

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC	)	UE 264
POWER 2014 TRANSITION ADJUSTMENT	)	
MECHANISM	)	NOBLE AMERICAS ENERGY
	)	SOLUTIONS LLC’S
	)	PRE-HEARING MEMORANDUM
	)	
	)	

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**I. INTRODUCTION AND SUMMARY**

Pursuant to the scheduling order in this docket, Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its Pre-Hearing Memorandum to the Public Utility Commission of Oregon (“Commission” or “OPUC”). Noble Solutions respectfully requests that the Commission adopt the two recommendations raised in Noble Solutions’ testimony with regard to PacifiCorp’s transition adjustment mechanism (“TAM”).

First, Noble Solutions recommends that the Commission 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. The Company’s use of GRID to calculate the transition adjustment has proven to introduce needless complexity, to produce biased results, to lack transparency, and to significantly undervalue energy freed up by direct access. Simply put, using GRID impedes direct access opportunities for PacifiCorp’s customers.

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.

Both of Noble Solutions’ proposals are not only consistent with Oregon’s direct access law and regulation, but are also already elements of Portland General Electric Company’s (“PGE”) transition adjustment mechanism. Without requiring these elements for PacifiCorp, the direct access opportunities for PacifiCorp’s customers will continue to lag behind those available for PGE’s customers.

## **II. REGULATORY BACKGROUND**

### **A. Oregon’s Direct Access Law and Regulations.**

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. ORS 757.646. The Commission’s direct access programs 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”). OAR 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. ORS 757.600(31), (32).<sup>1</sup>

Pursuant to OAR 860-038-0140, Oregon utilities must calculate the transition adjustment

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<sup>1</sup> 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. ORS 757.600(35); OAR 860-038-0005(67), (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 due to direct access, absent transition credits. ORS 757.600(10); OAR 860-038-0005(18), (69).

based upon the “Ongoing Valuation” method, which OAR 860-038-0005(42) defines as follows:

Ongoing Valuation means the process of determining transition costs or benefits for a generation asset by *comparing the value of the asset output at projected market prices* for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(emphasis added). 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 logical premise behind Ongoing Valuation is to credit or charge direct access customers the difference between market prices and cost-of-service rates. *Id.* at 6.

**B. PacifiCorp’s Current Transition Adjustment Calculation.**

PacifiCorp initially used market prices to value generation “freed up” by direct access customers, consistent with the Commission’s administrative rule that requires using “the value of the asset output at *projected market prices*.” OAR 860-038-0005(42) (emphasis added); *see Re Investigation into Direct Access for Industrial and Commercial Customers*, OPUC Docket No. UM 1081, Order No. 04-516, at 2, 13 (2004). After implementing modifications to the GRID model, however, the Commission allowed PacifiCorp to use GRID to estimate the value of freed-up energy beginning in 2005. *See In Re Pacific Power and Light: Request for General Rate Increase*, OPUC Docket No. UE 170, Order No. 05-1050, at 19-21 (2005). In this GRID methodology, 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 20-21. In theory, these GRID runs calculate the weighted market value of the energy used to serve direct access customers. *Id.*

PacifiCorp then calculates the transition adjustment by comparing the weighted market value calculated from GRID to the cost-of-service rate under the customers' specific, energy-only tariff to arrive at a charge or credit to the direct access customer. *Id.*

While PacifiCorp's transition adjustment calculation currently results in a "credit" to the customer choosing direct access, PacifiCorp's direct access customers must still continue to pay for the Company's fixed generation costs through Schedule 200. *See Noble Solutions/100, Higgins/9.* Only if the Schedule 294 or 295 "credit" were greater than the Schedule 200 charge could it be accurate to state that direct access customers were being "paid" to leave cost-of-service rates. *Id.* That is far from the case today, and in fact when all relevant factors are considered PacifiCorp's customers must pay to leave cost-of-service rates. *See id.*

### **III. PROCEDURAL BACKGROUND**

On March 1, 2013, PacifiCorp commenced this proceeding by filing its TAM for the 2014 test year and its direct testimony supporting its filing. Commission Staff and Intervenors, including Noble Solutions, have now filed direct testimony, and PacifiCorp filed rebuttal testimony. The procedural schedule calls for an evidentiary hearing on August 20, 2013, and post-hearing briefs to follow.

### **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." ORS 757.210(1). The Commission also has the independent responsibility to ensure that PacifiCorp's customers are only charged just and reasonable rates. ORS 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, at 3 (2011).

## V. ARGUMENT

PacifiCorp's customers have never had a viable direct access option because of program design failure. *See* Noble Solutions/100, Higgins/3-4. PacifiCorp's power is *not* more competitive than the market. *Id.* Yet direct access participation levels in PacifiCorp's service territory were only 1.4% of eligible load last year – far less than the 10.7% participation level in PGE's service territory. *See id.* Noble Solutions recognizes the Commission is addressing this dichotomy through docket UE 267 to implement a five-year opt out program for PacifiCorp similar to that offered by PGE. *Re: Investigation into Issues Related to Direct Access*, OPUC Docket No. UM 1187, Order No. 12-500, at 9 (2012) (declaring, "We find no basis to maintain this difference in the programs of the two utilities."). The transition adjustment calculation at issue in this case, however, plays an important role in the Commission's ongoing development of a five-year opt out program for PacifiCorp.

In this TAM, therefore, the Commission should require changes to PacifiCorp's calculation of the transition adjustment that are consistent with PGE's calculation of its transition adjustment to work towards removing impediments to direct access for PacifiCorp customers. First, the Commission should require use of PacifiCorp's forward price curve, rather than GRID, for purposes of estimating the value of the freed up generation assets' output "at *projected market prices*." OAR 860-038-0005(42) (emphasis added). Second, the Commission should require PacifiCorp to include a modest credit of \$1.422 per MWH for the economic utility investment in BPA transmission.

**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's use of GRID in calculation of the transition adjustment has strayed too far from the Commission's administrative rules and any reasonable estimate of the value freed up generation. The Commission should require adherence to the administrative rules and consistency with PGE's calculation of its transition adjustment by requiring use of projected market prices in calculating the transition adjustment.

**1. PacifiCorp's proposed use of GRID is inconsistent with the administrative rules.**

The premise behind the directive in OAR 860-038-0005(42) to use "projected market prices" to value freed up power is that the utility, which buys and sells billions of kilowatt-hours over the course of a year, should be able to dispose of the energy freed up by direct access through market transactions. *Noble Solutions/100, Higgins/6-7*. The administrative rule also appropriately recognizes that when 25 MW of PacifiCorp's retail load begins purchasing from the market (as is assumed in the transition adjustment calculation) liquidity of the market increases by 25 MW, and provides additional opportunity for PacifiCorp to sell freed up generation at market prices. *See id.* at 15. The Commission should require PacifiCorp to comply with this rule. *See Harsh Inv. Corp. v. State By and Through State Housing Div.*, 88 Or.App. 151, 157, 744 P.2d 588, 591 (Or.App. 1987) ("An agency is not authorized to act contrary to its rules, and those who deal with it cannot benefit from its doing so. If it were otherwise, the rules would become meaningless.").

Despite the clear intent of the rule, PacifiCorp's proposed use of GRID does *not* produce a valuation based exclusively on projected market prices. *Noble Solutions/100, Higgins/10*.

Instead, GRID produces a valuation that is based on a blend of market prices *and thermal generation costs*. *Id.* PacifiCorp’s own testimony demonstrates that its proposal is to derive up to 16% of the value of freed-up generation from costs saved by backing down thermal generation, *not* projected market prices. *See* PacifiCorp/500, Duvall/29. The administrative rule provides no opportunity to substitute thermal costs for projected market prices. According to PacifiCorp, however, during light load hours the Commission should assume that the “market” contemplated in the administrative rule can exist at PacifiCorp’s generation resources. *See* PacifiCorp/500, Duvall/30. The Commission should not adopt this implausible reading of its 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).

Noble Solutions had stipulated to use of GRID in the past because modifications to GRID mitigated the impact of inclusion of thermal generation costs on the valuation required in OAR 860-038-0005(42). Noble Solutions/100, Higgins/11-13. These compromises produced transition adjustments that were “tenuously workable.” *Id.* at 16. But last year PacifiCorp removed the critical market cap relaxation in GRID that had been in place in one form or another since initial use of GRID to determine the transition adjustment in 2006. *Id.* at 14-15. The relaxation of market caps “was an integral part of the Commission’s adoption of the GRID model for the purpose of calculating the transition adjustment.” *Id.* at 13. In effect, relaxing the market caps allowed for GRID to assume that freed up generation would be sold at projected market prices – consistent with the administrative rule. However, PacifiCorp’s use of GRID now fails to calculate “the value of the asset output at *projected market prices*.” OAR 860-038-0005(42) (emphasis added). This proposed use of GRID contradicts the administrative rules.

## **2. PacifiCorp's proposed use of GRID produces unreasonable results.**

Aside from being inconsistent with the Commission's rules and therefore illegal, PacifiCorp's proposed use of GRID to estimate the value of freed up power has failed to produce reasonable results. Last year, the Commission noted "the company has continuing problems with GRID accurately forecasting sales and the dispatch of generation," and both "the company and others continue to raise questions about the accuracy and reasonableness of GRID forecasts." *Re PacifiCorp dba Pacific Power: 2013 Transition Adjustment Mechanism*, OPUC Docket No. UE 245, Order No. 12-409, at 7 (2012). The record in this case demonstrates that GRID's shortcomings warrant abandoning its use for purposes of calculating the transition adjustment. Without the adjustments previously implemented to "make the GRID approach work," GRID is not a reasonable approach for determining the transition adjustment. Noble Solutions/100, Higgins/15. The value assigned by PacifiCorp to energy freed-up by direct access is about \$2/MWh less than the market prices over the full year. *Id.* at 16. That unjustifiably places direct access in a negative position that cannot be overcome.

The GRID-based approach also results in needless complexity and controversy. *Id.* at 20. It is far more cumbersome and contentious than simply measuring market prices. *Id.* at 21. It requires the Commission and intervenors to cull the details of work papers in order to determine if PacifiCorp covertly implemented changes to major modeling assumptions from prior years. *See id.* This is an unreasonable and unnecessary process that guarantees a biased result.

## **3. Using projected market prices is the most reasonable approach.**

Given the shortcomings of GRID, the Commission should require PacifiCorp to use projected market prices in the Ongoing Valuation mechanism – as required by the administrative rules. This is the approach that PGE uses in determining its transition adjustment. Noble



Solutions/100, Higgins/22. Requiring the same application of the Commission's rules and policies for PacifiCorp is consistent with the determination in docket UM 1187 that policies applied to the two utilities should be consistent. *See Re: Investigation into Issues Related to Direct Access*, Order No. 12-500 at 9. Noble Solutions recommends using PacifiCorp's forward prices for Mid-Columbia ("Mid-C") and California-Oregon Border ("COB") using a 50/50 blend because COB and Mid-C are both major trading hubs in the Northwest in which PacifiCorp is very active. Noble Solutions/100, Higgins/22-23. For PacifiCorp, this blending produces a reasonable representation of market prices. *See id.* at 23.

**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.**

Freed up transmission assets are an "economic utility investment" for which direct access customers should receive a transition credit. *See* ORS 757.600(10), (32), 757.607(2). PacifiCorp owns 606 MW of long-term point-to-point ("PTP") BPA transmission from Mid-Columbia to serve cost-of-service customers. *See* Noble Solutions/100, Higgins/26. In the mechanics of the transition adjustment calculation, it is reasonable to recognize that the ESSs serving the 25 MW of departing PacifiCorp load will require 25 MW of BPA transmission, and that PacifiCorp will have the opportunity to sell to the ESSs the 25 MW of BPA transmission needed to meet this demand. *Id.* at 24. Unlike when the Commission addressed this issue in docket UM 1081, PacifiCorp may now sell its BPA PTP rights. *Id.* at 26. Furthermore, PacifiCorp may also use the freed-up PTP transmission to defer the need to purchase new BPA PTP transmission rights. *Id.* at 27. Inclusion of a transmission credit in the transition adjustment calculation is a reasonable assumption that has been a part of PGE's calculation for years.

PacifiCorp has claimed that it must continue to hold the transmission because direct

access customers return to cost-of-service rates. *Id.* at 26. But PacifiCorp ignores that it may resell the transmission for the limited period during which the customer has elected to buy from an ESS *or* use the freed-up transmission for some other purpose while the ESS serves the direct access customer. *Id.* PacifiCorp has not adequately refuted these assertions. Nor has it established that its alleged practice of holding freed-up BPA transmission idle is reasonable. Because there are economic uses aside from reselling this economic utility investment, the Commission is not bound by its determination last year that “compelling evidence was not presented that Pacific Power is able to resell BPA transmission rights due to direct access.” *Re PacifiCorp dba Pacific Power: 2013 Transition Adjustment Mechanism*, Order No. 12-409 at 17. That PacifiCorp may elect to hold and not use BPA PTP transmission when direct access makes it available should not be used as a pretext for denying direct access customers a reasonable credit for this economic utility investment.

Noble Solutions recommends 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 PTP transmission. Noble Solutions/100, Higgins/27. Even if PacifiCorp were correct that it is unable to resell BPA PTP transmission every time a customer chooses direct access, this valuation is conservatively calculated using 80 percent of the PTP rate at a 100 percent load factor, which amounts to about half of the BPA PTP rate when measured on an average load factor basis. *Id.* at 27-28.

## **VI. 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 12<sup>th</sup> day of August, 2013.

RICHARDSON ADAMS, PLLC

*/s/ Gregory M. Adams*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of August, 2013, a true and correct copy of the within and foregoing **NOBLE SOLUTIONS' PREHEARING MEMORANDUM** was served as follows:

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