BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, DBA: PACIFIC POWER, Request for a General Rate Revision	)	UE 374 POST-HEARING OPENING BRIEF OF CALPINE ENERGY SOLUTIONS, LLC

INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC ("Calpine Solutions") hereby respectfully submits its post-hearing opening brief to the Public Utility Commission of Oregon ("OPUC" or "Commission") in this proceeding. As noted in Calpine Solutions' prehearing brief, Calpine Solutions is a party to the Partial Stipulation addressing certain rate design and rate spread issues, filed in this proceeding on August 17, 2020, and Calpine Solutions continues to support approval of the Partial Stipulation. Of the issues that remain unresolved through settlement, Calpine Solutions takes a position on three issues this rate case:

First, the Commission should adopt Calpine Solutions' proposal to update transition adjustment mechanism ("TAM") guidelines, or include in the new annual power cost update ("APCU") guidelines, the requirement that PacifiCorp provide a sample calculation for the five-year direct access program. All parties to PacifiCorp's current TAM, including PacifiCorp, support this proposal, and no party has opposed this proposal in this proceeding.

Second, Calpine Solutions recommends that the Commission defer determination on the Citizen Utility Board of Oregon's ("CUB") proposal to create a non-bypassable charge for coal decommissioning costs until the issue can be more fully vetted in Docket No. UM 2024. At this point, all parties appear to agree with deferring this issue as recommended in this brief.

Third, Calpine Solutions supports the Commission Staff's recommendation with regard to future use of PacifiCorp's Schedule 272. Specifically, Calpine Solutions agrees with Staff that the Commission should open an investigation into PacifiCorp's Schedule 272 to determine whether it is appropriately considered a Voluntary Renewable Energy Tariff ("VRET") subject to the Commission's VRET guidelines, and direct PacifiCorp not to enter into any new contracts with Schedule 272 customers that include supplying renewable energy certificates ("RECs") from utility-owned resources pending the outcome of the investigation.

ARGUMENT

1. The Commission Should Adopt Calpine Solutions' Uncontested Proposal to Include a Sample Calculation for the Five-Year Direct Access Program in the Net Power Cost Guidelines

Calpine Solutions requests that the Commission adopt its reasonable and uncontested revision of the guidelines applicable to PacifiCorp's net power cost proceedings (whether a TAM or an APCU) to include a sample calculation of proposed rates for the five-year program for direct access. Specifically, as agreed to by PacifiCorp, the guidelines should require PacifiCorp to supply a sample calculation no later than 30 days after the initial filing.[1] As noted in Calpine Solutions' prehearing brief, all parties to PacifiCorp's ongoing TAM stipulated to support this proposed change to the guidelines regardless of whether the Commission adopts the proposal for an APCU or retains the TAM.[2] No party to this general rate case has opposed this discrete change to the guidelines. Thus, regardless of how the Commission resolves the dispute over use

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[1] PAC/500, Wilding/9-10. For additional background, *see Calpine Solutions' Prehearing Br.* at 2-3.

[2] *Calpine Solutions' Prehearing Br.* at 3 (citing *PacifiCorp, Staff, CUB, AWEC, Calpine Solutions, Sierra Club, KWUA, and Vitesse's Stipulation* Docket No. UE 375, at par. 26 (Aug. 18, 2020)).

of a TAM or an APCU and related details, it should direct that the resulting guidelines include the proposed requirement for PacifiCorp to supply the sample calculation for the five-year program for direct access.

2. The Commission Should Defer Determination on CUB's Proposed Non-Bypassable Charge for Coal Decommissioning Costs

CUB has made a proposal for non-bypassable coal decommissioning costs that Calpine Solutions recommends the Commission consider in another docket because it implicates significant direct access policy issues that should be addressed in a wholistic manner.[3] At this point, all parties taking a position on the subject in this proceeding, including CUB, appear to agree that the issue should be deferred for determination in the ongoing investigation into direct access issues, Docket No. UM 2024.[4] Thus, the Commission should defer determination on CUB's proposal to Docket No. UM 2024.

3. The Commission Should Investigate Whether PacifiCorp's Schedule 272 Is Appropriately Subject to the VRET Guidelines, and It Should Bar New Contracts Under Schedule 272 That Include RECs from Utility-Owned Resources Pending Such Investigation

Staff asks the Commission to open an investigation into whether future contracts under Schedule 272 should be subject the Commission's VRET guidelines.[5] While Calpine Solutions takes no position on PacifiCorp's rate recovery for the Pryor Mountain facility, Calpine Solutions supports Staff's proposal to open an investigation.

This issue arises from PacifiCorp's proposal to place in rate base the new Pryor Mountain wind facility, which PacifiCorp acquired on an expedited basis outside of the ordinary

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3 *See Calpine Solutions' Prehearing Br.* at 3-5 (providing additional background on this issue).

4 *See PacifiCorp's Prehearing Br.* at 68 n. 424 (stating "all parties have agreed to defer consideration of CUB's proposal . . . to docket UM 2024"); *CUB's Prehearing Br.* at 19 (stating, "Given that CUB believes additional process is necessary to determine an accurate level of decommissioning cost estimates, CUB is comfortable addressing this proposal in UM 2024").

5 *See Staff's Prehearing Br.* at 48-50.

procurement process to supply RECs from the newly acquired facility to Vitesse, LLC (a wholly-owned subsidiary of Facebook, Inc.) ("Vitesse") under Schedule 272.[6] PacifiCorp states the acquisition "was a unique, time sensitive opportunity to provide significant value to customers."[7] Under this arrangement, Vitesse contracted to purchase the RECs from the new wind facility under Schedule 272, and PacifiCorp's cost-of-service customers, including Vitesse, will purchase the power from the new wind facility as a system resource.[8]

Although this acquisition of a new generation resource is unquestionably designed to supply a green product to an individual customer, Staff explains that the transaction could fall under PacifiCorp's REC rider, Schedule 272, so long as the RECs sold from PacifiCorp to Vitesse are characterized as "unbundled" RECs.[9] According to Staff, Schedule 272 would allow sale of such unbundled RECs without regard to whether the wind facility is owned by PacifiCorp or a third party.[10] However, Staff appears to contest whether the RECs in this circumstance are truly "unbundled"[11] – a point Calpine Solutions takes no position on in this proceeding. In any event, given the ambiguity and novel use of Schedule 272, Staff concluded that Schedule 272 may be better considered a VRET subject to the Commission's VRET guidelines.[12] Staff recommends the Commission open an investigation on the subject and direct PacifiCorp to refrain from entering into Schedule 272 contracts selling RECs from utility-owned resources pending such investigation.[13] Notably, Vitesse does not oppose Staff's proposal to open an

6 PAC/700, Link/68.
7 PAC/700, Link/68.
8 PAC/800, Teply/19.
9 *Staff's Prehearing Br.* at 48 (citing Staff/800, Storm/46).
10 *Id.* at 48 (citing Staff/800, Storm/46).
11 *Id.*
12 *Id.* (citing *In re Public Utility Commission of Oregon,* OPUC Docket No. UM 1690, Order No. 15-405 at 1-2 (Dec. 15, 2015)).
13 *See Staff's Prehearing Br.* at 48-50.

investigation or the proposal to bar PacifiCorp from acquiring another utility-owned resource pending such investigation.[14]

Calpine Solutions shares Staff's concerns regarding future uses of Schedule 272, especially for utility-owned resources. The VRET guidelines were the product of a lengthy investigation in Docket No. 1690 after the legislature's enactment of House Bill 4126. In that legislation, the legislature directed the Commission to "determine whether, and under what conditions, it is reasonable and in the public interest to allow electric companies to provide voluntary renewable energy tariffs to nonresidential customers."[15] Consistent with the legislation, the resulting VRET guidelines are intended to ensure a utility program offering a voluntary renewable energy product does not harm the competitive retail market and does not result in non-participants absorbing cost shifts or cross subsidies.[16]

In Calpine Solutions' view, the concerns addressed in the VRET guidelines are magnified when the green tariff program may be used to acquire utility-owned resources. This Commission has recognized the well-established principle that a utility has a "bias" towards acquiring utility-owned assets that can be placed in rate base to earn a return for utility shareholders as opposed to supplying power to customers from third parties.[17] If the utility is incented to acquire rate-based resources upon which shareholders may profit in a green tariff program, the risk of harm to

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[14] *Vitesse's Prehearing Br.* at 1.

[15] 2014 Or Laws Ch 100, § 3(3); *see also In re Public Utility Commission of Oregon,* OPUC Docket No. UM 1690, Order No. 15-405 at App. A (containing extensive background).

[16] *In re Public Utility Commission of Oregon,* OPUC Docket No. UM 1690, Order No. 15-405 at 1-2; *see also* 2014 Or Laws Ch 100, § 3(3) (requiring consideration of "(b) The effect of allowing electric companies to offer voluntary renewable energy tariffs on the development of a competitive retail market; (c) Any direct or indirect impact, including any potential cost-shifting, on other customers of any electric company offering a voluntary renewable energy tariff").

[17] *Re Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias,* Docket No. UM 1276, Order No. 11-001 at 5 (Jan. 3, 2011) (discussing this "bias" in the context of a utility procurement of generation resources).

competitive retail markets and non-participants is heightened. Indeed, Staff recommended in Docket No. UM 1690 that utilities be barred from owning a VRET resource.[18] Although the resulting guidelines do not include an outright bar of utility ownership, they place very restrictive limitations on utility ownership of a VRET resource.[19] Instead of seeking Commission approval of a VRET, PacifiCorp appears to have sidestepped these limitations by packaging the green product as what it characterizes as an unbundled REC offered under Schedule 272.[20] Notably, the Commission's order approving Schedule 272 evidences an assumption that Schedule 272 would not be used to add specific utility-owned resources to suit a particular customer's needs.[21] Accordingly, Staff's proposal to open an investigation is well founded.

The Commission should not accept PacifiCorp's response to Staff's proposal. PacifiCorp argues it does not "anticipate" acquiring another resource under Schedule 272, thus rendering any consideration of further restrictions unnecessary.[22] Instead, PacifiCorp proposes it will commit to "meet and confer with stakeholders before proceeding with the transaction" to acquire another such resource.[23] However, if PacifiCorp is not planning to acquire such a resource, the delay of its right to do so pending an investigation should present little inconvenience to it.

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[18] *In re Public Utility Commission of Oregon,* OPUC Docket No. UM 1690, Order No. 15-405 at App. A, pp. 9-14.

[19] *Id.* at 2 (including as condition 7: "The regulated utility may own a VRET resource, but may not include any VRET resource in its general rate base. It may recover a return on and return of its investment in the VRET resource from the VRET customer; however, the utility must share some of the return on with other utility customers for ratepayer-funded assets used to assist the VRET offering.").

[20] *See PacifiCorp's Prehearing Br.* at 85-86; PAC/2000, Wilding/25.

[21] *In re PacifiCorp dba Pacific Power: Advice No. 16-012 (ADV 386), Changes to Schedule 272 Renewable Energy Rider Optional Bulk Purchase Option*, Docket No. UE 318, Order No. 17-051, at App. A, p. 7 (Feb. 13, 2017) (containing Staff's Report, stating, "Staff struggles with NIPPC's position that this tariff constitutes a VRET given Staff's understanding that Schedule 272 customers are not purchasing renewable energy from a specifically identified source, *nor are specific resources being built to meet specific customer preferences*." (emphasis added)).

[22] *PacifiCorp's Prehearing Br.* at 85-86; PAC/3800, Link/29.

[23] *PacifiCorp's Prehearing Br.* at 85-86; PAC/3800, Link/29.

Furthermore, the potential opportunity to "meet" with PacifiCorp before it acquires another such resource is insufficient because, as was the case here, PacifiCorp may argue it must acquire such new resource on an expedited basis without time to implement any clarifications or changes to Commission policy implicated by such proposal. The concerns addressed by House Bill 4126 and the VRET Guidelines are clearly implicated with PacifiCorp's use of Schedule 272 to acquire new utility-owned resources, and PacifiCorp's arguments to the contrary are misplaced.

In sum, while Calpine Solutions takes no position on PacifiCorp's rate recovery for the Pryor Mountain facility, Calpine Solutions agrees with Staff that use of Schedule 272 to acquire new resources warrants further scrutiny before any further utility-owned acquisitions may be made under Schedule 272.

CONCLUSION

For the reasons stated above, the Commission should approve the Partial Stipulation on rate spread and rate design issues. Additionally, the Commission should include in its final order in this proceeding the uncontested amendment to the TAM/APCU guidelines requiring a sample calculation for the five-year program, Schedule 296. The Commission should defer determination on CUB's request for a non-bypassable charge for coal decommissioning costs. Finally, the Commission should adopt Staff's recommendation to open an investigation of Schedule 272.

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