

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of	)	DR 49
	)	
GEORGIA-PACIFIC CONSUMER	)	OPENING BRIEF
PRODUCTS (CAMAS) LLC	)	OF NOBLE AMERICAS ENERGY
	)	SOLUTIONS LLC
and	)	
	)	
CLATSKANIE PEOPLE’S UTILITY	)	
DISTRICT	)	
	)	
Petitioners.	)	
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**I. INTRODUCTION AND SUMMARY**

Pursuant to the scheduling ruling in this docket, Noble Americas Energy Solutions LLC (“Noble Solutions”) respectfully submits this Opening Brief to the Public Utility Commission of Oregon (“OPUC” or “Commission”) in response to the Petition for Declaratory Ruling (“Petition”) filed by Georgia Pacific Consumer Products (Camas) LLC (“GP”) and Clatskanie People’s Utility District (“Clatskanie”). Noble Solutions is a national provider of retail energy services, including in the State of Oregon, and is a Commission-certified electricity service supplier (“ESS”). Noble Solutions intervened in this docket because the interpretations of Oregon’s direct access law and service territory statutes rendered in this proceeding could affect Noble Solutions’ ability to serve Oregon retail direct access customers as an ESS. Noble Solutions currently lacks information regarding PacifiCorp’s objections to the proposed transaction, and therefore reserves the right to supplement or modify its positions set forth below after being provided with PacifiCorp’s briefing on this matter.

Subject to its reservation of rights, Noble Solutions preliminarily submits:

(1) The assumed facts do not appear to describe a transaction that would be subject to Oregon's direct access law if it is reasonable to conclude that the customer is no longer an Oregon customer. Additionally, policy considerations dictate against concluding the proposed transaction is a direct access transaction to the extent that it may impact the availability of PacifiCorp's five-year opt-out program to otherwise eligible customers.

(2) The assumed facts do not appear to describe a violation of PacifiCorp's rights under Oregon's service territory laws.

## II. QUESTIONS PRESENTED AND SHORT ANSWER

**A. First Question Presented:** Under the Assumed Facts, does Oregon's direct access law apply to Clatskanie's delivery of electric service to GP under the terms of the proposed transaction?

**Short Answer:** The assumed facts do not appear to describe a transaction that would be subject to Oregon's direct access law if it is reasonable to conclude that the customer is no longer an Oregon customer. Additionally, policy considerations dictate against concluding the proposed transaction is a direct access transaction to the extent that it may impact the availability of PacifiCorp's five-year opt-out program to otherwise eligible customers..

**B. Second Question Presented:** Under the Assumed Facts, does Clatskanie's delivery of electric service to GP under the terms of the proposed transaction violate Oregon's territorial laws?

**Short Answer:** The assumed facts do not appear to describe a violation of PacifiCorp's rights under Oregon's service territory laws.

### III. ARGUMENT

#### A. The Assumed Facts Do Not Appear to Describe a Transaction That Would Be Subject to Oregon's Direct Access Laws.

The Petition argues that Oregon's direct access law does not apply to the proposed transaction because the proposed transaction will constitute a delivery of electricity outside of the State of Oregon. *See Petition* at 11-13. The assumed facts include that the delivery of electricity will be made to the retail customer whose entire load is geographically located in the State of Washington, and the customer's point of delivery and interconnection with the interstate grid will be located in Washington. It is well established that the Commerce Clause of the United States Constitution proscribes a state from controlling commercial conduct occurring beyond the boundary of the state. *See, e.g., Healy v. Beer Inst.*, 491 U.S. 324, 336, 109 S.Ct. 2491, 2500-01 (1989) (any "statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority."). Oregon's public utility laws do not attempt to control retail electricity sales occurring beyond Oregon's boundaries. *See Petition* at 11-12. Thus, to the extent that it is reasonable to assume that the Camas Mill will not continue to accept deliveries of electricity in the State of Oregon, it appears that Oregon's direct access laws should not apply to the proposed transaction.

Furthermore, policy considerations warrant treating the Camas Mill load as a non-direct access load. In an effort to provide meaningful direct access opportunities to PacifiCorp's non-residential customers, the Commission has required PacifiCorp to provide a five-year opt-out program that provides customers with the opportunity to obtain truly market-based prices without ongoing transition adjustments. *See In re Public Utility Commission of Ore.: Investigation of Issues Relating to Direct Access*, OPUC Docket No. UM 1587, Order No. 12-

500, at 8-9 (2012). The Commission recently issued its final order resolving initial implementation issues for PacifiCorp's five-year program. *See In re PacifiCorp, dba Pacific Power: Transition Adjustment, Five-Year Cost of Service Opt-Out*, OPUC Docket No. UE 267, Order No. 15-060 (2015). In docket UE 267, all parties agreed that PacifiCorp's five-year program will have a total participation cap of 175 average megawatts ("aMW"), which although lower than the 300 aMW cap for Portland General Electric Company's ("PGE") five-year program was comparable as a percentage of eligible direct access load to that in PGE's program. *See id.* However, in agreeing to this 175 aMW cap, Noble Solutions and other parties assumed that the Camas Mill was not eligible for direct access due to its long-term special contract. The Camas Mill appears to be a very large load. *See Petition* at Exhibit B at 5 (indicating that in 1993 the load of the mill was 85 MW). If the Camas Mill were now deemed to be a direct access customer and a participant in the five-year program for purposes of the 175-aMW program cap, the program cap would be disproportionately affected and otherwise eligible customers may be unduly deprived of the opportunity to participate.

Therefore, even if Oregon's direct access law could apply to the transaction, policy considerations lead to a conclusion that the proposed transaction should not be considered a direct access transaction, and that the Camas Mill's load should not count towards the 175 aMW eligibility criteria for the newly created five-year opt-out program.

**B. The Assumed Facts Do Not Appear to Describe a Transaction that Violates PacifiCorp's Rights Under Oregon's Service Territory Laws.**

As discussed above, the proposed transaction involves a sale of electricity at retail beyond the boundaries of the State of Oregon. Oregon's service territory laws, ORS 758.400 to 758.475, should not apply for the same reason that the direct access law should not apply – the

delivery and use of the electricity is occurring in the State of Washington. The assumed facts indicate that the Camas Mill has volunteered to be an Oregon utility customer by purchasing electricity at a point in the State of Oregon, the Troutdale substation, and then transporting it across the border for use in Washington via customer-owned 69 kilovolt (“kV”) transmission lines. However, after completion of the proposed transaction, the point of delivery for retail use will be in the State of Washington because Clatskanie will own the 69-kV lines from the Troutdale substation to the Camas Mill in Washington. The only portion of the transaction occurring in Oregon will be the transportation of the electricity without terminating at a point of use in Oregon. Such transportation of electricity is not a “utility service” that violates Oregon’s service territory law, and the Commission should declare as such. ORS 758.400(3).

Additionally, under the Commission’s recent interpretation of the service territory laws, it appears that even if the Camas Mill continued to accept deliveries at the Troutdale substation, there would still be no violation of Oregon’s service territory laws because the load is located in Washington. *See Columbia Basin Electric Cooperative, Inc. v. PacifiCorp et al.*, OPUC Docket No. UM 1670, Order No. 15-110 (2015). In *Columbia Basin Electric Cooperative, Inc.*, the Commission adjudicated a dispute regarding application of Oregon’s service territory laws in the circumstance where a customer’s facilities straddle the boundary of two utilities’ service territories. The Commission noted that other states to address this issue have adopted one of three tests: (1) the point of service test, (2) the geographic load center test, or (3) the point of use test. *Id.* at 7. The Commission determined that “as a matter of policy to resolve the circumstances presented here, we apply the geographic load center test.” *Id.* at 8. Applying the assumed facts to this recent decision, the Camas Mill’s entire load is geographically located in

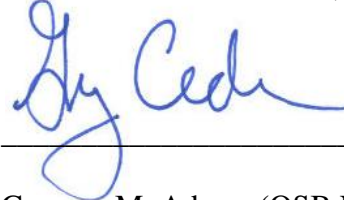
the State of Washington, and therefore Oregon's service territory laws cannot apply regardless of the location of the point of delivery.

#### IV. CONCLUSION

In sum, Noble Solutions reserves the right to modify its position after considering PacifiCorp's position, but based on the facts and arguments presented at this time it appears that Oregon's direct access law and its service territory laws do not apply to the proposed transaction.

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