

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

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

I. INTRODUCTION

Pursuant to procedural schedule in this case, Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its Post-Hearing Opening Brief to the Public Utility Commission of Oregon (“Commission” or “OPUC”). As explained below, the Commission should adopt the two recommendations raised in Noble Solutions’ testimony with regard to PacifiCorp’s transition adjustment mechanism (“TAM”). First, to the extent that the Commission approves any part of PacifiCorp’s proposal in this docket to apply certain restrictions on market liquidity when calculating net power costs (“market caps”), the Commission should concurrently order PacifiCorp to continue the practice utilized in the last four TAMs of relaxing the market cap limitations by 15 megawatts (“MW”) at Mid-Columbia and 10 MW at California-Oregon Border (“COB”) in the calculation of the Schedule 294 and 295 transition adjustment. Second, the Commission should require PacifiCorp to include a credit for the resale of Bonneville Power Administration (“BPA”) transmission in the calculation of the Schedule 294 and 295 transition adjustment to reflect the value of transmission freed up when a customer chooses direct access.

II. REGULATORY BACKGROUND

Oregon’s direct access law instructs the Commission to develop policies to eliminate barriers to the development of a competitive retail market structure, and to develop policies to mitigate the vertical and horizontal market power of incumbent electric utilities. O.R.S. 757.646. The Commission has implemented direct access programs to allow non-residential retail customers to opt out of cost-of-service rates, and instead purchase their unbundled electricity needs from a certified Electricity Service Supplier (“ESS”). O.A.R. 860-038-0260, -0275. A transition adjustment is either a transition charge to direct access customers that recovers an uneconomic utility investment, or a transition credit to direct access customers that returns to consumers the benefits from an economic utility investment. O.R.S. 757.600(31), (32).¹

“Ideally, a transition adjustment will value utility resources impacted by direct access based on actual, appropriate operational responses.” *In Re Investigation into Direct Access Issues*, OPUC Docket No. UM 1081, Order No. 04-516, 10 (2004). PacifiCorp’s TAM relies on its power cost model, Generation and Regulation in Initiative Decision model or “GRID.” *In Re Pacific Power and Light: Request for General Rate Increase*, OPUC Docket No. UE 170, Order No. 05-1050, 19-21 (2005). The methodology calculates the transition adjustment based on the assumption that 25 MW of PacifiCorp load will opt out of PacifiCorp’s cost-of-service tariff and instead purchase from an ESS. *Id.* PacifiCorp makes two GRID runs for each rate schedule, one with full Oregon load and one with a 25 MW load reduction shaped according to the rate schedule, based upon the assumption that 25 MW of load chooses direct access. *Id.* at 19, 21. In

¹ An “uneconomic utility investment” is a utility investment that was prudent when the investment or obligations were assumed, but the full costs of which cannot be recovered as a result of direct access. O.R.S. 757.600(35); O.A.R. 860-038-0005(67), (68), (72). Conversely, an “economic utility investment” is an investment or obligation that was prudent at the time it was incurred but the full benefits of which are no longer available to consumers due to direct access, absent transition credits. O.R.S. 757.600(10); O.A.R. 860-038-0005(18), (66), (69).

theory, these GRID runs calculate the weighted market value of the energy used to serve direct access customers. *Id.* The TAM then calculates the adjustment by comparing the weighted market value to the cost-of-service rate under the customers' specific, energy-only tariff. *Id.*

Thus, the methodology attempts to credit or charge direct access customers the difference between PacifiCorp's net power costs (as reflected in Schedule 201) and the estimated market value of the electricity that is "freed up" when a customer chooses direct access service. *See* Noble Solutions 100, Higgins/5-6. With some modifications adopted by stipulation in Order No. 08-543, Order No. 09-274, Order No. 10-363, and Order No. 11-435, PacifiCorp uses GRID in this manner to apply the transition adjustment either through Schedule 294, for customers choosing the one-year direct access term, or Schedule 295, for customers choosing the three-year direct access term. *See id.* at 5-8.

It is important to note also that electing direct access under Schedules 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/1.² The credit derived in the transition adjustment is essentially the difference between the *variable* cost of generation in rates (i.e., Schedule 201, which corresponds to net power costs) and market prices. *See* Noble Solutions/100, Higgins/5-6; PacifiCorp/200, Ridenour/3. This is important because the Schedule 294 and 295 transition credit may appear large when viewed in isolation but it does not take into account other generation costs direct access customers pay to PacifiCorp through Schedule 200.

² PacifiCorp's Schedule 200 filed concurrently in UE 246 also demonstrates this interplay between the tariffs. UE 246 PacifiCorp/1301, Griffith/25. 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. Griffith's testimony and exhibits (UE 246 PacifiCorp/1300-1301) cited herein. *See* O.A.R. 860-001-0460(1)(d).

III. PROCEDURAL BACKGROUND

On February 29, 2012, PacifiCorp commenced this proceeding by filing its TAM for the 2013 test year and its direct testimony supporting its filing. Commission Staff and Intervenor, including Noble Solutions, filed direct testimony on June 6, 2012. PacifiCorp filed reply testimony on July 11, 2012. The Commission held an evidentiary hearing on August 16, 2012, and has requested post-hearing briefing.

IV. LEGAL STANDARD

The utility “shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.” O.R.S. 757.210(1). The Commission also has the independent responsibility to ensure that PacifiCorp’s customers are only charged just and reasonable rates. O.R.S. 756.040(1). The burden of proof is borne by the utility throughout the proceeding. *In Re Portland General Electric Co.: 2012 Annual Power Cost Update*, OPUC Docket No. UE 228, Order No. 11-432, 3 (2011). Specifically, the Commission recently elaborated as follows:

We reaffirm that for rate revisions proposed by a utility that are subject to ORS 757.210:

[T]he burden of showing that a proposed rate is just and reasonable is borne by the utility throughout the proceeding.

Thus, if [Portland General Electric Company (“PGE”)] makes a proposed change that is disputed by another party, *PGE still has the burden to show, by a preponderance of evidence, that the change is just and reasonable. If it fails to meet that burden*, either because the opposing party presented compelling evidence in opposition to the proposal, or *because PGE failed to present compelling information in the first place, then PGE does not prevail*. To reach a determination on whether proposed rates are just and reasonable, we look at the record as a whole and make a determination based on the preponderance of the evidence. Once a utility has met the initial burden of presenting evidence to support its request, “the burden of going forward then shifts to the party or parties who oppose including the costs in the utility’s revenue requirement.” Although

the burden of production shifts, the burden of persuasion is always with the utility.

Id. (emphasis added) (footnotes and citations omitted).

V. ARGUMENT

When the Commission directed use of GRID for PacifiCorp's TAM methodology in 2004, no eligible PacifiCorp customers were receiving direct access service. *In Re Investigation into Direct Access*, Order No. 04-516 at 9. The Commission intended for the GRID-based methodology to stimulate participation and noted that further revision would likely be necessary to "implement an accurate and equitable transition adjustment in the long run." *Id.* at 1. In the years since that order, the Commission has approved use of a handful of such revisions, including the relaxation of the market caps and the use of a BPA transmission credit. However, according to the Commission's January 2012 Electric Industry Restructuring Status Report, only 0.6 percent of non-residential customer load has chosen direct access in PacifiCorp's Oregon service territory. Noble Solutions/103, Higgins/1.

In this case, PacifiCorp seeks to discontinue the relaxation of the market caps and the BPA transmission credits. PacifiCorp sought to implement these changes without explanation in its direct testimony for its proposed treatment of market caps and BPA transmission in calculation of the transition adjustment. PacifiCorp has therefore failed to meet its burden to support its proposed transition rates and tariffs. Furthermore, PacifiCorp's limited substantive explanation (contained for the first time in its reply testimony) lacks merit. The Commission should require PacifiCorp to continue relaxation of the market caps and to increase the BPA transmission credit in calculating the transition adjustment for Schedules 294 and 295.

A. The Commission Should Require PacifiCorp to Continue to Apply the Relaxation of Any Market Cap Limitations By 15 MW at Mid-Columbia and 10 MW at California-Oregon Border in the TAM Calculation.

PacifiCorp's proposal to eliminate the relaxation of the market caps is its proposal with the most significant economic impact on the transition adjustment calculation. If accepted, it would decrease the transition credits otherwise available by \$5.03 per MWH. PacifiCorp/300, Duvall/37, Ins. 11-14. Relaxation of the market caps in GRID has been an element of the transition adjustment calculation in the last four TAMs. It has become so well-accepted and common-place that the parties did not even include it as separate adjustment in the settlement stipulation in the last two TAMs. The Commission should reject PacifiCorp's unsupported proposal to eliminate this critical element of the transition adjustment calculation.

1. The relaxation of the markets caps in GRID is a well-established and necessary element of PacifiCorp's transition adjustment calculation.

In calculating net power costs, the GRID model assumes that there are restrictions on the liquidity of power markets. Noble Solutions/100, Higgins/13. Accordingly, if GRID shows that PacifiCorp has resources available that can earn a margin at market prices, these resources are not further dispatched once the assumed restriction, or market cap, is reached. *Id.* Generally, the market cap restrictions assumed by PacifiCorp cause an increase in net power costs as calculated in the GRID model because fewer off-system sales are assumed to occur. Staff/100, Schue/13. The appropriateness of the market cap assumptions in calculating net power costs is a source of contention among PacifiCorp, Staff, and the Industrial Customers of Northwest Utilities ("ICNU"). PacifiCorp/300, Duvall/10-22; Staff/100, Schue/5-21; ICNU/100, Deen/6-12.

Distinct from this controversy, the market cap restrictions also unreasonably reduces the Schedule 294 and 295 transition adjustment credits to direct access customers.³ This is so because in performing the GRID calculations PacifiCorp assumes that the generation freed up by the 25 MW of direct access (which is assumed in calculating the transition adjustment) is unable to be sold in market hubs once the market caps are reached. Noble Solutions/100, Higgins/14-15. This is the aspect of the market cap issue addressed by Noble Solutions. This aspect of the market cap issue is readily resolved – and as described below, in the past four TAM cases had been resolved – by making a corresponding adjustment to market liquidity in the amount of the assumed 25 MW of direct access load when calculating the Schedule 294 and 295 transition adjustment. *Id.* at 15-16.

In the 2009 TAM, UE 199, the Commission approved a Stipulation that required the Company to relax the market cap limitations in the GRID model when PacifiCorp calculates the Schedule 294 and 295 transition adjustment. Noble Solutions/201, Cross Exhibit/13, ¶ 15. That UE 199 Stipulation stated:

15. Transition Adjustment: The Parties agree to modify the calculation of the Transition Adjustment for direct access in two ways: (1) the Company will relax the market cap limitations in the GRID model by 15 MW at Mid-Columbia and 10 MW at COB to determine the value of freed up power . . .
.”
*Id.*⁴

The purpose of these adjustments is to relax the market caps by a total of 25 MW. Noble Solutions/100, Higgins/16. In this manner, the calculation recognizes that market liquidity increases when 25 MW of load leaves PacifiCorp’s cost-of-service rates and purchases from the

³ Currently, the Schedule 294 and 295 transition adjustments are credits. To the extent that the Schedule 294 and 295 transition adjustments may be charges, then the market caps unreasonably *increase* the *charges*.

⁴ The other change to the transition adjustment calculation implemented in 2008 is not at issue in this case because PacifiCorp has not proposed to change that element of the transition adjustment calculation. *See* Noble Solutions/100, Higgins/ 6, 8.

market through an ESS. *Id.* at 14, 16. Without implementing this adjustment, GRID would illogically assume that when 25 MW of load leaves PacifiCorp's cost-of-service rates to purchase from the market, there is no increase in market liquidity. *See id.*

PacifiCorp has utilized this relaxation of market caps for purposes of calculating the transition adjustment in each TAM since initially agreed-to in UE 199 for the 2009 TAM. *Id.* at 14; Tr. at 23-26, 36-38. In the 2010 TAM (UE 207), PacifiCorp included the relaxation of the market caps in its work papers with its initial filing. Tr. at 24-25; Noble Solutions/202, Cross Exhibit/1. The parties' stipulation in UE 207 stated the transition adjustment "will be based upon the Final Update and consistent with the modifications to the calculation described in Section 15 of the Stipulation adopted by the Commission in Order No. 08-543 in Docket UE 199." *In Re PacifiCorp, dba Pacific Power: 2010 Transition Adjustment Mechanism*, OPUC Docket No. UE 207, Order No. 09-432, Appendix A at p. 5, ¶ 15 (2009).⁵

In the 2011 TAM (UE 216) and the 2012 TAM (UE 227), the record reflects that PacifiCorp again included the relaxation of the market caps in its work papers with its initial filing and in its final calculation of the transition adjustment. Tr. at 36-38; Noble Solutions/203, Cross Exhibit/1; Noble Solutions/204, Cross Exhibit/1. However, the Stipulations from the 2011 TAM and the 2012 TAM did not even mention this particular element of the transition adjustment calculation. *In Re PacifiCorp, dba Pacific Power: 2011 Transition Adjustment Mechanism*, OPUC Docket No. UE 216, Order No. 10-363, Appendix A (2010); *In Re PacifiCorp, dba Pacific Power: 2012 Transition Adjustment Mechanism*, OPUC Docket No. UE

⁵ The UE 207 Stipulation is not yet included in the record. Noble Solutions respectfully requests that the Commission take official notice of Order No. 09-432, with the stipulation attached thereto. *See* O.A.R. 860-001-0460(1)(b), (d).

227, Order No. 11-435, Appendix A (2011).⁶ Thus, relaxation of the market caps has become so common-place that the parties did not even identify it as separate adjustment to the otherwise standard transition adjustment calculation in the settlement stipulation in the last two TAMs.

There is even precedent for relaxing the market caps in calculating the transition credits in a TAM where PacifiCorp expanded the use of market caps in GRID for other purposes. At the time of UE 199, PacifiCorp applied market caps only during graveyard hours, so the relaxation of the caps for purposes of the transition adjustment calculation occurred only during those hours. Noble Solutions/100, Higgins/16. Last year in UE 227, however, PacifiCorp proposed a major expansion in the use of market caps in GRID for purposes of calculating net power costs, which the Commission approved on a non-precedential basis. *In Re PacifiCorp, dba Pacific Power: 2012 Transition Adjustment Mechanism*, Order No. 11-435 at 21-23. But PacifiCorp made no proposal in that case to eliminate the relaxation of the market caps for purposes of calculating the transition adjustment, and in fact the record reflects that PacifiCorp relaxed the expanded market caps in the calculation of the final transition credits. Tr. at 37-38.

In short, relaxation of the market caps in calculation of the transition adjustment is a well-established element of the approved calculation. It should be applied regardless of how extensively PacifiCorp uses market caps for purposes of calculating net power costs in GRID. Without relaxing the market caps in calculating the transition adjustment, PacifiCorp's calculation would illogically assume that 25 MW of its load will begin purchasing from the market but will somehow have no impact on market liquidity.

⁶ The UE 216 and UE 227 Stipulations are not yet included in the record. Noble Solutions respectfully requests that the Commission take official notice of Order Nos. 10-363 and 11-435, with the stipulations attached thereto. See O.A.R. 860-001-0460(1)(b), (d).

2. PacifiCorp's proposal in this case departs from the well-established method of relaxing market caps in GRID and thereby substantially undervalues the transition credits.

In this case, PacifiCorp requests expansion of the application of market caps to all hours. PacifiCorp also proposes to undo the existing policy requiring it to relax the market caps by a total of 25 MW in the transition adjustment calculation. Noble Solutions/100, Higgins/16. Thus, GRID would assume PacifiCorp will not sell all the energy freed up by direct access, but will back down lower-priced thermal units. *Id.* at 14. The substitution of lower-priced thermal generation for market prices would result in a reduction in the calculated value of the weighted market value of freed-up energy. *Id.* at 14-15. The adverse impact of failing to relax the market caps for the Schedule 294 transition adjustment ranges from nil in certain months to as much as 0.88 cents per kilowatt-hour (or \$8.80 per MWH), which is very material. *Id.* at 15. PacifiCorp itself acknowledges the impact is substantial and estimates its proposed change would reduce the Schedule 294 and 295 credits paid to direct access customers by \$5.03 per MWH. PacifiCorp/300, Duvall/37, Ins. 11-14. PacifiCorp provided no explanation for this proposed change to the TAM in its direct testimony.

3. PacifiCorp cannot meet its burden because it failed to present compelling information in the first place in its direct testimony.

PacifiCorp's direct testimony provided no explanation for PacifiCorp's proposed treatment of market caps in calculating the transition adjustment. PacifiCorp failed to meet its burden of proof because it "failed to present compelling information in the first place." *In Re Portland General Electric Co.: 2012 Annual Power Cost Update*, Order No. 11-432 at 3. PacifiCorp also deprived Noble Solutions and other parties of the opportunity to substantively

respond to PacifiCorp's explanation in the single round of responsive testimony provided for intervenors.

PacifiCorp apparently believes that the TAM Guidelines provide a loophole that absolves PacifiCorp of the duty to provide notice and explanation of material modifications to the transition adjustment calculation in its direct testimony if there is a general rate case occurring at the same time as the TAM. Tr. at 32-33, 50-51. However, PacifiCorp cannot seriously dispute that it has frustrated a fair adjudication of the issue on the merits by burying its proposed change deep in its work papers supporting its direct filing. PacifiCorp also believes this element of the calculation is a non-binding provision from stipulations. Tr. at 36 ("we don't believe that we need to explain why we're not including a nonbinding – or a provision out of a nonbinding stipulation in our proposal."). But this excuse is unconvincing because the relaxation of market caps is so well-established that the parties did not even list it as a modification to the otherwise applicable calculation in the stipulations from two of the four TAMs where it was implemented. The Commission should not endorse PacifiCorp's attempt to secretly change a major element of the transition adjustment utilized for the last four TAMs without any explanation of the change in its direct testimony. A utility cannot meet its burden of proving its rates and tariffs are fair, just and reasonable by doing so. The Commission should require relaxation of the market caps on this basis alone.

4. PacifiCorp's justification for eliminating the relaxation of the market caps lacks substantive merit.

PacifiCorp also failed to provide a substantively defensible basis for its proposal to depart from the relaxation of the market caps in its GRID model. The Commission recently explained PacifiCorp's burden with regard to inputs and assumptions in GRID when it addressed

PacifiCorp's proposed treatment of market caps in calculating net power costs. The Commission stated:

It is difficult in the context of a stand-alone TAM proceeding to determine whether a certain modeling technique is reasonably representative of the company's actual operations. We note however, that Pacific Power is the party that designed the GRID model, and it has the most familiarity with all of the data and assumptions used in the model. Because the company has control of the complex modeling and better access to the details and choices behind it, *we expect the company to provide excellent reasons for its modeling choices.*

In Re PacifiCorp, dba Pacific Power: 2012 Transition Adjustment Mechanism, Order No. 11-435 at 23 (emphasis added).

Although this is not a stand-alone TAM, the same requirement should apply because PacifiCorp is still the party that designed the GRID model and has control of the complex modeling.

In this case, PacifiCorp has not provided "excellent reasons for its modeling choice[]" to assume that customers that begin purchasing from the market should have no impact on the market liquidity assumptions within PacifiCorp's GRID model. Indeed, the issue appears to have been an afterthought for PacifiCorp. The entirety of PacifiCorp's explanation (contained solely in its reply testimony) is as follows:

Simply put, relaxation of the market caps is based on the theory that the wholesale market size will increase when an Electric Service Supplier ("ESS") wins the business of a retail customer. As the Company has previously shown, GRID overstates wholesale sales volumes and an increase in the market size (relaxation of market caps) is unsupported. In addition, the relaxation of the market caps implemented as part of the stipulation in Docket UE 199 assumes the market size increases by 25 MW because that is the size of the hypothetical block of power used to develop the transition credits. This exceeds the size of PacifiCorp's load that has elected direct access. This is another reason that Noble Solutions' proposal is unreasonable.

PacifiCorp/300, Duvall/36.

PacifiCorp has forwarded two faulty reasons to abandon relaxation of the market caps.

First, PacifiCorp assumes that the wholesale market will not increase when a PacifiCorp

customer leaves cost-of-service rates to purchase electricity from the market through an ESS. This assumption lacks merit on its face. It is entirely reasonable to assume (for purposes of GRID modeling) that when 25 MW of existing PacifiCorp load begins purchasing from the wholesale market through an ESS, market liquidity increases. PacifiCorp has provided no analysis to support a conclusion that GRID already overstates market liquidity in an amount that exceeds the increase in liquidity that would occur if (as assumed in the GRID model) 25 MW of direct access load commenced purchasing from the market. PacifiCorp has therefore failed to meet its burden on that point.

PacifiCorp's second argument is that the 25 MW of load assumed in GRID to elect direct access in fact exceeds the amount of PacifiCorp load that is currently taking direct access service. According to PacifiCorp's witness's reply argument set forth above, it is unreasonable to assume in GRID that the 25 MW of hypothetical load electing direct access will have any impact on market liquidity because in reality 25 MW of PacifiCorp load has not actually elected direct access. This argument lacks merit because it confounds the importance of the "actual" amount of direct access load with the "assumed" amount of direct access load in the Company's own calculation of the transition adjustment. As a fundamental matter, *the entire transition adjustment calculation conducted by PacifiCorp is a hypothetical exercise. See Noble Solutions/100, Higgins/5-6.* The purpose of this exercise is to determine a *rate*, not a total dollar value to be charged or credited to the amount of direct access load that actually shows up. For the purpose of determining this rate, the methodology *assumes* 25 MW of PacifiCorp customers will opt out of cost-of-service tariff and instead purchase from an ESS. *Id.* As PacifiCorp's reply witness acknowledges, the 25 MW increase in market size assumed in GRID (when relaxing the market caps) is simply intended to match the 25 MW increase in direct access load

assumed in the first place when calculating the transition adjustments. PacifiCorp/300, Duvall/36.

Yet significantly, the transition adjustments calculated by GRID do not require that *actual* direct access load precisely match the *assumed* direct access load used in the GRID calculation. This is so because the transition adjustments calculated in GRID are calculated on a per kilowatt-hour basis. PacifiCorp's reply argument conveniently ignores all of this. Nevertheless, at the hearing, the Company's witness admitted that PacifiCorp's methodology *assumes* 25 MW of load elects direct access and uses that *assumption* to calculate the transition adjustment. Tr. at 40-43. In turn, the transition adjustment rate (calculated using the 25 MW assumption) is then provided on a dollar per kilowatt-hour basis *only* to the amount of load that actually elects direct access. *Id.* PacifiCorp's witness further admitted that the actual amount of load electing direct access does not impact the accuracy of the rates calculated in the transition adjustment calculation. *See* Tr. at 43, 45 ln. 21 to 46 ln. 15. PacifiCorp is improperly attempting to rely on its lack of actual direct access load to undermine reasonable assumptions that should be made in its GRID model regarding what would happen if PacifiCorp actually had direct access load. Thus, it is clear that PacifiCorp's reply argument is fundamentally inconsistent with the assumptions and the construct of its own model, and should be rejected.

In sum, regardless of the level of market caps the Commission authorizes for use in calculating net power costs in GRID, the Commission should require a corresponding relaxation of the market caps for all hours in calculation of the transition adjustment.

B. The Commission Should Require PacifiCorp to Increase the Credit for the Resale of 25 MW of BPA Transmission From \$0.75 per MWH to \$1.422 per MWH to Better Reflect the Value of Transmission Freed Up When a Customer Chooses Direct Access.

To serve its loads, PacifiCorp owns 636 MW of long-term point-to-point BPA transmission from Mid-Columbia. Noble Solutions/100, Higgins/10. At a 100 percent load factor, the BPA point-to-point transmission rate is equivalent to \$1.778 per MWH. *Id.* In addition, PacifiCorp has a network integration transmission agreement with BPA for 497 MW that allows for delivery to various load pockets on BPA's system. *Id.* At a 100 percent load factor, this rate is equivalent to \$2.28 per MWH. *Id.* As explained below, PacifiCorp can 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. 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).

1. Existing circumstances warrant Noble Solutions' proposed BPA Transmission credit.

In 2004, the Commission determined, under the circumstances at that time, PacifiCorp's transition adjustment should neither include a charge nor a credit to direct access customers to account for any freed up BPA transmission. *In Re Investigation into Direct Access*, Order No. 04-516 at 5, 10-13. However, in 2004, PacifiCorp's BPA transmission rights precluded sale of the BPA transmission that would be freed up by direct access customers. *Id.* at 6, 11. The Commission also approved this approach "based on PacifiCorp's current resource position," which was in resource balance and required no purchase of generation or transmission resources

that could be avoided by movement to direct access. *Id.* at 12. Ultimately, the Commission directed “PacifiCorp, Staff, and interested parties to continue investigation of PacifiCorp’s utilization of transmission rights and the proper valuation of avoided transmission.” *Id.* at 13. The circumstances are different today than in Order No. 04-515, and warrant a BPA transmission credit for at least two reasons.

First, PacifiCorp can now resell its BPA point-to-point transmission rights to another entity. Noble Solutions/100, Higgins/9, 12; Noble Solutions/104, Higgins/1. When a customer is assumed to choose direct access in the GRID transition adjustment calculation, it is reasonable to assume that PacifiCorp will resell or assign those BPA point-to-point transmission rights to an ESS serving that direct access customer in PacifiCorp’s service territory. *Id.*

Second, PacifiCorp can also be assumed to use freed up BPA transmission to avoid the need to purchase new BPA transmission rights to make its increasing retail sales in Oregon. Unlike at the time of Order No. 04-516, PacifiCorp has indicated that its Oregon retail sales are growing for the period during which the 2013 TAM rates will be in effect. Noble Solutions/205, Cross Exhibit/1. PacifiCorp has also stated that during the 2013 TAM it expects that it will need “New transmission contracts to wheeling power [sic] to serve the Company’s load obligations.” PacifiCorp/103, Duvall/1, ¶ 16. PacifiCorp has the ability to “re-direct” or otherwise change the point of delivery of its existing BPA transmission rights from Mid-Columbia. Noble Solutions/206, Cross Exhibit/1. PacifiCorp made three such changes to points of delivery for limited periods of time beginning in 2010 and 2011. *Id.* PacifiCorp even stated that it intends to change contract terms to existing transmission contracts during pendency of this TAM. PacifiCorp/103, Duvall/1, ¶ 17. It is reasonable to assume therefore that PacifiCorp can avoid

purchasing new BPA transmission rights by using BPA transmission freed up when a customer elects direct access.

The GRID model should therefore assume for purposes of calculating the transition adjustment that PacifiCorp will sell, assign, or re-direct its freed up BPA transmission rights during the time of the direct access customer's opt-out. The transition adjustment mechanism should recognize this economic benefit by including a credit in the GRID calculation.

2. PacifiCorp has not met its burden to support its proposal to eliminate the BPA transmission credit.

The Commission has approved use of a BPA transmission credit in past and recent transition calculations for PacifiCorp. At the time of Order No. 04-516, PacifiCorp's "kick start" direct access program included a transmission credit for the full value of BPA transmission purchased by ESSs. *In Re Investigation into Direct Access*, Order No. 04-516 at 12 & n.7. More recently, the stipulation approved in UE 216 provided for a small BPA transmission credit for Schedule 747 and 748 (direct access) customers of \$0.50 per MWH to reflect the potential value associated with reselling BPA point-to-point wheeling rights that are freed up as a result of customers choosing direct access. *See In Re PacifiCorp, dba Pacific Power: 2011 Transition Adjustment Mechanism*, Order No. 10-363 at 4-5 and Appendix A at p. 7, ¶ 16. The stipulation in the most recent TAM proceeding, UE 227, increased the BPA transmission credit to \$0.75 per MWH. *See In Re PacifiCorp: 2012 Transition Adjustment Mechanism*, Order No. 11-435, Appendix A at p. 4, ¶ 14.

Yet, in this proceeding, PacifiCorp has proposed to eliminate the BPA transmission credit without providing any explanation in its direct testimony for why the circumstances in existence today warrant elimination of a BPA transmission credit. This has been an ongoing issue in

proceedings addressing PacifiCorp's transition adjustment for a number of years. Under these circumstances, PacifiCorp cannot meet its burden of proving its transition adjustment credits are fair, just and reasonable without even addressing the BPA transmission credit in its direct filing.

Moreover, PacifiCorp's substantive reasoning lacks merit. In its reply testimony, PacifiCorp asserts that it cannot capitalize on freed up BPA transmission because all of its direct access customers must return to cost-of-service rates. PacifiCorp/300, Duvall/35, Ins. 14-16. But PacifiCorp provided no evidence that it lacks the ability to resell or otherwise assign its BPA transmission rights to an ESS only during the one-year or three-year opt out chosen by the direct access customer. PacifiCorp's reasoning also overlooks that PacifiCorp can avoid transmission purchases by temporarily re-directing the freed BPA transmission to another use and avoid purchasing new BPA transmission rights, as discussed above.

PacifiCorp also asserts that it might need to purchase new transmission rights to deliver generation freed up by direct access to the market. PacifiCorp/300, Duvall/35, Ins. 3-6. However, this would only be true if PacifiCorp lacks adequate transmission capacity to deliver output from its generation resources to its market hubs. PacifiCorp presented no such evidence. Even if PacifiCorp's assumption were legitimate in certain circumstances, Noble Solutions has not proposed a BPA transmission credit of 100 percent of the value of BPA transmission. Noble Solutions' proposed credit of \$1.422 per MWH still represents no more than 80 percent of the BPA point-to-point rate. Noble Solutions 100/Higgins/10. The Commission should adopt the BPA transmission credit because it is a reasonable assumption regarding appropriate responses PacifiCorp should make if customers were to move to direct access service.

VI. 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 include a credit for the value of freed up BPA transmission.

RESPECTFULLY SUBMITTED this 14th day of September, 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2012, a true and correct copy of the within and foregoing NOBLE AMERICAS ENERGY SOLUTIONS LLC'S POST-HEARING OPENING BRIEF, was served as shown to:

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Signed: /s/ *Gregory M. Adams*

Gregory M. Adams