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October 20, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

**Re: Docket UE 399 – In the Matter of PACIFICORP, dba PACIFIC POWER, Request
for a General Rate Revision**

Attention Filing Center:

Attached for filing in the above-referenced docket is PacifiCorp's Reply Brief.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 399**

In the Matter of
PACIFICORP d/b/a PACIFIC POWER
Request for a General Rate Revision.

PACIFICORP'S REPLY BRIEF

OCTOBER 20, 2022

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I. INTRODUCTION

PacifiCorp dba Pacific Power's (PacifiCorp or Company) Reply Brief responds to Calpine Energy Solutions, LLC's (Calpine) recommendation that a direct access customer enrolled in PacifiCorp's three-year opt-out program may freely switch to PacifiCorp's five-year opt-out program without penalty for early termination of its three-year agreement.¹ Public Utility Commission of Oregon (Commission) Staff and the Alliance of Western Energy Consumers (AWEC) now support Calpine's proposal.²

Along with the Oregon Citizens' Utility Board (CUB),³ PacifiCorp objects to Calpine's proposal, which Calpine added late to this case and failed to adequately develop. Calpine wrongly attempts to blame PacifiCorp for Calpine's delay in raising this issue, but this finger-pointing is baseless and does not remedy the deficiencies in the record.

Calpine, Staff, and AWEC fail to account for the potential problems associated with allowing a customer to unilaterally break its enrollment commitment to a long-term direct access program when another long-term direct access program becomes more advantageous. There is zero record on how Calpine's proposal could impact utility resource and decarbonization planning, or unfairly disadvantage customers who do not have the same freedom to move from one supply program to another. The Commission should deny Calpine's proposal in this case. If Calpine decides to re-raise the issue in another docket, the Commission should require Calpine to do so in a timely manner to ensure a fully developed record.

II. ARGUMENT

A. **The Record on This Issue is Insufficient to Support Calpine's Proposal.**

The record on this issue consists of just a few pages of rebuttal testimony from Calpine, to which only PacifiCorp had an opportunity to respond. Calpine has not developed the substantial evidence in the record necessary to support a Commission decision adopting its

¹ Calpine's Opening Brief at 1 (Oct. 13, 2022).

² Staff's Opening Brief at 3 (Oct. 13, 2022); AWEC's Opening Brief at 4 (Oct. 13, 2022). Walmart Inc., Vitesse, LLC, and the Klamath Water Users Association and Oregon Farm Bureau Federation did not take a position on Calpine's proposal in their opening briefs.

³ CUB's Opening Brief at 3 (Oct. 13, 2022).

proposal.⁴ Calpine, Staff, and AWEC summarily argue that there is no cost or harm when a three-year direct access customer breaks its commitment to remain in the program if that customer enrolls in the five-year direct access program. But Calpine’s testimony on this issue is conclusory and does not address the risks associated with invalidating enrollment periods, disrupting planning assumptions, and allowing certain customers an increased ability to move from one program to another based on changes in the transition adjustment or opt-out charge. Of course, Staff and AWEC filed no testimony at all on the issue—due to Calpine’s delay.

B. Calpine Incorrectly Blames PacifiCorp for Calpine’s Failure to Establish a Record in Support of its Proposal.

Calpine faults PacifiCorp for Calpine’s untimely pursuit of this issue.⁵ The facts show otherwise. PacifiCorp filed this case on March 1, 2022. In May 2022, Calpine surfaced its direct access issue in docket UE 400, the 2023 Transition Adjustment Mechanism (TAM). Even though PacifiCorp did not raise long-term direct access issues in the 2023 TAM, Calpine served a data request, Calpine 6.1, posing a hypothetical question on whether a three-year direct access customer could freely switch to the five-year direct access program.⁶ PacifiCorp objected to this data request on June 7, 2022, because it asked for a legal opinion on an issue outside the scope of the 2023 TAM.⁷ Nevertheless, on June 17, 2022, PacifiCorp offered to meet with Calpine to informally discuss its position on this issue.⁸ Due to scheduling issues, this meeting did not occur until July 7, 2022.

After the meeting on July 7, 2022, Calpine reached out to PacifiCorp for direction on “the procedural alternatives PacifiCorp would propose if the TAM proceeding is not used, so we can evaluate if such procedures would work from our perspective.”⁹ PacifiCorp provided two alternatives in response—“the appropriate option is for Calpine [] to file a complaint under ORS

⁴ See *Calpine Energy Sols. LLC v. PUC of Or.*, 298 Or App 143, 163 (2019) (“the findings that the PUC makes to support its fair and reasonable determination must be based on the evidence *in the record*.”) (emphasis in original).

⁵ Calpine’s Opening Brief at 9.

⁶ Calpine Solutions/200, Cross Exhibit/1.

⁷ *Id.*

⁸ Calpine Solutions/201, Cross Exhibit/2.

⁹ Calpine Solutions/202, Cross Exhibit/2.

756.500” or “another option that could resolve this issue even faster than a complaint. PacifiCorp could file an advice letter proposing to add language to Rule 21 . . . and [the parties] could work with Staff together to get the tariff change approved.”¹⁰ Rather than pursue either option, Calpine waited another month, until August 11, 2022, to include this issue in its rebuttal testimony in docket UE 399, without any advance notice to PacifiCorp.

These facts are all established by Calpine’s Exhibits 200 – 202, discovery responses and email correspondence from docket UE 400. These exhibits clearly show that (1) Calpine had identified this issue in May 2022, well before the due date for intervenors’ opening testimony in docket UE 399 on June 22, 2022; (2) prior to June 22, 2022, Calpine was also aware of PacifiCorp’s position that the issue was outside the scope of the 2023 TAM and should be litigated elsewhere; (3) Calpine never informed PacifiCorp of its intention to add this issue to this general rate case, nor did the parties ever identify this as an appropriate procedural option in advance of Calpine’s August 11, 2022 rebuttal testimony; and (4) contrary to Calpine’s suggestion,¹¹ PacifiCorp could not have reasonably anticipated that Calpine would try to add this issue to this case in its final stages. In short, Calpine failed to preserve this issue by raising it in opening testimony in this case and now unfairly blames PacifiCorp for the resulting deficiencies in the record.

C. This Issue Should be Resolved Based on a Robust Record and in the Context of Related Policy Issues.

The Commission should decide the policy issues Calpine’s proposal raises on a full record, and preferably in the context of other direct access policy issues. In response to the suggestion that the Commission review this issue in its pending direct access docket, Calpine argues that “[d]eferred the issue to a rulemaking in AR 651 will just invite disputes to arise in the direct access election windows that will occur between now and resolution of the rulemaking.”¹² But under the schedule in this case, the target date for a Commission order is

¹⁰ *Id.*

¹¹ Calpine’s Opening Brief at 9-10.

¹² *Id.* at 8-9.

December 16, 2022—after this year’s direct access window has closed. Thus, a decision in this case would first be applicable to the November 2023 direct access window. Given the fact that final comments in the AR 651 rulemaking are due at the end of January 2023,¹³ at which point the Commission is expected to proceed into a contested case in docket UM 2024, there is time to address this issue in either docket AR 651 or docket UM 2024 before the November 2023 direct access window. Accordingly, there is no material delay in resolving this issue in the direct access investigation instead of in this case.

Staff asserts that the concerns raised by Calpine’s proposal “*may not* be within the scope of the proposed rules in AR 651.”¹⁴ First, the direct access investigation consists of two dockets—AR 651 and UM 2024—and no party contests that Calpine could raise this issue in docket UM 2024. Docket UM 2024 has not entered the formal rulemaking phase and the rulemaking “could take up other issues that are deemed appropriate for rulemaking, as proposed by Staff and informed by parties during the process.”¹⁵ Second, the Commission could determine that Calpine’s issue is sufficiently related to the proposed rules in AR 651 (which include cost-shifting issues) to include it within that docket. While the docket has entered the formal rulemaking phase, under the Commission’s internal operating procedures, the Commission can revise its proposed rules to respond to comments from interested parties.¹⁶

D. Calpine Fails to Sufficiently Address the Implications of Allowing Three-Year Direct Access Customers the Option for “Free-Switching”.

Calpine’s, Staff’s, and AWEC’s main assertion is that other retail customers and PacifiCorp are not harmed by a three-year direct access customer breaking its three-year commitment and moving to the five-year program after year one or two, so there is no basis for

¹³ The schedule for AR 651 is not fully developed, but the currently available schedule has final comments on the rulemaking due at the end of January 2023. See *In re Rulemaking Regarding Direct Access Including 2021 HB 2021 Requirements*, Docket No. AR 651, Staff’s Schedule Update (Oct. 14, 2022).

¹⁴ Staff’s Opening Brief at 3 (emphasis added).

¹⁵ *In re Alliance of Western Energy Consumers, Petition for Investigation into Long-Term Direct Access Programs*, Docket No. UM 2024, ALJ Memorandum at 3 (Oct. 1, 2021).

¹⁶ *In re Public Utility Commission of Oregon, Amending Internal Operating Guidelines*, Docket No. UM 2055, Order 20-386, App. A at 11-12 (Oct. 27, 2020) (“The ALJ may revise the proposed rules based on comments received during the formal comment and hearing phase.”).

prohibiting this or requiring a returning service charge.¹⁷ This argument fails to acknowledge that there are potential benefits and associated costs when a customer has greater optionality to determine the most advantageous program in which to enroll at a particular time. Under Calpine's proposal, a three-year customer will get the benefit of a fixed transition charge for three years without a reciprocal three-year commitment to the program. In addition, parties' argument that three-year customers should not pay the returning service charge since they are not returning to cost-of-service, disregards the intent of the charge. The returning service charge is designed to discourage customers from breaking their commitment to stay on the three-year program, not just to reconcile the difference between market and cost-of-service rates. This is apparent from the fact that the charge includes a penalty.

The parties' argument that Calpine's proposal is neutral to other customers¹⁸ also ignores the potential impact of the proposal on the Company's resource and House Bill (HB) 2021 compliance planning. PacifiCorp is required to plan for customers in the three-year program, assuming they will return to cost-of-service rates after year three, but the Company does not plan for customers in the five-year program.¹⁹ If three-year customers are permitted to leave the program early by going to the five-year program, PacifiCorp could plan for more load than necessary for customers in the three-year program. Increased uncertainty around load and resource planning also negatively impacts HB 2021 compliance because HB 2021 compliance relies on the same fundamental load and resource building blocks. While Calpine cites ORS 757.646(1) to argue that the Commission is required to eliminate barriers to the development of a competitive market,²⁰ Calpine omits reference to ORS 757.646(4), which provides that the Commission should not adopt direct access policies that could limit or delay HB 2021

¹⁷ Calpine's Opening Brief at 1; Staff's Opening Brief at 3; AWEC's Opening Brief at 9.

¹⁸ Calpine's Opening Brief at 7-8; Staff's Opening Brief at 4.

¹⁹ *In re Public Utility Commission of Oregon; Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 19 (Jan. 8, 2007); *see also In re PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket No. LC 77, 2021 Integrated Resource Plan, App. B at 60 (Sept. 1, 2021) (Under Guideline 9, PacifiCorp's resource planning accounts for one- and three-year direct access participants, but not five-year opt-out customers).

²⁰ Calpine's Opening Brief at 2.

compliance.²¹

III. CONCLUSION

Calpine has not developed a record sufficient to support its position that customers in the Company's three-year direct access program may freely switch to the five-year opt-out program before the end of their three-year commitment. Calpine first raised this issue on August 11, 2022, less than one month before this case was originally set for hearing, and improperly blames PacifiCorp for Calpine's unreasonable delay. Calpine's proposal to void the three-year enrollment requirement raises the risk of cost-shifting and could disrupt the Company's resource and HB 2021 compliance planning. For these reasons, the Commission should reject Calpine's proposal.

Dated this 20th day of October 2022.



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²¹ ORS 757.646(4) ("Notwithstanding subsection (1) of this section, the commission shall ensure that policies developed to mitigate the vertical and horizontal market power of incumbent electric companies *do not limit or delay* electric companies from offering programs or services or making prudent investments in furtherance of the clean energy targets established by ORS 469A.410 or a program established under ORS 757.603 (5), or that otherwise aid in reducing statewide emissions of greenhouse gases consistent with state policies, including ORS 283.398 and 468A.205." (emphasis added)).