

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of	)	UE 296
	)	
PacifiCorp, dba Pacific Power, 2016 Transition	)	POSITION STATEMENT OF NOBLE
Adjustment Mechanism	)	AMERICAS ENERGY SOLUTIONS
	)	LLC

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Pursuant to the Administrative Law Judge (“ALJ”) Sarah Rowe’s Ruling dated August 21, 2015 (“Ruling”), Noble Americas Energy Solutions LLC (“Noble Solutions”) respectfully files this Position Statement on admission of hearing exhibits and requests for live rebuttal testimony at the hearing scheduled for August 25, 2015 in this matter. Noble Solutions has attempted to confer with the other parties. Because all parties do not agree on all issues, Noble Solutions sets forth its position below.

**1. Proposed Hearing Exhibits**

Noble Solutions has no objection to admission of Industrial Customers of Northwest Utilities (“ICNU”) proposed cross-examination exhibits (ICNU/300-310), and no objection to admission of PacifiCorp’s proposed cross examination exhibits (PAC/900-901).<sup>1</sup>

Additionally, PacifiCorp indicated to Noble Solutions it will not object to admission of Noble Solutions’ proposed hearing exhibits filed on August 18, 2015, and no other party has expressed any objection in response to Noble Solutions’ inquiries. As pre-filed, Noble Solutions had not numbered those exhibits for admission because it was not certain which exhibits would be used and admitted. In light of the lack of objection, Noble Solutions intends to ask for

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<sup>1</sup> Noble Solutions is not aware of all parties’ positions on admission of ICNU’s and PacifiCorp’s exhibits and makes no representation on that point.

admission of its pre-filed hearing exhibits at the start of the hearing, and Noble Solutions will provide appropriately numbered copies for the parties, ALJ Rowe, and the Commissioners.

## **2. Live Rebuttal Testimony**

A dispute remains regarding live rebuttal testimony. Noble Solutions understands that PacifiCorp has now decided that it will not offer live reply testimony, and that it opposes Noble Solutions' proposed live rebuttal testimony. Noble Solutions maintains that it should be allowed to present ten minutes of live rebuttal testimony from Kevin C. Higgins.

As the Ruling indicates, PacifiCorp's filings last week suggested that "it may seek to present live supplemental reply testimony." Ruling at 1. Now that Noble Solutions has proposed to present live testimony in response to a late-raised issue, PacifiCorp opposes live testimony. PacifiCorp's position is contradictory. Live testimony is warranted for the reasons set forth in Noble Solutions' Revised Cross Examination Statement filed on August 21, 2015, and Noble Solutions hereby incorporates that filing by reference, as supplemented below.

PacifiCorp may suggest that a confidential discovery production that counsel for Noble Solutions received this morning is a substitute for live reply testimony.<sup>2</sup> However, PacifiCorp's last-minute discovery production is no substitute for Noble Solutions' right to present its witness's testimony on the issue raised for the first time in PacifiCorp's reply testimony

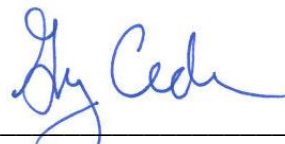
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<sup>2</sup> Noble Solutions served the discovery request at issue (Noble Solutions Request 5.27) on August 10, 2015, and specifically noted on the request that it was due in six calendar days per the procedural ruling in this docket dated May 1, 2015. PacifiCorp served partial responses to Noble Solutions late in the afternoon of Monday, August 17, 2015, and indicated it would supplement its response to subpart (c). See *Noble Solutions' Schedule of Exhibits*, at Proposed Exhibit (1) (containing PacifiCorp's incomplete Response to Noble Solutions' Data Request 5.27). PacifiCorp never sought an extension of time from Noble Solutions. Noble Solutions received a confidential disc containing PacifiCorp's supplemental response to subpart (c) of the data request this morning, August 24, 2015 -- the day before the hearing in this matter.

(PAC/500, Dickman/83:5-8). PacifiCorp's witness's reply testimony introduced his new position that direct access customers "will receive a share of the benefits of [renewable energy certificate] sales, if they occur." PAC/500, Dickman/83:5-8. PacifiCorp's failure to identify this position in an interrogatory filed by Noble Solutions prior to the time Noble Solutions filed its only round of testimony deprived Noble Solutions of the opportunity to address the issue with its witness's testimony. Requiring Noble Solutions to attempt to somehow present its response with a last-minute discovery production or cross examination of PacifiCorp's witness is not adequate. Moreover, the compressed three-week period between PacifiCorp's reply testimony and the hearing in this matter has limited Noble Solutions' ability to present the new issue with a request for additional pre-filed testimony. Noble Solutions should be permitted the opportunity for its own witness to clearly explain his position on the issue. Without live rebuttal testimony, Noble Solutions will be prejudiced, and the record will be incomplete.

RESPECTFULLY SUBMITTED on August 24, 2015.

RICHARDSON ADAMS, PLLC



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