

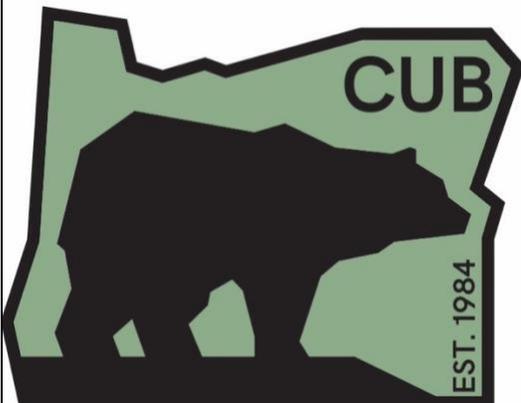
**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 335**

In the Matter of )  
 )  
PORTLAND GENERAL ELECTRIC )  
COMPANY, )  
 )  
Request for a General Rate Revision. )  
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**OPENING BRIEF  
OF THE  
OREGON CITIZENS' UTILITY BOARD**

October 19, 2018



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 335**

In the Matter of	)	
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PORTLAND GENERAL ELECTRIC COMPANY,	)	OPENING BRIEF OF THE OREGON
	)	CITIZENS' UTILITY BOARD –
Request for a General Rate Revision.	)	DIRECT ACCESS ISSUES
_____	)	

**I. INTRODUCTION**

Pursuant to Administrative Law Judge (ALJ) Moser’s August 14, 2018 Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits its Opening Brief on Direct Access issues in the above-captioned proceeding. In this Brief, CUB reaffirms its position that the Direct Access settlement reached between Staff of the Oregon Public Utility Commission (Staff), Albertsons, Fred Meyer, Calpine Solutions (Calpine), and Portland General Electric (PGE) (collectively, the Stipulating Parties) should be rejected. CUB continues to believe that the five year transition adjustment charge contained in paragraph two of the Direct Access Stipulation (DA Stipulation)<sup>1</sup> is insufficient to hold existing cost-of-service customers harmless.<sup>2</sup>

PGE filed this general rate case on February 15, 2018 and proposed two modifications to its long-term direct access opt out program.<sup>3</sup> First, PGE proposed to

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<sup>1</sup> UE 335 – Stipulating Parties/501/Kaufman – Waidelich – Bieber – Higgins – Macfarlane/1.  
<sup>2</sup> UE 335 – CUB/400/Jenks/6.  
<sup>3</sup> UE 335 – Stipulating Parties/500/ Kaufman – Waidelich – Bieber – Higgins – Macfarlane/2.

move from five years to ten years of transition adjustments.<sup>4</sup> Second, PGE proposed to modify its Rule K to allow it to petition the Commission to decertify an Electricity Service Supplier (ESS) if the ESS fails to meet certain monthly scheduling thresholds.<sup>5</sup> On August 10, 2018, the Stipulating Parties entered into the DA Stipulation that, in part, maintains PGE’s existing five year transition adjustment charge.

CUB continues to take issue with the Company backpedaling from its initial testimony position to modify its long-term direct access program to reflect fixed generation costs over ten years.<sup>6</sup> There, PGE noted that “[a]llowing ten years of fixed costs will help protect remaining [cost-of-service] customers from undue cost shifting when large nonresidential customers choose to opt out of [cost-of-service] on a long-term basis.”<sup>7</sup> CUB continues to support this argument, and believes that moving to a ten year transition adjustment charge will protect existing cost-of-service customers from unwarranted cost shifting consistent with the Commission’s statutory obligation,<sup>8</sup> and will ultimately result in rates that are fair, just, and reasonable. Therefore, CUB respectfully urges the Commission to reject the Stipulating Parties’ DA Stipulation on the grounds that retaining PGE’s current five year transition adjustment charge will result in

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> UE 335 – PGE/100/Pope – Lobdell/12.

<sup>7</sup> UE 335 – PGE/1300/Macfarlane – Godspeed/40.

<sup>8</sup> ORS 757.607(1) (“The provision of direct access to some retail electricity customers must not cause the unwarranted shifting of costs to other retail electricity customers of the electric company.”).

unwarranted cost shifting. The Commission should adopt PGE’s position in initial testimony to move to a ten year transition adjustment charge.

Although not a party to the DA Stipulation, the Northwest and Intermountain Power Producers Coalition (NIPPC) filed Response Testimony to CUB’s objection to the DA Stipulation.<sup>9</sup> NIPPC notes that CUB did not raise this issue in direct testimony.<sup>10</sup> While CUB is cognizant of the potentially procedurally awkward timing of its objection given it is not an issue we raised in direct testimony, we note, again, that CUB planned on addressing this issue in rebuttal testimony.<sup>11</sup> However, the Stipulating Parties reached an agreement before that time.

## II. ARGUMENT

A. *Contrary to NIPPC and Calpine’s assertions, CUB has provided evidence that ten years of transition charges are necessary to protect cost of service customers.*

In individually filed Response Testimony to CUB’s objection, both NIPPC and Calpine argue that CUB has not offered any evidence to support its position.<sup>12</sup> NIPPC goes as far as to state “CUB merely reiterates arguments in favor of the ten-year transition proposal that were set out by PGE in initial testimony and does not support its position with any real facts or analysis.”<sup>13</sup> CUB disputes this assertion. CUB provided sufficient evidence in its testimony objecting to the DA Stipulation to support the claim that a ten-year transition charge is necessary that appears nowhere else in the record. The evidence provided by CUB that PGE’s residential load is declining due to energy

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<sup>9</sup> UE 335 – NIPPC/200/Fitch-Fleishmann.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> UE 335 – CUB/400/Jenks/2.

<sup>12</sup> UE 335 – Calpine Solutions/200/Higgins/5; UE 335 – NIPPC/200/Fitch-Fleishmann/3.

<sup>13</sup> UE 335 – NIPPC/200/Fitch-Fleishmann/3.

efficiency (EE) measures is not sufficiently rebutted by NIPPC or Calpine.<sup>14</sup> Further, the primary source of load growth in PGE's system is anticipated to be in the industrial class.<sup>15</sup> This evidence is offered nowhere else on the record by any other party.

NIPPC argues that five years of transition charges remain appropriate because it is a longer period than the planning process in Oregon.<sup>16</sup> NIPPC notes that, beyond load growth, other factors such as plant closures also play a role in determining a utility's resource needs.<sup>17</sup> In support of its position to retain five years of transition charges, NIPPC goes on to state that even though PGE has had a recent history of flat or declining loads, the Company has acquired 2 gigawatts of generation since 2007.<sup>18</sup> NIPPC posits that cost-of-service customers may benefit from increased direct access participation due to deferred generation investment.<sup>19</sup>

For its part, Calpine cites to PGE's 2016 IRP and subsequent March 2018 update to argue that PGE will experience "continued load growth" that will lead to a resource need.<sup>20</sup> Calpine argues that this resource need can be partially displaced or deferred by new opt-out load.<sup>21</sup> Calpine pushes back on CUB's arguments by stating that there will not be unwarranted cost shifting because, with five years' notice, PGE will not plan to add any new resources to serve the departing load that leaves the system for direct access.<sup>22</sup> Finally, Calpine states that any residential rate impact concern should be

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<sup>14</sup> UE 335 – CUB/400/Jenks/4.

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> UE 335 – NIPPC/200/Fitch-Fleischmann/4.

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.*

<sup>20</sup> UE 335 – Calpine Solutions/200/Higgins/4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 5.

mitigated by the fact that only 64 aMW of the total 300 aMW direct access program cap remain.<sup>23</sup>

Unfortunately for NIPPC and Calpine, their arguments miss the mark and do not address the core concerns raised by CUB in its testimony objecting to the DA Stipulation. As CUB notes in its testimony, SB 1149's direct access program was enacted with a general understanding that monotonic increasing load growth would continue.<sup>24</sup> Under this paradigm, five years of transition charges were put in place to hold existing cost-of-service customers harmless under the Commission's statutory obligation to do so.<sup>25</sup> Much has changed in Oregon's electric sector since SB 1149 was passed in 1999. Due to robust energy efficiency procurement for non-direct access eligible customers pursuant to SB 838, residential electric usage has decreased nearly 20% in PGE's system.<sup>26</sup> Notably, SB 838 prohibits large, direct access eligible customers from acquiring additional energy efficiency beyond what was mandated in the public purpose charge.<sup>27</sup> Contrary to the intent of SB 1149's direct access program, residential customers have been unable to grow into load left behind by industrial customers choosing direct access like anticipated.<sup>28</sup>

To distill NIPPC and Calpine's arguments down, they posit that the interplay of Oregon's two-year resource planning process, continued long-term opt out, and PGE's generally minimal load growth will cause the Company to defer continued generation

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<sup>23</sup> *Id.*

<sup>24</sup> UE 335 – CUB/400/Jenks/3.

<sup>25</sup> *Supra*, note 8.

<sup>26</sup> UE 335 – CUB/400/Jenks/4.

<sup>27</sup> *Id.* at 4-5.

<sup>28</sup> *Id.* at 3.

investment. These parties fail to consider that, while residential load is currently flat or declining due to EE investment, PGE expects continued load growth in the industrial class over the next several decades.<sup>29</sup> New resources will be needed to serve this load. While these new resources are being built, industrial customers will undoubtedly continue to leave PGE's system to test the direct access market. Calpine's point that 64 aMW of enrollment opportunity beneath the direct access cap remains is well taken. However, it neglects the fact that the Commission recently established a new load direct access (NLDA) program with a cap entirely separate from the existing direct access program.<sup>30</sup>

CUB remains concerned that resources built to serve industrial load growth will give way to stranded costs that will eventually be shouldered by residential customers who did not need new resources to be procured in the first place. Residential customers have no option to leave PGE's system—they are truly held captive by the utility. Given the Commission's statutory mandate to protect these customers, it should adopt a ten year transition charge to ensure that they are truly held harmless—especially in years 6-10 while industrial load continues to expand. According to PGE, using a very conservative estimate the harm to cost-of-service customers over that time if the transition charge is not expanded to ten years will be \$76 million.<sup>31</sup> In order to keep captive cost-of-service customers harmless, ten years of transition charges are necessary.

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<sup>29</sup> *Id.* at 6.

<sup>30</sup> *In re Rulemaking Related to a New Large Load Direct Access Program*, OPUC Docket No. AR 614, Order No. 18-341 at 7 (Sep. 14, 2018).

<sup>31</sup> UE 335 – PGE/1300/Macfarlane – Goodspeed/40-41.

B. *The Stipulating Parties' responses to CUB's objection do little to assuage our concerns.*

In testimony responding to CUB's objection, Staff, Fred Meyer, and PGE articulate limited rationale for deciding to sign the DA Stipulation.<sup>32</sup> PGE notes that it initially made the proposal for ten years of transition adjustments, but supports the stipulation "as a balancing of the interests in this case."<sup>33</sup> Fred Meyer argues that the exit of new opt-out customers could avoid new incremental resource acquisition.<sup>34</sup> CUB has already responded to that argument in this brief. Like NIPPC and Calpine, Staff argues that PGE failed to provide evidence that the current transition adjustments result in unwarranted cost shifts.<sup>35</sup> CUB believes that the proper lens through which to view the current transition charges is not whether they have allowed cost shifting in the past; rather, it should be whether they *will* in the future. CUB has provided evidence that residential demand will remain flat due to continued EE investment while industrial load on PGE's system will continue to grow. Ten years of transition charges are necessary to protect residential cost-of-service customers in the later years (6-10).

### III. CONCLUSION

Industrial customers will continue to explore various options through which to meet their energy needs through direct access, an NLDA program, and PGE's proposed green tariff program. At the same time, existing residential cost-of-service customers are faced with a paradigm in which their loads are flat or declining, but PGE will undoubtedly seek to acquire new resources to meet the needs presented by a growing

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<sup>32</sup> UE 335 – Stipulating Parties/600/Gibbens – Waidelich – Bieber – Macfarlane/10-11.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.* at 10-11.

<sup>35</sup> *Id.* at 10.

industrial class. The uncertainty of whether or not this growing load will remain on PGE's system levies a risk onto captive cost-of-service customers that they will be forced to bear the stranded costs of resources left behind. CUB believes that it is imperative that these customers are held harmless through transition charges in order to comply with the Commission's statutory mandate. Therefore, we respectfully urge the Commission to reject the Stipulating Parties' DA Stipulation on the grounds that retaining PGE's current five year transition adjustment charge will result in unwarranted cost shifting. The Commission should adopt PGE's position in initial testimony to move to a ten year transition adjustment charge.

Dated this 19<sup>th</sup> day of October, 2018.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael P. Goetz".

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