BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1837

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into the Treatment of New Facility Direct Access Load	)	INITIAL BRIEF OF NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION

Pursuant to the Prehearing Conference Memorandum dated July 11, 2017, in this Docket, the Northwest and Intermountain Power Producers Coalition ("**NIPPC**") submits its initial brief on the limited issue whether the Oregon Public Utility Commission (the "**Commission**") has the legal authority to reduce or eliminate the applicability of transition charges for load desiring to take service through Direct Access that has not previously been served by its interconnected distribution utility.[1] NIPPC submits that the Commission's legal authority to do so is clear, and encourages swift action.

I. EXECUTIVE SUMMARY

At issue in this initial phase of Docket No. UM 1837 is whether the Commission has existing authority to allow new commercial and industrial load – load that has never before been served by a utility in Oregon – to purchase power from non-utility electricity service suppliers ("**ESS**") without being required to pay to a utility the same "transition" fees that the Commission currently requires be paid in the circumstance where load already served by the incumbent utility, through the utility's existing rate-based generation assets, chooses to leave the system.[2] The Commission has the authority to limit the

[1] The Commission's May 16, 2017 Order opening this proceeding (Order 17-171) adopts Staff's May 4, 2017 recommendation (as amended) that this proceeding address a number of specific factual issues, such as what constitutes new customer load. Pursuant to the June 26, 2017 prehearing conference and the Administrative Law Judge's July 11, 2017 Memorandum, NIPPC is limiting this Opening Brief to specified threshold legal issues. NIPPC reserves the right to address all remaining issues at the appropriate time.

[2] NIPPC believes the level of transition charges imposed on existing load are inappropriate, but is not addressing such issue herein.

application of transition charges to new load, and should do so given the important economic benefits to the state as well as the Commission's statutory responsibility to eliminate barriers to the development of a competitive retail market structure and to mitigate the vertical and horizontal market power of incumbent electric companies.[3] Further, it would inappropriate for new loads to bear transition charges to the extent that the utilities do not incur any uneconomic utility investments when new load takes Direct Access.

This brief will address the following topics:

First, the brief will address the history of Senate Bill ("**SB**") 1149 and Oregon's Direct Access Law, and some of the major continued barriers to development of a competitive retail structure, such as the level of transition charges imposed upon Direct Access customers leaving a utility's system. This history will also address some of the recent legislative actions aimed at creating opportunities to fix the Direct Access system, at least in part, as addressed in House Bill ("**HB**") 4126, SB 979, and related regulatory proceedings.

Second, the brief will reiterate the Commission's statutory obligation to remove barriers to the development of a competitive market, as well as the chilling impact placing full transition costs on new load has on both the development of a competitive market and on Oregon's economy as a whole.

Third, the brief will address the following subsidiary legal issues related to this docket:

- **Eliminating or reducing transition charges for new load will not cause any "unwarranted" cost shifts**. A utility should not reasonably incur new generation costs related to load that has never been served by the utility in the first instance and may well prefer to be served by Direct Access. Moreover, even if some cost shifts could occur, they would not be *unwarranted* given the important public interest in economic development and job growth in Oregon as well as the Commission's statutory mandate to eliminate barriers to the development of the competitive retail market.

- **Under Oregon law, utilities can meet their supplier of last resort obligations to returning Direct Access customers through market-based purchases rather than standing ready to offer cost-of-service rates.** The question whether utilities must stand ready to offer cost-of-service rates to customers returning from Direct

[3] *See* ORS 757.646(1).

Access service is easily answered; the Commission's existing statutory authority specifies that the Commission can allow utilities to provide supplier of last resort service through market-rate purchases, rather than cost of service rates.[4]

- **New load is not similarly situated to existing load for the purposes of allocating transition charges and can be treated as a separate customer class.** Oregon law requires that there be no undue preferences, advantages or prejudices, or unjust discrimination and that utilities must charge customers the same rate "for a like and contemporaneous service under *substantially similar circumstances*."[5] Current load taking service through existing rate-based generation facilities is not substantially similar to new load that is choosing among competitive options to locate in Oregon or elsewhere and has never expressed an intent to receive generation services from the incumbent Oregon utility. Longstanding Oregon law is that, where factual distinctions such as this exist, different rate treatment does not constitute undue discrimination, advantage or preference.

II. <u>BACKGROUND</u>: Oregon's Economy and Existing Law Require that the Commission Eliminate Transition Fees for New Load Taking Direct Access Service

By law, Oregon's electric generation industry is intended to be a competitive market where commercial and industrial retail customers are entitled to directly purchase power in the open market from third-party ESSs to the same extent as purchasing power from their local utility. This law, known generally as the Direct Access, has been in place since 1999, and is codified in Chapter 17, Section 757.600 through 757.689 of Oregon's Revised Statutes. The Oregon legislature declared that the Direct Access program is of critical import to the economic health of the state.[6] The law specifies that the Commission's duties expressly include "***developing policies to eliminate barriers to the development of a competitive retail market structure,***" including policies which "shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies."[7] However, more than 15 years since Oregon's Direct

[4] *See* ORS 757.603(3)(b): "The commission may prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through Direct Access, and may limit switching among portfolio options and the cost of service rate by residential electricity consumers."

[5] ORS 757.310(2) (emphasis supplied).

[6] *See* Preamble, Senate Bill 1149, Or Laws 1999, ch 865, compiled, as subsequently amended, at ORS 757.600-757.691.

[7] ORS 757.646(1) (emphasis supplied).

Access laws were enacted, development of a competitive retail market remains stunted despite continued vocal demand from commercial and industrial customers for products only available through Direct Access.[8]

More and more commercial and industrial entities desire the opportunity to purchase 100 percent renewable energy[9] – a service that is not available under a utility's standard cost of service rate, and which Oregon's utilities have steadfastly refused to provide under terms found by the Commission to be in the public interest. [10]

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[8] *See, e.g*., Brief of Oregon Business Coalition, *Noble Americas Energy Solutions LLC v. Public Utility Commission of Oregon, et al*., CA A161359, filed June 21, 2016 (incorporated herein by reference). ("The Oregon Business Coalition agrees with the findings of the legislature in Senate Bill 1149 that the availability of competitively-supplied power is critical for Oregon to compete in the national and global marketplace. Members of the Oregon Business Coalition are entities that purchase power in the state of Oregon for business operations as well as entities that develop and sell power in Oregon. The Oregon Business Coalition represent a variety of employers and commercial interests that provide substantial employment in, and tax revenue to, the state. Some members of the Oregon Business Coalition desire the opportunity to select power sources that are tailored to their needs, including corporate sustainability goals to purchase a customized mix of renewable energy products – a product that is available under the Direct Access program but not offered by the utilities. Some members of the Oregon Business Coalition are in very competitive, price sensitive industries, and their ability to acquire power at fixed prices for a known, fixed period of time (as available through the Direct Access program, but not from a utility) is critical to continuing business operations within the state.

Members of the Oregon Business Coalition have choices whether to continue or expand their facilities in Oregon (with the incumbent growth of jobs and tax base) or site their economic activities in other states. The ability to access competitive wholesale power markets, including renewable power supplies, is critical to those make-or-break business decisions. The PUC's decision in the proceeding below allowed PacifiCorp -- without evidentiary support -- to place a transition surcharge into effect for customers seeking to elect the Direct Access program at a rate that is so high as to effectively create an economic barrier to utilization of the Direct Access program throughout PacifiCorp's Oregon service territory. Such an excessive charge renders the statutory opportunity afforded by the state for Direct Access meaningless to the customers of PacifiCorp. That result is detrimental to the Oregon economy and contrary to the intent of Oregon's Direct Access law.")

[9] *See*, e.g., April 3, 2017 Testimony of Joanie Deutsch, Executive Director for the Northwest for Technet, SB 979, available at https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/114245 and incorporated herein by reference.

[10] *See, e.g*., *April 16, 2016 Letter filing*, Pacific Power, Docket UM 1690 (stating: "Based on the Company's discussions and research, Pacific Power is not able to develop a tariff-based program that

The legislature has considered this issue twice in recent years. In 2014, House Bill 2146 directed the Commission to conduct a study to determine whether it was in the public interest to allow utilities to provide a voluntary renewable energy tariff (a "**VRET**"), but expressly conditioned the Commission's review on the impact such VRET service would have on development of a competitive retail market. After an extensive proceeding, under Docket UM 1690, the Commission determined that it would consider allowing the utilities to do so, subject to a number of express conditions, including ensuring parity with service that could be provided through Direct Access. Faced with these conditions, both PGE and PacifiCorp refused to offer a VRET. [11]

In 2017, the legislature again considered changes to the Direct Access legislation in SB 979, supported by testimony from significant commercial and industrial interests. Although the bill did not move out of Committee, the Chair of the Senate Committee on Business and Transportation provided direction to the Commission of the importance of the availability of Direct Access to advance economic development in Oregon, and directed the Commission to reconsider policies with respect to transition costs for new load seeking to take Direct Access.[12]

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meets the needs of customers while conforming to the narrow constraints of the VRET guidelines established by the Commission").

[11] *Id.*; *see also April 14, 2016 Letter Filing*, Portland General Electric Company, Docket UM 1690 (stating: "This is in response to the Commission's Order encouraging PGE to file a draft Voluntary Renewable Energy Tariff (VRET) to help inform a Commission decision of whether it is in the public interest to allow utilities to offer VRETs. After careful consideration, we have chosen not to file a draft tariff at this time.")

[12] *See Transcript of Work Session on SB 978 and SB 979*, Senate Committee on Business and Transportation, April 17, 2017, comments of Chair Beyer: "With the bill that we passed in the last Session, 1547, I think that field has changed a lot particularly as you are talking about new loads where people coming on and the Commission Chair has assured me that they see that change and want to encourage and be supportive for economic development and of people coming in who are willing to take a look at that and perhaps take a little more supportive look than they have in the past. I think that is good. What I told Chair Hardy is that we would let them do their job and if it seemed like they were not going on that way that we would be back in about eight months and we would take another look at it. So I think the message we want to send to companies that are looking to Oregon as a place to do business and do green power is that we are indeed open for that. I think we are open to it in a sense of providing equal opportunity for both the utilities and third parties to provide that coverage and the regulatory field should be pretty level—I hate to use that term—we've all heard me talk about what a level playing field looks like—but as level as we can get it. The real

This docket was opened as a result.

III. DISCUSSION/SUBSIDIARY LEGAL ISSUES

A. Existing Law Dictates that New Load Should Not Bear Transition Costs.

Nothing in the Direct Access law requires new load to bear transition costs. The law provides that the Commission "may" allow for such charges, but does not mandate them. Even then, transition charges are limited to specifically-defined "uneconomic utility investments," which are previously incurred and otherwise unrecoverable investments made by the utility to serve load, and only to the extent such charges are necessary to prevent costs shifts that are "unwarranted." In this analysis, whether costs shifts are "unwarranted" must be read in conjunction with two important criteria: the public interest in Oregon's economic growth and prosperity from providing a cost-effective opportunity to encourage new investment within the state, and the Commission's mandatory obligation to eliminate barriers to the development of a competitive retail market. Specifically, the Direct Access law provides that:

> "The Direct Access […] rates ***may*** include transition charges or transition credits that reasonably balance the interests of retail electricity consumers and utility investors. The commission ***may*** determine that full or partial recovery of the costs of ***uneconomic utility investments***, or full or partial pass-through of the benefits of economic utility investments to retail electricity consumers, ***is in the public interest***."[13]

It is unclear whether a utility will ever have any "uneconomic utility investment" related to new load. The term "uneconomic utility investments" is expressly defined in the law using past-tense phrasing to specify that "uneconomic" investments, and thus any transition charges to recover such investments, include only investments that were incurred *prior to* a customer's election to leave the utility's cost of

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issue there is how to deal with the transition charges and what those are. The issue on transition charges—so you guys who are not so familiar—Is that you don't want to let somebody leave the utility and then leave a major charge behind as being unfair and throwing that on the shoulders of the other customers. So there is a balancing act that I think the Commission is in probably a far better position to deal with than we are as a legislature, but we can take another look later, so that is why we are not doing that now, but I understand Senator Girod's comments and I have strong feelings along the same lines although, not negative towards any one party."

[13] ORS 757.607(2) (emphasis supplied).

service system in favor of Direct Access.[14] Transition charges cannot include costs for new generation investments and obligations assumed by the utility after a customer has ceased purchasing power from the utilities' generation assets in favor of competitive power markets.[15]

The basis for this restriction on the Commission's authority to impose transition charges is transparent. Where a utility prudently incurs costs with the expectation that the utility is required to serve a given number of existing customers, but some of those customers subsequently elect to purchase their power from the competitive power markets and not from the utility's underlying generation assets, the "regulatory compact"[16] generally provides that the utility should have an opportunity to recover such costs *previously* incurred to serve the now departed customers. ***But where the utility has never served the load, nor reasonably incurred new generation costs planning for such load, no such uneconomic utility investments are ever incurred***. If the utility has not prudently incurred any uneconomic utility investment related to new load, then no transition costs are appropriate.

Importantly, while the utilities may anticipate some level of generic load growth when developing future plans, such plans do not equate with *incurrence of costs* to provide service for new load. New load often requires long lead times as facilities planning to utilize such load are constructed, sometimes three to five years or more. Even if such load is within a utility's projected future load, the utility may not have invested anything to serve such load. Where loads are decreasing or relatively flat, any investment in generation already will have been incurred, and no new utility investment will be needed to meet the new load moving directly to Direct Access – meaning no "uneconomic utility investment" can ever exist with respect to such load. Indeed, requiring new load to bear transition charges to pay for generation

[14] ORS 757.600(35) (definition of "uneconomic utility investments"); *see also* ORS 757.600(31) (definition of "transition charge").

[15] *See* ORS 757.600(35).

[16] *See, e.g., Transmission Access Policy Study Group v. FERC,* 225 F 3d 667, 700 (DC Cir 2000), *aff'd, New York v. FERC,* 535 US 1 (2002).

capacity that pre-existed would cause an unwarranted cost shift onto such new load, and violate the longstanding ratemaking principle that cost incurrence should follow cost causation.[17]

Nor should such planning automatically entitle the incumbent utility to collect transition charges from the new load moving directly to Direct Access, especially in a circumstance where the customer has expressed a preference to be served by Direct Access from the outset. Much of the new load that desires Direct Access service will simply bypass Oregon and locate elsewhere if it is forced to pay a significant transition charges to elect the type of service in Oregon that it can easily obtain in other jurisdictions. This is especially true for new load that seeks to be served with 100 percent renewable energy, and/or load that desires cost certainty available from tailored agreements not subject to cost of service fluctuation, which Oregon utilities cannot provide under cost of service rates[18]. If it is required to purchase from the utility, it will not meet its renewable energy and/or contracting goals and simply not locate in Oregon. This is not load the utility is ever likely to have as part of its customer base. The Commission has the statutory authority to ensure that utilities do not invest in generation to serve such load, and to prevent the utilities from forcing customers to pay transition charges. Even if the utility has invested in the hope of securing such load, in the face of retail competition, it is not clear that such investment would be prudent, or that shifting the costs of the utility's decision onto the back of new load would be warranted.

Oregon law also requires that the Commission remove barriers to the development of a competitive retail market. Allowing utilities to place transition charges on new load – which that utility has never served – creates a significant barrier. The mere threat of transition charges on new load has a chilling effect on competition. Assume that new load is considering moving to Oregon and would prefer Direct Access service. All things being equal, this load would never choose to be served by the utility's cost-based generation services. But if the utility claims that it has ostensibly "planned" for such customer, and therefore is entitled to collect transition charges if the customer takes Direct Access service, the Direct Access service is rendered uneconomic. Requiring new load to pay transition charges therefore

[17] *See, e.g., S. Carolina Pub. Serv. Auth v. FERC*, 762 F. 3d 41, 87 (D.C. Cir. 2014) ("the cost causation principle requires costs to be allocated to those who case the costs to be incurred and reap the resulting benefits.")

[18] By statute (SB 1149), Oregon utilities remain free to provide such service through affiliates.

drastically tilts the competitive playing field and harms both the competitive market and the customer. As noted above, the Commission *may* impose transition charges where appropriate to reasonably balance the interests of retail electricity consumers and utility investors, and *must* remove barriers to the development of a competitive market. Allowing utilities to impose transition charges on new load, for which they have never provided service, meets neither of these goals, and may significantly harm Oregon's economic growth.

B. Utilities in Oregon Can Meet Provider of Last Resort Obligations Through Market Purchases Rather Than Cost of Service.

The question whether utilities must stand ready to offer cost-of-service rates to customers returning from Direct Access service is easily answered; the Commission's existing statutory authority unequivocally specifies that the Commission can allow utilities to provide supplier of last resort service through market-rate purchases, rather than cost of service rates.

Oregon law provides the Commission with broad latitude to establish the terms and conditions under which a utility must offer default service to a customer desiring to return from Direct Access service, whether in an emergency or upon reasoned reflection. Moreover, these terms and conditions for default service ***must*** provide an opportunity for viable competition from electricity service suppliers. For example, ORS 757.622 provides:

> "The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through Direct Access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for viable competition among electricity service suppliers."

Oregon law goes on to explain that the utilities are not obligated to offer a cost of service rate to customers desiring to return to the utility system from Direct Access, and go so far as to allow the Commission to ***expressly prohibit*** Direct Access customers from returning to a cost of service rate:

> **The commission may prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through Direct Access**, and may limit switching among portfolio options and the cost-of-service rate by residential electricity consumers.[19]

Given these statutory mandates, the Commission can allow utilities to provide customers desiring to return to the utility's system – whether as a result of an emergency or otherwise – with service at market-based rates, rather than standing ready to provide service on a cost-of-service basis. Moreover, both PGE and PacifiCorp already offer customers the opportunity to be served through market-based power rates, and have systems in place to manage market purchases and bill customers accordingly.

In addition to the statutory authority, the Oregon Court of Appeals has expressly upheld the Commission in denying a customer's request to return from a market based rate to cost of service in *Wah Chang v. PUC of Oregon*.[20] In addition to finding that a market based rate could be just and reasonable, the *Wah Chang* decision held that the Commission is entitled to take into consideration the fact that a customer elects to take contractual risks with respect to power prices.[21] Customers seeking Direct Access are similarly electing to take certain contractual risks. The Commission is fully authorized to require customers returning from Direct Access to receive service based on market-based rates, rather than requiring the utility to stand ready to provide service on a cost of service basis.

NIPPC believes that there may be a reasonable time frame under which customers returning from Direct Access should be entitled to return to embedded cost rates, based on the utility's ability to incorporate the customer's load into its plans. Whether such time frame is six months, two years, or something else is outside the scope of this phase of this proceeding. Commercial and industrial customers that elect to take Direct Access service are making an informed business decision with respect to one of the commodities necessary to operate their business, and can accept the consequences of returning to market based rates, rather than cost based rates, for whatever period of time the Commission determines may be appropriate. But with respect to the question at issue here – whether a utility *is obligated to stand ready*

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[19] *See* ORS 757.603(3)(b) (emphasis supplied).
[20] *Wah Chang v. PUC of Oregon,* 256 Or. App. 151, 301 P.3d 934 (2013) ("*Wah Chang*").
[21] *Wah Chang*, 256 Or. App. At 167-68.

to provide cost of service rates to customers returning from Direct Access, and the answer is an unequivocal "no."

C. Eliminating Transition Charges for New Load Does Not Create Undue Discrimination.

Oregon law specifies that a utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the utility charges any other customer for a like and contemporaneous service under ***substantially similar circumstances***.[22] Moreover, the requirement to charge the same rate for service does not apply where there is a difference based on service classifications as set forth in ORS 757.230. That section, in turn specifies that service classifications may take into account a variety of different things, including, *inter alia*, the quantity of service used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration.[23] The Oregon Court of Appeals has concluded that this statute allows the Commission to approve significantly different rates for similar services based on those service classifications.[24]

The Commission itself has previously concluded that ORS 757.230 and 757.310 do not restrict its authority to approve Direct Access tariffs that charge significantly different rates for like and contemporaneous service. Prior to the adoption of SB 1149, the Commission agreed with PacifiCorp that its existing utility statutes preventing undue discrimination did not apply to a Direct Access tariff. PacifiCorp argued that the Commission's general authority gives the Commission the authority to declare price discrimination laws inapplicable to a Direct Access pilot program.[25] PacifiCorp maintained "that the dangers of utility price discrimination do not exist in a competitive market and that

[22] ORS 757.310(2) (emphasis supplied).

[23] *See* ORS 757.230.

[24] *Wah Chang*, 256 Or. App. at 164-65.

[25] *Re PGE Customer Choice Pilot Program; Re PacifiCorp's Petition for Declaratory Ruling Regarding the Applicability of ORS 757.205 and 757.225 and ORS 757.310 to 757.330 to Direct Access Pilot Programs*, Docket Nos. UE 101/DR 20, Order No. 97-408 (Oct. 17, 1997).

price discrimination is in fact a positive force in a competitive market" and explained "that price discrimination laws would be inimical to the success of the Pilot Program."[26]

In accepting PacifiCorp's Pilot Program, the Commission explained that ORS 757.230 is broad and allows it to "use any economic justification--so long as it is a reasonable one--in the creation of customer classes" and allows the Commission to "permit rates tailored to the need of individual customers --again, so long as there is a reasonable economic justification for doing so."[27] Thus, it is permissible for two customers to receive the same service, but pay different rates, if there is a reasonable economic justification.

While currently disfavored, the Commission has a long history of allowing discriminatory treatment among customers that are not similarly situated through the process of adopting special contracts. The Commission justified providing discounted rates to large industrial customers to keep these customers from leaving the utility's system.[28] Specifically, customers that had the economic option to choose to take service from another service provider were allowed to pay a lower rate designed to ensure that these customers remained captive customers.

In a later phase of this proceeding, the Commission will have ample opportunity to identify reasonable economic justifications to treat customers currently taking electric service different from customers the utility has not served. For example, without the opportunity to take generation service from an electricity service supplier, some of these customers may never choose to locate their facility in Oregon. This will harm all of the incumbent utility's remaining customers because these new customers will not be available to contribute to the utility's distribution and transmission rates. In addition, if the utility does not plan (or is directed not to plan) to serve new large loads (or at least a portion of those new large loads that are reasonably expected to take Direct Access), then the utility will not have made investments to acquire generation capacity to serve them.

[26] *Id.*
[27] *Id*.

[28] *Wah Chang v. PacifiCorp*, Docket No. UM 1002, Order No. 01-873 at 2 (Oct. 15, 2001).

The difference between existing load and new load is a reasonable consideration for creating a separate customer class. Load that does not currently exist in Oregon has the ultimate price and service competition: such load can simply choose to invest in other jurisdictions rather than in Oregon.

The policy phase of this proceeding will explore in greater detail the specific reasons why or how a new large load tariff can be designed. The basic legal issue presented in this brief, however, is that as long as the Commission has a reasonable economic basis to support a finding that new customers are not facing substantially similar circumstances at existing customers, then there is no undue discrimination if new customers are exempt from paying transition charges.

IV. CONCLUSION

NIPPC submits that the Commission has full authority to allow new load to take Direct Access service without paying transition charges. The law makes it clear that application of transition charges is discretionary, not mandatory; the Commission "may" allow them, but is not required to do so. The law makes clear that the Commission may allow utilities to meet their provider of last resort obligation for returning customers through market-based purchases, and do not need to stand ready to provide service through cost of service rates. The law is clear that new load is not similarly situated to existing load, and can be served under different rates without creating undue discrimination.

NIPPC urges the Commission to swiftly move forward in this docket and eliminate transition charges for new load. Business interests have made it clear that the ability to purchase tailored energy products such as those available through Direct Access, and at a reasonable cost, is critical to decisions whether to site or expand within the state. Imposing transition costs on such load could have a chilling impact on the state's economic future, and should be avoided. With respect to new load, it is not clear that any "uneconomic utility investment" can occur, as it is unclear that the utilities have or should be incurring expenses to serve future load that may not desire to ever take service from such utility, and even if a small amount of such investment occurs, whether any cost shift would be "unwarranted." Imposition of transition charges to new load also creates a barrier to the development of the competitive market by skewing the price of service in favor of incumbent utilities. These are among the many reasons the Commission should act swiftly to eliminate transition charges from new load desiring service through

Direct Access; but with respect to the threshold legal issue, it is clear that the Commission has this power.

The Commission has full authority to take action in this docket, and legislative guidance to do so.

Dated this 8th day of September 2017.

Respectfully submitted,

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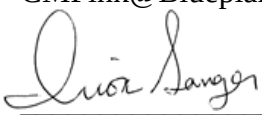

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