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Via Electronic Mail puc.filingcenter@state.or.us
And Overnight Mail

November 7, 2012

Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, Oregon 97310
Attn: Filing Center

Re: Case No. UE-246

Dear Sir or Madam:

Please find enclosed the original and five (5) copies of the BRIEF OF THE FRED MEYERS STORES AND QUALITY FOOD CENTERS, DIVISIONS OF THE KROGER CO. for filing in the above referenced matter.

Copies have been served on all parties of record. Please place this document of file.

Very truly yours,



Kurt J. Boehm, Esq.

Jody M. Kyler, Esq.

BOEHM, KURTZ & LOWRY

KJBkew
Enclosure
cc: Certificate of Service

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 246

In The Matter Of	:	
PACIFICORP, dba PACIFIC POWER	:	BRIEF OF
Request for a General Rate Revision	:	THE KROGER CO

I. INTRODUCTION

Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co., (“Kroger”) signed and supports the Partial Stipulation filed on July 12, 2012. Kroger submits the following Brief addressing issues that were not resolved by the Partial Stipulation.

II. ARGUMENT

1. PacifiCorp’s Design For Its Proposed Power Cost Adjustment Mechanism (“PCAM”) Is Flawed In That It Does Not Provide For Any Risk Sharing Between Pacificorp And Its Customers.

As explained in the Direct Testimony of PacifiCorp witness Gregory N. Duvall, the Company has proposed a PCAM that “*would provide dollar-for-dollar recovery of prudent Net Power Costs and would not use sharing bands, deadbands, or an earnings review.*”¹ The PCAM would be filed annually, and would recover the difference between Base Net Power Costs set in the Transition Adjustment Mechanism (“TAM”) filing and Actual Net Power Costs.

Unfortunately, PacifiCorp’s proposal does not provide for any risk-sharing between the Company and customers. Instead, the proposed PCAM would simply pass through 100 percent of Net Power Costs variances between annual TAM filings. The balance collected in the proposed PCAM would not exclude variances resulting from normal business risks typically borne by the utility. This type of 100 percent cost pass-through

¹ PAC/900 Direct Testimony of Gregory N. Duvall, p. 29, lines 6-7.

seriously reduces the Company's incentive to manage its fuel and purchased power costs as well as it would manage them if the Company remained fully responsible for the energy cost risk between TAM filings.²

Should the Commission approve a PCAM, Kroger recommends adoption of a sharing mechanism to provide a more equitable balance between customer and shareholder interests. One option is to adopt a 70/30 sharing mechanism in which 70 percent of the difference between Base Net Power Costs and Actual Net Power Costs is allocated to customers and 30 percent is allocated to PacifiCorp. Such power cost sharing provisions are in place in PacifiCorp's Utah and Wyoming jurisdictions. Kroger believes that a 70/30 sharing mechanism would provide the proper balance to ensure sufficient management incentive to control costs, in a more direct and efficient manner than after-the-fact prudence audits. This sharing ratio still shifts the substantial majority of responsibility for recovering Net Power Costs deviations on customers, but it meaningfully aligns Company and customer interests through shared benefits and costs.³

2. **PacifiCorp's Direct Access Program May Be More Successful If Customers Are Given The Option To Transition Over A Five-Year Period To A Cessation Of The Transition Adjustment.**

On pages 21-22 of his Direct Testimony ICNU witness, Michael C. Deen comments on the very low Direct Access penetration rate in PacifiCorp's service territory and indicates that ICNU is open to exploring other avenues toward promoting open access. Kroger shares ICNU's concern. It should be noted that Portland General Electric ("PGE") has significantly greater participation in direct access than PacifiCorp. One of the major differences between PGE's direct access program and that of PacifiCorp is that PGE offers an option that allows customers to transition over a five-year period to a cessation of the transition adjustment. This option allows interested customers to achieve genuine market pricing. Kroger believes it makes sense for a similar program to be implemented in the PacifiCorp service territory. Such an option could go a long way toward improving Direct Access participation in the PacifiCorp service territory.⁴

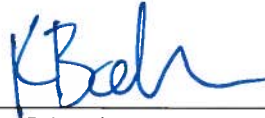
² Direct Testimony of Neal Townsend p. 8

³ Direct Testimony of Neal Townsend p. 9.

⁴ Rebuttal Testimony of Kevin C. Higgins p. 7.

DATED this 7th day of November, 2012.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served via electronic mail this 7th day of November, 2012.


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service**

**C=Confidential
HC=Highly Confidential**

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