

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **DR 49**

4 In the Matter of

5 GEORGIA-PACIFIC CONSUMER
6 PRODUCTS (CAMAS) LLC and
7 CLATSKANIE PEOPLE'S UTILITY
8 DISTRICT,

Petition for Declaratory Ruling.

STAFF REPLY BRIEF

9 **1. INTRODUCTION**

10 Staff of the Public Utility Commission of Oregon (Staff) replies to the Response Briefs
11 filed by PacifiCorp d/b/a Pacific Power (PacifiCorp), Noble Americas Energy Solutions LLC
12 (Noble), and jointly by Georgia-Pacific Consumer Products (Camas) LLC (Georgia-Pacific) and
13 Clatskanie People's Utility District (CPUD) (collectively, Petitioners).¹

14 As a preliminary matter, Staff will briefly discuss its concern with whether it is possible
15 to resolve the issues raised by the Petition through a declaratory ruling (DR) proceeding.
16 Through their briefing, the parties, including Staff, have presented, alluded to, or relied upon
17 facts not set forth in the Assumed Facts. These additional facts may or may not be in dispute and
18 they may or may not be important to resolution of the matters at hand. If they are in dispute and
19 important, or if there are other important facts not contained in the record, then a DR proceeding
20 is not appropriate and a different type of proceeding, one where facts can be evaluated and
21 determined, should be opened.

22 Staff will then discuss the issue of whether the Troutdale Substation (Substation) is
23 located within territory that the Commission has allocated to PacifiCorp. Staff's conclusion
24 remains that the Substation is located in territory that the Commission previously allocated to

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26 ¹ Noble essentially makes the same arguments as do the Petitioners. As such, Staff will not
directly reply to Noble's assertions but incorporates its reply to Petitioners as its reply to Noble's
Response Brief.

1 PacifiCorp. However, Staff corrects in this brief a misstatement contained in its Response Brief
2 concerning its use of a “metes and bounds” description.

3 Staff next replies to the Petitioners’ argument that Proposed Transaction does not
4 implicate or violate the territorial allocation laws. Based upon the totality of the circumstances,
5 including a review of the history of the Mill being served as an allocated customer of PacifiCorp,
6 application of the *Columbia Basin* “utility right to serve” tests, and consideration of the purpose
7 of the territorial allocation laws, Staff concludes the Proposed Transaction would violate the
8 territorial allocation laws.

9 Finally, as to Petitioners’ argument about the direct access laws, if the Proposed
10 Transaction will violate the territorial allocation laws, then it will necessarily also violate the
11 direct access laws.

12 2. ARGUMENT

13 A. Appropriateness of Declaratory Ruling proceeding to resolve Petitioners’ issues.

14 A DR proceeding applies the law to assumed facts. However, throughout their briefs,
15 PacifiCorp, the Petitioners, Noble and Staff have included, alluded to, or relied upon facts that
16 are not part of the set of agreed-upon Assumed Facts. For example, PacifiCorp included a copy
17 of a 1972 facilities exchange agreement as Exhibit A to its Response Brief. Staff believes the
18 1972 agreement to be of critical importance to understanding the Commission’s Order No. 72-
19 870 and, as such, Staff relies upon it as support for its conclusion that the Substation is located in
20 PacifiCorp’s allocated territory. But, again, the 1972 agreement was not included as part of the
21 Assumed Facts.

22 Petitioners also insert new facts. For example, Petitioners state that “the only facilities
23 that exist at the Troutdale Substation are the breakers and lines that constitute the point of
24 delivery, but that do not consume the electric commodity.” Petitioners Reply Brief at 8-9. The
25 Petitioners cite to Assumed Fact No. 6 as support for this assertion, but Assumed Fact No. 6 does
26 not contain this type of detail. Later on, Petitioners insert new facts about the series of contracts

1 the Camas Mill has had with PacifiCorp “for decades” and that “PacifiCorp’s executives have
2 known and acknowledged for decades that the Camas Mill has had the option to take power from
3 other sources.” *Id.* at 21-22. Petitioners cite to its Revised Petition, Exhibit B, as support for this
4 fact. However, this precise statement is not found in that Exhibit.

5 For its part, Noble presents additional facts concerning the possible impact upon the
6 participation cap set in Docket UE 267, and to the assumptions made by the parties in that docket
7 about what may occur if the Camas Mill is deemed eligible for direct access and the Proposed
8 Transaction is considered to be a direct access transaction. Noble Opening Brief at 4.

9 Finally, as an example of facts that are “alluded to but not included,” the Petitioners state
10 that they are in possession of “numerous documents and facts that bear on whether stranded costs
11 will exist after the Camas Mill leaves PacifiCorp’s system and why any such costs cannot be
12 properly borne by customers.” *Id.* at 22.

13 In its Response Brief, Staff set forth the option of opening an evidentiary-type of
14 proceeding precisely to allow for the exploration of important additional facts. If there are such
15 facts, as it appears there are based upon the parties’ briefs, a DR proceeding is not the proper
16 procedural vehicle to reach resolution of Petitioners’ issues.

17 Further, there may be other facts that may or may not exist that could be helpful to the
18 resolution of this matter (e.g. documents showing the intent of the parties, or the Commission, or
19 both, when the Mill was first allowed to be served as an Oregon customer or when the latest
20 special contract was approved; and facts showing the harm, if any, to PacifiCorp and its
21 customers if Mill allowed to cease being treated as an Oregon customer). If the Commission
22 agrees, it may choose to close this proceeding and open an evidentiary-type proceeding in order
23 to resolve the issues set forth in the Revised Petition.

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1 **B. The Troutdale Substation is located within PacifiCorp's allocated territory.**

2 For at least the past 23 years, the Camas Mill has taken service from PacifiCorp as an
3 Oregon customer, with a "point of service" located at PacifiCorp's Troutdale Substation.
4 However, there is a dispute amongst the parties whether the Substation is located in territory
5 which the Commission has previously allocated to PacifiCorp.

6 The resolution of this matter is technically a legal one because it involves applying what
7 the Commission has stated in its prior orders on the topic. However, the issue is not easily
8 resolved for several reasons. To begin, the two relevant orders, Order No. 72-870 and 92-557,
9 are interrelated and issued 20 years apart. The complexity increases because each Order
10 incorporates and relies upon multi-page agreements reached by PacifiCorp and Portland General
11 Electric Company (PGE). These agreements in turn contain descriptive promises and statements,
12 metes and bounds property descriptions, as well as diagrams and maps, which themselves
13 contain narrative descriptions. Further, as will be discussed, Order No. 92-557 not only allocates
14 territory between PGE and PacifiCorp, it considers, and resolves, whether Order No. 72-870
15 should be viewed as an "allocation order" that created exclusive service territories. So, the
16 matter is complicated.

17 In its Response Brief, Staff concluded, after review of the relevant orders and associated
18 documents, that the Troutdale Substation is within territory that the Commission allocated to
19 PacifiCorp in its Order No. 92-557 *nunc pro nunc* to 1972. See Staff Response Brief at 3-5. The
20 Petitioners continue to assert that the relevant Orders have made no such an allocation. See
21 Petitioners Response Brief at 10-16. After first correcting a misstatement made in its Response
22 Brief, Staff will explain why the Petitioners are incorrect.

23 In its Response Brief on page 5, lines 10-11, referring to Order 72-870 and the related
24 1972 agreement between PGE and PacifiCorp, Staff stated: "Importantly, the metes and bounds
25 description for Parcel B, which was transferred by PacifiCorp to PGE, ends just to the *west* of the
26 territory that encompasses the Troutdale Substation." (emphasis in the original). Further, at the

1 end of the same page, Staff continued: “Staff has confirmed that the metes and bounds property
2 description set forth in the 1992 Commission Order, like the 1972 Commission order, places the
3 Troutdale Substation within the territory that 1992 Order allocates to PacifiCorp...”

4 Upon further review, Staff has determined that the metes and bounds property
5 descriptions attached to the 1972 and 1992 orders do not carve out the Troutdale Substation from
6 the facilities and property transferred by PacifiCorp to PGE. In applying the metes and bounds
7 descriptions to maps on file, Staff incorrectly concluded that a substation shown on the
8 applicable map was the Troutdale Substation at issue in the proceeding. Upon further review,
9 Staff has determined that the substation it had thought was the Troutdale Substation is instead a
10 different substation, owned by Bonneville Power Administration. Staff regrets any confusion
11 caused by its misstatement.

12 Nonetheless, Staff still stands by its conclusion that the Commission has allocated the
13 Troutdale Substation to PacifiCorp. In its Response Brief, Staff noted that its metes and bounds
14 conclusion was supported by “Exhibit F to Exhibit A attached to PacifiCorp’s Opening Brief
15 (identifying the Troutdale Substation as a PacifiCorp-owned facility.)” *Id.* Indeed, Exhibit F is
16 dispositive of the matter.

17 Exhibit A attached to PacifiCorp’s Opening Brief is a facilities exchange agreement PGE
18 and PacifiCorp entered into on July 18, 1972. This agreement transferred the property
19 surrounding the Substation from PacifiCorp to PGE (i.e. the “Parcel B” transfer referenced in
20 Staff’s Response Brief quoted above). However, Exhibit F to the agreement is a map which
21 clearly indicates that PacifiCorp retained ownership of the Substation. *See* PacifiCorp Opening
22 Brief, Exhibit A, attachment F at 4. Indeed, the Petitioners acknowledge and concede this
23 conclusion. *See* Petitioners Response Brief at 15 (“it [referring to the 1972 agreement] simply
24 indicates that PacifiCorp would keep a substation when the facilities exchange took place.”)
25 Order 72-870 then approves the 1972 agreement.

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1 Subsequently, in 1991, PacifiCorp and PGE entered another agreement to allocate “utility
2 service and customers” in the Portland area. Order 92-557 approved the requested allocation of
3 “territories and customers.” Order 92-557 at 21, Ordering Paragraph 4. Importantly, Order 92-
4 557 also addressed the characterization of Order 72-870. The Commission acknowledged that
5 “because Order No. 72-870 did not expressly refer to ORS Chapter 758 with respect to future
6 service in Portland under the allocation statutes and because the order did not say that exclusive
7 territorial allocations are being created in Portland, Order No. 72-870, perhaps it did not
8 unambiguously allocate exclusive service territories to PGE and PP&L.” Order No. 92-557 at
9 14. However, after thoroughly considering the matter, the Commission determined that it had
10 intended to create exclusive service territories in its 1972 order, basing those territories upon the
11 PGE and PacifiCorp July 18, 1972 agreement. Accordingly, the Commission amended Order
12 No. 72-870 *nunc pro tunc* as of December 15, 1972 to exclusively allocate the territories and
13 facilities at issue in the 1972 agreement in the same manner as the agreement had done so. Order
14 No. 92-557 at 15, 21.²

15 From this history, Staff concludes that the Commission allocated the Troutdale
16 Substation to PacifiCorp *nunc pro tunc* as of December 15, 1972.

17 Petitioners challenge this conclusion. First, Petitioners assert that the 1972 facilities
18 exchange agreement was not an agreement to allocate customers or territories. Petitioners
19 Response Brief at 11. Petitioners’ argument fails because Order No. 92-870 expressly states
20 otherwise. As discussed immediately above, in Order 92-870, the Commission stated that it
21 deemed the 1972 Order, based upon the 1972 agreement, to have allocated territories and
22 facilities.

23 Petitioners then argue that Order No. 92-557 is a prospective order and that it did not
24 continue the allocations made by Order No. 72-870. Again, Order No. 92-870 flatly refutes this

25 ² While the property descriptions found in Order No. 92-557, Appendix A read almost identically
26 to those found in the PGE/PacifiCorp 1972 agreement, there are some minor, but confusing
differences. Most notably, what the 1972 agreement labels as “Parcel B” is re-labeled at “Parcel
C” in Order No. 92-557, Appendix A at 1.

1 assertion. The Order expressly notes that “PGE and PP&L each ask for allocation of areas that
2 they have served since the facilities and customer exchange agreement of 1972...If the
3 Commission approves the application, the affected territories and customers would experience no
4 change in service...This Order resolves the controversies surrounding the 1972 events by
5 confirming the previous allocations.” Order No. 92-870 at 18-19.

6 **C. The Proposed Transaction would violate Oregon’s territorial allocation laws.**

7 Petitioners present several arguments in support of their position that the Proposed
8 Transaction would not violate Oregon’s territorial allocation laws (ORS 758.400 to ORS
9 758.475). Briefly restated, Petitioners main arguments seem to boil down to the following:

10 (1) *Columbia Basin* mandates that a “geographic load center” (GLC) test be used to
11 determine a utility’s right to serve a customer. Because the Mill’s geographic center has
12 always been located in Washington, under the GLC test, the Mill is a customer that is not
13 subject to Oregon’s territorial allocation laws;

14 (2) After the Proposed Transaction, the minimal “point of service” Mill facilities that
15 were located at the Troutdale Substation will be moved to Washington and the Mill’s
16 transmission lines will be owned by Clatskanie. Further, the Mill’s special contract with
17 PacifiCorp will have expired. Under any “utility right to serve” test, including the point
18 of service test, because the Mill will have no facilities located in Oregon, and the special
19 contract will have expired, Oregon’s territorial allocation laws do not apply; and

20 (3) The Commerce Clause prohibits the Commission from subjecting the Mill to
21 Oregon’s territorial laws.

22 Staff disagrees with Petitioners’ assertions and responds as follows.

23 (1) *The Commission’s decision in Columbia Basin does not mandate the use of the GLC test.*
24 *The Commission has authority to continue to employ the point of service test to conclude*
that the Mill is an Oregon customer served by PacifiCorp.

25 The Petitioners argue that, in its *Columbia Basin* decision, the Commission mandated the
26 use of the GLC test in all circumstances. *See* Petitioners Response Brief at 8. This is an

1 incorrect reading of *Columbia Basin*. The Commission in *Columbia Basin* was careful to note
2 that its decision concerned only the circumstances at issue in that proceeding – “The Territorial
3 Allocation Law is unclear as to which utility has the right to serve a customer that straddles
4 adjoining service territories.” *In the matter of Columbia Basin Electric Cooperative vs.*
5 *PacifiCorp*, Order No. 15-110 (Docket No. UM 1670) at 7. The Commission has not mandated
6 the use of a GLC “utility right to serve” test for all factual circumstances. Because the
7 Commission has the discretion to apply different “utility right to serve” tests to different complex
8 factual situations, it is free to continue to apply a point of service test if it determines in a
9 particular circumstance that it is appropriate to do so.

10 In the present circumstances, as discussed previously in Staff’s Response Brief, the
11 Commission currently employs, and historically has done so, what it now terms a “point of
12 service” test to allow PacifiCorp to serve the Mill as an Oregon customer under its tariffs and
13 special contracts. The Commission has full and complete discretion to continue to apply the
14 point of service test to factual circumstances surrounding the Mill to conclude the Mill is an
15 Oregon customer being served within PacifiCorp’s allocated territory.

16 (2) *The Commission has the authority to conclude that, even after the special contract*
17 *terminates and the Proposed Transaction concludes, CPUD may not provide service to*
18 *the Mill except as an ESS.*

18 Petitioners argue that after the current special contract between Georgia-Pacific and
19 PacifiCorp terminates, and after the Proposed Transaction results in CPUD owning the two
20 transmission lines, the Mill will have no connection or relationship with PacifiCorp and its
21 Troutdale Substation. Based upon this premise, the Petitioners claim that under any “right to
22 serve” test, the Mill is located in Washington and outside of PacifiCorp’s allocated territory.
23 Petitioners Response Brief at 21-22. On the surface, without context, the Petitioners’ argument
24 seemingly is persuasive. Certainly, a “person on the street” would find it unusual to learn that
25 the Mill, being located in Washington, has received service as an Oregon customer for at least
26 the past 68 years.

1 However, as Staff noted in its Response Brief, the Mill's history of receiving electric
2 service from an Oregon provider as an Oregon customer is complex and likely unique. It is
3 overly simplistic to rely upon the two circumstances underlying the Petitioners argument to
4 conclude the Mill can simply "walk away" from Oregon regulation without consideration of the
5 ramifications of doing so. A deeper look at the history involved with the service to the Mill, and
6 an understanding of the purpose of the territorial allocation laws, leads to the conclusion that
7 even after the two events the Petitioners rely upon, CPUD can only provide service to the Mill as
8 an "electricity service supplier" (ESS).

9 (a) Termination of the special contract is not determinative of the Mill's status.

10 There is very little in the Assumed Facts about the circumstances that originally lead to
11 PacifiCorp's provision of service to the Mill. Prior to the most recent special contract, the Mill
12 took service under PacifiCorp tariffs, and other Commission approved special contracts, since
13 1947. Assumed Fact No. 2. Clearly, without a point of service in Oregon, PacifiCorp could not
14 have legally provided utility service to the Mill as an Oregon customer for the past 68 years.
15 However, the Assumed Facts provide no information about how it came to be that an Oregon
16 utility became the service provider to a facility that was essentially located in another state. The
17 record is silent on whether there were agreements reached between PacifiCorp and the Mill as to
18 what would happen when the service arrangement ended. Similarly, the record is devoid of facts
19 illuminating what the Commission's understanding was, including the "right to serve" test being
20 used, when it approved this unusual service arrangement. These "creation" background facts
21 would certainly be interesting to know and could possibly aid in the resolution of the present
22 matter.

23 Petitioners do rely upon one Assumed Fact to show what they believe the parties, and
24 perhaps the Commission, intended by allowing PacifiCorp to serve the Mill under the most
25 recent special contract. Petitioners point out that the special contract between the Mill and
26 PacifiCorp, approved by the Commission at its August 31, 1993 public meeting, states that

1 Georgia-Pacific agreed to remain a “100% Oregon customer” during the term of the contract.
2 Assumed Fact No. 7. Petitioners argue that this fact was intended to show that, after the contract
3 terminates, Georgia-Pacific is free to take service from any entity it chooses, including CPUD.
4 Petitioners Response Brief at 26.

5 But, the truth is, while the special contract states what the Mill’s status is while the
6 contract is in effect, it is silent about what the Mill’s status would be after the contract expires.
7 The termination of the special contract between the Mill and PacifiCorp at the end of this year,
8 by itself, carries no special meaning. Stated differently, the fact that the special contract
9 terminates does not mean that Georgia-Pacific is free to take service from another Oregon entity.
10 There is simply nothing in this record to show what the Commission or the parties intended when
11 PacifiCorp was first allowed to serve the Mill as an Oregon customer or what the Mill’s status
12 was intended to be when the current special contract ends.

13 (b) Lack of Mill facilities in Oregon is not by itself determinative of Mill’s status under the
14 territorial allocation laws. The totality of the circumstances lead to the conclusion that
the Mill remains a customer of PacifiCorp’s after the Proposed Transaction.

15 The Petitioners also rely upon the fact that, after the Proposed Transaction, the Mill will
16 have no facilities located in Oregon. From this fact, they assert that the point of service for the
17 Mill will move to the Mill’s facilities in Washington. As such, the Petitioners’ assert that under
18 any “right to serve” test, the Mill is deemed located in Washington and thus not located in any
19 allocated territory in Oregon. Again, while this argument certainly has facial appeal, it must be
20 considered in context of the purpose of the territorial allocation laws.

21 Staff explained in its Response Brief that the purpose of the territorial allocation laws is
22 to prevent the duplication of utility facilities and to promote the efficient development and safety
23 of the operation of utility service while providing adequate and reasonable service to all
24 territories and customers. Staff Response Brief at 9-11. Under the laws, a utility has the
25 privilege of serving all customers located within its allocated territory. But, the utility also has
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1 the obligation and responsibility to plan for, and maintain its operations, so that it is able to
2 provide adequate and safe service to all of its allocated customers.

3 As discussed earlier in this brief, the Commission allocated to PacifiCorp its Troutdale
4 Substation in its Order 72-870. While the Assumed Facts do not reveal whether PacifiCorp
5 serves or served any other customers from its Troutdale Substation, the purpose of allocating the
6 Troutdale Substation to PacifiCorp was, at the very least, to allow the company to serve the Mill
7 as its Oregon allocated customer.

8 The Commission in *Columbia Basin* also spoke to the importance of overseeing these
9 laws to ensure the integrity of the areas allocated. Of particular relevance, the Commission
10 stated that it was paramount to prevent “a customer from manipulating delivery points and
11 running transmission lines across boundaries to obtain service from a neighboring utility.” Order
12 No. 15-110, *Columbia Basin*, at 8. Despite the Mill’s lack of Oregon-based facilities after the
13 Proposed Transaction, it is important to recognize that the Proposed Transaction envisions the
14 Mill still being served by CPUD, an Oregon entity. And, the Mill would be served by CPUD
15 essentially over the same physical infrastructure as currently being used by PacifiCorp, with the
16 provision of service still relying upon PacifiCorp’s allocated Troutdale Substation facilities.
17 This seems to be precisely the type of situation *Columbia Basin* was concerned about.

18 So, even though the Mill will not have a physical presence in Oregon after the Proposed
19 Transaction, this does not by itself mean the territorial allocation laws are without effect.
20 PacifiCorp has faithfully provided this service, either under either special contracts or through its
21 tariffs, for at least 68 years. While the record is silent on the issue, PacifiCorp would have been
22 remiss if it had not arranged and planned its operations to serve a load as large as the Mill.
23 Because of this, having the Mill depart as a PacifiCorp customer would have ramifications to
24 PacifiCorp and its customers, the extent of which are unknown under the Assumed Facts. With
25 this history and understanding, it is easy to see that *Columbia Basin*’s concern about

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1 manipulation of delivery points is valid and applies to different circumstances, including the one
2 under consideration in this proceeding.

3 In summary, consideration should be given to the sum total of the following
4 circumstances: the historic use of the point of service test since at least 1947 as the basis for
5 determining PacifiCorp may serve the Mill as an Oregon customer; the allocation of the
6 Troutdale Substation to PacifiCorp in 1972 to allow it to serve the Mill; PacifiCorp's obligation
7 under the territorial allocation law to organize its operations to serve the Mill's large load; and
8 the fact that the Proposed Transaction envisions the provision of service to the Mill by a different
9 Oregon entity (CPUD) over essentially the same infrastructure as used by PacifiCorp before the
10 Proposed Transaction, including use of PacifiCorp's allocated Troutdale Substation. These
11 circumstances, taken together, lead to and support the legal conclusion that the Petitioners
12 attempt to move, through the Proposed Transaction, the Mill's legally-constituted point of
13 service from the PacifiCorp's Troutdale Substation to the Mill's facilities in Washington must
14 fail. Even after the Proposed Transaction, CPUD may only provide service to the Mill as an ESS
15 pursuant to ORS 757.672(2).

16 (3) *The Commerce Clause does not prohibit the Commission from applying its territorial*
17 *allocation laws to oversee the provision of utility service to the Mill by PacifiCorp.*

18 The Petitioners argue that the Commerce Clause prevented the Commission from ever
19 allocating the Mill as an Oregon customer. Petitioners Response Brief at 4. Then, the
20 Petitioners assert that, even if such an event was legally possible, the Commerce Clause prevents
21 the Commission from prohibiting the desired result of the Proposed Transaction. *Id.* at 5-6.

22 As to the first point, Staff has previously shown that the Commission did indeed allocate
23 the Mill to PacifiCorp as its Oregon customer in 1972. And, to the extent it was necessary, the
24 allocation was done with Georgia-Pacific's consent and approval in order to allow it to receive
25 service from its chosen provider, PacifiCorp. It seems very odd to hear Georgia-Pacific now
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1 complain about this circumstance being as it was the very outcome it originally requested and
2 has abided by since 1972.

3 As to their second point, the Petitioners argue that the Commerce Clause prohibits “direct
4 regulation” of interstate commerce by a State. Petitioners Response Brief at 5. From this,
5 Petitioners assert that, even if the Commission finds that the Mill is an exclusively allocated
6 customer of PacifiCorp, a violation of the Commerce Clause would result because “GP [Georgia-
7 Pacific] would be required to obtain Commission approval before undertaking a transaction in
8 Washington.” *Id.* The “transaction” the Petitioners refer is apparently the Proposed Transaction.
9 *Id.* at 5-6. Petitioners conclude by observing that PacifiCorp has only been able to serve it as an
10 Oregon customer because Georgia-Pacific and its predecessors “voluntarily agreed to such
11 treatment” and because of the Commission-approved special contracts (the latest of which is
12 soon to expire). *Id.* at 6.

13 The Petitioners’ argument fails because it does not consider the totality of the
14 circumstances that are set forth in the prior subsection. The Mill has been legally considered to
15 be a PacifiCorp Oregon customer since 1947 and an allocated customer since 1972. PacifiCorp
16 has organized its utility business to ensure it can faithfully provide safe and adequate service to
17 the Mill, and its other customers. For reasons discussed earlier, under these circumstances, the
18 Mill cannot unilaterally decide to stop being an Oregon allocated customer of PacifiCorp and
19 take service from another Oregon service provider (unless done consistent with the territorial
20 allocation and direct access laws). The Mill requires Commission approval to cease being
21 considered as an Oregon customer and, indeed, that is precisely what the Petitioners request with
22 their Petition. Simply stated, the Mill remains an Oregon customer until the Commission
23 determines that that is no longer the case.³ The Commerce Clause is not impacted when the

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25 ³ Staff notes, as it did in its Response Brief, that the Petition does not raise the issue of the
26 lawfulness of the Mill entirely severing its ties with all Oregon service entities in favor of taking
service from a Washington provider without the use the infrastructure used by PacifiCorp to
provide such service. The resolution of this issue would present different considerations that
may, or may not, lead to a different conclusion.

1 Commission applies its laws to regulate the provision of utility service by an Oregon entity to its
2 Oregon customers.

3 **3. CONCLUSION**

4 For the reasons stated, Staff recommends the Commission declare that the Proposed
5 Transaction would violate both the territorial allocation laws and the direct access laws.

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7 DATED this 11th day of August, 2015.

8 Respectfully submitted,

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11 

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