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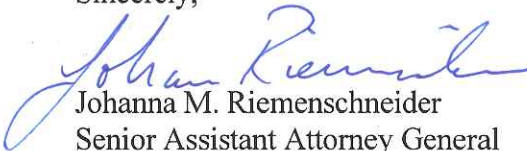
October 24, 2013

Attention: Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, #215
PO Box 2148
Salem, OR 97308-2148
puc.filingcenter@state.or.us

Re: *In the Matter of PACIFICORP, dba PACIFIC POWER, Transition Adjustment*
PUC Docket No.: UE 267
DOJ File No.: 860115-GB0282-13

Enclosed for filing is an original and five copies of the Joint Brief of Stipulating Parties
In Support of Stipulation.

Sincerely,


Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

Enclosures
JLM:kt2/4727278
c: UE 267 Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 267

4 In the Matter of:

5 PACIFICORP dba PACIFIC POWER

6
7 Transition Adjustment, Five-Year Cost of
8 Service Opt-Out

JOINT BRIEF OF STIPULATING PARTIES
IN SUPPORT OF STIPULATION

9 I. INTRODUCTION

10 On October 14, 2013,¹ a comprehensive settlement agreement executed by several parties
11 was filed in this docket (Stipulation). The Stipulation was executed by all of the following
12 parties: Staff of the Public Utility Commission of Oregon (Staff), ICNU, Noble Americas
13 Energy Solutions LLC (Noble Solutions), Wal-Mart Stores, Inc. (Wal-Mart), Shell Energy North
14 America (US), LP (Shell Energy), Constellation NewEnergy, Inc. (Constellation), Fred Meyer
15 Stores, Inc./Kroger, Co. (Fred Meyer), the Northwest and Intermountain Power Producers
16 Coalition (NIPPC), Safeway Inc. (Safeway) and Vitesse, LLC (Vitesse). These parties are
17 collectively referred to as “the Stipulating Parties.” Neither PacifiCorp nor Portland General
18 Electric (PGE) executed the Stipulation.

19 On October 16, 2013, the Stipulating Parties filed an unopposed motion to suspend the
20 procedural schedule in this docket to schedule a prehearing conference to determine a new
21 schedule. The motion stated, in relevant part, that PacifiCorp disputes whether the Stipulation is
22 a proper stipulation. On October 17, 2013, Administrative Law Judge Kirkpatrick granted the
23 motion to suspend the schedule in a Ruling and Notice of Prehearing Conference. This ruling
24 authorizes the parties to file argument on whether the Stipulation satisfies the criteria for a proper

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¹ This Stipulation was re-submitted on October 21, 2013 with a complete set of signatures.

1 stipulation as set forth in OAR 860-001-0350. The parties may also address how classification
2 of the filing affects the procedural and substantive issues in the proceeding.

3 The following Stipulating Parties respectfully submit the argument below in support of
4 classification of the Stipulation as a stipulation under OAR 860-001-0350.

5 II. BACKGROUND

6 In Order No. 12-500, in Docket No. UM 1587, the Commission directed PacifiCorp to
7 file a tariff for a five-year opt-out program that allows a qualified customer to go to direct access.
8 On February 28, 2013, PacifiCorp filed its proposed five-year opt-out tariff in Advice No. 13-
9 004, Schedule 296-Transition Adjustment, Five-Year Cost of Service Opt-Out (Schedule 296).
10 The proposed tariff filing was to be effective July 1, 2013. In Order No. 13-130, the
11 Commission suspended Schedule 296 for six months to investigate the filing.

12 The parties participated in a settlement conference on September 26, 2013. As a result of the
13 discussions at the settlement conference, the Stipulating Parties entered into the Stipulation filed
14 on October 14, 2013. The Stipulating Parties consist of Staff and nine intervenors, listed above,
15 representing the varied interests of ratepayers, large industrial consumers, large commercial
16 consumers, independent power producers, and retail energy service suppliers. PGE took no
17 position on the Stipulation. PacifiCorp opposes the Stipulation, and, as noted above, disputes
18 that the Stipulation satisfies the criteria for a proper stipulation under OAR 860-001-0350.

19 III. ARGUMENT

20 1. The Stipulation Is Proper Under OAR 860-001-0350.

21 OAR 860-001-0350(1) provides, “In all Commission contested case proceedings, some or
22 all of the parties may enter into a settlement of any or all issues at any time during the
23 proceedings.” The Commission has discretion to interpret its own rule, provided that
24 interpretation is plausible, i.e. consistent with the wording of the rule itself, the context of the
25 rule, and not inconsistent with any other source of law.²

26 ² *SAIF Corp v. Satterfield*, 255 Or App 791, 799-800 (2013) citing *Don't Waste Oregon Comm. v. Energy Facility Siting Council*, 320 Or 132, 142 (1994) and *Johnson v. Employment Dept.*, 187 Or App 441, 447-48, rev den, 336 Or 60 (2003).

1 The text of OAR 860-001-0350(1) does not specify any particular set of parties as
2 necessary to enter a settlement; it does not distinguish between “utility parties” and “non-utility
3 parties”. For purposes of this rule, the term “party” is defined to include “a person entitled as a
4 matter of right to a hearing before the Commission, an intervenor, or Commission Staff.”³ The
5 Stipulating Parties are Staff and nine intervening parties, which is consistent with the rule. The
6 signature of the filing utility is not required on a stipulation under this rule.

7 A settlement under OAR 860-001-0350(1) must be made for the purpose of resolving one
8 or more of the issues pending in a proceeding. A settlement may address “any or all issues”.⁴
9 This is consistent with the definition of a settlement discussion in OAR 860-001-0350(2), “A
10 settlement discussion is any communication between two or more parties for the purpose of
11 resolving issues pending in contested case proceedings.” However, a stipulation is not binding
12 on the Commission, and any party may file objections to a stipulation under this rule.⁵ Thus,
13 filing a stipulation does not end the proceeding, but may facilitate resolution of issues pending
14 before the Commission. The Commission has never held that agreement of a utility party is
15 required in order for the remaining parties to submit a stipulation to the Commission under this
16 rule.

17 We note that the language of the current rule may be more open than the prior
18 administrative rule on settlements.⁶ The prior rule provided, “In all Commission proceedings,
19 some or all of the parties may enter into a voluntary settlement of issues, or enter into a
20 stipulation *upon any matter in controversy*, at any time during the proceeding.”⁷ Without the
21 limiting language of “in controversy”, the current rule allows for a stipulation regarding any
22 issue before the Commission.

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25 ³ OAR 860-001-0010(7).
26 ⁴ OAR 860-001-0350(1).
⁵ OAR 860-001-0350(8) and (9).
⁶ Former OAR 860-014-0085 (2009). The current rule was adopted following Order No. 10-400 in Docket No. AR
535.
⁷ *Id.*, (emphasis added).

1 The Stipulation filed on October 14, 2013 addresses a number of issues before the
2 Commission in this proceeding, several of which are matters of significant controversy. (The
3 procedures for a party to object and be heard on the stipulation are addressed below). For
4 example, PacifiCorp proposes to use the company's production cost model, GRID, in calculation
5 of the transition charge in Schedule 296.⁸ However, several parties argue strongly against use of
6 the GRID model to calculate transition adjustments and instead favor using PacifiCorp's
7 projection of market prices to determine the value of energy freed up by direct access.⁹ Noble
8 Solutions argues that use of the GRID model to determine transition adjustments is inconsistent
9 with the requirements of OAR 860-038-0005(42) and will produce an unfavorable value
10 proposition for shopping customers.¹⁰ Yet, as part of the negotiated compromise, paragraph
11 twelve of the Stipulation provides that the Stipulating Parties agree that PacifiCorp should use
12 the GRID model with four changes to the transition charge calculation. This compromise
13 represents a significant concession for those parties opposed to the use of GRID for determining
14 the transition adjustment.

15 An additional example is the issue of right of return to cost of service. Under proposed
16 Schedule 296, a customer electing direct access would not be eligible to return to cost of service
17 rates from PacifiCorp.¹¹ Many parties support allowing a consumer to return to cost of service
18 with advance notification, but supported different terms for advance notification.¹² The
19 Stipulation, in paragraph 11, resolves this issue; the Stipulating Parties agree that Schedule 296
20 customers that opt out be allowed to return with four years' notice to the Company.

21 Each Stipulating Party has compromised its position in the Stipulation. ICNU, for
22 example, recommended in testimony that PacifiCorp's opt-out tariff be revised to reduce the
23 eligibility requirements to 1 MW, eliminate the customer opt-out charge, and allow customers to
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25 ⁸ Exhibit PAC/200, Duvall/4-5.

26 ⁹ See e.g. Exhibit Wal-Mart/100, Chriss/11-12; Exhibit Noble Solutions/100, Higgins/18-19.

¹⁰ Exhibit Noble Solutions/100, Higgins/12-14.

¹¹ Exhibit PAC/100, Steward/7-8.

¹² Exhibit Staff/100, Compton/15; Noble Solutions/100, Higgins/27; CNE/SENA/100, Lynch/8; Wal-Mart/100, Chriss/8; ICNU/100, Schoenbeck/7.

1 return to cost of service rates with three years of advance notification.¹³ ICNU also supports the
2 recommendations of the marketers to eliminate the use of the GRID model and include a credit
3 for BPA transmission. For the purposes of settlement, ICNU compromised its positions by
4 agreeing to a four year return to cost of service rates (instead of three years), a 2 MW eligibility
5 requirement (as opposed to 1 MW), and use of the GRID model (instead of market prices). In
6 addition, ICNU did not address the issue of whether new customers should be charged transition
7 adjustment charges and whether transition charge rates should differentiate between Heavy Load
8 Hours (“HLH”) and Light Load Hours (“LLH”). For the purposes of settlement, however, ICNU
9 agreed to clarify that parties shall not be precluded from raising, supporting or opposing the issue
10 of the appropriate transition adjustment charges for new customers and that transition charge
11 rates should not differentiate between HLH and LLH.

12 Staff, as an additional example, recommended in testimony that fixed cost recovery under
13 Schedule 296 be limited to five years’ worth of fixed costs, return to cost of service rates be
14 allowed with five years of advance notification, and the transition adjustment credits make no
15 distinction between HLH and LLH period cost distinctions.¹⁴ For purposes of settlement,
16 however, Staff compromised its positions by agreeing to a four year return to cost of service
17 rates, and a credit for BPA transmission in the transition charge calculations.

18 As illustrated above, the Stipulation is a result of compromise and negotiation among parties
19 with opposing interests. Staff seeks to represent the interests of Oregon citizens and all
20 ratepayers. Safeway and Vitesse are retail commercial customers of PacifiCorp, whose service
21 and rates are affected by the proceeding.¹⁵ NIPPC is a trade association that includes
22 independent power producers, whose purpose “is to represent the interests of its members in

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26 ¹³ Exhibit ICNU/100, Schoenbeck.

¹⁴ Exhibit Staff/100, Compton/2-3.

¹⁵ Petition to Intervene, filed by Safeway Inc., Docket No. UE 267 (March 26, 2013); Vitesse LLC’s Petition to Intervene Out of Time, Docket No. UE 267 (February 22, 2013).

1 developing rules and policies that help achieve a competitive electric power supply market in the
2 Pacific Northwest.”¹⁶ Other intervenors have an interest in providing retail energy services in
3 Oregon.¹⁷ The resolution of issues in this docket among such diverse parties fits exactly within
4 the framework of OAR 860-001-0350.

5 A comprehensive settlement reached between ten parties on the issues in this docket only
6 serves to aid resolution of the issues and develop the record in this proceeding. A stipulation
7 under OAR 860-001-0350 may be entered into evidence.¹⁸ If the Stipulation is not classified as
8 such, however, then it may not be admitted to the record. It is not testimony. And, if the
9 Stipulation is not classified as a stipulation, intervening parties will have little incentive to
10 negotiate a stipulated resolution of the issues with some of the parties in the remainder of this
11 docket, or in any other contested docket.

12 Accepting the Stipulation as a proper stipulation under OAR 860-001-0350 will
13 significantly narrow, and facilitate the Commission’s resolution of, the issues in the proceeding.
14 Instead of confronting a myriad of different positions on all the issues in this proceeding, the
15 Commission will be presented with two alternative proposed resolutions: PacifiCorp’s filing and
16 the joint recommendation of the Stipulating Parties. There is no reason to unnecessarily require
17 the Stipulating Parties to revert to, or for the Commission to resolve, the numerous previously
18 filed positions, when the Stipulating Parties have agreed to resolve their disputed positions
19 through a Stipulation.

20 2. The Procedural Schedule May Allow for the Filing of Objections to the Stipulation, and
21 Satisfy Due Process.

22 Once the Stipulation is recognized as such, the Stipulating Parties will file joint testimony
23 in support of the Stipulation and file a motion to admit the Stipulation and testimony as
24 evidence.¹⁹ Should it not be classified as a Stipulation, the filing has no legal effect on the

25 ¹⁶ Petition to Intervene of the Northwest & Intermountain Power Producers Coalition, Docket No. UE 267 (May 3,
2013).

26 ¹⁷ Petition to Intervene, filed by Shell Energy, Docket No. UE 267 (May 1, 2013); Petition to Intervene, filed by
Constellation NewEnergy, Docket No. UE 267 (May 3, 2013).

¹⁸ OAR 860-001-0350(7).

¹⁹ *Id.*

1 proceeding. The terms of the Stipulation do not withdraw the testimony previously filed by the
2 Stipulating Parties.

3 The Stipulation and the (yet to be filed) testimony in support of the Stipulation also do
4 not supersede the previously filed testimony of the Stipulating Parties. The previously filed
5 testimony supports the terms of the Stipulation by providing justification for the various terms
6 and compromises as well as rebutting and addressing the substantive recommendations of
7 PacifiCorp on the issues in this proceeding. In past proceedings in which there were contested
8 settlements, the settling parties' previously filed testimony was not superseded, but the
9 Commission instead relied upon it to review the new and different recommendations in the
10 settlement.²⁰

11 When a stipulation is filed under OAR 860-001-0350, a party may request a hearing or
12 file written objections on the merits or regarding process within 15 days of the date the
13 stipulation was filed.²¹ The Commission or ALJ may set a different filing deadline.²² The
14 Stipulating Parties request an extension of this 15 day time period as necessary to allow parties to
15 file objections after the classification of the October 14, 2013 stipulation filing is resolved. If
16 requested by PacifiCorp, the Stipulating Parties also would not oppose extending the time for
17 filing objections until after joint testimony supporting the Stipulation is filed. If requested by
18 PacifiCorp, the Stipulating Parties also would not oppose allowing PacifiCorp additional time
19 after the joint testimony in support of the Stipulation is filed in which to file any rebuttal
20 testimony.

21 The Stipulating Parties further support including dates for the filing of rebuttal testimony
22 and a hearing in the new procedural schedule. Adequate time exists for such a schedule, as the
23 effective date of the proposed tariff may be suspended for an additional three months into 2014.²³

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26 ²⁰ *E.g. In Re PacifiCorp*, Docket No. UE 210, Order No. 10-022 (January 26, 2010) (the Commission repeatedly
cites to and relies upon the testimony of Staff and PacifiCorp to adopt a contested settlement).

²¹ OAR 860-001-0350(8).

²² *Id.*

²³ ORS 757.215(1).

1 If the Commission rejects or modifies the Stipulation, as provided in OAR 860-001-0350(9),
2 further hearing should be conducted, and the Stipulating Parties reserve, among other rights, the
3 right to present individual positions, including but not limited to those presented in the reply
4 testimony.

5 IV. CONCLUSION

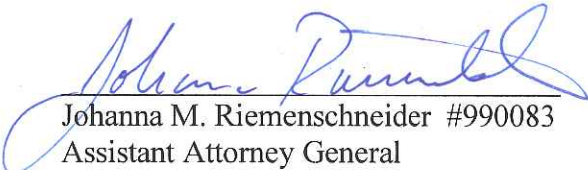
6 For the foregoing reasons, the Stipulating Parties respectfully request that the
7 Commission or ALJ:

- 8 1) Recognize the October 14, 2013 filing as proper stipulation under OAR 860-001-
9 0350; and
10 2) Proceed to establish a new procedural schedule given the scheduling considerations
11 set forth above.

12 DATED this 24th day of October 2013.

13 Respectfully submitted,

14 ELLEN F. ROSENBLUM
15 Attorney General

16 
17 Johanna M. Riemenschneider #990083
18 Assistant Attorney General
19 Of Attorneys for Public Utility Commission,
20 State of Oregon
21 Filed on behalf of the Stipulating Parties
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CERTIFICATE OF SERVICE/SERVICE LIST

I hereby certify that on October 24, 2013, I served the foregoing Joint Brief of Stipulating Parties In Support Of Classification Of Stipulation upon the persons named on the service list, by electronic mail only as all parties have waived paper service.

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