

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC	)	UE 245
POWER 2013 TRANSITION ADJUSTMENT	)	
MECHANISM	)	NOBLE AMERICAS ENERGY
	)	SOLUTIONS LLC'S
	)	POST-HEARING REPLY BRIEF
	)	
	)	

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**I. INTRODUCTION**

Pursuant to procedural schedule in this case, Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits it Post-Hearing Reply Brief to the Public Utility Commission of Oregon (“Commission” or “OPUC”). With its opening brief, PacifiCorp has presented almost no argument on the two critical elements of the transition adjustment calculation at issue in this case. PacifiCorp has the burden to prove its transition adjustment rates were properly calculated given current circumstances. PacifiCorp has failed to do so. Noble Solutions again respectfully requests the Commission adopt Noble Solutions’ recommendations that (1) PacifiCorp continue to relax market caps in the transition adjustment calculation, and (2) that PacifiCorp’s proposed transition adjustment calculations be modified to include a credit for the value of freed up Bonneville Power Administration (“BPA”) transmission.

Additionally, with respect to the proposal from the Industrial Customers of Northwest Utilities (“ICNU”) and the Citizens Utility Board of Oregon (“CUB”) to eliminate the transition adjustment mechanism (“TAM”), Noble Solutions does not take a position with respect to the annual resetting of rates for cost-of-service customers through the TAM process. However, Noble Solutions notes that irrespective of whether rates for cost-of-service customers are reset

annually, the Schedule 294 and 295 transition adjustments should continue to be recalculated each annual shopping window so that they continue to reflect the difference between market prices and net power costs recovered in rates.

## **II. ARGUMENT**

Noble Solutions explained in great detail in its only round of testimony and in its opening brief why PacifiCorp has not met its burden of demonstrating that its transition adjustment calculation should eliminate the use of relaxation of market caps and the credit for freed-up BPA transmission. PacifiCorp provided little substantive explanation in its reply testimony, and its opening brief provides almost no argument in support PacifiCorp's position that the Commission should eliminate these two elements of the transition adjustment calculation. PacifiCorp may include new arguments in its reply brief – just as it did in its reply testimony. The Commission should not consider any arguments that might be presented for the first time in PacifiCorp's reply brief. The extremely limited argument PacifiCorp has provided in its opening brief on these issues does not support PacifiCorp's proposed calculation of the transition adjustment.

Additionally, Noble Solutions notes that irrespective of whether rates for cost-of-service customers are reset annually through the TAM, the Schedule 294 and 295 transition adjustments should continue to be recalculated each annual shopping window so that they continue to reflect the difference between market prices and net power costs recovered in rates.

### **A. PacifiCorp Has Not Met Its Burden of Providing Adequate Argument in Its Opening Testimony and Opening Brief, and Allowing PacifiCorp to Present New Arguments in Reply Testimony and Reply Briefing Prejudices Noble Solutions.**

As Noble Solutions noted in its opening brief, PacifiCorp's direct testimony completely failed to mention its proposed treatment of market caps and the BPA transmission credit in calculation of the transition adjustment for 2013. Had Noble Solutions not intervened and

thoroughly reviewed PacifiCorp's work papers, no party but PacifiCorp would have ever known that PacifiCorp had decided to depart from use of these elements of the well-established transition adjustment calculation. PacifiCorp's opening brief contains only a summary discussion of these critical and complex elements of the transition adjustment calculation. *See PacifiCorp's Opening Brief* at 25. The entire discussion is contained within fifteen lines comprising a little over a half page of briefing. PacifiCorp cannot meet its burden with such limited discussion of such a complex matter.

The Commission has expressed a clear policy against allowing parties to wait to provide evidence and argument late in proceedings without sufficient opportunity for other parties to respond. *In Re Portland General Electric Co.: 2012 Annual Power Cost Update*, OPUC Docket No. UE 228, Order No. 11-432, 8 (2011). It is a well-settled tenet that a party waives an issue if it is not raised and adequately argued in its opening brief. *See Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co.*, 981 F.2d 429, 436 (9th Cir.1992) (presenting alternative contention for first time in reply brief not allowed). PacifiCorp has prejudiced Noble Solutions with its failure to provide explanation of its position for the relaxation of the market caps and the BPA transmission credit until late in this proceeding. PacifiCorp has the burden to prove its transition adjustment calculation is accurate, and has failed to meet that burden by providing inadequate explanations in the first instance. *In Re Portland General Electric Co.: 2012 Annual Power Cost Update*, Order No. 11-432 at 3. The Commission should not consider any arguments that might be presented for the first time in PacifiCorp's reply brief because no party will have any opportunity to respond to such arguments.

**B. PacifiCorp's Limited Explanation Does Not Justify PacifiCorp's Proposals to Eliminate Relaxation of Market Caps.**

PacifiCorp's post-hearing opening brief provided no substantive argument on relaxation of the market caps. PacifiCorp's brief does not even attempt to rely upon PacifiCorp's confusing and unconvincing testimony on the substance of relaxation of the market caps. *See PacifiCorp's Opening Brief* at 25 (containing no substantive argument on relaxation of market caps); *Noble Solutions' Opening Brief* at 11-14 (discussing the lack of substantive merit to PacifiCorp's limited testimony on relaxation of market caps). Again, without relaxing the market caps in calculating the transition adjustment, PacifiCorp's calculation would illogically assume that 25 megawatts ("MW") of its load will begin purchasing from the market but will somehow have no impact on market liquidity. When 25 MW of PacifiCorp load begins purchasing from the market (as is assumed in the transition adjustment calculation), liquidity of the market increases by 25 MW irrespective of whether PacifiCorp makes the sale directly to the Electricity Service Supplier ("ESS") or some other party makes the sale to the ESS. Simply put, more parties purchasing in the market makes the market more liquid. PacifiCorp has not and cannot rebut this point.

**C. PacifiCorp's Limited Explanation Does Not Justify PacifiCorp's Proposal to Eliminate The BPA Transmission Credit.**

PacifiCorp has also failed to present any compelling evidence or argument that its transition adjustment should assume that PacifiCorp would receive no benefit from BPA transmission assets freed up as a result of direct access. PacifiCorp relies entirely on prior Commission decisions from 2004 and 2005. *See PacifiCorp's Opening Brief* at 25. The circumstances today are different than they were when the Commission decided not to utilize a BPA transmission credit in 2004 and 2005. *Noble Solutions' Opening Brief* at 15-18. Unlike in

2004 and 2005, PacifiCorp can now capitalize on the value associated with freed up BPA transmission by: (1) selling or assigning its BPA point-to-point transmission rights to ESSs serving PacifiCorp load, or (2) using its freed up BPA transmission to meet its need to make increased retail sales and thereby avoid purchasing new BPA transmission. *See id.* (citing to the record). The Commission should require a BPA transmission credit because doing so will properly pass through to direct access customers that freed up value of this economic benefit. *See* O.R.S. 757.600(10), 757.607(2).

**D. Noble Solutions' Recommendation to Properly Calculate The Transition Credits Will Not Subsidize Direct Access Or Shift Costs.**

PacifiCorp has attempted to overstate the significance of the dollar value of the Schedule 294 and 295 transition credits, as though properly calculated transition credits are a subsidy to direct access customers. *See PacifiCorp's Opening Brief* at 25. PacifiCorp correctly states that the transition credits would be between \$12.43 and \$12.92 per megawatt-hour with Noble Solutions' recommendations. *Id.* But PacifiCorp paints an incomplete picture by focusing on the dollar amount of the credits in isolation. Electing direct access under Schedule 294 and 295 relieves the customer from paying for net variable power costs in Schedule 201, *but not* fixed costs of generation through Schedule 200. PacifiCorp/202, Ridenour/1, 3; Noble Solutions/100, Higgins/5-6; *see also* UE 246 PacifiCorp/1301, Griffith/25.<sup>1</sup> Therefore, while the Schedule 294 and 295 transition credit may appear large when viewed in isolation, the credit alone does not take into account other generation costs direct access customers pay to PacifiCorp through Schedule 200.

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<sup>1</sup> Noble Solutions requested that the Commission take official notice of this exhibit from UE 246. *See Noble Solutions Opening Brief* at 3 n.2.

Additionally, Noble Solutions' proposals are essentially for preservation of the status quo, which thus far has resulted in only 0.6 percent of eligible PacifiCorp customers electing direct access. *See Noble Solutions/103, Higgins/1*. Despite PacifiCorp's suggestion, adoption of Noble Solutions' recommendation to preserve the status quo is highly unlikely to result in any cost shifting.

**E. If the Annual Resetting of Cost-of-Service Rates through the TAM Process Is Eliminated as Recommended by ICNU and CUB, It Will Still Be Necessary to Annually Reset the Transition Adjustments for Direct Access Customers.**

In response to Administrative Law Judge Pines' request on August 31, 2012, for briefing on four issues, Noble Solutions addressed the history and purpose of the TAM as it relates to calculation of the transition adjustment. *See Noble Solutions' Opening Brief* at 2-3. Noble Solutions did not perceive the other three questions presented by Judge Pines' request to apply to Noble Solutions. In response to Judge Pines' request, other parties to this proceeding have proposed to eliminate the TAM and to cease the use of PacifiCorp's GRID model. *See Opening Brief of ICNU and CUB* at 2-8, 28-31. The same issues are being litigated in PacifiCorp's general rates case (UE 246). These issues became apparent to Noble Solutions after the time for filing intervenor testimony, and therefore Noble Solutions did not present testimony on these issues in this proceeding. Additionally, Noble Solutions is not a party to PacifiCorp's general rates case (UE 246).

The thrust of the argument by ICNU and CUB to eliminate the TAM is directed to the annual resetting of rates for cost-of-service customers through the TAM process – it is not directed at calculating the Schedule 294 and 295 transition adjustments for direct access customers. Noble Solutions does not take a position with respect to the annual resetting of rates for cost-of-service customers. However, Noble Solutions notes that irrespective of whether rates

for cost-of-service customers are reset annually, the Schedule 294 and 295 transition adjustments should continue to be recalculated each annual shopping window so that they continue to reflect the difference between market prices and net power costs recovered in rates. On this point, Noble Solutions refers the Commission to the rebuttal testimony of Fred Meyer Stores and Quality Food Centers (“Fred Meyer”), divisions of The Kroger Co. in the general rate case (UE 246), which discusses this point in some detail. *See* UE 246 FM/200, Higgins/3-7.<sup>2</sup>

As discussed by Mr. Higgins in that docket, the Schedule 294 and 295 transition adjustments are calculated by PacifiCorp in the context of carrying out the “ongoing valuation” method for determining transition charges or credits. According to that method, direct access customers receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic and uneconomic utility investments, as prescribed in O.A.R. 860-038-0160(1). The salient characteristic of the Schedule 294 and 295 transition adjustments is that these riders represent the difference between net power costs *in rates* and the market value of freed-up energy from direct access. For this calculation to remain current, it is necessary to update the market value of freed-up energy annually, i.e., to update the Schedule 294 and 295 transition adjustments, even if the rates for cost-of-service customers are not reset on an annual basis.

### **III. CONCLUSION**

Noble Solutions respectfully requests the Commission adopt Noble Solutions’ recommendations that (1) PacifiCorp continue to relax market caps in the transition adjustment calculation, and (2) that PacifiCorp’s proposed transition adjustment calculations be modified to

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<sup>2</sup> PacifiCorp requested official notice of all filings in the general rate case at the hearing in this proceeding. Tr. at 7-8. To the extent that request was not granted, Noble Solutions requests official notice of Mr. Higgins’ testimony and exhibits (UE 246 FM/200) cited herein. *See* O.A.R. 860-001-0460(1)(d).

include a credit for the value of freed up BPA transmission. Additionally, Noble Solutions does not take a position with respect to the annual resetting of rates for cost-of-service customers. However, Noble Solutions notes that irrespective of whether rates for cost-of-service customers are reset annually, the Schedule 294 and 295 transition adjustments should continue to be recalculated each annual shopping window so that they continue to reflect the difference between market prices and net power costs recovered in rates.

RESPECTFULLY SUBMITTED this 21st day of September, 2012.

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*/s/ Gregory M. Adams*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of September, 2012, a true and correct copy of the within and foregoing NOBLE AMERICAS ENERGY SOLUTIONS LLC'S POST-HEARING REPLY BRIEF, was served as shown to:

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