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May 14, 2014

VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: UE 267 – In the Matter of Pacificorp Transition Adjustment, Five-Year Cost-of-Service Opt-Out

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and five copies of PacifiCorp's Prehearing Brief. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

Katherine McDowell

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of PACIFICORP d/b/a PACIFIC POWER Transition Adjustment, Five-Year Cost-of-Service Opt-Out.	**UE 267**

PACIFICORP'S

PREHEARING BRIEF

May 14, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Oregon Administrative Rules

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 267

In the Matter of PACIFICORP d/b/a PACIFIC POWER Transition Adjustment, Five-Year Cost-of-Service Opt-Out.	**PACIFICORP'S PREHEARING BRIEF**

I. INTRODUCTION

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) respectfully submits this Prehearing Brief to the Public Utility Commission of Oregon (Commission). This case concerns PacifiCorp's Schedule 296, filed in compliance with Order No. 12-500. In this order, the Commission directed PacifiCorp to file a tariff to allow customers to go to direct access, pay fixed transition charges for a five-year period, and then be free from additional transition charges.[1] The Commission allowed the Company to "tailor its program to fit its circumstances" and "acknowledg[ed] Pacific Power's concerns that any program that allows customers to elect direct access permanently be tailored for each utility, be designed to protect other customers from cost-shifting, and be limited to large, sophisticated customers."[2]

The Company's proposed Five-Year Cost-of-Service Opt-Out program (Five-Year Program) complies with Order No. 12-500, offering a meaningful new option to PacifiCorp's direct access customers, while protecting other customers from bearing its costs. In addition, the Five-Year Program, as modified in PacifiCorp's reply testimony filed on March 27, 2014, incorporates the design changes proposed by Staff and intervenors (collectively, the

[1] *In the Matter of Public Utility Commission of Oregon Investigation of Issues Relating to Direct Access*, Docket UM 1587, Order No. 12-500 at 9 (Dec. 30, 2012).
[2] *Id.*

Stipulating Parties[3]) in their Stipulation, filed on October 21, 2013, with only two major exceptions. First, to ensure the legality and fairness of the Five-Year Program, PacifiCorp reduced but did not eliminate the Consumer Opt-Out charge, a charge designed to collect transition costs from departing direct access customers. Second, in accordance with Commission Order Nos. 12-409, 13-008 and 13-387, the Company rejected the Stipulating Parties' proposal to include a Bonneville Power Administration (BPA) transmission credit in the transition adjustment calculation.[4]

In this prehearing brief, PacifiCorp outlines its position on these primary issues. It also addresses the unresolved administrative issues of program eligibility, the timing of the election window and program evaluation. Finally, consistent with the November 19, 2013 Prehearing Conference Memorandum, this brief addresses the position of certain parties rejecting the use of GRID to calculate the transition adjustment, although this position was not incorporated in the Stipulation.

II. BACKGROUND

A. PacifiCorp's Current Direct Access Programs

The Oregon Legislature enacted Senate Bill 1149 (SB 1149) in 1999. SB 1149 was designed to deregulate retail electric energy supply in Oregon and allow the development of a competitive retail electricity market. The law gives the Commission authority to require utilities to make implementation filings,[5] subject to the mandate that the "provision of direct

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[3] The intervenors are: Noble Americas Energy Solutions LLC (Noble Solutions), Industrial Customers of Northwest Utilities (ICNU), Wal-Mart Stores, Inc. (Wal-Mart), Constellation NewEnergy, Inc. (Constellation), Shell Energy North America (US) L.P. (Shell), Safeway Inc., The Kroger Co., Vitesse LLC, and the Northwest and Intermountain Power Producers Coalition.
[4] *In the Matter of PacifiCorp dba Pacific Power 2013 Transition Adjustment Mechanism*, Docket UE 245, Order No. 12-409 at 17 (Oct. 29, 2012), *aff'd on recon.*, Order No. 13-008 (Jan. 15, 2013); *In the Matter of PacifiCorp dba Pacific Power 2014 Transition Adjustment Mechanism,* Docket UE 264, Order No. 13-387 at 13-14 (Oct. 28, 2013).
[5] ORS 757.661.

access to some retail electricity customers must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company."[6]

Under SB 1149, direct access programs may include transition charges or credits that "reasonably balance the interests of retail electricity consumers and utility investors."[7] The Commission implemented this statute through rules requiring utilities to credit or pay transition charges "equal to 100 percent of the net value of the Oregon share of all [investments] as determined pursuant to an auction, an administrative valuation, or an ongoing valuation."[8] The applicable transition charge or credit "may change to reflect the duration of the service option chosen by the consumer."[9]

PacifiCorp currently offers three supply service options for direct access eligible customers: (1) a one-year opt-out through Schedule 294; (2) a three-year opt-out for supply service through Schedule 295; and (3) a default cost-based supply service.[10] The Company uses the on-going valuation method to calculate a transition adjustment, measured as the estimated difference between the value of the electricity that is freed-up when a customer chooses to leave cost-based supply service and cost-based rates. The direct access customer pays the transition cost or receives a transition credit for the term of its opt-out.

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[6] ORS 757.607(1). The cost-shifting statute is written broadly and does not limit its protection to Oregon customers. For a multi-state utility like PacifiCorp, this means the impact on customers from other states is a relevant consideration. This is consistent with the Commission's goals in adopting the Revised Protocol and 2010 Protocol, one of which was equitable sharing of PacifiCorp's costs between Oregon and other states. *In the Matter of PacifiCorp's Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, Docket UM 1050, Order No. 05-021 at 6 (Jan. 12, 2005) ("we required that all states concerned be dealt with fairly and equally, which is the definition of 'equitable.'").
[7] ORS 757.607(2).
[8] OAR 860-038-0160(1).
[9] *Id.*
[10] PAC/100, Steward/2-3.

B. PacifiCorp's Five-Year Program.

In Order No. 12-500, the Commission directed PacifiCorp to file a five-year opt-out tariff.[11] The Commission referred to this as a "PGE-type model" because, under a series of stipulations, PGE has offered a five-year opt-out program since 2002.[12]

In February 2013, the Company filed Schedule 296 to allow customers to transition off of cost-based supply service over five years. During the five-year transition period, a direct access customer is subject to delivery charges, generation fixed costs in Schedule 200, a transition adjustment, and a Consumer Opt-Out charge. After the transition period, the customer will pay only for delivery service from PacifiCorp.

The Consumer Opt-Out charge is intended to minimize the shifting of transition costs from departing customers to all other customers. In the Company's opening testimony, the charge was designed to recover 15 years of fixed generation costs on a levelized basis from departing customers (measured from the customer's departure date under the Five-Year Program), offset by the value of the freed-up power made available by the departing customers. The Company used a 20-year total time horizon as a conservative estimate of the average remaining life of PacifiCorp's generation resources to determine a departing customer's transition cost responsibility. The 20-year period is used in the Company's integrated resource plan (IRP) and long-run marginal cost studies.

The Company's opening testimony also proposed eligibility criteria consistent with its current three-year opt-out program, a program cap of 175 aMW (which is approximately one-half of the eligible customers), and a provision that once customers opt-out under this program, they waive their right to return to cost-based supply service from the company.

[11] Order No. 12-500 at 9.
[12] *Id.*

C. Staff's and Intervenors' Stipulation.

Following the submission by Staff and intervenors of individual testimony addressing the Company's proposed Five-Year Program, on October 21, 2013, the Stipulating Parties filed a Stipulation with the following terms: (1) no Consumer Opt-Out charge; (2) no customer responsibility for Schedule 200 fixed generation charges beginning in year six; (3) four-year advance notice required to return to cost-based rates; (4) transition adjustment calculated using GRID, as modified to eliminate the distinction between heavy load hours (HLH) and light load hours (LLH) in the transition adjustment, use a 50 average megawatt (aMW) load decrement, include a BPA transmission credit, and use the same market/thermal backdown assumptions as in the most recent transition adjustment mechanism (TAM) filing; (5) participation cap of 175 aMW; (6) customer eligibility generally consistent with PacifiCorp's proposal; (7) one-month election window in November; (8) four-year effective period for program, from 2015 through 2018, with a program evaluation in 2017; and (9) parties reserve the right to raise whether new customers should be allowed to avoid or limit transition adjustments.

D. PacifiCorp's Revised Five-Year Program and Remaining Contested Issues.

In response to the Stipulation, the Company significantly modified its Five-Year Program in its reply testimony. First, addressing the Stipulating Parties' concerns that the Consumer Opt-Out charge would impair the viability of the Five-Year Program, the Company substantially reduced the charge by accounting for transition costs for years six through 10 only, rather than years six through 20.

The Company further reduced the Consumer Opt-Out charge by agreeing to the Stipulating Parties' recommendation that the Company calculate the value of freed-up energy using the same methodology used to calculate the value of freed-up energy for the annual

TAM under Schedule 294. Together, these changes reduced the Consumer Opt-Out charge by two-thirds—from $17.30/MWh to $5.75/MWh for Schedule 47/48 customers.[13]

Second, the Company agreed to allow customers electing the Five-Year Program to return to cost-based supply service after providing a four-year notice.[14] Under the Company's revised proposal, customers choosing to leave the Five-Year Program would not be eligible for the program in the future, though they would be eligible for the Company's other direct access programs. In addition, the Company agreed that if a customer provides notice of its intent to return to cost-based rates within the five-year transition period, it could cease paying the Consumer Opt-Out charge. This approach uses the four-year notice period recommended by the Stipulating Parties, modified to limit switching between "permanent" direct access and cost-based supply service.

Third, the Company accepted the Stipulating Parties' proposal to assume an incremental departure of 50 aMW of direct access load when calculating the transition adjustment. Originally, the Company assumed 175 aMW of departing load.

Fourth, the Company accepted the Stipulating Parties' recommendation to eliminate the distinction between HLH and LLH in the transition adjustment.

The revisions to PacifiCorp's proposed Five-Year Program leave only two major issues in dispute in this case:

- Whether the Five-Year Program should include a Consumer Opt-Out charge to recover transition charges from a departing direct access customer for a ten-year horizon (*i.e.,* the five-year opt-out period, plus a levelized charge for years six to 10) to avoid unwarranted cost-shifting to all other customers?

[13] PAC/400, Duvall/2 (as corrected by errata filed on May 13, 2014).
[14] Under the Company's proposal, the four-year notice period would begin on January 1 of the calendar year after the Company received the notice of return.

- Whether the Commission's decisions rejecting a BPA transmission credit for the transition adjustment calculation should apply to the Five-Year Program, just as they apply to the Company's one- and three-year opt-out programs?

III. ARGUMENT

A. The Commission Should Approve PacifiCorp's Proposed Consumer Opt-Out Charge.

Oregon's direct access statutes specifically prohibit unwarranted cost-shifting to non-participating customers.[15] Implementing this statute, OAR 860-038-0160(1) requires direct access customers to pay 100 percent of transition costs and receive 100 percent of transition benefits.

When the Commission directed PacifiCorp to develop a five-year opt-out program, it made clear that the program must "be designed to protect other customers from cost-shifting[.]"[16] To minimize cost-shifting, PacifiCorp proposed a Consumer Opt-Out charge intended, in part, to account for PacifiCorp's unique circumstances as a multi-jurisdictional utility. The Consumer Opt-Out charge is a valuation of the Company's fixed generation costs, offset by the value of the freed-up power made available by the departing customers.[17] The Company proposes calculating the Consumer Opt-Out charge using the same "ongoing valuation" methodology that the Company uses to determine its annual transition costs and benefits in the one- and three-year direct access options.[18]

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[15] ORS 757.607(1); *see also In the Matter of Pacific Power & Light Company dba PacifiCorp Request for a Generate Rate Increase in the Company's Oregon Annual Revenues*, Docket UE 170, Order No. 05-1050 at 21 (Sept. 28, 2005) ("purpose of the TAM is not to promote direct access . . . [r]ather, the TAM is to capture costs associated with direct access, and prevent unwarranted cost shifting"); Order No. 12-500 at 9 (Dec. 30, 2012) (PacifiCorp's five-year opt-out program should not result in cost shifting).
[16] Order No. 12-500 at 9.
[17] PAC/200, Duvall/5.
[18] *Id.* at 3-4.

The Stipulating Parties recommend that the Five-Year Program operate without a Consumer Opt-Out charge.[19] Instead, under the terms of the Stipulation, departing customers would pay a transition charge only for the first five years.

1. Without the Consumer Opt-Out Charge, $58.9 Million in Transition Costs Could Be Shifted to Non-Participating Customers under PacifiCorp's Five-Year Program.

PacifiCorp demonstrated that between years six to 10, its transition costs for 175 MW of departing direct access load are approximately $58.9 million on a nominal basis, or $35.4 million on a net present value basis.[20] The Stipulating Parties' proposal allows customers to permanently elect direct access without paying their share of these costs, shifting the entire amount to non-participating customers. This shift would affect all Oregon customers, including residential customers who are not eligible for direct access.

In its direct access rules, the Commission previously determined that 100 percent recovery of transition costs or credits was required, an approach that effectively prohibits any shifting of costs or benefits between direct access and non-direct access customers. Even without this rule, a cost-shift of almost $60 million over five years is indisputably "unwarranted" under ORS 757.601(1). The Consumer Opt-Out charge requires departing customers to pay their share of the transition costs between years six to 10, ensuring compliance with Oregon's direct access laws and rules.

2. Under Section X of the 2010 Protocol, All Costs and Benefits of Direct Access Elections are Allocated to Oregon, and a Consumer Opt-Out Charge is Required to Protect Oregon's Non-Participating Customers.

It is undisputed that under Section X of the Company's current interstate cost allocation methodology, the 2010 Protocol, non-participating Oregon customers could be

[19] Stipulating Parties/100, Joint/22.
[20] PAC/402, Duvall/1 (as corrected by errata filed on May 13, 2014).

harmed by the Five-Year Program because they will absorb 100 percent of the transition costs (*i.e.* the difference between the costs of Oregon's freed-up generation and market prices) caused by permanent direct access elections.[21] This underscores why a Consumer Opt-Out charge is necessary in PacifiCorp's Five-Year Program.

Section X of the 2010 Protocol allows for direct access customers to either permanently opt-out, relieving PacifiCorp of its obligation to plan to serve these customers, or choose direct access for a shorter-term with the understanding that PacifiCorp will still plan for and serve the direct access load in the future.[22] In either case, the costs of PacifiCorp's existing resources[23] will continue to be allocated to Oregon customers as if the departing direct access load was still being served by these resources.[24]

New resources acquired after a customer elected to participate in direct access are allocated to Oregon customers based on the inclusion of the direct access load if the opt-out is for a shorter-term (*i.e.*, the opt-out is not permanent).[25] If the opt-out is permanent, then the costs of new resources are allocated to Oregon without the inclusion of the direct access load.[26] Although the Five-Year Program has been referred to as a "permanent opt-out," the Stipulating Parties proposed, and PacifiCorp agreed, that opting-out customers will have a right to return to cost-of-service rates.[27] Therefore, it is possible that Oregon's share of the Company's system load will include the loads of *all* direct access customers for allocating *all* resources, both existing and new. This means that Oregon customers will pay for the costs of

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[21] PAC/400, Duvall/12; Exhibit PAC/403, Duvall/1; Stipulating Parties/100, Joint/24.
[22] PAC/400, Duvall/11.
[23] These resources are referred to as "Existing Resources," which are defined as: "Resources whose costs were committed to prior to Direct Access Customers making an election to permanently forego being served by the Company at a cost-of-service rate. *Id.*; Order No. 05-021, Appendix A of Revised Protocol at 2.
[24] PAC/400, Duvall/11.
[25] *Id.*
[26] *Id.*
[27] PAC/300, Steward/5-6.

the resources that are necessary to serve direct access loads even if those resources are not actually serving those loads.[28]

Because the costs of generation resources will be allocated to Oregon as if the direct access load was still being served, the costs of resources allocable to the now-absent direct access load will be shifted to remaining customers unless direct access customers cover these costs in advance through the Consumer Opt-Out charge.[29] This is true even if new customers ultimately replace the direct access load because the 2010 Protocol has no provision to remove the direct access load from the total Oregon load used to allocate costs.[30]

While the Stipulating Parties now refer to Section X as "obscure" and "outdated,"[31] the Commission most recently adopted it in Order No. 11-244, approving the 2010 Protocol, less than three years ago.[32] Section X was originally proposed by Staff, ICNU, and the Citizens' Utility Board of Oregon (CUB), who argued that its provisions were necessary to prevent cost-shifting to remaining customers when direct access customers chose to permanently opt-out.[33] Staff testified in support of Section X because it "[r]esolves direct access issues from an inter-jurisdictional standpoint consistent with Oregon direct access goals and objectives."[34] When approving Section X, the Commission agreed with Staff that it "enhance[d] Oregon's ability to implement direct access" and was therefore in the public interest.[35]

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[28] PAC/400, Duvall/12.
[29] *Id.*
[30] *Id.*
[31] Stipulating Parties/100, Joint/24.
[32] *In the Matter of PacifiCorp, dba Pacific Power, Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, Docket UM 1050, Order No. 11-244 (July 5, 2011).
[33] PAC/400, Duvall/9.
[34] *In the Matter of PacifiCorp Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, Docket UM 1050, Staff/100, Hellman/10 (July 2, 2004).
[35] Order No. 05-021 at 8. Section X was first approved as part of the Revised Protocol. The Revised Protocol was amended by the 2010 Protocol, which was approved by the Commission in Order No. 11-244. The 2010

The Stipulating Parties concede that absent a modification of Section X, "existing customers will be responsible for the fixed generation costs and could be harmed."[36] Despite this fact, the Stipulating Parties claim that the Commission should nonetheless approve the Stipulation without a Consumer Opt-Out charge on the basis that Section X will be changed before the end of the first five-year period.[37] But this is a risky and speculative position because there is no basis for assuming that Section X should or will be amended as Staff proposes.[38] Given the concerns that other states may have over the shifting of Oregon direct access transition costs to other states, and the reciprocal concerns that Oregon might develop about cost-shifting from direct access in other states, resolution of this issue in the Multi-State Process may not be straightforward. For the Commission to adopt Staff's revision to Section X, the Commission would need to reverse its conclusion in Order No. 05-021 that Section X facilitates direct access and is in the public interest—even though there has been no change in Oregon's direct access laws or rules since that order.

3. PacifiCorp's System Load Growth Does Not Prevent Unwarranted Cost-Shifting.

The Stipulating Parties claim that the Consumer Opt-Out charge is unnecessary because PacifiCorp's load growth will replace departing direct access loads and eliminate cost-shifting to non-participating customers.[39] This claim is inconsistent with Oregon's direct access rules and Section X of the 2010 Protocol. It is also factually incorrect.

Protocol included no changes to the Revised Protocol's direct access terms. No party raised objections to Section X in the Commission's review of the 2010 Protocol.
[36] PAC/403, Duvall/1.
[37] Stipulating Parties/100, Joint/24 -25.
[38] PAC/400, Duvall/13.
[39] Stipulating Parties/100, Joint/24.

As noted above, the Commission's rules require direct access customers to pay 100 percent of transition costs.[40] The rules provide no exception or offset for load growth that may replace departing loads. Moreover, load growth does not negate transition costs, it merely shifts those costs to current and new customers.[41] Finally, the Company's load growth is not occurring in Oregon and, as discussed above, Section X of the 2010 Protocol prohibits the consideration of load growth outside of Oregon in this context.[42] Therefore, even if load growth did effectively mitigate transition costs, there is no evidence of load growth in Oregon to support the Stipulating Parties' theory.

Staff also argues that the Company can mitigate any existing transition costs by scaling back its front office transactions to account for the departing direct access loads.[43] Staff's argument ignores the fact that the GRID runs that form the basis for the Company's proposed Consumer Opt-Out charge already account for the impact of departing loads on front office transactions.[44] If departing direct access loads cause less front office transactions, this effect is already captured in the Consumer Opt-Out charge.[45]

Similarly, Noble Solutions, Constellation, and Shell argue that the five-year period is sufficient time for the Company to alter its procurement strategies to account for the departing load.[46] Over the five-year transition period, however, the most likely changes in the Company's procurement strategy will involve changes to front office transactions.[47] As discussed above, those changes are already accounted for in the determination of the

[40] OAR 860-038-0160(1).
[41] PAC/400, Duvall/5.
[42] *Id.*
[43] Staff/100, Compton/2-3, 10.
[44] PAC/400, Duvall/6.
[45] *Id.*
[46] Noble Solutions/100, Higgins/11; CNE/SENA/100, Lynch/6.
[47] PAC/400, Duvall/7.

Consumer Opt-Out charge.[48] Moreover, even if the Company delayed a particular future resource acquisition due to departing direct access load, the costs of existing resources will still be shifted to non-participating customers.[49] And the Company's IRPs indicate that the Company does not intend to add major supply-side resources until 2027—so there is no basis to conclude that departing load due to the Five-Year Program would cause the Company to defer the acquisition of this resource.[50]

4. PGE's Lack of Consumer Opt-Out Charge is Immaterial.

The Stipulating Parties rely extensively on PGE's five-year opt-out program, which does not include a Consumer Opt-Out charge, to support elimination of PacifiCorp's proposed Consumer Opt-Out charge.[51] Comparisons to PGE, however, are irrelevant. The Commission made clear when requiring PacifiCorp to develop its Five-Year Program that it must be specifically tailored to fit PacifiCorp's circumstances,[52] and there are several important distinctions between PGE and PacifiCorp.

First, when PGE's five-year opt-out program was first approved in 2002, the working assumption was that transition costs were nearly zero, *i.e.*, market prices were nearly the same as long-term embedded costs.[53] This is no longer the case, at least for PacifiCorp. PacifiCorp demonstrated that, through year 10, customers under the Five-Year Program could shift transition costs to other customers of up to $58.9 million on a nominal basis, or $35.4 million on a net present value basis.[54]

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[48] *Id.* at 6.
[49] *Id.* at 7.
[50] *Id.* at 7-8.
[51] Stipulating Parties/100, Joint/23.
[52] Order No. 12-500 at 9.
[53] PAC/400, Duvall/15-17.
[54] PAC/402, Duvall/1 (as corrected by errata filed on May 13, 2014).

Second, PGE is not a multi-state utility. PGE's direct access program does not need to account for interstate allocation provisions such as Section X of the 2010 Protocol.

Third, the PGE program is the result of several stipulations, and it does not appear that PGE ever claimed that its five-year opt-out program would result in cost-shifting due to unrecovered transition costs.[55] Here, PacifiCorp has demonstrated that its transition costs are substantial and that cost-shifting will occur unless a Consumer Opt-Out charge is approved.

B. The Commission Should Follow its Precedent and Reject the Stipulating Parties' Proposal to Include a Credit for Freed-Up BPA Transmission in the Transition Adjustment Calculation.

The Stipulating Parties recommend that PacifiCorp include a credit in the transition adjustment calculation for the BPA transmission that is allegedly freed-up as a result of customers electing direct access.[56] The Stipulating Parties' recommendation is identical to the proposal that the Commission flatly rejected in the last two TAM proceedings.[57] In the 2013 TAM, the Commission found that "compelling evidence was not presented that Pacific Power is able to resell BPA transmission rights due to direct access."[58] In the 2014 TAM, the Commission again found "no compelling reason to depart from our precedent."[59] The Stipulating Parties raise the same arguments here even though the underlying facts have not

[55] PAC/400, Duvall/17; *see also* Order No. 12-500 at 9 ("No party has alleged that PGE's program results in cost shifting to other customers[.]").
[56] Stipulating Parties/100, Joint/17-18.
[57] Order No. 12-409 at 17; Order No. 13-387 at 13-14. The Commission's rejection of the Stipulating Parties' recommendation in the 2013 and 2014 TAMs is also consistent with the Commission's Order No. 05-1050 in docket UM 1081. In UM 1081, Staff recommended a "market-even" approach to calculating the transition adjustment, assuming that avoided and incremental wheeling costs associated with freed-up direct access load were approximately equal. The Company supported Staff's proposals, but other parties proposed a "market plus" approach, imputing a credit into the transition adjustment for freed-up transmission. In Order No. 04-516, the Commission adopted Staff's "market even" recommendation and ordered PacifiCorp to file a permanent transition adjustment. *In the Matter of Public Utility Commission of Oregon Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149*, Docket UM 1081, Order No. 04-516 at 10 (Sept. 14, 2004). Thereafter, when the Commission approved the Company's TAM in Order No. 05-1050, the Commission again rejected ICNU's renewed "market plus" proposal, reasoning that "[t]he purpose of the TAM is not to promote direct access, as ICNU would have us do." Order No. 05-1050 at 21.
[58] Order No. 12-409 at 17.
[59] Order No. 13-387 at 14.

changed—PacifiCorp is still unable to obtain value from BPA transmission freed-up due to departing direct access load.[60]

The Stipulating Parties argue that this case is different because PacifiCorp will not have to retain transmission rights to plan to serve the departing customers.[61] Under the Five-Year Program, however, departing customers will be able to return cost-of-service rates.[62] The Company remains the provider of last resort for departing customers.[63] Therefore, the Company must maintain its transmission rights and will not obtain value due to departing load.

The Stipulating Parties also rely on PGE's program, which does include a credit for freed-up transmission.[64] However, this comparison is again irrelevant. When the Commission most recently rejected the transmission credit last year, the Commission specifically concluded that comparisons to PGE's system fail to account for the important differences between PGE's and PacifiCorp's systems.[65]

C. The Commission Should Approve PacifiCorp's Proposed Eligibility Criteria for the Five-Year Program and Reject the Stipulating Parties' Proposed Modifications.

PacifiCorp's Five-Year Program is open to: (1) large nonresidential customers who currently receive service under Delivery Service Schedules 47/747 or 48/748; and (2) customers who receive service under Delivery Service Schedules 30/730, 47/747 or 48/748 under the same corporate entity with meters that each have more than 200 kw of billing demand at the least once in the previous 13 months and that total to at least

[60] PAC/400, Duvall/20.
[61] Stipulating Parties/100, Joint/20.
[62] PAC/300, Steward/5-6; PAC/400, Duvall/21.
[63] PAC/400, Duvall/21.
[64] Stipulating Parties/100, Joint/20.
[65] Order No. 13-387 at 13-14.

2 megawatts (MW).[66] The Stipulating Parties generally agreed to PacifiCorp's eligibility requirements, but offered some modifications. They proposed to allow smaller usage meters on the same property as the eligible opt-out customer and billed to the same entity or billing address to opt out at the same time, with the Schedule 296 charge associated with the largest meter at the premises.[67]

PacifiCorp does not agree that meters of any size should be included in the Five-Year Program once eligibility criteria are met for one meter on the property. The Stipulating Parties' proposal is contrary to Oregon law and inconsistent with application of rates as set forth in the Company's tariffs. ORS 757.310(2) expressly prohibits a utility from charging a customer "a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances." In addition, PacifiCorp's tariff requires charging customers consistent with the applicable rate schedule. The Stipulating Parties' proposed the modification because "the largest meter is very often the primary meter for a facility."[68] But the Company's tariff does not allow it to charge based on a rate schedule for the "primary meter." As required by Oregon law and the Company's tariff, the Company bills customers consistent with the applicable rate schedules as set forth in the tariff.[69]

The Stipulating Parties' eligibility proposal for customers taking service at a common billing address inappropriately broadens program participation through aggregation of loads that share a billing address but have no common corporate relationship. To address the

[66] PAC/100, Steward/4.
[67] Stipulating Parties/100, Joint/5.
[68] Exhibit PAC/301, Steward 1 (as corrected by errata filed on May 13, 2014).
[69] If the Commission nonetheless adopts the Stipulating Parties' proposed modification, smaller usage meters should instead be considered based on the voltage for which the meter takes service, and would more appropriately be included with the Schedule 296 Transition Adjustments calculated for Schedule 30.

Stipulating Parties' concerns that affiliated customers may be operating with different trade names, the Company modified the eligibility requirement from corporate *name* to corporate *entity*.[70] With this modification, customers operating with different trade names that are part of the same corporate entity may be eligible for participation in the Five-Year Program.

D. The Commission Should Approve PacifiCorp's Proposed Election Window.

The Stipulating Parties proposed a month-long election window that would span the entire month of November.[71] PacifiCorp proposed a three-week election window, beginning on November 15 of each year, which is the longest period now possible under the Commission's rules and the Company's tariffs. Because indicative transition adjustments are published one week earlier, however, customers will effectively have four weeks to consider an election.[72] The Company cannot extend the election window beyond the end of the first week of December because it needs to ensure that appropriate metering is in place before January 1, and meet all applicable timelines in the Commission's rules and Company tariffs.[73]

E. The Commission Should Approve the Proposal to Reevaluate the Five-Year Program in 2017 and Should Review the Five-Year Program if Section X of the 2010 Protocol is Amended.

The Stipulating Parties proposed 2015 through 2018 as the term for the Five-Year Program, and recommended that the parties reconvene to evaluate the Five-Year Program in

[70] PAC/300, Steward/10.
[71] Stipulating Parties/100, Joint/26.
[72] PAC/300, Steward/10-11.
[73] Specifically, an Energy Service Supplier (ESS) must provide a Direct Access Service Request (DASR) to PacifiCorp at least 13 business days before providing service to the opting-out customer, OAR 860-038-0445(8)-(9) constraining how long the election window may remain open in December. If PacifiCorp does not receive a DASR with sufficient time to facilitate the customer's opt-out election by January 1, PacifiCorp proposes that the opt-out choice revert to the one-year program, Schedule 294, meaning that the customer would be placed on Schedule 220, Standard Offer Supply Service, until the DASR is received, then the customer would move to Schedule 294. The customer could then elect the Five-Year Program during the next election window, at which point the five-year transition would begin, provided that there is still room in the program and the overall cap has not been met.

2017.[74] The Company agrees with this proposal, and additionally recommends review of the program if Section X of the 2010 Protocol is amended. There is no dispute that an amendment to Section X may significantly impact the Five-Year Program.

When the Commission reconvenes the parties to evaluate the Five-Year Program, PacifiCorp recommends that the parties evaluate whether cost-shifting has occurred and develop estimates of cost-shifting. The cost-shifting analysis should consider impacts to other customer classes in Oregon and impacts to other states.

F. The Continued Use of GRID More Accurately Captures the Company's Actual System Response to Departing Load.

Noble Solutions and Wal-Mart recommend that the Company calculate the transition adjustment using only forecast market prices, not both forecast market prices and GRID. Like the BPA transmission credit proposal discussed above, the Commission expressly rejected this exact argument in the 2013 TAM. The Commission agreed with PacifiCorp that it had "addressed the use of GRID to calculate the transition adjustment in previous dockets, and we decline to adopt Noble Solutions' proposed change in this docket."[75] The Commission found that the use of only forecast market prices "may not accurately reflect an actual estimate of direct access costs, because Pacific Power's utility operations are complex and multidimensional."[76]

IV. CONCLUSION

PacifiCorp's Five-Year Program, as set forth in PacifiCorp's Schedule 296 and detailed in PacifiCorp's opening and reply testimony, complies with Order No. 12-500 by providing customers the ability to choose potentially permanent direct access service instead

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[74] Stipulating Parties/100, Joint/26.
[75] Order No. 13-387 at 12.
[76] *Id.* (internal quotations omitted).

of cost-based service. In designing the Five-Year Program, PacifiCorp balanced the interests of departing direct access customers and non-participating customers, as required by the Commission's direct access statutes and rules, through the Consumer Opt-Out charge. This charge requires departing customers to pay reasonable transition costs, measured over a ten-year horizon, and avoids shifting up to $58.9 million in transition costs to other customers. In other respects, the Five-Year Program incorporates the design proposals of the Stipulating Parties and represents a reasonable compromise of the parties' interests. Notably, the Five-Year Program allows participants to return to cost-based service with a four-year notice.

PacifiCorp's Five-Year Program provides an important new option to direct access customers, is tailored to fit PacifiCorp's circumstances, and protects other customers from cost-shifting. For these reasons, PacifiCorp respectfully requests that the Commission approve Schedule 296.

Respectfully submitted this 14th day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 267 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below:

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