

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

In the Matter of)
PacifiCorp, dba Pacific Power,) **Docket No. UE 390**
2022 Transition Adjustment)
Mechanism)

Rebuttal Testimony of Kevin C. Higgins

on behalf of

Calpine Energy Solutions, LLC

July 30, 2021

1 **REBUTTAL TESTIMONY OF KEVIN C. HIGGINS**

2

3 **Introduction**

4 **Q. Please state your name and business address.**

5 A. My name is Kevin C. Higgins. My business address is 111 East Broadway, Suite
6 1200, Salt Lake City, Utah, 84111.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a
9 private consulting firm specializing in economic and policy analysis applicable to
10 energy production, transportation, and consumption.

11 **Q. Are you the same Kevin C. Higgins who pre-filed Opening Testimony in this**
12 **docket on behalf of Calpine Energy Solutions, LLC (“Calpine Solutions”)?**

13 A. Yes.

14

15 **Overview and Conclusions**

16 **Q. What is the purpose of your Rebuttal Testimony?**

17 A. My Rebuttal Testimony responds to the Reply Testimony of PacifiCorp regarding
18 the calculation of the Consumer Opt-Out Charge used in PacifiCorp’s five-year
19 opt-out program and the treatment of Renewable Energy Certificates (“RECs”)
20 for direct access service.

21 **Q. What are the primary conclusions and recommendations in your Rebuttal**
22 **Testimony?**

1 A. PacifiCorp’s arguments against allowing a negative Consumer Opt-Out Charge
2 should be rejected. The Commission should order PacifiCorp to remove any
3 constraint on the calculation of the Consumer Opt-Out Charge that prevents it
4 from resulting in a negative value. If the calculation of the Consumer Opt-Out
5 Charge results in a negative value, then the Consumer Opt-Out Charge should
6 properly be applied as a credit in the transition adjustment calculation.

7 The recent passage of House Bill 2021 provides a means for resolving the
8 concerns I raised in my Opening Testimony regarding the preservation of the
9 equities in the current REC transfer arrangement for direct access service, which
10 was negotiated by stakeholders and approved by the Commission in prior TAM
11 proceedings. However, to maintain the same effect as the current arrangement,
12 the protocol would have to be changed from a REC *transfer* procedure to a REC
13 *retirement* procedure. If, with Commission approval, PacifiCorp is willing to
14 make this change, then the RPS Adjustment I proposed as a backstop in my
15 Opening Testimony would not be necessary. Specifically, I am recommending
16 adoption of an approach in which PacifiCorp will retire on behalf of an ESS the
17 bundled and unbundled RECs necessary to meet the RPS obligation for the
18 customers of the ESS that are paying transition adjustment charges to the
19 Company. Based on discussions between PacifiCorp and Calpine Solutions, it is
20 my understanding that PacifiCorp is amenable to adopting this modified
21 procedure. Therefore, I request that the Commission affirm this approach in its
22 final TAM order so it may be used for ESS compliance for the upcoming year.

23

1 **Consumer Opt-Out Charge**

2 **Q. How has PacifiCorp responded to your recommendation that the Consumer**
3 **Opt-Out Charge should be treated as a credit in the transition adjustment**
4 **calculation if the calculation of the Consumer Opt-Out Charge results in a**
5 **negative value?**

6 A. PacifiCorp opposes my recommendation. Company witness Robert Meredith
7 argues that if the Consumer Opt-Out Charge is permitted to be negative, then
8 “five-year direct access customers that choose to opt-out will be reducing their
9 contribution to net power costs in years one through five.”¹

10 **Q. How do you respond to this argument?**

11 A. Mr. Meredith’s framing of the issue depicts only part of the story. The overall
12 transition costs paid by long-term direct access customers includes a continued
13 payment of Schedule 200 charges for five years. As discussed in my Opening
14 Testimony, Schedule 200 recovers generation costs other than net power costs,
15 largely the fixed generation and non-fuel operating costs associated with
16 Company-owned power plants. If the Consumer Opt-Out Charge is allowed to be
17 negative, it is more accurate to view it as reduction in the contribution of the opt-
18 out customers toward the *combination* of Schedule 200 charges and net power
19 costs. And such a reduction would be entirely appropriate.

20 **Q. Why would such a reduction be appropriate?**

21 A. The only reason that the Consumer Opt-Out Charge can become a credit is if there
22 are substantial net power costs savings attributed to the departed opt-out load in

¹ PAC/900, Meredith/4.

1 years 6 through 10. That is, the net power cost savings from the departed load at
2 the margin are projected to be much higher than the average net power costs
3 charged to customers in rates. Consequently, costs are not shifted to non-direct
4 access customers if the Consumer Opt-Out Charge is negative because the
5 calculation recognizes the net power cost savings that will be realized by the non-
6 direct access customers as a result of the departure of the opt-out load.

7 Mr. Meredith seems to object to the *timing* aspect of this. That is, he
8 appears to find it objectionable that projected benefits from years 6 through 10
9 would be used to lower transition charges in years 1 through 5. Yet that is the
10 very mechanism PacifiCorp devised. It was the Company that came up with the
11 idea to calculate projected *costs* in years 6 through 10 and *charge* these costs to
12 direct access customers in years 1 through 5. Yet somehow if the projected costs
13 turn out to be a projected benefit, then recognizing this benefit in the total
14 transition charge in years 1 through 5 suddenly gets labeled a “cost shift” by the
15 Company. It is no more of a “cost shift” than costs imposed on direct access
16 customers in the first place through the design of the Consumer Opt-Out Charge
17 when the charge is positive. If there is any logic to the opt-out mechanism, then it
18 has to be symmetrical.

19 **Q. How does PacifiCorp respond to your argument that PacifiCorp’s**
20 **calculation of the Consumer Opt-Out Charge violates Oregon regulations**
21 **which require that direct access customers must pay or receive 100 percent**
22 **of transition costs or *benefits*?**

1 A. Mr. Meredith attempts to draw a distinction between the two components in the
2 Schedule 296 Transition Adjustment rate schedule: the transition adjustment
3 component (i.e., the difference between the value of freed-up energy and
4 Schedule 201 rates projected for each of the five years of the transition period)
5 and the Consumer Opt-Out Charge *per se*. Mr. Meredith avers that setting the
6 Consumer Opt-Out Charge to zero – when it would otherwise be negative – does
7 not deprive opt-out customers of the net value of the Oregon share of all
8 economic utility investments and all uneconomic utility investments because the
9 Consumer Opt-Out Charge “is intended to recover the fixed cost of generation.”²

10 However, this distinction is arbitrary. Substantively, the total transition
11 costs paid by a five-year direct access customer consist of the *sum* of the Schedule
12 296 transition adjustment, the Schedule 296 Consumer Opt-Out Charge, and
13 Schedule 200. These components are priced separately because they address
14 different aspects of the transition cost, but taken together they comprise a ten-year
15 projection of the net cost associated with the continued assignment to direct
16 access customers of fixed generation and net power costs – offset by the value of
17 freed-up energy. Singling out a certain component that is arbitrarily prohibited
18 from becoming negative undermines the integrity of the valuation method being
19 used.

20 **Q. Is it necessary for this issue to be addressed in this docket rather than UM-**
21 **2024, which will deal with direct access issues more generally?**

² *Id.*, p. 5

1 A. PacifiCorp has already introduced in this docket a mathematical constraint on the
2 Consumer Opt-Out Charge, which makes it necessary to address the issue in this
3 docket. The Consumer Opt-Out Charge is unique to PacifiCorp and its
4 calculation is an integral part of the TAM proceeding. Therefore, it is necessary
5 to address the issue in this docket in order to establish just and reasonable TAM
6 charges.

7 Notwithstanding the need to address this issue in this docket, if the
8 Commission determines that this question should also be considered in a more
9 generic context, then I suggest that it is *PacifiCorp's position* that should be
10 deferred to UM 2024, as it is the Company that is seeking to introduce constraint
11 on the calculation of the Consumer Opt-Out Charge that heretofore had not been
12 discussed. Either way, whether considered on the merits, or in a procedural
13 context, PacifiCorp's proposed floor on the Consumer Opt-Out Charge should be
14 rejected in this proceeding.

15 **Q. Please summarize your recommendation concerning the Consumer Opt-Out**
16 **Charge.**

17 A. The Commission should order PacifiCorp to remove any constraint on the
18 calculation of the Consumer Opt-Out Charge that prevents it from resulting in a
19 negative value. If the calculation of the Consumer Opt-Out Charge results in a
20 negative value, then the Consumer Opt-Out Charge should properly be applied as
21 a credit in the transition adjustment calculation. Such a symmetrical treatment is
22 fundamental to the calculation of any stranded cost or transition adjustment
23 mechanism.

1

2 **Renewable Energy Certificates (“RECs”)**

3 **Q. In your Opening Testimony, you recommended that if the Commission**
4 **denied the clarification sought by Calpine Solutions in AR 617, and thereby**
5 **caused the current REC transfer arrangement to no longer retain the full**
6 **RPS compliance value, then the Commission should require that the market**
7 **value of the bundled RECs freed up by direct access be credited to direct**
8 **access customers within the transition adjustment rates through an “RPS**
9 **Adjustment.” Has the Commission since ruled on the clarification sought by**
10 **Calpine Solutions in AR 617?**

11 A. Yes. The Commission denied the clarification sought by Calpine Solutions in AR
12 617. However, as pointed out by PacifiCorp in its Reply filing, the legislature has
13 subsequently addressed this problem through an amendment to the statute
14 governing the RPS.³ While the Company indicates that the recent amendment
15 resolves the concerns I raised in my testimony, it only does so if parties,
16 particularly PacifiCorp, agree to take the steps necessary to maintain the spirit of
17 the previous REC transfer arrangement through a slightly different protocol than
18 the one currently in effect.

19 **Q. How does the current protocol need to be modified to adapt to the recently**
20 **passed amendment?**

21 A. The current protocol provides for the *transfer* of RECs to an ESS to be retired on
22 behalf of the ESS’s direct access customers for years in which those customers

³ PAC/800, Wiencke/6.

1 are subject to the transition adjustment. However, the amendment provides that
2 bundled RECs may now be *retired* by the utility *on behalf of* the ESS (on behalf
3 of the ESS's direct access customers for years in which those customers are
4 subject to the transition adjustment). Consequently, to maintain the same effect
5 as the current arrangement, the protocol would have to be changed from a REC
6 *transfer* procedure to a REC *retirement* procedure. If, with Commission
7 approval, PacifiCorp is willing to make this change, then the RPS Adjustment I
8 proposed as a backstop in my Opening Testimony would not be necessary.

9 **Q. Do you have any specific proposals for implementing this change?**

10 A. Yes. I believe this change could be effected through either of two options:

11 1. Option One: PacifiCorp will create a WREGIS retirement subaccount that is
12 specific to each ESS and RPS compliance year and will transfer into such
13 retirement subaccount for retirement on behalf of the ESS, on at least a yearly
14 basis, the bundled and unbundled RECs necessary to meet the RPS obligation
15 for the customers of the ESS that are paying transition adjustment charges to
16 PacifiCorp. PacifiCorp will provide each ESS a WREGIS report documenting
17 the retired RECs, which will enable the ESS to provide the necessary
18 documentation to the Commission for the ESS's annual RPS compliance
19 report.

20
21 -or-

22
23 2. Option Two: PacifiCorp will create a WREGIS retirement subaccount that is
24 specific to each ESS and RPS compliance year and will transfer into such
25 retirement subaccount for retirement on behalf of the ESS, on at least a yearly
26 basis, the bundled RECs necessary to meet the bundled REC RPS obligation
27 for the customers of the ESS that are paying transition adjustment charges to
28 PacifiCorp, and PacifiCorp will *transfer* to each ESS the unbundled RECs
29 necessary to meet the unbundled REC RPS obligation for the customers of the
30 ESS that are paying transition adjustment charges to PacifiCorp. PacifiCorp
31 will provide each ESS a WREGIS report documenting the retired bundled
32 RECs, which will enable the ESS to provide the necessary documentation to
33 the Commission for the ESS's annual RPS compliance report.

34
35

1 **Q. What is the difference between the two options?**

2 A. Option 1 provides that the protocol will simply switch from being a REC transfer
3 procedure to a REC retirement procedure. All relevant RECs, bundled and
4 unbundled, would be retired by the utility on behalf the ESS and its qualifying
5 direct access customers. Option 2 is slightly more nuanced. As the legislative
6 amendment specifies that *bundled* RECs may be retired as described (and is silent
7 on unbundled RECs), Option 2 provides that the bundled RECs would be retired
8 as described above, while the unbundled RECs would continue to be transferred
9 as under the current protocol. Thus, it is a hybrid of the new procedure and the
10 current procedure.

11 **Q. Which of these two options are you recommending for approval in this case?**

12 A. After discussions between PacifiCorp and Calpine Solutions, I believe the
13 preferred approach is Option 1, in which PacifiCorp would retire the RECs (both
14 unbundled and bundled) on behalf of the ESS. This approach appears to be
15 consistent with the requirements of the RPS and presents the most efficient way to
16 solve this issue. Importantly, it is my understanding that PacifiCorp is amenable
17 to this option. Therefore, I request that the Commission affirm this approach in
18 its final TAM order so it may be used for ESS compliance for the upcoming year.

19 **Q. If PacifiCorp agrees to implement Option 1 and the Commission affirms this**
20 **approach, would you continue to ask the Commission to require that the**
21 **market value of the bundled RECs freed up by direct access be credited to**
22 **direct access customers within the transition adjustment rates through an**
23 **RPS Adjustment?**

1 A. No. Implementation of Option 1 (or Option 2) would retain the equities in the
2 current REC transfer arrangement. Therefore, it would not be necessary to
3 incorporate an RPS Adjustment into the calculation of the transition adjustment.

4 **Q. In UE-339, PacifiCorp outlined the key provisions negotiated by Oregon**
5 **stakeholders to implement the current REC transfer procedure.⁴ How**
6 **should those provisions be updated to accommodate the switch to a REC**
7 **retirement procedure?**

8 A. In switching from a REC transfer procedure to a REC retirement procedure, the
9 provisions should be updated as follows (assuming Option 1 is approved):

- 10 • Following election of direct access, PacifiCorp will retire RECs on at least an
11 annual basis to a direct access consumer's ESS.
- 12
- 13 • Based on the prior year compliance obligation, a retirement of Oregon RPS-
14 eligible RECs would take place by May 1 of each year.
- 15
- 16 • For one- and three-year direct access consumers, the RECs retired will be based
17 on the prior year's actual load for that consumer.
- 18
- 19 • For the 5-year/permanent opt-out direct access consumer, the RECs retired will
20 be based on the following schedule:
 - 21 ○ Years 1-5: Compliance obligation is based on the direct access
22 consumer's actual load.
 - 23 ○ Years 6-10: Compliance obligation is based on the direct access
24 consumer's average load over years 1-5 (to align with the transition
25 adjustment and opt-out charge paid by the direct access consumer).
 - 26
- 27 • The specific RECs retired would be from RPS-eligible resources, at PacifiCorp's
28 discretion, and may vary from year to year.
- 29
- 30 • At least 80 percent of the RECs will be RECs that, before the retirement, were
31 considered bundled (*i.e.*, no more than 20 percent of the retired RECs will be
32 unbundled.)
- 33

⁴ UE-339, PAC/100, Wilding/46.

- 1 • PacifiCorp shall provide the ESS WREGIS documentation necessary for the
2 Commission to determine the retirement status, as well as bundled or unbundled
3 status, of the RECs retired for ESS RPS compliance purposes.
4
- 5 • PacifiCorp is not responsible for claims made about the RECs on behalf of the
6 direct access consumer or ESS, or any RPS compliance of the direct access
7 consumer or ESS.
8

9 **Q. Does this conclude your Rebuttal Testimony?**

10 A. Yes, it does.