BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, DBA: PACIFIC POWER,	))	UE 390
	))	CALPINE ENERGY SOLUTIONS, LLC'S REPLY BRIEF
PacifiCorp 2022 Transition Adjustment Mechanism (TAM)	))))	

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I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") respectfully submits to the Public Utility Commission of Oregon ("OPUC" or "Commission") its reply brief in this matter. Although other intervenors primarily focus on net power costs for cost-of-service customers in PacifiCorp's annual transition adjustment mechanism ("TAM") dockets, Calpine Solutions actively participates in the TAM to address the rates PacifiCorp may charge direct access customers who purchase generation from an electricity service supplier ("ESS"). Oregon law has long provided that customers should have access to retail alternatives through Oregon's direct access law.

Calpine Solutions addresses two important issues related to direct access in PacifiCorp's service territory:

- *First*, the Commission should reject PacifiCorp's proposal to introduce a constraint upon the calculation of the consumer opt-out charge for the five-year program such that it cannot be negative when the approved ongoing valuation calculation for years six through 10 after the opt-out election results in a negative value, i.e., a credit. PacifiCorp's newly proposed constraint deprives five-year program participants of potential transition credits for years six through 10, even though the administrative rules PacifiCorp itself cited as the basis for the consumer opt-out charge in Docket No. UE 267 specifically require that such credits by provided where the calculation results in a negative value. PacifiCorp and the Citizens Utility Board of Oregon ("CUB") incorrectly argue that the newly proposed constraint preserves the status quo while the Commission investigates direct access issues in Docket No. UM 2024. To the contrary, Calpine Solutions' proposal preserves the status quo by applying current conditions to the same calculation that has been used from 2015 up until PacifiCorp furnished its sample calculation in this case.

- *Second*, the Commission should adopt the proposed modification to the Commission-approved methodology by which freed-up renewable energy certificates ("RECs") are transferred from PacifiCorp to an ESS for its customers that are subject to transition adjustment rates. Both PacifiCorp and Calpine Solutions agree to a new method – implemented to ensure consistency the recently enacted House Bill 2021 – whereby PacifiCorp will retire the RECs on behalf of the ESS.

II. BACKGROUND

A. Oregon's Direct Access Law and Regulations

Under a retail direct access program, the direct access customer continues to use the utility's distribution system but obtains energy from another retail supplier. Initially enacted in 1999, Oregon's direct access law ("S.B. 1149") specifically instructs the Commission to develop policies to "eliminate barriers to the development of a competitive retail market[.]"[1] In its findings supporting the legislation, the legislative assembly declared that "retail electricity consumers that want and have the technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets as soon as is practicable."[2] The direct access law requires that all nonresidential retail customers be allowed

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[1] ORS 757.646(1).
[2] Or Laws 1999, ch 865.

direct access to competitive markets by purchasing generation services from a Commission-certified ESS.[3]

The law further addresses stranded generation resources. It characterizes stranded costs as "uneconomic utility investments," which are defined as certain investments "that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of [direct access], absent transition charges."[4] But the law also contemplated stranded benefits, which are characterized as "economic utility investments."[5] If, for example, the utility's existing generation fleet could produce electrical output or other valuable attributes, such as RECs, that are more valuable than the remaining costs of those facilities, a significant loss of customer load could result in profits that would flow to the utility's shareholders or its remaining customers.[6]

The law allows the Commission to apply "transition charges" or provide "transition credits" to a customer who departs from the incumbent electric company's traditional generation offering to recover or return the value of stranded generation investments.[7] If necessary to prevent "unwarranted shifting of costs," the Commission may assess direct access customers with such transition charges or credits for past investments.[8]

The Commission's administrative rules implement the law in a very specific manner. The rules provide that direct access customers "will receive a transition credit or pay a transition

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3 ORS 757.600(6), (16), 757.601(1), 757.649(1)(a).
4 ORS 757.600(35).
5 ORS 757.600(10).
6 *See* Calpine Solutions/100, Higgins/6; Calpine Solutions/301, Hearing Exhibit/66 (discussing stranded benefits).
7 *See* ORS 757.600(31) & (32), 757.607(2).
8 ORS 757.607(1)-(2).

charge equal to 100 percent of the net value of the Oregon share of all [investments] as determined pursuant to an auction, an administrative valuation, or an ongoing valuation."[9] The rules further require that PacifiCorp use the "ongoing valuation" method, which determines the "transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period."[10] The design logic in this approach places departing direct access customers in an economically "break even" position with respect to the choice of direct access service, while at the same time holding non-participating customers harmless.[11]

B. PacifiCorp's Direct Access Programs

Prior to the 2016 shopping year, customers in PacifiCorp's service territory had a choice between one-year and three-year programs, under which the customer is never able to cease paying for PacifiCorp's generation resources. However, since 2016, PacifiCorp has also offered a five-year program provides the opportunity for eligible customers to enter into a permanent opt-out program and eventually stop paying PacifiCorp for generation resources.[12]

1. PacifiCorp's One-Year (Schedule 294) and Three-Year (Schedule 295) Programs

PacifiCorp's one-year and three-year programs implement a perpetual ongoing valuation rate structure. PacifiCorp's transition adjustment equals the difference between: (i) PacifiCorp's

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9 OAR 860-038-0160(1).

10 OAR 860-038-0005(41); *see also* OAR 860-038-0080(5)-(6), 860-038-0140(1).

11 Calpine Solutions/100, Higgins/8-9.

12 More recently, PacifiCorp has offered a program for large new loads, the New Load Direct Access ("NLDA") program, but the NLDA program elements are not in dispute in this year's TAM.

net power costs, which includes long-term power purchase contracts, short-term market purchases, and fuel for power generation and is reflected in Schedule 201; and (ii) the estimated market value of the electricity that is freed up when a customer chooses direct access service, as calculated in GRID.[13] However, even though PacifiCorp's transition adjustment often results in a credit to the customer, PacifiCorp's direct access customers must continue to pay for the Company's fixed-generation costs through Schedule 200.[14] The end result is that the one-year or three-year program participant pays substantial amounts to PacifiCorp for generation resources the customer does not use.[15]

Additionally, the one-year and three-year program participants will pay the ESS for generation supply and pay PacifiCorp for delivery service.[16] At the conclusion of the one-year or three-year term, the customer returns to cost-of-service or elects a new one-year or three-year term. Under this regime, the customer never stops paying for PacifiCorp's generation resources.[17]

2. PacifiCorp's Five-Year Program (Schedule 296)

In contrast to the one-year and three-year programs, PacifiCorp's five-year program allows customers to eventually migrate to 100 percent market prices without any remaining obligations to PacifiCorp for generation resources.[18] The customers in the five-year program

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13 Calpine Solutions/100, Higgins/10-11.
14 Calpine Solutions/100, Higgins/11-12.
15 Calpine Solutions/100, Higgins/11-12 (noting that the 2022 one-year program participant on Schedule 48-P will pay PacifiCorp $25.50 per megawatt-hour ("MWh") on Schedule 200 but is projected to only receive a transition credit of $14.27 per MWh during heavy load hours and an average credit of $11.07 per MWh during light load hours).
16 Calpine Solutions/100, Higgins/7-8.
17 Calpine Solutions/100, Higgins/6.
18 Calpine Solutions/100, Higgins/6.

must provide four years' advance notice to return to PacifiCorp's cost-of-service rates for generation resources.[19] The program is therefore effectively a permanent opt-out program, and PacifiCorp does not plan to serve the customer's load.[20]

The five-year program's Schedule 296 consists of two major parts: (1) a five-year transition adjustment component that is nearly identical to the calculation of the ongoing valuation calculation used in Schedule 294 and 295 transition adjustments; and (2) a consumer opt-out charge, which brings forward into years one through five the results of an ongoing valuation calculation for years six through 10.[21] In addition to the Schedule 296 charge, the customer must also pay PacifiCorp the base Schedule 200 charge for the first five years, which may be updated in each rate case during that period.[22] The Schedule 200 costs for years six through 10, used in the consumer opt-out charge calculation, are forecasted costs that do not escalate after year five.[23] From the effective date of the opt-out election forward, i.e., January 1, 2022 in the case of this year's TAM, the customer will also pay the ESS for generation supply and pay PacifiCorp for delivery service.[24]

III. LEGAL STANDARD

When the Commission sets rates for a public utility, it is performing a quasi-legislative

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[19] *In the Matter of PacifiCorp, dba Pacific Power: Transition Adjustment, Five-Year Cost of Service Opt-Out*, OPUC Docket No. UE 267, Order No. 15-060, at 12-13 (Feb. 24, 2015).

[20] *See In the Matter of PacifiCorp, dba Pacific Power, Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050, Order No. 16-319, at App. A at 8-9 (Aug. 23, 2016) (noting Schedule 296 allows customers "to permanently opt-out of cost-of-service rates").

[21] Calpine Solutions/100, Higgins/13.

[22] Calpine Solutions/100, Higgins/13.

[23] Calpine Solutions/100, Higgins/15-16; *In the Matter of PacifiCorp, dba Pacific Power, 2016 Transition Adjustment Mechanism*, OPUC Docket No. UE 296, Order No. 19-406, 3-8 (Nov. 25, 2019).

[24] Calpine Solutions/100, Higgins/13.

function.[25] Oregon law requires that rates assessed to direct access customers in each final Commission order be fair, just and reasonable.[26] The burden of proof is borne by the utility throughout the proceeding.[27] Thus, the Commission has a statutory duty to ensure that the direct access rates approved in this docket are just and reasonable and provide eligible customers with a meaningful opportunity to access competitive retail markets.

IV. ARGUMENT

A. The Commission Should Reaffirm the Ongoing Valuation Calculation Used for the Consumer Opt-Out Charge and Reject PacifiCorp's Proposed Constraint that Prevents a Negative Charge

PacifiCorp proposes an unreasonable constraint on the calculation of the consumer opt-out charge that should be rejected as unreasonable, unlawful, and inconsistent with the previously approved methodology for calculating the consumer opt-out charge since 2015. Contrary to PacifiCorp's arguments, the refusal to allow a negative result in calculating transition adjustment costs or credits for years six through 10 skews the calculation method to shift costs from direct access customers to cost-of-service customers and unjustifiably deters participation in the five-year program.

Allowing the consumer opt-out charge to be a credit is consistent with the governing administrative rules and is thus required by Oregon law, which mandates that the Commission must follow its administrative rules.[28] As the Oregon Court of Appeals has explained,

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25 *Gearhart v. Pub. Util. Commn. of Or.*, 356 Or 216, 221, 339 P.3d 904 (2014).

26 ORS 756.040(1), 757.210(1)(a).

27 ORS 757.210(1)(a); *In the Matter of Portland General Electric Co.: 2012 Annual Power Cost Update*, OPUC Docket No. UE 228, Order No. 11-432, at 3 (Nov. 2, 2011).

28 *Northwest & Intermountain Power Producers Coal. v. Portland Gen. Elec. Co*., 308 Or App 110, 117, 480 P3d 981 (2020) (citing *Harsh Investment Corp. v. State Housing Division*, 88 Or App 151, 157, 744 P2d 588 (1987), *rev den*, 305 Or 273, 752 P2d 1219 (1988)).

"[w]hether or not an agency is *required* to adopt rules, when it has authority to adopt them and does so, it must follow them."[29] Here, the applicable administrative rules require PacifiCorp to use the "ongoing valuation" methodology to calculate its transition adjustment charges or credits.[30] That is a common method of calculating stranded costs or benefits that requires departing customers to pay, or receive a payment for, the difference between the remaining costs of the stranded assets and the value of the output of those assets over a defined period of time.[31] And under the Commission's administrative rules the direct access customers "*will receive a transition credit or pay a transition charge*" resulting from that calculation.[32] The rules are unambiguous that the five-year opt-out customer must receive a credit for the value of freed-up energy from the stranded generation assets when that value exceeds the costs of such assets.

In this case, the record is undisputed that the results of ongoing valuation calculation in the sample calculation for the consumer opt-out charge (years six through 10) was negative.[33] Absent the new constraint on the calculation proposed by PacifiCorp, the result of the calculation would be a rate credit for years six through 10.[34] While market conditions could change from those in existence during the sample calculation, the Commission's order in this TAM must reject PacifiCorp's proposed constraint that would prevent the calculation of final rates from resulting in a credit for years six through 10. Under the Commission's administrative rules,

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29 *Harsh Investment Corp.*, 88 Or App at 157 (emphasis in original).

30 OAR 860-038-0005(41); *see also* OAR 860-038-0080(5)-(6), OAR 860-038-0140(1).

31 OAR 860-038-0005(41); *see also* G. Basheda, et al, *The FERC, Stranded Cost Recovery and Municipalization*, 19 Energy Law Journal 351, 359-61 (1998) (discussing the Federal Energy Regulatory Commission's use of a similar methodology to calculate stranded costs).

32 OAR 860-038-0160(1) (emphasis added).

33 Calpine Solutions/100, Higgins/16-17; Calpine Solutions/102, Higgins/2.

34 Calpine Solutions/101, Higgins/1-10 (containing calculations with, and without, PacifiCorp's constraint).

PacifiCorp's constraint must be rejected because it prevents the prospective customers in the five-year program from receiving the "transition credit" that OAR 860-038-0160(1) states such customer "will receive" under the ongoing valuation calculation for years six through 10.[35] The Commission should reject PacifiCorp's proposal because it contravenes the administrative rules and is therefore unlawful.[36]

In addition to being unlawful, PacifiCorp's proposed constraint on the consumer opt-out charge is unreasonable. As Calpine Solutions' witness, Kevin Higgins, explained, the ongoing valuation calculation for years six through 10 can only be negative "if there are substantial net power costs *savings* attributed to the departed opt-out load in years 6 through 10."[37] In other words, under the calculation PacifiCorp proposed and the Commission has used for several years now, "the net power cost savings from the departed load at the margin are projected to be much higher than the average net power costs charged to customers in rates."[38] Thus, "costs are *not* shifted to non-direct access customers if the Consumer Opt-Out Charge is negative because the calculation recognizes the net power cost savings that will be realized by the non-direct access customers as a result of the departure of the opt-out load."[39] The credits should flow through to customers just as the charges have in past years because "symmetrical treatment is fundamental to the calculation of any stranded cost or transition adjustment mechanism."[40] Staff's witness, Scott Gibbens, agrees that PacifiCorp's proposal would create "a bias towards subsidization of [cost-of-service] customers" and thus recommends "that the Commission order the Company to

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35 OAR 860-038-0160(1).
36 *Harsh Investment Corp.*, 88 Or App at 157.
37 Calpine Solutions/100, Higgins/18 (emphasis in testimony).
38 Calpine Solutions/100, Higgins/18.
39 Calpine Solutions/100, Higgins/18-19 (emphasis in testimony).
40 Calpine Solutions/100, Higgins/20.

utilize the approved methodology to calculate the [consumer opt-out charge] as a freely floating mechanism that can go below zero."[41]

Yet PacifiCorp and its witness, Robert Meredith, maintain the Commission should ignore the results of the ongoing valuation calculation approved in UE 267, and used each year since then, by allowing PacifiCorp to prevent the consumer opt-out charge from being a negative value or a credit. But PacifiCorp's arguments in support of this position each fail.

First, PacifiCorp's witness suggested that even though credits are indisputably available in the transition adjustment component of its calculations for years one through five, credits are inapplicable to the consumer opt-out charge because it is not a form of ongoing valuation calculation.[42] But this argument contradicts PacifiCorp's own testimony proposing the charge in Docket No. UE 267, which the Commission relied upon in approving the charge as proposed by PacifiCorp.[43] PacifiCorp testified in UE 267 as follows:

> PacifiCorp's calculation of the Consumer Opt-Out Charge uses the "ongoing valuation" approach for calculating transition costs. Under this approach, the Commission determines the "transition costs *or benefits* for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period."[44]

PacifiCorp also explained in UE 267 as follows:

> OAR 860-038-0160(1) expressly provides that direct access customers must pay *or receive* 100 percent of transition costs *or benefits*. PacifiCorp cannot contravene Oregon's direct access laws and regulations by agreeing that customers may permanently leave cost-based supply service without meeting their transition cost obligations.[45]

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41 Staff/1300, Gibbens/11; *see also* AWEC/200, Mullins/25-28 (agreeing the charge should not be constrained to prevent a credit).

42 Tr at 124:20-23.

43 Calpine Solutions/300, Hearing Exhibit/6-7 (Order No. 15-060, approving consumer opt-out charge for year six through 10 as proposed by PacifiCorp's reply testimony).

44 Calpine/301, Hearing Exhibit/24 (UE 267 PAC/400, Duvall/3:22 to 4:3) (quoting OAR 860-038-0005(42)) (emphasis added).

45 Calpine/301, Hearing Exhibit/24 (UE 267 PAC/400, Duvall/3:9-16) (emphasis added).

PacifiCorp further stated that the direct access law "*require[es]* the payment of transition charges or the *receipt of transition benefits*."[46] PacifiCorp's attempt to argue otherwise in this case where the sample calculation produces a credit is meritless.

Second, PacifiCorp argues that because PacifiCorp used the word "charge" in the name of the "consumer opt-out *charge*" there cannot be a credit for years six through 10 of its ongoing valuation calculation.[47] But that argument ignores that the administrative rules expressly require the Commission to provide credits when that is the result of the approved rate calculation. Additionally, PacifiCorp's heavy reliance on the word "charge" is inconsistent with other rates that are also labeled as a "charge" but nonetheless can be negative and thus a credit. PacifiCorp's witness admitted as such when presented with the example of the rate credit that exists on the currently effective Schedule 201's "Energy Charge."[48] It is common for a rate labeled as a charge to occasionally be a credit that reduces the overall charges owed by the customer for the electric service provided.

Third, PacifiCorp argues that it never understood the consumer opt-out charge to be a rate that could become negative.[49] This argument is misplaced. PacifiCorp did not communicate to the Commission and parties in UE 267 that the rate it was proposing would be constrained to never become negative.[50] Indeed, its statements – quoted above – expressed that under the ongoing valuation method PacifiCorp proposed for use the rates must be allowed to be a credit.

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46 Calpine/301, Hearing Exhibit/35 (UE 267 PAC/400, Duvall/14:6-8) (emphasis added).
47 PacifiCorp's Opening Br. at 60-61; PAC/1500, Meredith/2:13-18; Tr at 129:14 to 130:13.
48 Tr at 138:8 to 141:4; *see also* Calpine Solutions/303 (containing Schedule 201, which has a negative "Energy Charge" for certain delivery schedules).
49 PacifiCorp's Opening Br. at 61; Tr at 165:7-15.
50 Calpine Solutions/301 (PacifiCorp's UE 267 Reply Testimony).

PacifiCorp's newly revealed belief that contradicts its own prior statements in UE 267 and the Commission's administrative rules is not controlling.

Fourth, PacifiCorp, joined by CUB, also argues that the Commission should preserve the status quo until the ongoing investigation into direct access issues, Docket No. UM 2024, is complete.[51] This argument fails because PacifiCorp and CUB do not argue for preservation of the status quo. The Commission-approved methodology for calculating the consumer opt-out out charge does not include a constraint that prevents the rate from being a credit. Rather, the constraint is a new modeling limitation PacifiCorp proposed for the first time in this case.[52] In each TAM since UE 267, PacifiCorp's rate calculation model contained no constraints that would have precluded the consumer opt-out charge from being a credit.[53] As noted above, this newly proposed constraint also contradicts PacifiCorp's own description of the charge to the Commission in UE 267 when it was developed and approved. PacifiCorp and CUB are certainly free to argue in UM 2024 for adoption of a new policy proscribing use of the ongoing valuation methodology, and thus the possibility of credits, in calculating the consumer opt-out charge and other in direct access rates. But the record in this proceeding does not support adoption of such a change in policy. Indeed, in the absence of any evidence of flaws in the preexisting calculation method, the record compels the Commission to reject PacifiCorp's newly proposed constraint.

Fifth, and relatedly, PacifiCorp and CUB also argue that because CUB has testified in this case and commented in Docket No. UM 2024 that it "believes there is already cost shifting occurring in operation of PacifiCorp's DA program," the Commission should deny direct access

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51 PAC/1500, Meredith/5; CUB/200, Jenks/26-29.
52 Tr at 143:7 to 147::9.
53 Tr at 146:2 to 146:12.

customers any credits resulting from the ongoing valuation calculation in years six through 10.[54] But other than CUB's vague assertions, CUB and PacifiCorp present no evidence supporting this theory. The record contains no quantification by CUB or PacifiCorp demonstrating the alleged underpayment of other charges by five-year program participants rises to the magnitude of the expected value of the credits they ask the Commission to withhold. As Staff explains, PacifiCorp "has not shown that unwarranted cost-shifting would occur if the [consumer opt-out charge] were allowed to go negative."[55] The Commission cannot adopt CUB's argument without any supporting evidence, and therefore the argument should be rejected.[56]

In sum, for the reasons set forth above, the Commission should reject PacifiCorp's proposed constraint on the consumer opt-out charge and reconfirm that under the ongoing valuation method used for the charge, a credit must be provided to customers if the approved methodology produces a negative value.

B. The Commission Should Approve the New REC Retirement Proposal Under H.B. 2021 Supported by Both Calpine Solutions and PacifiCorp

Due to a change in the law during pendency of this proceeding, Calpine Solutions and PacifiCorp were able to reach a mutually agreeable resolution to an initially disputed issue related to freed-up RECs. Although there is no formal stipulation, Calpine Solutions and PacifiCorp are in agreement, and the Commission should approve the new REC retirement proposal as described in Kevin Higgins' rebuttal testimony and set forth in this section.[57]

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[54] CUB/200, Jenks/26-29; *see also* PacifiCorp's Opening Br. at 61.

[55] Staff/1300, Gibbens/10.

[56] *Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 159, 445 P3d 308 (2019) (holding court must "'set aside or remand [the PUC's] order if [we] find[ ] that the order is not supported by substantial evidence in the record.' ORS 183.482(8)(c)").

[57] Calpine Solutions/200, Higgins/10-11.

The freed-up RECs issue presents the question of how to properly return a stranded benefit, the "freed-up RECs", to direct access customers. RECs generated by PacifiCorp's renewable resources are freed up by a direct access election because the utility's RPS obligation is reduced proportionately to a direct access customer's load when that customer migrates to direct access.[58] Additionally, during the years in which the direct access customer continues to pay transition charges, the direct access customer continues to pay for the utility's RPS-compliant resources through the transition adjustment charges and Schedule 200.[59] For each MWh of electric energy produced by the RPS-compliant resources in the utility's portfolio, the resource also produces a REC.[60] However, despite including the value of the freed-up *energy* in the transition adjustment calculation, the transition adjustment mechanism in Oregon was initially developed without inclusion of any credit for the value of the freed-up RECs.[61] Further, the RPS requires the ESS to meet the RPS obligation for the customers' load it serves, and the direct access customers must pay their ESS for the RECs necessary to meet that RPS obligation tied to those customers' load.[62] In past TAM proceedings, Calpine Solutions pointed out that this situation effectively resulted in double payment by direct access customers for RPS compliance as a condition of participating in direct access.[63]

After multiple years of disputing how to resolve this issue, the parties worked in good faith to develop an agreement for the transfer of the freed-up RECs to the ESS, which the

[58] Calpine Solutions/100, Higgins/20-21; ORS 469A.052(1)(c), 469A.065.
[59] Calpine Solutions/100, Higgins/21.
[60] Calpine Solutions/100, Higgins/21.
[61] Calpine Solutions/100, Higgins/21.
[62] ORS 469A.065.
[63] Calpine Solutions/100, Higgins/21 & n. 22 (citing UE 323 Calpine Solutions/100, Higgins/17-18).

Commission approved in the 2019 TAM proceeding.[64] Under that Commission-approved arrangement, PacifiCorp transfers RECs to the ESS to be retired on behalf of the direct access customer served by that ESS during the years for which that the customer is assessed transition adjustment rates by PacifiCorp.[65] The overall intent of the agreement was that the RECs would be sufficient to meet the RPS compliance requirement – including at least 80 percent bundled and up to 20 percent unbundled proportions – as if that customer were still served by PacifiCorp.[66]

However, the Commission subsequently determined that the REC transfer arrangement was insufficient for use by ESSs to meet the RPS's bundled REC requirement. Specifically, in Docket No. AR 617, Commission determined that the "transfer of a REC without transfer of energy does not meet the definition of a bundled REC found in ORS 469A.005(4)"[67] – thus depriving the ESS's customers of the full value of the bundled RECs transferred to the ESS on the customers' behalf.

Given the result in AR 617, Calpine Solutions initially proposed in this proceeding that a new credit should be developed in the transition adjustment calculation for the full value of bundled RECs to return the full value to direct access customers.[68] Other parties opposed Calpine Solutions' proposed bundled REC credit.

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[64] *In Re PacifiCorp, dba Pacific Power, 2019 Transition Adjustment Mechanism*, OPUC Docket No. UE 339, Order No. 18-421, at 9 & App. A, p. 8, ¶ 28 (Oct. 26, 2018). The terms of the agreement were set forth in PacifiCorp's testimony. UE 339 PAC/100, Wilding/46-47.

[65] Calpine Solutions/100, Higgins/22 (citing UE 339 PAC/100, Wilding/46-47).

[66] Calpine Solutions/100, Higgins/23.

[67] *In the Matter of Rulemaking related to the Use of Renewable Energy Certificates for Compliance with the Renewable Portfolio Standard*, OPUC Docket No. AR 617, Order No. 21-203, 4-5 (June 17, 2021).

[68] Calpine Solutions/100, Higgins/26-28.

During pendency of the case, however, Oregon's legislature amended the definition of "bundled renewable energy certificate" in a manner that provides an opportunity to resolve this issue. Specifically, a legislative fix to the problem was enacted in H.B. 2021, effective 91 days after the conclusion of the legislative session and thus useful for the 2021 RPS compliance year,[69] which allows for the ESS to meet its bundled REC requirement through the *retirement* by the electric company of bundled RECs on behalf of the ESS for its customers who are paying transition charges to the electric company. House Bill 2021 accomplished this with the following amendment to the RPS:

> (4) "Bundled renewable energy certificate" means a renewable energy certificate for qualifying electricity that is acquired:
>
> > (a) By an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the renewable energy certificate that was issued for the electricity; [*or*]
> >
> > (b) By an electric utility by generation of the electricity for which the renewable energy certificate was issued**; or**
> >
> > **(c) By an electricity service supplier by retirement by an electric company where the renewable energy certificate satisfied paragraph (a) or (b) of this subsection prior to such retirement and was retired on behalf of the electricity service supplier on behalf of a retail electricity consumer that pays transition adjustments to the electric company**.[70]

No relevant changes were made to the treatment of unbundled RECs in the new legislation.[71]

After discussions with PacifiCorp, Calpine Solutions proposed two alternative resolutions

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69 The RPS only allows for use of bundled or unbundled RECs that are issued or acquired on or before March 31 of the calendar year for the compliance requirement for the preceding compliance year. ORS 469A.070(2). Thus, RECs meeting the new legislation's requirements may be used for the 2021 compliance year if acquired by the ESS before March 31, 2022.

70 Or Laws 2021, ch 508, § 24(4) (amendment in bold).

71 Or Laws 2021, ch 508, § 24(14).

in its rebuttal testimony.[72] Option 1 provides that the protocol will simply switch from being a REC transfer procedure to a REC retirement procedure. All relevant RECs, bundled and unbundled, would be retired by the utility on behalf the ESS and its qualifying direct access customers. Option 2 is more complicated. As the legislative amendment specifies that *bundled* RECs may be retired as described (and is silent on unbundled RECs), Option 2 provides that the bundled RECs would be retired as described above, while the unbundled RECs would continue to be transferred as under the current protocol. Thus, Option 2 is a hybrid of the new procedure and the current procedure.

Both Calpine Solutions and PacifiCorp prefer Option 1 because it is the most efficient way to resolve the issue.[73] Transferring unbundled RECs while retiring bundled RECs would require additional and inefficient administrative burdens for PacifiCorp and ESSs, whereas PacifiCorp's retirement of both bundled and unbundled RECs is more efficient. Calpine Solutions and PacifiCorp also agree to the detailed mechanics of the REC retirement arrangement, as set forth in Calpine Solutions/200, Higgins/10-11.

Staff's final round of testimony proposed a preference for an arrangement similar to Option 2, continuing to transfer unbundled RECs but retiring bundled RECs.[74] However, Staff made this proposal without the benefit of the agreed-to approach proposed by Calpine Solutions and PacifiCorp, which is more efficient.

Therefore, Calpine Solutions requests that the Commission affirm the use of Option 1, retirement of both unbundled and bundled RECs, in its final TAM order so it may be used for

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[72] Calpine Solutions/100, Higgins/8-9.
[73] PAC/1400, Weinke/1-2.
[74] Staff/1300, Gibbens/12.

ESS compliance for the upcoming year, as set forth in Calpine Solutions/200, Higgins/10-11.

V. CONCLUSION

For the reasons explained above, the Commission should reject PacifiCorp's proposal to constrain the consumer opt-out charge from being negative, and the Commission should adopt the proposal that PacifiCorp retire freed-up bundled and unbundled RECs on behalf of ESSs as supported by Calpine Solutions and PacifiCorp.

DATED this 28th day of September 2021.

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