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October 5, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PACIFICORP, dba PACIFIC POWER
2022 Transition Adjustment Mechanism.
Docket No. UE 390

Dear Filing Center:

Please find enclosed the Cross-Answering Brief on behalf of the Alliance of Western Energy Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 390

In the Matter of)
)
PACIFICORP, dba PACIFIC POWER)
)
2022 Transition Adjustment Mechanism)
_____)

**CROSS-ANSWERING BRIEF
ON BEHALF OF THE
ALLIANCE OF WESTERN ENERGY CONSUMERS**

October 5, 2021

I. INTRODUCTION

Pursuant to Administrative Law Judge Rowe’s (“ALJ”) *Memorandum Regarding Updated Schedule for Evidentiary Hearing*, issued June 14, 2021, the Alliance of Western Energy Consumers (“AWEC”) hereby submits to the Oregon Public Utility Commission (“Commission”) this Cross-Answering Brief in the matter of PacifiCorp, dba Pacific Power’s (“PacifiCorp” or “Company”) 2022 Transition Adjustment Mechanism (“TAM”). AWEC has previously submitted multiple rounds of written testimony, as well as an initial Reply Brief outlining its concerns, positions and analyses on issues before the Commission in this proceeding, and AWEC incorporates those arguments by reference, as necessary. Here, AWEC provides a brief and limited additional response to the support presented by the Oregon Citizens’ Utility Board (“CUB”) for PacifiCorp’s proposal to artificially constrain the Customer Opt-Out Charge (“COOC”) at zero, rather than allowing the calculation to produce a negative value should the math so demonstrate. As discussed below, neither CUB nor the Company have provided evidentiary support or analysis to justify why the undisputed mathematics should not be allowed to apply to the modeling underlying the Company’s TAM. The Company’s proposal, supported by CUB, should be rejected and the COOC should be allowed to produce a negative value, should the math demonstrate such a result.

II. ARGUMENT

As discussed by AWEC witness Mullins, “[t]he Customer Opt-Out Charge is a component of the costs a long-term direct access customer must pay to depart PacifiCorp’s system.”^{1/} “In basic terms, the Opt-Out Charge is meant to recover stranded capital costs,

^{1/} AWEC/200, Mullins/25:16-17. See also Calpine Solutions/100, Higgins/13-15.

whereas the transition adjustment charge is meant to recover stranded energy costs. The transition adjustment is calculated over the initial five-year period and the Opt-Out Charge is calculated from years six through 10, though it is recovered in the initial five-year period.”^{2/}

Within its initial testimony in this matter, Calpine Energy Solutions, LLC’s (“Calpine”) witness Higgins noted that “[f]or the first time since its inception, the calculation of the [COOC] produces a *negative* value. That is, the [COOC], at least according to the sample calculation, should be a credit, not a charge.”^{3/} In Rebuttal Testimony, AWEC supported Calpine’s recommendation that “[t]he Commission should order PacifiCorp to remove any constraint on the calculation of the [COOC] that prevents it from resulting in a negative value.”^{4/} AWEC noted that “[a] negative opt-out charge only means that there is a capital cost benefit associated with departing customers” and that “...departing customer[s are] still required to pay the stranded energy costs through the transition adjustment when departing.”^{5/} Furthermore, AWEC agreed with Calpine that “...the possibility of a negative opt-out charge appears to be required by [the Commission’s] rules, which state that ‘each Oregon retail electricity consumer of an electric company *will receive a transition credit* or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of the electric company....”^{6/} Additionally, AWEC testified that since “...the question of whether the [COOC] should be negative is not a policy issue [but rather] simply a matter of applying the math and the Commission’s rules to a PacifiCorp-specific charge

^{2/} AWEC/200, Mullins/25:19-22.

^{3/} Calpine Solutions/100, Higgins/16:8-10 (emphasis in original).

^{4/} Calpine Solutions/100, Higgins/20:11-13.

^{5/} AWEC/200, Mullins/26:17-19.

^{6/} AWEC/200, Mullins/27:3-7 (emphasis in original).

that has existed since 2015”^{7/}, the Commission should not defer addressing this issue to Docket No. UM 2024.

In its Reply Brief, CUB asserts that “[d]irect access customers are already shifting costs to captive cost-of-service customers in the implementation of PacifiCorp’s direct access program”^{8/} and, therefore, “...to fulfill its obligations to establish just and reasonable rates that protect captive cost-of-service customers and ensure direct access does not result in unwarranted cost-shifting, the Commission should adopt [PacifiCorp’s] proposal to set the COOC to zero if its value becomes negative....”^{9/} In support of its assertion that direct access customers are shifting costs to cost-of-service customers, CUB sites the Company’s Opening Brief, as well as CUB witness Jenks’ Rebuttal and Cross-Answer Testimony.^{10/} A review of PacifiCorp’s Opening Brief at page 61, as cited by CUB’s Reply Brief, identifies a reference to “...docket UM 2024, [wherein] CUB has submitted comments that argue the direct access program has already resulted in unwarranted cost-shifting because program participants’ wholesale energy purchases do not capture capital costs associated with power generation.”^{11/} Thus, CUB’s examples of multiple declarations of cost-shifting are in fact two references to the same statement, made by CUB in Docket UM 2024. Moreover, as made clear in footnote 51 of CUB witness Jenks’ Rebuttal and Cross-Answer Testimony, the statement of interest here is contained within “CUB’s Opening Comments” in Docket No. UM 2024.^{12/} Comments are not sworn testimony subject to

^{7/} AWEC/200, Mullins/27:15-17.

^{8/} CUB’s Reply Brief at 14.

^{9/} Id.

^{10/} See id. at 14, fn. 59.

^{11/} PacifiCorp’s Opening Brief at 61.

^{12/} CUB/200, Jenks/26, fn. 51.

cross-examination and are, therefore, not evidence on which the Commission can rely for its decision in this case.^{13/} Moreover, a review of the comments that form the basis for the circular references at issue here shows that the discussion presented in UM 2024 is predicated on the claim that “CUB *believes* that some of the difference between [wholesale and retail] price curves is derived from unwarranted cost shifting.”^{14/} Importantly, neither CUB’s testimonial reference in the instant matter, nor CUB’s comments in Docket No. UM 2024 provide any analytical support for its belief regarding “unwarranted shifting of costs to nonparticipating customers.”^{15/} CUB’s “belief” that cost-shifting is occurring is based entirely on its assumption that all direct access customers purchase their full energy requirements on the spot market, an assumption unsupported by any evidence in this docket, UM 2024, or any other Commission docket. Indeed, neither CUB nor PacifiCorp provided evidence in the instant proceeding demonstrating any cost shifts as a result of the Company’s Direct Access program. In short, neither CUB nor PacifiCorp have demonstrated that the “problem”^{16/} actually exists.

On the contrary, Calpine witness Higgins demonstrated that the mathematics underlying the COOC indicate a negative value in the present proceeding.^{17/} While PacifiCorp and CUB take issue with the philosophy behind the results, neither party disputes the math. Thus, the record in this proceeding contains uncontested evidence that the COOC should be a negative value in the present analysis. Moreover, as noted by AWEC witness Mullins, “...the question of whether the [COOC] should be negative is not a policy issue, it is simply a matter of

^{13/} See Docket No. UM 1709, Order No. 14-358, Appx. A. at 10 (Oct. 17, 2014).

^{14/} Docket No. UM 2024, CUB’s Opening Comments, p. 5 (emphasis added).

^{15/} CUB/200, Jenks/27:9-10.

^{16/} PacifiCorp’s Opening Brief at 61.

^{17/} Calpine Solutions/100, Higgins/17.

applying the math and the Commission’s rules to a PacifiCorp-specific charge that has existed since 2015.”^{18/} Discussion regarding the continued existence of the COOC and/or the policy behind its framework, and any changes thereto, are appropriately discussed in UM 2024. However, the framework as currently approved demonstrates the COOC is accurately represented as a negative value.

CUB asserts its support to develop an accurate TAM forecast.^{19/} Successfully accomplishing this goal, shared by CUB and all stakeholders in this proceeding, requires the elimination of the artificial constraint imposed on the COOC by PacifiCorp, and supported by CUB. The Commission should reject this unsupported premise and allow the math surrounding the COOC to fall where it may. The Commission should authorize a negative Customer Opt-Out Charge, in the event the authorized formula demonstrates this to be the most accurate result.

III. CONCLUSION

For the reasons stated above, PacifiCorp’s proposal to artificially constrain the Customer Opt-Out Charge at a value higher than supported by the Commission-approved formula, and CUB’s support thereof, should be rejected. The Commission should confirm the ability of the Customer Opt-Out Charge to accurately represent the value produced by the undisputed math.

Dated this 5th day of October, 2021

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

^{18/} AWEC/200, Mullins/27:15-17.

^{19/} See CUB’s Reply Brief at 3.

/s/ Brent L. Coleman

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