BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER 2014 TRANSITION ADJUSTMENT MECHANISM	)	UE 264
	)	NOBLE AMERICAS ENERGY SOLUTIONS LLC'S RESPONSE BRIEF

I. INTRODUCTION AND SUMMARY

Pursuant to the scheduling order in this docket, Noble Americas Energy Solutions LLC ("Noble Solutions") hereby submits it Response Brief to the Public Utility Commission of Oregon ("Commission" or "OPUC"). Noble Solutions maintains that the Commission should adopt its two recommendations with regard to PacifiCorp's transition adjustment mechanism ("TAM").[1] First, the Commission should require PacifiCorp to calculate the Schedule 294 and 295 transition adjustments by measuring the value of energy freed up by direct access from the projection of market prices – not through the blend of market prices and thermal generation costs calculated in PacifiCorp's GRID model. Second, Noble Solutions recommends that the Commission should require PacifiCorp to include a credit of $1.422 per megawatt hour ("MWH") for the economic uses of Bonneville Power Administration ("BPA") transmission in the calculation of the Schedule 294 and 295 transition adjustment.

PacifiCorp has not met its burden of proving that its proposed transition adjustment rates are just and reasonable for eligible direct access customers. *See* ORS 757.210(1); *In Re Portland*

[1] Noble Solutions refers the Commission to its Pre-Hearing Memorandum for a more complete summation of the background of the TAM and the proceedings in this case.

General Electric Co.: 2012 Annual Power Cost Update, OPUC Docket No. UE 228, Order No. 11-432, at 3 (2011). Furthermore, as explained herein, PacifiCorp's Opening Brief fails to refute Noble Solutions' core argument – that PacifiCorp's proposed use of GRID to calculate its transition adjustment rates is in direct conflict with the Commission's administrative rules and unjustifiably divergent from the calculations used by Portland General Electric Company ("PGE") under the same rules. PacifiCorp asks the Commission to simply ignore the rules and the fact that PacifiCorp's direct access program is currently a failure. *See* Noble Solutions/100, Higgins/3-4. Direct access eligible customers expect and deserve the opportunity to reasonable transition adjustment rates, and the Commission should require such rates.

II. ARGUMENT

The most relevant facts are undisputed. Under the ongoing valuation methodology, the Commission's administrative rules require PacifiCorp to measure the value of freed-up power at the projected cost of market power. *See* OAR 860-038-0005(42), OAR 860-038-0140. There is no dispute that PacifiCorp's proposed use of GRID fails to do so. PacifiCorp cannot refute that PGE interprets the same rules to calculate its transition adjustment by a simple comparison to projected market prices and also includes a credit for BPA transmission freed up by direct access customers. Nor can PacifiCorp dispute that its direct access participation level of 1.4% is far less than the 10.7% participation level in PGE's service territory. *See* Noble Solutions/100, Higgins/3-4. Yet PacifiCorp argues, through its testimony and briefing, that the Commission should ignore all of this and even ignore the administrative rules. The Commission should not do so.

Instead, the Commission should adopt Noble Solutions' two modest adjustments to PacifiCorp's transition adjustment calculation, in order to begin to attempt to provide direct

access customers a reasonable transition adjustment calculation – as they have expressly requested in this proceeding and others. *See Walmart Stores, Inc.'s Prehearing Memorandum* at 1-2 ("In the event the OPUC chooses not to order a workshop process, Walmart supports the proposals set forth by Noble Americas Energy"); *Safeway Inc.'s Pre-Hearing Memorandum* at 1 ("Safeway supports the recommendations of Noble Americas Energy Solutions LLC with regard to the proper calculation of the transition adjustment for PacifiCorp").

A. The Commission Should Require PacifiCorp to Calculate the Transition Adjustment By Measuring the Value of Energy Freed Up By Direct Access From the Company's Projection of Market Prices – Not Through a Blend of Market Prices and Thermal Generation Costs Calculated in GRID.

PacifiCorp is fundamentally unable to dispute that its proposed use of GRID in this case to calculate the transition adjustment is contrary to the letter and logic of the ongoing valuation methodology set forth in OAR 860-038-0005(42), which expressly requires PacifiCorp to use "projected market prices" to value freed-up energy. *See also* OAR 860-038-0140 (proscribing the ongoing valuation methodology). The ongoing valuation 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/9-10. The administrative rule, therefore, appropriately assumes that PacifiCorp should be able to dispose of the energy freed up by direct access through market transactions – thus warranting use of projected market prices to value freed up energy. *Id.* at 6-7. PacifiCorp also fails to refute the rule's logic that liquidity of the market increases when PacifiCorp's retail load begins purchasing from the market (as is assumed in the transition adjustment calculation). *See id.* at 15. This undeniably provides additional support for the rule's assumption that PacifiCorp can sell energy

from freed-up generation at market prices.

Not only is the administrative rule logical but it is also the *rule*. The Commission should therefore require PacifiCorp to follow it. *Harsh Inv. Corp. v. State By and Through State Housing Div.*, 88 Or.App. 151, 157, 744 P.2d 588, 591 (Or.App. 1987). It is black letter law that an agency, such as the Commission, "is not authorized to act contrary to its rules, and those who deal with it cannot benefit from its doing so." *Id.* The Commission should not adopt PacifiCorp's implausible attempts to reconcile its incorrect calculations with the administrative rule. *See Reforestation General v. Natl. Council on Comp. Ins.*, 127 Or.App. 153, 164, 872 P.2d 423, 430, *adh'd to on recons.*, 130 Or.App. 615, 619, 883 P.2d 865, 897 (1994); PacifiCorp/500, Duvall/30 (testifying that PacifiCorp's backed-down thermal plants are the "market" as contemplated in the rule). Under PacifiCorp's theory of the law and facts, "the rules would become meaningless." *Harsh Inv. Corp.*, 88 Or.App. at 157, 744 P.2d at 591. The Commission's direct access rules are the product of extensive and detailed consideration under Oregon's Administrative Procedures Act. *See* ORS 183.325 – 183.355. PacifiCorp should not be allowed to follow some of these rules but not others at its choosing.

Factually, PacifiCorp cannot overcome the that it proposes to value freed-up power at *significantly* less than the projected market prices at which the freed-up power would be sold. According to PacifiCorp, Noble Solutions "misrepresents PacifiCorp's testimony" by asserting that it demonstrates that PacifiCorp's proposal is to derive up to 16% of the value of freed-up generation from costs saved by backing down thermal generation. *See PacifiCorp's Opening Brief* at 29 (quoting *Noble Solutions' Pre-Hearing Memorandum* at 7). Yet in the next breath PacifiCorp acknowledges "during the light load hours that 16 percent of the transition adjustment is based on the costs of thermal generation." *Id.* at 30 (citing PAC/500, Duvall/29-30).

PacifiCorp would focus instead on the fact that when heavy load hours and light hours are averaged, its proposed use of GRID falls short of projected market prices by 8% and only by 1% during heavy load hours. *Id.* But the administrative rule provides *no* opportunity to substitute thermal costs for projected market prices. *Any* divergence from projected market prices (be it 1%, 8%, or 16%, depending on the time period in question) violates the administrative rule, and unjustifiably frustrates direct access.

Implicitly acknowledging that its use of GRID fails to comply with the rule, PacifiCorp even suggests, in a footnote, that the Commission should "waive this rule for good cause." *See PacifiCorp's Opening Brief* at 28 n. 144 (citing OAR 860-038-0001(4)). But PacifiCorp fails to identify the "good cause" to ignore the logic and reason of the rule. Nor does it point to any past case where the Commission consciously decided that violating this rule could ever be warranted under the ongoing valuation methodology – as PacifiCorp asks it to do in this case. The Commission applies the rule to PGE's calculation of the transition adjustment and no evidence in this proceeding supports any exceptions for PacifiCorp.

Unable to refute the arguments squarely presented in this case, PacifiCorp argues that the Commission should ignore the rule because, according to PacifiCorp, the Commission has "consistently rejected" Noble Solutions' argument. *See PacifiCorp's Opening Brief* at 27-28, and n.140. However, not a single one of the cases cited by PacifiCorp in its footnote 140 addressed the arguments now presented to the Commission for the first time – whether the Commission should make a special exception to its administrative rule for PacifiCorp and whether doing so is even legal. First, PacifiCorp cites *In the Matter of Public Utility Commission Staff Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149,* Docket No. UM 1081, Order No. 04-516 at 10 (Sept. 14, 2004), but

that case did not hold that using GRID with market caps to calculate the value of freed-up energy complies with logic or the administrative rule. Instead, that order stated that, "additional facts are necessary to evaluate a GRID-based transition adjustment as an appropriate long-range approach and we decline at this time to endorse this approach on either a short or long-term basis." Order No. 04-516 at 11. Next, PacifiCorp cites *In Re Pacific Power and Light: Request for General Rate Increase,* OPUC Docket No. UE 170, Order No. 05-1050, at 21 (2005). PacifiCorp fails to mention, however, that the order adopted the use of GRID without discussing its market caps or whether their use complies with the administrative rule. Order No. 05-1050 at 11. The issues were simply not raised or addressed in the order.

Finally, PacifiCorp relies upon the Commission's decision in last year's TAM (docket UE 245) to allow PacifiCorp to use the market caps in GRID, both for purposes of setting net power costs and for purposes of calculating the transition adjustment rate. *See PacifiCorp's Opening Brief* at 1-2, and n.2. PacifiCorp overlooks, however, that compliance with the administrative rule was *not* in issue in that proceeding. Nor was the question of whether, given GRID's shortcomings, the model should continue to be used to calculate transition adjustment rates. Furthermore, the factual evidence in this proceeding is more fully developed. In last year's TAM, PacifiCorp's opening testimony failed to even address the fact that PacifiCorp had covertly abandoned relaxation of market caps for purposes of calculating the value of freed-up energy. Nor did it include a request for waiver from the Commission's administrative rule that PacifiCorp now asks for through a footnote in its brief. PacifiCorp's covert actions last year limited Noble Solutions' ability to fully investigate and challenge the issue. Indeed, the order specifically stated it was "based upon the evidence presented in this proceeding" – not the evidence that might be presented in a future case where parties had adequate notice of

PacifiCorp's modeling change. *See Re PacifiCorp dba Pacific Power: 2013 Transition Adjustment Mechanism*, OPUC Docket No. UE 245, Order No. 12-409, at 16 (2012).

This year, the factual evidence indisputably shows that GRID now significantly and unjustifiably discounts the value of freed-up energy compared to projected market prices. The Commission should follow the administrative rule and require PacifiCorp to calculate the Schedule 294 and 295 transition adjustments by measuring the value of energy freed up by direct access from the projection of market prices. *See* Noble Solutions/100, Higgins/22

B. The Commission Should Require PacifiCorp to Include a Modest Credit of $1.422 per MWH to Reflect the Value of BPA Transmission Freed Up When a Customer Chooses Direct Access.

PacifiCorp again relies on the record presented in past proceedings to support its opposition to Noble Solutions' proposal that the Schedule 294 and 295 transition adjustment calculations be modified to include a modest credit of $1.422 per MWH to account for BPA point-to-point ("PTP") transmission. *PacifiCorp's Opening Brief* at 30-31. PacifiCorp does not dispute that Noble Solutions conservatively calculated its proposed credit using 80% of the PTP rate at a 100% load factor, which amounts to about half of the BPA PTP rate when measured on an average load factor basis. *See* Noble Solutions/100, Higgins/27-28. Simply put, PacifiCorp's position is that it would be unable to use *any* freed-up transmission assets for *any* economic purpose if eligible customers were to choose direct access. This position is entirely unreasonable.

Unlike when the Commission addressed this issue in docket UM 1081, PacifiCorp may now sell its BPA PTP rights, and it is reasonable to assume that PacifiCorp should do so. *Id.* at 26. Furthermore, PacifiCorp has not even addressed the fact that it may also use the freed-up PTP transmission to defer the need to purchase new BPA PTP transmission rights that it is

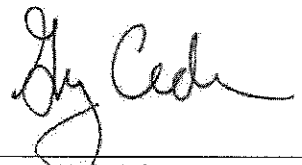
undeniably acquiring. *See id.* at 27. Inclusion of a transmission credit in the transition adjustment calculation is an assumption that has been a part of PGE's calculation for years because it is reasonable to assume that when customers choose direct access some amount of transmission formerly used to serve them is freed-up for other economic uses. The Commission should expect PacifiCorp to put freed-up transmission to an economic use and appropriately credit direct access customers for that freed-up "economic utility investment." *See* ORS 757.600(10), (32), 757.607(2).

III. CONCLUSION

Noble Solutions respectfully requests the Commission require two changes to PacifiCorp's transmission adjustment calculation that would move PacifiCorp's calculation towards consistency with Oregon's direct access regulations and with PGE's existing transition adjustment calculation. First, the Commission should require PacifiCorp to calculate the Schedule 294 and 295 transition adjustments by measuring the value of energy freed up by direct access from the projection of market prices – not through the a blend of market prices and thermal generation costs calculated in PacifiCorp's GRID model. Second, PacifiCorp's transition adjustment calculations should be modified to include a credit of $1.422 per MWH to account for the economic utility investment in BPA transmission.

RESPECTFULLY SUBMITTED this 18th day of September, 2013.

RICHARDSON ADAMS, PLLC



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of September, 2013, a true and correct copy of the within and foregoing **NOBLE SOLUTIONS' POST HEARING BRIEF** was served as follows; electronic mail to all parties and U.S. Postal Service for confidential parties:

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