ORDER NO. 15 060

ENTERED FEB 24 2015

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 267

In the Matter of PACIFICORP, dba PACIFIC POWER, Transition Adjustment, Five-Year Cost of Service Opt-out.	ORDER

DISPOSITION: PACIFICORP DIRECTED TO FILE REVISED TARIFF CONSISTENT WITH THIS ORDER

I. INTRODUCTION

A. Background

PacifiCorp, dba Pacific Power, currently offers three supply service options for direct access eligible customers: (1) a one-year opt-out program through Schedule 294; (2) a three-year opt-out program through Schedule 295; and (3) a default cost-based supply service program. Customers selecting direct access are subject to a transition adjustment, which PacifiCorp imposes to either credit or recover investment costs rendered economic or uneconomic by the loss of load.[1] As required by our rules, the company uses the ongoing valuation method to calculate the transition adjustment, which compares the value of the freed-up generation asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.[2]

In Order No. 12-500, entered in docket UM 1587, we ordered PacifiCorp to file a tariff providing for a five-year opt-out program. Specifically, we directed PacifiCorp to file a tariff for a "five-year opt-out program that allows a qualified customer to go to direct access and pay fixed transition charges for the next five years, and then to be no longer subject to transition adjustments—for so long as that customer remains a direct access customer (on the Pacific Power system)."[3] We further explained that the company may tailor a five-year program for its large, sophisticated customers, with other customers being protected from cost shifting.[4]

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[1] *See* ORS 757.607.
[2] *See* OAR 860-038-0005(41) and OAR 860-038-0140.
[3] *In re Public Utility Commission of Oregon: Investigation of Issues Relating to Direct Access*, Docket No. UM 1587, Order No. 12-500 at 9 (Dec 12, 2012).
[4] *Id.* at 10.

B. Procedural History

In response to that order, PacifiCorp filed Schedule 296, in Advice No. 13-004, setting forth a proposed five-year cost-of-service opt-out program (five-year opt-out program or five-year program) with an effective date of July 1, 2013. The advice filing was docketed as UE 267.[5]

Following the filing of opening testimony and settlement discussions, all active parties other than PacifiCorp offered a "stipulation" to resolve all issues in the docket. The stipulation, supported by joint testimony, was signed by Staff and the following nine intervenors: the Industrial Customers of Northwest Utilities (ICNU), Noble Americas Energy Solutions LLC (Noble Solutions), Wal-Mart Stores, Inc. (Wal-Mart), Shell Energy North America (US), LP (Shell), Constellation NewEnergy, Inc. (Constellation), Fred Meyer Stores, Inc./Kroger, Co. (Fred Meyer), the Northwest and Intermountain Power Producers Coalition (NIPPC), Safeway Inc. (Safeway), and Vitesse, LLC (Vitesse) (collectively, the Stipulating Parties).[6]

PacifiCorp disputed the validity of the stipulation because it did not involve an agreement between parties on adverse sides of an issue. The stipulation was accepted into the record. PacifiCorp filed reply testimony and presented a modified version of a five-year opt-out program.

All parties waived the right to cross-examine witnesses. Pre-filed testimony was admitted into the record, and the parties filed three rounds of briefs.

II. PROCEDURAL ISSUES

A. Legal Standard Applicable to Review of Contested Stipulations

At the outset, we address three procedural matters related to the stipulation submitted by all active parties in this docket except PacifiCorp. The disputes focus on the legal standard of our review of contested stipulations.

First, the parties differ as to whether we should afford the stipulation deference based on a policy of encouraging voluntary resolution of issues. PacifiCorp argues that no deference should be given because, as the administrative law judge (ALJ) previously found, the stipulation does not "resolve any issues as it fails to include Pacific Power[.]"[7] In contrast, the Stipulating Parties contend we should defer to the stipulation as it represents a "compromise of different positions" and "a reasonable resolution" of the

[5] In Order No. 13-130, we initially suspended the tariff for six months, until January 1, 2014. We subsequently extended the suspension period to January 1, 2015, in Order No. 14-432.
[6] Two other parties intervened in this proceeding: Portland General Electric Company and Compete Coalition. Neither took a position on the stipulation.
[7] ALJ Ruling on Stipulation (Nov 15, 2013).

issues.[8] They argue that we may approve a non-unanimous stipulation where substantial competent evidence on the record shows that the stipulation will result in just and reasonable rates.[9]

Second, the parties dispute whether we are required to review the stipulation as an integrated document. PacifiCorp contends that the Stipulating Parties "have the burden of producing evidence to support their argument in opposition to the utility's position" on each and every settlement term.[10] The Stipulating Parties counter that we should review the stipulation as an integrated document, contending that evidence demonstrating the reasonableness of the entire settlement is sufficient. They note this view is consistent with our process to set just and reasonable rates by "look[ing] at the record as a whole and mak[ing] a determination based on the preponderance of the evidence."[11]

Third, the parties dispute what additional proceedings are necessary if we reject or modify the stipulation. Should we not adopt the stipulation in its entirety, the Stipulating Parties request that we allow a second opportunity for hearing. They indicate that the Commission has granted a second hearing in analogous circumstances.[12] PacifiCorp contends that no additional proceedings are necessary if we reject or modify the stipulation.

B. Resolution

The agreement made by the Stipulating Parties technically satisfies the definition of a stipulation in OAR 860-001-0350, as determined in the ALJ's November 15, 2013 ruling:

> The language used in OAR 860-001-0350 is broad, but unambiguous, allowing 'some or all of the parties' to 'enter into a settlement of any or all issues' at any time during a contested case. It does not require all parties to agree, nor does it specify that 'necessary' or 'adverse' parties must agree.[13]

As the ALJ also noted, however, the stipulation does not "*resolve* any issues" since the adverse party in the docket, PacifiCorp, opposes its terms. Nevertheless, we agree with the ALJ that the settlement has "value in terms of administrative efficiency by narrowing the range of positions on issues and further developing the record,"[14] thereby performing the same function as joint testimony. In the future, we encourage parties to submit joint testimony as a means of aligning positions against an adverse party.

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[8] *Id.* citing *In re PacifiCorp*, Docket No. UE 210, Order No. 10-222 at 5.
[9] *See In re PacifiCorp Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 6 (Jan 26, 2010).
[10] PacifiCorp's Opening Brief at 4, quoting *In the Matter of Portland General Electric Company Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 09-046 at 8 (Feb 5, 2009).
[11] Stipulating Parties' Post-Hearing Reply Brief at 25, citing *In re PacifiCorp*, Docket Nos. UM 995/UE 121/UC 578, Order No. 02-469 at 75 (Jul 18, 2002).
[12] *Id.* citing *In re PacifiCorp*, Docket No. UE 94, Order No. 98-107 (Mar 19, 1998).
[13] ALJ Ruling at 3 (Nov 15, 2013).
[14] PacifiCorp's Rebuttal Brief at 17, citing ALJ Ruling at 3 (Nov. 15, 2013).

In response to the parties' arguments, we clarify that we do not defer to, and are not bound by the terms of *any* stipulation. Although we encourage parties to resolve disputes informally, we must review the terms of any stipulation for reasonableness and accord with the public interest. We also affirm that, as set out in OAR 860-001-0350, we may adopt or reject a stipulation in its entirety, or adopt it with modifications to its terms. We will explain any modifications that we make, but we will provide further opportunity for the parties to be heard only if necessary to ensure a complete record or preserve rights of the parties.

Here, we do not find it necessary to provide an additional opportunity for a hearing should we reject the stipulation. We note that the ALJ's acceptance of the stipulation into the record did not conclude the proceedings in this docket, and that an opportunity for all parties to participate in cross-examination was subsequently available.

III. PACIFICORP'S FIVE-YEAR OPT-OUT PROGRAM

The parties identified six primary issues regarding the elements of PacifiCorp's five-year program: (1) Rate Components; (2) Transition Adjustment Calculation; (3) Program Eligibility; (4) Total Eligible Load; (5) Election Window; and (6) Right to Return.

Following the completion of testimony and briefing, the parties reached a consensus on one primary issue, as well as on many other sub-issues. We address each issue separately below, with positions presented jointly or separately as appropriate.

A. Rate Components

PacifiCorp and the Stipulating Parties agree on all rate components of a five-year program except the inclusion of a consumer opt-out charge. The parties agree that, during the five-year transition period, a direct access customer should be subject to delivery charges, generation fixed costs (calculated pursuant to Schedule 200), and a transition adjustment. All parties also agree that after the transition period, a direct access customer will pay the company for delivery service alone.

We summarize the parties' positions on the opt-out charge below, followed by our resolution.

1. PacifiCorp's Position

PacifiCorp contends that a consumer opt-out charge is necessary to minimize cost shifting to nonparticipating customers. PacifiCorp explains that the opt-out charge is intended to represent the fixed generation costs incurred by the company to serve all customers offset by the value of freed-up power made available by the departing customers for years six through 20 after a customer's departure from cost-of-service rates.

PacifiCorp observes that the opt-out charge is required under the direct access law and are implementing rules to prohibit unwarranted cost shifting to non-participating customers.[15] PacifiCorp asserts that a direct access customer must pay 100 percent of transition costs and receive 100 percent of transition benefits.[16] Absent an opt-out charge, PacifiCorp argues that a significant amount in transition costs could be shifted to non-participating customers. PacifiCorp estimates that, between years six and ten, the transition costs associated with 175 MW of departing direct access load approximate $58.9 million on a nominal basis, or $35.4 million on a net present value basis.

PacifiCorp argues that, even with the opt-out charge, the company has a strong incentive to minimize transition costs given the reduced window of recovery. The company notes that, although transition costs may exist through at least a 20-year period, recovery of such costs is limited to a 10-year period.[17]

PacifiCorp disputes arguments that its system load growth will completely mitigate the company's transition costs after five years. PacifiCorp explains that GRID relies on the company's total system load forecast for calculating both the transition adjustments for years one through five and the consumer opt-out charge for years six through ten. Thus, contrary to the Stipulating Parties' assertions, GRID incorporates forecasted system load growth in valuation of electricity freed-up by direct access in Oregon.

PacifiCorp also contends that it is unreasonable to assume that the company could defer planned resource acquisitions based on departing direct access load. PacifiCorp explains that the company's IRP does not contemplate the addition of new generation resources within the next ten years so there are no costs to avoid or delay due to direct access. It also offers unrebutted evidence that savings from reduced front-office transactions associated with loss of direct access load are already captured in the GRID model runs that underlie calculation of the transition adjustment. Finally, PacifiCorp indicates it presented undisputed evidence that the company forecasts *no* load growth in Oregon and the Commission's current approach to the company's inter-jurisdictional cost allocation effectively forecloses consideration of system load growth as a stranded cost mitigation factor for Oregon alone.

2. Stipulating Parties' Position

The Stipulating Parties oppose an opt-out charge. They allege that imposing ten years of alleged costs in a five-year period of recovery would present a negative value proposition for participants and ensure that the program will be doomed to fail.

At the outset, the Stipulating Parties contend that Oregon's direct access law provides far more discretion than the company suggests. They note that cost shifting is prohibited only when it is *unwarranted*, and that a transition charge is defined as "a charge or a fee

[15] *See* ORS 757.607(1) and OAR 860-038-0160(1).
[16] PacifiCorp observes that the Commission adopted OAR 860-038-0160(1) in 2000, after issuance of Order No. 98-353 which permitted less than 100 percent transition cost recovery. PacifiCorp asserts that with the passage of SB 1149, the Commission instituted a full recovery standard.
[17] OAR 860-038-0160(7) ("The Commission will determine the period of payment or recovery of transition costs or transition credits, provided such period will not exceed 10 years.").

that recovers all *or a portion* of an uneconomic utility investment."[18] Thus, the Stipulating Parties conclude that law provides the Commission with the ability to determine the appropriate level of transition charge or credit to impose.

Next, the Stipulating Parties contest PacifiCorp's calculations that stranded costs will exist after the five-year transition period. They argue that the "record contains no comprehensive analysis of projected stranded costs beyond the five-year transition period."[19] The Stipulating Parties suggest that PacifiCorp's claims are based on extrapolations from an illustrative example rather than real data. They assert that the company failed to model appropriate system planning in the face of long-term and likely permanent departing load.

In any case, the Stipulating Parties argue that a consumer opt-out charge is unjustified because PacifiCorp can adjust its system to match load lost within five years. They observe that the maximum amount of load allowed to depart under the program, 175 aMW, is a small proportion of PacifiCorp's total system load of 7,000 aMW, and will likely be offset by future load growth. The Stipulating Parties also assert that expensive front-office load-meeting transactions by the company can be scaled back in anticipation of the reduced direct-access-related loads.

The Stipulating Parties also argue that, by proposing an opt-out charge, PacifiCorp avoids its duty underlying the direct access law to mitigate transition costs. The Stipulating Parties contend that PacifiCorp is not properly taking mitigation steps, such as amending provisions of its inter-jurisdictional agreement or putting unused Bonneville Power Administration (BPA) transmission rights to beneficial use.[20]

3. Resolution

During the five-year transition period for the five-year program, we find that a direct access customer under Schedule 296 should pay delivery charges, generation fixed costs, a transition adjustment, and a consumer opt-out charge. After the transition period, a direct access customer will pay PacifiCorp for delivery service alone. We therefore resolve the only contested issue regarding the rate components of Schedule 296 by adopting the consumer opt-out charge as it was presented in modified form by PacifiCorp in reply testimony.

We conclude that the consumer opt-out charge is necessary pursuant to implementation of the state's direct access laws by our rules. The inclusion of an opt-out charge is consistent with our request that PacifiCorp design a five-year opt-out program that would protect other customers from cost-shifting. We also find that, even with the opt-out

[18] *Id.* citing ORS 757.600(31) (emphasis added).
[19] Stipulating Parties' Post-Hearing Reply Brief at 10.
[20] *Id.* at 5, citing *In re Investigation of Transition Costs for Electric Utilities*, Docket No. UM 834, Order No. 98-353 at 20 (Aug 24, 1998) ("Utilities should expect to show they have maximized the value of their assets and minimized the costs associated with those assets. We may allow less than full recovery of transition costs to ensure mitigation takes place."); *accord* ORS 757.607(2).

charge, PacifiCorp will have an incentive to minimize transition costs, having reduced the period for recovery from 20 to 10 years.

The Stipulating Parties failed to rebut PacifiCorp's evidence of transition costs, up to approximately $60 million, in years six to ten of the program, and rely too heavily on mere assertions about how transition costs beyond year five can be reduced or erased. Moreover, we reject the Stipulating Parties' arguments that PacifiCorp's system load growth will completely mitigate any transition costs. As PacifiCorp notes, GRID considers forecasted system load growth in calculating both the transition adjustments and the consumer opt-out charge.

B. Transition Adjustment Calculation

The Schedule 296 transition adjustment is the estimated difference between the value of the electricity that is freed up when a customer chooses to leave cost-based supply service and regulated net power costs in Schedule 201.

The parties identified four separate issues regarding the calculation of the Schedule 296 transition adjustment. The parties ultimately reached consensus on three of those issues: (1) Use of Grid to Determine Value of the Transition Charge; (2) Differentiate between HLH and LLH; and (3) Amount of Load Assumed to Depart. The remaining dispute relates to BPA Transmission Credit. We discuss each issue separately.

1. Use of GRID Model To Determine Value of the Transition Charge

PacifiCorp and the Stipulating Parties agree on a calculation methodology using the company's GRID program to determine the value of the transition charge.[21] This methodology includes changes agreed to by PacifiCorp in responsive testimony that it would calculate the transition adjustment, including the value of freed-up energy, in the same respective methodologies used for the annual Transition Adjustment Mechanism (TAM) under Schedules 294 and 295.

We agree and authorize PacifiCorp to use the GRID-based methodology set forth in its reply testimony.[22] We note that this decision is consistent with prior decisions favoring a GRID-based methodology rather than a market price approach to value the loss of direct access load.[23]

2. Differentiate Between Heavy Load Hours (HLH) and Light Load **Hours (LLH)**

PacifiCorp originally proposed to differentiate the transition adjustment between HLH and LLH. The Stipulating Parties persuaded the company that doing so would

[21] Although they support the use of GRID, the Stipulating Parties note that this position is a compromise, as some parties to the stipulation argued that PacifiCorp should calculate its transition adjustment using market prices to value freed-up generation. *See* Noble Solutions/100, Higgins/5; Walmart/100, Chriss/12.
[22] PAC/400, Duvall/22.
[23] *See e.g.*, Order No. 13-387 at 12-13.

preferentially treat HLH, and PacifiCorp accepted the recommendation to eliminate the distinction between HLH and LLH.

We deem elimination of a transition adjustment distinction between HLH and LLH appropriate. Calculation of the Schedule 296 transition adjustment will not differentiate between HLH and LLH.

3. Amount of Load Assumed to Depart

Rather than assuming the initial departure of all 175 aMW of eligible load under Schedule 296, PacifiCorp and the Stipulating Parties agree to assume only 50 aMW of direct access load will depart in the first year of the five-year program. In each subsequent year, the parties agree that the Schedule 296 Transition Adjustment will be calculated for newly departing customers based on actual data about departed load and the assumption of an addition 50 aMW of direct access load, until the program cap is reached.

We find it reasonable and appropriate to use, for purposes of calculating the transition adjustment for Schedule 296, an incremental departure of 50 aMW of direct access load each year until the program cap is reached.

4. Credit for BPA Transmission

The parties dispute whether PacifiCorp should include a moderate credit in the transition adjustment calculation for BPA transmission that is freed-up as a result of customers electing direct access. The positions of PacifiCorp and the Stipulating Parties are separately presented.

a. PacifiCorp's Position

PacifiCorp contends no credit should be provided, because the company will not be able to obtain value from BPA transmission freed-up by departing direct access load due to its continuing obligation to be the provider of last resort in the company's West Balancing Authority Area.[24] PacifiCorp explains that the company will need to retain transmission rights in order to be able to serve departing customers that have the right to return. PacifiCorp argues that imputing a credit for BPA transmission would shift additional costs to other customers.

PacifiCorp adds this Commission has previously rejected similar proposals in the company's last two TAM proceedings.[25] PacifiCorp asserts that the Stipulating Parties fail to distinguish the proposal in this case from those previous adverse decisions. Moreover, PacifiCorp points out that the Commission has already recognized that comparisons to PGE are inapplicable to PacifiCorp for purposes of considering a transmission credit for direct access.

[24] PacifiCorp's Opening Brief at 20, citing PAC/500.
[25] PacifiCorp's Prehearing Brief at 14, citing Order No. 12-409 at 17; Order No. 13-387 at 13-14.

b. Stipulating Parties' Position

The Stipulating Parties recommend that PacifiCorp credit direct access customers for approximately half of the BPA point to point (PTP) rate of $3.166/MWh (as measured on an average load factor basis).[26] The transmission credit is appropriate, the Stipulating Parties contend, because freed-up transmission assets are an "economic utility investment" that should be credited to direct access customers.[27]

The Stipulating Parties explain that this transmission credit proposal is conservative, accounting for the possibility that PacifiCorp cannot free up, resell, or reuse ***all*** pertinent BPA transmission rights. The Stipulating Parties indicate that this type of transmission credit has been part of PGE's five-year opt-out program for several years, and emphasize that PacifiCorp does not refute that the company can contractually reassign, sell, or redirect its PTP rights to another party. The Stipulating Parties add that prior orders rejecting a BPA transmission credit in PacifiCorp's one-year and three-year opt-out programs are distinguishable because customers in those programs are allowed to return to cost-of-service rates without meaningful advance notice.

The Stipulating Parties assert that there is no reason for PacifiCorp to hold the rights idle. They explain that, under their proposal, direct access customers would be required to provide four years' advance notice before returning to cost-of-service rates. That notice, the Stipulating Parties observe, would provide PacifiCorp sufficient time to reacquire the BPA transmission rights needed to serve the returning customers. Moreover, if an emergency situation arose and PacifiCorp had to provide service, the Stipulating Parties assert that OAR 860-038-0280(3) would allow the company to pass on the above-market costs of securing short-term transmission rights to provide emergency service. Even if PacifiCorp does not relinquish the rights, the Stipulating Parties point out that the company can use freed-up transmission for other economic uses, or serve other loads.

c. Resolution

As in previous dockets in which we have rejected potential transition adjustment credits for the resale of BPA transmission, we find no compelling evidence of PacifiCorp's actual ability to sell BPA transmission rights when direct access loads depart and then repurchase such rights when direct access loads return.[28] The Stipulating Parties offer no supporting detail or evidence to support their assertion that a required four-year advance notice before returning to cost-of-service rates is sufficient to allow PacifiCorp to reacquire the BPA transmission rights needed to serve returning customers. We find no reason to depart from our precedent that declines to institute a transition adjustment credit for the resale of BPA transmission.

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[26] Stipulating Parties/100, Higgins, Compton, Schoenbeck, Chriss, Lynch/18.
[27] *See* ORS 757.600(1), (32); ORS 757.607(2).
[28] Order No. 12-409 at 17, Order No. 13-387 at 13-14.

C. Total Eligible Load

The parties agree that PacifiCorp's five-year program should be capped at 175 aMW of departing load. The Stipulating Parties note that PGE's program cap is 300 aMW, but acknowledge that PGE has a greater amount of potentially eligible load. They ask that any party be allowed to request at any time that the size of the cap be increased.

We adopt the 175 aMW cap on the total amount of load that can be accepted in the five-year program, finding it to be a reasonable initial limit on the departure of load. Any party is free to ask that the cap be revisited at a later time.

D. Program Eligibility

The parties dispute how meter eligibility is determined under the five-year program. PacifiCorp contends each meter must be independently eligible, while the Stipulating Parties contend that all meters located on the same property as one eligible meter should be allowed to participate in the program, regardless of usage.

1. PacifiCorp's Position

For customers who receive service under Delivery Service Schedules 30/730, 47/747 or 48/748, PacifiCorp proposes to limit its five-year program to those under the same corporate entity with meters that each have more than 200 kW of billing demand at least once in the previous 13 months, and that total to at least 2 megawatts (MW). PacifiCorp notes that the term, "corporate entity," replaced the term, "corporate name," to address concerns that customers that are part of the same corporate entity, but operate under different trade names, would not be eligible to participate.

PacifiCorp does not believe that the presence of one eligible meter under these standards should allow all other meters on the same property—regardless of independent eligibility—to participate in the program. PacifiCorp contends that allowing such participation would violate ORS 757.310(2), which prohibits a utility from charging different rates to similarly situated customers. PacifiCorp adds that its tariff does not allow the company to charge all meters based on the rate schedule that applies to the primary meter on a customer's property.

2. Stipulating Parties' Position

The Stipulating Parties contend that, once one meter on a property meets the opt-out eligibility requirements for the five-year program, all other nonresidential meters on the same property that are billed to the same corporate entity, regardless of the meter's annual usage, should be eligible to opt-out. The Stipulating Parties argue that allowing a customer to include all accounts on the same property in an opt-out program is reasonable and administratively efficient by facilitating coordinated energy management and central utility bill processing.

The Stipulating Parties view PacifiCorp's objection as an attempt to frustrate the potential success of the five-year program, and refute PacifiCorp's concerns about ORS

757.310(2). Although the provision prohibits a utility from charging different rates to two customers with substantially the same service, the Stipulating Parties argue the statute is inapplicable to the aggregation of meters for the purposes of opting out of cost-of-service rates. They argue, "[t]he customer's accounts on the same property would no longer be purchasing generation service from PacifiCorp and would instead each be taking same type of distribution related services from PacifiCorp."[29] In any case, the Stipulating Parties argue that we have broad discretion to set transition adjustment rates under ORS 757.607(2).

3. *Resolution*

We adopt PacifiCorp's proposed eligibility criteria, as it has been revised to use the term, "corporate entity." We also find that each and every meter in the five-year program must be eligible under these criteria, and that an otherwise ineligible meter does not become eligible by collocation with an eligible meter. We make this decision for policy, not legal reasons. We agree with PacifiCorp that its tariff does not determine rate application based on a customer's primary meter, but rather does so based on the individual basis of each meter. As discussed above, program eligibility will be capped at 175 aMW, largely based on the estimated amount of eligible departing load as calculated using the application in PacifiCorp's tariff. Indeed, no testimony was presented regarding the amount of eligible load if the Stipulating Parties' eligibility criteria is adopted. We find it inappropriate to adopt eligibility criteria that would potentially render the initial cap on total eligible load unsuitable.

E. Election Window

The parties dispute the length of time an eligible customer is allowed to decide whether to enroll in the five-year program. The positions of PacifiCorp and the Stipulating Parties are separately presented.

1. *PacifiCorp's Position*

PacifiCorp proposes a three-week election window, beginning on November 15 of each year. The company contends this is the longest period possible under the Commission's rules and the company's tariffs. PacifiCorp explains that November 15 is designated as the "Announcement Date" for electric utilities to state their estimated prices for the next calendar year.[30] PacifiCorp indicates it will post indicative transition adjustments one week earlier than the Announcement Date, thereby effectively giving customers four weeks to consider whether to elect the five-year program.

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[29] Stipulating Parties' Pre-Hearing Brief at 18.

[30] PacifiCorp's Opening Brief at 20, citing ORS 757.609(1) (requiring the Commission to "set a date on which all electric companies must announce prices that will be charged for electricity by the companies in the subsequent calendar year") and OAR 860-038-027(1) (establishing November 15 as the "Announcement Date" on which each electric company must announce the prices to be charged for electricity services in the next calendar year).

2. *Stipulating Parties' Position*

The Stipulating Parties propose a one-month election window. They contend that this duration is necessary to give customers adequate time to work through all of the details and approvals necessary to execute a long-term opt-out commitment. The Stipulating Parties observe that a one-month election window is consistent with the election window in PGE's program.

Given the logistical problems identified by PacifiCorp with having an election window extend into December, the Stipulating Parties argue that the election window should commence on November 1 of each year. They ask the Commission to waive the November 15 Announcement Date set forth in OAR 860-038-0275(1) to allow an earlier date for the five-year opt-out program.

3. *Resolution*

We adopt PacifiCorp's proposal to allow an election window starting November 15 which extends three weeks thereafter. As noted, PacifiCorp will post indicative transition adjustments one week prior to that date, effectively extending that window to four weeks. Customers may begin the process to enroll in the five-year program at that time. We find that the Stipulating Parties did not show that having a November 1 Announcement Date would add enough value to the process to offset the potential confusion created by different Announcement Dates for PacifiCorp's direct access programs.

F. Right to Return

The parties dispute the conditions imposed on direct access customers wanting to return to cost of service rates. The positions of PacifiCorp and the Stipulating Parties are separately presented.

1. *PacifiCorp's Position*

After initially proposing that a five-year program direct access customer never be allowed to return to cost-of-service rates, PacifiCorp revised its proposal to allow a five-year program customer to return to cost-of-service rates with four years' notice, and the condition that the customer would never again be eligible to participate in the five-year opt-out program. PacifiCorp contends these restrictions are required to impose disincentives to customers switching between direct access and cost-of-service rates, which is harmful to non-direct access customers. PacifiCorp adds that if the Stipulating Parties are correct and the five-year program results in direct customers permanently leaving the company's system, then there is little harm in adopting PacifiCorp's proposal.

2. *Stipulating Parties' Position*

The Stipulating Parties agree that a direct access customer seeking to return to cost-of-service rates should provide four years' advance notice, but oppose PacifiCorp's proposal to ban returning customers from future participation in the program. While customers should be discouraged from switching between direct access and cost-of-service rates, the

Stipulating Parties contend that the length of the four-year notice will ensure that any switching is not frequent. They also note that PGE's five-year program, which allows customers to return with three years' notice, contains no future ban on participation.

3. Resolution

We adopt the requirement that a direct access customer must provide four years' advance notice in order to return to cost-of-service rates, finding this requirement to be reasonable. We reject PacifiCorp's proposal that a returning customer is thereafter precluded from future eligibility. PacifiCorp failed to demonstrate why a ban on future eligibility for its five-year program is necessary for customers that switch one time, particularly when such a limitation is not in place for PGE's five-year program.

IV. ORDER

IT IS ORDERED that:

1. PacifiCorp will file revised rate schedules consistent with this order within ten days of issuance of this order.

Made, entered, and effective FEB 24 2015.

Susan Ackerman

Susan K. Ackerman
Chair

John Savage
Commissioner

COMMISSIONER BLOOM WAS UNAVAILABLE FOR SIGNATURE

Stephen M. Bloom
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.