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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UM 1837—PacifiCorp's Opening Comments

I. INTRODUCTION AND BACKGROUND

PacifiCorp d/b/a Pacific Power appreciates the opportunity to provide comments to the Public Utility Commission of Oregon (Commission) in this proceeding. The Commission opened this proceeding to "investigate questions related to the appropriate treatment of direct access transition adjustments for new customer load at a new site"[1] and these comments follow two rounds of briefing submitted by parties to address legal issues.

On September 8, 2017, PacifiCorp filed with Portland General Electric Company (PGE) a joint brief that explained that Senate Bill (SB) 1149 does not limit the Commission's existing authority to approve different transition adjustment charges for new customer load at new sites. PacifiCorp and PGE addressed three primary legal issues that would need to be addressed when considering different transition adjustment mechanisms for new customer load at new sites: (1) treatment of new customer load at a new site must consider the statutory prohibitions against unwarranted cost shifting; (2) treatment of new customer load at a new site must not violate the Commission's non-discrimination statutes; and (3) treatment of new customer load at a new site must account for the burden and risk to the utility's customers when the utility is the provider of last resort.[2]

Staff, the Oregon Citizens' Utility Board (CUB), the Industrial Customers of Northwest Utilities (ICNU), Vitesse, LLC, Northwest and Intermountain Power Producers Coalition (NIPPC), and Calpine Energy Solutions, LLC (Calpine) also filed opening briefs on September 8, 2017, and parties filed response briefs on October 10, 2017. While parties may have approached the issues somewhat differently, based on two rounds of legal briefing it appears that there is general consensus that the Commission has authority to approve different transition charges for new customer loads at new sites. CUB was the sole party to argue that the

[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] Joint Utilities' Opening Brief at 2-3.

Commission lacks authority to approve a different transition charge for new customer loads.[3] CUB filed a motion to amend the procedural schedule asking the Commission to "make a legal determination as soon as possible to provide parties clarity on the Commission's authority to take action in this docket."[4] No party supported CUB's motion, and the administrative law judge has not ruled on the request as of the time of this filing.

On November 6, 2017, parties held a workshop where PacifiCorp and PGE provided an overview of their load forecasting process, and parties also asked questions about each utility's direct access program. After that workshop, Staff circulated an updated list of policy questions, which PacifiCorp addresses in these comments.

In these comments, PacifiCorp explains that the Commission should exercise its discretion to reduce or eliminate transition charges for new customer load, which is supported by PacifiCorp's existing planning process where large "lumpy" new customer loads are already planned for using a different method than more traditionally anticipated load growth. PacifiCorp proposes a two-step approach to determine whether customer load should be considered "new" for the purposes of being able to elect direct access without incurring traditional transition charges. The purpose of this approach is to protect existing customers from unwarranted cost shifting, and to avoid treating similarly situated customers differently while allowing only unplanned-for new customer load to move to direct access without incurring traditional transition charges.

As a threshold matter, new customer load less than 10 average megawatts (aMW) will not be considered "new" because the company has already planned for these customers. PacifiCorp will employ a balancing test to determine whether new customer load exceeding 10 aMW has already been planned for and should therefore be considered new for the purposes of direct access. With this balancing test, PacifiCorp will consider: (1) the anticipated timing of the new customer load coming online; (2) whether there is a new meter; (3) whether the load is located on a new site; (4) whether the new load includes a new facility; (5) whether the customer has executed a Master Electric Service Agreement (MESA); and (6) whether the new customer load exceeds the regression model's projected growth.

The program to allow new customers to elect direct access without paying traditional transition charges should only be available to customers seeking green energy[5]. Changes in how new load is treated under direct access should also take into consideration the role of the utility in competing for new customer load.

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[3] CUB's Opening Brief at 2.
[4] CUB's Motion to Amend Procedural Schedule at 2.
[5] Consistent with the descriptions included in Pacific Power's Oregon Schedule 272, "green energy" should include energy obtained from resources and fuels such as wind, solar, geothermal energy, certified low impact hydroelectric, hydrogen derived from photovoltaic electrolysis, pipeline or irrigation canal hydroelectric systems, wave or tidal action and low emissions biomass.

II. COMMENTS

A. PacifiCorp's Definition of New Customer Load is Consistent with its Existing Planning Process.

PacifiCorp and PGE's joint opening brief noted that while the term "new customer" and "new site" were not yet defined, the analysis in the brief was based on the understanding that "new customer" included incremental new load of an existing customer[6] and clarified in the response brief that this does not necessarily mean that a customer's incremental load growth at an existing site constitutes "new load" and a "new site."[7] As PacifiCorp and PGE explained, these definitions are of critical importance and will be based on fact-specific inquiries.[8]

PacifiCorp's planning process supports a two-step process for determining whether a customer is considered "new" for the purposes of applying potentially different transition charges to customers electing direct access. First, PacifiCorp proposes a bright line size threshold where only customers above 10 aMW could possibly be considered new, unplanned load for the purposes of direct access. Second, PacifiCorp will employ a balancing test for new customer load above 10 aMW to determine whether they have been incorporated into PacifiCorp's planning process. PacifiCorp proposes a balancing test based on a fact-specific inquiry unique to each new customer that reflects how PacifiCorp currently determines whether to include new customer load in its load forecast. In employing this balancing test, PacifiCorp will consider: (1) the anticipated timing of the new customer load coming online; (2) whether there is a new meter; (3) whether the load is located on a new site; (4) whether the new load includes a new facility; (5) whether the customer has executed a MESA; and (6) whether the expected growth in new customer load exceeds the regression model's projected growth.

Under this balancing test approach, no single element would be dispositive of the issue of whether PacifiCorp has planned for new customer load. The purpose of this balancing test is to ensure that only unplanned-for customer load will be considered "new" for the purpose of direct access. Although the timing of this process will need to be further refined, before the direct access window opens, PacifiCorp will inform the customer whether PacifiCorp has already planned for their new load and therefore whether the customer is eligible to select direct access with different transition charges under the balancing test. Each element of the balancing test is discussed in greater detail below.

- **Size threshold.** Using a size threshold before employing a balancing test is a useful bright line test, which aligns with PacifiCorp's current planning process. Customers with at least 10 aMW of load can notably influence the accuracy of the load forecast with their discrete operational decisions. New load from new customers would likely be in excess of the baseline forecast and should be individually included in the load forecast.

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[6] Joint Utilities' Opening Brief at 1.
[7] *Id.* at 3.
[8] *Id*.

- **Anticipated timing.** The anticipated timing of new load will primarily be based on whether an individual customer forecast for prospective new customer load would be necessary if the new customer load was not aligned with the projected forecasted growth for that same year.

- **New meter.** Whether a customer already has a meter or whether the new load will require new meters indicates whether the new customer's historic usage will inform the regression analysis. This would be another element for PacifiCorp to consider when determining whether a customer's load is new for planning purposes. Similarly, a new site would indicate that the new customer's historic usage may not be informing the regression analysis.

- **MESA.** The execution of a MESA typically indicates that the probability of new customer load occurring is high, although this may not always be the case. Generally, an Engineering Services Study Agreement (ESSA) will take about 60 to 90 days, then the Engineering Material Procurement Agreement (EMPA) will take about 90 days to estimate and a Master Electric Service Agreement (MESA) will take approximately one week to complete and the customer will have 30 days to sign. MESA's are required for customers of one MW or greater. These processes generally run back to back, such that in a straightforward circumstance, the process can take 210 days. However, for more complex projects, the MESA can take an extended time to complete.

B. PacifiCorp Uses a Multi-Step Process for Planning for New Customer Load Depending on Multiple Factors.

PacifiCorp's proposed size threshold and balancing test are supported by PacifiCorp's current planning process, where the company uses two different processes depending on whether the company is evaluating a large commercial and industrial customer versus the majority of smaller customers. The majority of industrial and commercial customers are modeled using regression analysis with trend and economic variables. This is the company's default planning process that is used absent any factors warranting individual planning for a specific customer.

PacifiCorp's traditional load forecasting process begins in March and is typically finalized by July of each year. In limited cases the load forecast is updated after July to account for new customer load data. This is done only when there is a high degree of certainty regarding the customer load update. The forecasting process begins by accumulating the most recent sales data by customer class and the most recent economic driver data such as; employment, population and industrial production indexes. Weather data is also used for those customer classes affected by temperature. These data are used as variables in a regression analysis in order to predict future loads.

For a small number of industrial and commercial customers, instead of using the default regression analysis discussed above, PacifiCorp conducts individual forecasts based on input from the customer as collected by the company's regional business managers (RBMs). The decision of whether to produce an individual customer forecast for new customer load is determined at the time a MESA is signed. The RBMs collect information about an industrial or commercial customer's anticipated future operations and any planned expansion of new load if this customer has loads in excess of one MW. The PacifiCorp load forecasting group relies on these individual new customer forecasts to better reflect customer operating characteristics that cannot be reasonably predicted using a regression analysis. In general, an individual customer forecast for a new customer would be incorporated by balancing whether the new operation : (1) has signed a MESA; (2) the new load will be associated with a new meter; (3) exhibits loads that are at a scale large enough to notably influence the forecast with their discrete operational decisions made by the customer (i.e., over 10 aMW); or (4) has projected load growth that is in excess of the regression model's projected growth in the relevant timeframe.

Once the load forecast has been completed by the load forecasting group in July, it is sent to the integrated resource planning team, among other departments in the company. As noted above, in some cases, the load forecast is updated after it has been completed in July to account for new information on customer loads. The integrated resource planning team incorporates this load forecast in the integrated resource plan (IRP), which is filed in odd-numbered years, or IRP Update, which is filed in even-numbered years. For resource planning purposes, the IRP load forecast excludes one- and three-year direct access customers from the forecast for the immediate opt-out period and assumes these customers will return to PacifiCorp service once the opt out period expires. This assumption is reasonable because the company must continue to plan to serve these customers in the event they do not elect to participate in the direct access program. The IRP load forecast excludes load for five-year direct access customers from all years of the IRP forecast. Once a customer has permanently opted out, the company is no longer obligated to plan for its load and a four-year notice is required to return to cost of service rates. Depending on the timing of adjustments to the load forecast based on known-and-measurable changes, such adjustments may or may not be incorporated in an IRP planning cycle.

C. PacifiCorp's Direct Access Program and Transition Adjustments Avoid Cost Shifting and Reasonably Balance Interests of the Utilities, Cost-of-Service Customers, and Direct Access Customers.

PacifiCorp currently offers five supply service options for direct-access-eligible customers: (1) a one-year opt-out program through Schedule 294; (2) a three-year opt-out program through Schedule 295; (3) a five-year opt out program through Schedule 296; (4) standard offer supply service through Schedule 220; and (5) a default cost-based supply service program. These opt-out programs include transition adjustment charges. The purpose of PacifiCorp's transition adjustments is to make cost-of-service customers indifferent to a customer's decision to elect direct access and receive energy from an electricity service supplier (ESS). The transition adjustments are calculated each year at the conclusion of the transition adjustment mechanism (TAM), and are the difference between the estimated market value of the electricity that is freed-up when a customer chooses to leave cost-based supply service for direct access versus PacifiCorp's regulated cost-of-service price. Indicative transition adjustments are posted on PacifiCorp's website on November 8 each year and the final transition adjustments are posted on November 15. Transition adjustments apply to all direct access customers.

Customers may elect to participate in the one-year direct access program between November 15 and November 22 each year or the three year direct access program between November 15 and December 6 each year. Both the one- and three-year direct access customers are subject to certain transition adjustments for the duration of their participation in direct access.

The period for customers to elect to participate in the five-year permanent direct access program is November 15 to December 6 each year. Permanent direct access customers are subject to both the transition adjustments and a consumer opt-out charge for a period of five years. After the five-year period the permanent direct access customers are no longer subject to the transition adjustments or a consumer opt-out charge.

The consumer opt-out charge is a levelized payment and consists of the transition adjustments and the costs embedded within Schedule 200, base supply service, for years six through 10 after the customer elects the permanent direct access program. The consumer opt-out charge keeps cost of service customers indifferent by providing some recovery of fixed generation costs which a customer on permanent direct access would no longer pay for after five years.

A customer on permanent direct access must provide PacifiCorp no less than four years of notice to return to cost-based service. The purpose of the notice provision for customers returning from the permanent opt-out program is to protect existing cost-of-service customers from cost shifting.

After notice is given, but before the four-year waiting period has elapsed, if a customer needs to return to PacifiCorp's service, it would be subject to emergency-default service. Under the emergency-default service, the customer would be required to pay market prices with a 25 percent premium for their supply service as well as all appropriate costs for transmission and ancillary services. This charge is necessary to protect existing customers—once a customer is on permanent direct access, PacifiCorp no longer includes that customer in its planning for supply service.[9] Ensuring that the cost of emergency-supply service for customers who choose to return to PacifiCorp's cost-based supply service is adequately robust mitigates the potential for cost shifting to other customers. For example, if prevailing wholesale market prices rise precipitously above the company's average cost-of-supply service, a consumer on direct access may have a strong incentive to return to the company's cost-based rates if its ESS is heavily exposed to the market. Since the return of the customer to cost-based rates in that scenario would likely cause the company to need to purchase more from markets and/or make less sales for resale, tying the emergency supply service to market prices protects other customers from the increased cost of the consumer's re-entry.

[9] See PacifiCorp's Tariff Schedule 230 and Rule 21 available at: https://www.pacificpower.net/about/rr/ori.html.

D. PacifiCorp's Direct Access Program is Designed to Protect Cost-of-Service Customers from Cost Shifting Resulting from Customers Electing Direct Access.

1. *PacifiCorp's planning process allows new customers to elect direct access without adverse impacts on cost-of-service customers.*

As previously explained, not all new customer load is immediately included in the load forecasting process. Several factors determine whether large, new customer load is included in the load forecasting process, including the expected timing of when new customer load will be online on the PacifiCorp system. Until new customer load is included in the load forecasting process, potential adverse impacts to cost-of-service customers is limited.

For rate making and pricing purposes, the 2017 multi-state process (MSP) Protocol specifies that direct access customer load must be included in the company's jurisdictional load used to allocate system costs among states. Load for one-year and three-year direct access customers are included in the forecast throughout the forecast horizon, while loads for customers electing the five-year direct access program remain in Oregon's jurisdictional loads for the time period covered by the consumer opt-out charge.

Additionally, customers who elect direct access are still required to pay for distribution charges to protect against cost-shifting to cost-of-service customers and ensure that direct access customers appropriately pay for the cost the company incurs to deliver power to them. Existing customers do not benefit from these charges—these charges simply insulate cost-of-service customers from harm or unwarranted cost shifting.

2. *Treating new customers differently from existing customers will not lead to undue discrimination.*

As PacifiCorp and PGE explained in briefing, the Commission may, but is not required to, approve different treatment if customers are differently situated and there is a reasonable economic basis for the different treatment.[10] Based on PacifiCorp's existing planning process, there is a reasonable economic basis to treat new, unplanned for load differently than load that has been planned for by the utility.

When a large significant incremental customer load that is otherwise unplanned-for would elect direct access and only receive delivery service from the company, there is less potential for cost shifting to other customers from permanent direct access participation, since no investments have been previously made to accommodate supply for this load. For existing loads, smaller less significant new loads connecting to PacifiCorp's system, and additional loads from pre-existing sites, the potential for considerable cost shifting remains, since those loads are part of the company's planning. The distinction between large new customer load and existing and

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[10] PacifiCorp and PGE Joint Response Brief at 7.

smaller less significant new load is not discriminatory, since these two groups are not similarly situated from a cost-causation perspective.

E. Direct Access For New, Large, Unplanned Load Should Only Be Available For Customers Seeking Green Energy from Green Resources.

Any direct access offering for new customers should be limited to customers seeking green energy, either from the utility or the electricity service provider. During the 2017 legislative session, the legislature considered Senate Bill (SB) 979, a bill that would, among other things, have considered changes to direct access. Central to the new direct access program proposed in SB 979 was the requirement that the offering by the electricity service provider be comprised nearly entirely of renewable resources. Although the legislature did not pass SB 979, during a committee hearing on the bill, Senator Lee Beyer referenced the issue of renewable offerings for new customer load and noted that the Commission was likely better suited to consider these issues. The Commission opened this proceeding on May 16, 2017, approximately one month after the senate committee meeting discussing the proposed legislation. Although the legislative history of SB 979 is not binding on the Commission, requiring that any new direct access program for new customer load be served by green energy options is consistent with the intent of SB 979.

Distinguishing between a customer electing direct access to satisfy its energy needs through green energy versus other conventional sources helps to further protect against the risk of cost shifting for cost-of-service customers. It is far more likely that a consumer seeking direct access from a renewable energy resource is making its decision for reasons other than purely financial ones. In contrast, a customer seeking direct access from a conventional source of energy for financial reasons only could be more likely to elect to return to cost of service rates if conditions render their continued direct access participation uneconomic.

F. The New Program for New Direct Access Load Should be Included in the Current Program Caps for Existing Direct Access Programs.

The new program for direct access contemplated in this docket should be included in the existing direct access program caps[11]. Keeping direct access programs capped limits the potential risk of cost shifting to cost of service customers from potential provider of last resort requirements. Currently, customers with 11 MW of load out of the 200 MW cap participate in the three year program and customers with an estimated 41 aMW out of the 175 aMW cap participate in the five year program.

G. The New Program for New Direct Access Load Should Consider the Utility's Ability to Compete to Provide Renewable Options to New Customer Load.

New customer load that has not been planned for should be eligible for non-traditional transition adjustments because doing so does not create adverse impacts for remaining cost-of-

[11] See Company's Tariff Schedule 295 and 296.

service customers. Allowing utilities the ability to compete for new customer load on the same footing as ESSs similarly does not create adverse impacts for remaining cost-of-service customers for the same reason. In addition, the utility has no competitive advantage with respect to new customer load. Prohibiting utilities from competing for new customer load would actually provide ESSs with a competitive advantage by entirely eliminating a market participant. Designed appropriately, a program to allow utilities to compete for new customer load will result in a more robust competitive marketplace in Oregon while ensuring that cost-of-service customers remain insulated from the decisions of customers electing alternative service supply from either an ESS or a utility.

III. CONCLUSION

PacifiCorp appreciates the opportunity to provide these comments and looks forward to continuing to actively participate in this proceeding.

If you have questions about this filing, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,

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