Noble Americas Exhibit 100
Witness: Kevin C. Higgins

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

In the Matter of PacifiCorp, dba	**)**	
Pacific Power	**)**	**Docket No. UE-267**
Transition Adjustment, Five-Year	**)**	
Cost of Service Opt-Out	**)**	

Reply Testimony of Kevin C. Higgins

on behalf of

Noble Americas Energy Solutions LLC

September 13, 2013

REPLY TESTIMONY OF KEVIN C. HIGGINS

Introduction

Q. Please state your name and business address.

A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

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

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

Q. On whose behalf are you testifying in this phase of the proceeding?

A. My testimony is being sponsored by Noble Americas Energy Solutions LLC ("Noble Solutions"). Noble Solutions is a retail energy supplier that serves commercial and industrial end-use customers in 16 states, the District of Columbia, and Baja California, Mexico. Noble Solutions directly serves more than 15,000 retail customer sites nationwide, with an aggregate load in excess of 4,500 MW. Noble Solutions' retail customers are located in the service territories of over 55 utilities. Noble Solutions also provides back-office billing and settlement functions for municipal aggregations in California, managing approximately 130,000 customer accounts. In Oregon, Noble Solutions is currently serving customers in Portland General Electric's service territory and PacifiCorp's territory.

Q. Please describe your professional experience and qualifications.

A. My academic background is in economics, and I have completed all coursework and field examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have served on the adjunct faculties of both the University of Utah and Westminster College, where I taught undergraduate and graduate courses in economics. I joined Energy Strategies in 1995, where I assist private and public sector clients in the areas of energy-related economic and policy analysis, including evaluation of electric and gas utility rate matters.

Prior to joining Energy Strategies, I held policy positions in state and local government. From 1983 to 1990, I was economist, then assistant director, for the Utah Energy Office, where I helped develop and implement state energy policy. From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County Commission, where I was responsible for development and implementation of a broad spectrum of public policy at the local government level.

Q. Have you ever testified before this Commission?

A. Yes. I have testified in seventeen prior proceedings in Oregon. These proceedings have included the last six PacifiCorp Transition Adjustment Mechanism ("TAM") cases, UE-264 (2014 TAM), UE-245 (2013 TAM), UE-227 (2012 TAM), UE-216 (2011 TAM), UE-207 (2010 TAM), and UE-199 (2009 TAM); five PacifiCorp general rate cases, UE-263 (2013), UE-210 (2009), UE-179 (2006), UE-170 (2005), and UE-147 (2003); four Portland General Electric ("PGE") general rate cases, UE-262 (2013), UE-215 (2010), UE-197 (2008) and UE-180 (2006); the recent PGE Opt-Out case, UE-236 (2012); and the PGE restructuring proceeding, UE-115 (2001).

Q. Have you participated in any workshop processes sponsored by this Commission?

A. Yes. In 2003, I was an active participant on behalf of Fred Meyer Stores in the collaborative process initiated by the Commission to examine direct access issues in Oregon, UM-1081. More recently, in 2012, I participated in drafting comments on behalf of Noble Solutions as part of UM-1587, the Commission's investigation of issues relating to direct access.

Q. Have you testified before utility regulatory commissions in other states?

A. Yes. I have testified in approximately 165 proceedings on the subjects of utility rates and regulatory policy before state utility regulators in Alaska, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. I have also prepared affidavits that have been filed with the Federal Energy Regulatory Commission.

Overview and Conclusions

Q. What is the purpose of your testimony in this proceeding?

A. My testimony addresses PacifiCorp's proposal to implement a five-year opt-out program for direct access customers pursuant to the Commission's directive in UM-1587.

Q. What are the conclusions and recommendations in your testimony?

A. Eleven years after the statutory implementation of direct access in Oregon, the direct access program in PacifiCorp's service territory remains stymied by program design failure. Shopping participation levels in 2012 were only 1.4% of eligible shopping load, far below the 10.7% participation rate in the PGE territory.[1] With Oregon unemployment above the national average and among the highest in the western United States, Oregon businesses continue to be denied reasonable access to market-priced power in PacifiCorp's territory, despite the proximity to major wholesale trading hubs, and in contravention of the objectives of the Oregon Legislature in enacting direct access legislation in 1999.[2]

The Commission's directive to PacifiCorp to implement a five-year opt-out program presents an opportunity to introduce a meaningful direct access option for PacifiCorp customers for the very first time. Unfortunately, the program design proposed by PacifiCorp is guaranteed to perpetuate program failure. This continued failure would be assured via imposition of an onerous and unreasonable "Consumer Opt Out" charge that would cram charges for twenty years' worth of projected stranded costs into the five-year transition period. The Company's proposal is fundamentally inconsistent with the design parameters of the five-year opt-out program implemented by PGE (and which has been further refined in an unopposed Stipulation filed by parties in UE-262) and fails to comport with the five-year transition required by the Commission's directive.

[1] Source: Oregon Public Utilities Commission, Status Report: Oregon Electric Industry Restructuring (July 2012).
[2] ORS 757.601(1) provides that "[a]ll retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access beginning on March 1, 2002."

PacifiCorp's proposed Consumer Opt Out charge should be rejected in its entirety. Instead, the Commission should adopt a reasonable approach to transition cost recovery that is directly comparable to that proposed for PGE in UE-262. Specifically, transition cost recovery (including recovery of fixed generation costs) should be limited to those costs directly associated with the five-year transition period. In PacifiCorp's case, this corresponds to Schedule 200 (fixed generation charge) and the proposed Schedule 296 Transition Adjustment, as modified per my testimony below.

In addition to making these changes, the Commission should require PacifiCorp to calculate the transition adjustment for the five-year opt-out program using the value of energy freed up by direct access as measured directly from the Company's projection of market prices at the California-Oregon Border ("COB") and Mid-Columbia ("Mid-C") trading hubs rather than through the GRID-based analysis the Company currently performs and which the Company proposes to continue to use. As discussed in my Reply Testimony filed in UE-264, the GRID-based calculation currently used by PacifiCorp places customers who select direct access in an uneconomic position by producing a valuation of energy freed-up by direct access that is materially below the market prices that direct access customers must actually pay. Consequently, PacifiCorp's calculation of the transition adjustment virtually ensures that customers lose money if they select direct access. This roadblock to direct access is entirely distinct from the Company's proposal to thwart direct access by recovering twenty years' worth of projected stranded costs during the five-year transition.

In addition, as I discussed in my testimony filed in UE-264, recognition of a Bonneville Power Administration ("BPA") transmission credit is necessary to address a structural impediment to the pricing of direct access service associated with the need for an Electricity Service Supplier ("ESS") to obtain wheeling from BPA to reach the PacifiCorp service territory from the Mid-C trading hub. This impediment is reasonably mitigated if the calculation of the transition adjustment is adjusted to recognize that the direct access load "frees up" BPA transmission capacity that can then be resold to an ESS to reach PacifiCorp's load. I recommend that the transition adjustment for the five-year opt out program be modified to include a credit for the resale of BPA transmission of $(1.422)/MWh.

PacifiCorp proposes that customers who participate in the five-year opt-out program can never return to cost-of-service rates. The Company's proposal is punitive and unreasonable, and should be rejected. Instead, I recommend adopting the same three-year notice period for return to cost-of-service rates that is proposed for the PGE program as part of the Stipulation in UE-262. A three-year notice strikes a reasonable balance between allowing for contingencies and providing adequate notice to the utility.

PacifiCorp proposes to limit the program to large nonresidential customers who currently receive service under Schedules 47/747 or 48/748, and customers who receive service under Schedules 30/730, 47/747 or 48/748 under a single corporate name with meters that each have more than 200 kilowatts of billing demand (at least once in the previous thirteen months) and which sum to at least 2 megawatts (MW). Noble Solutions does not object, for purposes of this

proceeding, to the eligibility requirements proposed by the Company. Nor does Noble Solutions object, for purposes of this case, to PacifiCorp's proposed overall cap on program participation of 175 average MW ("aMW").

Five-Year Opt-Out Program - Overview

Q. What directive did the Commission give to PacifiCorp regarding implementation of a five-year opt-out program for direct access?

A. In its Order 12-500 issued December 30, 2012 in UM-1587, the Commission directed PacifiCorp as follows:

> As noted by the parties, PGE's five-year opt out program is in PGE's tariff. If the program were in the Commission's rules, it would apply equally to Pacific Power.
>
> Pacific Power has chosen, however, not to offer a program similar to the PGE program. We find no basis to maintain this difference in the programs of the two utilities. Accordingly, we adopt a PGE-type model for Pacific Power. We direct Pacific Power to file a tariff for a five-year opt out program that allows a qualified customer to go to direct access and pay fixed transition charges for the next five years, and then to be no longer subject to transition adjustments – for so long as that customer remains a direct access customer (on the Pacific Power system). [Order at 9]

Q. Are you familiar with the "PGE-type model" the Commission references in its Order?

A. Yes. I participated in negotiating the Stipulation approved by the Commission in 2012 that retained and modified the PGE Opt-Out program in UE-236. I also participated in negotiating the unopposed Stipulation in UE-262 that further modifies the PGE Opt-Out program and which is awaiting Commission review and approval.

Q. What are the salient features of the PGE-type opt-out model?

A. The PGE-type model offers qualifying customers a *genuine* opportunity to transition to market prices over a five-year period. I consider the opportunity to be genuine because the terms of participation strike a reasonable balance between allowing customers to move to market pricing as envisioned in the Oregon direct access statute, while still requiring shopping customers to pay an equitable share of the utility's fixed generation costs during the transition period. Specifically, in the PGE program, participating customers are required to pay transition costs that correspond directly to the utility's generation costs during the five-year transition period. Under the current PGE program (approved in UE-236), the recovery of utility fixed generation costs from shopping customers is determined by the level of fixed cost recovery in rates at the *start* of the five-year period. As modified in the UE-262 Stipulation, the recovery of utility fixed generation costs from shopping customers is proposed to be determined by the level of fixed cost recovery in rates for *each year* of the five-year transition period.

Other key features of the PGE-type program are that the program participation is limited to customers with individual site billing demands of 250 kWa or greater and aggregate billing demand of 1000 kWa or greater. In addition, there is an overall cap on program participation of 300 MW. Moreover, customers who wish to return to cost-of-service pricing must provide three-year notice, as proposed in the UE-262 Stipulation (up from two-year notice under the current program).

Q. In your opinion, has PacifiCorp filed a tariff for a PGE-type opt-out program as instructed by the Commission?

A. No. While the PacifiCorp proposal adopts some of the features of the PGE program, it is wholly unlike the PGE program in a fundamental respect: whereas the PGE program charges shopping customers for the fixed cost of utility generation that is otherwise recovered from cost-of-service customers during the five-year transition period, the PacifiCorp proposal would bring forward twenty years' worth of fixed generation costs that would be charged to the participating customers during the five-year transition period. Substantively, the PacifiCorp proposal is not a five-year transition as required by the Commission, but a twenty-year transition that is recovered in five years. Indeed, by recovering twenty years' worth of generation fixed costs in five years, the PacifiCorp proposal is actually more burdensome to a participant than a twenty-year transition would be (because in the latter case the fixed cost recovery would at least be spread out over the twenty-year period). In short, the PGE program carefully weighs the balance between market access and generation fixed cost recovery and has proven to be a workable compromise, whereas the PacifiCorp program is purposefully designed to fail. As such, it should be rejected as non-responsive to the Commission's Order in UM-1587 and should be modified by the Commission to be genuinely reflective of a PGE-type program as discussed in my testimony below.

Transition Cost Recovery

Q. Please describe the mechanism proposed by PacifiCorp to recover transition costs from customers that participate in the five-year opt-out program.

A. As described in the direct testimony of PacifiCorp witnesses Joelle R. Steward and Gregory N. Duvall, PacifiCorp's proposed transition cost recovery for the five year opt-out consists of three components: (1) Schedule 200, Base Supply Service, which provides for recovery of fixed generation costs identical to those charged to cost-of-service customers; (2) Schedule 296 – Transition Adjustments, which is analogous to the transition adjustment Schedule 294 that is charged to direct access customers in the annual shopping program; and (3) Schedule 296 – Consumer Opt-Out Charge, which would charge direct access customers for the present value of projected Schedule 200 costs for Year 6 through Year 20, offset by the value of the freed-up power (in excess of projected average net power costs for the corresponding amount of power) made available by the departing customers for Years 6 through 20. I address each of these components in turn.

Schedule 200

Q. What is Schedule 200?

A. Schedule 200 recovers the Company's fixed generation costs from its Oregon customers. Schedule 200 is paid by both cost-of-service and direct access customers.

Q. How long would a participating customer be subject to Schedule 200 according to PacifiCorp's proposal?

A. A participating customer would be subject to Schedule 200 charges for the duration of the five-year transition period.

Q. Do you have any objections to this component of PacifiCorp's transition cost recovery proposal?

A. No. The Schedule 200 charge makes a participating shopper fully responsible for recovery of PacifiCorp's fixed generation costs during the transition period – even though the customer is buying its generation service from another supplier. While this provision does create an obvious obstacle to shopping, it is consistent with the notion of providing for a five-year transition to market pricing. The notion here is that PacifiCorp presumably has been planning to serve this customer prior to the customer's enrollment in the opt-out program. The five-year transition provides PacifiCorp extended notice that the Company need no longer plan to provide generation service to this customer and should adjust its future generation procurement accordingly. While a reasonable argument could be made that the participant's Schedule 200 obligation should be *phased out* during the five-year transition, the levying of full Schedule 200 charges for the five-year period errs on the side of ensuring that non-participants are not adversely impacted by the program.

Q. Is the recovery of Schedule 200 costs analogous to what occurs in PGE's five-year opt-out program?

A. Yes. It is directly analogous to the design of PGE's five-year opt-out program, as modified in the Stipulation submitted in UE-262 described in the previous section of my testimony. The only difference between the two is superficial: in the PGE design, the recovery of fixed generation costs is

incorporated into the transition adjustment calculation, whereas in the PacifiCorp design, Schedule 200 is a standalone charge.

Schedule 296 – Transition Adjustment

Q. How long would a customer be subject to the Schedule 296 Transition Adjustment?

A. As is the case with Schedule 200, the Schedule 296 Transition Adjustment would be levied for the five-year duration of the transition period.

Q. Do you have any objections to this component of PacifiCorp's transition cost recovery proposal?

A. I have no objections *conceptually* to this component of PacifiCorp's transition cost recovery proposal. As a conceptual matter, the Schedule 296 Transition Adjustment performs the same role in the five-year opt-out as the Schedule 294 Transition Adjustment performs in the annual direct access program. Both transition adjustments are intended to represent the difference between net power costs in rates and the market value of freed-up energy. Schedule 294 is simply applied to a one-year period, whereas Schedule 296 is applied to a five-year period. Taken in combination with Schedule 200, the Schedule 296 Transition Adjustment, if calculated properly, would ensure that a shopping customer pays a net transition charge that is equal to the difference between cost-of-service rates and market prices. *Conceptually*, this treatment is consistent with the requirements of Ongoing Valuation as prescribed in OAR 860-038-0140. According to OAR 860-038-0005(42):

Ongoing Valuation means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

However, as I have pointed out in my Reply Testimony in UE-264, the *actual calculation* of the Schedule 294 Transition Adjustment by PacifiCorp is problematic because it does not adhere strictly to the definition of Ongoing Valuation articulated in According to OAR 860-038-0005(42). This same problem exists with the proposed Schedule 296 Transition Adjustment. Ongoing Valuation requires that transition costs or benefits for a generation asset be determined by comparing the value of the asset output at projected *market prices* to an estimate of the revenue requirement of the asset. In contrast, PacifiCorp uses the GRID model to calculate transition costs. The Company's use of the GRID model for this purpose does not produce a valuation based exclusively on projected market prices as required in the OAR, but a valuation that is based on a blend of market prices and thermal generation costs. Because the incremental cost of PacifiCorp's thermal generation is typically less than market prices, blending market prices and the Company's thermal costs invariably produces a lower valuation of freed-up energy than would occur if market prices alone were used for this purpose. And because the value of freed-up energy is a credit against the cost-of-service price for direct access customers in the calculation of Schedule 296, using a lower price for this purpose increases the transition adjustment charge (or alternatively, reduces the transition adjustment credit), all other things being equal. As shopping customers must pay market prices for power, if the value of freed-up energy used in the calculation of the transition

adjustment is less than the actual market price direct access customers pay, it creates a negative value proposition for shoppers rather than the break-even proposition inherent in the logic of Ongoing Valuation. This results in an unwarranted barrier to direct access service.

In the context of the five-year opt-out, the imposition of an unwarranted negative value proposition though the Schedule 296 Transition Adjustment is unreasonable and will unduly thwart participation in the program.

Q. Do you have other concerns regarding the Company's calculation of the proposed Schedule 296 Transition Adjustment?

A. Yes. As currently implemented, the calculation of the Schedule 294 Transition Adjustment includes an adjustment that partially mitigates the negative impact on shoppers of blending market prices with the cost of thermal energy for the purpose of determining the market value of freed-up energy.[3] The adjustment dates back to UE-199 (2009 TAM). In that case, the Commission approved a Stipulation in Order No. 08-543 which provides that:

> …monthly thermal generation that is backed down for assumed direct access load will be priced at the simple monthly average of the COB price, the Mid-Columbia price, and the avoided cost of thermal generation as determined by GRID. The monthly COB and Mid-Columbia prices will be applied to the heavy load hours or light load hours separately.

This provision been applied continuously since its initial adoption in UE-199. PacifiCorp indicates that it "has voluntarily continued to use the non-precedential stipulated method and reserves the right to challenge it in the future."[4] However,

[3] The adjustment is also made in the calculation of Schedule 295, which is applicable to the three-year opt-out program.
[4] UE-264. PacifiCorp Response to Noble Solutions Data Request 8(c). Reproduced in Exhibit Noble Solutions/101.

whereas this adjustment partially mitigates the negative impact of using GRID to calculate the Schedule 294 Transition Adjustment, PacifiCorp does not include this mitigating adjustment in the calculation of the proposed Schedule 296 Transition Adjustment. As I explained in my reply testimony in UE-264, the use of GRID to calculate the Schedule 294 Transition Adjustment already produces unreasonably biased results; by eliminating the partial mitigation employed in calculating the Schedule 294 Transition Adjustment, the Schedule 296 Transition Adjustment would produce even *more unreasonably* biased results.

Q. What is your recommended remedy for this problem?

A. Consistent with my proposal in UE-264, to remedy this problem, I recommend that the Commission require PacifiCorp to calculate the Schedule 296 Transition Adjustment using the value of energy freed up by direct access as measured directly from the Company's projection of market prices at the COB and Mid-C trading hubs rather than through the GRID-based analysis the Company currently uses for the Schedules 294 and 295 Transition Adjustments. For purposes of this calculation, I recommend using a 50/50 blend of COB and Mid-C prices.

Q. Is there a precedent in Oregon for projecting market prices directly in the calculation of the transition adjustment rather than running the analysis through a complex net power cost model?

A. Yes. That is exactly the approach used by PGE in determining its transition adjustment. I regularly review PGE's transition adjustment calculation for Noble Solutions and have found no problems with it over the years. PGE's

approach is straightforward and produces a reasonable, unbiased transition adjustment that is consistent with the intent of the Ongoing Valuation approach.

Q. Are there other aspects of the Schedule 296 Transition Adjustment that need to be addressed if the five-year opt-out program is to be structured reasonably and is to have an opportunity to be successful?

A. Yes. It is necessary to incorporate a BPA PTP transmission credit.

Q. What is the basis for recognizing a BPA PTP transmission credit?

A. As I discussed in UE-264, recognition of a BPA PTP transmission credit is necessary to address a structural impediment to the pricing of direct access service associated with the need for an ESS to obtain wheeling from BPA to reach the PacifiCorp service territory from the Mid-C trading hub. This impediment is reasonably mitigated if the calculation of the Schedule 296 Transition Adjustment is adjusted to recognize that the direct access load "frees up" BPA transmission capacity that can then be resold to an ESS to reach PacifiCorp's load.

A BPA transmission credit based on this concept is included in the calculation of transition adjustments for the PGE service territory for both the annual shopping program and the long-term opt-out program.

Q. Do direct access customers pay for PacifiCorp's BPA transmission in the rates they pay the Company?

A. Yes. The cost of PacifiCorp's BPA transmission is included in net power costs and therefore is paid by direct access customers through the transition adjustment, through either Schedule 294, 295, or the proposed Schedule 296. Despite paying PacifiCorp for this transmission, direct access customers are not

permitted to use this transmission for delivery to their loads without separately (re)purchasing it through their ESS, thus paying for it twice. Yet PacifiCorp refuses to recognize any type of BPA transmission credit in the calculation of the transition adjustment.

Q. Has a BPA credit been included in previous TAMs?

A. Yes. The Stipulation in UE-216, approved in Order No. 10-363, provided for a BPA transmission credit for Schedule 747 and 748 (direct access) customers of $(0.50)/MWh to reflect the potential value associated with reselling BPA PTP wheeling rights from Mid-C to the Company's Oregon Service territory that are freed up as a result of customers choosing direct access. The Stipulation in UE-227, approved in Order No. 11-435, increased the BPA transmission credit to $(0.75)/MWh. Yet in UE-245, PacifiCorp refused to continue this credit and the Commission did not require the Company to do so.

Q. What is your recommended course of action?

A. Consistent with my proposal in UE-264, I recommend that the Schedule 296 transition adjustment calculations be modified to include a credit for the resale of BPA transmission of $(1.422)/MWh. Even at $(1.422)/MWh, the valuation is conservative because it is calculated using 80 percent of the BPA PTP rate of $1.298/kW-month at a 100 percent load factor, the latter representing the minimum per-MWh valuation for a product that is originally priced on a per kW-month basis. This credit is also only about half of the BPA PTP rate when measured on an average load factor basis. Moreover, the PTP rate corresponds to a product that PacifiCorp is free to resell when customers move to direct access.

This change would mitigate the structural impediment to the pricing of direct access service by treating the BPA wheeling costs on a comparable basis for direct access and cost-of-service customers.

Q. Please summarize your recommendations regarding PacifiCorp's proposal for the Schedule 296 Transition Adjustment.

A. I have no objections *conceptually* to this component of PacifiCorp's transition cost recovery proposal. However, the Company's proposed calculation methodology using GRID does not comport with the requirement of Ongoing Valuation that transition costs or benefits for a generation asset be determined by comparing the value of the asset output at projected *market prices* to an estimate of the revenue requirement of the asset. Rather, in determining the "market" value of power freed up by direct access, PacifiCorp blends in the lower cost of thermal generation, thus creating – by design – a negative value proposition for shopping customers. Making matters worse, the proposed Schedule 296 Transition Adjustment fails to incorporate the adjustments that partially mitigate this negative value proposition in the calculation of Schedules 294 and 295. Finally, PacifiCorp refuses to recognize a BPA PTP transmission credit for direct access customers, despite the fact that these customers already pay PacifiCorp for this product and yet must (re)purchase it to have their loads served by their ESS – and despite the fact that PacifiCorp is free to resell this transmission capacity when the direct access customers depart.

To remedy these shortcomings I recommend that:

- The Commission require PacifiCorp to calculate the Schedule 296 Transition Adjustment using the value of energy freed up by direct access as measured directly from the Company's projection of market prices at the COB and Mid-C trading hubs rather than through the GRID-based analysis preferred by the Company; and
- The Schedule 296 transition adjustment calculations be modified to include a credit for the resale of BPA PTP transmission of $(1.422)/MWh.

Q. What are the likely consequences if the Commission does not require PacifiCorp to modify the calculation of the Schedule 296 Transition Adjustment from a negative economic proposition to more of a "break even" economic proposition as you are recommending?

A. If PacifiCorp is successful in continuing to make the transition adjustment(s) a negative value proposition for prospective shoppers, then the Company is likely to continue its decade-long success in thwarting customer choice and the development of direct access in its service territory, notwithstanding any efforts by the Commission to craft a new five-year opt-out program. Oregon direct access will then continue to be subject to two *de facto* standards: one for PGE's customers, for whom PGE has implemented a five-year opt-out program that is enjoying modest success, and another standard for PacifiCorp's customers, whose direct access programs have been an abject failure, as measured by customer participation rates, for eleven years and counting.

Schedule 296 – Consumer Opt-Out Charge

Q. What is the proposed Consumer Opt-Out Charge?

A. As I discussed above, the Consumer Opt-Out Charge would charge participating customers for the present value of Schedule 200 costs for Year 6 through Year 20, escalated at the projected inflation rate, offset by the present value of the freed-up power (in excess of projected average net power costs for the corresponding amount of power) made available by the departing customers for Year 6 through Year 20. This present value amount would be converted to a five-year nominal levelized payment stream using a discount rate equal to PacifiCorp's weighted average cost of capital. In other words, in *addition* to the contemporaneous recovery of Schedule 200 and Transition Adjustments over the five year-transition period, PacifiCorp is proposing that program participants pay for Company-alleged "stranded costs" attributed to Years 6 through 20 (during that same five-year period).

Q. Is the proposed Consumer Opt-Out Charge reasonable?

A. No. The proposal attempts to extract fixed generation cost recovery from shopping customers that is projected for twenty years *after* these customers have stopped taking generation service from PacifiCorp. This onerous provision is a showstopper and is clearly intended to ensure that customers in PacifiCorp's territory remain economically blocked from accessing market energy irrespective of Oregon statutory requirements and irrespective of the Commission's decision to adopt a PGE-type opt-out model for PacifiCorp.

Q. Do you contend that PacifiCorp has not filed a PGE-type model as the Commission directed?

A. Yes, that is my contention. The first two transition adjustment elements proposed by PacifiCorp – Schedule 200 Charges and Schedule 296 Transition Adjustment – bear a direct correspondence (at least conceptually) to the key transition adjustment elements in the PGE program (the calculation flaws in the PacifiCorp proposal notwithstanding). In fact, these two components represent the *totality* of the PGE transition adjustment for its five-year opt-out program. In contrast, the Consumer Opt-Out Charge proposed by PacifiCorp has no analogue in the PGE program. The inclusion of this single material item makes the PacifiCorp proposal radically different from a PGE-type model. In substance, the PacifiCorp proposal is a twenty-year transition adjustment scheme that is crammed into a five-year package.

The Commission's Order allows PacifiCorp to "tailor its program to fit its circumstances."[5] However, there is nothing special about PacifiCorp's circumstances that warrant the imposition of a twenty-year transition charge rather than the five-year transition charge adopted in the PGE model.

Q. Is the PacifiCorp approach necessary to protect other customers from cost-shifting?

A. No. During the five-year transition, shopping customers would be required to compensate PacifiCorp fully for fixed generation costs despite purchasing their power supply from an ESS. This five-year transition provides

[5] Order 12-500 at 9.

more than ample notice to PacifiCorp that the Company need no longer plan to serve this customer's load.

Moreover, the 175 MW of load that would be permitted to participate in the program (as proposed by PacifiCorp) is but a small proportion of PacifiCorp's 7,000+ aMW system retail load, and will easily be replaced by system load growth, which is projected to be 512 aMW from 2013 to 2020,[6] the latter being the first year in which program participants would have fully transitioned to the market.

Q. Is it reasonable to consider opt-out program load as being replaced by system load growth in light of inter-jurisdictional cost allocation practices?

A. Yes. As part of the Multi-State Process ("MSP"), five of the six PacifiCorp state jurisdictions have agreed to use the 2010 Protocol to allocate system costs. The 2010 Protocol does contain an obscure provision that effectively "traps" generation costs in Oregon in the event that Oregon customers depart for direct access. This provision (which actually dates from the Revised Protocol filed in 2004) is outdated and needs to be modified. The 2010 Protocol runs through the end of 2016, and Oregon Staff has already informed the other MSP participants that this issue will be on the table when discussions on a post-2016 Protocol get underway. Significantly, the transition period for a five year opt-out program, if adopted effective 2015, would run through 2019. This means that the implications of an Oregon opt-out program for inter-jurisdictional cost

[6] Source: Derived from PacifiCorp 2013 IRP, Appendix A, Table A.1. See Exhibit Noble Solutions/102.

allocation would not be relevant until 2020. The upshot here is that there is plenty of time to fix the MSP provision in question.

The resolution of transition costs in this docket should not be hamstrung by an outdated provision in an MSP agreement that expires in 2016. Quite the contrary, adopting a genuine five-year transition period, as the Commission has for PGE, will provide PacifiCorp with the incentive to resolve the inter-jurisdictional cost allocation issue fairly for any post-2016 protocol.

Q. Why do you believe that the direct access provision in the 2010 Protocol is outdated?

A. Section X of the 2010 Protocol (reproduced in Exhibit Noble Solutions/103) effectively requires that Oregon continue to be allocated the generation (and transmission) costs associated with direct access load even after customers have elected to permanently leave the PacifiCorp generation system. While this provision appears unfair to Oregon on its face, a full reading of this section strongly suggests that it was originally intended to allow Oregon to retain the allocation of load responsibility for the purpose of permitting Oregon to transfer freed-up resources among Oregon customer classes. This section also provides a framework for valuing a permanent sale of freed-up resources.

Such transfers of freed-up resources among customer classes and permanent sales of freed-up resources appear to be of little interest today, and in any case, are not an integral part of the five-year opt-out proposal. Consequently, it is reasonable to expect that Oregon opt-out load should be treated similarly to other departing load in future MSP protocols. For example, according to the

2010 Protocol, when industrial load shuts down or relocates outside its original jurisdiction, the costs allocated to the affected jurisdiction (appropriately) reflect the reduced load. Similarly, when states implement energy efficiency programs, their respective loads are adjusted for inter-jurisdictional cost allocation purposes to reflect the reduced demand levels. Even when a customer with generating capability switches from selling power to PacifiCorp to displacing its own retail purchases from the Company, the load in the affected jurisdiction is reduced to reflect this change. Only direct access is singled out in manner that traps the cost of the departing load in its state of origin. Under current expectations, this asymmetrical provision is unreasonable going forward and should be changed in any post-2016 MSP protocol. It should not be a constraint that affects the determination of the appropriate parameters for a five-year opt-out program in this case.

Eligible Load

Q. What eligibility criteria has PacifiCorp proposed for the five-year opt-out program?

A. As explained by Ms. Steward, the Company proposes to make the five-year program available to: (1) large nonresidential customers who currently receive service under Schedules 47/747 or 48/748; and (2) customers who receive service under Schedules 30/730, 47/747 or 48/748 under a single corporate name with meters that each have more than 200 kilowatts of billing demand at least once in the previous 13 months and which total to at least 2 MW.

Q. Are these eligibility criteria consistent with the PGE program?

A. They are similar. The minimum meter size (for aggregation) proposed by PacifiCorp of 200 kW is slightly less than the minimum size of 250 kW employed in the PGE program. PacifiCorp's proposed threshold is aligned with the eligibility criteria for service under Schedules 30/730 and thus is tailored to reasonably reflect the Company's circumstances. However, PacifiCorp's proposed minimum aggregation threshold of 2 MW is double that of the PGE program. While it would be preferable for the minimum aggregation threshold of the PacifiCorp program also to be 1 MW, Noble Solutions is not objecting to PacifiCorp's proposed 2-MW threshold in this proceeding. It is my understanding, based on data responses provided by the Company, that the pool of eligible customers using a 2-MW threshold is similar to the pool that is eligible using a 1-MW threshold.[7] Therefore, for purposes of this proceeding, Noble Solutions prefers to remove this issue from contention and focus on the critical issues pertaining to the recovery of transition costs discussed in the previous section of my testimony.

Q. Has PacifiCorp proposed an overall cap on program participation?

A. Yes. PacifiCorp has proposed an overall cap of 175 aMW.

Q. Do you have any objections to this proposed cap?

A. For purposes of this proceeding, Noble Solutions does not object to the proposed cap of 175 aMW. It is my understanding, based on data responses provided by the Company, that the proposed cap of 175 aMW represents 51%

eligible load,[8] therefore, it compares favorably (on a proportionate basis) to the PGE cap of 300 aMW and comports with the Commission's directive to adopt a PGE-type model.

Return to Cost-of-Service Rates

Q. What has PacifiCorp proposed with respect to return to cost-of-service rates?

A. PacifiCorp has proposed that a customer who participates in the program can never return to cost-of-service rates.

Q. Do you believe that PacifiCorp's proposal is reasonable?

A. No. While the intent of the opt-out program is for the participant's movement to market to be permanent, it is reasonable to allow for contingencies that may require the customer, at some future date, to seek to return to cost-of-service rates. In doing so, it is necessary to strike a balance between allowing for such a contingency on the one hand, and providing for adequate notice to the utility on the other hand. "NEVER" fails to strike such a balance. PacifiCorp's position is particularly egregious given its transition cost proposal: not only would a participant have fully paid for transition costs during the five-year transition period, the customer would also have *prepaid* for fixed generation costs for Years 6 through 20. In light of the Company's proposal for *über*-recovery of

[7] According to PacifiCorp Response to NAES DR 1.10, reproduced in Noble Exhibit/104, 343 aMW of load would be eligible to participate if the aggregation threshold were set at 2 MW and 357 aMW of load would be eligible to participate if the aggregation threshold were set at 1 MW.
[8] Id.

transition costs, its position that a participant can never return to cost-of-service rates is fundamentally unreasonable.

Q. What is your recommendation regarding return to cost-of-service?

A. I recommend adopting the same three-year notice period that is proposed for the PGE program as part of the Stipulation in UE-262. The PGE Stipulation proposes to increase the notice period from two years, which is currently in effect. A three-year notice strikes a reasonable balance between allowing for unforeseen customer contingencies and providing adequate notice to the utility for generation procurement planning purposes.

Q. Have any of the participants in the PGE five-year opt-out program requested to return to cost-of-service rates?

A. It is my understanding that no customers have made such a request to date.

Q. Does this conclude your reply testimony?

A. Yes, it does.

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

In the Matter of PacifiCorp, dba	**)**	
Pacific Power	**)**	**Docket No. UE 267**
Transition Adjustment, Five Year	**)**	
Cost of Service Opt-Out	**)**	

Noble Americas Energy Solutions LLC

Exhibit 101

PacifiCorp's Response to Noble Americas Energy

Solutions LLC's Data Request 8, part (c), Docket No.

UE-264

Sept 13, 2013

UE-264/PacifiCorp
May 13, 2013
NAES Data Request 8

NAES Data Request 8

Section 15 of the Stipulation dated September 4, 2008 in UE-199 states:

> The Parties agree to modify the calculation of the Transition Adjustment for direct access in two ways: (1) the Company will relax the market cap limitation in the GRID model by 15 MW at Mid-Columba and 10 MW at COB to determine the value of the freed up power; and (2) any remaining monthly thermal generation that is backed down for assumed direct access load will be priced at the simple monthly average of the COB price, the Mid-Columbia price, and the avoided cost of thermal generation as determined by GRID. The monthly COB and Mid-Columbia prices will be applied to the heavy load hours or light load hours separately.

(a) Please confirm that PacifiCorp has used the calculation described in (2) above in calculating the Sample Schedule 294 Transition Adjustments for Schedules 30 and 48 filed in UE-264.
(b) Please confirm that PacifiCorp has not used the calculation described in (1) above in calculating the Sample Schedule 294 Transition Adjustments for Schedules 30 and 48 filed in UE-264.
(c) Please explain PacifiCorp's reasoning for continuing to utilize one portion of Section 15 from the Stipulation in UE-199, but not the other.

Response to NAES Data Request 8

(a) Please refer to the Company's response to NAES Data Request 7.

(b) Confirmed.

(c) No rationale is necessary because the stipulation in docket UE 199 specifies that it does not have precedential value in future proceedings. As stated in Public Utility Commission of Oregon (Commission) Order No. 12-409 in Oregon docket UE 245 (the Company's 2013 transition adjustment mechanism), the referenced market cap change was accepted as part of the stipulation without precedential value. Order No. 12-409 specifically addressed the modeling of market caps for the transition adjustment calculations. The Company's modeling in this docket complies with the Commission's Order No. 12-409. The thermal generation back down valuation in the transition adjustment calculation was not contested in docket UE 245, nor has it been addressed in this docket or in a Commission order. The Company has voluntarily continued to use the non- precedential stipulated method and reserves the right to challenge it in the future.

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

In the Matter of PacifiCorp, dba	**)**	
Pacific Power	**)**	**Docket No. UE 267**
Transition Adjustment, Five Year	**)**	
Cost of Service Opt-Out	**)**	

Noble Americas Energy Solutions LLC

Exhibit 102

PacifiCorp–2013 IRP, Appendix A–Load Forecast, Table A.1

Noble Solutions Table 1 – 2013 IRP System Load Forecast in aMW

Sept 13, 2013

Table A.1 - Forecasted Annual Load Growth, 2013 through 2022 (Megawatt-hours)

Year	Total	OR	WA	CA	UT	WY	ID	SE-ID
2013	61,556,386	14,877,800	4,453,504	903,816	25,153,750	10,190,043	3,740,820	2,236,653
2014	62,698,447	15,150,179	4,479,048	905,134	25,718,951	10,408,489	3,779,427	2,257,219
2015	63,527,998	15,371,114	4,510,405	908,752	26,010,382	10,626,524	3,819,927	2,280,894
2016	63,431,505	15,638,182	4,561,495	916,004	26,478,252	10,856,135	3,868,348	1,113,089
2017	63,246,311	15,821,900	4,587,861	918,237	27,010,019	11,012,432	3,895,861	
2018	64,219,328	16,003,367	4,630,207	923,755	27,542,259	11,188,259	3,931,482	
2019	65,183,187	16,181,469	4,672,594	928,941	28,073,752	11,360,999	3,965,432	
2020	66,266,672	16,377,833	4,722,544	935,083	28,622,538	11,563,805	4,004,870	
2021	66,917,769	16,491,188	4,746,086	935,580	29,021,169	11,698,580	4,025,165	
2022	67,814,244	16,652,789	4,784,841	938,914	29,514,597	11,866,488	4,056,614	
Average Annual Growth Rate for 2013-2022								
2013-2022	**1.08%**	**1.26%**	**0.80%**	**0.42%**	**1.79%**	**1.71%**	**0.90%**	

Noble Solutions Table 1 - System Load From Table A.1 (above) Converted to aMW*

Year	System Load (aMW)
2013	7,027
2014	7,157
2015	7,252
2016	7,221
2017	7,220
2018	7,331
2019	7,441
2020	7,539
2021	7,639
2022	7,741

* Total Megawatt-hours are divided by the number of hours in each year to arrive at aMW.

BEFORE THE PUBLIC UTILITY COMMISSION
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In the Matter of PacifiCorp, dba	**)**	
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Noble Americas Energy Solutions LLC

Exhibit 103

Excerpt from 2010 Protocol (Section X)

Sept 13, 2013

X. Implementation of Direct Access Programs

A. Allocation of Costs and Benefits of Freed-Up Resources

1. Loads lost to Direct Access – Where the Company is required to continue to plan for the load of Direct Access Customers, such load will be included in Load-Based Dynamic Allocation Factors for all Resources.
2. Loads of customers permanently choosing Direct Access or permanently opting out of New Resources – Where the Company is no longer required to plan for the load of customers who permanently choose direct access or permanently opt out of New Resources, such loads will be included in Load-Based Dynamic Allocation Factors for all Existing Resources but will not be included in Load-Based Dynamic Allocation Factors for New Resources acquired after the election to permanently choose Direct Access or opt out of New Resources. An effective date for this process will be established at such time as customers permanently choose Direct Access or opt out, and this process will be implemented under the guidance of the MSP Standing Committee.
3. In each State with Direct Access Customers, an additional step will take place for ratemaking purposes to establish a value or cost (which could include a transfer of Freed-Up Resources between customer classes within a State) resulting from the departure of the departing load; other States do not implement the second step.

B. Freed-Up Resource Sale Approval

Any proposed sale of a Freed-Up Resource for purposes of calculating transition charges or credits will be subject to applicable regulatory review and approval based upon a "no-harm" standard. States implementing Direct Access Programs that involve the sale of Freed-Up Resources will endeavor to propose a method for allocating the gain or loss on a sale to Direct Access Customers in a manner that satisfies the "no-harm" standard in respect to customers in the other States. The parties agree that they will not advocate a sale of Freed-Up Resources to be consummated if the proposed allocation of the gain or loss from the sale would cause the Company to distribute more than the total gain on a sale or recover less than the full amount of the total loss on a sale.

C. Allocation of Revenues and Costs from Direct Access Purchases and Sales

Revenues and costs from Direct Access Purchases and Sales will be assigned situs to the State where the Direct Access Customers are located and will not be included in Net Power Costs.

XI. Loss or Increase in Load

Any loss or increase in retail load occurring as a result of condemnation or municipalization, sale or acquisition of new service territory which involves less than five percent of system load, realignment of service territories, changes in economic conditions or gain or loss of large customers will be reflected in changes in Load-Based Dynamic Allocation Factors. The allocation of costs and benefits arising from merger, sale and acquisition transactions proposed by the Company involving more than five percent of system load will be dealt with on a case-by-case basis in the course of Commission approval proceedings.

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

In the Matter of PacifiCorp, dba	**)**	
Pacific Power	**)**	**Docket No. UE 267**
Transition Adjustment, Five Year	**)**	
Cost of Service Opt-Out	**)**	

Noble Americas Energy Solutions LLC

Exhibit 104

PacifiCorp's Response to Noble Americas Energy

Solutions LLC's Data Request 1.10

Sept 13, 2013

UE-267/PacifiCorp
March 26, 2013
NAES Data Request 1.10

NAES Data Request 1.10

Reference Advice No. 13-004 at 2, discussing "Total Eligible Load."

(a) Please identify the amount of total qualifying load under the Company's proposal expressed in both MWa and MWH.
(b) What is the amount of total qualifying load if the minimum aggregate load under a single corporate name is reduced from 2 MW (PacifiCorp proposal) to 1 MW?
(c) What is the amount of total qualifying load if the minimum aggregate load under a single corporate name is reduced from 2 MW (PacifiCorp proposal) to 1 MW and the minimum billing demand per meter is increased from 200 kW to 250 kW?

Response to NAES Data Request 1.10

(a) The amount of total qualifying load under the Company's proposal is 3,006,426 MWh, or 343 aMW, based on usage in 2012.

(b) The amount of total qualifying load if the minimum aggregate load under a single corporate name is reduced from 2 MW to 1 MW is 3,127,130 MWh, or 357 aMW, based on usage in 2012.

(c) The Company objects to this request as requesting information not maintained in the ordinary course of business or as requiring a special study. Without waiving these objections, the Company responds as follows:

This data is not readily available. The Company does not have a rate schedule with a minimum registered usage of 250 kW.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of September, 2013, a true and correct copy of the within and foregoing **REPLY TESTIMONY OF KEVIN C. HIGGINS ON BEHALF OF NOBLE AMERICAS ENERGY SOLUTIONS LLC,** was served as follows:

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Signed Nina M. Curtis
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