

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP,	)	UE 390
DBA: PACIFIC POWER,	)	
	)	CALPINE ENERGY SOLUTIONS, LLC'S
	)	CROSS-ANSWERING BRIEF
PacifiCorp 2022 Transition Adjustment	)	
Mechanism (TAM)	)	
	)	
	)	
_____	)	

Gregory M. Adams, OSB No. 101779  
Peter J. Richardson, OSB No. 066687  
Richardson Adams, PLLC  
515 North 27th Street  
Boise, ID 83702  
Telephone: (208) 938-2236  
Facsimile: (208) 939-7904  
Email: greg@richardsonadams.com  
peter@richardsonadams.com

Attorneys for Calpine Energy Solutions, LLC

**Table of Contents**

I. INTRODUCTION AND SUMMARY ..... 1

II. ARGUMENT ..... 1

    A. The Commission Should Reaffirm the Ongoing Valuation Calculation Used for the Consumer Opt-Out Charge and Reject PacifiCorp’s Proposed Constraint that Prevents a Negative Charge ..... 1

    B. The Commission Should Approve the New REC Retirement Proposal Under H.B. 2021 Supported by Both Calpine Solutions and PacifiCorp ..... 6

III. CONCLUSION ..... 6

**Table of Authorities**

**Page**

**Cases**

*Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 445 P3d 308 (2019)..... 2

**Statutes**

ORS 183.482(8)(c)..... 2

ORS 757.607(2) ..... 3

## I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) respectfully submits to the Public Utility Commission of Oregon (“OPUC” or “Commission”) its cross-answering brief in this matter. Calpine Solutions maintains the two positions set forth in its testimony and in its reply brief: (1) the Commission should reject PacifiCorp’s proposal to constrain the consumer opt-out charge from being negative; and (2) the Commission should adopt the proposal that PacifiCorp retire freed-up bundled and unbundled renewable energy certificates (“RECs”) on behalf of electricity service suppliers (“ESSs”) as supported by Calpine Solutions and PacifiCorp.

This cross-answering brief responds to arguments made by the reply brief of the Citizens’ Utilities Board of Oregon (“CUB”) with respect to PacifiCorp’s proposed constraint on the consumer opt-out charge. For the reasons explained below, CUB’s arguments with respect to the consumer opt-out charge are misplaced and unsupported. Additionally, as to the REC retirement issue, no other parties’ reply briefs have opposed the agreed-to proposal of Calpine Solutions and PacifiCorp, and therefore the Commission should approve the proposal in its final order.

## II. ARGUMENT

### A. **The Commission Should Reaffirm the Ongoing Valuation Calculation Used for the Consumer Opt-Out Charge and Reject PacifiCorp’s Proposed Constraint that Prevents a Negative Charge**

As explained in Calpine Solutions’ reply brief, the Commission should reject PacifiCorp’s proposed constraint on the calculation of the consumer opt-out charge that prevents it from being negative or a credit.<sup>1</sup> PacifiCorp’s proposal unreasonably skews the rate

---

<sup>1</sup> *Calpine Solutions’ Reply Brief* at 7-13.

calculation in favor of shifting costs from prospective five-year program customers to cost-of-service customers by refusing to provide credits when credits result from the Commission-approved ongoing valuation calculation for the consumer opt-out charge.<sup>2</sup> CUB makes a number of misplaced arguments in its reply brief in support of PacifiCorp’s unreasonable proposal. The Commission should reject CUB’s arguments.

CUB incorrectly asserts that “[d]irect access customers are already shifting costs to captive cost-of-service customer in the implementation of PacifiCorp’s direct access program.”<sup>3</sup> CUB proposes that the Commission should constrain the calculation of the consumer opt-out charge to make up for this alleged cost shift. As explained in Calpine Solutions’ reply brief, however, the record contains no evidence supporting CUB’s cost-shift theory, and the Commission should not therefore adopt this unsupported cost-shift theory.<sup>4</sup>

The citation in CUB’s reply brief supporting its assertion of existing cost shifts is Bob Jenks’s testimony and PacifiCorp’s opening brief.<sup>5</sup> PacifiCorp’s opening brief is not evidence and, in any event, it merely cites to Jenks’s testimony.<sup>6</sup> Thus, the only evidence in the record to which CUB points is its own limited testimony on the subject.

The referenced portion of Jenks’s testimony asserts that CUB has submitted comments (not evidence) in another proceeding, UM 2024, alleging that direct access programs are already

---

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

<sup>3</sup> *CUB’s Reply Brief* at 14.

<sup>4</sup> *Calpine Solutions’ Reply Brief* at 13; *see also Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 159, 445 P3d 308 (2019) (holding court must “‘set aside or remand [the PUC’s] order if [we] find[ ] that the order is not supported by substantial evidence in the record.’ ORS 183.482(8)(c)”).

<sup>5</sup> *CUB’s Reply Brief* at 14 n. 59 (citing UE 390 – CUB/200/Jenks/26-27 and PacifiCorp’s Opening Brief at 61).

<sup>6</sup> *PacifiCorp’s Opening Brief* at 61.

resulting in cost shifts.<sup>7</sup> Jenks’s testimony further notes that, in UM 2024, CUB discussed a number of programs that it believes result in cost shifts, including “state and federal mandates, net metering and community solar, coal plant closure and decommissioning, demand response, energy efficiency, and PURPA development.”<sup>8</sup> However, the testimony in this proceeding provides no further explanation as how costs of those other programs are recovered from PacifiCorp’s cost-of-service and/or direct access customers, much less why it would be reasonable to allocate such costs to direct access customers to the extent such costs are not already being recovered from them in currently approved rates for PacifiCorp. Without such explanation and some quantification of the magnitude of the allegedly unrecovered costs at issue, there is no evidence of any cost shift in this proceeding.

CUB’s testimony also contends that direct access customers “purchase energy on the wholesale market at marginal values that do not capture the capital costs associated with the underlying generating plant.”<sup>9</sup> Although CUB alleges this results in a cost shift, the amount paid by a direct access customer to its ESS for energy from the wholesale market has no legal relevance to any alleged cost shifts. Under Oregon law, a cost shift would occur only if the direct access customer failed to pay the *utility* for the unrecoverable costs of the utility’s stranded assets or for ongoing services the utility may continue to provide direct access customers.<sup>10</sup>

---

<sup>7</sup> CUB/200, Jenks/26.

<sup>8</sup> CUB 200, Jenks/27.

<sup>9</sup> CUB/200, Jenks/26:16 to 27:1 (arguing this is a “core issue” to be addressed in UM 2024).

<sup>10</sup> *See, e.g.*, ORS 757.607(2) (stating the Commission may prevent cost shifts through the imposition of “transition charges” that may include “full or partial recovery of the costs of uneconomic utility investments.”).

CUB’s testimony further alleges that because “investor-owned utilities sell renewable energy into wholesale markets at its marginal cost, the captive customers of the utility are paying the capital cost for a resource that eventually serves – and benefits – a DA customer.”<sup>11</sup> Again, no quantification of this alleged problem exists in the record. Moreover, contrary to the assertion that direct access customers do not pay for the capital costs of PacifiCorp’s renewable resources, the record demonstrates that five-year program participants pay for the capital costs of PacifiCorp’s stranded renewable resources through the transition adjustment rates in years one through five and through the consumer opt-out charge calculation in years six through 10 after their opt-out election.<sup>12</sup> Those costs are reduced for the value of the freed-up energy on the market.<sup>13</sup> CUB’s testimony provides no explanation for why this current arrangement results in a cost shift.

Finally, in support of its cost-shift theory, CUB’s reply brief points to PacifiCorp and Portland General Electric Company’s (“PGE”) comments in UM 2024, which CUB has proposed to be included in the record in this proceeding as exhibits, proposed CUB/301 and CUB/302.<sup>14</sup> Calpine Solutions has objected to inclusion of these exhibits in the record because they were not sponsored by any witness in the proceeding, lack foundation, and are thus procedurally improper and prejudicial to other parties.<sup>15</sup> No ruling has been issued at this point on whether these exhibits will be admitted into evidence in this proceeding. If the exhibits are admitted as

---

<sup>11</sup> CUB/200, Jenks/19-22.

<sup>12</sup> Calpine Solutions/100, Higgins/13-16.

<sup>13</sup> Calpine Solutions/100, Higgins/13-16.

<sup>14</sup> *CUB’s Reply Brief* at 15.

<sup>15</sup> *Calpine Solutions’ Response to CUB’s Motion to Admit Testimony and Exhibits*, Docket No. UE 390 (Sept. 8, 2020).

evidence, the Commission should accord no weight to them because they contain unsworn statements of PacifiCorp and PGE in another proceeding. PacifiCorp is a party to this proceeding, and if it believed its statements in UM 2024 had relevance to the issues in this case, it would have made such statements through a witness under oath in this proceeding.

In any event, even if admitted as evidence, PacifiCorp and PGE's comments from UM 2024 do not support CUB's argument here. CUB's brief asserts that "[c]omments from both PAC and Portland General Electric Company in that proceeding both indicate that cost-shifting may be occurring in a wide range of venues[.]"<sup>16</sup> However, nothing in either set of comments alleges, much less provides a reasonable basis to conclude, that costs shifts are occurring under in PacifiCorp's five-year program. To the contrary, PGE's comments note that its five-year program has only five years of transition adjustment rates and suggest that PGE should also be allowed to have a 10-year transition adjustment rate, like PacifiCorp's five-year program.<sup>17</sup> PGE complains at length about perceived shortcomings of its own direct access programs, but it makes no specific allegation that PacifiCorp's 10-year ongoing valuation calculation and other charges are inadequate.<sup>18</sup> PacifiCorp's UM 2024 comments list a number of ways costs "can be shifted to remaining utility customers" in a poorly designed direct access program.<sup>19</sup> But PacifiCorp's UM 2024 comments make no specific allegations of any cost shifts currently occurring as a result of its five-year program, and even state "this Commission has followed a

---

<sup>16</sup> *CUB's Reply Brief* at 15.

<sup>17</sup> Proposed CUB/302 at 26.

<sup>18</sup> Proposed CUB/302 at 23-34.

<sup>19</sup> Proposed CUB/301 at 5-6 ("If significant customer load departs the system under direct access, and remaining customers are not financially protected from the departure of that customer load, the following are illustrative of the types of costs that can be shifted to remaining utility customers. . .").

careful, incremental approach to direct access, one that has moved the state further toward its energy policy goals without threatening cost or reliability.”<sup>20</sup> Thus, the utilities’ unsworn comments in UM 2024 provide no further support for CUB’s position.

In sum, as Staff found, PacifiCorp has not shown that unwarranted cost-shifting will occur due to the consumer opt-out charge being negative.<sup>21</sup> Nor has CUB. Instead, those parties seek to unreasonably and unlawfully skew the Commission’s ongoing valuation calculation in favor of shifting costs from prospective five-year program participants to cost-of-service customers. The Commission should therefore reject PacifiCorp’s proposal to prevent the consumer opt-out charge from resulting in a negative value and thus a rate credit.

**B. The Commission Should Approve the New REC Retirement Proposal Under H.B. 2021 Supported by Both Calpine Solutions and PacifiCorp**

As explained in Calpine Solutions reply brief, the Commission should approve the new REC retirement proposal as described in Kevin Higgins’ rebuttal testimony,<sup>22</sup> which is also supported by PacifiCorp. No other party opposed this proposal in their reply briefs, and therefore it appears to be unopposed.

**III. CONCLUSION**

For the reasons explained above, the Commission should reject PacifiCorp’s proposal to constrain the consumer opt-out charge from being negative, and the Commission should adopt the proposal that PacifiCorp retire freed-up bundled and unbundled RECs on behalf of ESSs as supported by Calpine Solutions and PacifiCorp.

---

<sup>20</sup> Proposed CUB/301 at 8.

<sup>21</sup> Staff/1300, Gibbens/10.

<sup>22</sup> Calpine Solutions/200, Higgins/10-11.

DATED this 5th day of October 2021.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No.101779)

515 N. 27<sup>th</sup> Street

Boise, Idaho 83702

Telephone: (208) 938-2236

Fax: (208) 938-7904

greg@richardsonadams.com

Of Attorneys for Calpine Energy  
Solutions, LLC