

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 335

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY

7 Request for a General Rate Revision

STAFF'S OPENING BRIEF – DIRECT ACCESS

8 **I. INTRODUCTION**

9 Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Opening
10 Brief in support of the Direct Access Stipulation pursuant to Administrative Law Judge Moser's
11 August 14, 2018 Ruling.

12 On August 20, 2018, Portland General Electric Company (PGE), Staff, Fred Meyer
13 Stores and Quality Food Centers, Divisions of The Kroger Company (Fred Meyer), Albertsons
14 Companies, Inc. (Albertsons) and Calpine Energy Solutions, LLC (Calpine Solutions),
15 collectively the Stipulating Parties, filed a Partial Stipulation Regarding Direct Access Issues
16 (Direct Access Stipulation or Stipulation) that resolved all outstanding direct access related
17 issues in this case for service years 2020 and 2021, including the calculation and duration of
18 transition charges for Long-Term Direct Access (LTDA) and the participation limit, or cap,
19 applicable to LTDA participants.

20 On September 4, 2018, Oregon Citizens' Utility Board (CUB) and the Alliance of
21 Western Energy Consumers (AWEC) each filed objections to certain provisions in the Direct
22 Access Stipulation.¹ On September 17, 2018, the Stipulating Parties filed Testimony in support

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25 ¹ CUB also made an argument in the alternative that if the Commission declines to adopt ten
26 years of transition adjustments, it should reject the Direct Access Stipulation in its entirety.
Objections of the Oregon Citizens' Utility Board at 4. CUB's Testimony supporting its
objections does not provide evidence on other issues included in the Direct Access Stipulation.
See CUB/400.

1 of the Direct Access Stipulation, continuing to recommend that the Commission adopt the
2 Stipulation as filed.

3 **II. LEGAL STANDARD**

4 The Commission must set rates that are fair, just and reasonable.² The Commission
5 reviews the terms of any stipulation for reasonableness and accord with the public interest.³ The
6 Commission has previously noted the value of settlement in terms of administrative efficiency by
7 narrowing the range of positions on issues and further developing the record;⁴ however, the
8 Commission does not defer to, and is not bound by, the terms of any stipulation.⁵ For contested
9 stipulations, the Commission must “make an independent finding, supported by substantial
10 competent evidence in the record as a whole, that the settlement will establish just and
11 reasonable rates.”⁶

12 **II. SUMMARY OF OBJECTIONS AND PARTIES’ RESPONSES**

13 Only two provisions of the Direct Access Stipulation are contested—paragraph 2 and
14 paragraph 4. Paragraph 2 relates to Transition Adjustments, and provides that “Except as
15 provided herein regarding Docket UM 1920, there will be no change to either the calculation of
16 transition adjustments or the number of years for transition adjustments as a result of this
17 docket.”⁷ Paragraph 4 relates to the Participation Limit (i.e. cap) that applies to PGE’s LTDA
18 program, and provides that “[t]here will be no modification to either the 300 MWa participation
19 cap or the minimum eligibility requirements for PGE’s long-term direct access program for
20 existing customers (Schedules 485, 489, 490, 491, 492 and 495),” unless the Commission
21 modifies the participation cap in docket AR 614 through adoption of a combined cap with the

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² ORS 756.040; ORS 757.210.

23 ³ *In re PacifiCorp*, OPUC Docket No. UE 267, Order No. 15-060 at 4 (Feb. 24, 2015).

24 ⁴ *Id.* at 3.

25 ⁵ OAR 860-001-0350(9); Order No. 15-060 at 4.

26 ⁶ *In re PacifiCorp*, OPUC Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010) (internally
citations omitted).

⁷ Direct Access Stipulation at 1.

1 new large load direct access program.⁸ In that event, the Stipulating Parties agreed that “[t]he
2 other terms of this Stipulation will remain in effect even if the Commission adopts a combined
3 cap in AR 614 or otherwise changes the cap on the long-term direct access program for the
4 existing loads as part of AR 614.”⁹

5 *Transition Adjustments*

6 CUB is the only party that objects to paragraph 2 of the Direct Access Stipulation, which
7 allows for the continuation of five years of fixed generation costs in the transition adjustment for
8 LTDA participants. CUB advocates that the Commission adopt ten years of fixed generation
9 charges in transition adjustments as initially proposed in PGE’s Opening Testimony in this
10 case.¹⁰ Generally, CUB argues that the current methodology for calculating transition
11 adjustments results in unwarranted cost-shifting to existing cost-of-service customers because
12 PGE’s loads are flat or declining, and future load growth will not materialize to effectively
13 replace the load that has departed to direct access.¹¹

14 Staff’s Opening Testimony argued that the Commission should reject PGE’s proposal to
15 reflect ten years of fixed generation costs in transition adjustment rates because it found PGE’s
16 proposal to be unsupported, and had concerns that ten years of fixed generation costs would raise
17 unnecessary barriers to a competitive energy market and could result in unnecessary and costly
18 resource acquisitions, which would raise cost of service rates in the long-run.¹² Staff also
19 recommended that the parties undertake one or more direct access workshops outside of the
20 general rate case in order to investigate and analyze the issues, rather than dispense with them
21 permanently in this case.¹³ Staff’s testimony in support of the Stipulation argued that five-years

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23 ⁸ The Stipulation was negotiated prior to the date that the Commission adopted final rules in
24 docket AR 614, which did not adopt a combined cap for New Load Direct Access programs.

24 ⁹ *Id.* at 2.

25 ¹⁰ CUB/400.

25 ¹¹ *Id.*

26 ¹² Staff/800, Kaufman/39.

¹³ *Id.*

1 of transition adjustments was consistent with its testimony in this proceeding, and is reasonable
2 as part of an overall settlement of direct access issues in this case.¹⁴

3 AWEC contests CUB's objection, and urges the Commission to adopt the Stipulating
4 Parties' agreement to maintain five years of fixed generation transition charges for LTDA
5 participants.¹⁵ AWEC's Opening Testimony on this issue urged the Commission to reject five
6 years of transition charges.¹⁶

7 In addition to the criticisms of PGE's proposal in its Opening Testimony,¹⁷ Calpine wrote
8 independent testimony supporting the Stipulation, and urging the Commission to reject CUB's
9 proposal for ten years of transition adjustments. Calpine argues that, five years provides
10 sufficient time for PGE to plan for the exit of LTDA load¹⁸ and that if ten years of fixed
11 generation costs is implemented, "the fixed generation costs avoided by the opt-out customers
12 should be credited against the fixed generation charge levied on opt-out customers in years six
13 through ten after the customer enters the opt-out program."¹⁹

14 Fred Meyer supports the current five-year transition period, as it provides sufficient time
15 for PGE to plan for the permanent exit of a Direct Access customer.²⁰ Fred Meyer argues that
16 PGE is able to avoid incremental resources that would otherwise be needed, which is a benefit to
17 the system.²¹ Fred Meyer also argues that ten years of transition charges is unwarranted and
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¹⁴ Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/10.

21 ¹⁵ AWEC Objections (Revised) at 2. AWEC also notes that if the Commission were to modify
22 the Partial Stipulation to extend the current transition period, a capacity credit would be essential
to prevent unwarranted cost-shifting to direct access customers. *Id.*

23 ¹⁶ AWEC/100, Mullins/42-45.

24 ¹⁷ Calpine Solutions/100, Higgins/6-24.

25 ¹⁸ Calpine Solutions/200, Higgins/3-6.

26 ¹⁹ Calpine Solutions/200, Higgins/2.

²⁰ Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/10-11.

²¹ *Id.*

1 would unduly hinder the continuation of a successful Direct Access program.²² Fred Meyer's
2 Opening Testimony did not specifically address this issue.²³

3 PGE notes that it initially proposed the ten-year transition adjustment, but as part of an
4 overall settlement, agreed to five years of transition adjustments which it believes results in just
5 and reasonable rates.²⁴

6 Although the Northwest and Intermountain Power Producers Coalition (NIPPC) did not
7 join the Stipulation, it filed responsive testimony to CUB's objection. NIPPC argued that CUB
8 failed to produce evidence in support of its position,²⁵ and that "the current five years of
9 transition charges provides ample time for PGE to incorporate changes in direct access load in its
10 planning process."²⁶ NIPPC also supports a workshop to address ongoing and interrelated direct
11 access issues.²⁷ In its Opening Testimony, NIPPC urged the Commission to reject PGE's
12 proposal to increase transition charges as unsupported by evidence and sound policy.²⁸

13 *Participation Limits*

14 AWEC is the only party to object to paragraph 4 of the Direct Access Stipulation, which
15 continues the existing participation limit for LTDA customers.²⁹ AWEC argues that the
16 Commission should either eliminate the cap on the long-term opt-out program, or alternatively,

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19 ²² *Id.*

20 ²³ *See* FM/100.

21 ²⁴ Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/11.

22 ²⁵ NIPPC/200, Fitch-Fleischmann/3-4.

23 ²⁶ *Id.* at 4.

24 ²⁷ *Id.* at 6.

25 ²⁸ NIPPC/100, Fitch-Fleischmann/10-14.

26 ²⁹ Staff notes that the Direct Access Stipulation allowed for adjustment of the cap if so ordered
by the Commission as part of docket AR 614, the New Load Direct Access Rulemaking
proceeding. Since the Direct Access Stipulation was filed, the Commission adopted final rules in
AR 614 which did not adjust the participation cap for PGE's LTDA customers. *In re*
Rulemaking related to New Load Direct Access Program, OPUC Docket No. AR 614, Order No.
18-341 (Sept. 14, 2018).

1 increase the cap by 250 aMW to allow all eligible customers to participate.³⁰ AWEC argues that
2 the Commission's failure to do so results in a violation of Oregon law, as the cap is prejudicial,
3 arbitrary, and imposes unwarranted barriers to the development of a competitive market.³¹

4 Staff's testimony in support of the Stipulation acknowledged that it had similar concerns
5 to those raised by AWEC, but that these issues should be further investigated and considered in
6 one or more direct access workshops outside of PGE's currently pending general rate case.³²

7 Fred Meyer notes that it strongly supports the development and continuation of a viable
8 direct access program, which could include a revisit of the program caps. Fred Meyer notes that
9 it supports the Stipulation, however, because it represents a reasonable resolution to the package
10 of direct access issues addressed in this case.³³

11 PGE responds that under AWEC's theory, any participation limit would be
12 discriminatory, and suggests that its position is targeted to address one customer's interests.
13 PGE also argues that the participation limit has existed since the program began and that there
14 has been ample opportunity to participate in direct access.³⁴

15 Calpine noted that its Opening Testimony addressed similar issues to those raised by
16 AWEC regarding relaxation of the participation cap, but accepted the continuation of the current
17 participation limits as reasonable within the context of the overall settlement package.³⁵

18 NIPPC's Opening Testimony advocated for an increase in the participation cap;³⁶ NIPPC
19 did not join, but did not object to, the Direct Access Stipulation's settlement of this issue.³⁷

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21 ³⁰ AWEC Objections (Revised) at 2. AWEC also notes that if the Commission were to modify
22 the Partial Stipulation to extend the current transition period, a capacity credit would be essential
23 to prevent unwarranted cost-shifting to direct access customers. *Id.*

24 ³¹ AWEC Objections (Revised) at 1.

25 ³² Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/4.

26 ³³ Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/5.

27 ³⁴ Stipulating Parties/600, Gibbens – Waidelich – Bieber – Macfarlane/5-9.

28 ³⁵ Calpine Solutions/200, Higgins/7.

29 ³⁶ NIPPC/100, Fitch-Fleischmann/14.

30 ³⁷ NIPPC/200, Fitch-Fleischmann/2.

1 III. ARGUMENT

2 Staff continues to support the Direct Access Stipulation, and advocate that the
3 Commission adopt the Direct Access Stipulation as filed by the Stipulating Parties. Therefore,
4 Staff recommends that the Commission reject the proposals from CUB and AWEC to modify
5 provisions related to the duration of transition charges and participation limits.

6 As stated in the Joint Testimony supporting the Direct Access Stipulation, Staff maintains
7 many of the positions and concerns initially set forth in its Opening Testimony; however, Staff
8 found support for the Direct Access Stipulation, as a complete resolution of the direct access
9 issues in this case for the short-term, because the Stipulation generally continues the status quo
10 (with small modification to address certain customer-specific issues). This allows Staff, PGE
11 and stakeholders additional time to investigate and consider large policy and design questions for
12 PGE’s direct access program, as discussed in testimony in this and other proceedings. As noted
13 in the Joint Testimony, there are several pending dockets with implications for LTDA, including
14 the forthcoming New Load Direct Access (NLDA) programs and a future NLDA rulemaking
15 phase II, as well as PGE’s proposed green tariff. Further, other issues not explicitly addressed by
16 the Stipulation or objections thereto, such as capacity credits for LTDA participants, were at
17 issue in this case and have been raised in other proceedings.³⁸ Because there are additional
18 issues and questions that are not the subject of the objections to the Stipulation, but that could
19 implicate direct access and other voluntary programs, it may be premature to adjust the
20 participation limits and duration of transition charges at this time. Adoption of the Stipulation as
21 filed allows for further discussion and holistic engagement on these issues.

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26 ³⁸ The issue of capacity credits was also at issue in PacifiCorp’s 2019 TAM. See e.g. UE 339 – Staff/200, Kaufman/17.

