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October 26, 2018

Via Electronic Filing

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

Re: UE 335 – PORTLAND GENERAL ELECTRIC COMPANY Request for a General Rate Revision

Dear Filing Center:

Enclosed is the Reply Brief of Portland General Electric Company Regarding Direct Access Issues for filing in the above-referenced docket.

Thank you for your assistance.

Sincerely,

DOUGLAS C. TINGEY
Associate General Counsel

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Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision.	**REPLY BRIEF OF PORTLAND GENERAL ELECTRIC COMPANY REGARDING DIRECT ACCESS ISSUES**

Portland General Electric Company ("PGE") submits this reply brief regarding direct access issues in this general rate case.

I. BACKGROUND

This part of the procedural schedule is only to address the Partial Stipulation Regarding Direct Access Issues ("Stipulation"). The parties to the Stipulation are PGE, Staff of the Public Utility Commission of Oregon ("Staff"), Albertson's, LLC and Safeway, Inc. ("Albertson's"), Fred Meyer Stores and Quality Food Centers ("Fred Meyer"), and Calpine Energy Solutions, LLC ("Calpine Solutions") (collectively, the "Stipulating Parties"). The Northwest and Intermountain Power Producers Coalition ("NIPPC") is not a party to the Stipulation but filed testimony recommending that the Commission adopt the Stipulation.[1]

The Alliance of Western Energy Consumers ("AWEC"), and the Oregon Citizens' Utility Board ("CUB"), object to certain terms of the stipulation, and for opposing reasons. The opening briefs of these parties argue about two specific provisions of the Stipulation, and argue very little about the issue and decision before the Commission.

II. LEGAL STANDARD

This is a contested stipulation in a rate case. "The Commission has broad powers to set just and reasonable rates."[2] PGE's opening brief set out the legal standard used by the Commission for contested stipulations. It bears repeating here. In the decision in docket UE 210, the Commission stated that it has "a statutory duty to make an independent judgment as to whether any given settlement constitutes a reasonable resolution of the issues."[3] That order continues:

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[1] UE 335/NIPPC/200/5.
[2] *In the Matter of PacifiCorp dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).
[3] *Id.*

> We have recognized, however, that issues in a general rate case typically reflect judgments along a continuum of outcomes and can rarely be reduced to one "right" number in any cost category. When considering a stipulation, therefore, we may evaluate the validity of the rates based on "the reasonableness of overall rates, not the theories or methodologies used or individual decisions made." We may accept a non-unanimous settlement agreement so long as we make an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.[4]

This Stipulation is well within the continuum of outcomes, and the terms of the Stipulation that CUB and AWEC oppose are unchanged from the current terms. They are the same terms that have been in place for 16 years. They may not be the only possible outcome for the specific issues questioned, but they are, taken as part of an overall stipulation resolving all direct access issues, reasonable and the result will be just and reasonable rates and terms of service. The Stipulation should be approved.

III. STIPULATION TERMS

The terms of the settlement do not change the main components of PGE's direct access program. The Stipulation does not change the calculation and length of transition adjustments, the program participation cap, or Electricity Service Supplier ("ESS") scheduling requirements. These terms have been in place for many years, and will continue unchanged under the Stipulation.

As with all stipulations, the Stipulation reflects a compromise of disparate positions between the settling parties. The Stipulating Parties reached a settlement that will result in just and reasonable direct access terms and conditions, and they each requested that the Commission adopt the Stipulation.

The briefs of CUB and AWEC argue at length about the specific provisions of the Stipulation that they seek changed. The do little to address the Stipulation as a whole and

[4] *Id.* (footnotes omitted).

whether the overall result is reasonable. CUB and AWEC's arguments do, however, illustrate that the Stipulation terms and result are well within the continuum of outcomes that would be reasonable. CUB argues that direct access customers should pay transition adjustments for ten years rather than five, to avoid cost shifting to non-participating customers. AWEC argues that the participation cap that has been in place for 16 years is now discriminatory and should be raised so that more load can go to direct access. One party thinks the Stipulation terms do not do enough to protect non-participating customer, and the other argues that no protection is necessary and the Stipulation should have gone further to allow more potential direct access. The Stipulation is well within these bookends, and a reasonable outcome.

The Stipulation resolved a number of issues other than the two CUB and AWEC address:

1. The transition adjustment methodology and five-year term remain unchanged.
2. Electricity Service Supplier ("ESS") scheduling provisions remain unchanged.
3. Participation limits remain unchanged.
4. During the transition adjustment period, Renewable Energy Certificates ("RECs") will be transferred to ESSs for accounts opting out beginning next year.
5. As done previously, the Stipulating Parties will not, with exceptions, propose changes to the direct access program for service years 2020 and 2021.
6. The one-time impact of UM 1920 is addressed.
7. Some changes requested by direct access customers to Schedule 485 eligibility, and Rule K account site relocation have been adopted.
8. Schedule 600 location change fees will be addressed in PGE's next general rate case.

There were many issues other than those raised by CUB and AWEC, with the major components of direct access continuing unchanged. It is the Stipulation as a whole that is before the

Commission for approval. The terms of the Stipulation are reasonable, and will result in just and reasonable prices and terms.

Another important part of the context for this decision is that PGE's long-term opt-out program is not necessary to meet any particular requirement of the Commission rules.[5] A multi-year opt-out offering with fixed transition adjustments is required. PGE's three-year, opt-out program meets that obligation. This five-year opt-out program with transition adjustments that end is not required. The Commission has adopted this program, and used tools like transition adjustments and the participation cap to fulfil its statutory requirement to not cause the unwarranted shifting of costs from direct access customers to other retail customers.[6] The Commission has done just that since the inception of direct access.

IV. OBJECTIONS

Again, the issue here is whether the Stipulation as a whole should be approved. Nevertheless, PGE provides this response to the individual objections.

CUB. CUB's only objection is regarding the length of transition adjustments. CUB "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."[7] CUB points to its testimony filed with its objection to support this argument. Among other arguments, CUB states that it is concerned about residential customers being shouldered with stranded investment costs if industrial load goes to direct access.[8] In this docket PGE originally proposed ten years of transition adjustments. However as part of the overall

[5]OAR 860-038-0275(5) requires: "At least once each year, electric companies must offer customers a multi-year direct access program with an associated fixed transition adjustment."
[6] ORS 757.607(1).
[7] CUB's Opening Brief, at 3 (footnote omitted).
[8] *Id.* at 7.

settlement of direct access issues, PGE agreed to continue five-year transition adjustments. PGE believes that the result of the overall settlement is fair and reasonable.

AWEC. AWEC takes a directly opposing position. AWEC supports maintaining five years of transition adjustments but objects to the longstanding, unchanged, 300 MWa participation cap. AWEC goes so far as to propose a greatly expanded participation cap. That would not be good policy, or in the interests of non-participating customers. In addition, AWEC's arguments are not well supported.

AWEC has attempted to make arguments that the long-standing participation cap is somehow discriminatory. It is not, and AWEC's arguments do not withstand scrutiny. The cap applies to all eligible direct access accounts the same. In essence AWEC's argument is that since the cap could, potentially, not allow one customer's entire load (several accounts) to go to direct access, then it is discriminatory. In other words, the argument is that if the cap might actually operate as a cap, it is discriminatory. That argument is logically flawed. If the argument were accepted, then any time the room under the cap was less than the entire load of this largest customer, the cap would need to be raised. That would make the cap meaningless. It would have no ability to prevent cost shifting because it would not ever be a cap in reality.

AWEC also argues that it is a particular customer that will be prevented from going to direct access. That is also incorrect. Direct access participation is done at the account level. A customer may choose to take any eligible account to direct access. A customer may take one account, or more. The particular customer AWEC is referring to has multiple accounts, and has accounts that qualify and fit within the participation limit.[9] In addition, that customer, as all other

[9] UE 335/Stipulating Parties/600/5.

eligible customers, has had sixteen annual direct access windows in which they could have chosen direct access.[10]

AWEC's discussion of Docket DR 20 is likewise inapposite. DR 20 was a declaratory ruling docket in 1997. It was a request by PacifiCorp for a declaratory ruling on three questions connected to what was termed a pilot direct access program. It was not direct access as is now in place. The current direct access statutes did not exist in 1997. The service under this pilot was to be provided by PacifiCorp. The Commission ruled that under the assumed facts presented PacifiCorp needed to file a tariff for this service, that the tariffs needed to specifically state the prices for service, and that the discrimination laws in ORS Section 757 did not apply to this pilot program.[11] None of that has any relevance to direct access under the existing statutes and the issues in this docket. CUB's arguments about transition charges are informative. Transition charges end under PGE's long-term opt-out program. That leaves the cost of resources acquired before the long-term opt-out customers chose direct access for remaining cost-of-service customers to absorb. A cap helps mitigate the potential cost shifting.

AWEC goes so far as to argue that there is no cost shifting. PGE's opening brief discussed the flaws in AWEC's testimony. CUB has also offered evidence of cost shifting in support of its objections. The very existence of transition charges is evidence of cost shifting. But those transition charges end, and another tool the Commission has used since the inception of direct access in Oregon is a participation cap. Its relevance is still theoretical – no customer has been denied direct access due to the cap. But, maintaining the cap is necessary to protect non-participating customers from potentially significant cost shifts.

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[10] *Id.* at 5-6.

[11] *In the Matter of PacifiCorp's Petition for Declaratory Ruling Regarding the Applicability of ORS 757.025 and 757.225 and ORS 775.310 to 757.330 to Direct Access Pilot Programs*, Docket No. UE 101/DR 20, Order 97-408 (Oct. 17, 1997) at 4-9.

The Commission has also very recently recognized the potential for cost shifting with respect to New Load Direct Access in Docket AR 614.[12] There, a participation cap for new load direct access was implemented based on a percentage of load. In PGE's case the cap is approximately 120 MWa. The reasoning for the cap applies in this docket as well, and the existence of this new direct access program, with a potential participation of 120 MWa, increases the potential for cost shifting and weighs strongly against raising the cap in this docket.

AWEC has ignored the long history of direct access and the legal requirement of the Commission to prevent undue cost shifting, and has provided flawed reasoning and analysis in support of its arguments.

V. CONCLUSION

The issue before the Commission is whether to approve the Stipulation that resolves all Direct Access related issues. The Stipulation retains the main components of PGE's current direct access program. In particular, the transition adjustment calculation and duration, and the participation limit, are unchanged. The Stipulation was entered into and supported by disparate parties all agreeing that if approved the terms of the Stipulation will result is just and reasonable

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[12] *In the Matter of Rulemaking Related to a New Load Direct Access Program*, Docket No. AR 614, Order No. 18-341 at 7-8 (Sept. 14, 2018).

terms of service, and requesting approval by the Commission. The Stipulation is a reasonable resolution of all direct access issues and should be approved in its entirety.

Dated this 26th day of October, 2018.

Respectfully submitted,

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