

February 14, 2022

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: AR 651—PacifiCorp’s Comments on Staff’s AR 651 Straw Proposal**

PacifiCorp d/b/a/ Pacific Power (PacifiCorp) appreciates the opportunity to comment on Staff’s straw proposal in docket AR 651 after the January 26, 2022 workshop and looks forward to continuing to constructively engage with Staff on these issues as the process continues.

Caps and Behind the Meter (BTM) load growth

With respect to caps and BTM load growth, PacifiCorp would note that the straw proposal does not provide a great deal of information about criteria that would be used to set a cap. PacifiCorp is unsure whether rules would be proposed to address this issue, or whether the litigation of caps will be left entirely to the contested case phase of this proceeding. To the extent Staff intends to draft rules addressing criteria for imposing caps, PacifiCorp would request a meaningful opportunity for stakeholder input on any proposed criteria.

The straw proposal remains ambiguous with respect to how often the caps would be updated. Additionally, the straw proposal states, “caps would be updated to be responsive to the ongoing risks of the program.” PacifiCorp understands that caps may need to be revisited as the system and industry change but would note that litigation of ongoing risks is likely to be a contentious issue that imposes a meaningful administrative burden on parties and the Commission. PacifiCorp would thus recommend that careful and detailed consideration be provided regarding the timing and criteria for revisiting a cap. For example, a rule might allow a party to petition to reopen a cap after a specific number of years.

PacifiCorp would also reiterate the importance of caps for removing risk in general. Many of the considerations in this straw proposal are not problematic when a limited amount of load defects from the system. However, the larger the amount of load that leaves the system, the more significant potential flaws in the program design will be.

The straw proposal indicates that petitions to exceed a capacity cap will be examined through a 90-day process similar to what has been outlined for voluntary renewable energy tariff programs in UM 1953. PacifiCorp is not familiar with this process and is uncertain how it would apply or whether it has a successful track record. PacifiCorp reserves the right to comment further on this proposal once additional explanation has been provided on how it might apply in the context of direct access.

With respect to BTM load growth, PacifiCorp agrees that BTM load growth is tethered to the size of caps and agrees in theory with Staff's comment that BTM load growth may not be a significant issue so long as all concerns about cost shifting and other risks are mitigated through program design. PacifiCorp would note, however, that a customer with significant behind the meter load growth creates a bigger Provider of Last Resort (POLR) risk to the utility, an issue that could be meaningful in the aggregate.

### Non-Bypassability

The straw proposal defines non-bypassable charges as costs that the legislature directs to be recovered by all customers as well as costs determined by the Commission to be associated with implementing public policy goals related to reliability, equity, decarbonization, resiliency, or other public interests.

PacifiCorp largely agrees with this definition, so long as it is broad enough to include federal obligations, in addition to state obligations, and so long as it is sufficiently inclusive to include costs associated with historical stranded cost obligations such as coal plant decommissioning. The state of Oregon determined that coal plants were a least cost, least risk resource and utilities invested in them on behalf of all customers. These historical collective obligations should not be avoided by virtue of timing issues associated with time-limited transition or customer opt out charges.

Staff proposes that non-bypassable charges should be allocated to a direct access customer in the same method as a cost-of-service customer of similar size and load profile. PacifiCorp agrees this is a supportable default cost allocation methodology. The rules should recognize, however, that legislation may in certain instances mandate a specific cost allocation methodology that would displace this default allocation method.

The straw proposal states that the current list of non-bypassable charges will be determined in the contested case phase of docket UM 2024. PacifiCorp agrees with this approach.

### POLR

A POLR is the utility or other entity that has the obligation to serve all customers. PacifiCorp agrees with the straw proposal that regulated utilities are best positioned to effectively fill this role.

Staff's straw proposal states that "ESS participation in an RA program and also charging DA customers for POLR backstop capacity is duplicative." PacifiCorp is not necessarily advocating for POLR backstop capacity charges but would note that the existence of a successful resource adequacy (RA) program does not eliminate concerns about POLR risk.

PacifiCorp noted during the workshop that, while RA is one element of a long-term solution to direct access customers leaning on the incumbent utilities, it does not solve all POLR issues, particularly if the Commission allows significant load migration. RA can help ensure the region is, on the whole, resource adequate. But that assurance simply serves to ensure the region as a

whole is planning to an adequate regional reserve margin. This is an important requirement, as regional capacity shortages affect all market participants.

But POLR issues can also arise when an Electric Service Supplier (ESS) can no longer serve a customer, or when a customer of an ESS fails to pay its bills. In such a situation, the customer may find another ESS to serve its needs, but it often returns to its POLR. Even with an effective RA program, events can create a shortfall of system capacity that drives up prices and creates an unplanned customer migration event. Depending on the amount of departed load on the system, the potential impact on ratepayers and cost shifting implications of unplanned customer migration can be significant. If multiple ESSs were to fail or decline to provide service to direct access customers for one reason or another, a safety net based largely on the imposition of RA obligations would not necessarily ensure a POLR could reasonably meet system reliability needs or ensure uninterrupted service for returning customers. Thus, the state of California, which has an RA program, is currently investigating its POLR requirements to fill the gaps in its current regulatory framework.<sup>1</sup>

The February 2021 winter storm in Texas is an example of unplanned customer migration. During the rolling blackouts and high wholesale energy prices caused by that weather event, some retail providers encouraged their customers to migrate to other providers to avoid high pass-through costs; other providers were prevented by high market prices from serving their customers.<sup>2</sup> Retail customers were forced to return to their POLR, the only entity obligated to serve them in that environment. This is not necessarily a rare event, as PacifiCorp understands that similar customer migration events occurred after the polar vortex in 2014 and as a result of the Western Power Crisis in the early 2000s. The California Public Utilities Commission explicitly noted this risk in the context of the rolling blackouts that occurred in the summer of 2020: “If market fundamentals change, both [Community Choice Aggregators] and [Electric Service Providers] can return customers to the POLR. If this occurs and the IOUs are not hedged for the returning customers, this could result in the POLR paying high spot market prices, to the detriment of all customers and the stability of the market.”<sup>3</sup>

When an ESS fails, it also is at high risk of default on contracts for new construction, which could create additional shortfalls and further market instability.

In short, PacifiCorp strongly supports efforts to ensure the region is resource adequate, but RA does not create a framework that mitigates all POLR risk. Nor does preferential curtailment,

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<sup>1</sup> *Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort*, California Public Utilities Commission, Rulemaking (R.) 21-03-011 (Mar. 18, 2021) *hereinafter* “CPUC Order Instituting POLR Rulemaking.”

<sup>2</sup> The Public Utility Commission of Texas (PUCT) held an emergency meeting during the event, noting that “pricing and financial security issues have arisen that could affect the ability of some retail electric providers to continue as viable providers of retail electric service, which could result in a mass transition of retail electric customers to providers of last resort (POLR).” The PUCT deemed it important to determine “whether a requirement related to the pricing of POLR service must be modified or excused” to address the hardships faced by customers. *See* [https://www.adminmonitor.com/tx/puct/open\\_meeting/20210219/](https://www.adminmonitor.com/tx/puct/open_meeting/20210219/).

<sup>3</sup> CPUC Order Instituting POLR Rulemaking at 11. Electric Service Providers are the California equivalent to ESSs in Oregon.

which PacifiCorp objects to for a number of reasons, but in any case, appears to be a short-term solution intended to apply in limited situations.

Staff has proposed that utilities may choose to preferentially curtail customers on emergency default service, but only if all other options have been pursued, including RA resources set forth for customer's load, other ESS or market options, any capacity sharing agreements, and generation from the utility's resource stack. PacifiCorp does not agree that preferential curtailment is either a meaningful solution to the POLR problem or good public policy. First, customers that come back to the utility on emergency supply service can only be on that service for five business days. After that, they are moved to cost-of-service rates. Preferential curtailment for customers over a five-day period is not a meaningful policy solution to POLR risk. Second, PacifiCorp believes that as a matter of public policy, the state of Oregon should attempt to ensure that all customers, including its large industrial customers, are able to count on reliable electric service in the state.

PacifiCorp agrees with Staff's proposal to ensure that emergency default service rates are designed to mitigate or avoid cost shifting.

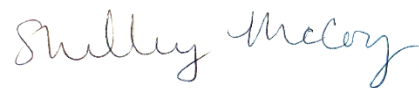
In summary, PacifiCorp would encourage Staff, in thinking through its draft rules, to ensure that it adequately addresses POLR issues. In the event of customer migration after the financial failure of one or multiple ESSs, mechanisms should be in place to ensure system reliability needs are met, that utility decarbonization goals can continue to be met, and that costs associated with customer migration are fairly allocated.

#### ESS Reporting Obligations.

To date, PacifiCorp does not have significant concerns about the ESS reporting and regulatory framework proposed by Staff. PacifiCorp would submit that one additional area of reporting may be necessary. To the extent ESSs are required by law to collect money from their customers based on a percentage of ESS revenues and remit those funds to the utilities (as is currently the case with the public purpose charge), the Commission should implement reporting requirements that ensure the Commission, rather than utilities, exercise appropriate oversight over ESS compliance with such requirements.

PacifiCorp appreciates the opportunity to provide comments and looks forward to continuing its active participation in this proceeding. Please direct any questions regarding this filing to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Shelley McCoy  
Director, Regulation