

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 2143

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation Into Resource Adequacy in
Oregon

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION’S
COMMENTS ON STAFF REPORT

I. INTRODUCTION AND SUMMARY

The Northwest & Intermountain Power Producers Coalition (“NIPPC”) hereby submits its comments in response to the Public Utility Commission of Oregon (“OPUC” or “Commission”) Staff’s Report (“Staff Report”) recommending that the Commission open a formal rulemaking proceeding and providing draft proposed rules for resource adequacy (“RA”) requirements.

NIPPC has actively engaged in the informal stage of this rulemaking process and appreciates Staff’s efforts to refine the proposed state-level RA requirements. However, NIPPC has a fundamental concern that the compliance options in the proposed rules are, in effect, exclusively limited to full compliance with the terms and conditions of the Western Resource Adequacy Program (“WRAP”) Tariff’s Forward Showing (“FS”) Program. While the draft proposed rules include parallel State Program Requirements for non-participants in WRAP, the State Program Requirements for advance procurement of capacity and transmission are no less

stringent than those in WRAP.¹ NIPPC supports participation in WRAP by as many load responsible entities (“LREs”) as possible, and agrees that an LRE’s procurement of WRAP-compliant capacity and transmission—through direct WRAP participation or demonstration through the draft proposed rules’ State Program Requirements—is a logical option for compliance with Oregon’s rules. NIPPC is also not opposed to a State Program Requirement that encourages WRAP participation.

But NIPPC urges the Commission not to rely solely on WRAP-style compliance because it remains unclear whether all 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. As summarized herein, there is a meaningful chance that the underlying assumption that adequate firm transmission exists for all LREs to meet WRAP’s FS Transmission Requirement 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 market structure. Ultimately, such an infeasible RA requirement would undermine the competitive retail market intended by Oregon law. That outcome is not reasonable or in the public interest.

¹ See Staff Report, Attachment A at 4-5 (Sept. 11, 2023) (containing the “State Program Requirements”).

Thus, as explained below, NIPPC urges the Commission to include within the proposed rules a meaningful alternative to such WRAP compliance, at least for ESSs. There are already two reasonable alternatives that have been proposed in this proceeding:

(1) Capacity Backstop Charge: The Commission should include an option that direct access customers pay the utility an RA charge, which meets the customer's ESS's RA obligation for that customer's load; or

(2) Request for Offers: If the Commission decides not to adopt a Capacity Backstop Charge, the Commission should 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 Energy Solutions, LLC ("Calpine Solutions").

The Commission could further develop either of these proposals in the Docket No. UM 2024 proceeding as well, as opposed to delaying or extending the rulemaking in this proceeding.

At a minimum, if the Commission does not adopt one of these recommendations, then it should set a date certain by which it will revisit this issue in the rules to review whether the WRAP's firm transmission requirement is proving to be unworkable.

II. COMMENTS

A. **The WRAP's Firm Transmission Requirement Is Very Problematic and Should Not Be Elevated to a De Facto Mandatory LRE Requirement By this Commission's Rules**

The most concerning aspect of the WRAP Tariff's Forward Showing requirements (which are also imported into the draft proposed rules' State Program Requirements) is the FS

Transmission Requirement.² WRAP’s FS Transmission Requirement primarily requires advance procurement of firm transmission in a region that has not traditionally relied so heavily on firm transmission. Instead, the regional practice has been for some of the region’s major transmission providers, in particular Bonneville Power Administration (“BPA”), to release for purchase the necessary transmission capacity on the short-term market relatively close in time to the real-time market.³ LREs have been able to reliably serve load with such released transmission capacity for many years without necessarily locking in firm transmission reservations months in advance. But the WRAP Tariff assumes a new and significant shift in regional practices by requiring all of its participants to rely very heavily on firm transmission. Under the WRAP Tariff’s FS Transmission Requirement, each LRE must procure firm transmission at least seven months before the beginning of each Binding Season for at least 75% of its load obligations with very limited exceptions that cannot be consistently relied upon.⁴

In NIPPC’s view, the underlying assumption that adequate firm transmission will be

² 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*, FERC Docket No. ER22-2762, Western Power Pool’s WRAP Submittal Letter, FERC Docket No. ER22-2762 at 23-24 (Aug. 31, 2022) (hereafter “WPP’s FERC Submittal Letter”) (describing the FS Transmission Requirement).

³ For instance, WRAP itself acknowledged that “full transmission service seven Months ahead of the Binding Season could serve as a barrier to initial participation” and it “is not essential for reliability, given that most Participants’ experience has been that a certain amount of transmission service that is not available seven Months ahead of the Binding Season can be obtained on a shorter-term basis.” WPP’s FERC Submittal Letter at 23.

⁴ WRAP Tariff at §§ 14.2 (“The FS Deadline for each Binding Season shall be seven months before the start of such Binding Season.”) and 16.3 (FS Transmission Requirement).

available for all LREs to consistently meet WRAP’s FS Transmission Requirement has a meaningful probability of being wrong. The lack of adequate firm transmission in the region for purposes of widespread WRAP compliance by all LREs in the region has been demonstrated during the informal rulemaking phase in this proceeding. As Calpine Solutions explained in its comments, Portland General Electric Company’s (“PGE”) recent regulatory filings succinctly summarize the lack of incremental firm transmission available to parties who do not already hold such firm transmission rights.⁵ PGE’s 2023 Clean Energy Plan-Integrated Resource Plan (“CEP-IRP”) succinctly explains:

Resource portfolios have grown and shifted in response to increasing loads, new large and highly concentrated loads and the significant growth of variable energy resources. However, the delivery capabilities of the Pacific Northwest’s transmission system, generally, have not kept pace with these changing demands. *As a result, the region is already constrained, with little or no ATC available across all time horizons.*

* * * *

As discussed by BPA and stakeholders throughout BPA’s Transmission Study and Expansion Process 2022 (TSEP), ***BPA’s system is fully subscribed***, and *incremental transmission requests are unlikely to be granted until the late 2020s or early 2030s*, pending significant upgrades.⁶

⁵ Calpine Solutions’ Comments at 5-7 (June 12, 2023).

⁶ *In re PGE 2023 CEP and IRP*, Docket No. LC 80, PGE’s CEP-IRP at 217 (Mar. 31, 2023) (emphasis added, internal citations omitted).

BPA’s own presentation of results from a recent transmission cluster study describes the situation as follows: “Near full-subscription all over the existing BPA transmission system.”⁷ In another recent filing at the Federal Energy Regulatory Commission (“FERC”), PGE sought relief from the requirement to use firm transmission across BPA’s system to support dynamic transfer/pseudo ties and BPA apparently agreed.⁸ According to PGE’s FERC filing, “the region’s transmission system is already constrained, with little or no available transfer capability (‘ATC’) available across all time horizons[,]” and “[r]estricting Pseudo-Ties to the use of firm transmission would unduly constrain use of the regional transmission system[.]”⁹ PGE states that a table included with the filing “clearly illustrates a constrained regional transmission system, especially on transmission paths impacting energy from outside the PGE service area.”¹⁰ PGE further concludes that “[t]here are no east to west unconstrained paths available to PGE[,]”¹¹ and “the region lacks sufficient firm transmission capacity to meet both Northwest utilities’ projected load growth and carbon-reduction requirements.”¹²

PGE’s assessments in its 2023 CEP-IRP and its recent FERC filing provide important confirmation regarding the lack of adequate firm transmission in the region to give LREs, and

⁷ TSEP Cluster Study Process Update, BPA at slide 6 (Sept. 2022), <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/09-20-22-cluster-study-improvements-customer-update.pdf>.

⁸ See FERC Docket No. ER23-1123, PGE’s Response to Deficiency Letter (May 11, 2023).

⁹ *Id.* at 2.

¹⁰ *Id.* at 4

¹¹ *Id.* at 4.

¹² *Id.* at 5.

particularly ESSs, much comfort that they will be able to reliably meet the WRAP's FS Transmission Requirement. Notably, ESSs are in a worse position than PGE or PacifiCorp because ESSs are not transmission providers with the capability expand their own transmission system to cure these problems. If the desire is for all LREs to rely so heavily on advanced procurement of firm transmission, ESSs must rely solely on the region's transmission providers to properly expand the transmission system to make that possible. Additionally, until the WRAP's recent creation of a firm transmission requirement for RA, ESSs have not necessarily had reason to acquire on their customers' behalf extensive firm transmission assets because the Northwest market has been able to successfully serve load without such heavy use of advance procurement of firm transmission.

Thus, locking in rules that require compliance with WRAP—with the only alternative being a parallel State Program Requirement that includes and even amplifies the most problematic firm transmission requirement from WRAP's current requirements—and tying that compliance to an ESS's certification to operate in Oregon's direct access programs at all, is not a reasonable course of action at this time. Making such a WRAP-only RA requirement a provision of becoming and maintaining good standing as an ESS in Oregon could create barriers to entry into Oregon's retail market and limit opportunities for customers.

Staff's proposal seems to operate under the assumption that because WRAP is already FERC-approved, it is a suitable requirement to impose under Oregon law on all LREs. However, Staff's proposal overlooks that one of the key premises of FERC's approval of the justness and reasonableness of the WRAP Tariff was its *voluntary* nature. While the WRAP Tariff was indeed approved by FERC, it certainly was *not* approved by FERC as a mandatory compliance

standard that must be used by all LREs in the region. Notably, at FERC, NIPPC objected to the WRAP’s stringent firm transmission procurement requirements, which may be practically infeasible in today’s market and, in effect, shift transmission planning burdens onto LREs that are not transmission providers.¹³ In response, FERC stated as follows: “Further, we disagree with NIPPC’s argument that [Western Power Pool’s] proposal inappropriately turns the Forward Showing Transmission Requirement into an extension of the planning function of transmission providers. Rather, the WRAP is a *voluntary* program that financially binds all participants to meeting capacity and transmission showing requirements that will, as a result, provide better information to state and local regulatory agencies’ planning processes.”¹⁴ Thus, FERC approved the WRAP Tariff and excused its potentially infeasible transmission requirement because it was voluntary. This necessarily assumes that there would be other feasible alternatives. But under Staff’s draft proposed rules before this Commission, compliance with the WRAP’s potentially infeasible firm transmission requirement would be, for all practical purposes, mandatory.

In sum, NIPPC submits that available evidence does not support that adoption of the WRAP’s FS Transmission Requirement as a mandatory RA compliance option is just and reasonable as the only option for ESS compliance, and the Commission should ensure other options will be made available in the rules.

B. There Are Reasonable Alternative RA Compliance Options to WRAP Compliance

Two reasonable alternatives to ESS-supplied WRAP-compliant RA have been proposed

¹³ See, e.g., FERC Docket No. ER22-2762, NIPPC’s Comments at 3-6, 9-24 (Sept. 30, 2022).

¹⁴ *Northwest Power Pool*, 182 FERC ¶ 61,063, P 85 (Feb. 10, 2023) (emphasis added).

in this proceeding, but neither is included as an option in the proposed rules before the Commission. The Commission should adopt one of these proposals, or otherwise expressly set a date certain to revisit the rules to review whether the WRAP requirements are proving to be unworkable.

The first proposed alternative is payment of an RA charge to the applicable utility by the direct access customer. Notably, Staff’s initial straw proposal in this proceeding included as one of the compliance options the payment of a “Capacity Backstop charge.”¹⁵ While the initial proposal needed certain refinements, Staff instead completely removed the Capacity Backstop Charge as an option in its February 17, 2023 updated straw proposal.¹⁶ At that time, Staff explained that this “major change is to eliminate the capacity backstop charge in this filing while making it clear that an ESS can procure capacity from an IOU through a bilateral contract as a means of compliance.”¹⁷ NIPPC and others pointed out that it is not reasonable to expect that the utilities necessarily have any interest in selling excess WRAP-compliant capacity and transmission to their competitor ESSs to serve load within the same utility’s own balancing authority, and further that the ESS and its customers may have no means of compliance if the ultimate provisions of the WRAP and products available in that program do not work for the particular ESS.¹⁸ These concerns have not been resolved in Staff’s proposal and remain as a

¹⁵ See Staff Straw Proposal, as amended by errata, at 6-7 (Oct. 5, 2022).

¹⁶ Staff’s Updated Process Proposal at 3 (Feb. 17, 2023).

¹⁷ Staff’s Updated Process Proposal at 3 (Feb. 17, 2023).

¹⁸ See NIPPC’s Comments at 4 (Mar. 13, 2023) (stating: “Simply stated, for the second option, a Commission-established RA backstop charge is necessary and appropriate to ensure that an ESS has the ability to acquire RA capacity at a just and reasonable price,

fundamental flaw with the proposed rules before the Commission.

The second proposed alternative to ESS-supplied WRAP-compliant RA was made by Calpine Solutions as a result of Staff’s expressed disinterest in developing a Capacity Backstop Charge.¹⁹ Building on Staff’s own concept that the ESS could purchase WRAP-compliant capacity and transmission from the utility, Calpine Solutions proposed that the Commission adopt, at a minimum, workable guidelines that the rules require the utilities to follow in offering any excess WRAP-compliant capacity or transmission to ESSs with the goal of deterring utilities from refusing a reasonable offer by an ESS to buy the utility’s excess capacity and/or transmission.²⁰ This proposal was made as an alternative to be considered only if a fully developed, off-the-shelf Capacity Backstop Charge would not be recommended by Staff or adopted by the Commission.²¹ The specific recommendation was that the rules should at least require the public utility to issue an annual request for offers (“RFO”) from ESSs to buy the

especially to the extent that a utility has ‘uncommitted supply’ as recently proposed in Docket AR 651. Absent a backstop charge, regulated utilities would have no incentive to offer RA capacity to competitors.” (internal footnote omitted)); *see also* Calpine Solutions’ Comments at 5-6 (Mar. 13, 2023) (making similar statements); Brookfield Renewable Trading and Marketing LP’s Comments at 3 (June 12, 2023) (stating: “Following the conclusion of transition charges, [Brookfield Renewable Trading and Marketing] supports a requirement that the utilities offer, through a negotiated rate, RA service to direct access customers, so that such customers have further choices, especially when their ESS is unable to participate in the WRAP.”); *id.* at 8-9 (“The ability for a [direct access] customer to purchase RA from the utility is important because it provides optionality, which is consistent with state law, and an additional avenue for ESS compliance with Oregon RA requirements.” (internal footnote omitted)).

¹⁹ *See* Calpine Solutions’ Comments at 2-7 (July 21, 2023).

²⁰ Calpine Solutions’ Comments at 2-7 (July 21, 2023).

²¹ Calpine Solutions’ Comments at 2-7 (July 21, 2023).

utility's excess capacity or transmission that meets the WRAP's definition of Qualifying Resources for use in WRAP's FS Program and/or transmission rights meeting the WRAP's FS Transmission Requirement.²²

As summarized in the Staff Report, Staff has declined to include this alternative RFO proposal in the draft proposed rules. Concerns have been expressed that a state-level RFO may impact the regional program without materially improving the ability of ESSs to procure capacity.²³

However, NIPPC agrees with Calpine Solutions that those concerns are misplaced, and the state-level RFO would serve an important purpose if the Commission will not adopt a Capacity Backstop Charge payable by direct access customers to the utility. The incumbent utility is the most likely entity to control any excess WRAP-compliant generation and transmission deliverable to loads in its balancing authority but, without any encouragement from the Commission through a state-mandated RFO, the utility may choose not to sell such resources to ESSs.

Calpine Solutions' proposal does not require the utility to sell excess capacity and transmission; it merely requires the utility to timely communicate the availability of any such excess capacity and transmission to ESSs, consider offers for the same from ESSs, and report back to the Commission on why the utility rejected any such offers. The goal is to provide

²² Calpine Solutions' Comments at 2-7 (July 21, 2023) (citing WRAP Tariff, Definitions ("Qualifying Resource"); *id.* at Part II (FS Program Requirements); *id.* at § 16.3.

²³ Staff Report at 6-7 (Sept. 11, 2023).

transparency to the Commission and stakeholders as to whether the utility is managing its portfolio prudently and whether the assumption that ESSs can easily obtain excess capacity and transmission bi-laterally from utilities is correct.

NIPPC notes that the RFO requirement would likely benefit cost-of-service customers by ensuring that the utility does not unreasonably decline to sell excess WRAP-compliant generation and transmission to willing buyers serving load in the same balancing authority. NIPPC assumes that the utilities have such excess capacity because direct access customers continue to pay transition charges for capacity that the utilities have claimed they acquired to serve those customers that have left the utility system and is now deemed as excess.²⁴

Staff's Report suggests that the draft proposed rules "as written allow this RFO proposal to be implemented in the future if it appears likely to aid in RA planning."²⁵ However, the rules themselves only provide mandatory requirements to participate in WRAP or to otherwise meet the State Program Requirements. There is no mention in the draft proposed rules of development of a Capacity Backstop Charge, an RFO, or any other options. Staff's suggestion in the Staff Report is of little comfort that such reasonable alternatives will be timely made available to ESSs and direct access customers if the WRAP requirements prove unworkable as currently written. At a minimum, the Commission should set a date certain by which it will revisit this issue in the

²⁴ See *Calpine Energy Solutions LLC v. PUC*, 298 Or App. 143, 149-50, 445 P3d 308, 312 (2019) (noting PacifiCorp described its five-year program's charges as "intended to represent the fixed generation costs incurred by the company to serve all customers offset by the value of freed-up power made available by the departing customers").

²⁵ Staff Report at 7 (Sept. 11, 2023).

rules to review whether the WRAP's firm transmission requirement is workable in the evolving market.

III. CONCLUSION

For the reasons stated above, NIPPC recommends that the Commission include within the proposed rules, or otherwise commit to develop, the meaningful alternatives to WRAP compliance as discussed above.

Dated this 18th day of September 2023.

Respectfully submitted,

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