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	REQUEST FOR LEAVE TO REPLY AND REPLY OF NOBLE AMERICAS ENERGY SOLUTIONS LLC, 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

Noble Americas Energy Solutions LLC, 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.[1] respectfully request that the Public Utility Commission of Oregon ("OPUC" or the "Commission") accept and consider this Reply to PacifiCorp's Response to the Joint Parties' Motion for Clarification, or in the Alternative, Application for Reconsideration or Rehearing of Order No. 15-060 (the "Order"). This Reply responds to new arguments and factual assertions in PacifiCorp's Response to ensure that the record is complete for the Commission's resolution in this matter.

II. REQUEST FOR LEAVE TO FILE A REPLY

The OPUC's administrative rules allow for a reply to a substantive motion, but do not provide for a reply to a response to an application for reconsideration or rehearing without leave

[1] Wal-Mart Stores, Inc. joined in the Joint Parties' Motion for Clarification, or in the Alternative, Application for Reconsideration or Rehearing filed on April 20, 2015. Wal-Mart Stores, Inc. supports the substance of this Reply, but is unable to sign as a result of timing issues.

of the administrative law judge. *See* OAR 860-001-420(6), and -0720(4). Because the Joint Parties filed both a substantive motion for clarification and an application for reconsideration/rehearing, the rules appear to allow a reply to those portions of the filing that requested clarification. To the extent leave is required, the Joint Parties respectfully request leave that the administrative law judge allow and the Commission consider this Reply. This Reply is necessary because PacifiCorp's Response raised new arguments and made factual assertions that are not correct or contained anywhere in the evidentiary record. Additionally, this Reply is filed within seven days of PacifiCorp's Response and therefore should not impede the Commission's ability to resolve the issues.

III. REPLY ARGUMENT

A. PacifiCorp Has Not Refuted that Clarification Is Warranted.

PacifiCorp incorrectly relies on ORS 756.568 (and decisions rendered under that provision) to argue that the Joint Parties seek to "relitigate" issues finally resolved by the Commission. *See* PacifiCorp's Response at 5 and n. 17. ORS 756.568 addresses the circumstance where the Commission is asked to amend a <u>final</u>, non-appealable order. In the cases cited by PacifiCorp, parties sought to reopen specific findings in an order after the time to appeal the order had passed. *See, e.g., In re Ascertaining the Unbundled Network Elements that must be Provided by Incumbent Local Exchange Carriers to Requesting Telecommunications Carriers Pursuant to 47 C.F.R. § 51.319,* Docket Nos. UT 138 & UT 139 (Phase III), Order No. 03-085 at 16 (Feb. 5, 2003) (stating that "the Commission reexamined loop conditioning on reconsideration in Order No. 00-316. Verizon did not appeal that decision, and the time for doing so has now past."). The cases cited by PacifiCorp are not relevant to the Joint Parties' filing. The Commission's February 24, 2015 Order is not a final non-appealable order. Thus, the Joint

Parties do not seek to "relitigate" issues decided in a final Commission order. The more deferential standard under ORS 756.568 (and the cases cited by PacifiCorp) do not apply.

PacifiCorp further argues that no party may propose refinements to the new Consumer Opt-Out Charge in any future rate-setting proceeding, such as the ongoing TAM in docket UE 296, or presumably ever again. PacifiCorp relies on the fact that "no party objected" to its compliance filing. PacifiCorp also asserts that in Order No. 15-060, the Commission did not "simply announce[] a policy for future implementation," but instead "approve[d] tariffs for PacifiCorp's Five-Year Program." PacifiCorp's Response at 1, 3.[2] This argument ignores that PacifiCorp must justify its proposed rates each time it files them. ORS 757.210(1). Each rate case is a new case with new proposed rates that must be proven to be just and reasonable.[3] A procedural schedule is already set in docket UE 296, where the Commission has an opportunity to address the issues raised by the Joint Parties here, as well as other proposals to ensure that the rates and charges under the Five-Year Program comply with Oregon's requirement for fair, just and reasonable rates.

B. PacifiCorp's Objection to Clarification on the Load Growth Issue Is Without Merit.

PacifiCorp has not refuted the Joint Parties' argument that an expert witness is needed to rebut the Stipulating Parties' position that in the context of a five-year opt-out program, system load growth could replace the departing direct access loads and thereby eliminate the need for the "ongoing valuation" after year five represented by the Consumer Opt-Out Charge. *See*

[2] PacifiCorp conveniently overlooks that its compliance filing contained no rates or supporting work papers demonstrating how to calculate such rates. There was nothing included in the filing that could possibly form the basis for any sort of objection as to the rates.

[3] PacifiCorp's suggestion that there have been no changes to the transition adjustment calculation since 2004 is simply wrong. *See* PacifiCorp's Response at 4. There have been multiple changes to the calculation since 2004 in individual TAM proceedings, including some years where a BPA transmission credit was including and some where it was not, some years where market caps were relaxed in the GRID runs and some where they were not, and initial years where the relaxation of thermal pricing was not included and later years where it was.

Staff/100, Compton/10; Stipulating Parties Post-Hearing Br. at 13-14 (citing Stipulating Parties/100 at 24; ICNU/100, Shoenbeck/6). PacifiCorp points to no evidence in the record supporting the assertion that GRID accounts for the Stipulating Parties' load growth argument. None exists. Instead, PacifiCorp's response again points to its rebuttal brief and manufactures additional non-record expert explanation. PacifiCorp's Response at 7-9 & n. 24. Simply put, the Order provides no explanation for rejecting the Stipulating Parties' load growth argument other than incorrect reliance on GRID. The Order is fatally flawed in that respect. *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.").

C. PacifiCorp's Response on Depreciation is Misleading.

PacifiCorp relies on *In re Portland General Electric Co.*, Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 90 (2008), to argue that depreciation has no effect on the level of rates over a period of time. PacifiCorp's reliance upon the PGE order is incorrect and so is PacifiCorp's assertion.

Accumulated depreciation results in declining retail rates. Depreciation *expense* is constant throughout an asset's life (unless depreciation rates themselves are changed), and an asset's *plant balance* generally remains constant (except for capital upgrades, etc.). But rates are not set based on plant balances. Rates reflect a combination of expenses *plus* return on rate base. Rate base equals plant in service *minus* accumulated depreciation minus accumulated deferred income tax ("ADIT"). *See* Bonbright, J. et al., *Principles of Public Utility Rates*, at 267-68 (2nd ed., 1988).

Rate base is front-end loaded and declines over time. *Id.* Thus, the return earned on any

given asset declines over time. The subtlety that distinguishes the statement in the PGE order from the question here is that while amortization *expense* is constant throughout the amortization period, the *return* on the asset being amortized is applied to the *unamortized* balance. That is, the return declines over time. In PacificCorp's five-year opt-out program, the return on rate base should decline (in Schedule 200's projected base rates) for years six through 10.

Furthermore, PacifiCorp's misleading explanation fails to account for assets in Schedule 200 that will become fully depreciated during the 10-year time frame at issue. These assets should be removed from rates altogether. The order PacifiCorp cites even explains that Oregon's constant payment of the plant balance "allows the balance to be paid off completely during the chosen amortization period," rather than the longer time period that would otherwise apply. Order No. 08-487 at 90. Thus, in addition to declining returns on all assets, some of PacifiCorp's assets may become fully depreciated during the 10-year period over which the Consumer Opt-Out charge is calculated. In these instances, the entire plant balance should be removed from the rates reflected in the Consumer Opt-Out Charge.[4]

IV. CONCLUSION

The Commission should clarify Order No. 15-060, or in the alternative, grant reconsideration or rehearing of the Order.

[4] PacifiCorp further faults the Stipulating Parties for not addressing depreciation through testimony. The Stipulating Parties did not raise the depreciation issue in testimony because the Stipulating Parties recommended elimination of the *entire* Consumer Opt-Out Charge. Under the Stipulating Parties' recommendation, the components of the charge, including depreciation, were irrelevant. Now that the Commission has chosen to include the Consumer Opt-Out Charge, parties should not be forever prohibited from ensuring that its components are reasonable when PacifiCorp implements rates.

DATED this 12th day of May 2015.

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