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December 4, 2012

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket UE 245

Attention Filing Center:

Enclosed for filing in Docket UE 245 are an original and five copies of PacifiCorp's Response in Opposition to Noble Solutions' Application for Reconsideration. A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed service list.

Please contact this office with any questions.

Very truly yours,

Katherine McDowell

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 245

In the Matter of
PACIFICORP d/b/a PACIFIC POWER
2013 Transition Adjustment Mechanism.

**PACIFICORP'S RESPONSE IN
OPPOSITION TO NOBLE
SOLUTIONS' APPLICATION FOR
RECONSIDERATION**

I. INTRODUCTION

On October 29, 2012, the Public Utility Commission of Oregon (Commission) issued Order No. 12-409 in this docket. In the order, the Commission rejected Noble Americas Energy Solutions LLC's (Noble Solutions) proposal to change the market caps used in the calculation of the transition adjustment.¹ On November 20, 2012, Noble Solutions filed an application for reconsideration under ORS 756.561 and OAR 860-001-0720(3)(c), claiming that Order No. 12-409 relied on a factual error essential to the decision on transition adjustment market caps. As PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) demonstrates below, the Commission correctly decided the issue and no error of fact exists. PacifiCorp therefore respectfully requests that the Commission deny Noble Solutions' Application for Reconsideration.

II. LEGAL STANDARD

The Commission may reconsider an order if there is "sufficient reason" to do so. ORS 756.561(1). Under OAR 860-001-0720(3), "sufficient reason" consists of: previously unavailable, material evidence; a change in law or policy; an error of law or fact essential to

¹ Order No. 12-409 at 15-16 (October 29, 2012).

1 the decision; or good cause for further examination of an issue essential to the decision. The
2 rule requires the application to identify with specificity all grounds for reconsideration.²

3 The requirements of OAR 860-001-0720 are not met when a party “merely reiterates
4 its prior argument and its disagreement with [a] decision and its underlying reasoning.”³
5 Neither are they satisfied when a party argues new matters outside the scope of the order⁴ or
6 raises new or alternative theories in a case.⁵

7 III. ARGUMENT

8 Noble Solutions alleges that the Commission made an error of fact in these statements
9 from Section 5(a)(ii) of Order No. 12-409:

10 Noble Solutions’ argument that market caps in GRID unreasonably
11 limit assumptions about how much of the generation freed up by
12 25 MW of direct access load will be sold is effectively the same in
13 nature as the more general arguments made by ICNU and Staff
14 about the limitations of market caps. We are not persuaded that
15 there is any reason to depart from our decision to retain but revise
16 the market caps in GRID.

17 Noble Solutions asserts that the Commission “improperly conflated” the issue of market caps
18 used for calculating net power costs (NPC) and the “unrelated and separate issue” of market
19 caps used for calculating the transition adjustment.⁶ Noble Solutions contests the
20 Commission’s conclusion that the argument against using market caps in the transition
21 adjustment calculation is “effectively the same” as the general arguments against use of
22 market caps.⁷ Similarly, Noble Solutions argues that adopting changes in the transition

² OAR 860-001-0720(1)-(2).

³ *In re Portland General Electric Company*, UM 954, Order No. 00-308 (Jun 9, 2000).

⁴ *Id.*

⁵ *Bultman v. Qwest Corp.*, UCR 119, Order No. 03-270 (May 1, 2003).

⁶ Noble Solutions’ Application for Reconsideration at 1.

⁷ *Id.* at 5.

1 adjustment market caps would not require the Commission “to depart” from its underlying
2 decision to retain but revise market caps.⁸

3 **A. Noble Solutions’ Claim of Factual Error Misconstrues Order No. 12-409.**

4 The Commission correctly observed in Order No. 12-409 that the parties’ arguments
5 against market caps—whether for determining NPC or for determining the transition
6 adjustment— were “effectively the same in nature.”⁹ The Commission’s decision retaining
7 but revising market caps “relaxed” market caps by approximately 500 MW at Mid-C and
8 100 MW at COB, on average, for both calculation of NPC and calculation of the transition
9 adjustment,¹⁰ completely subsumed the 25 MW market cap adjustment Noble Solutions
10 proposed.

11 The Commission correctly recognized the overlap in the parties’ arguments. The
12 Commission’s adoption of the revised market caps proposed by Staff fully covered Noble
13 Solutions’ smaller adjustment to market caps for calculating the transition adjustment. The
14 Commission therefore concluded that there was no need to “depart”¹¹ from its decision by
15 making the incremental market cap adjustment proposed by Noble Solutions.

16 **B. Noble Solutions’ Claim of Factual Error is Based On A False Distinction.**

17 Noble Solutions claims that the Commission erred in not recognizing the distinction
18 between NPC market caps and transition adjustment market caps. The only support for such
19 a distinction, however, is Noble Solutions’ own self-serving testimony.¹² In reality, there are
20 not two sets of market caps that operate differently from one another depending on whether

⁸ *Id.*

⁹ Order No. 12-409 at 16.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 16.

¹² See Noble Solutions’ Application for Reconsideration at 6 (citing Noble Solutions/100, Higgins/13-14.)

1 the Company is modeling overall NPC or transition adjustments. Market caps are designed
2 to approximate the liquidity constraints that actually exist in the markets in which PacifiCorp
3 transacts. The market liquidity constraints and the market caps in GRID are constant no
4 matter how the Company is applying GRID.

5 Noble Solutions claims that the hypothetical transfer of 25 MW of PacifiCorp load to
6 direct access increases market liquidity for PacifiCorp at Mid-C and COB by 15 MW and
7 10 MW, respectively, justifying a design change in the transition adjustment market caps. As
8 noted in Order No. 12-409, Noble Solutions made this argument in its testimony and
9 PacifiCorp responded to it.¹³ Noble Solutions' claim of factual error on this issue is in reality
10 an impermissible attempt to relitigate an issue it lost on the merits.¹⁴

11 The Company's testimony demonstrated the fallacy of Noble Solutions' argument
12 that wholesale market size and PacifiCorp's ability to transact in the market increase by
13 25 MW with 25 MW of direct access load.¹⁵ At both Mid-C and COB, PacifiCorp has a
14 relatively small percentage of the total market transactions conducted.¹⁶ Yet Noble
15 Solutions incorrectly assigns 100 percent of the 25 MW of released load to PacifiCorp
16 (15 MW at Mid-C and 10 MW at COB) and increases PacifiCorp's capacity to make sales in
17 those markets by that level.

18 As an example, if PacifiCorp's market share at Mid-C is approximately 3 percent,
19 then at most PacifiCorp should be assigned 3 percent of the 15 MW hypothetically released
20 to that market, or 0.45 MW. This calculation is generous because not all direct access load
21 goes to market (some goes to the Company's Standard Offer tariff), and, to date, the

¹³ Order No. 12-409 at 15.

¹⁴ See *In re Portland General Electric Company*, UM 954, Order No. 00-308 (Jun 9, 2000).

¹⁵ Reply Testimony of Greg Duvall, PAC/300, Duvall/35-36.

¹⁶ Confidential ICNU/103.

1 Company's actual direct access load has been less than 25 MW.¹⁷ Under any calculation,
2 however, the load assumed to be released to market for the transition adjustment calculation
3 is insufficient to justify relaxation of market caps as Noble Solutions argues.

4 **C. Noble Solutions' Proposed Change to Transition Adjustment Market**
5 **Caps Would Result in Impermissible Cost-Shifting.**
6

7 In support of its reconsideration application, Noble Solutions cites to ORS 757.646,
8 which authorizes the Commission to develop policies to eliminate barriers to the
9 development of a competitive market. Noble Solutions argues that the Commission's failure
10 to revise transition adjustment market caps creates a barrier to competitive market
11 development.

12 Any policies developed under ORS 757.646 must be consistent with other
13 Commission laws and policies, notably including ORS 757.607(1), which states that:

14 The provision of direct access to some retail electricity consumers
15 must not cause the unwarranted shifting of costs to other retail
16 electricity consumers of the electric company.

17 Noble Solutions' proposed change to market caps improperly subsidizes direct access by
18 shifting costs to other retail customers.¹⁸ Noble Solutions proposes to relax market caps at
19 Mid-C by 15 MW and at COB by 10 MW. The record in this case demonstrates that Mid-C
20 is a relatively liquid hub and COB is a relatively illiquid hub.¹⁹ As a result, the relaxation of
21 market caps at Mid-C has little impact on NPC,²⁰ while relaxation of market caps at COB has
22 a significant impact.²¹

¹⁷ Reply Testimony of Greg Duvall, PAC/300, Duvall/36.

¹⁸ Reply Testimony of Greg Duvall, PAC/300, Duvall/35.

¹⁹ TR 109, line 22; TR 110, line 5.

²⁰ TR 106, lines 18-20.

²¹ TR 106, line 21; TR 107, line 3.

1 Without accounting for any change in load for direct access, Noble Solutions'
2 proposed relaxation of market caps alone will artificially lower NPC and increase the
3 transition credit. This is because the logic of the GRID model will seek out the highest value
4 sales by reducing sales at Mid-C and moving them to the higher-priced COB market.²²
5 Noble Solutions assigns the lower NPC caused by GRID's re-optimization to the transition
6 credit, which benefits direct access customers, even though the 25 MW of released load had
7 nothing to do with creating the benefit. In this way, Noble Solutions' proposal shifts costs
8 from direct access customers to retail customers and is therefore precluded by ORS
9 757.607(1).

10 **D. None of Noble Solutions' Proposed Changes to Order No. 12-409 are**
11 **Warranted.**
12

13 Noble Solutions asks the Commission to revise its order on transition adjustment
14 market caps, require PacifiCorp to file corrected Schedule 294/295 transition adjustments,
15 and order an additional direct access shopping window in 2013. For all of the reasons
16 addressed above, there is no basis for reconsidering Order No. 12-409.

17 In addition, a request for a new direct access window is outside the proper scope of
18 this reconsideration application.²³ Institution of a new direct access window raises a number
19 of policy concerns, including the need to update the Company's NPC concurrently with the
20 calculation of a new transition adjustment to avoid the risk of cost shifting.

21

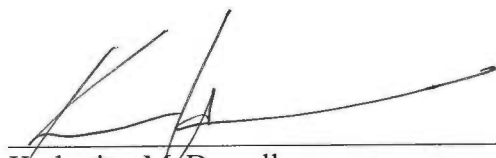
²² See PAC/304.

²³ See *In re Portland General Electric Company*, UM 954, Order No. 00-308 (Jun 9, 2000).

1 **IV. CONCLUSION**

2 Based on the foregoing, PacifiCorp respectfully requests that the Commission deny
3 Noble Solutions' Application for Reconsideration.

Respectfully submitted this 4th day of December 2012,



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Sarah Wallace
Senior Counsel
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Attorneys for PacifiCorp

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 Docket UE 245 on the following named person(s) on the date indicated below by email
4 addressed to said person(s) at his or her last-known address(es) indicated below.

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