BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for General Rate Revision	)))))))	NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION OPENING BRIEF

I. INTRODUCTION

The Northwest Intermountain Power Producers Coalition ("NIPPC") files this brief in accordance with the Administrative Law Judge's August 14, 2018 Ruling, establishing a schedule related to the direct access issues raised in this case. This brief addresses the stipulation on direct access issues ("Stipulation"), reached by the Staff of the Public Utility Commission of Oregon ("Staff"), Safeway Inc. and Albertson's, LLC ("Albertsons"), Fred Meyer Stores and Quality Food centers, Division of The Kroger Co. ("Fred Meyer"), and Portland General Electric Company ("PGE"), (collectively, the "Stipulating Parties") and the Oregon Citizens' Utility Board's ("CUB's") and Alliance of Western Energy Consumers' ("AWEC's") opposition to the Stipulation.

NIPPC strongly supports competitive electricity markets and direct access. Competitive markets reduce costs for customers and help strengthen the energy industry and economy as a whole. The Legislature adopted direct access as a critically important component of fostering a more competitive market in Oregon. The state's direct access program gives at least some customers an option of taking their electricity service through direct participation in the electric energy market, rather than being required to rely on a monopoly provider for those services.

NIPPC supports the adoption of the Stipulation by the Commission, because it preserves the existing direct access framework, and prevents the deterioration of PGE's direct access program that would have occurred under PGE's initial proposals. NIPPC did not sign the Stipulation out of deference to the industrial customers (AWEC), who argue for the removal of unnecessarily low caps placed on customer participation in direct access.

The Commission should adopt the Stipulation and reject CUB's proposal to modify the Stipulation in a way that would drastically roll back the clock on the state's modest direct access program. NIPPC does not oppose the Commission modifying the Stipulation to include AWEC's change to the participation cap.

II. ARGUMENT

A. The Commission Should Ensure that a Reasonable Direct Access Program Is Retained, so that Some Oregon Customers Can Reply Upon a Competitive Electricity Market to Meet Their Needs, Rather than Rely on a Monopoly Utility

Senate Bill ("SB") 1149 was passed by the Oregon Legislature in 1999 in order to accomplish several goals of the Legislature related to ensuring access to a competitive electric market by the state's electric utility customers. These goals were articulated in the preamble to the bill, and specifically include:

- Competitiveness of the state's economy;
- Functional separation of electrical power generation from the distribution functions in order to stimulate competition;
- Providing depth and liquidity to the wholesale market and facilitating the transition to a fully competitive market by alleviating horizontal and vertical monopoly market power;
- Providing a more accurate estimation and mitigation of stranded costs;
- Development of a competitive electricity market;

- Provision to all Oregon retail electricity consumers of fair, non-discriminatory access to competitive electricity options; and

- Enabling retail electricity consumers that want and have the technical capability to, either on their own or through aggregation, take advantage of competitive electricity markets.

A main provision of the bill was the mandate that "[a]ll retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access [to the electricity market] beginning on March 1, 2002."[1] Direct access, implemented under SB 1149, is therefore a critical component of the state's energy policy, and the Commission is charged with ensuring that it works and accomplishes the Legislature's goals.

The importance of the direct access legislation is also recognized on the Commission's website, which announces:

> Customers of Portland General Electric (PGE) and PacifiCorp now have more energy options. . . . Legislation (Senate Bill 1149) requiring electric industry restructuring for the state's largest investor-owned utilities was signed into law in July of 1999. The law received broad-based support including the Oregon Public Utility Commission, the Citizens' Utility Board, Industrial Customers of Northwest Utilities and Associated Oregon Industries. Restructuring is designed to give consumers more options while at the same time encouraging the development of a competitive energy market.[2]

Direct access was also considered in the Commission's recent process surrounding implementation of SB 978, which called for the Commission to review how developing industry trends might impact the existing regulatory system.[3] The Commission's report to the Legislature on SB 978 noted: "Customer options—The PUC will enable customer and competitive options

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1 ORS 757.601(1).

2 *Restructuring Law SB 1149,* PUB. UTIL. COMM'N. OF OR., https://www.puc.state.or.us/Pages/electric_restruc/consumer/summary.aspx (last visited Oct. 18, 2018).

3 Section 1, Chapter 741, Oregon Laws 2017.

to be *fully and accurately valued* and, therefore, encouraged to expand in alignment with legislative goals and the overall strength and efficiency of the utility system."[4]

The direct access program has allowed for at least some customers to look to a competitive energy market to meet their electricity needs. NIPPC notes, however, that direct access adoption has been very modest in the state, and the vast majority of PGE's customers continue to receive their electricity supply from PGE. Thus, the Commission should be mindful as it considers this case of the Legislature's intent to provide reasonable access to the competitive electricity market for all of PGE's non-residential customers, and it should reject any invitations to further impede customers' reasonable access to the market.

B. Ensuring the Reasonableness of Any Transition Adjustment, or "Exit Fee" Is Critical to the Viability of Direct Access, and the Commission Should Not Allow the Exit Fee to Become a Tool to Unravel the Program

In SB 1149, the Legislature recognized that customers leaving a utility's power supply service and turning to the competitive market to procure their electricity could leave the utility with stranded costs. SB 1149 thus allowed for a charge to be established to prevent "unwarranted shifting of costs to other retail electricity consumers."[5]

Importantly, the Legislature left the specific determination of the transition adjustment to the Commission, given that its calculation involves complexity, requires expertise, and is the type of calculation that should be supported by substantial evidence in an agency process. The Commission's discretion, however, is limited and must be interpreted to effectuate the purpose

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[4] OR. PUB. UTIL. COMM'N., SB 978 ACTIVELY ADAPTING TO THE CHANGING ELECTRICITY SECTOR at 4 (2018). https://www.puc.state.or.us/Renewable%20Energy/SB978LegislativeReport-2018.pdf.

[5] ORS 757.607(1).

of SB 1149, which is to ensure that all non-residential customers have a fair opportunity to purchase power in the competitive market.

It is apparent that while it is important to get the calculation 'right,' the transition adjustment is susceptible to being used as a tool to try to unravel the entire direct access construct. This is because it provides an opportunity for a utility or other party to seek to use the transition adjustment to impose significant costs on those who would leave utility service for direct access. This can put such customers in a position of being unable to economically afford to do so, even when the underlying economics of the market are favorable, and the actual utility stranded costs created by the customers' departure from utility service are not so high as to warrant there being an impediment to direct access.[6]

It is also important to note that in establishing all rates and charges, including the transition adjustment, the Commission is required to ensure that such charges are just and reasonable.[7] The Commission must, therefore, ensure that the exit fee is based on a reasonable estimation of costs, and is just and reasonable. Additionally, where there is in fact a benefit associated with load moving to the competitive market for its supply, that benefit also must be reflected.

C. PGE Proposed an Unwarranted Doubling of the Exit Fee Period to Ten Years, and Provided No Substantial Evidence in the Record to Support the Fee

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[6] See Staff/800, Kaufman/41 (discussing that transition adjustments can inappropriately impede access to competitive electricity markets when set higher than is necessary to address any cost shifting).

[7] See ORS 756.040(1) ("[T]he commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates."). *See also* ORS 756.010(7) (defining "rate" as including all charges levied by a utility on its customers).

In this case, PGE sought a general rate increase. In addition, PGE also attempted to substantially limit its customers' ability to gain access to a competitive electricity market through the direct access program. Under PGE's current Schedule 129, eligible customers choosing to access the electricity market for their loads must pay a transition fee, which assigns to them uneconomic costs of PGE's generation resources over five years. PGE proposed to fully *double* the payment period for the exit fee in Schedule 129, extending it to ten years.[8]

PGE attempted to justify this by simply asserting, as its primary case, that doing so "will help protect remaining [cost of service ("COS")] customers from undue cost shifting when large nonresidential customers choose to opt out of COS on a long-term basis."[9] The only attempt PGE made at analytical evidence to support this assertion was a calculation that showed that if PGE were to extend the revenue collection period by 100%, it would collect 100% more revenues.[10] PGE equated this to a showing that PGE's cost of service customers would therefore be harmed by the same extent to which it would forego revenues without this increase.[11]

Staff, NIPPC, AWEC, Calpine Solutions, and several PGE commercial customers all strenuously objected, showing that PGE's proposal was unwarranted, not supported by any credible evidence in the record and, in fact, contradicted by substantial evidence in the record and evidence from other PGE proceedings. Staff witness, Lance Kaufman testified, for example, that PGE's proposal was unfounded for a number of reasons, including:

> 1) PGE provides no evidence that the current transition adjustments result in unwarranted cost-shifts;
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> 2) PGE's proposal would raise unnecessary barriers to a competitive energy market; [and]

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8 PGE/1300, Macfarlane-Goodspeed/40. See generally PGE/1308.

9 Id.

10 Id. at 40-41; PGE/1308, Macfarlane-Goodspeed/1.

11 PGE/1300, Macfarlane-Goodspeed/40-41.

3) PGE's proposal could result in unnecessary and costly resource acquisitions, which would raise cost of service rates in the long run.[12]

With respect to the "evidence" provided by PGE of unwarranted cost shifts under the current charge, Mr. Kaufman aptly testified:

> PGE points to Exhibit 1308 as evidence of unwarranted cost-shifts. Exhibit 1308 is a table that multiplies $34.60 by 438,000 by ten to arrive at $75 million. PGE asserts that this arithmetic provides evidence of cost-shifting. . . . PGE provides no explanation for why the $75 million calculation represents cost-shifting, and whether that cost-shifting (if it exists) is unwarranted. PGE also provides no explanation for the relevance of ten years or 50 MWa. Without a basis for the number of years, PGE could have proposed *any* number of years with equal validity. For example, PGE could have claimed that the transition charge should collect 100 years of fixed generation costs, and that would be perfectly in line with PGE's rationale, because there is no rationale.[13]

NIPPC's witness Ben Fitch-Fleischmann similarly testified about the lack of substance in PGE's testimony on the alleged cost shifting. He explained:

> PGE points to PGE Exhibit 1308, which simply demonstrates that the fixed generation revenues that it would receive from a customer who opts for long-term direct access would be twice as big if the charges were assessed for twice as long, i.e., ten years instead of five years. It is true, of course, that if PGE collects transition charges for twice as long, the revenues it collects will be twice as much—and if they extended the charges for 20 years, the revenues would be four times as much. But, this does not in any way suggest that there is undue cost shifting or that existing transition adjustment charges are insufficient. PGE has only provided analyses of how its revenue would increase under the proposed change; it has not provided evidence of changes in harm or costs to COS customers that would justify the proposed change in revenue.[14]

In requesting its proposed increase to the transition adjustment for direct access customers, PGE also made a fragile attempt to justify its proposal based on a fee charged by

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12 Staff/800, Kaufman/39.
13 Id. at 40.
14 NIPPC/100, Fitch-Fleischmann/10-11.

another utility, arguing that its proposal was justified by an exit fee established for PacifiCorp.[15] This rationale was unpersuasive and insufficient to support PGE's request.

First, it is worth noting that PacifiCorp's fee was and remains objectionable to NIPPC and other parties to the proceeding where it was established, and that it is under review at the Oregon Court of Appeals.[16] Second, regardless of NIPPC's and others' objections, PacifiCorp's fee was established through a very different process and evidentiary record. For example, the fee was argued for by PacifiCorp and addressed in the testimony of two witnesses who provided calculations that at least comported to their arguments.[17] PGE made no attempt to provide a similar analysis, or to show that its resource portfolio or loads were similar to those reviewed by the Commission in establishing PacifiCorp's transition fee.

Staff's witness Mr. Kaufman highlighted the lack of analytical or quantitative evidence in support of PGE's proposal, noting that in order to demonstrate cost shifting, PGE would have to do something such as develop a multi-year model of cost of service rates with and without direct access load, and further establish that the negative impacts of cost-shifting are greater than the positive benefits of a competitive electricity market.[18] Or, he explained, PGE would have to demonstrate that direct access does not improve the depth and liquidity of the energy market and that PGE has not become more efficient and cost-effective in the face of market competition.[19]

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15 PGE/1300, Macfarlane-Goodspeed/40.

16 See Brief of Petitioner-Appellant, Noble Americas Energy Solutions LLC v. Pub. Util. Comm'n of Oregon and PacifiCorp, dba Pacific Power, Case No. A161359 (Or. Ct. App., filed June 14, 2016).

17 See In re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, Docket No. UE 267, PAC/100, Steward and PAC/200, Duvall (June 14, 2013).

18 Staff/800, Kaufman/40.

19 Id. at 40-41.

Mr. Kaufman also described for the Commission the undesirable effects on other customers' rates that could come about from PGE's proposal to double the applicable term of the exit fee. He explained:

> PGE is facing a substantial capacity shortfall in the wake of the Boardman plant closure. This capacity shortfall means continued resource acquisitions. Long-term direct access is one program that reduces PGE's generation load, and consequently reduces PGE's capacity shortfall. PGE's proposal will reduce direct access participation, and as a result, will increase the likelihood that PGE will acquire costly generation resources and further increase cost of service rates. . . . Staff proposes maintaining the current five-year approach to transition adjustments.[20]

D. The Stipulating Parties Came to a Reasonable Resolution of All Direct Access Issues, Including Abandoning PGE's Unjustified Proposal to Double the Period for the Exit Fee

In light of PGE's request to double the period for collection of the exit fee for direct access, parties to this proceeding took up the exit fee issue, along with several other direct access-related issues raised in the case, as part of settlement discussions. Eventually most parties were able to reach an agreement on all direct access issues.

Importantly, the parties to the Stipulation agreed to abandon the proposal of a 10-year transition charge. In addition to retaining the current exit fee, the Stipulation also:

- Removes PGE's ESS decertification proposal, which NIPPC and other parties had opposed as unwarranted;
- Retains participation limits on direct access; and
- Specifies the treatment of Renewable Energy Certificates for direct access customers.[21]

Although NIPPC is supportive of the Stipulation, NIPPC determined not to sign it, out of deference to the industrial customers, who are not satisfied with the cap put on participation in

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20 Staff/800, Kaufman/41-42.

21 Partial Stipulation Regarding Direct Access Issues at 1-2.

direct access.[22] In NIPPC's opening testimony, it also raised the same concerns as the industrial customers, and recommended that the Commission direct PGE to "either establish an annual enrollment cap for direct access of 50 MWa or increase the total cap from 300 MWa to 400 MWa."[23] NIPPC also argued that the "cap has not proven necessary and either of these adjustments will help to ensure new customers have the choice of direct access."[24]

AWEC's testimony further details their challenge to the caps, and NIPPC does not repeat them here. NIPPC would continue to be supportive of the Commission acting to modify the caps as recommended by AWEC or NIPPC's opening testimony.

E. CUB Now Seeks to Thwart the Stipulation by Reviving PGE's Unsubstantiated and Harmful Exit Fee Proposal, but Provides No Better Justification than PGE

CUB filed an objection to the Stipulation on direct access issues, and now urges the Commission to restore PGE's original proposal to double the period for the exit fee. CUB asks the Commission to modify the Stipulation to reflect this outcome. As an "alternative" to its proposal, CUB asks the Commission to reject the Stipulation in its entirety.[25]

CUB invites the Commission to act, as did PGE, without any basis in the record, and with no substantial evidence to support its position. To do so would be contrary to law, and subject to remand on appeal.[26] CUB's whole case is founded upon the same crude notion as PGE's

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22 See Objections of the Alliance of Western Energy Consumers to the Partial Stipulation Regarding Direct Access Issues.

23 NIPPC/100, Fitch-Fleischmann 15.

24 Id. NIPPC also recommended "that the Commission direct PGE to lower the direct access participation threshold to 35 kW."

25 Objections of the Oregon Citizens' Utility Board to the Partial Stipulation Regarding Direct Access Issues at 4.

26 Under ORS 183.482(8)(c), "[t]he court shall set aside or remand [an agency's] order if the court finds that the order is not supported by substantial evidence in the record." Substantial evidence supports an agency's finding "when the record, viewed as a whole, would permit a reasonable person to make that finding."

original unsupported case, that a ten-year charge will go further in protecting cost of service customers than a five-year charge, and thus CUB prefers it.

Under the current record, there is no demonstration of unwarranted cost shifting with the transition fee set at five years. CUB's request is therefore tantamount to a request that the Commission add on an amount that would certainly ensure that PGE's cost of service customers are not harmed, but that would in reality result in unwarranted and impermissible subsidization by direct access customers of other customers' rates.

Multiple witnesses testified that a doubling of the exit fee period would create a windfall for PGE's cost of service customers, resulting in a situation where the direct access customers were actually *charged* for providing a *benefit* to PGE's system. NIPPC's witness, Ben Fitch-Fleischmann testified about PGE's resource position, demonstrating that an increase to the exit fee like that proposed by CUB would be unwarranted. In response to the proposal, Mr. Fitch-Fleischmann stated:

> To extend these charges to the period six to ten years after the direct access customer leaves COS rates, as PGE proposes, would be inappropriate because it would impose charges beyond a sufficient planning window over which a utility ought to be able to manage its procurement plans to account for the departing load. . . . PGE's projections of load growth and capacity deficits show that PGE expects its capacity deficit to rise from 100 MW in 2021-2023 to over 1,000 MW in 2031. This means that the departure of load from COS rates could help PGE avoid some 10 of the need for new resources.[27]

Kevin Higgins, on behalf of Calpine Solutions, also testified in response to CUB and explained that extending the charge to cover ten years of fixed asset generation costs would result in an overpayment by direct customers unless otherwise mitigated. He advocated that, if CUB's proposal were adopted, the Commission should provide a credit to direct access

[27] NIPPC/100, Fitch-Fleischmann/11-12.

customers to reflect avoided fixed generation costs that PGE has already identified it will need based on its forecast future needs.[28] Mr. Higgins testified:

> According to PGE's 2016 IRP: […] PGE will have a significant and growing gap between the power capacity needed to meet our customers' needs reliably and the resources available to do so. Much of the deficit is due to the need to generate power when renewable resources are unavailable, continued load growth, expiring long-term power purchase agreements, and ceasing coal-fired operations at Boardman. According to PGE's March 2018 IRP Update, PGE projects annual growth rates over the 2022-2050 period of 1.1% for energy, 0.8% for winter peak, and 1.1% for summer peak. Since the original 2016 IRP filing, PGE has procured additional capacity, but still anticipated a significant deficit as of its March 2018 IRP Update. In its IRP Update, PGE reported a capacity need of 225.7 MW in 2024, growing to 824.7 MW in 2028 (corresponding to years six and ten for a new opt-out customer entering the program in 2019). Thus, PGE has significant resource needs in years six through ten of its forthcoming opt-out period that can be partially displaced or deferred by new opt out load.[29]

The testimony of these witnesses establishes that CUB's proposal is unwarranted, and would impose inappropriate costs on direct access customers that go well beyond what would be needed to hold PGE's other customers harmless from any effects associated with direct access.

In an attempt to support its proposal to double the period for the exit fee, and in the face of a total lack of analytical evidence to justify it, CUB resorts to espousing a 'theory' upon which it invites the Commission to rely. CUB's witness Bob Jenks asserts that when direct access was established, and an exit fee determined, the "theory was that retail customers' continued load growth would enable them to grow into stranded generation resources. Transition charges were intended to serve as stranded cost protections during a period while the load grows into the

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28 Calpine Solutions/200, Higgins/2.

29 Id. at 4.

stranded resource."[30] CUB then theorizes that because PGE's load growth has slowed, a doubling of the exit fee period is warranted.

CUB's arguments fall short for several reasons. First, CUB's argument contains no citations that CUB's theory was indeed the prevailing theory that supported the transition adjustment concept (and NIPPC does not believe that they exist), or that the existing charges depended on that theory. And more importantly, CUB provides no evidence to support a calculation that the exit fee's application should be doubled to ten years, or even that the current exit fee is insufficient to compensate PGE and its cost of service customers for any stranded costs. The Commission should reject CUB's attempts to bolster PGE's original proposal with unsubstantiated conjecture.

That CUB's proposal should be rejected is also clear under the legal standard that CUB itself assigns to the Commission in this case. CUB's objection to the Stipulation states:

> In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production. In a utility proceeding, the burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility. Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility's position. In a case in which a utility is requesting a change in rates or a schedule of rates—such as a general rate case—the utility bears the burden of showing that its proposed change will result in rates that are fair, just, and reasonable.[31]

CUB's filed objection then literally fails to apply that standard to its own argument regarding the exit fee because PGE is the party that did not provide any evidence to double the application of the exit fee. And indeed, it would undermine CUB's proposal if it were to do so. As described

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30 CUB/400, Jenks/3.

31 Objections of the Oregon Citizens' Utility Board to the Partial Stipulation Regarding Direct Access Issues at 3.

above, no party has offered evidence of unwarranted cost shifting occurring under the current transition adjustment. Certainly, PGE did not meet the high standard described by CUB when it proposed to double the exit fee period to ten years, and showed only a calculation that its revenues would double under such a proposal. The Commission should reject CUB's invitation to revive a proposed doubling of a rate that was never established in accordance with its original proponent's burden of proof.

F. Based on the Record, and for Sound Policy Reasons, the Commission Should Maintain the Status Quo for the Exit Fee, as Negotiated in the Stipulation.

For all of the reasons described above, the Commission should recognize that the proposal to double the application of the exit fee is not supported by substantial evidence. No party presented evidence of cost shifting between direct service customers and cost of service customers. And by no means did any party present a case that moving from five to ten years would result in just and reasonable rates for direct access customers. In light of this record, and the Commission's requirement to further the purposes of the Legislature in enacting SB 1149, the Commission should adopt the Stipulation, which maintains the status quo for PGE's exit fee.

In considering PGE's exit fee, the Commission should also be mindful of evidence that shows direct service customers are providing benefits to PGE's other customers. For example, the very concept that PGE's customers benefit from conservation programs (which reduce PGE's load with the aim of reducing required resource acquisitions) aligns with the conclusion that direct access customers may be reducing costs for the utility's other customers. Witnesses in this case testified further about this benefit. As Mr. Fitch-Fleischmann testified:

> Given PGE's forecasts of capacity deficits and load growth, it would be unreasonable to extend the transition charges beyond the current five-year period, as PGE proposes. This is because, under current conditions, the

> departure of a customer from COS to direct access may very well help PGE *reduce* its need for new resources.[32]

Mr. Fitch-Fleischmann further noted:

> PGE has recently proposed a capacity credit for customers that elect to take service under its proposed voluntary renewable energy tariff ("VRET"), as filed in Docket UM 1690. In that docket, PGE states that 'If PGE is resource deficient at the time of program subscription/resource fulfillment, we propose that participating customers be credited the value of capacity according to the then approved Schedule 201, in addition to the value of energy based on the AURORA market price forecast.' This same credit should be applicable to customers taking direct access service.[33]

It is difficult to imagine that programs aimed at reducing PGE's loads and resource needs can be highly beneficial to customers on one hand, and that, on the other hand, allowing certain of PGE's loads to get their electricity supply for an entity other than PGE is highly detrimental to PGE's customers.

G. If the Commission Were to Adopt CUB's Proposal to Double the Exit Fee Period, It Would Need to Reduce the Exit Fee by Capacity Credits that Should Be Paid to Direct Access Customers

The Commission should recognize that, if the Commission were to determine that it should reject the Stipulation, the Commission should provide a credit to direct access customers that reflects capacity costs saved by PGE. This concept was described in the testimony of witnesses for NIPPC and Calpine Solutions. Mr. Fitch-Fleischmann stated,

> I recommend that the Commission deny PGE's request to increase transition adjustment charges for direct access customers, and I recommend that the Commission direct PGE to incorporate a capacity credit into its transition adjustments to ensure that direct access load is appropriately compensated if in fact its departure benefits PGE's COS customers by helping PGE avoid costs associated with the addition of new generation resources.[34]

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[32] NIPPC/100, Fitch-Fleischmann/4.
[33] Id. at 13.
[34] NIPPC/100, Fitch-Fleischmann/4.

Mr. Higgins further testified, with calculations that demonstrated the need for these credits, providing:

> As explained in my Opening Testimony, using the cost assumptions in the Company's IRP, I estimate that opt-out load will be able to avoid incremental fixed generation costs of approximately $41.77/MWh in 2024, declining to $38.42/MWh in 2028 due to depreciation (assuming the avoided resource would have been added in 2024). The upshot is that if a ten-year transition adjustment were to be adopted, then it would need to be accompanied by a substantial capacity credit for departing customers.[35]

Again, for all the reasons described above, the Commission should accept the Stipulation, and reject CUB's invitation to double the exit fee period under the direct access program. However, if the Commission were to nevertheless double the exit fee's application, it should incorporate a crediting mechanism related to avoided capacity needs in order to at least hopefully prevent its finding from being the final blow to the state's direct access program.

H. The Commission Should Undertake a Workshop to Delve Further into the Benefits of Direct Access, and to Discuss any Concerns About Cost Shifting

The Commission's job in determining an appropriate transition adjustment is a complex task, and one which requires the expertise of its Staff and resources from the parties. NIPPC believes that one appropriate method for resolving the adjustment, therefore, is to rely on the parties' negotiations, embodied in the Stipulation, which benefitted from discovery, expert testimony, and a full consideration of the competing interests involved. NIPPC requests, however, that the Commission also look deeper into direct access issues, and the associated benefits and costs through holding a workshop to explore the associated issues in more detail,

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[35] Calpine Solutions/200, Higgins/4-5.

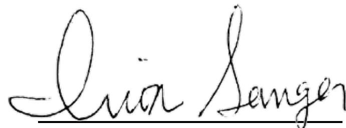
and in a more constructive environment. This proposal was discussed in Staff's testimony,[36] and in NIPPC's testimony as well,[37] and NIPPC would stand ready to participate.

III. CONCLUSION

For all the reasons described above, the Commission should adopt the Stipulation in this case that resolves issues related to the direct access program. The Stipulation preserves the modest access that some customers have to a competitive electricity market in the state. The Commission should reject CUB's proposed modifications to the Stipulation as unsubstantiated and inappropriate.

Dated this 19th day of October 2018.

Respectfully submitted,



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36 Staff/800, Kaufman/42-43.

37 NIPPC/200, Fitch-Fleischmann/5-6.