

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

AR 651

IN THE MATTER OF

RULEMAKING REGARDING
DIRECT ACCESS INCLUDING 2021
HB 2021 REQUIREMENTS

COMMENTS OF
BROOKFIELD RENEWABLE TRADING AND
MARKETING LP

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I. INTRODUCTION & SUMMARY

Brookfield Renewable Trading and Marketing LP (“BRTM”) hereby submits the following comments on the Oregon Public Utility Commission (“OPUC” or “Commission”) staff’s (“Staff”) straw proposal rules published on December 16, 2022. BRTM appreciates the Commission’s direction to continue informal rulemaking workshops in the above-captioned proceeding in an effort to reach a just and reasonable provider of last resort (“POLR”) and capacity backstop framework. BRTM also appreciates Staff’s efforts in drafting the December 16, 2022 straw proposal.

BRTM submits these comments to (1) support the direction of the proposed rules, particularly with regard to avoiding prospective capacity backstop charges and eliminating direct access (“DA”) caps on curtailable load and (2) highlight several areas of improvement and clarification, including with regard to establishing a process for assessing charges on a returning DA customer, limiting charges on a returning DA customer to the incremental cost to serve, treating demand response programs separately, and clarifying the transition charges applicable to a customer’s return to the DA market.

II. COMMENTS

- a. **The avoidance of prospective capacity backstop charges and elimination of caps on curtailable load should be included in the notice of proposed rulemaking.**

Staff's December 16, 2022 straw proposal permits capacity and energy charges on returning DA customers only upon return (*i.e.*, no prospective charges). Further, Staff's proposed rules state that "[t]he Commission may establish a cap on non-curtailable direct access load."¹ Both of these proposals should carry forward into the Commission's formal proceeding and the notice of proposed rulemaking.

First, as discussed at length in BRTM's prior comments in this proceeding,² prospective capacity backstop charges are duplicative and would erode the commercial viability of DA in the state. Existing protections are in place such that prospective capacity backstop charges are unnecessary. These protections include: the ability of utilities, acting as transmission providers, to charge and recover costs related to the provision of Federal Energy Regulatory Commission ("FERC") Open Access Transmission Tariff ("OATT") prescribed ancillary services, including operating reserves and imbalance energy; state and regional resource adequacy requirements, including, to the extent that an electricity service supplier ("ESS") participates in the Western Resource Adequacy Program ("WRAP"), the specific ability of that ESS to rely on capacity available through the WRAP prior to relying on assistance from its host utility; and the ability of an IOU to charge a returning customer for emergency service, potentially for a longer and appropriate amount of time prior to returning to bundled service. Thus, Staff should maintain the current proposed framework that assesses capacity and energy costs only upon a customer's return.

¹ Staff Straw Proposal, Proposed Rule 860-038-0290(3).

² AR 651, BRTM Comments (dated November 18, 2022).

Second, the elimination of caps on curtailable load makes sense. The chief concern of utility commenters has been the inability to serve the energy and capacity needs of returning customers in grid constrained periods. However, if a DA customer elects to be curtailable in their unlikely event of return, then this concern is eliminated. During grid constrained events, curtailable customers will not be the cause of any capacity or energy shortfalls. Therefore, eliminating caps for curtailable load of returning DA customers is just and reasonable, and Staff's proposed rules on this point should be included in the Commission's notice of proposed rulemaking.

b. Opportunities for refinement and clarification of the proposed rules.

- i. The rules should include a process for assessing charges imposed on returning DA customers.*

Staff's proposed rules include a process for assessing charges on curtailable customers. Specifically, Staff's straw proposal states: "If a returning curtailable consumer is served through market purchases or excess generation, the consumer will be charged rates for that service as defined in OAR 860-038-0280 (3)(b) or OAR 860-038-0250."³ For non-curtailable customers, by contrast, the rules state that the non-curtailable customer will be responsible for "the greater of the incremental capacity and energy costs or retail energy costs required to serve on less than notice of return."⁴ Staff's proposed rules continue, stating that the non-curtailable customer "must remain on default service for the remaining time for notice of return." This language suggests that the vehicle through which the utility is permitted to charge the returning, non-curtailable DA customer is the applicable utility's default supply tariff. However, utility tariffs do not appear to be designed

³ Staff Straw Proposal, Proposed Rule 860-038-0290(7).

⁴ Staff Straw Proposal, Proposed Rule 860-038-0290(10).

to address this proposed rule, or any likely rule following formal rulemaking proceedings. Accordingly, BRTM recommends adding the following language to Staff's proposed rules:

(12) An electric company shall file an application with the Commission within 90 days of the effective date of this section to seek necessary tariff revisions to implement the requirements of this section.

ii. Returning customers should be charged only the incremental cost to serve.

Staff's proposed rules indicate that a returning, non-curtable DA customer would be assessed the greater of the incremental capacity and energy costs to serve the customer or the retail energy costs.⁵ BRTM supports the notion that a DA customer that returns unexpectedly should compensate the utility for the incremental costs the utility incurs to serve the returning customer. However, the costs a DA customer is responsible for should be only those incremental capacity and energy costs incurred to serve them. If the returning DA customer is covering all incremental capacity and energy costs incurred to serve them, whether higher or lower than the retail energy price, then the returning customer is not harming cost-of-service customers. The appropriate policy choice is to require returning customers to cover demonstrable costs they cause the utility to incur, and not penalize the returning customer based on unpredictable and transient lost opportunity costs.

Further, it is not clear how "retail energy costs" will be measured. It is possible to impute the wholesale energy price at one of several trading hubs; however, retail prices do not necessarily equate to, or follow a clear defined relationship with respect to, hub prices in the wholesale market. Therefore, for the sake of both simplicity and clarity, returning non-curtable DA customers should only be charged the incremental capacity and energy cost to the utility to serve such load.

⁵ *Id.*

iii. *Demand response potential of DA load should be considered, but not in this proceeding.*

Staff's straw proposal includes discussion on the potential to utilize DA load for demand response purposes.⁶ Specifically, Staff proposes adding the following provision to the rules:

Curtable customers may avoid or reduce such charges, or be compensated by an electric company if the curtable customer agrees to participate in a demand response or capacity program to support electric company operations.⁷

By "such charges," it appears Staff is alluding to the capacity and energy costs discussed in sections (7) and (10) of the proposed rules.

While BRTM sees significant benefit to both DA customers and cost-of-service customers from exploring how demand response can be employed in the DA market, BRTM views capacity backstop charges and curtailment as a separate issue than demand response. Particularly, curtailment operates to eliminate capacity backstop charges, and demand response should not influence the ability of curtable load to avoid such charges. In addition, demand response should be considered holistically, including employing demand response for DA customers taking service from their ESS, as opposed to limiting its application only upon unexpected return. BRTM encourages this broader discussion but in a separate rulemaking to avoid further delays here from this late-stage addition that deserves greater attention. Should Staff or the Commission see value in pursuing demand response in the DA market, BRTM suggests initiating a separate proceeding on the topic. If the Commission elects to consider demand response in the DA market in this proceeding, BRTM requests further workshops and opportunities to adequately address demand response issues and proposals.

⁶ Staff Straw Proposal, p. 2.

⁷ *Id.*

iv. Section 11 of the proposed rule should be clarified.

Section 11 of Staff's proposed rule states:

If a non-curtable consumer on an electric company's default supply option elects to return to direct access service during the period equal to the remaining time for notice of return, the consumer must pay transition charges that recover the electric company's costs of planning to serve that consumer.⁸

BRTM recommends the following revisions to Section 11 for the reasons discussed below:

If a non-curtable consumer on an electric company's default supply option elects to return to direct access service ~~during the period equal to the remaining time for notice of return~~ prior to the termination of the electric company's applicable notice of return period, the consumer must pay any remaining transition charges not recovered prior to the customer's return and any additional costs that recover any unmitigated costs the electric company ~~'s costs incurs in~~ of planning to serve that consumer, as determined by the Commission.

The above revisions largely seek to clarify Staff's proposed rules. However, BRTM recommends substantive edits to detail that a returning customer that elects to again take service from the DA market is responsible for any remaining transition costs that were not paid prior to the DA customer's return,⁹ as well as any additional costs incurred by the utility in planning to meet the long-term needs of the returning customer, as determined by the Commission. Importantly, transition charges do not contemplate the customer's departure, return, further utility investment for that customer, and re-departure. Rather, transition charges only contemplate one-time departure. Accordingly, it is appropriate to treat each DA customer on an individual basis under these circumstances and to have the Commission determine the appropriate level of transition charges, if any, that may be necessary to avoid harm to cost-of-service customers.

⁸ Staff Straw Proposal, Proposed Rule 860-038-0290(11).

⁹ This recommendation assumes that, upon return, the DA customer would no longer pay transition charges during the period in which they take service from their applicable utility.

III. Conclusion

BRTM appreciates the opportunity to comment on these important issues and looks forward to engaging with Staff and other parties in the forthcoming rulemaking process.

DATED this 3rd day of February, 2023.

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