

July 11, 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 Draft Rule Revisions.

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) would like to thank Public Utility Commission of Oregon (Commission) Staff and stakeholders for the hard work that has been put into the draft rules to date. PacifiCorp supports Staff’s recommendation to move forward with a formal rulemaking in this docket.

Generally speaking, PacifiCorp believes Staff’s proposed revisions are consistent with key statutory and public policy considerations related to the continuation of direct access and represent a good starting point for a formal rulemaking. PacifiCorp is mindful of the fact that a number of key direct-access issues will be deferred for resolution in the contested case phase of the proceeding but agrees that Staff’s proposed staging is appropriate.

PacifiCorp would like to briefly comment on a few key issues raised in Staff’s Report.¹

Non-bypassable Charges

Staff’s draft rule revisions include a new definition for Non-bypassable Charges.²

PacifiCorp supports the definition of Non-bypassable Charges so long as that definition is deemed sufficiently broad to include not only rules and legislation imposing certain costs on utility customers, but also the costs of coal plant decommissioning. As PacifiCorp noted in prior written comments during the informal stage, PacifiCorp largely agrees with Staff’s proposed definition, so long as the definition is deemed broad enough to include federal obligations, in addition to state obligations, and so long as it is interpreted to include costs associated with historical stranded cost obligations such as coal plant decommissioning.

As both the Oregon Citizens’ Utility Board (CUB) and PacifiCorp have noted, coal plants were

¹ Staff Report for July 12, 2022 Public Meeting (July 7, 2022).

² Staff’s Proposed Rule 860-038-0170.

once determined to be least cost, least risk resources, and plants were constructed to serve all customers. Departing customers should not be able to avoid responsibility for their portion of significant societal investments by moving to direct access, and the Commission should make clear that it views such costs as non-bypassable. PacifiCorp believes the draft rule is sufficiently broad to cover this issue, but if the Commission disagrees, PacifiCorp would appreciate guidance from the Commission at this stage so that PacifiCorp can draft appropriate comments addressing this issue during the formal rulemaking stage.

A broad definition is appropriate. As Staff notes in its report, some parties have argued that the definition of Non-bypassable Charges in the draft rule is too broad and should be narrowed. PacifiCorp believes a broad definition is appropriate, particularly at this stage.

First, given the increasing responsibilities imposed on utilities by the Oregon Legislature and other bodies, it is difficult to anticipate every type of Non-bypassable Charge a utility may be required to bear going forward. A narrow definition could inadvertently harm customers by defining away costs that should be shared by all customers.

Second, the Commission will have the opportunity to provide interpretive guidance on the rule after the contested case-phase of this proceeding (UM 2024). In that phase, the parties anticipate examining the various types of costs parties argue should be non-bypassable and the rationale for making them so. The Commission will be able to provide guidance to the parties about which costs should be deemed non-bypassable—and which should not—based on an examination of real-world examples. In doing so, the Commission will help parties better understand how it would apply the rule going forward. In these circumstances, a broad rule is appropriate.

PacifiCorp supports Staff's proposal for allocation of Non-bypassable Charges. Staff proposes in the draft rules that Non-bypassable Charges be allocated “as determined by the Commission.”³ PacifiCorp believes this is an appropriate option that will allow the Commission to determine, on a case-by-case basis, the most appropriate allocation methodology for a particular charge. In most instances it may be appropriate to allocate Non-bypassable Charges to a direct access customer in the same method as a cost-of-service customer of similar size and load profile, but the Commission may wish in certain instances to apply an alternative methodology, and legislation may mandate a specific cost allocation methodology.

Default Supply / Provider of Last Resort (POLR)

Staff did not alter OAR 860-038-0280 regarding Default Supply, concluding that it would be duplicative to require ESSs to participate in a resource adequacy program while simultaneously charging direct access customers for backstop capacity.⁴ PacifiCorp is not necessarily advocating for backstop capacity charges, but has repeatedly noted that the existence of a successful resource adequacy program does not eliminate reliability concerns related to POLR risk, particularly if the Commission allows significant load defection to direct access.

A POLR is the utility or other entity that has the obligation to serve all customers, including

³ Staff's Proposed Rule 860-038-0170(3).

⁴ Staff's Proposed Rule 860-038-0280.

returning direct access customers. PacifiCorp agrees with the assumption in Staff's straw proposal that regulated utilities are best positioned to effectively fill this role.

Resource adequacy can help ensure the region is, on the whole, resource adequate. But that assurance simply serves to ensure that load-serving entities are planning to an adequate reserve margin. It does not address other, significant POLR issues. For example, if multiple ESSs were to fail or decline to provide service to direct access customers for one reason or another, investments in resource adequacy investments would not necessarily ensure a POLR could reasonably meet system reliability needs or ensure uninterrupted service for returning customers.

It in its report, Staff downplays the risk associated with significant customer return. But extreme events are common enough to be within stakeholders' memories, and they are likely to continue occurring. The February 2021 winter storm in Texas is an example. 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.⁵ 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 POLR 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."⁶

These contingencies are the reason the state of California, which has a resource adequacy program, is currently investigating POLR requirements to fill the gaps in its current regulatory framework.⁷ California, of course, has allowed significant portions of its retail load to migrate away from incumbent utilities. While it has done a significant amount of work to create a procedurally demanding resource adequacy program, California has nevertheless determined that its existing planning requirements leave meaningful gaps associated with POLR obligations that must be examined and addressed.⁸

⁵ 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/.

⁶ *Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort*, California Public Utilities Commission, Docket No. R.21-03-011 at 11 (Mar. 18, 2021).

⁷ *Id.* at 12, 17.

⁸ 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.

While POLR issues are not at issue during this phase of the proceeding, PacifiCorp would simply note that the issue should be taken seriously, particularly in a time of anticipated regional supply shortfall and rapid utility transition under HB 2021. The potential for disruption caused by customer return scales with the level of customer defection, and thus will be an issue when the parties address caps.

In short, PacifiCorp strongly supports efforts to ensure the region is resource adequate, but resource adequacy does not create a framework that mitigates all POLR risk.

Other Issues

Caps. Staff proposes deferring the issue of caps to the contested case proceeding, docket UM 2024.⁹ The draft rules thus defer any discussion of the criteria that would be used to set caps. PacifiCorp believes this procedural route is appropriate, as the issue of caps has not been the subject of meaningful exploration, despite its critical role in ensuring reliability and avoiding unwarranted cost shifting. The contested case will provide a meaningful opportunity for stakeholder input on any proposed criteria and allow for Commission guidance after factual exploration of the issue.¹⁰

PacifiCorp would reiterate the importance of caps for removing risk in general. Many direct access program flaws or unintended consequences can be dealt with effectively when a limited amount of load defects from the system. However, the larger the amount of load that leaves the system, the more significant flaws in the program design could be, including potential POLR risk.

Preferential Curtailment

Staff's draft rules do not include a provision for preferential curtailment, but Staff and others have raised the issue as a potential solution for POLR issues associated with customer return. PacifiCorp's position is that preferential curtailment is neither a meaningful solution to the POLR problem nor good public policy. As PGE has noted, there are costs associated with implementation of preferential curtailment. Moreover, the potential duration of such curtailment has not been explicitly discussed. But as a matter of public policy, PacifiCorp believes that the state of Oregon should do its best to ensure that all customers, including its large customers, are able to count on reliable electric service in the state.

⁹ Staff's Report at 7, Attachment B at 1.

¹⁰ Staff notes that, while it recommends deferring discussion of caps to the next stage, it stands by its original position on cap recalculation. Staff's Report at 7, Attachment B at 1. Staff's initial view was that caps should be recalculated annually or at an interval chosen by the Commission to address load growth (including behind-the-meter) and ongoing risks. While PacifiCorp understands this issue is not yet before the Commission, PacifiCorp would simply note that it agrees that caps may need to be revisited as systems and the industry change. But litigation of "ongoing risks" is likely to be a contentious issue that imposes a significant administrative burden on parties and the Commission, particularly if it is litigated *every year*. PacifiCorp thus recommends careful consideration of how frequently to revisit a cap.

Conclusion

In summary, PacifiCorp believes that Staff's proposed rules are a good starting point for the formal rulemaking process and supports Staff's recommendation. Moving forward, PacifiCorp believes it will be important to recognize the centrality of caps to mitigation of POLR risk. As direct access rules and policies are revisited, mechanisms should be in place to ensure system reliability needs and state decarbonization goals are met, and that costs associated with customer migration are fairly allocated.

Informal inquiries regarding this filing may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

A handwritten signature in blue ink that reads "Lisa D. Hardie".

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