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October 19, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.
2018 Request for a General Rate Revision
Docket No. UE 335

Dear Filing Center:

Please find enclosed the Alliance of Western Energy Consumers' Opening Brief on Direct Access Issues in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Request for a General Rate Revision.	)))))))	OPENING BRIEF OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS ON DIRECT ACCESS ISSUES

I. INTRODUCTION

Pursuant to the Administrative Law Judge's August 14, 2018 Ruling in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") files this Opening Brief on Direct Access Issues. AWEC is separately filing a reply brief on other contested issues in Portland General Electric Company's ("PGE" or "Company") 2018 general rate case.

PGE has entered into a stipulation resolving disputes over its long-term opt-out program (the "Partial Stipulation") that essentially maintains this program in its current form for another three years, including both a five-year transition adjustment period and a total cap on participation in the program (the "Participation Cap") of 300 average megawatts ("aMW").[1/] AWEC opposes paragraph 4 of the Partial Stipulation because the Participation Cap discriminates against otherwise eligible customers and violates the direct access law.

The Stipulating Parties' support for the Participation Cap is a non sequitur. The direct access law prohibits *any* unwarranted shifting of costs from direct access to non-

[1/] Partial Stipulation ¶¶ 2, 4.

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participating customers.[2] But the evidence in the record of this case leads to one of only two mutually exclusive conclusions. Either: (1) the current long-term opt-out program that the Partial Stipulation would preserve causes unwarranted cost-shifting to non-participating customers; or (2) it doesn't. If the Commission concludes the latter, then the Participation Cap serves no purpose other than to discriminate against otherwise eligible customers by eliminating their ability to participate in the long-term opt-out program. If it concludes the former, then the Participation Cap does not prevent unwarranted cost-shifting; it merely establishes an outer bound on how much unwarranted cost-shifting can occur, which is still unlawful.

This is the fundamental problem with the Partial Stipulation. The Participation Cap treats certain customers – those larger than the 64 aMW remaining under the cap – differently from all other customers that are eligible for the opt-out program but without any basis for treating those specific customers differently. If the current long-term opt-out program is causing unwarranted cost-shifting, then no one should be able to participate. If it does not cause cost-shifting, then everyone should be able to participate so long as they meet the minimum eligibility criteria. But arbitrarily singling out certain customers for different treatment is precisely what the Commission's anti-discrimination statutes prohibit, and that is precisely what the Participation Cap does.

Accordingly, AWEC requests that the Commission modify paragraph 4 of the Partial Stipulation to either eliminate the Participation Cap or increase it to 550 aMW so that all eligible customers may participate. AWEC does not object to, and in fact supports, the remainder of the Partial Stipulation.

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[2] ORS 757.607(1).

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II. BACKGROUND

In its Objections to the Partial Stipulation, AWEC provided background on PGE's long-term opt-out program, which it will not repeat here. For purposes of this Opening Brief, the important – and undisputed – facts are these:

1. PGE's long-term opt-out program has been in place since 2003 and has had a cap on participation in the program of 300 aMW since its inception;[3/]
2. The Participation Cap has never been reached, despite 16 years of annual enrollments in the program;[4/]
3. Current enrollment in the long-term opt-out program is at 236 aMW (this does not include any load that may have opted out during the 2018 opt-out window this September);[5/]
4. The Partial Stipulation maintains the existing 300 aMW cap, meaning that the signatories to the Partial Stipulation have effectively instituted a 64 aMW cap on participation in the long-term opt-out program at least for the term of the Partial Stipulation;[6/]
5. Only two cost-of-service accounts, both belonging to the same customer, are larger than this 64 aMW cap.[7/]
6. No party has presented any evidence that could lead to a finding that restricting only these two accounts from participating in the opt-out program will prevent unwarranted cost-shifting.

PGE is the only one of the Stipulating Parties that opposes AWEC's objections to paragraph 4 of the Partial Stipulation on substantive grounds. All other Stipulating Parties oppose AWEC's position merely because they support the Partial Stipulation as an integrated document. In fact, most of the Stipulating Parties suggest that they would support AWEC's

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[3/] AWEC/504 at 2.
[4/] AWEC/500 at 2:16-19.
[5/] AWEC/502.
[6/] Partial Stipulation ¶ 4.
[7/] AWEC/506

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position but for their commitment to the Partial Stipulation. Calpine Solutions, for instance, notes that it supported broader eligibility for the opt-out program in testimony, but "accept[s] the continuation of the current participation limits as reasonable within the context of the overall settlement package."[8/] Commission Staff and Fred Meyer echo this testimony.[9/] The Northwest and Intermountain Power Producers Coalition ("NIPPC") specifically identifies AWEC's objections to paragraph 4 as the reason why it chose not to join the Partial Stipulation.[10/]

The Oregon Citizens' Utility Board ("CUB") also objects to the Partial Stipulation, but CUB's objection is to the Partial Stipulation's maintenance of a five-year transition period.[11/] CUB recommends a ten-year transition period, as PGE advocated for in testimony.[12/] In contrast to AWEC's objection, however, numerous Stipulating Parties oppose CUB's objection on substantive grounds. Staff, for instance, notes that its testimony in this case found that PGE had "failed to provide evidence that the current transition adjustments result in unwarranted cost-shifts …."[13/] Calpine Solutions testifies to the benefits cost-of-service customers receive from the opt-out program with the existing five-year transition period.[14/] Fred Meyer offers similar testimony in opposition to CUB's recommendation.[15/] NIPPC filed testimony specifically to respond to and dispute CUB's recommendation.[16/]

8/ Calpine Solutions/200 at 7:14-17.
9/ Stipulating Parties/600 at 10-11.
10/ NIPPC/200 at 2:13-17.
11/ CUB/400 at 2-3.
12/ Id. at 3.
13/ Stipulating Parties/600 at 10:10-11.
14/ Calpine Solutions/200 at 4-6.
15/ Stipulating Parties/600 at 10:17-11:8.
16/ NIPPC/200 at 2:9-11.

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III. ARGUMENT

AWEC challenges a single provision of the Partial Stipulation in its Objections – paragraph 4's maintenance of the 300 aMW Participation Cap – on the bases that this cap unduly prejudices the one customer who meets the eligibility criteria for the opt-out program but which the cap prevents from participating, and that the cap imposes unnecessary barriers to the creation of a competitive market, in violation of the direct access law.

Inextricably intertwined with AWEC's objection to paragraph 4 is the issue of whether unwarranted cost-shifting is occurring from the long-term opt-out program. That is because PGE's sole basis for objecting to increasing the Participation Cap is its initial position that the long-term opt-out program results in unwarranted cost-shifting.[17/] If no such unwarranted cost-shifting is occurring, there is no basis to prevent otherwise eligible customers from participating.

As noted in AWEC's Objections, PGE, even as a signatory to a settlement agreement, has the burden of proof and persuasion that paragraph 4 of the Partial Stipulation is lawful and is just, reasonable, and in the public interest.[18/] PGE must satisfy that burden exclusively through evidence presented in the record of this case.[19/] If the record is insufficient to support PGE's position, the Commission must reject it.[20/]

As discussed in its Objections and further in this Opening Brief, the record in this case contains no credible evidence that the long-term opt-out program has resulted in cost-shifting from direct access customers to cost-of-service customers and, in fact, the evidence

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17/ PGE/2500 at 16:18-20.
18/ See AWEC Objections at 4-5 and cases and statutes cited therein.
19/ Id.
20/ Id.

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demonstrates the opposite. There is, therefore, no basis to prevent otherwise eligible customers from participating in the long-term opt-out program. Moreover, even if the Commission were to credit the evidence that the long-term opt-out program is shifting costs to non-participating customers, the record is utterly devoid of evidence that such cost-shifting is limited to the two customer accounts that are otherwise eligible for the program but that the Partial Stipulation prevents from participating. Such a restriction is therefore unlawful and must be rejected.

A. The Participation Cap is Unduly Prejudicial

1. The Commission has established a single classification of non-lighting customers for purposes of their eligibility for PGE's long-term opt-out program and the Participation Cap treats some customers within this classification differently than all others.

ORS 757.325(1) states that "[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." The statute specifies that any utility that violates this provision "is guilty of unjust discrimination."[21]

In DR 20, the Commission had occasion to consider this statute within the context of direct access. In that docket, PacifiCorp requested a declaratory ruling that, among other things, the Commission's discrimination statutes did not apply to energy sales to direct access customers, who are making these purchases on the open, competitive market.[22] The Commission issued the requested declaratory ruling, finding that each customer on direct access is effectively a class of one with respect to its energy purchases because those purchases are

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[21] ORS 757.325(2).

[22] Docket Nos. DR 20/UE101, Order No. 97-408, 1997 WL 913205 at *5 (Oct. 17, 1997).

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being made within a competitive market. The Commission found that its discrimination statutes only "prohibit[] discrimination within a customer class."[23/] Thus, because each customer is acting individually on the open market, each customer may lawfully pay different rates for their energy commodity. In making this determination, the Commission concluded that "it can use any economic justification – so long as it is a reasonable one – in the creation of customer classes."[24/]

The Commission's authority to create classifications of customers is housed in ORS 757.230. That statute authorizes the Commission to base such classifications upon "any … reasonable consideration."[25/] The statute further provides that the Commission may group customers by "classifications *or* schedules of rates …."[26/] In other words, a classification of customers need not be embodied within a single rate schedule – customers may be classified based on "any … reasonable consideration."

The Commission has approved separate rate schedules for PGE's long-term opt-out program, but has adopted a single classification for non-lighting customers with respect to their eligibility for the long-term opt-out program. Non-lighting customers can participate under Schedules 485, 489, and 490. These opt-out schedules track their cost-of-service counterparts – Schedules 85, 89, and 90 – which have been established to reflect the different costs to serve the customers eligible for these cost-of-service schedules. Each one of the opt-out schedules establishes identical minimum participation requirements: a customer "must initially enroll a

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23/ Id.
24/ Id. at *5-6.
25/ ORS 757.230(1).
26/ Id. (emphasis added).

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minimum of 1 MWa" and "have a Facility Capacity of at least 250 kW."[27] The only difference between these tariffs, and the only reason more than one opt-out tariff exists for non-lighting customers, is to reflect the different delivery charges opt-out customers will continue to pay to PGE. Thus, for purposes of *eligibility* for the long-term opt-out program, all customers who participate under any of these three schedules are part of the same classification.

The 300 aMW cap in the Partial Stipulation, however, treats some customers differently than others within this classification – the very circumstance the Commission has determined to be expressly prohibited by its discrimination statutes. While the Participation Cap applies to all customers who are eligible for the long-term opt-out program, it impacts those customers differently. Some customers can continue to participate, while others cannot. That is why PGE is incorrect when it argues that AWEC's logic would render any participation cap discriminatory.[28] As AWEC had already noted in its Objections, "[w]hen originally developed, the 300 aMW cap on the long-term opt-out program was likely lawful and in the public interest."[29] This is because the cap applied to a new and untested program and allowed all eligible customers to participate. This cap could not be discriminatory because there was no one against which it could discriminate. PGE is correct that, as customers participate in the program, the remaining space under the cap necessarily diminishes, but that merely places a duty on the Commission to revisit the cap periodically to determine whether it remains lawful and in the public interest, as it does with all sorts of mechanisms, and as it is being asked to do here.

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[27] "Applicable" section in Schedules 485, 489, and 490
[28] Stipulating Parties/600 at 5:17-19.
[29] AWEC Objections at 14.

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Indeed, it is the participation of many customers over a 16-year period that makes the cap the Partial Stipulation institutes materially different from the original Participation Cap. The long-term opt-out program is no longer a new and untested program – there is evidence in the record of this case demonstrating that it has been a success by providing eligible customers with a competitive option while insulating non-participating customers from adverse effects. Additionally, the Participation Cap now *does* prevent some customers from joining the program. An outright prohibition on participation in the opt-out program plainly prejudices those customers who are subject to that prohibition relative to the customers who can still participate. That this prejudice is an "undue" one is also plain because the Commission has never distinguished between any of these customers in terms of their eligibility for the opt-out program. Further, the only "economic justification" PGE has provided for limiting the opt-out program is that this program results in cost-shifting to cost-of-service customers. But not only is that justification unsupported by the record, even if it were supported it would provide no basis for treating the two customer accounts that exceed the Participation Cap differently from everyone else because PGE does not maintain that cost-shifting would occur only if these accounts leave.

2. <u>The record contains no credible evidence that cost-shifting is occurring from direct access customers to cost-of-service customers</u>.

PGE – the party with the burden of proof and persuasion – has provided two pieces of "evidence" to show that cost-shifting is occurring from the existing opt-out program. First, it offered Exhibit PGE/1308, which simply "multiplies $34.60 by 438,000 [i.e., 50 aMW]

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by ten to arrive at $75 million" in purported cost-shifting.[30/] PGE provided no explanation for its assumption that 50 aMW would leave annually or why it chose ten years as opposed to any other period.[31/] As every party that addressed PGE's testimony on direct access concluded, there "is no rationale" behind this exhibit.[32/] Second, the Company makes an unsubstantiated statement in its testimony that the five-year transition period was based on an assumption that the Company's load would grow to offset lost direct access load.[33/] CUB parrots this assertion in its objection to the Partial Stipulation, but with no more convincing evidence than PGE provides. CUB simply asserts that there was "a general expectation that retail load growth would continue to increase overtime [*sic*]" and that transition charges "were influenced by this assumption."[34/] When asked for evidence to support these statements, CUB provided excepts of old PGE IRPs, only one of which even mentions direct access, and this was in the 1997 IRP when PGE, controlled by Enron, was pursuing a plan to fully deregulate.[35/] Nothing in this 1997 excerpt or any of the other IRP excerpts even mentions transition adjustments, let alone ties load growth to the length of a transition adjustment period.[36/]

The fact is that, when the opt-out program was first proposed and approved by the Commission, the rationale for a 5-year transition period, to the extent it was discussed at all, was based on comparing the transition charges to a five-year fixed price resource that would offset

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30/ Staff/800 at 40:2-3.

31/ Indeed, such an assumption is radically out of line with historical precedent, which has seen an average of 15.5 aMW depart for the opt-out program annually. AWEC Objections at 3.

32/ Staff/800 at 40:11-12; AWEC/200, Mullins/44:6-14; Calpine Solutions/100, Higgins/14:5-15:14; NIPPC/100, Fitch-Fleischmann/10:20-11:5.

33/ PGE/2500 at 6:4-7.

34/ CUB/400 at 3:24-26.

35/ AWEC/600 at 16-17.

36/ AWEC/600.

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market purchases.[37] Unlike PGE's and CUB's unsubstantiated testimony, this rationale has the advantage of actually reflecting reality. By claiming that load growth, and load growth alone, can prevent cost-shifting from load lost to direct access, both PGE and CUB appear to be arguing that the Company has a linear and static load/resource balance: PGE's load grows; it acquires a new resource to meet that load; repeat as necessary. Of course, if that were the case, then energy efficiency also would necessarily increase costs to customers because it also reduces load. This is a position no party holds.[38]

In truth, as Confidential Exhibit AWEC/602 demonstrates, PGE is constantly acquiring and losing resources through PPAs, market purchases, financial swaps, seasonal contracts, and others in a continuous effort to meet a dynamic load/resource balance. Even the Company's own IRP shows that, over the long term, its projected capacity deficit is driven at least as much by losing existing resources as it is by load growth – even if the Company assumed no load growth, it would still have a substantial capacity deficit over the long term.[39] While load growth, therefore, is one way of offsetting the potential for cost-shifting from lost load (from direct access, energy efficiency, self-generation, economic impacts, or anything else), it is not the only way. Whether cost-shifting exists ultimately is determined by whether the lost load impacts the Company's ability to maintain its load/resource balance. If lost load is accompanied by reduced supply, remaining customers are held harmless and can even benefit, regardless of the existence of load growth.

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[37] AWEC/504 at 2.
[38] See, e.g., PGE/100 at 8.
[39] AWEC/601.

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This point is confirmed by the analysis and testimony of Bradley Mullins that accompanies AWEC's Objections. On pages 10-13 of AWEC/500, Mr. Mullins presents two counterfactual scenarios to show the rates cost-of-service customers would have paid had the opt-out program not existed. One assumes that the cost of resources PGE would have acquired to meet the additional load that did not participate in the opt-out program equals the Company's long-run marginal cost of energy and capacity; the other assumes that PGE would have acquired a resource similar to its Carty combined cycle resource. Mr. Mullins performed the second analysis because "the resources PGE has acquired recently have exceeded its marginal cost of capacity," the marginal cost values "do not reflect the front-loaded way that new resources impact revenue requirement," and because "resource additions are also inherently blocky," meaning that PGE would be unlikely to acquire a resource that exactly matched the 236 aMW that has opted out and likely would have acquired a larger resource.

The first analysis, shown in Table 1 on page 11 of AWEC/500, shows that cost-of-service customers are paying nearly identical rates both with and without the opt-out program – precisely what one would expect if transition charges are appropriately designed to prevent cost-shifting.[40/] The other, provided in Table 2 on page 13, shows that cost-of-service customers are paying lower rates as a consequence of the opt-out program.

PGE criticizes Mr. Mullins' analyses in Tables 1 and 2 on a number of bases, arguing that they are "flawed and based on questionable assumptions."[41/] The Company argues, for instance, that Mr. Mullins inappropriately included transition adjustments as a cost if direct

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40/ AWEC/500 at 11:11-13.
41/ Stipulating Parties/600 at 6:15.

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access customers had not left cost-of-service,[42] and that Mr. Mullins did not include line losses in the marginal cost of energy.[43] AWEC disagrees with the Company on these issues, but the details of these disputes are irrelevant. Exhibit AWEC/607 modifies the analysis in Mr. Mullins' Table 1 to incorporate PGE's purported "flaws." The exhibit shows that, even if PGE were correct on these issues, the impact is insignificant – customer rates would still be essentially identical both with and without the long-term opt-out program when one assumes that PGE's incremental cost to serve opt-out customers would be at its long-run marginal cost.[44]

The Company also argues that Mr. Mullins' analyses using both the long-run marginal cost and Carty's revenue requirement are skewed because they "value[] those resources using a first-year revenue requirement."[45] When asked to clarify this statement, PGE confirmed that it applied only to Table 2's use of Carty, not to Table 1's use of the long-run marginal cost.[46] Thus, even if PGE's criticism were valid on this point, it is irrelevant to Table 1's conclusion that non-participating customers have not been negatively impacted by the opt-out program.

Finally, PGE criticizes Mr. Mullins' analysis because it "is based on adding load to PGE's COS load."[47] This is, frankly, a confusing and nonsensical criticism. Of course Mr. Mullins' analysis is based on adding load to PGE's cost-of-service load – the whole point is to

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[42] Id. at 6:15-7:2.
[43] AWEC/604 at 1.
[44] Exhibit AWEC/607 shows that, if both the marginal energy cost is modified to include line losses and transition adjustment revenues are removed, the difference in customer rates with and without the long-term opt-out program is 0.1 cents per KWh.
[45] Stipulating Parties/600 at 7:3-6.
[46] AWEC/604 (subpart b).
[47] Stipulating Parties/600 at 8:5.

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demonstrate the costs PGE would have incurred to serve direct access load had it never left. That analysis necessitates adding existing direct access load to the current cost-of-service load.

Ultimately, PGE does not, and cannot, dispute that the results from Mr. Mullins' Table 1 reflect the likely cost to serve incremental load, as these results are based on the Company's own generation marginal cost study.[48/] They show that cost-of-service customers have not been harmed by the long-term opt-out program. And this conclusion remains true even if the Company's own criticisms of Mr. Mullins' analysis are incorporated.[49/]

3. Even if the record did contain evidence of cost-shifting, it is wholly devoid of evidence that cost-shifting only occurs from customers larger than the remaining cap.

Another critical flaw with PGE's position is that it has never maintained that unwarranted cost-shifting only occurs from the opt-out program if a certain amount of load leaves.[50/] Rather, PGE's position is that every MWh that migrates to direct access necessarily shifts costs in an unwarranted manner to cost-of-service customers. The benefit of the Participation Cap, according to PGE, is that it limits the amount of unwarranted cost-shifting that can occur, not that it prevents unwarranted cost-shifting.[51/] But if that is true, then there is no basis to approve any stipulation that continues the long-term opt-out program as it is currently structured because to do so would be to approve what is illegal – unwarranted cost-shifting.[52/]

48/ AWEC/500 at 11:1-2.

49/ AWEC/607.

50/ Note that, at no point in this proceeding has PGE taken the position that some cost-shifting either from or to direct access customers would be warranted; thus, for PGE any cost-shifting from direct access is by definition "unwarranted."

51/ PGE/2500 at 16:18-20.

52/ ORS 757.607(1).

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PGE argues that this is not true because it has entered into a stipulation that resolves all direct access issues and, therefore, constitutes a compromise of litigation positions and achieves "an appropriate balance" between these positions.[53/] But PGE did not compromise a factual position, such as the appropriate level of its employee benefit costs, it compromised a legal position. AWEC is unaware of any legal theory which holds that an action that is unlawful on its own somehow becomes lawful because it is packaged with a resolution of other issues. PGE's litigation position on its opt-out program in this case was quite clear: five years of transition adjustments causes unwarranted cost-shifting to cost-of-service customers, regardless of the size of the load that opts out.[54/] To find that the Partial Stipulation is lawful with respect to the transition adjustment period, then, the Commission must reject PGE's litigation position that this period results in cost-shifting. And if it rejects that position, then it cannot find that the Participation Cap continues to be lawful as well, as the only basis for its continuation has been eliminated.

In fact, even if the Commission agrees with PGE that the current opt-out program results in unwarranted cost-shifting, it cannot even modify the Partial Stipulation to include ten years of transition adjustments, as CUB requests. It must, instead, eliminate the opt-out program entirely because no transition period would be sufficient. The entire basis for CUB's argument that cost-shifting is occurring is that load growth is not replacing load lost to direct access.[55/] As discussed above, this argument is erroneous because the existence of cost-shifting depends on both sides of the load/resource equation. The issue is whether PGE can balance its supply and

53/ Stipulating Parties/600 at 8:16-17.
54/ PGE/1300 at 39-40.
55/ CUB/400 at 4-6.

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demand, both of which are dynamic, particularly over a five-year period. But even if CUB were correct, the lack of load growth would mean that no transition period would ever be long enough to allow load to grow into the resource costs that are allegedly stranded by direct access customers. Anything multiplied by zero is still zero. Thus, ten years of transition adjustments would be no better than five.

PGE, for its part, appears to recognize this. It testifies that "[t]en years of transition adjustments doesn't entirely remove the cost shift to COS customers for the existing generation resources, but it contributes more meaningfully than five years of transition adjustments."[56/] For one, this is a nonsensical legal position. The direct access law does not state that *some* unwarranted cost-shifting is allowable, it states that direct access "*must not cause* the unwarranted shifting of costs to other retail electricity consumers …."[57/] If *any* unwarranted cost-shifting is occurring, it is *per se* unlawful. Further, as with CUB's position on load growth, the Company's Exhibit PGE/1308, if accepted at face value, indicates that direct access customers should pay transition adjustments out to infinity to protect against cost-shifting. Such evidence does more to undermine the legitimacy of PGE's entire position on cost-shifting than it does to demonstrate the existence of such cost-shifting.

The ultimate point here is that the dispute over cost-shifting in this case has been between two mutually exclusive alternatives: either five years of transition charges results in cost-shifting, regardless of the amount of load at issue, or it does not. Nothing in the record provides a basis for determining that five years of transition charges may be sufficient to prevent

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56/ PGE/2500 at 5:22-6:3.

57/ ORS 757.607(1) (emphasis added).

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cost-shifting for loads of a particular size but not for loads larger than that size. And even if the record did contain such evidence, it certainly does not establish 64 aMW as the appropriate demarcation between these two. Without such evidence, there is no “economic justification” and no “reasonable consideration” the Commission can make to classify customers larger than the cap differently from all other customers that are eligible for the opt-out program. Such different treatment of similarly situated customers unduly prejudices these larger customers and constitutes unjust discrimination in violation of Oregon law.

B. Paragraph 4 of the Partial Stipulation violates ORS 757.646(1).

AWEC explained in its Objections why paragraph 4 of the Partial Stipulation violates ORS 757.646(1) of the direct access law. Specifically, that statute requires the Commission to “develop[] policies to eliminate barriers to the development of a competitive retail market structure” and “to mitigate the vertical and horizontal market power of incumbent electric companies ….” Without any evidence that PGE’s long-term opt-out program harms non-participating customers (indeed, likely benefits these customers), and because the Partial Stipulation allows PGE to prohibit certain eligible customers from participating in the opt-out program, thereby solidifying its vertical and horizontal market power, the direct access law requires the Commission to either eliminate or modify Paragraph 4 to allow all eligible customers to participate in the opt-out program.

In its testimony responding to AWEC’s objections, PGE did not address this argument. If the Company chooses to respond in its opening brief on direct access issues, AWEC will address the Company’s arguments in its reply brief.

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C. If the Commission adopts a ten-year transition adjustment period, it should provide a capacity credit to opt-out customers who help PGE avoid capacity additions.

CUB objects to the Partial Stipulation on the basis that it maintains a five-year transition period, rather than instituting the 10-year period PGE advocated for in its testimony. The Commission should reject CUB's argument, but if it does not, it should allow for a capacity credit for opt-out customers to prevent unwarranted cost-shifting *to* direct access customers.

Most importantly, for the reasons discussed above, even if the Commission were to find that both PGE's and CUB's testimony is credible, it could not rely on that evidence to find that a 10-year transition period meets the direct access law's requirement to prevent unwarranted cost-shifting because that evidence only leads to the conclusion that a 10-year transition period (or, indeed, any other transition period) also is insufficient to prevent unwarranted cost-shifting.

If, however, the Commission determines to impose a ten-year transition period on PGE's long-term opt-out program, it should institute a capacity credit when an opt-out customer helps PGE avoid or delay incremental capacity additions during the ten-year transition period. Such a credit is consistent with how other utilities outside of Oregon have valued the long-term impact of a customer leaving bundled service.[58/]

It also is unequivocally supported by the evidence in the record of this case. Exhibit AWEC/501, explained on pages 6-7 of Mr. Mullins' testimony in support of AWEC's Objections, demonstrates that "any capacity cost avoided in the transition period produces

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[58/] AWEC/500 at 9:8-10:3; Washington Utilities and Transportation Comm'n v. Puget Sound Energy, Docket No. UE-161123, Exh. No.__(JAP-1T) at 4-6 (Oct. 7, 2016).

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savings to remaining customers."[59] While this exhibit uses hypothetical numbers, it demonstrates the crucial point: whatever the actual numbers end up being, it is impossible for "the departure of a customer … [to] result in any additional capacity cost to the utility. A utility would never have to build more generation as a result of a customer's choice to depart."[60] "Mathematically, if PGE avoids just one dollar of capacity-related costs in the transition period due to direct access, remaining customers recognize capacity benefits, even after considering the fact that the costs are spread over fewer megawatt-hours."[61]

Critically, Exhibit AWEC/501 and Mr. Mullins' testimony discussing it are unrebutted. In its testimony responding to AWEC's Objections, PGE states that Mr. Mullins' conclusions are flawed, but relies exclusively for this conclusion on its criticisms of Tables 1 and 2 on pages 11 and 13 of AWEC/500, discussed above. Even if PGE's criticisms of Tables 1 and 2 were accurate (which they are not), Mr. Mullins' analysis of the capacity savings opt-out customers produce for cost-of-service customers is not based on those tables. It is based on Exhibit AWEC/501, a fact that is plainly evident from pages 6-7 of Mr. Mullins' testimony. PGE's testimony in support of the Partial Stipulation does not address AWEC/501 *at all*. The unrebutted evidence in this case, therefore, demonstrates that a capacity credit for opt-out customers is both warranted and necessary if a ten-year transition period is adopted, so long as PGE projects to be in a capacity-short position during the transition period.

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[59] Id. at 6:8-9.
[60] Id. at 7:15-17.
[61] Id. at 6:9-12.

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IV. CONCLUSION

For the foregoing reasons, AWEC respectfully requests that the Commission modify paragraph 4 of the Partial Stipulation to either increase the Participation Cap on the long-term opt-out program to 550 aMW or eliminate the Participation Cap entirely. As included in the Partial Stipulation, the Participation Cap unduly prejudices otherwise eligible customers and unlawfully imposes barriers to the development of a competitive retail market. AWEC further recommends that the Commission reject CUB's request to modify the Partial Stipulation to impose a 10-year transition period, as this recommendation is unsupported by the evidence. If, however, the Commission nevertheless imposes a 10-year transition period, it must provide a capacity credit for opt-out customers who help PGE avoid incremental capacity additions during the transition period.

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Respectfully submitted,

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