BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 267

In the Matter of: PACIFICORP dba PACIFIC POWER Transition Adjustment, Five-Year Cost of Service Opt-Out	MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, APPLICATION FOR RECONSIDERATION OR REHEARING OF NOBLE AMERICAS ENERGY SOLUTIONS LLC, WAL-MART STORES, INC., SHELL ENERGY NORTH AMERICA (US), LP, CONSTELLATION NEWENERGY, INC., FRED MEYER STORES, INC./KROGER, CO., THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION, AND SAFEWAY INC.

I. INTRODUCTION

Pursuant to ORS 756.561 and OAR 860-001-0720, Noble Americas Energy Solutions LLC ("Noble Solutions"), Wal-Mart Stores, Inc. ("Wal-Mart"), Shell Energy North America (US), LP ("Shell Energy"), Constellation NewEnergy, Inc. ("Constellation"), Fred Meyer Stores, Inc./Kroger, Co. ("Fred Meyer"), the Northwest and Intermountain Power Producers Coalition ("NIPPC"), and Safeway Inc. ("Safeway") (collectively referred to as "the Joint Parties") respectfully move the Public Utility Commission of Oregon ("Commission" or "OPUC") to clarify Order No. 15-060 (or "the Order"), or in the alternative to grant reconsideration or rehearing of the Order. The Joint Parties include most, but not all, of the parties that sought Commission approval of the "Stipulation" in this docket.[1]

[1] The Stipulating Parties were Staff of the Public Utility Commission of Oregon ("Staff"), Industrial Customers of Northwest Utilities ("ICNU"), Noble Solutions, Wal-Mart, Shell Energy, Constellation, Fred Meyer, NIPPC, Safeway and Vitesse, LLC ("Vitesse"). Staff, ICNU, and Vitesse

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Contrary to the agreed upon terms of the Stipulation, the Commission adopted a "Consumer Opt-Out Charge" for PacifiCorp's five-year cost-of-service opt-out program. The cost calculation for the Consumer Opt-Out Charge is not transparent in the Order, however. The Joint Parties believe that unless the cost elements of the Consumer Opt-Out Charge are clarified, the Consumer Opt-Out Charge will present a substantial barrier to customer participation in the program. Attracting commercial and industrial customers to a five-year opt out program that requires payment of 10 years of transition costs in a five-year period will be an uphill struggle, at best. Convincing customers to participate in the five-year opt out program will be even more difficult if the cost elements of the Consumer Opt-Out Charge are not clarified.

A charge that is designed to recover 10 years' worth of utility costs from participating customers over a five-year period must be calculated in a manner that does not reflect more costs than the particular costs for which departing customers are responsible. A Consumer Opt-Out Charge that imposes excessive or improper costs on participating customers will make it difficult, if not impossible, for direct access customers to participate in the five-year opt-out program.

The Commission's Order contains ambiguities on material issues regarding how the Consumer Opt-Out Charge will be calculated, and whether the calculation will lead to fair, just and reasonable rates for participating direct access customers. Owing to the timing of the Order, PacifiCorp's compliance filing does not contain proposed rates or supporting workpapers; this gap in timing affords the Commission an opportunity to clarify ambiguities in the Order. For the

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have not joined in this Motion for Clarification, or in the Alternative, Application for Reconsideration or Rehearing.

reasons expressed below, the Joint Parties urge the Commission to clarify that Order No. 15-060 does not pre-approve the level or calculation of PacifiCorp's Consumer Opt-Out Charge. The Joint Parties request that the Commission clarify that issues not directly decided in the Order (or on reconsideration) may be raised and addressed in subsequent rate-setting proceedings.

In the alternative, if the Commission declines to clarify its Order, the Joint Parties respectfully request reconsideration or rehearing of Order No. 15-060 on the following points:

- If Section X in the 2010 Protocol of the Multi-State Process ("MSP") is amended, or if system load is otherwise reasonably projected to be able to absorb the cost responsibility otherwise allocated to departed direct access customers, prior to expiration of 10 years, the years included in the Consumer Opt-Out Charge will be reduced accordingly.
- In rates filed by PacifiCorp in compliance with Order No. 15-060, direct access customers should only be responsible for the projected *depreciated* value of Schedule 200 assets incorporated in the Consumer Opt-Out Charge, for stranded costs associated with years six through 10 (after the date of a customer's opt-out election).

II. BACKGROUND AND SUMMARY

Oregon's direct access law ("S.B. 1149") instructs the Commission to develop policies to "eliminate barriers to the development of a competitive retail market structure." ORS 757.646(1). Although the law was enacted over 15 years ago, direct access participation remains extremely low in PacifiCorp's service territory. Noble Solutions/100, Higgins/4.

In an effort to bring PacifiCorp's direct access programs in line with Portland General Electric Company's ("PGE") higher customer participation levels, the Commission ordered PacifiCorp to provide a five-year opt-out program that allows a qualified customer to pay fixed transition charges for the five years, and then to be no longer subject to transition adjustments. *In re Public Utility Commission of Oregon: Investigation of Issues Relating to Direct Access*, OPUC Docket No. UM 1587, Order No. 12-500, at 9 (2012); Noble Solutions/100, Higgins/7-8. The Commission's Order No. 15-060 is the culmination of the Commission's efforts, begun three years ago in docket UM 1587, to provide PacifiCorp's non-residential customers with a viable direct access alternative similar to PGE's only successful direct access program.

The Commission's Order embraced PacifiCorp's proposed Consumer Opt-Out Charge, which is designed to recover 10 years' worth of prospective fixed utility costs from participating direct access customers over a five-year transition period. Owing to the length of time represented by the Consumer Opt-Out Charge, it is important that the charge is calculated precisely. Eligible customers will not participate in a program that shifts excessive or inappropriate costs to a departing load charge.

Unless the Commission clarifies that the components of the Consumer Opt-Out Charge will be calculated and refined in a future rate-setting proceeding, the potential exists for PacifiCorp to impose unjust and unreasonable transition costs on customers seeking an alternative to PacifiCorp's cost-of-service portfolio. Without clarification on key calculation issues, the Commission's Order may paradoxically stand as a permanent barrier to development of a truly viable retail alternative for PacifiCorp's customers.

The Order's significance may even reach beyond the scope of Oregon's 15-year-old direct access law. PacifiCorp customers have expressed similar interest in "retail choice" through the purchase of additional amounts of renewable energy. As a result, PacifiCorp lobbied for the legislature's adoption of a statute providing for a voluntary renewable energy tariff ("VRET").[2] The VRET law, however, is directly tied to this proceeding because the law requires the Commission to consider "potential cost-shifting" to other customers.[3] Or. Laws 2014 ch. 100, § 3(3)(c). Insofar as Order No. 15-060 determined that participating PacifiCorp customers must pay 10 years of projected stranded costs to avoid "unwarranted shifting of costs to other retail electricity consumers" under the five-year opt-out program pursuant to the Oregon direct access law, ORS 757.607(1), the same stranded cost calculations may be applied to prospective VRET customers, should the Commission ultimately find that implementation of a VRET program can be accomplished under the conditions specified in the VRET statute.[4]

Particularly in view of the Order's broader significance, the Commission must ensure that the adopted Consumer Opt-Out Charge is calculated so that it does not unreasonably impede

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[2] In ongoing docket UM 1690 to implement recently enacted House Bill 4126, PacifiCorp asserted: "Recent discussions with technology industry prospects working with the state of Oregon have highlighted interest in availability of 'Green Tariffs' based on experience with models in other states." *PacifiCorp's Statement of Principles,* OPUC Docket No. UM 1690 (June 16, 2014).

[3] The VRET law further requires that "[a]ll costs and benefits associated with the" VRET "shall be borne" by VRET customers. Or. Laws 2014 ch. 100, § (4).

[4] The California Public Utilities Commission ("CPUC") recently applied an "indifference adjustment" charge to Green Tariff Shared Renewables ("GTSR") customers that is substantially the same as the indifference adjustment that is applied to direct access customers in California. *Application of San Diego Gas & Electric Co. for Authority to Implement Optional Pilot Program to Increase Customer Access to Solar Generated Electricity, and related matters,* CPUC Decision 15-01-051, at 100-104 (Feb. 2, 2015) (explaining that the "Power Charge Indifference Adjustment" addresses the "potential for cost shifting when bundled customers switch to unbundled direct access service," and "is an appropriate proxy on which to base the [green tariff] customer indifference amount").

eligible customers' retail service alternatives. Having made the policy decision to adopt a Consumer Opt-Out Charge, the Commission must provide an opportunity to address the issues that must be resolved to calculate and implement the Consumer Opt-Out Charge.

The Commission's Order largely adopted PacifiCorp's modified Consumer Opt-Out Charge proposal as described in its final reply testimony. As set forth in PacifiCorp's reply testimony, Schedule 296 customers will be responsible for the following charges during a five-year transition period:

i. Charges paid for generation and delivery that the customer will use to serve its load, which includes payments to an electricity service supplier ("ESS") for the generation and to PacifiCorp for delivery service under an applicable delivery service tariff;

ii. PacifiCorp's Schedule 200 rates, which are base supply service rates paid by the direct access customer during the five years and updated in each rate case during that time;

iii. PacifiCorp's Schedule 296 transition adjustment rates for years one through five after the date of the opt-out election, which utilizes the ongoing valuation method to calculate the difference between projected Schedule 201 rates and value of freed up power calculated through GRID simulations; and,

iv. PacifiCorp's Schedule 296 Consumer Opt-Out Charge, which contains two components: (1) a projection of Schedule 200 rates for years six through 10 escalated at an assumed rate of inflation, and (2) a projected ongoing valuation calculation of the difference between projected Schedule 201 rates and value of freed-up power calculated through GRID simulations for the years six through 10.

Two disputed issues were left unresolved by the Commission's Order: (1) the proper treatment of "load growth" in calculation of the Consumer Opt-Out Charge should Section X in the 2010 Protocol of the MSP be amended; and (2) the proper treatment of depreciation of fixed-cost assets included in the Consumer Opt-Out Charge. The Joint Parties seek clarification that these two issues -- issues that were not directly decided in the Order -- will be addressed in a

future rate-setting proceeding. In the alternative, the Joint Parties request reconsideration or rehearing of these two issues to ensure that the Order cannot be used to set unjust and unreasonable rates for participating customers.

III. MOTION FOR CLARIFICATION

A. Standard of Law

The Commission may clarify a final order. The Commission has done so in the past where, *inter alia*, the scope and effect of the order is unclear. *See In re Investigation into the Use of Virtual NPA/NXX Calling Patterns*, OPUC Docket No. UM 1058, Order No. 04-704 (2004) (clarifying the scope and effect of a final order).

B. The Commission Should Clarify that the Order Does Not Pre-Approve Rates, And Issues Not Addressed in the Order (or on Reconsideration) May Be Addressed in Subsequent Rate-Setting Proceedings.

Oregon law requires that rates assessed to direct access customers be fair, just and reasonable. ORS 757.210(1). PacifiCorp bears the burden to show that its proposed Schedule 296 rates for the five-year opt-out program are fair, just and reasonable. *Id.* Because calculation of the Consumer Opt-Out Charge is unclear, the Commission must take action to ensure that PacifiCorp cannot assess unjust and unreasonable rates to those eligible PacifiCorp customers "that want and have the technical capability . . . to take advantage of competitive electricity markets as soon as is practicable." Or. Laws 1999 ch. 865.

The Order "adopt[ed] the consumer opt-out charge as it was presented in modified form by PacifiCorp in reply testimony." Order No. 15-060 at 6. PacifiCorp's reply testimony presented a modified form of its proposed Consumer Out-Out Charge primarily in illustrative exhibits. *See* Exhibit PAC/401-402. As noted above, PacifiCorp's proposed Consumer Opt-Out

Charge included two components: (1) a projection of Schedule 200 rates for years six through 10, escalated at an assumed rate of inflation, and (2) a projected "ongoing valuation calculation" of the difference between projected Schedule 201 rates and value of freed-up power calculated through GRID simulations for the years six through 10. *See* Exhibit PAC/401.

PacifiCorp witness Duvall testified that his illustrative exhibit demonstrated that the Stipulation, if adopted, "*could* shift cost responsibility for up to $35.4 million (measured over a ten-year period) in transition costs to other customers unless direct access customers are required to pay PacifiCorp's modified Consumer Opt-Out Charge." Errata PAC/400, Duvall/4 (May 13, 2014) (emphasis added); *see also* Errata Exhibit PAC/402 (May 13, 2014). The exhibit upon which PacifiCorp relied, however (Exhibit 402), merely presented PacifiCorp's revised illustrative Consumer Opt-Out Charge on a dollar-per-megawatt-hour basis (in column (e)), and extrapolated from that proposed Charge to assert that, in the event of full enrollment of 175 average megawatts, $35.4 million represents "[s]hifted costs quantified for years 6 through 10." Errata Exhibit PAC/402 (May 13, 2014).

The details underlying PacifiCorp's illustrative exhibit were not vetted in this proceeding due to the lack of opportunity to provide responsive testimony to PacifiCorp's reply testimony. The Commission's Order contains no finding of fact that PacifiCorp's $35.4 million calculation of stranded costs was accurate enough to justify using that precise calculation method and its underlying assumptions in future rates. *See Mass. Inst. Of Tech. v. Dept. of Pub. Util.*, 684 N.E.2d 585, 694-96 & n. 39 (Mass. 1997) (reversing stranded cost determination where record included testimony that stranded costs *could* reach the level approved for rate recovery, and explaining there was "no finding by the department that this will, or is likely, to occur.").

The Commission should clarify, therefore, that its approval of the Consumer Opt-Out Charge is without prejudice to further development of the underlying rate calculation and assumptions in a future rate-setting proceeding. This clarification is necessary to prevent PacifiCorp from asserting that parties are precluded from disputing any of the unaddressed assumptions underlying PacifiCorp's exhibit. *See In re Investigation into the Use of Virtual NPA/NXX Calling Patterns*, Order No. 04-704 (clarifying the scope and effect of a final order in response to concern that order could be accorded the effect of res judicata without clarification).

Although the Commission's rate-setting orders should not have preclusive effect, the Commission has regularly relied on prior direct access orders to impose a heightened burden on parties proposing changes to PacifiCorp's direct access filings. For example, the Commission recently relied upon prior orders to reject an argument that the Commission should use market prices instead of GRID to calculate the transition adjustment, and further found "no compelling reason to depart from our precedent" by including a transmission credit in the calculation. *In re PacifiCorp, dba Pacific Power, 2014 Transition Adjustment Mechanism*, OPUC Docket No. UE 264, Order No. 13-387, at 12-14 (2013). Absent clarification, the Order may inadvertently impede necessary adjustments to the new Consumer Opt-Out Charge. The Commission should not allow PacifiCorp to raise barriers to prevent further development of the Consumer Opt-Out Charge.

While there may be several issues associated with calculation of the Consumer Opt-Out Charge that remain to be addressed in a future rate-setting proceeding, two issues in particular were raised by the Stipulating Parties but not directly resolved by the Order. First, the Order does not address the impact of projected load growth on the number of years of utility fixed costs

reflected in the Consumer Opt-Out Charge, even though this issue was argued by the parties. *See* Stipulating Parties Post-Hearing Br. at 13-14. The Order simply concluded that GRID addresses load growth. Order No. 15-060 at 7. However, for the reasons explained below, reliance on GRID does not address the Stipulating Parties' argument.

Second, the Order does not address whether PacifiCorp should take into account depreciation of the fixed generation costs in the projected Schedule 200 charges in years six through 10, even though the parties also addressed that issue. *See* Stipulating Parties Post-Hearing Br. at 9-11. The Commission failed to address the depreciation issue, which was raised by the Stipulating Parties. *See id*.

In view of the risk that the Order could be relied upon to attempt to prevent further consideration of these two issues, the Commission must clarify that the Order will not prejudice parties' rights to have these issues appropriately addressed in a future rate-setting proceeding. The Commission should further clarify that Order No. 15-060 does not preclude consideration of calculation of the components of the Consumer Opt-Out Charge in a future rate-setting proceeding.

IV. APPLICATION FOR RECONSIDERATION OR REHEARING

If the Commission declines to grant clarification as requested above, the Joint Parties request that the Commission grant reconsideration or rehearing on two issues integral to calculation of the Consumer Opt-Out Charge: 1) the treatment of load growth; and 2) the treatment of depreciation in the assumptions underlying the Consumer Opt-Out Charge. Reconsideration is appropriate for the reasons set forth below.

A. Standard of Law

ORS 756.561(1) authorizes a party to request reconsideration or rehearing by the Commission of any order. The Commission may grant reconsideration or rehearing "if sufficient reason therefor is made to appear." ORS 756.561(1). OAR 860-001-0720(3) provides that the Commission may grant an application for reconsideration if, *inter alia*, the applicant shows that there is "(c) An error of law or fact in the order that is essential to the decision" or "(d) Good cause for further examination of an issue essential to the decision."

B. The Commission Should Reconsider and Correct the Order's Conclusions Regarding the Impact of Load Growth On the Consumer Opt-Out Charge.

As explained below, the requirements of OAR 860-001-0720(2) are met to grant reconsideration or rehearing of the Order's determination regarding the impact of load growth on calculation of the Consumer Opt-Out Charge.

1. OAR 860-001-0720(2) (a): The portion of the challenged order that the applicant contends is erroneous or incomplete.

The portion of the Order that is erroneous or incomplete with regard to the impact of load growth is set forth below:

> During the five-year transition period for the five-year program, we find that a direct access customer under Schedule 296 should pay delivery charges, generation fixed costs, a transition adjustment, and a consumer opt-out charge. After the transition period, a direct access customer will pay PacifiCorp for delivery service alone. We therefore resolve the only contested issue regarding the rate components of Schedule 296 by adopting the consumer opt-out charge as it was presented in modified form by PacifiCorp in reply testimony.
>
> We conclude that the consumer opt-out charge is necessary pursuant to implementation of the state's direct access laws by our rules. The inclusion of an opt-out charge is consistent with our request that PacifiCorp design a five-year opt-out program that would protect other customers from cost-shifting. We also find that, even with the opt-out charge, PacifiCorp will have an incentive to minimize transition costs, having reduced the period for recovery from 20 to 10 years.

> The Stipulating Parties failed to rebut PacifiCorp's evidence of transition costs, up to approximately $60 million, in years six to ten of the program, and rely too heavily on mere assertions about how transition costs beyond year five can be reduced or erased. Moreover, we reject the Stipulating Parties' arguments that PacifiCorp's system load growth will completely mitigate any transition costs. *As PacifiCorp notes, GRID considers forecasted system load growth in calculating both the transition adjustments and the consumer opt-out charge.*

Order No. 15-060 at 6-7 (emphasis added).

The most economically significant dispute in the case was whether system load growth could replace the departing direct access loads and thereby eliminate the need for an "ongoing valuation." The Stipulating Parties presented evidence showing that system load growth justified five years of transition adjustments under an ongoing valuation and negated the need for a Consumer Opt-Out Charge. *See* Stipulating Parties Post-Hearing Br. at 13-14 (citing Stipulating Parties/100 at 24; ICNU/100, Shoenbeck/6).

In support of the Stipulating Parties' position, the Commission Staff's witness succinctly explained: "In essence the new loads will be utilizing, and therefore paying for, the production resources otherwise dedicated to the departed direct access customers." Staff/100, Compton/10; *see also* ICNU/100, Shoenbeck/6. The Stipulating Parties demonstrated that projected system load growth exceeds the maximum enrollment of the five-year opt-out program. Stipulating Parties/100 at 24. The Stipulating Parties also observed, in connection with the load growth, that Section X of the 2010 Protocol is in the process of being revised. *Id*.

By contrast, PacifiCorp witness Duvall testified that Section X of the 2010 Protocol prevents consideration of system load growth. PAC/400, Duvall/5. Additionally, according to PacifiCorp, even absent Section X, Oregon's direct access law does not allow for consideration of load growth in evaluating the stranded costs occasioned by the direct access election. *Id.*

Faced with this conflicting testimony, the Commission failed to address whether, and if so to what extent, system load growth can be projected to replace departed direct access load under the five-year opt-out program. Instead, the Order relied exclusively on GRID to address load growth. This conclusion is not supported by the record. As a consequence, the issue of load growth is appropriate for reconsideration or rehearing.

2. OAR 860-001-0720(2) (b): The portion of the record, laws, rules, or policy relied upon to support the application.

The Commission's findings and conclusions must be based upon substantial evidence in the record. ORS 183.482(8)(c). Additionally, the Commission's final orders must "disclose a rational relationship between the facts found and the legal conclusion reached." *Util. Reform Project v. Oregon Pub. Util. Com'n*, 215 Or.App. 360, 372-73, 170 P.3d 1074, 1080-81 (2007) (reversing order where the court "cannot determine whether there is a rational relationship between the facts and the legal conclusions reached by the PUC").

The Order is erroneous because the record contains no evidence that GRID accounts for load growth in a manner that contradicts the Stipulating Parties' argument that system load growth can replace load lost due to departed direct access customers. Instead, this incorrect assertion arose solely from PacifiCorp's rebuttal brief, which points to no evidence on the point. *See* PacifiCorp's Rebuttal Br. at 10; *see also* Order No. 15-060 at 5 (paraphrasing PacifiCorp's argument without citing any evidence). PacifiCorp's testimony addressing load growth did not rely on GRID. PAC/400, Duvall/5: 7-18.

"Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482(8)(c). Owing to the absence of evidence on the point, the Order cannot lawfully reject the Stipulation's reliance

on load growth based on a determination that "GRID considers forecasted system load growth in calculating both the transition adjustments and the consumer opt-out charge." Order No. 15-060 at 7.

Additionally, no evidence supports the view that GRID accounts for load growth in a manner that contradicts the Stipulating Parties' argument that system load growth can replace load lost due to departed direct access customers. Because PacifiCorp's reliance on GRID for this point appeared for the first time in its final legal brief (and not in any testimony), the Stipulating Parties did not have an opportunity to cross-examine any PacifiCorp witness on the point or otherwise rebut PacifiCorp's incorrect assertion.

The record demonstrates that GRID exclusively addresses net power costs and does not in any way address *fixed* cost recovery, which PacifiCorp recovers through Schedule 200. Stipulating Parties/100 at 10-12. GRID simply "is used to calculate the value of freed up energy." PAC/200, Duvall/4. Thus, GRID cannot account for the role of load growth in mitigating the loss of *fixed* cost recovery from departing direct access customers. Simply put, if load growth replaces the load lost as a result of direct access, there is no need to use GRID under an ongoing valuation methodology after that point in time – whether that occurs five, six, or ten years after the opt-out election. *See* Staff/100, Compton/10:15-19; Stipulating Parties/100 at 11:1-3.

Given the absence of evidence that GRID accounts for fixed generation costs, and given the corollary absence of evidence that GRID accounts for the relationship between fixed generation costs and load growth, there is no rational relationship between the evidence and the ultimate conclusion expressed in the Order. In addition, the Order provides no other findings of

fact or rationale to reject the Stipulating Parties' reliance on the ability of load growth to mitigate transition costs under the direct access law.

On these bases, the Order must be corrected to remove any reliance on GRID to counter the Stipulating Parties' arguments regarding load growth. *See Northwest Natural Gas Co. v. PUC*, 195 Or.App. 547, 559, 99 P.3d 292 (2004) ("It is not a court's task to create a basis for the PUC's ultimate conclusion that is different from the basis that the PUC itself expressed."). In the absence of an Order granting reconsideration, PacifiCorp may improperly attempt to rely on Order No. 15-060 for the incorrect proposition that a 10-year GRID analysis accounts for the fixed generation costs associated with load growth. PacifiCorp may attempt to rely on this Order even in the event that Section X of the 2010 Protocol is amended or new loads are otherwise reasonably projected to absorb the cost responsibility previously covered by departed direct access loads prior to expiration of the 10-year period.

3. OAR 860-001-0720(2) (c): The change in the order that the Commission is requested to make.

The Commission should correct the Order by removing all reliance on GRID to address the Stipulating Parties' arguments regarding load growth. The emphasized language of the Order should be stricken. Instead, the Order should state that if Section X of the 2010 Protocol is amended or system load is otherwise reasonably projected to absorb the cost responsibility previously covered by departed direct access customers prior to expiration of 10 years, the years included in the Consumer Opt-Out Charge will be reduced accordingly. Alternatively, the Commission should grant rehearing and conduct further proceedings on this question.

4. OAR 860-001-0720(2) (d): How the applicant's requested change in the order will alter the outcome.

The requested change to the Order would alter the outcome of future calculations of the Consumer Opt-Out Charge to appropriately account for any factual circumstances where load growth is reasonably projected to absorb the fixed cost responsibilities of the departed direct access customers sooner than 10 years after the date of the opt-out election. As such, the outcome will be corrected to be consistent with Oregon law and ensure that participating direct access customers are not assessed unjust and unreasonable charges.

5. OAR 860-001-0720(2) (e): One or more of the grounds for rehearing or reconsideration in section (3) of this rule.

In accordance with OAR 860-001-0720(3), the reasons set forth above describe both "(c) An error of law or fact in the order that is essential to the decision" and "(d) Good cause for further examination of an issue essential to the decision."

C. The Commission Should Reconsider and Correct PacifiCorp's Failure to Account for Depreciation of Fixed Assets in the Consumer Opt-Out Charge.

The requirements of OAR 860-001-0720(2) are satisfied to grant reconsideration or rehearing of the Order's treatment of depreciation of fixed assets in the Consumer Opt-Out Charge.

1. OAR 860-001-0720(2) (a): The portion of the challenged order that the applicant contends is erroneous or incomplete.

The same portion of the Order quoted above is incomplete because the Commission did not resolve the matter of whether PacifiCorp's stranded cost calculation (and the resulting Consumer Opt-Out Charge) properly accounts for depreciation of fixed assets in Schedule 200.

2. OAR 860-001-0720(2) (b): The portion of the record, laws, rules, or policy relied upon to support the application.

When the Commission approves a methodology to calculate rates, the Commission must ensure that the resulting rates will be fair, just and reasonable. ORS 757.210(1). In this case, the calculations underlying PacifiCorp's illustrative exhibits on the Consumer Opt-Out Charge result in unjust and unreasonable rates because, among other reasons, the calculations do not properly account for depreciation of fixed assets in Schedule 200.

As noted above, PacifiCorp's Consumer Opt-Out Charge contains two components: (1) a projection of Schedule 200 for years six through 10 *escalated at an assumed rate of inflation*, which PacifiCorp set at 1.9 percent, and (2) a projected ongoing valuation calculation of the difference between projected Schedule 201 rates and value of freed-up power calculated through GRID simulations for the years six through 10. Exhibit PAC/401. Schedule 200 recovers PacifiCorp's fixed generation costs. Noble Solutions/100, Higgins/10. The apparent theory of the Consumer Opt-Out Charge is that the five-year opt-out customer must pay for the projected costs of those fixed assets in years six through 10, just as the customer would have paid for those assets had the customer remained a cost-of-service customer during those years.

Under Oregon law, however, for as long as a customer remains responsible for fixed generation assets, the customer should only be responsible for the *depreciated* value of the assets. *See* Stipulating Parties Post-Hearing Br. at 9-11. A stranded cost calculation cannot assume that the current fixed generation costs will remain constant. Standard regulatory accounting principles require reflection of depreciation in the cost of these assets. *Id.* PacifiCorp's own chosen secondary source is consistent with the Stipulating Parties' position on this point, where it explains:

> Under standard regulatory accounting, the net present value of all revenue requirements, less the operating costs of the units, is the net book value of the plant. For any set of generating plants going forward, revenue requirements are generally a steadily declining function. This is because the number of generating units stranded declines over time as plants reach the end of their useful lives and because traditional utility revenue requirements are the sum of depreciation, return, taxes, and operating costs which decline for a plant as it gets older and its book value (hence aggregate annual depreciation and return) declines to zero.

G. Basheda, et al, *The FERC, Stranded Cost Recovery and Municipalization*, 19 Energy L. J. 351, 367 (1998); *see also* PacifiCorp's Opening Br. at 11-12 (quoting G. Basheda, et al.). There is no basis to ignore depreciation of PacifiCorp's rate-based assets in Schedule 200. *See Gearhart v. Pub. Util. Comm'n of Ore.*, 356 Or. 216, 220, 339 P.3d 904, 907 (2014) ("Although the term 'rate base' is not defined by statute, it is understood within public utility ratemaking to represent the net or *depreciated* value of the tangible and intangible property, or net investment in the property . . . ." (emphasis added; internal quotation omitted)).

Thus, the portion of the Consumer Opt-Out Charge that includes an assumed Schedule 200 cost responsibility for direct access customers in years six through 10 (after the date of the opt-out election) must be limited to a proper *depreciated* value of the Schedule 200 assets. Calculation of the Consumer Opt-Out Charge may not assign to direct access customers responsibility for an asset value that escalates at 1.9 percent as set forth in PacifiCorp's exhibit.[5]

[5] PacifiCorp does not contest the fact that the assets in Schedule 200 are depreciable. Instead, in response to this argument, PacifiCorp argued that the Stipulating Parties included escalation of fixed costs and ignored depreciation for costs associated with the initial five years after the opt-out election. PacifiCorp Rebuttal Br. at 7-8. The Stipulating Parties had no chance to respond to this reply argument, yet PacifiCorp's response was incorrect for multiple reasons. First, under the Stipulating Parties' proposal, depreciation would have been accounted for in years one through five after the date of the opt-out election because the Schedule 200 rates, including depreciation, could be updated in a general rate case. *See Stipulation* at ¶ 10. Second, depreciation is largely irrelevant to the portion of the calculation that compares Schedule 201 rates to the projected value of freed-up power because Schedule 201 contains few depreciable assets. Additionally, even if PacifiCorp were correct, the Stipulating Parties' concession

{footnote continued}

Failing to account for depreciation of Schedule 200 assets included in the Consumer Opt-Out Charge will result in unjust and unreasonable rates assessed to Schedule 296 customers.

3. OAR 860-001-0720(2) (c): The change in the order that the Commission is requested to make.

The Order should be corrected to state that Schedule 296 customers should only be responsible for the *depreciated* value of Schedule 200 assets assessed through the Consumer Opt-Out charge for stranded costs associated with years six through 10 (after the date of the opt-out election). Alternatively, the Commission should grant rehearing and conduct further proceedings on this issue.

4. OAR 860-001-0720(2) (d): How the applicant's requested change in the order will alter the outcome.

The requested change to the Order would alter the outcome of future calculations of the Consumer Opt-Out Charge to appropriately account for depreciation of the stranded assets for which the Schedule 296 customers must pay. As such, the outcome will be corrected to be consistent with Oregon law and standard rate-setting practices to ensure that eligible direct access customers are not assessed unjust and unreasonable charges.

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to include an over-charge by failing to account for depreciation for the initial five years does not justify such an over-charge for a full 10 years. *See* Stipulating Parties/100 at 10. Nor would such a concession undermine the Commission's independent duty to set fair, just and reasonable rates that properly account for depreciation. ORS 757.210(1).

5. OAR 860-001-0720(2) (e): One or more of the grounds for rehearing or reconsideration in section (3) of this rule.

In accordance with OAR 860-001-0720(3), the reasons set forth above describe both "(c) An error of law or fact in the order that is essential to the decision" and "(d) Good cause for further examination of an issue essential to the decision."

V. CONCLUSION

For the reasons set forth herein, the Commission should clarify Order No. 15-060, or in the alternative, grant reconsideration or rehearing of the Order.

DATED this 20th day of April 2015.

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