

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 2143

In the Matter of Public Utility Commission of) Oregon: Investigation Into Resource) Adequacy in Oregon) _____) _____)) CALPINE ENERGY SOLUTIONS, LLC’S) COMMENTS ON STAFF’S DRAFT RULES))))
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I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its comments to the Public Utility Commission of Oregon (“OPUC” or “Commission”) on the Staff’s Draft Rules circulated May 18, 2023 (hereafter, “Staff’s Draft Rules”). Calpine Solutions appreciates the opportunity to provide its feedback on Staff’s Draft Rules and Staff’s consideration of its prior comments in this process.

Staff’s Draft Rules are a good start to development of workable rules governing Resource Adequacy (“RA”) for Oregon load serving entities (“LSEs”), but Calpine Solutions remains concerned with the aspect of the proposal that appears to completely foreclose the possibility of the Commission developing a reasonable RA backstop charge for utility-supplied RA as an alternative compliance option. As explained in Calpine Solutions’ previous comments, Calpine Solutions generally supports the overall concept of providing *three* options for an electricity service supplier (“ESS”) and long-term direct access (“LTDA”) and new load direct access (“NLDA”) customers to meet the RA requirements of this Commission. Specifically, Calpine Solutions supports providing the following three general options: (1) the ESS’s participation in the Western Power Pool’s (“WPP’s”) Western Resource Adequacy Program (“WRAP”) coupled with the filing of a forward-looking informational filing with the Commission; (2) the ESS’s

compliance with OPUC-administered RA rules coupled with the forward informational filing to this Commission; *or* (3) the applicable customer's payment to the relevant utility of an RA backstop charge for utility-supplied RA.¹

As explained in these comments, Calpine Solutions remains concerned that mandating compliance with the WRAP's requirements as the only practically available compliance option could have unintended consequences. These comments again stress that it remains unknown whether participation in the WRAP's requirements will be feasible—especially whether its strict, firm transmission requirements for its Forward Showing are realistic in light of the well-established fact that the transmission system of the Bonneville Power Administration (“BPA”) is oversubscribed and such firm transmission is generally not available to potential WRAP participants. While Staff's Draft Rules provide an option of alternative State Program Requirements in lieu of direct WRAP participation, the State Program Requirements appear to largely incorporate the WRAP's problematic firm transmission requirement. Thus, in Calpine Solutions' view, retaining the option to develop a reasonable RA backstop charge for ESSs is important.

Aside from the critically important issue of an RA backstop charge, Calpine Solutions has identified a number of areas in need of clarification and some potentially unreasonable requirements in Staff's Draft Rules that are discussed below.

¹ See Calpine Solutions' Comments on Staff's Straw Proposal, Docket No. UM 2143 (Nov. 21, 2022).

II. COMMENTS

A. **RA Backstop Charge: The Commission's Administrative Rules Should Provide the Option for a Resource Adequacy Backstop Charge for ESSs.**

In comments on the prior Staff Straw Proposal, Calpine Solutions recommended against adopting administrative rules that enshrine the WRAP requirements as the sole means of compliance with the state RA program, without at least retaining within the rules the option of developing a Commission-approved RA backstop charge as an alternative compliance option for ESSs and their customers. Calpine Solutions now reiterates its concern and recommendation with respect to Staff's Draft Rules.

As with Staff's Straw Proposal, Staff's Draft Rules lean heavily on the requirements of the WRAP program, which would presumably be the "Qualified Regional Program" referred to in Staff's Draft Rules into the foreseeable future. While the Draft Rules also contain the option of compliance with State Program Requirements, the substantive requirements therein are similar to, if not identical to or even more stringent than, the concerning aspects of the currently approved WRAP requirements. As previously indicated, Calpine Solutions appreciates the goal of encouraging WRAP participation given the regional benefits of the program. Calpine Solutions continues to devote substantial time and resources to working within the WRAP.

However, the final requirements of the WRAP are still being developed into the business practices that will implement important elements of the program, such as the exceptions to the firm transmission requirement. During the upcoming non-binding phase of the program, those details and the participants' efforts to commercialize products that meet the WRAP's requirements will evolve, and thus it is not possible at this time to guarantee the final program and commercial products that will become available, will work for all Oregon LSEs.

Thus, locking in rules that require compliance with WRAP—or adopting the most

problematic aspects of WRAP’s current requirements in the alternative State Program Requirements—as the only practical compliance option, and tying that compliance to an ESS’s certification to operate in Oregon’s direct access programs at all, is not a reasonable course of action at this time. Throughout this proceeding, Calpine Solutions had understood that there would be development of an RA backstop charge in this docket (or UM 2024) as the option to comply with the state’s RA requirement for ESSs (or direct access customers) that ultimately elect not to participate in the WRAP or otherwise demonstrate comparable RA supply to the Commission. Calpine Solutions continues to support at least retaining the option to develop an RA backstop charge. Absent a Commission-established RA backstop charge, the ESS and its customers may have no means of compliance if the ultimate provisions of the WRAP, including those adopted in the proposed State Program Requirements, do not work for the particular ESS.

Additionally, making such a WRAP-only RA requirement a provision of becoming and maintaining good standing as an ESS in Oregon could create barriers to entry into Oregon’s retail market and limit opportunities for customers. Notably, one of the premises of Federal Energy Regulatory Commission’s (“FERC”) approval of the justness and reasonableness of the WRAP tariff was its *voluntary* nature.² Parties protested, for example, the WRAP’s stringent transmission procurement requirements, which may be practically infeasible in the today’s market, and limitations on use of exceptions to that process.³ In response, FERC relied on the *voluntary* nature of the program: “We also note that the *voluntary* nature of the WRAP, and the Transition Period (where penalties do not apply) provides practical flexibility for Participants to evaluate the operational implications for each Participant’s individual circumstance.”⁴ FERC

² *Northwest Power Pool*, 182 FERC ¶ 61,063, PP 84-85 (Feb. 10, 2023).

³ *Id.* at PP 57-62.

⁴ *Id.* at P 84 (emphasis added).

stated: “Further, we disagree with NIPPC’s argument that WPP’s proposal inappropriately turns the Forward Showing Transmission Requirement into an extension of the planning function of transmission providers. Rather, the WRAP is a *voluntary* program that financially binds all participants to meeting capacity and transmission showing requirements that will, as a result, provide better information to state and local regulatory agencies’ planning processes.”⁵ But that reasoning is turned on its head—and the WRAP’s firm transmission requirement is decidedly unjust and unreasonable— if the WRAP’s firm transmission requirement becomes a *mandatory* requirement of a state program. That is precisely what would happen under Staff’s Draft Rules, which require WRAP participation or compliance with the WRAP’s firm transmission requirement in the State Program Requirements and provide no other option.

To further illustrate the concern with firm transmission requirement, it is useful to examine publicly available information regarding the current lack of firm transmission in the region. The state’s largest utility, Portland General Electric Company (“PGE”), has examined and documented the lack of firm transmission in multiple proceedings. PGE’s 2023 Clean Energy Plan-Integrated Resource Plan (“CEP-IRP”) succinctly explains:

Resource portfolios have grown and shifted in response to increasing loads, new large and highly concentrated loads and the significant growth of variable energy resources. However, the delivery capabilities of the Pacific Northwest’s transmission system, generally, have not kept pace with these changing demands. *As a result, **the region is already constrained, with little or no ATC available across all time horizons.***

* * * *

As discussed by BPA and stakeholders throughout BPA’s Transmission Study and Expansion Process 2022 (TSEP), ***BPA’s system is fully subscribed,*** and *incremental transmission requests are unlikely to be granted until the late 2020s or early 2030s,* pending significant upgrades.⁶

⁵ *Id.* at P 85 (emphasis added).

⁶ PGE’s 2023 CEP-IRP, p. 217 (emphasis added).

BPA itself confirms the situation as follows: “Near full-subscription all over the existing BPA transmission system.”⁷

PGE also recently made these same assertions in an application to FERC seeking relief from the requirement to use of firm transmission across BPA’s system to support dynamic transfer/pseudo ties.⁸ PGE proposes to use non-firm transmission to support pseudo ties, and BPA apparently agreed to this approach. According to PGE’s FERC filing, “the region’s transmission system is already constrained, with little or no available transfer capability (‘ATC’) available across all time horizons[,]” and “[r]estricting Pseudo-Ties to the use of firm transmission would unduly constrain use of the regional transmission system[.]”⁹ PGE’s filing provides detailed information regarding the existing limitations on transmission, including a table that “clearly illustrates a constrained regional transmission system, especially on transmission paths impacting energy from outside the PGE service area.”¹⁰ PGE further concludes that “the region lacks sufficient firm transmission capacity to meet both Northwest utilities’ projected load growth and carbon-reduction requirements.”¹¹ Calpine Solutions does not suggest that the requirements for pseudo ties are precisely analogous to the requirements for Resource Adequacy, but PGE’s assessments in its 2023 CEP-IRP and this recent FERC filing provide important confirmation regarding the lack of adequate firm transmission in the region—

⁷ BPA’s TSEP Cluster Study Process Update , Slide 6 (September 2022), available at: <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/09-20-22-cluster-study-improvements-customer-update.pdf>.

⁸ See PGE’s Response to Deficiency Letter, FERC Docket No. ER23-1123 (May 11, 2023).

⁹ *Id.*, p. 2.

¹⁰ *Id.*, p. 4

¹¹ *Id.*, p. 5.

an issue of vital importance to the options offered to ESSs for compliance with a state RA program.

Given those facts, the lack of firm transmission in the region needs to be taken into account in designing an RA construct that will be mandatorily imposed by a state, and it strongly supports offering an alternative option to ESSs through an RA backstop charge. As PGE puts it, “[t]here are no east to west unconstrained paths available to PGE.”¹² Similarly, there are no east to west unconstrained paths available to ESSs delivering to customers in PGE’s territory. And ESSs are in a worse position than PGE because ESSs are not transmission providers with the capability expand their own transmission system to cure these problems. Instead, ESSs must rely solely on the region’s transmission providers to properly expand the transmission system in transmission planning processes if the desire is for parties to rely so heavily on long-term, firm point-to-point transmission being available. Additionally, until the WRAP’s recent creation of a long-term, firm point-to-point transmission requirement for RA, ESSs have not necessarily had reason to acquire on their customers’ behalf extensive long-term, firm transmission assets because the Northwest market has been able to successfully serve load without such heavy use of long-term, firm point-to-point transmission.

Put simply, if the only option offered to ESSs is to require use of firm transmission but no long-term, firm, point-to-point transmission is available, the Commission’s requirements will be impossible, and ESSs may be sanctioned for noncompliance with such impossible requirement. That outcome is not reasonable or in the public interest.

While there would be a certain amount of regulatory process involved in developing an appropriate RA backstop charge, it would not be an unreasonable burden to do so. Development

¹² *Id.*, p. 4.

of an RA backstop charge would be little different from development of any other rate the Commission regularly adjudicates. In sum, therefore, Calpine Solutions continues to urge Staff to include the RA backstop charge as one of the potential compliance options for ESSs.

B. Regional Participants: The Draft Rules Should Clarify the State’s Requirements for Regional Participants.

Calpine Solutions recommends that Staff’s Draft Rules provide more details regarding the process for demonstrating compliance through participation in a Regional Program. Aside from the definitions of “Qualified Regional Program” and “Regional Participant,” Staff’s Draft Rules contain no explanation of how an LSE must demonstrate to the Commission that it is a Regional Participant and thus exempt from compliance with the State Program Requirements.

The details that should be in the rules include:

- The date by which the Regional Participant must be a *binding* participant in the Qualified Regional Program to be exempt from the State Program Requirements;
- Whether a Regional Participant is a State Participant until it becomes a binding participant in the Qualified Regional Program;
- The form and deadlines for any necessary filings with the Commission to demonstrate the LSE is a Regional Participant; and
- Whether and how an LSE may switch between being a being a Regional Participant and a State Participant, or vice versa.

The details regarding the timing of becoming a binding participant in WRAP are particularly important and in need of clarification in the rules to allow Oregon LSEs and their customers to make informed decisions. Although not stated in the Staff’s Draft Rules, Staff’s appended memorandum suggests that the expectation is that the compliance program will start in 2025 “to coincide with the expected beginning of the Western Resource Adequacy Program’s binding forward showing.” However, that expectation is not reasonable for all LSEs.

Although Summer 2025 is the first potential binding season that a WRAP participant may elect, it is already too late to elect that as the initial binding season in WRAP for any LSE that has not already done so. WRAP already required existing participants to make an election as to their first binding season by December 31, 2022, with the options for the LSE’s initial binding season being from Summer 2025 through Winter 2027-2028.¹³ That election had to be made in the absence of knowledge as to what requirements this Commission will adopt for the state-level RA program, including its date of effectiveness. Calpine Solutions understands that WRAP currently requires that an LSE seeking to change its prior election of the initial binding season must provide notice to WRAP at least two years prior to the revised initial binding season.¹⁴ Based on communications from WRAP, that includes changes to an earlier binding season than initially elected.

For example, an LSE would need to make an election with WRAP before November 1, 2023, to select WRAP’s 2025-2026 Winter Season as a binding season—unless it had already elected that season or earlier to be its first binding season. In the absence of clarity on this Commission’s rules, it is not reasonable to expect that all Oregon LSEs—whether ESSs or utilities—are already planning to be binding participants in WRAP by 2025. For example, Idaho Power Company recently reported to the Idaho Public Utilities Commission (“IPUC”) that it currently plans to become a binding participant in WRAP’s 2027 Summer Season.¹⁵ Idaho Power reasonably explains: “The Company tentatively plans to begin binding participation in the

¹³ WPP’s WRAP Submittal Letter, FERC Docket No. ER22-2762, p. 68 (Aug. 31, 2022); WRAP Tariff, § 1 (Definition of “Transition Period” is “Binding seasons within the time period from June 1, 2025, through March 15, 2028, plus the time period required to implement the requirements and procedures of Part II of this Tariff applicable to Binding seasons”).

¹⁴ WRAP Tariff, § 15.3 .

¹⁵ Idaho Power’s Application, IPUC Case No. IPC-E-23-08, p. 4 (March 14, 2023).

summer of 2027, giving the Company ample time to adjust to WRAP processes and requirements during the no-penalty phase of WRAP operations.”¹⁶ Idaho Power also reasonably sought the IPUC’s approval before becoming a binding member to assure it can recover the costs of doing so from its ratepayers.

Thus, as previously recommended, this Commission should allow at least two years after finalizing its administrative rules before making effective any requirement that the LSE demonstrate compliance through binding participation in the WRAP. In other words, the Commission should ensure the Commission’s rules do not require that the LSE be a binding participant in WRAP sooner than the binding season occurring after such two-year notice of revised binding season could feasibly be submitted by the LSE to WRAP. Assuming the rules are not finalized well before November 1, 2023, the earliest reasonable binding season that could be required would be WRAP’s 2026 Summer Season, and if this rulemaking goes into next year, the earliest reasonable binding season may be later than that. In all events, the requirements should be clearly spelled out in the rules to allow for parties to make informed decisions.

C. ESS’s Informational Filings: The Draft Rules Should be Clarified Regarding the Informational Filings by ESSs.

Calpine Solutions recommends that two aspects of Staff’s Draft Rules regarding ESSs’ Informational Filings should be clarified.

1. Regional Participants’ Data Submissions (Draft Rules § 4.c.)

Staff’s Draft Rules require ESSs that are Regional Participants to submit with their Informational Filing the “most recent data submission to its Qualified Regional Program,”¹⁷ but no further detail is provided regarding the data submission. It is not clear to Calpine Solutions

¹⁶ *Id.*

¹⁷ Staff’s Draft Rules, § 4.c.

exactly which data submission to the WRAP is identified in Staff’s Draft Rules. Further clarification as to the expected content of the data submission would be helpful to avoid misunderstandings and delays in processing the Informational Filing.

2. Protective Treatment of Confidential Material (Draft Rules § 4.d.)

Staff’s Draft Rules require an ESS to include with its Informational Filing a load forecast and transmission requirements over at least the next four years.¹⁸ Although not stated in Staff’s Draft Rules, the ESS would presumably need to also include a resource plan to meet those requirements. Because the ESS’s Informational Filing is made with the Emission Planning Report and covers similar information, Staff’s Draft Rules should use the same provisions for treatment of commercially sensitive information.

Specifically, in requiring submission of similar information with the Emissions Planning Reports, the Commission recently proposed rules in AR 651 that restrict availability of much of that information with use of unique modified protective orders.¹⁹ Specifically, any cost related information may be limited to “Qualified Statutory Parties,” which are defined to include “any Commission Staff and any representatives of the Citizen's Utility Board, who executed a modified protective order.”²⁰ Restrictions are loosened for “Non-Market Participants that have executed a modified protective order,” who may obtain: “(A) Action plan that specifies annual goals and resources, including specified and unspecified market purchases, that the ESS plans to use to meet the load and emissions forecast consistent with the DEQ emissions reporting methodology;” “(B) Information regarding the load forecast for each of the following three

¹⁸ Staff’s Draft Rules, § 4.d.

¹⁹ See Notice of Proposed Rulemaking, Docket No. AR 651, at Proposed OAR 860-038-0405(8) (Feb. 27, 2023).

²⁰ *Id.*

consecutive years, aggregate for all Oregon Direct Access customers;” and “(C) The summary of the specific electricity-generating resources and MWh generation from those resources.”²¹ Non-Market Participants include “Commission Staff, the Citizen's Utility Board, and non-profit organizations engaged in environmental advocacy that do not otherwise participate in electricity markets.”²²

Those rules for Emissions Planning Reports were collaboratively developed by ESS representatives and public interest parties with an interest in reviewing the material, and they should also apply to the Informational Filing to preserve the intent of adopting those unique levels of protection in what will ultimately be part of the same filing. That could be accomplished by simply cross-referencing the Emissions Planning Report rule for purposes of availability of the information in the Informational Filing or by reproducing the same provisions as modified into the RA rules.

D. State Program Requirements: The Draft Rules Should Be Clarified Regarding the State Program Requirements.

As discussed below, Calpine Solutions recommends certain revisions and clarifications with respect to Staff’s Draft Rules’ provisions for the State Program Requirements.

1. Initial Binding Showing (Draft Rules § 5.a.)

Staff’s Draft Rules propose that any State Participant’s initial Binding Forward Showing will be due by April 1, 2025.²³ This proposed date raises a number of questions.

Calpine Solutions continues to recommend that the initial Binding Forward Showing in the State Program not begin until the time that Oregon LSEs must begin binding participation in

²¹ *Id.*

²² *Id.*

²³ Staff’s Draft Rules, § 5.a.

the WRAP to qualify as Regional Participants under the OPUC's rules. And as noted above, unless an LSE has already elected an earlier initial binding season in WRAP, the earliest reasonable binding season that an LSE could elect after completion of the OPUC's rules would be WRAP's 2026 Summer Season. The earliest reasonable binding season for WRAP participation could easily be later than that if informed decisions cannot be made until after early next year, due to ongoing uncertainty as to the final RA framework and costs in Oregon.

If Staff's Draft Rules propose a requirement for an initial Binding Forward Showing for State Participants that is earlier than the rule's requirement for the initial binding season for Regional Participants, additional issues must be resolved. Such an arrangement calls into question how the Commission will treat LSEs who elect (or have already elected and cannot timely change) an initial binding season in WRAP that occurs after the initial Binding Forward Showing in the State Program. Do all such LSEs need to comply with the State Program until they begin binding participation in WRAP? The rules do not clearly address that question.

Additionally, as noted in prior comments, it would be unreasonable to apply an earlier compliance date to LSEs electing the State Program. Doing so could create confusion, as well as the risk of unexpected outcomes for, and differential treatment of, similarly situated parties.

In sum, Calpine Solutions recommends the OPUC's rules use the same binding date for Regional Participants and State Participants, and the OPUC should use a date that can still be feasibly elected for the initial binding season in WRAP. As noted above, that would be an initial binding date for both Regional Participants and State Participants no earlier than WRAP's 2026 Summer Season and later if the Commission's rules and related RA policies are not finalized by early next year.

2. Planning Reserve Margin (Draft Rules § 5.b.)

Staff's Draft Rules propose to provide the State Participant its Planning Reserve Margin ("PRM") by February 1, which is just two months before the proposed April 1 due date for the State Participant's forward showing. However, two months is not sufficient to acquire necessary resources to adjust the portfolio, especially if the PRM can change significantly from the prior showing. The WRAP ensures that the WPP will provide participants with their PRM at least nine months before the participant's deadline to submit the forward showing.²⁴ Calpine Solutions recommends that the OPUC's rules require the PRM be supplied to the State Participant at least nine months before the forward showing must be filed.

Additionally, the WRAP's PRM is just for the upcoming binding season. It appears Staff will supply a PRM to State Participants for the entire two years of the forward showing in the State Program, but the rules should clarify that point and whether the PRM will be adjusted seasonally to provide parties information on what to expect in the initial forward showing of the State Program.

3. Qualifying Capacity Contribution (Draft Rules § 5.c.)

Staff's Draft Rules propose to provide the State Participant its Qualifying Capacity Contributions ("QCC") by February 1, which is also just two months before the proposed April 1 due date for the State Participant's forward showing. As with the provision of PRM, two months is not enough time to use and transact on the QCC. Calpine Solutions recommends at least nine months' notice of the QCC that will apply before the forward showing deadline, or better yet, standardizing the QCC values that can be relied upon on a more long-term basis. The QCC could have an even more significant impact on the LSE's resource requirements than the PRM

²⁴ WPP's Submittal Letter, FERC Docket No. ER22-2762, pp. 18-19 (Aug. 31, 2022).

because effective load carrying capability (“ELCC”) values can vary drastically from one calculation method to another. Just a few years ago, Oregon utilities were calculating ELCC values for solar that were in the range of 70%, but now the same utilities calculate values in the 10% range, or lower. If that type of swing is presented to a State Participant for a resource type upon which it relies significantly just two months before its forward showing deadline, there will be difficulty obtaining necessary resources to economically meet the requirements of the program.

Relatedly, Calpine Solutions recommends that Staff provide further clarity as to how Staff plans to calculate the QCC. For example, the WRAP appears to rely on a QCC according to different zones but to use uniform values for all participants, which will presumably be contained in business practices and thus known well in advance of the forward showing.²⁵ In contrast, each Oregon utility calculates a unique capacity contribution value for each major resource type in the context of the specific utility’s capacity position and load in its IRP. It is not clear how such a process would work for ESSs, which will likely have very different load profiles than utilities. If the process, method, or results for QCC calculations will change from year to year, the State Participant would need significant advance notice due to the potential impacts on its resource needs in the State Program.

4. Compliance Resources (Draft Rules § 5.f.)

Calpine Solutions recommends Staff’s Draft Rules clarify that State Participants are not bound to use the exact same resources in the forward showing when the operational period occurs if doing so no longer makes sense from an economic standpoint and load can be reliably served otherwise. In the operational time period, the WRAP provides flexibility to deviate from

²⁵ WPP’s Submittal Letter, FERC Docket No. ER22-2762, pp. 19-21 (Aug. 31, 2022).

the portfolio in the forward showing in recognition of the fact that circumstances can change, and LSEs need the flexibility to serve load in the most cost effective means possible. This is particularly the case where the forward showing in the State Program goes two years into the future. Accordingly, it would be reasonable to clarify Staff's Draft Rules on this point.

5. Transmission Requirement (Draft Rules § 5.g.)

Staff's Draft Rules essentially adopt the general framework of the WRAP's forward showing firm transmission requirement, except that State Participants must demonstrate firm transmission rights for two years whereas WRAP's firm transmission requirement extends just to the next binding season. As noted above, Calpine Solutions has serious concerns with the WRAP's firm transmission requirement and the State Program's adoption of it because there is likely not sufficient firm transmission available in the region to meet this requirement. Aside from that concern, Staff's Draft Rules require clarifications if the Commission will adopt a WRAP-style firm transmission requirement.

First, Staff's Draft Rule should further define the critical term "firm transmission rights," which is not defined in the proposed rules.²⁶ In the WRAP, the firm transmission requirement defines firm transmission as "NERC Priority 6 or NERC Priority 7 firm point-to-point transmission service or network integration transmission service[.]"²⁷ That is an important clarification because it includes, not just firm point-to-point transmission service and network transmission service, but also conditional firm point-to point transmission service and secondary network transmission service.²⁸ In contrast, Staff's Proposed Rule might exclude the NERC

²⁶ Staff's Draft Rule, § 5.g. ("A State Participant must demonstrate that it has *firm transmission* rights to deliver 75% of the compliance resources" (emphasis added)).

²⁷ WRAP Tariff, § 16.3.

²⁸ *Puget Sound Energy, Inc.*, 144 FERC ¶ 61,198, P 7 (Sept. 12, 2013) ("Conditional firm point-to-point transmission service, during the conditional period, has a curtailment priority

Priority 6 products, even though they are essentially firm and carry curtailment priority over non-firm transmission. If the WRAP-style firm transmission requirement will be imported to Oregon’s rules, the rules should at least allow use of the same types of firm transmission as WRAP, which includes NERC Priorities 6 and 7.

Second, Staff’s Draft Rule includes the four exceptions that are itemized in the WRAP tariff, but the “waiver request” process to use those exceptions is not explained.²⁹ The rules should clearly define the waiver process, which should provide adequate time to act if Staff and/or the Commission disagree that an exception applies or otherwise deny the waiver request. To the extent Staff’s Draft Rules propose use of the same 30-day review period that would apply to any other deficiency in § 5.h., that is not sufficient. In the WRAP, the exceptions process is still being developed in business practices, but there is a 60-day cure process for any deficiency in the LSE’s forward showing before penalties could apply.³⁰ The intent of a cure period is to “promote identification and correction of any deficiencies to help ensure that the required resources are arranged and in place for the relevant season.”³¹ Cutting the WRAP’s 60-day period in half—especially for the transmission exceptions—will make the State Program even more difficult without any identified reason.

Calpine Solutions recommends that Staff’s Draft Rules should provide additional guidance as to how a State Participant would submit its transmission exceptions waiver request

of Priority 6”); BPA’s Conditional Firm Service Business Practice, pp. 2, 7-8, available at <https://www.bpa.gov/-/media/Aep/transmission/business-practices/tbp/conditional-firm-service-bp.pdf> (stating conditional firm service has curtailment priority 6 or 7, depending on the circumstances); PGE’s Network Integration Transmission Service Business Practice, p. 9, available at <http://www.oasis.oati.com/pge/> (“Secondary Network Service has a NERC 6 curtailment priority, identified on electronic tags as 6-NN”).

²⁹ Staff’s Draft Rule, § 5.g.(i)-(iv.).

³⁰ WPP’s Submittal Letter, FERC Docket No. ER22-2762, p. 26 (Aug. 31, 2022).

³¹ *Id.*

(e.g., informally to Staff, or through a formal filing to the Commission) and provide some assurance that the exceptions proposal will be processed with enough advance notice, at least 60 days, of the result to cure any deficiencies found. Otherwise, the exceptions process in the State Program is not equivalent to that in the WRAP and will likely be unworkable.

6. Fines and Sanctions (Draft Rules § 5.i.)

Finally, Calpine Solutions recommends deletion of the suggestions in Staff's Draft Rules that a State Participant that is an ESS may have its ESS certification revoked for failure to obtain an order from the Commission that it cured a deficiency found in its forward showing within 30 days.³² Revocation of an ESS's certification should occur only after deliberate and repeated flaunting of the Commission's rules, not a good faith error or misunderstanding that may ultimately have no material impact on the ability to deliver energy to load in the operational time period.

Deficiencies could occur in the forward showing for any number of reasons despite the best efforts and intentions of the ESS, and may not ultimately create a serious risk of inability to deliver energy in the operational timeframe. For example, the ESS could believe in good faith that it qualified for a waiver of the firm transmission requirement, but ultimately find that Staff and/or the Commission disagreed. As noted above, deficiencies in a participants' initial submission are expected to occasionally occur in the WRAP, which provides 60 days to cure such deficiencies with the goal of the program being to cure such deficiencies before the operational time period. In comparison, the 30-day cure period with the specter of license revocation in Staff's Draft Rules is not reasonable.

³² Staff's Draft Rules, § 5.i.

Further, there is no explanation for why ESSs are uniquely singled out for such a drastic penalty resulting from a deficient forward showing. There is no corresponding provision in Oregon law or regulation that allows the Commission to revoke an electric utility's authorization to operate in the Oregon due to a failure equivalent to submitting a deficient forward showing at issue here. If the Draft Rules retain the specter of ESS license revocation, there should be qualifying language explaining in more detail the circumstances that would warrant that result.

DATED: June 12, 2023.

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