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VIA ELECTRONIC FILING

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Public Utility Commission of Oregon
PO Box 1088
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**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 Opening 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 OPENING BRIEF OF
PORTLAND GENERAL ELECTRIC AND PACIFICORP**

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PORTLAND GENERAL ELECTRIC
AND PACIFICORP**

I. INTRODUCTION

1
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 Opening Brief to the Public Utility Commission of Oregon (Commission), in accordance
5 with Administrative Law Judge Patrick Power’s prehearing conference memorandum issued
6 July 11, 2017.

7 The Commission initiated this proceeding to “investigate questions related to the
8 appropriate treatment of direct access transition adjustments for new customer load at a new
9 site.”¹ Senate Bill (SB) 1149 does not limit the Commission’s existing authority to approve
10 different transition adjustment charges for new customer load at new sites. There are three
11 main legal issues that must be addressed when considering different transition adjustment
12 mechanisms for new customer load at new sites:

- 13 (1) Treatment of new customer load² at a new site must consider the statutory
14 prohibitions against unwarranted cost-shifting.

¹ *In the Matter of Pub. Util. Comm’n of Or. Investigation into the Treatment of New Facility Direct Access Load*, Docket No. UM 1837, Order No. 17-171 at 1 (May 16, 2017).

² Although the terms “new customer” and “new site” have not yet been defined, the Joint Utilities’ analysis is based on the understanding that “new customer” includes incremental new load of an existing customer.

1 (2) Treatment of new customer load at a new site must not violate the Commission’s
2 non-discrimination statutes.

3 (3) Treatment of new customer load at a new site must account for the burden and
4 risk to the utility’s customers when the utility is the provider of last resort.

5 II. ARGUMENT

6 A. Treatment of new customer load at a new site must consider the statutory 7 prohibitions against unwarranted cost-shifting.

8 The Commission may approve different transition adjustment charges for new
9 customer load at new sites, but a customer’s choice to participate in direct access may not
10 cause unwarranted shifts in costs to the utility’s remaining cost-of-service customers.³ Cost-
11 shifting occurs when the transition costs resulting from direct access are not recovered from
12 departing customers and become the responsibility of all remaining customers. To prevent
13 cost-shifting, the Oregon direct access statutes and rules provide for transition charges to
14 mitigate the impact of departing direct access customers on the utility’s remaining
15 customers.⁴

16 Prudent utility resource acquisition requires that the utility consider and plan for
17 future loads⁵—including existing load from existing customers, new load from existing
18 customers, and new load from new customers. Transition charges are intended to protect the

³ The direct access statutes specifically prohibit “unwarranted shifting of costs to other [non-participating] retail electricity consumers of the electric company.” ORS 757.607(1).

⁴ ORS 757.607(2) (direct access programs may include transition charges or credits that “reasonably balance the interests of retail electricity consumers and utility investors”); *In the Matter of a Rulemaking Proceeding to Implement SB 1149 Relating to Electric Restructuring*, Docket No. AR 380, Order No. 00-596 at 7 (Sept. 28, 2000) (explaining that the rule OAR 860-038-0160 “provides that all Oregon retail electric consumers of an electric company will receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of the company as determined pursuant to the various valuation methods set out in other portions of the rules.”).

⁵ *In the Matter of Pub. Util. Comm’n of Or. Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 5 (Jan. 8, 2007) (requiring a planning horizon of “at least 20 years”).

1 remaining cost-of-service customers from the burden of paying an unwarranted share of
2 utility investments as the result of direct access customers voluntarily choosing to receive
3 alternative generation supply. The Commission’s rules require direct access customers to
4 pay 100 percent of transition costs,⁶ and the Commission has never allowed direct access to
5 shift costs to a utility’s non-participating customers.⁷ Even in non-direct access contexts, the
6 Oregon legislature and the Commission have recognized the importance of avoiding cost-
7 shifting.⁸

8 In a pre-SB 1149 investigation, the Commission explored policy issues associated
9 with electric industry restructuring, and specifically considered the issue of differentiating
10 between new and existing customers moving to direct access.⁹ The Commission concluded
11 that “[n]ew customers in a utility’s service territory should pay transition charges on the same
12 terms as existing customers.”¹⁰ Order No. 98-353 was in part superseded by SB 1149, and
13 SB 1149 did not explicitly adopt the Commission’s statement regarding the treatment of new

⁶ OAR 860-038-0160(1).

⁷ *In the Matter of PacifiCorp, d/b/a Pac. Power, Transition Adjustment, Five-Year Cost of Service Opt-out*, Docket No. UE 267, Order No. 15-060 at 6 (Feb. 24, 2015); *In the Matter of Pub. Util. Comm’n of Or. Investigation of Issues Relating to Direct Access*, Docket No. UM 1587, Order No. 12-500 at 9 (Dec. 30, 2012); *In the Matter of Pub. Util. Comm’n of Or. Investigation into the Changes Proposed for the 3 and 5 year Cost of Service Opt-Out Program for Large Non-Residential Customers*, Docket No. UE 236, Order No. 12-057 at 4 (Feb. 23, 2012); *In the Matter of Pac. Power & Light Co., dba PacifiCorp, Request for a General Rate Increase in the Company’s Oregon Annual Revenues*, Docket No. UE 170, Order No. 05-1050 at 21 (Sept. 28, 2005).

⁸ See SB 1547, Section 22, codified in Oregon Laws 2016, Chapter 28, Section 22 (recent legislation regarding community solar projects requires that implementation of such projects should minimize cost-shifting to the utility’s non-participating customers); HB 4126, Section 3, codified in Oregon Laws 2014, Chapter 100, Section 3 (voluntary renewable energy tariff statute prohibits cost-shifting); ORS 757.300(6) (net metering law allows for program caps to “balance the interests of retail customers”); see *Wah Chang v. PacifiCorp*, Docket No. UM 1002, Order No. 01-873 (Oct. 15, 2001) (Commission approved Wah Chang’s special contract because of the threat of municipalization from the City of Millersburg, explaining: “If a large customer ceases to receive service from a utility company, or significantly reduces service, that customer’s contribution toward fixed costs is lost. Other customers could be called on to increase their contribution to fixed costs.”).

⁹ *In the Matter of Investigation of Transition Costs for Electric Utils.*, Docket No. UM 834, Order No. 98-353 (Aug. 24, 1998).

¹⁰ *Id.*

1 customers. The current direct access statutes are silent with respect to the treatment of new
2 customer loads, and accordingly, do not preclude different treatment of transition charges for
3 new customer loads.

4 **B. Treatment of new customer load at a new site must not violate the Commission’s**
5 **non-discrimination statutes.**

6 The Commission’s statutes prohibit discrimination among customers of the same rate
7 class and require a reasonable and rational basis to establish a new rate class. The
8 Commission may approve different treatment of transition charges for new customer load at
9 a new site so long as the proposal does not violate the Commission’s non-discrimination
10 statutes, ORS 757.310(2)¹¹ and ORS 757.325.¹²

11 There is limited Commission precedent addressing different treatment for new
12 customers in comparison with existing customers; however, the Commission previously
13 concluded that the duty to serve and the prohibition against giving an unreasonable or undue
14 preference apply equally to both prospective and existing customers.¹³

¹¹ Under ORS 757.310(2), a “public utility may not charge 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.” ORS 757.310(2) specifically addresses rate discrimination by prohibiting utilities from charging two customers in the same rate classification different rates for the same service.

¹² Under ORS 757.325(1), “[n]o public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.” ORS 757.325 more generally addresses the “relative value” received by various utility customers by prohibiting utilities from giving “undue preferences or advantages to any person or locality.”

¹³ *In the Matter of the Investigation into the Capacity of Salmon Valley Water Co.*, Docket No. UM 774, Order No. 97-074 (Mar. 3, 1997) (“ORS 757.020 draws no distinction between present and future customers. . . Offerings to the general public include existing and future customers; thus the requirement is not limited to existing customers only”; water company “engaged in a discriminatory practice violating ORS 757.325 . . . by allowing certain types of residential dwellings to be connected to its water system while denying others.”).

1 **C. Treatment of new customer load at a new site must account for the burden and**
2 **risk to the utility’s customers when the utility is the provider of last resort.**

3 The Joint Utilities are providers of last resort and have an ongoing burden to forecast
4 and plan for existing and future customer load. The burden and risk as a provider of last
5 resort arises from the utility’s duty to provide service within its allocated service territory and
6 to plan for and forecast for future loads.¹⁴

7 The Commission’s integrated resource planning (IRP) guidelines require the Joint
8 Utilities to look twenty years into the future to forecast loads,¹⁵ which requires consideration
9 of existing demand, as well as predicting future load growth attributable to increased demand
10 from existing customers and new load from future customers. Through the IRP process,
11 utilities identify resource needs and make plans for long-term investments to ensure their
12 continuing ability to provide reliable power. The utility’s current level of investment in
13 generation, transmission, and distribution facilities necessarily takes into account planning
14 for future loads—including planning for future customers.

15 Further complicating this issue is the fact that utility investments in infrastructure
16 tend to be “lumpy”—that is, utilities periodically make large investments in infrastructure
17 designed to serve future loads, but in most cases, the new generating plant is not attributable
18 to a particular customer and cannot be precisely matched with demand on a customer-by-
19 customer basis. The Joint Utilities believe that they can adequately account for any costs

¹⁴ The general obligation to provide service arises from a common law obligation to serve, the statutory duty to furnish adequate and safe service (ORS 757.020),¹⁴ and the statutory prohibition against discrimination (ORS 757.325), and the territorial allocation statutes (ORS 758.400-758.475). “When an entire load is located within the service territory of a single utility, that utility has the right and obligation to serve that load.” *In the Matter of Columbia Basin Elec. Coop., Inc. v. PacifiCorp et al.*, Docket No. UM 1670, Order No. 15-110 at 6 (Apr. 10, 2015). The direct access statutes also require utilities to “provide all retail electricity consumers that are connected to the electric company’s distribution system with a regulated, cost-of-service rate option,” except as otherwise is provided in the direct access statutes. ORS 757.603(1); *see also* ORS 757.622.

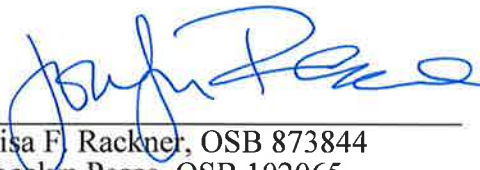
¹⁵ Order No. 07-002 at 5.

1 incurred by the utility as the provider of last resort—this can be addressed when proposing
2 and approving the treatment of new customer load at new sites.

3 **III. CONCLUSION**

4 The Joint Utilities believe that, subject to appropriate program parameters, the
5 Commission could approve a different level of transition charges for new customer load.
6 Any different treatment, however, would require developing a methodology for determining
7 actual costs associated with new loads moving to direct access. The Joint Utilities look
8 forward to continued participation in this investigation.

Respectfully submitted this 8th day of September, 2017.



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