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July 28, 2015

Via Electronic Filing

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

Re: In the Matter of GEORGIA-PACIFIC CONSUMER PRODUCTS (CAMAS) LLC and CLATSKANIE PEOPLE'S UTILITY DISTRICT Petition for Declaratory Ruling
Docket No. DR 49

Dear Filing Center:

Enclosed for filing in the above-referenced matter, please find the Response Brief of Georgia-Pacific Consumer Products (Camas) LLC and Clatskanie People's Utility District.

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

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 49

In the Matter of	)	
	)	
GEORGIA-PACIFIC CONSUMER PRODUCTS (CAMAS) LLC	)	RESPONSE BRIEF OF GEORGIA-PACIFIC CONSUMER PRODUCTS (CAMAS) LLC AND CLATSKANIE PEOPLE'S UTILITY DISTRICT
	)	
and	)	
	)	
CLATSKANIE PEOPLE'S UTILITY DISTRICT	)	
	)	
	)	
Petitioners.	)	
_____	)	

I. INTRODUCTION

Georgia-Pacific Consumer Products (Camas) LLC ("GP" or "Camas Mill"), a customer located in Washington State, is planning to take retail electric service at a point of delivery in Washington State following the expiration of a special contract with a fixed end date (the "Contract"). These are the dispositive facts in this case – a case that seeks a ruling from the Oregon Public Utility Commission ("Commission") on the applicability of Oregon-specific laws to this transaction.

PacifiCorp's (or the "Company") Opening Brief employs numerous tactics to attempt to shoehorn the proposed transaction between the Camas Mill and Clatskanie People's Utility District ("Clatskanie") into Oregon's territory allocation laws and direct access law. It attempts convoluted and, ultimately, unsuccessful statutory analysis. It unpersuasively invokes equitable and policy arguments. It even appends over one hundred pages of agreements and

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schematics to its brief, arguably introducing new facts into the proceeding. Ultimately, however, none of the Company's arguments address the fundamental issue that the Assumed Facts in the Revised Petition for Declaratory Ruling ("Revised Petition") do not describe an Oregon-jurisdictional transaction.

PacifiCorp claims that the Camas Mill is the Company's exclusively allocated customer. PacifiCorp is wrong. The Commission cannot require a customer located in another state to take service from an Oregon utility. To do so would be outside of the Commission's jurisdiction and unconstitutional.

PacifiCorp claims that it has an exclusively allocated service territory at the Troutdale Substation. PacifiCorp is wrong. No Commission order affirmatively allocates the Troutdale Substation to the Company as its exclusive service territory, or the Camas Mill as its exclusive customer. Absent an affirmative allocation, PacifiCorp has no exclusive right to serve the Camas Mill under the territorial allocation statute. In any event, the Commission need not decide this issue, as Clatskanie will not provide utility service to the Camas Mill at the Troutdale Substation or even in Oregon, so no Oregon exclusive service territory could possibly be impacted.

PacifiCorp claims that Clatskanie's provision of retail service to the Camas Mill will violate Oregon's direct access law. PacifiCorp is wrong. Direct access requires that a person provide electricity to another utility's retail customer. Under the proposed transaction, the Camas Mill will be a retail customer of Clatskanie, not PacifiCorp.

Finally, PacifiCorp claims that Clatskanie's provision of retail service to the Camas Mill will violate the policies against cost-shifting in the territory allocation and direct

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access laws. Again, PacifiCorp is wrong. The Company's assertions on this issue are wholly unsubstantiated and are irrelevant to the legal determinations requested in this docket.

Under the Assumed Facts, the only transactions that will occur in Oregon are: 1) PacifiCorp will provide transmission service to Clatskanie pursuant to PacifiCorp's Open Access Transmission Tariff ("OATT"); and 2) PacifiCorp will deliver wholesale power to Clatskanie at a point of interconnection between Clatskanie and PacifiCorp at the Troutdale Substation. Both of these transactions are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"). The only retail transaction contemplated in the Assumed Facts is the delivery of electricity by Clatskanie to the Camas Mill in Washington State. The Commission does not have jurisdiction over any of these transactions because they are subject to federal law or occur outside the state.

The provision of retail electric service in Washington to a customer located in Washington does not implicate Oregon law, on either statutory or equitable grounds. The Commission should reject the Company's arguments and find that Clatskanie's service to the Camas Mill under the Assumed Facts does not violate Oregon's service territory laws or implicate Oregon's direct access law.

II. ARGUMENT

A. The Proposed Transaction Does Not Violate PacifiCorp's Allocated Territory

PacifiCorp's Opening Brief is based upon the premise that the Company has an exclusive right to serve the Camas Mill because the Camas Mill is allegedly its exclusively

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allocated customer.[1/] The Company arrives at this conclusion by making the logical leap that, because it currently delivers electricity to the Camas Mill at what it claims is its exclusively allocated territory at the Troutdale Substation, the Camas Mill is, therefore, an exclusively allocated PacifiCorp customer.[2/] As discussed below, PacifiCorp does not have an exclusive service territory at the Troutdale Substation, but even if it did, that would not render the Camas Mill an exclusively allocated PacifiCorp customer because it is not possible for the Camas Mill, located in Washington, to be an exclusively allocated PacifiCorp customer in Oregon. Additionally, nothing about the proposed transaction between Clatskanie and the Camas Mill affects the policies behind Oregon's exclusive service territory law.

1. The Camas Mill is not an Exclusively Allocated Customer.

The Company claims that prior Commission orders exclusively allocate the Camas Mill to PacifiCorp, yet the Company has produced no orders that even mention an allocation of the Camas Mill.[3/] As argued in Petitioners' Opening Brief, the Commission has never made such an allocation because it does not have the authority to allocate customers that are located in Washington.[4/]

Fundamental principles of state sovereignty prevent the Commission from extending its jurisdiction to regulate transactions that occur outside of Oregon. Requiring the Camas Mill to take service from PacifiCorp in Oregon would represent an unconstitutional

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1/ PacifiCorp Opening Br. at 14-15, 22 (arguing violation of service territory and direct access laws based on assumption that the Camas Mill is an "exclusive PacifiCorp customer" and that "PacifiCorp is the exclusively allocated distribution utility for the Camas Mill")

2/ Id. at 10-11.

3/ PacifiCorp acknowledges in its Opening Brief "the fact that the Camas Mill was not specifically described in the order" that allegedly allocated the Troutdale Substation to PacifiCorp. PacifiCorp Opening Br. at 11.

4/ GP/Clatskanie Opening Br. at 6-7.

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restraint on interstate commerce because it restricts the ability of a customer located outside of Oregon to transact for electric service outside of Oregon.

While state regulation of interstate commerce may be permissible under the Commerce Clause, that is the case only if the impacts on interstate commerce are incidental; "direct regulation is prohibited."[5/] In Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., the U.S. Supreme Court struck down a New York law that required liquor distillers to sell their product at a price that was no lower than the price at which they sold the same product in New York.[6/] The Court noted that "[w]hen a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry."[7/] Following this reasoning, the Court held that "[f]orcing a merchant to seek regulatory approval in one State before undertaking a transaction in another directly regulates interstate commerce."[8/]

If the Commission finds that the Camas Mill is an exclusively allocated PacifiCorp customer in Oregon, the same constitutional violation would result – GP would be required to obtain Commission approval before undertaking a transaction in Washington. Further, it also discriminates against interstate commerce by preventing GP from transacting for electric service in another state. As discussed below, because the Camas Mill is located in Washington, nothing prevents GP from forming a new interconnection at the mill and taking service from any utility that is ready, willing, and able to serve it. Yet, under PacifiCorp's

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5/ Edgar v. MITE Corp., 457 U.S. 624, 640 (1982); see also, Sam Francis Foundation v. Christie's, Inc., 784 F.3d 1320, 1323 (9th Cir. 2015) (noting that "the Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State") (quoting Healy v. Beer Inst., 491 U.S. 324, 336 (1989)).

6/ 476 U.S. 573, 580 (1986).

7/ Id. at 579.

8/ Id. at 582.

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reasoning, GP would first need permission from this Commission before undertaking that transaction. Such a requirement facially burdens interstate commerce in violation of the Commerce Clause.

In addition, even if the Commission could have legally allocated the Camas Mill to PacifiCorp, after GP sells the 69 kV lines to Clatskanie, the Camas Mill will have wholly withdrawn from the State of Oregon, meaning that the Commission has no further authority to allocate it as a captive customer. When GP chooses to sell all of its facilities in Oregon to another party and confine its facilities to Washington State, it will no longer be interconnected with PacifiCorp. The Camas Mill's withdrawal from the Company's purported "allocated territory" at the Troutdale Substation will have the same effect as if it, or any other customer, large or small, relocated to another state, or an unassigned territory, or if GP were simply to remove its facilities in Oregon and form a new, but redundant, interconnection in Washington.

PacifiCorp has been able to serve the Camas Mill as an Oregon customer because PacifiCorp and GP and its predecessors have voluntarily agreed to such treatment, and because the Commission has approved the bilateral contracts signed between GP and the Company that use the Troutdale Substation as the point of delivery. That agreement and approval, though, expire with the Contract on December 31, 2015.[9/]

2. Clatskanie Will Not Offer or Extend Utility Service in an Allocated Territory.

A violation of an allocated territory does not occur unless an electric utility "offer[s], construct[s] or extend[s] utility service in or into an allocated territory."[10/] PacifiCorp

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9/ Revised Petition at 3 (Assumed Facts ¶ 3).

10/ ORS 758.450(2).

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incorrectly argues that Clatskanie's service to the Camas Mill will result in two violations of PacifiCorp's service territory. First, the Company complains that Clatskanie has violated its exclusive service territory by "offering" utility service to a PacifiCorp retail customer.[11/] Second, PacifiCorp argues that the transaction will result in Clatskanie "extending" its distribution system to reach a PacifiCorp retail customer and into its exclusively allocated territory.[12/]

a. Clatskanie has not offered to provide utility service in an allocated territory.

PacifiCorp claims that the Memorandum of Understanding ("MOU") between GP and Clatskanie "constitutes an unlawful offer to provide utility service to an exclusive PacifiCorp customer under ORS 758.450(2)."[13/] Fundamentally, as discussed above, the Company's right to serve the Camas Mill extends only through the term of the Contract. It has no exclusive allocation of this customer. The MOU explicitly contemplates that Clatskanie would assume service to the Camas Mill after expiration of the Contract.[14/] Consequently, the Company's argument fails at the outset.

Furthermore, a prohibited "offer" under ORS 758.450(2) must be to provide "utility service in or into an allocated territory." "Allocated territory" is defined as "an area with boundaries established by a contract … and approved by the Public Utility Commission …."[15/] Meanwhile, utility service is defined to exclude service through the use of facilities "which pass through or over but are not used to provide service in or do not terminate in an [allocated

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11/ PacifiCorp Opening Br. at 14.
12/ Id. at 14-15.
13/ Id. at 14.
14/ Revised Petition at 5 (Assumed Facts ¶ 9).
15/ ORS 758.400(1).

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territory]."[16/] Under the proposed transaction, Clatskanie's "utility service" to the Camas Mill will occur at the mill's location in Washington, and therefore, will "pass through," and will "not terminate" at, any allocated territory that the Commission could approve given that the boundaries of such an allocated territory must constitutionally stop at the state border.[17/]

PacifiCorp's claim that "the geographic location of the Camas Mill's load has always been the Troutdale substation"[18/] appears to be a misguided attempt by the Company to apply the "point of service" test, which was flatly rejected by the Commission in Columbia Basin.[19/] There, the Commission stated "[w]e reject . . . PacifiCorp's assertion – that all 'utility service' occurs at the point of delivery."[20/] Rather, for the purposes of determining what service territory a load was located in, the Commission stated that it looks to the "location of the permanent loads ... relative to service territory boundaries."[21/] In Columbia Basin, the Commission looked to the location of the turbines and collector substations – the mechanical devices that actually consumed the electricity – to determine where a load was located.[22/]

Following that decision, the analysis is straightforward: the Assumed Facts demonstrate that the Camas Mill is located in Camas, Washington, where the mechanical devices that run the Camas Mill are physically located; and the only facilities that exist at the Troutdale Substation are the breakers and lines that constitute the point of delivery, but that do not

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16/ ORS 758.400(3).
17/ Supra at 4-6.
18/ PacifiCorp Opening Br. at 7.
19/ Columbia Basin Electric Coop., Inc. v. PacifiCorp, Docket No. UM1670, Order No 15-110 at 7 (Apr. 10, 2015).
20/ Id.
21/ Id. at 8.
22/ Id.

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consume the electric commodity.[23/] Thus, no "utility service" takes place at the Troutdale Substation because the Troutdale Substation is a bare point of delivery, not the location of any Camas Mill load. In any event, once Clatskanie begins providing utility service to GP, both the load *and* the point of delivery will be located in Washington.

Therefore, consistent with Columbia Basin and the definition of "utility service," Clatskanie's service of the Camas Mill will pass through the Troutdale Substation and will terminate at the location of the load in Washington State. Because Clatskanie has not "offered" to provide "utility service" at the Troutdale Substation or anywhere else in Oregon, there cannot be a violation of the service territory allocation laws.

b. Clatskanie will not extend utility service into an allocated territory.

PacifiCorp's claim that Clatskanie also will violate ORS 758.450(2) "by extending its distribution system to the Troutdale substation" is similarly erroneous.[24/] The Company's argument gets the test backwards. ORS 758.450(2) prohibits the extension of "utility service" into an allocated territory. "Utility service" is defined as the "distribution of electricity to users."[25/] Thus, the prohibited extension of utility service must be to reach users within an allocated territory. Here, Clatskanie is extending its distribution system to reach the Camas Mill in Washington, outside of any allocated territory in Oregon.[26/] It is interconnecting this distribution system with the Company's transmission system at the Troutdale Substation, but will serve no users at this location.[27/]

[23/] Revised Petition at 4 (Assumed Facts ¶ 6).
[24/] PacifiCorp Opening Br. at 15.
[25/] ORS 758.400(3).
[26/] Revised Petition at 5-6 (Assumed Facts ¶ 10).
[27/] Id. at 6 (Assumed Facts ¶ 11).

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PacifiCorp is essentially asking the Commission to decide that state law prohibits Clatskanie from interconnecting with PacifiCorp's transmission system for the purpose of transmitting electricity into another state. However, Section 211 of the Federal Power Act ("FPA") provides that a utility has the right to interconnect with the transmission system of a transmitting utility, and gives the authority to regulate such an interconnection to FERC, not to the states.[28/] Furthermore, it is well-settled that FERC has exclusive jurisdiction over interstate transmission and the wholesale sale of electricity.[29/] To the extent, then, that PacifiCorp is claiming that Oregon law prohibits this interconnection, its argument is barred by federal preemption.

For these reasons, Clatskanie cannot violate the service territory laws by offering or extending service to the Camas Mill regardless of whether the Troutdale Substation has been exclusively allocated to the Company or not. The Camas Mill is no such exclusively allocated customer and no "utility service" will be provided at the Troutdale Substation.

3. PacifiCorp's Claim to Have an Allocated Territory at the Troutdale Substation Is Unsupported.

Because Clatskanie will not offer or extend "utility service" within any allocated territory or to any exclusive PacifiCorp customer, the Commission need not reach the question of whether PacifiCorp has an allocated territory at the Troutdale Substation. Nonetheless, should the Commission decide to resolve this issue, the plain text of the Commission's orders establishing Portland General Electric Company's ("PGE") allocated territory demonstrates that,

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28/ 16 U.S.C. § 824k.

29/ Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 966 (1986); New England Power Co. v. N.H., 455 U.S. 331, 340 (1982); Pub. Util. Dist. No. 1 of Grays Harbor County Wash. v. IDACORP, Inc., 379 F.3d 641, 646-47 (9th Cir. 2004); Transmission Agency of N. Cal. v. Sierra Pacific Power Co., 295 F.3d 918, 931 (9th Cir. 2002); Transmission Access Policy Study Group v. F.E.R.C., 225 F.3d 667, 723 (D.C. Cir. 2000).

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while PacifiCorp (and, indeed, other utilities such as the Bonneville Power Administration) has substations within PGE's exclusive service territory, PacifiCorp does not have retail service territory within PGE's allocated areas.

Commission Order No. 92-557 allocated the entire area surrounding the Troutdale Substation, described as "Parcel C" and outlined in maps, as well as metes and bounds in the appendix to that order, to PGE as exclusive service territory.[30/] PacifiCorp does not claim otherwise. Instead, PacifiCorp asserts that the Commission's acceptance, in 1972, of a facilities transfer agreement (the "1972 Order"), which was later amended, *nunc pro tunc*, to act as an exclusive service territory allocation, included the creation of an exclusive service territory within the Troutdale Substation for PacifiCorp, solely on the grounds that the facilities transfer agreement listed this transmission-voltage substation as a facility that was not transferred to PGE during the facilities exchange.[31/]

A facilities exchange agreement is not an agreement to allocate customers or territories. ORS 758.410(1) provides that any "person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties." Thus, the contract must explicitly define which customers and territories are being allocated. In contrast, ORS 758.410(2) provides "[a]ny such contracting parties *may also* contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon

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30/ Docket Nos. UA 37 & UA 41, Order No. 92-557 at 21 & App. A at 2-3 (Apr. 16, 1992).

31/ PacifiCorp Brief at 8.

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pursuant to subsection (1) of this section."[32/] Thus, an exchange of facilities is not an allocation of territories.[33/]

The establishment of a valid service territory allocation requires a specific and clear authorization by the Commission.[34/] PacifiCorp's claim that it was allocated retail service territory within an individual substation simply because the Commission accepted an agreement for a facilities exchange that did not include that substation is not a clear or specific allocation of exclusive service territory. To the contrary, in the midst of the Columbia Steel litigation, PGE and PacifiCorp filed a request in Docket Nos. UA 37 and UA 41, requesting that the Commission: 1) clarify the effectiveness of the 1972 Order, and 2) allocate exclusive territory on a prospective basis by approving an agreement that adopted a metes and bounds description of the parties' respective service territories (the "1991 Agreement").[35/] Oregon's service territory allocation laws require that "[o]n the basis of the applicant's filing . . . the Public Utility Commission shall enter an order either approving or disapproving the contract as filed."[36/] The Commission's regulations provide that a filing must include the contract, a general map of the territories covered, and a description by "county, section lines, river, highway, road, street, or metes and bounds . . . designating the boundaries of the territory to be served by each party to the contract."[37/] Each version of an application, even amendments, constitutes a new filing.[38/]

32/ ORS 758.410(2) (emphasis added).

33/ In fact, the Ninth Circuit Court of Appeals specifically confirmed this conclusion for federal antitrust purposes. Columbia Steel Casting Co. v. PGE, 111 F.3d 1427, 1437 (1996).

34/ Id. at 1441.

35/ Order 92-557 at 2.

36/ ORS § 758.425(1).

37/ OAR § 860-025-0010(4).

38/ Re Central Lincoln People's Utility District, Docket Nos. UA 58, UA 60, Order No. 98-546, 1998 Ore. PUC LEXIS 1 at *22 (Dec. 31, 1998).

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The filing made by PacifiCorp and PGE in Docket UA 41, therefore, was a new application for a prospective service territory application, not a request that the Commission simply ratify an old understanding. The Commission was legally bound to consider the application *as filed*, and approve or disapprove the filed document. PacifiCorp's claim, therefore, that the Commission allocated the Troutdale Substation to it in the 1972 Order on the basis that the substation was not on a list of facilities included in a facilities transfer does not meet the requirements of the allocation statutes, which the Commission is bound to follow. Rather, the 1991 Agreement, adopted by the Commission in Order No. 92-557, included a metes and bounds description of Parcel C, allocated to PGE, which encompasses the Troutdale Substation.[39/] Nowhere in the order is there a map showing the Troutdale Substation, nor a metes and bounds, road, or street description of the substation. Neither the Troutdale Substation nor the Camas Mill are even referenced in the order. Rather, PacifiCorp affirmed to the Commission that "PGE currently serves all customers in [Parcel C]."[40/] The Commission granted the application as filed, as required by statute, and attached the metes and bounds description of Parcel C to its order as an official, legal description of PGE's allocated territory.[41/] As a result, the Commission has affirmatively and properly allocated Parcel C, including the Troutdale Substation, to PGE as exclusive retail service territory.

That allocation does not have any effect upon whether PacifiCorp may operate a substation within the area, nor does it have any effect on PacifiCorp's ability to serve the Camas Mill, because, under the standard recently applied in the Columbia Basin case, PacifiCorp's

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39/ Docket Nos. UA 37 & UA 41, Order No. 92-557, App. A at 2-3.
40/ Id. at 18.
41/ Id. at 20-21 & App. A at 2-3.

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"utility service" to the Camas Mill takes place at the geographic load center, in Camas, Washington, not at the Troutdale Substation.[42/]

Moreover, GP and PacifiCorp have never acted as if PacifiCorp had the exclusive right to serve the Camas Mill. PacifiCorp admits that an actual territorial allocation creates an exclusive right paired with an obligation to serve.[43/] Yet, the Camas Mill has long taken service from the Company under special contracts with fixed end dates. PacifiCorp's Schedule 400 establishes the terms and conditions of service to special contract customers. It states that "special contracts should *only* be offered to customers with *viable alternatives* to the Company's service."[44/] The Company's Contract with GP is the only special contract listed in this tariff.[45/] It indicates that, in meeting the eligibility criteria for a special contract, GP "committed to sole reliance on PacifiCorp as a source of electric service for a significant period of years,"[46/] demonstrating that such commitment is neither presumed nor indefinite – it is bound by the length of the Contract. In fact, as PacifiCorp recognizes, the Staff report recommending approval of the current Contract acknowledged that GP could take power from a utility operating in Washington (as Clatskanie will be),[47/] even though in that circumstance, it would still have lines interconnecting at Troutdale.

PacifiCorp attempts to analogize to PGE's right to serve a mill owned by Boise-Cascade and located within the service territory of the Columbia River People's Utility District

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42/ See Columbia Basin, Order No. 15-110 at 7.
43/ PacifiCorp Opening Br. at 7.
44/ PacifiCorp Oregon Schedule 400 at 1 (emphasis added), available at: https://www.pacificpower.net/content/dam/pacific_power/doc/About_Us/Rates_Regulation/Oregon/Approved_Tariffs/Rate_Schedules/Special_Contracts.pdf.
45/ Id. at 3.
46/ Id.
47/ PacifiCorp Opening Br. at 13 (citing Revised Petition, Exh. B at 4).

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("CRPUD") in St. Helens, Oregon.[48/] In that case, CRPUD sought to condemn a portion of PGE's service territory that lay within CRPUD's boundaries through an action brought in Columbia County Circuit Court.[49/] CRPUD and PGE reached a Stipulated Judgment, later approved by the court, under which the service territory and facilities were purchased by CRPUD, except for an affirmatively stated carve-out of the mill located in St. Helens.[50/] The agreement included a provision stating that "facilities and property necessary to serve Boise-Cascade and the *sole and exclusive right* to serve and provide electricity to Boise-Cascade shall remain with and is reserved to defendant [PGE]."[51/] Therefore, the CRPUD/PGE Stipulated Judgment affirmatively and expressly granted to PGE the ownership of all facilities necessary to serve the mill, as well as the "sole and exclusive right" to provide electricity to the mill. On the other hand, Order 92-557, adopting the 1991 Agreement, does not even mention the Troutdale Substation, let alone the Camas Mill. Even the 1972 agreement, which the Commission did *not* adopt on a prospective basis in Order No. 92-557, does not assign all facilities necessary to serve the Camas Mill; it simply indicates that PacifiCorp would keep a substation when the facilities exchange took place.[52/] Further, and more importantly, no agreement between PGE and PacifiCorp, nor any Commission order, mentions any "sole" or "exclusive" right to serve the Camas Mill. When contrasted with the specific, affirmative language of the PGE/CRPUD Stipulated Judgment, it is even more evident that, even if it could be argued that the Commission allocated the Troutdale Substation to PacifiCorp, it did not accompany that allocation with any

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48/ Id. at 10-11.
49/ Re PGE, Docket No. DR 22, Order No. 99-748, 1999 WL 1489649 at *2 (Dec. 12, 1999).
50/ Id.
51/ Id. (citing PGE/CRPUD Stipulated Judgment) (emphasis added).
52/ PacifiCorp Opening Br., Exhibit A (Agreement, Exh. F at 4 (July 18, 1972)).

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exclusive right to serve the Camas Mill. This is unsurprising, given that the Camas Mill is in Washington and cannot legally be assigned to PacifiCorp by the State of Oregon.[53/]

As a result, there is no evidence that PacifiCorp was ever allocated exclusive service territory at the Troutdale Substation, and to the contrary, the plain language of the Commission's allocation order and the agreement that it adopts affirmatively allocates the entire area to PGE. PacifiCorp has consistently behaved as though it had no exclusive service territory, and in fact, no exclusive service territory is necessary for utility service to a customer located in an unallocated area, regardless of the point of delivery. Therefore, the Commission should find, as a matter of law, that its orders have not granted PacifiCorp an allocated territory at the Troutdale Substation. Nonetheless, as discussed above, even if the Commission were to determine that there is an exclusive PacifiCorp service territory within the confines of the Troutdale Substation fence, once GP has withdrawn entirely from this service territory, there is no basis for PacifiCorp to claim that Clatskanie's service to the Camas Mill interferes with its exclusive service territory.

4. PacifiCorp's Policy Arguments Are Irrelevant And Unpersuasive.

PacifiCorp further argues that that proposed transaction between GP and Clatskanie is contrary to the purpose of exclusive service territories and would result in cost-shifting that will harm its remaining customers. Both arguments should be rejected.

53/ Supra at 4-6. It should be noted that the PGE/CRPUD dispute was a condemnation proceeding governed by ORS 758.470, while ORS 758.410 governed the approval of the 1991 Agreement. Unlike Section 410, which gives the Commission discretion and sets forth strict requirements for approval, Section 470 limits the Commission to the ministerial act of transferring rights to the territory acquired through condemnation. As a result, there is no meaningful analogy to be made between the Commission's acts in these two cases.

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a. Clatskanie's service to the Camas Mill will not undermine the policies behind Oregon's service territory laws.

To support its claim that the proposed transaction is contrary to the purpose of exclusive service territories, the Company points to the Commission's recent Columbia Basin decision in which it adopted the location of the load test for determining which customers are exclusively allocated to a utility.[54/] The Commission rejected a point of delivery test for this distinction, reasoning that it "would effectively render meaningless all allocated service territories, as a customer could choose its own utility service provider simply by constructing its own transmission line to an adjoining service territory."[55/] It is difficult to reconcile how this case supports PacifiCorp's argument that the Commission should ignore the location of Camas Mill load and apply a point of delivery test in this case in an effort to transform an entity located entirely in Washington into a captive Oregon customer. The policy behind the Columbia Basin decision is that a customer should not be able to evade one allocated territory – and the utility's associated obligation to serve – in favor of another allocated territory.[56/] Where, as in the Assumed Facts, the customer is not evading an allocated territory in the first place, this policy is wholly inapplicable.

Further undercutting its own position, the Company cites to a number of non-binding decisions from other states that demonstrate just how far out of the mainstream of American jurisprudence and regulatory policy PacifiCorp's position is. While these cases are extra-jurisdictional and are based on the unique laws of each of these states, they are,

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54/ PacifiCorp Opening Br. at 16.

55/ Columbia Basin, Order No. 15-110 at 7.

56/ Id. at 8 (noting that the geographic load center test "helps best ensure the integrity of the allocated territories").

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nevertheless, all based on factual situations in which the actual load of the customer – motors, pumps, poultry manufacturing facilities, et cetera – were located within an exclusive service territory created by the state commission, in the same state and pursuant to that state's law. For example, the Company relies on a decision by the Florida Supreme Court finding that a customer could not evade the exclusive service territory of an electric cooperative in which it was located by constructing a transmission line into Florida Power & Light's territory.[57/] In that case, however, the electric cooperative and Florida Power & Light both had exclusive service territories in Florida pursuant to a territorial agreement between the two utilities.[58/] The court rejected "the transparent device of constructing a line into another utility's service area … to avoid the effect of a territorial agreement."[59/] Here, there is no territorial agreement. In fact, there is no territory allocation at all. Thus, PacifiCorp's reliance on this case is wholly misplaced.

Additionally, in O'Brien Co. Rural Elec. Coop, v. Iowa State Commerce Comm'n, the Iowa Supreme Court explicitly set out instructions for application of the geographic load test, which this Commission has also adopted, stating that one properly looks to "the location of the permanent electric loads which have been or which will be installed . . . [t]o locate the electrical usage where it is primarily concentrated – not where a potential customer might locate its point of delivery."[60/] Thus, PacifiCorp's persuasive authority fully supports Petitioners' position that the Camas Mill is a customer located in Washington, outside of any allocated service territory, and the point of delivery at the Troutdale Substation is wholly

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57/ PacifiCorp Opening Br. at 16-17 (citing Lee County Elec. Co-op. v. Marks, 501 So.2d 585 (Fla. 1987)).
58/ Marks, 501 So.2d at 586-87.
59/ Id. at 587.
60/ O'Brien Co. Rural Elec. Coop., v. Iowa State Commerce Comm'n, 352 N.W.2d 264, 268 (Iowa 1984).

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irrelevant. Likewise, the Mississippi case cited by PacifiCorp to argue that there are policy reasons that should compel the Commission to extend its regulatory authority across state borders was decided based on the factual distinction that the electric current was to be actually consumed within a certificated exclusive service territory in Mississippi.[61/] Even more tellingly, the Mississippi court distinguished cases wherein the customer was in a jurisdiction with non-exclusive service rights, or not within a certificated service area, stating that such situations were not applicable to Mississippi.[62/] Just as a case involving the Camas Mill would not be applicable in Mississippi because the mill is not located within an exclusive service territory, so likewise cases from Mississippi and other jurisdictions cited to by PacifiCorp are wholly inapposite to a decision regarding the Camas Mill because the facilities and load center in those cases all lie within exclusive, certificated service territories in the same state.[63/]

To support its policy claims, PacifiCorp also makes the assertion that there will be no actual change to the facilities involved in providing utility service to the Camas Mill.[64/] This claim is irrelevant to the determinations requested in this proceeding, and is, in any case, absolutely untrue. Significant alterations must be made to the facilities, and multiple studies are

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61/ Capital Elec. Power Ass'n v. Miss. Power & Light Co., 218 So. 2d 707, 714 (Miss. 1968).

62/ Id. at 713-14.

63/ See also, Cent. Ill. Pub. Serv. Co. v. Ill. Comm. Comm'n, 560 N.E.2d 363, 365 (Ill. 1990) (noting that customers' loads were located entirely within Southwestern Electric Cooperative's service territory, established pursuant to a service area agreement); Sw. Elec. Power Co. v. Carroll Elec. Coop. Corp., 554 S.W.2d 308, 309 (Ark. 1977) (noting that customer's load was within "an area certificated for electric service by the Arkansas Public Service Commission"); Holston River Elec. Co. v. Hydro Elec. Corp., 66 S.W.2d 217, 218 (Tenn. 1933) (noting that customer's plant was located within Rogersville, Tennessee. in which plaintiff had "a franchise to transmit energy").

64/ PacifiCorp Opening Br. at 15, 22-23 (arguing that "there will be no change in the location of the Camas Mill or the location of any of the facilities that serve the Camas Mill" and that "Clatskanie's facilities will interconnect with PacifiCorp's distribution system in the same place and in the same manner as did the Camas Mill's").

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either complete or are underway to identify these.[65/] Among other things, PacifiCorp has required additional relays, protection, and communication devices in order to effect the new interconnection with Clatskanie at the Troutdale Substation. As noted in the Assumed Facts, BPA will be the new Balancing Area Authority for the Camas Mill and the associated generation, and is working on the technical requirements necessary for this major change to the way that power is delivered to the Camas Mill.[66/] PacifiCorp will now be responsible for a FERC-regulated wholesale delivery at the Troutdale Substation, and has cooperated with Clatskanie to reserve the needed transmission and assign the point of delivery.[67/] As a result, while it is true that GP will sell the 69 kV lines to Clatskanie, rather than bearing the inefficient, high cost of building a new interconnection in Washington or bypassing PacifiCorp's substation to interconnect directly to the adjacent BPA substation in Troutdale, PacifiCorp's suggestion that the transaction is a sham sale is untrue and unsupportable.

b. The Company's speculative statements that loss of the Camas Mill will result in cost-shifting are unsubstantiated and irrelevant to the legal determinations requested in this docket.

Similarly, the Company's claim that the Camas Mill's termination of service from PacifiCorp will result in cost-shifting to other customers is entirely unsubstantiated.[68/] None of the Assumed Facts mentions anything about stranded costs or cost-shifting. Instead, the Company cites general policy guidelines against cost-shifting and follows these up with blanket statements that the proposed transaction will result in cost-shifting because the Camas Mill will

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65/ Revised Petition at 6 (Assumed Facts ¶¶ 11-13).
66/ Id. (Assumed Facts ¶ 13).
67/ Id. (Assumed Facts ¶¶ 11-12).
68/ PacifiCorp Opening Br. at 18-20.

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not be purchasing electric power from the Company.[69] Thus, even if PacifiCorp's unsubstantiated cost-shifting claims were relevant to a legal conclusion as to whether the proposed transaction violates its exclusive service territory, which they are not, they would not provide a basis to make any determination at all.

The case law the Company cites for support is likewise unpersuasive. These decisions are all from other states and based on the unique laws of the states in which they were made.[70] Moreover, they are entirely inapplicable because they all require, as a prerequisite, that the customer currently be sited in an exclusive service territory within the same state.[71] Indeed, as the Virginia State Corporation Commission stated in Kentucky Utilities Co., cited by PacifiCorp, "[o]ur jurisdiction over this matter addresses the retail electric service provided to [the customer] in Virginia and does not, *of course*, extend to service provided in Kentucky."[72] The Camas Mill is not located in an exclusive service territory in Oregon. One cannot evade an exclusive service territory in which one is not located.

For decades, the Camas Mill has entered into a series of bilateral, voluntary contracts with PacifiCorp with specifically designated dates of expiration. These contracts (rather than the physical location of the Camas Mill) are the sole basis for the relationship between PacifiCorp and the Camas Mill, and that relationship concludes when the Contract

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[69] Id.

[70] Id. at 19-20.

[71] See Cent. Ill. Pub. Serv. Co., 560 N.E.2d at 365 (noting that customers' loads were located entirely within Southwestern Electric Cooperative's service territory, established pursuant to a service area agreement); Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n of Colo., 765 P.2d 1015, 1017 (Colo. 1988) (noting that customer's facilities were located in two exclusive service territories, both in Colorado); Re Prince George Elec. Coop., 1998 WL 420155 at *1 (Va. S.C.C. June 25, 1998) (noting that customer's load was located within certificated service territory of electric cooperative granted by Virginia State Corporation Commission).

[72] Re Ky Utils. Co. dba Old Dominion Power Co., 1999 WL 288835 at *1 (Va. S.C.C. Mar. 31, 1999) (emphasis added).

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expires. Given that the Camas Mill has no obligation to remain a PacifiCorp customer following expiration of the Contract, even if loss of the mill were to result in increased costs, those costs are not properly borne by the Camas Mill since PacifiCorp had ample notice that the Camas Mill could leave the system following termination of the Contract and PacifiCorp's executives have known and acknowledged for decades that the Camas Mill has had the option to take power from other sources.[73/] PacifiCorp must bear the burden, if any, of ensuring that the Company's shareholders were properly protected from the risk that the Camas Mill would leave the Company's system following expiration of the Contract.

The Petitioners are in possession of numerous documents and facts that bear on whether stranded costs will exist after the Camas Mill leaves PacifiCorp's system and why any such costs cannot be properly borne by customers. However, the questions of whether the proposed transaction results in stranded costs and, if so, who should bear those costs, are not relevant to the legal determinations requested from the Commission in this docket.

B. PacifiCorp's Assertion that Direct Access Applies to the Proposed Transaction Is Unsupported by Law or Policy.

PacifiCorp claims that the proposed transaction between GP and Clatskanie implicates Oregon's direct access law by meeting the terms of ORS 757.672(2) and by contravening the direct access law's prohibition against cost-shifting.[74/] The Company's arguments are based on an incorrect interpretation of the policies underlying direct access, as well as deeply flawed statutory interpretations. They should be dismissed out-of-hand.

[73/] See, e.g., Revised Petition, Exh. B at 4 (noting that PacifiCorp estimated the cost of alternative service from Clark County PUD).

[74/] PacifiCorp Opening Br. at 20-25.

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1. The Direct Access Law Was Intended to Provide Competition for Otherwise Captive Customers and the Camas Mill Is Not a Captive PacifiCorp Customer.

Rather than basing its position on a strict legal analysis, PacifiCorp's argument that the proposed transaction between GP and Clatskanie violates the direct access law appears primarily calculated to influence the Commission to conclude that the Petitioners are acting in bad faith to evade the requirements of direct access, even if the transaction does not meet the substantive statutory requirements. Hence, the Company argues that GP's sale of the 69 kV lines to Clatskanie is a mere "subterfuge to bypass the requirements of Oregon's direct access law."[75/] It further argues that "Clatskanie is attempting to circumvent direct access and the Camas Mill's obligation to pay transition costs through the manipulation of the point of delivery."[76/]

As with its territory allocation arguments, however, the Company's equitable arguments collapse when it is understood that the Camas Mill is not an exclusively allocated PacifiCorp customer, and that it does not have – and never has had – a permanent obligation to take retail electric service from PacifiCorp.

The Company claims that "Oregon's Territorial Allocation Statutes Are Designed to Eliminate Competition among Oregon Utilities" and that the direct access law is "the Exclusive Statutory Framework under which a Customer can Choose its Electric Service Provider."[77/] This is incorrect. The territorial allocation statute does not prohibit competition. As the Commission has recognized:

> The Territory Allocation Law clearly permits competition to exist. In a mixed service area, territory can be allocated only by contract

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[75/] Id. at 23.
[76/] Id. at 25.
[77/] Id. at 3, 5.

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> between the utilities. ORS 758.410. If the utilities do not contract to allocate territory and receive Commission approval for those contracts pursuant to ORS 758.415 et seq., two or more service providers may well duplicate facilities. If the legislature had intended to eliminate all duplication of facilities, it would have eliminated mixed service territories. However, the legislature left mixed territories in place.[78/]

In a mixed service territory, direct access is unnecessary to reach an alternative supplier because the customer has a choice of providers. Therefore, direct access is not the "exclusive" avenue for a customer to choose a different supplier – standard retail competition is available to customers, like the Camas Mill, who are not in an allocated territory.

In fact, the direct access law was never intended to apply where a customer has a choice of retail service providers. As the Commission has stated:

> Oregon's direct-access legislation … was intended to allow new electricity sellers, called ESSs, to compete with electric utilities for retail electricity customers. In order to compete with electric utilities, however, the new electricity sellers needed a way to deliver electricity to those customers. Consequently, ORS 757.632 requires utilities to provide ESSs with non-discriminatory access to the utilities' *existing distribution systems*.[79/]

Direct access, in other words, allows for retail competition for otherwise captive nonresidential customers of an electric utility – those that have no choice but to take service from their utility's distribution system.

Clatskanie does not need access to PacifiCorp's distribution system to serve the Camas Mill and is not a captive PacifiCorp customer. GP owns the 69 kV lines that connect the

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78/ Re Cent. Lincoln People's Util. Dist, 1998 Ore. PUC LEXIS at *24.

79/ Re Honeywell Int'l, Inc., *et al.* Application for Declaratory Ruling, Docket No. DR 40, Order No. 08-388 at 12 (July 31, 2008) (emphasis added).

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Camas Mill to PacifiCorp's transmission system.[80/] Therefore, GP can do whatever it wants with them. As an alternative to selling them to Clatskanie, it could remove them, severing the Camas Mill's connection to PacifiCorp. If GP did this, and subsequently took service from a Washington utility, surely the Company could not argue that the Camas Mill's arrangement with that Washington utility would violate Oregon's direct access law, in substance or in spirit. Only under the most tortured logic could a Washington customer taking retail service in Washington be considered a manipulation of Oregon's direct access law.

This is, in fact, what GP and Clatskanie have proposed under the Assumed Facts. When GP sells its 69 kV lines to Clatskanie, Clatskanie will use them to distribute power to the Camas Mill at a retail point of delivery in Washington.[81/] That the power flows from Oregon is irrelevant.[82/] PacifiCorp itself has service territory that straddles the Oregon-Washington border near Walla Walla. Presumably it has lines that cross this state border and electricity presumably passes over the state border, yet, PacifiCorp's delivery of electricity to customers in Washington is a Washington-regulated transaction. Once the retail point of delivery, as well as the customer load, is located in Washington, there is no longer any basis for Oregon to regulate this transaction. Indeed, as discussed above, it would be unconstitutional for it to do so.[83/]

80/ Revised Petition at 4 (Assumed Facts ¶ 6).

81/ Id. at 5-6 (Assumed Facts ¶ 10).

82/ Because the retail transaction would occur in Washington, it is also irrelevant that Clatskanie's Oregon service territory is approximately 70 miles from the Troutdale Substation, as PacifiCorp notes. PacifiCorp Opening Br. at 2. The only service territories that are implicated in the proposed transaction are those in Washington, where the retail service is occurring. Yet, except for bilateral agreements between utilities, Washington law does not provide for the creation of exclusive service territories. Revised Petition at 9; RCW § 54.48. Thus, there is no inherent restriction on the utility from which the Camas Mill can take service.

83/ Supra at 4-6.

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That the Camas Mill has an option of retail service providers was recognized in the Staff Report recommending approval of the Contract.[84/] Furthermore, the Contract itself implicitly acknowledges the Camas Mill's retail service options. The Contract includes a provision that during the life of the Contract, the Camas Mill will "remain an one-hundred percent (100%) Oregon customer and will not take any action which may have the effect of preventing Pacific Power from treating the service provided to the Mill as an Oregon customer."[85/] Such a provision would be unnecessary if it were clear that the Camas Mill had no other option than to be an Oregon customer (for instance, by being located in Oregon).

It is for this reason that PacifiCorp's claim that Clatskanie will provide direct access because the Company "is the exclusively allocated distribution utility for the Camas Mill" is nonsensical.[86/] One cannot be exclusively allocated to a utility and also have a choice of retail service providers. The two are mutually exclusive. Because the Camas Mill has a choice of bundled retail service providers, the direct access law is not implicated by the proposed transaction.

2. PacifiCorp's Assertion That ORS 757.672(2) Governs the Proposed Transaction Is Meritless.

The fact that the Camas Mill has a choice of retail service providers materially undermines the Company's reliance on the direct access law. As PacifiCorp acknowledges, direct access does not apply to consumer-owned utilities such as Clatskanie except in the narrow

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84/ Revised Petition, Ex. B at 4 (noting that the Camas Mill could take service from Clark County Public Utility District).

85/ Revised Petition at 5 (Assumed Facts ¶ 7).

86/ PacifiCorp Opening Br. at 22.

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circumstance in which such a consumer-owned utility sells electricity to a nonresidential electricity consumer of another electric utility under ORS 757.672(2).[87/]

PacifiCorp states that "[b]y the plain meaning of its terms, ORS 757.672(2) applies to the proposed transaction," yet it does not specify which terms in that statute make it plainly applicable.[88/] The Company argues that service is currently provided at the Troutdale Substation, and points to the definition of "load," which is "the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery."[89/] Yet, under that definition, once Clatskanie takes ownership of the 69 kV lines, the "load" will be at the Camas Mill, not at the Troutdale Substation. Thus, it is unclear why PacifiCorp thinks this definition supports its argument.

Instead, for purposes of determining whether ORS 757.672(2) applies, the only question that matters is whether Clatskanie will serve its own nonresidential electricity consumer or "a nonresidential electricity consumer of another electric utility."[90/] As discussed in detail in the Revised Petition and the Petitioners' Opening Brief, because the Camas Mill will be connected to Clatskanie's own distribution system and because any relationship between the Camas Mill and PacifiCorp will expire with the Contract,[91/] Clatskanie will serve its own nonresidential electricity consumer (located in Washington) and ORS 757.672(2) does not apply.[92/]

87/ Id. at 20-21.
88/ Id. at 22.
89/ Id. at 21-22 (quoting OAR 860-038-0005(31)) (emphasis omitted) (this language is also contained in the direct access statute at ORS 757.600(18)).
90/ ORS 757.672(2).
91/ Revised Petition at 13-15; Petitioners' Opening Br. at 8-11.
92/ ORS 757.600(29) & (9) (defining "retail electricity consumer" as "all end users of electricity served through the distribution system of an electric utility" and "distribution utility" as "an electric utility that

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PacifiCorp also states that the proposed transaction meets the statutory definition of "direct access," which is the "ability of a retail electricity consumer to purchase electricity … directly from an entity other than the distribution utility."[93/] The Company reaches its conclusion by relying on its position that "PacifiCorp is the exclusively allocated distribution utility for the Camas Mill."[94/] As already discussed, however, this position is plainly erroneous, even if the Commission were to conclude that the Troutdale Substation is part of PacifiCorp's allocated territory. No Commission order explicitly states that the Camas Mill is an exclusively allocated PacifiCorp customer, nor could the Commission legally make such an allocation given that the Camas Mill is located in Washington. Furthermore, as also noted above, if the Camas Mill has no obligation to take service from PacifiCorp, then it cannot be the case that the Camas Mill could be exclusively allocated as a customer of the Company.

In any event, the Company's reliance on the territory allocation statutes for support that it will be the distribution utility following the proposed transaction is misplaced. "Distribution utility" is a defined term under the direct access law. Thus, that definition governs whether "direct access" exists here, not the territory allocation statutes. "Distribution utility" is defined under the direct access law as "an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer."[95/] Under the proposed transaction, Clatskanie will own the lines that connect the Camas Mill to PacifiCorp's

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owns and operates a distribution system connecting the transmission grid to the retail electricity consumer").

93/ PacifiCorp Opening Br. at 22 (quoting ORS 757.600(6)).

94/ Id.

95/ ORS 757.600(9).

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transmission system at the Troutdale Substation.[96/] Thus, it will be the mill's "distribution utility" for purposes of the direct access law (if that law were applicable in the State of Washington).[97/] This means that Clatskanie's service to the Camas Mill will not meet the definition of "direct access."[98/]

Finally, PacifiCorp also argues that the payment arrangement between Clatskanie and GP "is exactly the type of pricing that would be provided by an ESS."[99/] This assertion is misleading and untrue. The Camas Mill is proposing to take *bundled retail electric service* from Clatskanie, something an ESS, by definition, cannot provide.[100/] The price GP pays will cover Clatskanie's expenses,[101/] which include the costs of distribution, a cost no ESS has. Furthermore, there is nothing in the direct access law that governs or even discusses how a direct access customer pays for the power it receives from an ESS, or how a distribution utility ought to serve a customer that it connects to directly, as Clatskanie will.

Simply put, PacifiCorp has no statutory support for its position that the proposed transaction between GP and Clatskanie will violate Oregon's direct access law. This is because, as already discussed, the Camas Mill is not a captive PacifiCorp customer – it has the option to take bundled retail electric service from another utility following expiration of the Contract.

96/ Revised Petition at 5-6 (Assumed Facts ¶ 10).
97/ ORS 757.600(9).
98/ ORS 757.600(6).
99/ PacifiCorp Opening Br. at 22.
100/ ORS 757.600(16) & (6) (defining "electricity service supplier" as "a person or entity that offers to sell electricity services available pursuant to direct access" and defining "direct access" as "the ability of a retail electricity consumer to purchase electricity … directly from an entity other than the distribution utility").
101/ Revised Petition at 7 (Assumed Facts ¶ 14).

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3. PacifiCorp's Arguments Related to Cost-Shifting Are Unsubstantiated and Irrelevant to the Determination in This Proceeding.

In addition to arguing erroneously that the proposed transaction implicates ORS 757.672(2), the Company also incorrectly states that the proposed transaction contravenes the fundamental policy against cost-shifting in the direct access law.[102/] The Company notes that the direct access law requires that the "provision of direct access … must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company."[103/]

Fundamentally, the Company's argument ignores the self-evident prerequisite that, in order for the direct access law's prohibition against cost-shifting to apply, there must first be direct access. The Petitioners have already shown that the proposed transaction does not implicate the direct access law.

Additionally, as with its similar claims with regard to its service territory arguments, the Company's assertion that the Camas Mill's termination of service from PacifiCorp will result in cost-shifting to other customers is entirely unsubstantiated. As discussed more fully, *supra* pp. 20-22, none of the Assumed Facts mentions anything about stranded costs or cost-shifting. Nor are such arguments relevant to the Commission's legal determination in this proceeding.

C. FERC Has Jurisdiction Over the Only Transactions Occurring in Oregon Under the Assumed Facts.

PacifiCorp states that the Petitioners' claim that the proposed transaction is subject to FERC's jurisdiction is irrelevant to the Commission's determination in this

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[102/] PacifiCorp Opening Br. at 23-25.
[103/] Id. at 23 (citing ORS 757.607(1)).

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proceeding.[104/] The Petitioners largely agree with PacifiCorp's assessment. However, the Petitioners included an analysis under the FPA to give the Commission the full regulatory picture of the proposed transaction between GP and Clatskanie.

The proposed transaction is really three transactions: (1) a transmission wheeling arrangement between Clatskanie and PacifiCorp that will occur in Oregon and is subject to FERC jurisdiction under Sections 211 and 212 of the FPA, which PacifiCorp does not dispute;[105/] (2) a FERC-jurisdictional interconnection agreement between the facilities of Clatskanie and the facilities of PacifiCorp at the Troutdale Substation; and (3) a bundled retail electric sale from Clatskanie to the Camas Mill that will occur in Washington. Thus, the only transactions that are occurring in Oregon are FERC-jurisdictional. The fact that Clatskanie is delivering power over a line that it owns to a load that is out of state also is not a transaction subject to regulation by the Commission.

PacifiCorp's citation to Section 212(g) of the FPA is helpful in this regard.[106/] That section holds that FERC may not issue an order that "is inconsistent with any State law which governs the retail marketing areas of electric utilities."[107/] A FERC order requiring PacifiCorp to provide transmission services to Clatskanie under Section 211 of the FPA does not impact the Commission's decision in this case because it does not implicate any state law related to "retail marketing areas," and because, in any event, the "retail marketing area" of the proposed

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104/ Id. at 25.
105/ Id. at 25 n. 94.
106/ Id. at 25 & n. 95.
107/ 16 U.S.C. § 824k(g).

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transaction is located in Washington. Furthermore, as noted above, a state law prohibition of a right accorded to Clatskanie by Section 211 of the FPA would be preempted.[108/]

III. CONCLUSION

Following the expiration of the Contract, the Camas Mill has a choice of electric suppliers. The Camas Mill proposes to exercise that choice by entering into a contract with Clatskanie for electric service in the State of Washington. Both the point of delivery and the point of electric consumption will be in Washington. After the Camas Mill sells the 69 kV lines to Clatskanie, the Camas Mill will own no facilities in Oregon, and Clatskanie will enter into a FERC jurisdictional interconnection agreement to interconnect its 69 kV distribution line to PacifiCorp's transmission system. Clatskanie also will obtain transmission services to its 69 kV distribution line pursuant to PacifiCorp's OATT.

Under these facts, neither the territorial allocation statute nor the direct access statute applies to a transaction occurring entirely within the state of Washington. Furthermore, PacifiCorp does not have an exclusive right to serve the Camas Mill, because the Camas Mill was never allocated as an exclusive customer of PacifiCorp, and it is beyond the jurisdiction of the Commission to allocate a customer in another state. Finally, the direct access laws do not apply, because once the Camas Mill sells the 69 kV lines, it will no longer be connected to PacifiCorp's system, and PacifiCorp will no longer be the Camas Mill's distribution utility. Therefore, the proposed transaction does not fall within the statutory definition of direct access.

For the aforementioned reasons, PacifiCorp's arguments that the proposed transaction between the Camas Mill and Clatskanie under the Assumed Facts violates its

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[108/] Supra at 10.

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exclusive service territory and is regulated by the direct access law are without merit and should be rejected.

Dated this 28th day of July, 2015.

Respectfully submitted,

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