

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

AR 660

In the Matter of Adoption of Rules Relating
to Resource Adequacy

JOINT REPLY COMMENTS OF
NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION,
CALPINE ENERGY SOLUTIONS, LLC,
AND BROOKFIELD RENEWABLE
TRADING AND MARKETING LP ON
PROPOSED RULES

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I. INTRODUCTION AND SUMMARY

The Northwest & Intermountain Power Producers Coalition (“NIPPC”), Calpine Energy Solutions, LLC (“Calpine Solutions”), and Brookfield Renewable Trading and Marketing LP (“Brookfield”) (collectively, the “ESS Parties”) hereby submit joint reply comments to the Public Utility Commission of Oregon (the “Commission” or “OPUC”) on the Notice of Proposed Rulemaking filed with the Oregon Secretary of State on November 27, 2023 (hereafter, “Proposed Rules”).

As expressed in ESS Parties’ prior comments during the formal and informal stage of the rulemaking and at the hearing, the ESS Parties have a fundamental concern that the compliance options in the Proposed Rules are, in effect, exclusively limited to full (and in several respects more onerous) compliance with the terms and conditions of the Western Resource Adequacy Program (“WRAP”) Tariff’s Forward Showing (“FS”) Program.¹ The ESS Parties continue to recommend that the Commission not rely solely on WRAP-style compliance (through direct WRAP participation or through the parallel State Program Requirements) because it remains unclear whether all load responsible entities (“LREs”) will be able to procure resources fully compliant with WRAP’s requirements, especially WRAP’s FS Transmission Requirement, which relies very heavily on advance procurement of firm transmission. The ESS Parties

¹ See generally WRAP Tariff at § 16.3 (FS Transmission Requirement), available at: https://www.westernpowerpool.org/private-media/documents/WRAP_Tariff_12-12-22_W0327945x8DF47_2.pdf; see also *Northwest Power Pool d/b/a Western Power Pool*, Federal Energy Regulatory Commission (“FERC”) Docket No. ER22-2762, Western Power Pool’s WRAP Submittal Letter at 23-24 (Aug. 31, 2022) (hereafter “WPP’s FERC Submittal Letter”) (describing the FS Transmission Requirement).

reiterate there is a meaningful chance the underlying assumption that the specific type of firm transmission needed to meet WRAP's specific and new FS Transmission Requirement is available for all LREs is wrong. If the Commission moves forward with the Proposed Rules that effectively mandate compliance with WRAP's firm transmission requirement as the only option, then the Commission runs the real risk that the Commission's requirements will be infeasible, particularly for electricity service suppliers ("ESSs") who have not, to date, had a commercial or regulatory reason to acquire extensive firm transmission portfolios under the region's preexisting bilateral market structure. Ultimately, such an infeasible Resource Adequacy requirement would undermine the competitive retail market intended by Oregon law. That outcome is not reasonable or in the public interest.

Thus, the ESS Parties continue to recommend that the Commission include within its administrative rules a meaningful alternative to such WRAP compliance, at least for ESSs. The ESS Parties' primary recommendation remains that the Commission should include a "Capacity Backstop Charge" option under which direct access customers could elect to pay the utility a Resource Adequacy charge. As another alternative, the ESS Parties continue to recommend that the Commission at least provide guidelines that would provide some assurance that utilities will not unreasonably refuse to sell to ESSs excess WRAP-compliant capacity and transmission through a mechanism, such as the annual Request for Offers ("RFO") proposed by Calpine Solutions.

In these reply comments, the ESS Parties primarily respond to PacifiCorp and Portland General Electric Company's ("PGE") comments in opposition to the proposal for the Commission to adopt an alternative compliance option of a Capacity Backstop Charge or an

RFO.² PacifiCorp and PGE's comments do not present any valid reasons for the Commission to decline to adopt a Capacity Backstop Charge or an RFO.

While it is certainly in PacifiCorp and PGE's best interest to limit Oregon's Resource Adequacy requirements to requirements that work *only* for incumbent utilities, that is not a reasonable or equitable path forward for the Commission. The ESS Parties support the Commission's efforts to develop a Resource Adequacy framework that ensures planning for Resource Adequacy for all Oregon loads, including new requirements that ensure such planning occurs for direct access customers.

However, this is a major transition and change in policy that can lead to outcomes that are difficult to predict at this time. Oregon's existing direct access market has developed in reliance on the system we have today based on the rules and policies previously adopted by the Commission. Until very recently, no one knew the specific contours of the new Resource Adequacy requirements, and these requirements were not contemplated when Oregon's direct access market was put in place or when existing direct access customers elected to enroll in direct access. The ESS Parties are reasonably requesting an alternative compliance option be included to ensure the transition to this new Resource Adequacy planning framework leaves all direct access customers with a viable path forward and does not have the unintended consequence of limiting retail choice opportunities for customers. Waiting until the problems occur with ESSs attempting to comply with the WRAP-only compliance framework might be too

² The ESS Parties do not oppose the clarifications to the Proposed Rules recommended by Idaho Power Company's comments filed on January 25, 2024.

late to avoid significant adverse consequences for direct access customers and the competitive retail market in Oregon.

II. COMMENTS

A. **Capacity Backstop Charge: The Commission Should Include a Capacity Backstop Option in the Administrative Rules.**

The ESS Parties' proposal for a Capacity Backstop Charge is a reasonable solution to ensure that at least one viable compliance option exists for Oregon's direct access customers. Despite providing little substantive basis to oppose the Capacity Backstop Charge in the informal rulemaking process, PacifiCorp and PGE's comments raise a number of new arguments against the Capacity Backstop Charge. None of these new arguments should dissuade the Commission from adopting a Capacity Backstop Charge. The Capacity Backstop Charge is a logical element to include in a new Resource Adequacy regime for a state offering retail choice outside of organized wholesale markets.

For example, a similar program has been proposed by Arizona Public Service Company ("APS") and is currently under consideration by the Arizona Corporation Commission for APS's wholesale buy-through program. Under that program, the customer can choose to supply their own Resource Adequacy through their ESS-equivalent or receive Resource Adequacy from APS and pay a capacity backstop charge.³ The Administrative Law Judge in that proceeding recently

³ *In re Application of APS for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop Such Return*, Arizona Corporation Commission Docket No. E-01345A-22-0144 at 8-9 (Oct. 28, 2022), available at <https://docket.images.azcc.gov/E000022029.pdf?i=1705344693216>. No

issued her order approving this framework.⁴ It is unclear to the ESS Parties why the same logical proposal in Oregon has become so controversial—particularly when the idea was initially proposed by PGE in Docket No. UE 358 when this Resource Adequacy discussion commenced.

1. PacifiCorp and PGE Mischaracterize the Capacity Backstop Charge Proposal.

At the outset, PacifiCorp and PGE misconstrue the Capacity Backstop Charge proposal in certain locations within their comments. They incorrectly characterize it as a proposal to *eliminate* the firm transmission requirement from the WRAP and/or the State Program.⁵ As the ESS Parties have previously argued, the Capacity Backstop Charge proposal is an *alternative in addition to* WRAP participation or State Program participation. It is not a proposal to reduce the FS Transmission Requirement in WRAP or the firm transmission requirements in the State Program. The intent of the Capacity Backstop Charge proposal is to ensure there is at least one option that is commercially viable for direct access customers. The ESS Parties do not argue that direct access customers should be exempt from contributing to regional Resource Adequacy efforts. To the contrary, the proposed Capacity Backstop Charge allows for complete Resource

party to the APS case opposed providing the capacity backstop charge as an option to wholesale buy-through customers.

⁴ Arizona Corporation Commission Docket No. E-01345A-22-0144, Recommended Opinion and Order at 445-46 (Jan. 25, 2024), available at <https://docket.images.azcc.gov/E000033297.pdf?i=1707493443879>.

⁵ See PacifiCorp and PGE’s Comments at 2 (Jan. 25, 2024) (stating opposition to “recommendations from NIPPC and Calpine Solutions that the Commission jettison the transmission forward showing requirement”); PacifiCorp and PGE’s Comments at 6 (characterizing NIPPC’s argument as “[r]emoving the transmission forward showing from the Oregon program”).

Adequacy planning for all loads and would require the direct access customer to pay the relevant LRE that has included the customer's load in its Resource Adequacy planning.

2. PacifiCorp and PGE Do Not Contest Certain Key Facts Supporting Adoption of an Alternative Compliance Option for ESSs.

Importantly, PacifiCorp and PGE do not seriously dispute certain key facts upon which the ESS Parties rely in proposing the Commission adopt a Capacity Backstop Charge. First, the key problem identified by the ESS Parties' comments and proposal for alternative compliance options is that Bonneville Power Administration ("BPA") point-to-point transmission is constrained, with incremental long-term, firm transmission being largely unavailable on the critical paths into PGE and PacifiCorp's systems.⁶ PacifiCorp and PGE appear to concede this point.⁷

Second, PacifiCorp and PGE do not seriously dispute NIPPC's argument that the incumbent utilities have locked up much of the necessary incremental transmission capacity, and they do not suggest that they lack the ability to offer a Capacity Backstop Charge option to direct access customers. As noted in NIPPC's opening comments, PGE estimated in its 2023 Clean Energy Plan-Integrated Resource Plan ("CEP-IRP") that it holds in excess 4,000 MW of BPA point-to-point transmission.⁸ That is far in excess of PGE's designated network resources that are located off-system, which total just 3,645 MW, and appear to include contracted resources

⁶ NIPPC's Opening Comments at 7-12 (Jan. 8, 2024).

⁷ See PacifiCorp and PGE's Comments at 5 ("There is no dispute that the regional transmission system is currently constrained[.]").

⁸ NIPPC's Opening Comments at 24 & n.53.

where the Seller uses its own BPA point-to-point transmission and not PGE's rights.⁹

Additionally, PGE has 1,724 MW of designated network resources directly connected to its own system that does not require use of BPA transmission.¹⁰ According to PGE's most recent Form 10-K, PGE's all-time peak load is 4,453 MW.¹¹ It is not clear if that amount includes direct access loads, but even if not, the existing cap in PGE's long-term direct access and new large load direct access ("NLDA") programs is approximately 420 MW, which if fully enrolled could bring PGE's peak load to approximately 4,900 MW. While PacifiCorp's situation may be more complicated, this public data clearly demonstrates that PGE holds significant BPA firm transmission and that it has extensive capacity connected to its system in relation to its all-time peak load. It appears to be the case that PGE would be fully capable of offering a Capacity Backstop Charge as an option to direct access customers.

In any event, if PacifiCorp or PGE believes it would be infeasible to offer the Capacity Backstop Charge as an option because they are short of capacity or transmission, they could be allowed to prove that in Docket No. UM 2024. But they have made no such argument yet, and there appears to be at least a prima facie case here that PGE at least could offer such a service to its direct access customers.

⁹ See Current Designated Network Resources Reported to PGE Transmission, OASIS (June 7, 2021), [http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/DNR_List_\(06-07-2021\).pdf](http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/DNR_List_(06-07-2021).pdf).

¹⁰ See Current Designated Network Resources Reported to PGE Transmission, OASIS (June 7, 2021), [http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/DNR_List_\(06-07-2021\).pdf](http://www.oasis.oati.com/woa/docs/PGE/PGEdocs/DNR_List_(06-07-2021).pdf).

¹¹ 2022 Annual Report, PGE Form 10-K for fiscal year ended Dec. 31, 2022 at 11 (Feb. 15, 2023), <https://investors.portlandgeneral.com/static-files/18b37e31-ebfd-4cc0-93e7-fb9c8e1c32b3>.

Finally, NIPPC agrees with PacifiCorp and PGE that the Resource Adequacy “program should work together with regional transmission planning efforts to incentivize efficient and near-term transmission system investments.”¹² The Capacity Backstop Charge would provide a path for direct access customers to contribute to the region’s near-term transmission investments by paying the necessary charge for the incumbent utility’s participation in those efforts. However, forcing ESSs to attempt to procure long-term, firm BPA point-to-point transmission that is not available and incurring draconian penalties in WRAP, or being decertified as ESSs in the State Program if they are unable to do so, does not solve the near-term transmission problem and is not a reasonable solution to these newly imposed Resource Adequacy expectations—especially if the incumbent utility’s capacity and transmission portfolio could support the relatively limited direct access load.

3. PacifiCorp and PGE Incorrectly Suggest that WRAP is an Organized Wholesale Market from Which ESSs May Easily Procure Resource Adequacy.

Next, PacifiCorp and PGE attempt to portray WRAP as an organized wholesale market where ESSs can easily procure capacity and firm transmission. PacifiCorp and PGE appear to argue that instead of offering a Capacity Backstop Charge to direct access customers, they would prefer to force direct access customers to purchase their excess capacity through the WRAP’s Operations Program.¹³ They appear to suggest that the WRAP’s Operations Program is similar

¹² PacifiCorp and PGE’s Comments at 5-6.

¹³ See PacifiCorp and PGE’s Comments at 8 (arguing that “the WRAP operations program will commit excess capacity to other WRAP participants who are short”); PacifiCorp and PGE’s Comments at 14-15 (making similar argument).

to an organized wholesale market where any ESS should be required to procure capacity. However, it is not a reasonable policy to design the state's Resource Adequacy requirements with the knowing intent that certain LREs or their customers must rely heavily on the WRAP's Operations Program.

The WRAP's Operations Program is not an organized wholesale market but is instead an option of last resort for WRAP Participants who are unable to meet load in the day-ahead timeframe. An ESS cannot plan to rely on the WRAP's Operations Program to meet its load obligations in the same way that an LRE might do in other regions of the nation with an organized wholesale market. Further, an ESS that is unable to meet WRAP's Forward Showing requirements due to the difficult FS Transmission Requirement cannot simply defer the problem until the Operations Program. Doing so would expose the ESS and/or its direct access customers to significant financial consequences, including: (1) a significant "Deficiency Charge" for any shortfall in the Forward Showing program based on the revenue requirement of a new capacity resource subject to adjustments specifically designed to deter deficiencies;¹⁴ and (2) charges in the Operations Program for any energy supplied to it by other Participants with prices with opportunity cost adjustments specifically designed to be higher than typical market prices.¹⁵

In sum, despite the suggestions in PacifiCorp and PGE's comments, relying on the WRAP's Operations Program as a means to regularly serve load is not a long-term solution any

¹⁴ WPP's FERC Submittal Letter at 26-29; WRAP Tariff at § 17, available at: https://www.westernpowerpool.org/private-media/documents/WRAP_Tariff_12-12-22_W0327945x8DF47_2.pdf.

¹⁵ WPP's FERC Submittal Letter at 38-42.

LRE would rationally pursue. While the ESS Parties would certainly welcome development of an organized wholesale market with an independent transmission provider, the Northwest region does not have such a market, and WRAP is not such a market.¹⁶ Indeed, the WRAP’s governing board is specifically “constrained from amending the Tariff to establish an organized market, including a capacity market, without supermajority support from the [Resource Adequacy Participants Committee.]”¹⁷ It is disingenuous for PacifiCorp and PGE to now point to WRAP as though it is a functioning capacity market from which ESSs can procure resources on a non-discriminatory basis.

4. PacifiCorp and PGE Incorrectly Claim that ESSs are Similarly Situated to Incumbent Utilities with Respect to Achieving Compliance with WRAP’s FS Transmission Requirement.

Despite PacifiCorp and PGE’s claims, ESSs are not similarly situated to incumbent utilities in their ability to comply with the FS Transmission Requirement.

PacifiCorp and PGE first provide an irrelevant argument that they operate their own transmission systems in accordance with FERC’s open access regime and treat ESSs equally to the utility’s own merchant functions.¹⁸ This argument misses the point. The ESS Parties have not pointed to scarcity of network transmission across the utilities’ own systems to load. The

¹⁶ See WPP’s FERC Submittal Letter at 14 (“the WRAP is not an organized market”).

¹⁷ WPP’s FERC Submittal Letter at 50; *see also* WRAP Tariff at § 3.4 (“WPP is specifically prohibited from amending this Tariff to: . . . Form any type of organized market, including but not limited to a capacity market, a regional transmission organization, a real-time market, or any other type of FERC-approved regional construct, unless such action is also approved by the RAPC under its voting procedures set forth in Section 4.1.6 of this Tariff.”).

¹⁸ PacifiCorp and PGE’s Comments at 6-7.

problem identified is the scarcity of available long-term, firm point-to-point transmission on BPA’s system to deliver power to the utilities’ systems for ultimate delivery to direct access customers.

With respect to point-to-point transmission across BPA’s system, PacifiCorp and PGE mistakenly claim that their “merchant functions are in the same position as ESSs[.]”¹⁹ This assertion is wrong for multiple reasons. Most significantly, as detailed above, the incumbent utilities already hold extensive BPA transmission rights. An ESS that does not also already hold such extensive rights, or acquires a new direct access load in excess of whatever rights it might have, does not have equal ability to meet the FS Transmission Requirement as the incumbent utilities for that reason. As NIPPC’s opening comments explained, the utilities have a larger captive customer base and incumbent status that make it much easier to meet the 75% firm transmission requirement.²⁰ Additionally, unlike utilities, ESSs are not entitled to stranded cost charges that allow them to comfortably procure years of forward capacity and transmission beyond the term of their customers’ commitments. The suggestion that the utilities are in the “same position” as ESSs when seeking transmission across third-party systems ignores their incumbent monopoly position and the fact that the utilities apparently already have the 75% firm transmission locked up.

ESSs are on equal footing only with respect to their rights to acquire *new* transmission rights, and only to the extent such transmission capacity is available for sale on a long-term, firm

¹⁹ PacifiCorp and PGE’s Comments at 7.

²⁰ NIPPC’s Opening Comments at 23-24.

basis months in advance of the applicable forward showing period. Given the utilities' extensive legacy transmission holdings, ESSs would only be on equal footing if the utilities ceded their legacy transmission rights back to the transmission provider and allowed for any party to procure those rights. The utilities' refusal to entertain an RFO for any excess WRAP-compliant transmission rights they currently hold further confirms that ESSs are not on equal footing.

Relatedly, PacifiCorp and PGE argue that FERC's rules preclude them from "hoarding" BPA's long-term, firm point-to-point transmission. This argument is both unsupported and beside the point. First, PacifiCorp and PGE present no evidence that they have only procured the limited amount of BPA point-to-point, long-term, firm transmission necessary to serve their near-term load. Second, PacifiCorp and PGE's comments suggest that they *do plan* to hold any excess transmission until other WRAP Participants are short of capacity in the operational timeframe and must then buy such transmission and/or capacity from them in the WRAP's Operations Program.²¹ PacifiCorp and PGE provide no basis to conclude that they would be complying with FERC's anti-hoarding rule if they were to withhold excess transmission rights until WRAP orders such rights sold to prevent a reliability event in WRAP's Operations Program. Such conduct may well be impermissible hoarding under the Federal Power Act.²²

²¹ See PacifiCorp and PGE's Comments at 8 (stating, "the Joint Utilities will not hoard unused generation capacity because first, the WRAP operations program will commit excess capacity to other WRAP participants who are short").

²² See *Preventing Undue Discrimination & Preference in Transmission Serv.*, 123 FERC ¶ 61,299 at P 82 (June 23, 2008) ("Should any customer believe . . . that particular holders of transmission capacity are attempting to exercise market power through hoarding or other tactics . . . the customer should bring the matter to the Commission's attention through a complaint or other appropriate procedural mechanisms."); *Aero Energy LLC*,

Third, and most importantly, the salient point relevant to the Capacity Backstop Charge proposal is not that the utilities are hoarding transmission in violation of FERC orders; the point is, as incumbents, the utilities are very likely to be better positioned to meet WRAP’s new requirement for firm transmission (or largely avoid it through use of on-system capacity), and thus the Commission should provide direct access customers the option to pay the utilities for that capacity product. The relevant inquiry is whether the utilities have the ability to offer a Capacity Backstop Charge and, if so, what is the appropriate charge, the appropriate notice periods, and other requirements to implement such a charge.

5. The Capacity Backstop Charge Would Not Violate the Federal Power Act.

PacifiCorp and PGE’s argument that the Capacity Backstop Charge is an unlawful wholesale charge is meritless.²³ They cite no convincing precedent in support of this argument.

The law is clear that this Commission has jurisdiction to establish retail rates charged to end-use customers of PacifiCorp and PGE. The Supreme Court has explained that under the Federal Power Act, FERC “may not regulate . . . retail sales of electricity (*i.e.*, sales directly to users).”²⁴ Instead, “[s]tate utility commissions continue to oversee those transactions.”²⁵ The

116 FERC ¶ 61,149 at P 22 (Aug. 14, 2006) (“under FPA sections 211 and 212 there is no reason to allow firm transmission service to lie idle when someone else needs it.”); *Houlian Chen, Powhatan Energy Fund, LLC*, 151 FERC ¶ 61,179 at P 67 (May 29, 2015) (“Respondents reserved 10 percent of all the reserved transmission capacity in PJM and by ‘hoarding’ that transmission Respondents prevented other market participants from using the transmission for legitimate purposes to enter into real physical and arbitrage-based trades.”).

²³ See PacifiCorp and PGE’s Comments at 11-13.

²⁴ *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 267, 136 S. Ct. 760, 768 (2016).

²⁵ *Elec. Power Supply Ass’n*, 577 U.S. at 267.

proposed Capacity Backstop Charge is unquestionably such a retail sale of capacity directly to the user and is firmly within this Commission’s jurisdiction. Oregon law specifically entitles non-residential customers to purchase energy, *or* capacity, *or* both from an ESS.²⁶ This Commission is the governmental authority that sets the rates applicable to customers choosing to buy capacity from the utility.

PacifiCorp and PGE cite off-point and irrelevant cases in support of their argument. They first rely on *Hughes v. Talen Energy Mktg., LLC*.²⁷ The *Hughes* decision addressed very different facts than the Capacity Backstop Charge proposed here. As the Supreme Court explained in *Hughes*, Maryland’s program “provides subsidies, through state-mandated contracts, to a new generator, but conditions receipt of those subsidies on the new generator selling capacity into a FERC-regulated wholesale auction.”²⁸ Thus, the program both mandated participation in the FERC-regulated wholesale market and, in effect, set the price for such wholesale transactions. The Supreme Court held that “[b]y adjusting an interstate wholesale rate, Maryland’s program invades FERC’s regulatory turf.”²⁹ But the Court explained its “holding is limited” and only applies where a state “disregards an interstate wholesale rate required by FERC.”³⁰ In contrast, the Commission here would not be guaranteeing a wholesale rate to an ESS or a utility. Nor would it be forcing the utilities to sell anything in a wholesale

²⁶ See ORS 757.601(1), 757.600(6) & 757.600(14).

²⁷ PacifiCorp and PGE’s Comments at 11-12 & n.17 (citing *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154, 136 S. Ct. 1288, 1292 (2016)).

²⁸ *Hughes*, 578 U.S. at 153.

²⁹ *Hughes*, 578 U.S. at 163.

³⁰ *Hughes*, 578 U.S. at 166.

market. It would be providing the direct access customer with the option to purchase its capacity at the retail level from the incumbent utility at a cost-of-service rate. The proposed Capacity Backstop Charge does not “require the Joint Utilities to engage in specific wholesale transactions at prices set by the Commission” as PacifiCorp and PGE allege;³¹ it establishes a just and reasonable rate to charge a customer for capacity at retail.

PacifiCorp and PGE also cite *Northern Natural Gas Co. v. State Corporation Comm’n of Kan.*, for the proposition that the Federal Power Act “leaves no room either for direct state regulation of the prices of interstate wholesales” or for regulation that “would indirectly achieve the same result.”³² The *Northern Natural Gas* decision is a gas case that predates retail direct access and the issue of whether a state can require its regulated utilities to offer a capacity backstop product to customers that are otherwise entitled to access the wholesale market through an ESS. In other words, it is totally off point. The Commission would not be indirectly setting any wholesale rates through the Capacity Backstop Charge assessed to the end use customer.

In sum, PacifiCorp and PGE’s arguments appear to misunderstand the proposed Capacity Backstop Charge to be a charge for selling capacity to ESSs, when the proposal is that the utilities charge a direct access customer a cost-based rate to include the direct access customer within the utility’s own WRAP forward showings. There is no forced sale of capacity to the ESSs. It is also hard to understand how PGE credibly argues that the concept of a Capacity

³¹ PacifiCorp and PGE’s Comments at 12.

³² PacifiCorp and PGE’s Comments, at 12 & n.18 (citing *Northern Natural Gas Co. v. State Corporation Comm’n of Kan.*, 372 U.S. 84, 91, 83 S. Ct. 646 (1963)).

Backstop Charge is illegal when PGE itself previously proposed the Commission adopt the very same type of charge just a few years ago in Docket No. UE 358.

6. PacifiCorp and PGE’s Remaining Arguments Merely Raise Issues that Could Be Resolved in Establishing the Rates, Terms, and Conditions Applicable to the Capacity Backstop Charge in Docket No. UM 2024.

Many of PacifiCorp and PGE’s arguments attempt to establish that a cost shift would necessarily occur if a Capacity Backstop Charge is offered. But that argument presupposes that the charge would be set too low to recover the utility’s reasonable costs of supplying the Resource Adequacy service. To be clear, the ESS Parties’ proposal is that the Commission would direct in this rulemaking that the Capacity Backstop Charge be further investigated and developed in Docket No. UM 2024, and the utilities would be free to propose a reasonable charge and demonstrate its necessary magnitude in that proceeding.

Certain statements in PacifiCorp and PGE’s comments even appear to ignore the fact that there would be a Capacity Backstop Charge to compensate the utility and cost-of-service customers for the capacity product. They claim the charge “would allow ESSs to impermissibly lean on cost-of-service customers to subsidize their RA obligations”³³ and “would provide a competitive advantage to ESSs, who would be relieved of that obligation under the state RA program.”³⁴ The direct access customer would not be impermissibly “leaning” on the utility’s Resource Adequacy service if the direct access customer is paying a just and reasonable rate for the Resource Adequacy product supplied by the utility. This is a particularly surprising

³³ PacifiCorp and PGE’s Comments at 2.

³⁴ PacifiCorp and PGE’s Comments at 8.

argument for PGE to make because PGE itself proposed such a Resource Adequacy charge be implemented for NLDA customers in Docket No. UE 358. Additionally, most or all of the current direct access customers were initially cost-of-service customers and have in fact contributed to the existing system through cost-of-service rates and stranded cost charges they have paid or continue to pay. Even NLDA customers are required to pay a charge equivalent to 20 percent of the utility's fixed generation costs for the first five years of program enrollment.³⁵ Thus, PacifiCorp and PGE's attempt to portray direct access customers as having contributed nothing to the existing utility system is mistaken. There is no inequity in those customers paying the utility a just and reasonable rate for WRAP-compliant capacity to meet the newly created Resource Adequacy requirements while continuing to purchase energy from an ESS.

PacifiCorp and PGE also claim there would be a cost shift because the utility using its own resources to supply the direct access customer's Resource Adequacy obligation would then be "unable to serve customers or support market sales."³⁶ But if the utilities can demonstrate there is a lost opportunity cost incurred by other customers due to the inability to sell the excess capacity or energy in the market, then that can be taken into account in establishing the Capacity Backstop Charge. However, to the extent PacifiCorp and PGE's concern is that utility shareholders are expected to profit from such wholesale sales from excess capacity, i.e. to the extent that the incremental revenues from such sales fall within a utility's power cost adjustor

³⁵ OAR 860-038-0740(3)(a).

³⁶ PacifiCorp and PGE's Comments at 3; *see also* PacifiCorp and PGE's Comments at 10 (making similar argument).

deadband, the utilities appear to be putting their own shareholders ahead of customers by refusing to offer the capacity to direct access customers.

Similarly, PacifiCorp and PGE claim that “cost-of-service customers will be left on the hook for the difference between actual costs incurred by the utility and the Capacity Backstop Charge set by the Commission.”³⁷ However, this argument raises an issue that is no different from the issues raised by any other cost-of-service rate. The risk can be solved by regular rate updates if the utility is concerned that the cost of supplying Resource Adequacy fluctuates significantly over time.

PacifiCorp and PGE also argue that “a direct access customer will presumably rely on the Capacity Backstop Charge only if it is less than the expected price for the equivalent product purchased in the wholesale market.”³⁸ This argument overlooks that the ESS Parties propose the charge be set at a level that holds cost-of-service customers harmless, and there be sufficient notice provisions to prevent the direct access customer from “arbitraging” back and forth to the disadvantage of other customers. To the extent that the utility’s Capacity Backstop Charge may be more attractive at this time and lead to most direct access customers electing that option, that would be the economically efficient outcome. Non-direct access customers are not harmed if the charge is set at a level that holds them harmless. It is a non-sequitur for PacifiCorp and PGE to

³⁷ PacifiCorp and PGE’s Comments at 8-9.

³⁸ PacifiCorp and PGE’s Comments at 3; *see also* PacifiCorp and PGE’s Comments at 9 (“direct access customers will only choose the Capacity Backstop Charge when it is lower cost than the market, meaning that by design the Capacity Backstop Charge will inherently result in cost-of-service customers paying more to procure RA compliance generation or losing out on revenue that could have been earned by the sale of RA compliance generation in the market. Either case is an impermissible shifting of costs.”).

argue that just because they can offer a Capacity Backstop Charge at a lower cost than an ESS that there would be a cost shift to non-direct access customers.

Finally, the argument that “a direct access customer would never choose to use the Capacity Backstop Charge unless it costs less than an equivalent market product”³⁹ overlooks the key point in the ESS Parties’ comments—that ESSs are concerned it may not be commercially feasible to meet the WRAP requirements *at all*. The question is not just whether the utility can offer the WRAP product at lower cost, but whether it is the only LRE that can offer it period.

B. Request for Offers: PacifiCorp and PGE’s Argument Against the RFO Proposal Are Incorrect.

PacifiCorp and PGE also make unpersuasive arguments regarding the ESS Parties’ alternative proposal for RFO guidelines.

They argue the RFO “raises jurisdictional concerns because the Commission would essentially create a state-mandated wholesale market for the sale of FERC- jurisdictional products to only a subset of potential purchasers.”⁴⁰ That argument mischaracterizes the RFO proposal. The RFO is basically a reporting mechanism that would exist to ensure the Commission, or its Staff, is regularly checking to ensure the utilities are not imprudently abusing their market power by withholding WRAP-compliant capacity or transmission from ESSs making reasonable offers to purchase it. The utilities’ response to the proposal appears to confirm the ESS Parties’ fear that the utilities will not offer such capacity bilaterally to ESSs,

³⁹ PacifiCorp and PGE’s Comments at 9.

⁴⁰ PacifiCorp and PGE’s Comments at 13-14.

which was the key assumption by Staff in abandoning the Capacity Backstop Charge earlier in this proceeding.

PacifiCorp and PGE also argue that the WRAP provides a “mechanism” to trade load obligations.⁴¹ This is another overstatement regarding the opportunities within WRAP. While it is true one WRAP Participant can pay another Participant to assume its load obligations, there is certainly no assurance that any party within WRAP will necessarily have, and be willing to sell, the WRAP-compliant capacity and transmission to serve load in the Oregon utilities’ territories. As noted above, the WRAP is not an organized wholesale market, and PacifiCorp and PGE mischaracterize it by suggesting it is.

In sum, the RFO proposal was a good faith effort to start a discussion around a framework under which utilities would sell any excess capacity and transmission to ESSs offering to buy it made in response to Staff’s assumption that the utilities would do so, but the utilities have refused to engage on this possibility at all. That refusal should give the Commission concern that the utilities do not plan to sell any excess capacity or transmission to ESSs at any price.

C. One-Year and Three-Year Programs: PacifiCorp and PGE’s Arguments Regarding One-Year and Three-Year Customers Are Unpersuasive.

PacifiCorp and PGE also make new arguments regarding Resource Adequacy obligations for the one-year and three-year programs. These new arguments are surprising. As noted in NIPPC’s opening comments, PGE previously agreed that customers still paying transition

⁴¹ PacifiCorp and PGE’s Comments at 14.

charges, such as one-year and three-year customers, should not be subject to a Resource Adequacy charge in Docket No. UE 358.⁴² Additionally, this issue was raised in the informal phase of this rulemaking, but no utility expressed any reason why the ESS should be responsible to conduct duplicative long-term planning for Resource Adequacy for one-year and three-year customers when the utility already does so. NIPPC based its recommendation in the formal rulemaking on the lack of prior objection from the utilities and on PGE's own prior representations to the Commission when PGE initially proposed that direct access customers should be responsible to pay for Resource Adequacy in Docket No. UE 358. PGE attempts to now distinguish its prior statements on the basis that those statements were made prior to the WRAP. However, even if the WRAP changes the circumstances, the issue could be addressed in a ratemaking setting to adjust the transition adjustments and/or Capacity Backstop Charge for one-year and three-year customers to ensure any added costs of WRAP compliance are included in the applicable charges to the customer.

In sum, the ESS Parties continue to recommend the Commission adopt a framework that allows the one-year and three-year customers to be credited for the value of their transition charges in calculating their Capacity Backstop Charge and the issue should be addressed in Docket No. UM 2024.

⁴² See NIPPC's Opening Comments at 18 (quoting Docket No. UE 358, Tr. at 24:20 to 25:3 (Oct. 17, 2019)).

D. Transmission Forward Showing Exceptions: NIPPC and Calpine Solutions Support Brookfield’s Requested Revision to the Proposed Transmission Forward Showing Exceptions.

In Brookfield’s comments filed on January 25, 2024, Brookfield noted the proposed rules include restrictions on claiming transmission forward showing exceptions that are unsupported.⁴³ Despite being added at PGE’s request “[t]o further align with the WRAP,”⁴⁴ the limitation is not in alignment with the WRAP. The WRAP tariff recognizes transmission may be constrained such that, in certain situations, a WRAP participant may need to claim an exception two years in a row. PGE’s recommended restriction included in the Proposed Rules fails to recognize this or support implementation of significantly more onerous requirements than those imposed in the WRAP, which as discussed above may be unworkable themselves.

Therefore, the ESS Parties agree the Commission should remove the restrictions on claiming transmission forward showing exceptions in consecutive years, or at least include a statement within the rules or its order adopting the rules that State Program transmission requirement waivers will not be precluded unless the Qualified Regional Program would preclude use of such waiver, consistent with Brookfield’s comments in this proceeding.⁴⁵

III. CONCLUSION

NIPPC, Calpine Solutions, and Brookfield appreciate the opportunity to comment on the

⁴³ Brookfield’s Comments at 7-8 (Jan. 25, 2024).

⁴⁴ Docket No. UM 2143, PGE Comments on Staff Updated Draft Resource Adequacy Rules at 7 (July 21, 2023).

⁴⁵ Brookfield’s Comments at 7-8.

proposed Resource Adequacy rules and continue to recommend the Commission make the revisions proposed in NIPPC's opening and Brookfield's comments.

Dated this 13th day of February 2024.

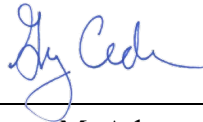
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