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October 4, 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 PRE-HEARING 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 Request for a General Rate Revision	: : : :	**PRE-HEARING BRIEF OF THE KROGER CO**

I. INTRODUCTION

Fred Myer 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 Pre-Hearing 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 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]

[1] PAC/900 Direct Testimony of Gregory N. Duvall, p. 29, lines 6-7.
[2] Direct Testimony of Neal Townsend p. 8

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. <u>Kroger Disagrees With The Direct Testimony Of ICNU Witness, Michael C. Deen With Respect To TAM.</u>

Kroger filed the Rebuttal Testimony of Kevin Higgins on August 13, 2012 responding to the recommendation of ICNU witness Michael C. Deen to abolish the TAM. After filing Mr. Higgins' Testimony, counsel for ICNU informed Kroger that it intends to withdraw its proposal with respect to the TAM and that ICNU is now, more or less, in agreement with Mr. Higgins. Although this issue may now be moot, Kroger will briefly summarize its position regarding the proposal contained in ICNU's Direct Testimony concerning the elimination of the TAM.

On page 14 of his Direct Testimony, Mr. Deen recommends that the Commission abolish the TAM and replace it with a "*more streamlined mechanism that allows customers to choose direct access, but does not adjust net power costs on an annual basis.*" Kroger believes that if the TAM were eliminated it would be important to replace it with a viable mechanism that would not impede the ability of customers to choose Direct Access service.

Mr. Deen's Direct Testimony does not directly address Schedule 294 and 295 transition adjustments if the TAM were eliminated, but rather discusses a couple of alternative approaches. One suggestion he offers is to set the transition charges or credits under the same method as is currently employed, but to do so in the context of a

[3] Direct Testimony of Neal Townsend p. 9.

general rate case.[4] Presumably, under this method, and in the absence of a PCAM, the Schedule 294 and 295 transition adjustments would remain unchanged until the next general case; however, Mr. Deen suggests that there could be an automatic review of the procedure if PacifiCorp reaches a "critical threshold" of open access.[5]

Kroger does not necessarily object to this type of approach but anticipate that it would be strongly resisted by PacifiCorp on the grounds that leaving the Schedule 294 and 295 transition adjustments unchanged from a prior year could make the Company susceptible to a large swing in demand for Direct Access service driven by outdated pricing information. However, to implement Mr. Deen's objective of abolishing the TAM process (as we now know it), it is not necessary to freeze the Schedule 294 and 295 transition adjustments at a prior year's level, as suggested by Mr. Deen.[6]

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 which 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 OAC 860-038-0160(1). The salient characteristic of the Schedule 294 and 295 transition adjustments is that these riders represent the difference between the cost of variable generation costs *in rates* and the market value of freed-up energy from Direct Access. For this calculation to remain current it is not necessary to change rates for *cost-of-service* customers on an annual basis, but rather to update the market value of freed-up energy annually, i.e., to update the Schedule 294 and 295 transition adjustments. In this sense, Mr. Deen is correct that it is not necessary to change rates for *cost-of-service* customers on an annual basis through the TAM in order to determine the Schedule 294 and 295 transition adjustments. However, in the context of the ongoing valuation method, it makes sense for the Schedule 294 and 295 transition adjustments themselves to be annually updated – even if cost-of-service rates are not.[7]

If a PCAM is adopted, Mr. Deen's Direct Testimony suggests that Schedule 294 and 295 charges could be updated based on the changes in PacifiCorp's actual power costs in the event the Company has not filed a rate

[4] Direct Testimony of Michael C. Deen p. 21.
[5] Rebuttal Testimony of Kevin C. Higgins pp. 3-4.
[6] Rebuttal Testimony of Kevin C. Higgins p. 4.
[7] Rebuttal Testimony of Kevin C. Higgins pp. 4-5.

case in a given year. As a general matter, Kroger does not agree that such an approach would be appropriate. As stated above, the Schedule 294 and 295 transition adjustments represent the difference between the cost of variable generation costs in rates and the market value of freed-up energy. Therefore, only to the extent that a change in net power costs affects going-forward cost-of-service rates should the Schedule 294 and 295 transition adjustments be impacted by a change in net power costs. If a PCAM is adopted and its adjustor mechanism does not change going-forward rates, but rather trues up the difference between actual net power costs and net power costs in rates on an after-the-fact basis, then the PCAM adjustor should have no impact whatsoever on the Schedule 294 and 295 transition adjustments.[8]

Direct Access customers should not pay a PCAM Adjustor that only trues up historical net power costs. With the exception of Direct Access customers that were served under cost-of-service rates during the period being trued up by the PCAM Adjustor. If a PCAM is adopted, the customers who should pay the PCAM Adjustor charge are those who received cost-of-service pricing for the time period being trued up. For example, if the true up is for Year 1, and a customer that took cost-of-service rates in Year 1 switches to Direct Access service in Year 2, then that customer should still be subject to the PCAM Adjustor for Year 1. Similarly, if a customer was on Direct Access service in Year 1, then that customer should not be subject to the PCAM Adjustor for Year 1 irrespective of whether that customer continues to take Direct Access service or switches back to cost-of-service rates in Year 2. The reason for this distinction is straightforward: the Direct Access customers in Year 1 purchased their power in the market; any deviation in PacifiCorp's net power costs that occurred in that year was incurred serving the Company's cost-of-service customers, not its Direct Access customers. Consequently, it would be fundamentally unreasonable to assign PCAM Adjustor charges (or credits) to customers who were taking Direct Access service during the true-up period.[9]

3. <u>**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.**</u>

On pages 21-22 of his Direct Testimony, Mr. Deen comments on the very low Direct Access penetration rate in PacfiCorp's service territory and indicates that ICNU is open to exploring other avenues toward promoting

[8] Rebuttal Testimony of Kevin C. Higgins p. 5.
[9] Rebuttal Testimony of Kevin C. Higgins p. 6.

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.[10]

DATED this 4th day of October, 2012.

Respectfully submitted,

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[10] Rebuttal Testimony of Kevin C. Higgins p. 7.

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served via electronic mail this 4th day of October, 2012.

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