



Oregon Citizens' Utility Board

610 SW Broadway, Suite 400
Portland, OR 97205

(503) 227-1984
www.oregoncub.org

April 21, 2022

Via electronic filing

Scott Gibbens
Public Utility Commission of Oregon
201 High St. SE
Salem, OR 97301

Re: AR 651 – Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements – Comments of the Oregon Citizens' Utility Board on Staff's Proposed Division 38 Rules

Dear Mr. Gibbens:

The Oregon Citizens' Utility Board (CUB) appreciates the opportunity to provide comments on Staff of the Public Utility Commission of Oregon's (Staff) proposed Division 38 rule language in AR 651. CUB would like to applaud Staff's diligent work throughout this proceeding in balancing divergent interests to bring forth a thoughtful and defensible set of draft rules for stakeholder consideration. Staff's overarching plan for the scope and process of this proceeding is sound, and CUB is hopeful that parties will be able to reach agreement on a broad subset of issues in this rulemaking before the contested case phase of this proceeding.

While a relatively long amount of time has passed since the UM 2024 Petition for Investigation into Long-Term Direct Access Programs was filed by the Alliance of Western Energy Consumers (AWEC) on June 10, 2019, agreement has been reached on several issues CUB raised in UM 2024 opening comments.¹ Electricity service suppliers (ESSs) and the direct access (DA) customers that they serve have assumed responsibility for acquiring adequate capacity to serve customer demand under individual and regional resource adequacy requirements. While details regarding the scope of non-bypassable charges assessed to ESSs and their DA customers still need to be ironed out, CUB is encouraged by the conversation to date.²

However, contentious issues will undoubtedly need to be addressed in the later phase of this proceeding. As Staff and stakeholders are aware, the Public Utility Commission of Oregon (Commission) has a binding statutory obligation to ensure the provision of DA to some retail customers not cause the unwarranted shifting of costs to other retail electricity consumers.³ It is

¹ UM 2024 – CUB's Opening Comments (Mar. 16, 2020).

² See, e.g., AR 651 – Calpine Energy Solutions, LLC's Comments on Staff's Straw Proposal at 5 (Feb. 14, 2022) ("Calpine Solutions supports Staff's proposal with some limited clarifications. In general, parties appear to be in agreement that the Commission should develop a general standard in its rules for determining which charges should be non-bypassable . . .").

³ ORS 757.607(1).

through this lens that the Commission and Staff should consider any potential changes to the existing long-term direct access (LTDA) program. Most utility customers—including the residential customers that CUB represents by statute—are truly captive. Unlike DA customers that can avail themselves to the benefits of a more competitive marketplace, residential customers under the purview of the Commission’s regulatory apparatus can only receive service from monopoly utilities. This—combined with the Commission’s statutory mandate to ensure there is no unwarranted cost shifting—is a critical and core issue that must be at the forefront of the conversation in both this rulemaking proceeding and the later contested phase.

Oregon’s DA program was established by 1999’s SB 1149. Since that time, several key elements envisioned in the bill have not come to fruition.⁴ In order to ensure Oregon’s DA program aligns with the reality we are currently in, changes are necessary. CUB continues to believe that this investigation is timely and looks forward to working with Staff and other stakeholders to design a LTDA program that is fair and holds cost-of-service customers harmless for actions taken by other customers to purchase power on the wholesale market.

These comments will now address several key issues raised in Staff’s most recent draft rules.

OAR 860-038-0170 – Non-bypassable Charges

CUB appreciates and supports Staff’s proposed rule language relating to non-bypassable charges. It is appropriate to define the term at a broad level in this phase of the proceeding with the understanding that a more nuanced exploration of individual potential non-bypassable charges will be undertaken in the contested phase of this proceeding. Given this phased approach, it is appropriate for definitions contained in the rules to be broad. Since individual charges will not be determined to be “non-bypassable” until after the contested phase of the proceeding, other parties’ concerns about the breadth of language are unpersuasive. Individual potentially non-passable charges will be similarly assessed by the Commission at a later date if they are not explicitly considered in the contested phase of this proceeding.

Utility customers are required to fund utility programs that are mandated by the Oregon legislature to further public policy goals or otherwise further the public interest. DA customers should not be able to sidestep requirements that further the public interest in the state by going to the wholesale market—these are costs that benefit the electric system and Oregonians as a whole. CUB supports the inclusion of costs related to the public interest in both the definition of “non-bypassable charges” as well as in the criteria for Commission consideration of whether a charge should be non-bypassable. CUB similarly supports Staff’s draft rule language related to criteria for Commission consideration of non-bypassable charges.

Should Staff choose to include language related to rate spread in its draft rules, CUB supports the additional language considered by Staff that non-bypassable charges be allocated to a DA customer in the same manner as they would be to a similar utility retail customer. Rate spread is a fact-based exercise typically undertaken using the results of a system-wide cost of service study. CUB cautions Staff against using language in rule that would presuppose any specific rate spread methodology.

⁴ UM 2024 – CUB’s Opening Comments at 1-2 (Mar. 16, 2020).

OAR – 860-038-0270 – Direct Access Program Caps

CUB supports Staff’s decision not to include detailed rules regarding program caps at this time. To CUB, DA program caps are an essential captive customer protection component of the DA program that must be retained. As CUB has detailed in UM 2024 comments, unwarranted cost shifting is already occurring within Oregon’s DA program through a variety of avenues.⁵ While it encouraging that ESSs and DA customers will begin to be assessed some level of non-bypassable costs and RA requirements, the level to which DA customers are shifting costs onto captive customers is inextricably linked to any conversation regarding caps. Unless and until CUB can be assured that no unwarranted cost shifting is occurring, caps remain necessary. CUB looks forward to exploring this issue in the next phase of the proceeding.

OAR 860-038-0280 – Default Supply

CUB similarly supports Staff’s decision not to include changes to the current default supply rules. According to Staff, in the presence of comprehensive RA requirements, a charge for utility “backstop” capacity is duplicative for ESS customers. While CUB supports this theory, we note that whether ESS RA requirements are sufficient to warrant such treatment is a factual determination that must be made by the Commission. RA requirements within the scope of the DA program must be sufficiently comprehensive to protect cost of service customers.

Once again, CUB appreciates Staff’s hard and thoughtful work throughout this proceeding.

Sincerely,



Michael P. Goetz
Oregon State Bar No. 141465
General Counsel
Oregon Citizens’ Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
T. (503) 227-1984
C. (630) 347-5053
E. mike@oregoncub.org

⁵ UM 2024 – CUB’s Opening Comments at 5-9 (Mar. 16, 2020).