



WENDY MCINDOO
Direct (503) 595-3922
wendy@mrg-law.com

October 10, 2017

VIA ELECTRONIC FILING

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

**Re: UM 1837 – In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,
Investigation into the Treatment of New Facility Direct Access Load.**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of the Joint Reply Brief of Portland General Electric and PacifiCorp.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1837**

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of New
Facility Direct Access Load.

**JOINT REPLY BRIEF OF
PORTLAND GENERAL ELECTRIC AND PACIFICORP**

October 10, 2017

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT..... 2

 A. CUB’s Conclusion that the Commission May Not Approve Different Transition Charges for New Customer Load is Premature, As it is Predicated on Certain Factual Assumptions that Will Be Addressed in Comments..... 2

 B. The Commission May Approve a Different Transition Charge for New Customer Load Within its Existing Authority, But is Not Required to Do So. 4

 C. The Commission Should Remain Focused on Ensuring Just and Reasonable Rates Rather than Promoting Economic Development. 4

 D. Market Purchases May Not Necessarily Be Available to Allow the Utility to Fulfill Its Obligation as a Provider of Last Resort..... 5

III. CONCLUSION..... 6

TABLE OF AUTHORITIES

	Page(s)
Statutes	
ORS 756.040.....	5
Public Utility Commission Cases	
<i>In the Matter of Ga.-Pac. Consumer Prod. (Camas) LLC & Clatskanie Peoples Util. Dist. Application for Declaratory Ruling, Docket No. DR 49, Order No. 15-299 (Sept. 29, 2015)</i>	5
<i>In the Matter of Nw. Natural Gas Co., dba NW Natural, Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider, Docket No. UG 266, Order No. 14-014 (Jan. 14, 2014).....</i>	5
<i>In the Matter of Pac. Power & Light Request for a Gen. Rate Increase in the Co.'s Or. Annual Revenues, Docket No. UE 170, Order No. 06-172 (Apr. 12, 2006)</i>	3
<i>Re Extended Area Service, Docket No. UM 189, Order No. 89-815 (June 19, 1989)</i>	5
<i>Re Incentive Rates for Elec. Serv., Docket Nos. UG 23, UE 50, Order No. 87-402, 82 P.U.R.4th 624 (Mar. 31, 1987).....</i>	5
<i>Wah Chang v. PacifiCorp, Docket No. UM 1002, Order No. 09-343 (Sept. 2, 2009)</i>	6

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1837

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of New
Facility Direct Access Load.

**JOINT REPLY BRIEF OF
PORTLAND GENERAL ELECTRIC
AND PACIFICORP**

1 **I. INTRODUCTION**

2 Portland General Electric Company (PGE) and PacifiCorp d/b/a Pacific Power
3 (PacifiCorp), collectively referred to as the Joint Utilities, respectfully submit this Joint
4 Reply Brief to the Public Utility Commission of Oregon (Commission), in accordance with
5 Administrative Law Judge Patrick Power’s prehearing conference memorandum issued
6 July 11, 2017.

7 On September 8, 2017, the Joint Utilities, Staff, the Oregon Citizens’ Utility Board
8 (CUB), the Industrial Customers of Northwest Utilities (ICNU), Vitesse, LLC (Vitesse), the
9 Northwest and Intermountain Power Producers Coalition (NIPPC), and Calpine Energy
10 Solutions, LLC (Calpine) filed opening briefs addressing the issue of whether the
11 Commission may, within its existing statutory authority, approve different transition charges
12 for new customer load at new sites. While each party approached the issue somewhat
13 differently, it appears that there is a general consensus among stakeholders—with the
14 exception of CUB¹—that the Commission has the authority to approve different transition

¹ Opening Brief of the Oregon Citizens’ Utility Board (CUB’s Opening Brief) at 2.

1 charges for new customer load at new sites.² This reply brief responds to CUB’s concerns
2 about discrimination and cost-shifting. The Joint Utilities also respond to claims that the
3 Commission is *required* to approve a different transition charge for new customer load; that
4 the Commission should consider economic development potential in establishing a different
5 transition charge; and that the utility’s provider of last resort obligations may be satisfied by
6 providing market-based rates.

7 Several parties inappropriately made policy recommendations in their opening briefs.
8 The Joint Utilities will address the policy recommendations raised by other parties in
9 comments scheduled to be filed later in this proceeding.

10 II. ARGUMENT

11 A. CUB’s Conclusion that the Commission May Not Approve Different Transition 12 Charges for New Customer Load is Premature, As it is Predicated on Certain 13 Factual Assumptions that Will Be Addressed in Comments.

14 CUB states that the Commission lacks authority to approve a different transition
15 charge for new customer load based on two assumptions: (1) discrimination would result
16 from disparate treatment between customers in the same class; and (2) cost-shifting would
17 result from the elimination of transition charges.³ CUB correctly points out that
18 discrimination and cost-shifting are important considerations for designing and evaluating the
19 appropriate treatment for new customer load, but presumes that discrimination and cost-
20 shifting will necessarily occur.

² Joint Opening Brief of Portland General Electric and PacifiCorp (Joint Utilities’ Opening Brief) at 6; Staff’s Opening Brief at 8-9; Opening Brief of the Industrial Customers of Northwest Utilities (ICNU’s Opening Brief) at 2; Opening Brief of the Industrial Customers of Northwest Utilities (Vitesse’s Opening Brief) at 2; Opening Brief of the Industrial Customers of Northwest Utilities (NIPPC’s Opening Brief) at 13; Opening Legal Brief of Calpine Energy Solutions, LLC (Calpine’s Opening Brief) at 3.

³ CUB’s Opening Brief at 2.

1 As indicated in the Joint Utilities’ Opening Brief, and echoed by other parties, while
2 different treatment of customers in the same rate class is generally prohibited, the
3 Commission may approve different treatment if customers are differently situated and there
4 is a reasonable economic basis for the different treatment.⁴ CUB’s opening brief
5 acknowledges that the Commission may approve different treatment for differently situated
6 customers, but still assumes that there will be no basis for different treatment of new load.⁵
7 The Joint Utilities expect that parties will articulate positions about how to treat new load in
8 opening and reply comments—including what constitutes new customer load⁶ and the
9 reasonable economic basis for different treatment of the new load.

10 Additionally, CUB’s conclusion that cost-shifting will occur is premature. The Joint
11 Utilities agree that the issue of cost-shifting requires further analysis and consideration, and
12 that the treatment of new customer load must avoid unwarranted cost-shifting. However, as
13 there is no program yet to evaluate, it is too early to determine whether unwarranted cost-
14 shifting will occur.

⁴ Joint Utilities’ Opening Brief at 4; ICNU’s Opening Brief at 3-5; NIPPC’s Opening Brief at 11-12; *see also In the Matter of Pac. Power & Light Request for a Gen. Rate Increase in the Co.’s Or. Annual Revenues*, Docket No. UE 170, Order No. 06-172 at 8 (Apr. 12, 2006) (In considering a different rate for certain Klamath irrigators, the Commission noted “we must find a substantial and reasonable basis for establishing a separate rate classification Under ORS 757.230(1), the Commission ‘may authorize classifications or schedules of rates applicable to individual customers or groups of customers.’ The Commission has broad authority under ORS 757.230 and may ‘use any economic justification—so long as it is a reasonable one—in the creation of customer classes.’” (citations omitted)).

⁵ CUB’s Opening Brief at 3-4.

⁶ As noted in the Joint Utilities’ Opening Brief, what constitutes a new customer and new load is a critical issue that may impact the analysis of whether differential treatment of new load or new customers is appropriate. *See* Joint Utilities’ Opening Brief at 1-2. The Opening Brief suggested that “new load” and “new site” could include incremental load of an existing customer; further definitions of these terms will be a fact-specific inquiry and will depend on the circumstances of the situation. *Id.* This does not necessarily mean, however, that a customer’s incremental load growth at an existing site constitutes “new load” and a “new site” for the purposes of this docket.

1 **B. The Commission May Approve a Different Transition Charge for New**
2 **Customer Load Within its Existing Authority, But is Not Required to Do So.**

3 Vitesse overstates the Commission’s enabling authority, claiming that the
4 Commission not only may, but that it *must*, approve different transition charges for new
5 customer load—to “encourage the development of a truly competitive retail energy
6 market[.]”⁷ While the Joint Utilities agree that the direct access laws do not prohibit the
7 Commission from approving a different transition charge for new customer load, this result is
8 not required. As Staff points out, the Commission has broad authority to determine
9 appropriate transition charges, subject to the requirement to prevent unwarranted cost-
10 shifting.⁸ Any different treatment for new customer load must appropriately account for and
11 balance the potential to result in unwarranted cost-shifting or discrimination, and must ensure
12 that the utility’s remaining cost-of-service customers are not otherwise harmed by the direct
13 access service election.

14 **C. The Commission Should Remain Focused on Ensuring Just and Reasonable**
15 **Rates Rather than Promoting Economic Development.**

16 Vitesse, Calpine, and NIPPC encourage the Commission to approve a direct access
17 program that will promote economic development and attract new businesses to Oregon.⁹
18 These parties misunderstand the Commission’s authority to implement the statute. As the
19 Commission has explained, the purpose of the direct access law is to promote competition
20 within the electric industry¹⁰—not to promote economic development in Oregon. Even

⁷ Vitesse’s Opening Brief at 2.

⁸ Staff’s Opening Brief at 6.

⁹ Vitesse’s Opening Brief at 3; Calpine’s Opening Brief at 2-3; NIPPC’s Opening Brief at 8-9.

¹⁰ *In the Matter of Ga.-Pac. Consumer Prod. (Camas) LLC & Clatskanie Peoples Util. Dist. Application for Declaratory Ruling*, Docket No. DR 49, Order No. 15-299 at 10 (Sept. 29, 2015) (“Oregon’s direct access law, codified in ORS 757.600 to 757.689, is intended to promote competition by allowing larger customers the opportunity to receive electric service from a provider other than their allocated utility.”).

1 under the Commission’s more general charge of ensuring that utility rates are just and
2 reasonable, the Commission’s consideration of economic development is more appropriately
3 limited to economic development that impacts the utility and its customers—for example,
4 programs that may increase customer base, thereby decreasing costs for all customers.¹¹ The
5 consideration of economic development outside the context of utility rates and benefits to
6 customers is not properly within the Commission’s purview.¹² Instead, the Commission’s
7 focus should be on ensuring that rates are fair and that direct access programs do not result in
8 rates requiring existing customers to subsidize economic development activities.

9 **D. Market Purchases May Not Necessarily Be Available to Allow the Utility to**
10 **Fulfill Its Obligation as a Provider of Last Resort.**

11 To address provider of last resort obligations, Vitesse and NIPPC suggest that utilities
12 can meet their obligations by providing market-based rates rather than cost-of-service rates.¹³
13 This recommendation assumes that energy is available for emergency market purchases—
14 which may or may not be accurate. If an electricity service supplier (ESS) is unable to
15 deliver power to its direct access customers, such failure could be associated with broader
16 problems in the power market—such as increased customer demand, inadequate generating
17 facilities, a particularly poor hydro year, or a transmission outage—all of which may make it

¹¹ See, e.g., *In the Matter of Nw. Natural Gas Co., dba NW Natural, Investigation into Schedule H, Large Volume Non-Residential High Pressure Gas Service Rider*, Docket No. UG 266, Order No. 14-014 at 8 (Jan. 14, 2014) (approving tariff that would generate additional sales and provide net benefits to customers by spreading fixed costs over larger volume of sales).

¹² ORS 756.040; see also *Re Extended Area Serv.*, Docket No. UM 189, Order No. 89-815 (June 19, 1989) (“Although economic development may be given some consideration, the Commission must balance this goal with the needs of other customers. The primary statutory role of the Commission is the protection of all utility customers, not the creation of economic development incentives for individual companies. ORS 756.040(1).”); see also *Re Incentive Rates for Elec. Serv.*, Docket Nos. UG 23, UE 50, Order No. 87-402, 82 P.U.R.4th 624, 626 (Mar. 31, 1987) (Though permissible classification criteria may have an impact on social policies such as economic development, “discrimination for the purpose of achieving goals outside the Commissioner’s mandate is not permissible because the classification would not be reasonably related to the purposes for which the Commissioner is authorized to classify customers.”).

¹³ Vitesse’s Opening Brief at 8-9; NIPPC’s Opening Brief at 10.

1 impossible for the utility to meet unplanned-for load on short notice.¹⁴ The problem could
2 become more acute if multiple ESSs fail to deliver power to meet their customers' need
3 resulting in the utility attempting to provide emergency service to a substantial load returning
4 to the utility with little notice. Reliance on the availability of power markets to provide large
5 amounts of power on short notice may not be adequate to satisfy utility obligations as a
6 provider of last resort, and could thus, impact the reliability for *all* of the utility's customers.

7 **III. CONCLUSION**

8 There is a general consensus among most stakeholders that the Commission has the
9 authority to approve different treatment for transition charges for new customer load. The
10 Joint Utilities believe that it is possible to design an approach for treatment of new customer

11 ////

12 ////

13 ////

14 ////

15 ////

16 ////

17 ////

18 ////

19 ////

¹⁴ For example, the Western Energy Crisis of 2000/2001 was the “result of a combination of natural, economic, and regulatory factors: ‘flawed market rules; inadequate addition of generating facilities in the preceding years; a drop in available hydropower due to drought conditions; a rupture of a major pipeline supplying natural gas into California; strong growth in the economy and in electricity demand; unusually high temperatures; an increase in unplanned outages of extremely old generating facilities; and market manipulation.’” *Wah Chang v. PacifiCorp*, Docket No. UM 1002, Order No. 09-343, (Sept. 2, 2009) (emphasis omitted) (quoting *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 128 S Ct 2733, 2742, 171 L Ed 2d 607 (2008)).

- 1 load that appropriately accounts for the issues of cost-shifting, discrimination, and provider
- 2 of last resort obligations, and look forward to working with parties in this proceeding.

Respectfully submitted this 10th day of October, 2017.

A handwritten signature in blue ink, appearing to read "Lisa F. Rackner".

Lisa F. Rackner, OSB 873844
Jocelyn Pease, OSB 102065
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: (503) 595-3922
lisa@mrg-law.com
dockets@mrg-law.com

Douglas C. Tingey
Portland General Electric Company

Matthew McVee
PacifiCorp d/b/a/ Pacific Power

Attorneys for Portland General Electric Company
and PacifiCorp