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August 11, 2014

VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: UE 267 – In the Matter of PacifiCorp Transition Adjustment, Five-Year Cost-of-Service Opt-Out

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and five copies of PacifiCorp's Rebuttal Brief. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

Katherine McDowell
Enclosure

cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of PACIFICORP d/b/a PACIFIC POWER Transition Adjustment, Five-Year Cost-of-Service Opt-Out.	**UE 267**

PACIFICORP'S REBUTTAL BRIEF

August 11, 2014

TABLE OF CONTENTS

I. INTRODUCTION **1**

II. ARGUMENT **4**

A. The Commission Requires Full Recovery of Transition Costs from Departing Direct Access Customers. 4

B. Post-SB 1149, the Commission Has Not Reduced Transition Cost Recovery to Encourage Transition Cost Mitigation. 5

C. Transition Costs May Include Costs Incurred after the Five-Year Transition Period. 7

D. PacifiCorp's Calculation of its Transition Costs is Reasonable and the Stipulating Parties' Criticisms Are Not Supported by the Evidence. 7

E. The Stipulating Parties' Proposed Transition Charge Does Not Exceed the Company's Actual Transition Costs During the Five-Year Transition Period 8

F. Load Growth Will Not Eliminate PacifiCorp's Transition Costs or Prevent Unwarranted Cost-Shifting to Non-Participating Customers. 9

G. Section X is a Barrier to the Stipulating Parties' Proposal and this is the Improper Forum to Address Changes to Section X. 13

H. There is No Basis to Distinguish the Commission's Past Precedent Rejecting a BPA Transmission Credit. 14

I. The Commission Should Not Disregard its Announcement Date Rules to Allow for the Stipulating Parties' Proposed Enrollment Period. 15

J. PacifiCorp's Proposal Reasonably Limits Switching By Allowing Customers One Opportunity to Participate in the Five-Year Program. 16

K. The Stipulation Should Not Be Afforded Any Deference. 16

III. CONCLUSION **18**

BEFORE THE PUBLIC UTILITY COMMISSION

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UE 267

In the Matter of PACIFICORP d/b/a PACIFIC POWER Transition Adjustment, Five-Year Cost-of-Service Opt-Out.	**PACIFICORP'S REBUTTAL BRIEF**

1 **I. INTRODUCTION**

2 In support of their alternative five-year direct access program, the Stipulating Parties[1]
3 ask the Public Utility Commission of Oregon (Commission) to: (1) ignore or vitiate OAR
4 860-038-0160(1), the Commission's long-standing rule requiring 100 percent transition cost
5 recovery from direct access customers; (2) disregard or repudiate Section X of the 2010
6 Protocol, which was originally designed by Oregon parties and adopted by the Commission
7 to facilitate Oregon direct access; (3) distinguish a series of Commission decisions rejecting a
8 credit for Bonneville Power Administration (BPA) transmission in the transition adjustment
9 calculation; and (4) waive OAR 860-038-0275(1), which implements ORS 757.609(1) by
10 setting November 15 as the Announcement Date for transition adjustments. In short, the
11 Stipulating Parties ask the Commission to upend its carefully balanced model for direct
12 access for PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) to promote
13 competitive retail service for certain large customers—at the risk of significant rate increases
14 to all other customers.

[1] The Stipulating Parties are: Public Utility Commission of Oregon Staff (Staff); Noble Americas Energy Solutions LLC (Noble Solutions); Industrial Customers of Northwest Utilities (ICNU); Wal-Mart Stores, Inc. (Wal-Mart); Constellation NewEnergy, Inc.; Shell Energy North America (US) L.P.; Safeway Inc.; Fred Meyer Stores, Inc., a subsidiary of The Kroger Co. and Quality Food Centers; Vitesse, LLC; and the Northwest and Intermountain Power Producers Coalition.

1 In contrast, PacifiCorp has proposed a Five-Year Cost-of-Service Opt-Out program
2 (Five-Year Program) that is fully consistent with the Commission's long-established
3 approach to direct access and the Company's approved inter-jurisdictional allocation
4 methodology. PacifiCorp's Five-Year Program uses a Consumer Opt-Out Charge to collect
5 reasonable transition costs from departing direct access customers. The Consumer Opt-Out
6 Charge prevents unwarranted cost-shifting and protects non-participating customers.
7 PacifiCorp proposes to calculate its Consumer Opt-Out Charge using the same
8 methodology it uses to calculate transition costs for the Company's one- and three-year direct
9 access programs and relying on the same forward price curves for its market price forecast.[2]
10 The Company has used this methodology since 2004, with the Commission's express
11 approval.[3] Applying this methodology, the Company demonstrated that the Consumer Opt-
12 Out Charge is necessary to prevent cost-shifting in the magnitude of nearly $60 million.
13 While the Stipulating Parties presented no testimony or other evidence challenging
14 the Company's calculation of the Consumer Opt-Out Charge, the Stipulating Parties' Reply
15 Brief now contends that the calculation is overstated because it reflects PacifiCorp's fixed
16 generation costs on a real basis (*i.e.,* escalated at the rate of inflation). This argument comes
17 too late and lacks any support in the record. Indeed, Staff's testimony in this docket
18 expressly supports the escalation of fixed generation costs for the first five years of the

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[2] PAC/400, Duvall/4.

[3] *In the Matter of Public Utility Commission of Oregon Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149*, Docket No. UM 1081, Order No. 04-516 (Sept. 14, 2004) (approving interim use of GRID to calculate transition adjustment); *In the Matter of PacifiCorp Request for a General Rate Increase in the Company's Oregon Annual Revenues*, Docket No. UE 170, Order No. 05-1050 (Sept. 28, 2005) (approving permanent use of GRID to calculate transition adjustment).

1 transition cost calculation and there is no theoretical basis for cutting off this escalation in
2 years six to 10.[4]

3 The Stipulating Parties also continue to urge the Commission to limit PacifiCorp's
4 transition costs to five years. This position cannot be squared with the record in this case or
5 the Commission's historical approach to direct access involving PacifiCorp. Oregon law
6 precludes direct access that comes at the expense of other customers and mandates rejection
7 of the Stipulating Parties' alternative five-year program on this basis. The Stipulating
8 Parties' core argument is that competitive market development requires less than full
9 transition cost recovery. But the Commission has repeatedly rejected this argument in its
10 direct access rulemakings and in designing PacifiCorp's Transition Adjustment Mechanism
11 (TAM).[5]

12 PacifiCorp requests approval of its Five-Year Program in Schedule 296, as detailed in
13 PacifiCorp's opening and reply testimony. Consistent with Oregon's direct access rules and
14 the schedule adopted in this case, PacifiCorp will update its illustrative transition costs and
15 Consumer Opt-Out Charge to incorporate final Schedules 200 and 201 and the most recent
16 forward price curves, as a part of the November Indicative and Final TAM updates.[6]

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[4] Staff/100, Compton/6.

[5] Order No. 04-516; Order No. 05-1050 at 21; *see also* PAC/404, Duvall/10-11 (Staff testified that purpose of transition costs is to not advantage market providers); Docket No. UE 170, Surrebuttal Testimony of Maury Galbraith, Staff/700, Galbraith/16-17 (purpose of TAM is not to incent direct access market).

[6] The Stipulating Parties claim that PacifiCorp has not met its evidentiary burden in this case to demonstrate the existence of transition costs beyond five years because PacifiCorp's testimony provides its transition cost calculations only as an illustrative example. Stipulating Parties' Post-Hearing Reply Brief at 9-10. This argument is meritless. First, PacifiCorp's calculations in years six through 10 are the same used in years one through five, which the Stipulating Parties do not challenge. Second, all transition adjustment calculations are initially provided on a sample basis because they are subject to update, and this is the context in which PacifiCorp provided its sample calculations in this case. *See* PAC/200, Duvall/4-6. The TAM Guidelines require PacifiCorp to provide workpapers to its Initial Filing showing: "*Sample* calculations of the transition adjustments for Schedule 30 Secondary and Schedule 48 Primary in Schedule 294, with all supporting documentation." *In the Matter of PacifiCorp d/b/a Pacific Power 2009 Transition Adjustment Mechanism*

1 **II. ARGUMENT**

2 **A. The Commission Requires Full Recovery of Transition Costs from Departing**
3 **Direct Access Customers.**

4 The Stipulating Parties contend that the Commission may allow PacifiCorp to recover
5 only a portion of its transition costs. The Stipulating Parties rely on ORS 757.600(31), which
6 provides that transition charges can recover "all or a portion of an uneconomic utility
7 investment." While the statute itself does not expressly mandate full transition cost recovery,
8 the Commission's rules are unequivocal—on behalf of non-participating customers, utilities
9 are entitled to recover 100 percent of transition costs from direct access customers.[7] The
10 rule, OAR 860-038-0160, was proposed by a coalition of parties that included Staff, the
11 Citizens' Utility Board of Oregon and ICNU, and was one of the first rules adopted by the
12 Commission to implement direct access.[8] The Commission observed that the rule formed
13 part of the "nucleus of the restructuring scheme" and "conform[ed] to the letter and spirit of
14 SB 1149 . . . and that [the rule] protect[ed] all customers classes."[9] The rule also satisfied
15 one of the specific goals proposed by the coalition of parties and endorsed by the
16 Commission—that transition costs and credits be "fair and reasonable."[10]

17 Full cost recovery of transition adjustments is necessary to prevent the cost-shifting
18 that is specifically prohibited by ORS 757.607(1). As Staff previously noted in docket
19 UM 1050 (in support of adoption of Section X of the Revised Protocol), transition
20 adjustments are intended to: (1) not harm or benefit the company; (2) not harm or benefit

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Schedule 200, Cost-Based Supply Service, Docket No. UE 199, Order No. 09-274, App. A at 18 (July 16, 2009) (emphasis added)).

[7] OAR 860-038-0160(1).

[8] *In the Matter of a Rulemaking Proceeding to Implement SB 1149 Relating to Electric Restructuring*, Docket No. AR 380, Order No. 00-596 at 2, 7 (Sept. 28, 2000).

[9] *Id.* at 2.

[10] *Id.* at 2-3.

1 remaining cost-of-service customers; (3) not advantage or disadvantage competitive power-
2 suppliers; and (4) allow direct access consumers access to the market on an equitable basis.[11]
3 These goals are served by the assignment of full responsibility for transition charges to direct
4 access customers.[12]

5 **B. Post-SB 1149, the Commission Has Not Reduced Transition Cost Recovery to**
6 **Encourage Transition Cost Mitigation.**

7 The Stipulating Parties criticize PacifiCorp's proposed Consumer Opt-Out Charge
8 for failing to encourage PacifiCorp to "take reasonable measures to reduce its portfolio costs
9 in view of its modified load obligations."[13] To support this argument, the Stipulating Parties
10 rely on Order No. 98-353,[14] where the Commission concluded that allowing less than
11 100 percent transition cost recovery may appropriately incent utilities to mitigate transition
12 costs.[15]

13 PacifiCorp's current Five-Year Program proposal creates a strong incentive for
14 minimizing transition costs by limiting transition cost recovery to a 10-year period. While
15 PacifiCorp's evidence demonstrates the existence of transition costs through at least a 20-
16 year period (the same period relied upon for PacifiCorp's resource planning), PacifiCorp
17 proposed to limit the Consumer Opt-Out Charge here to only years six through 10, reducing
18 the charge by two-thirds (from $17.30/MWh to $5.75/MWh for Schedule 47/48 customers).[16]
19 Because the Five-Year Program is capped at 175 aMW of load, PacifiCorp agreed to this

[11] PAC/404, Duvall/10-11.

[12] PAC/404, Duvall/9-11

[13] Stipulating Parties' Post-Hearing Reply Brief at 5.

[14] *In the Matter of an Investigation of Transition Costs for Electric Utilities*, Docket No. UM 834, Order No. 98-353 (Aug. 24, 1998).

[15] Stipulating Parties' Post-Hearing Reply Brief at 4-5.

[16] PAC/400, Duvall/2 (as corrected by errata filed on May 13, 2014).

1 change to respond to the Stipulating Parties' concerns that the Consumer Opt-Out Charge
2 could affect the viability of the program. In addition, by limiting the stranded cost recovery
3 time horizon to 10 years, the Company addressed the Stipulating Parties' arguments that a
4 20-year transition cost horizon might result in speculative transition costs. The recovery
5 shortfall under a 10-year time horizon gives PacifiCorp a strong incentive to reduce transition
6 costs to avoid costly regulatory lag or significant rate increases to non-participating
7 customers.

8 In addition, the Stipulating Parties' reliance on Order No. 98-353 is misplaced. While
9 aspects of Order No. 98-353 remain precedential (such as the order's adoption of a prudence
10 standard on the issue of transition cost mitigation, cited in PacifiCorp's Opening Brief),[17] the
11 Commission expressly superseded the order's provisions addressing transition cost recovery
12 when it adopted OAR 860-038-0160(1) in 2000.[18] The Commission's rationale in Order No.
13 98-353 for less than 100 percent transition cost recovery was based, in part, on the fact that
14 providing direct access at that time was voluntary.[19] With the passage of SB 1149, the
15 Commission moved to a full recovery standard.

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[17] PacifiCorp's Opening Brief at 10-11.

[18] Order No. 00-596 at 2, 7. Thus, while the Commission allowed PGE to recovery only 95 percent of its transition costs under Order No. 98-353, since the adoption of OAR 860-038-0160, the Commission has always allowed 100 percent recovery. *See In the Matter of the Application of Portland General Electric Company for Approval of the Customer Choice Plan*, Docket No. UE 102, Order No. 99-033 (Jan. 27, 1999) (allowing PGE to recover 95 percent of transition costs based on rationale in Order No. 98-353).

[19] Order No. 98-353 ("if [the Commission] disallows recovery of some of the company's transition costs . . . then PGE is free, under current law, to withdraw its rate filing. Unless the Legislative Assembly changes the law to give the Commission the authority to order PGE to restructure on the agency's terms, there is no danger that the Commission, by disallowing full recovery of transition costs, can force confiscatory rates on the company."); *see also* Order No. 99-033 at 43.

C. Transition Costs May Include Costs Incurred after the Five-Year Transition Period.

Without any citation to legal authority, the Stipulating Parties claim that SB 1149 "does not allow recovery for utility acquisitions and future front-office transactions outside the transition period."[20] While the Stipulating Parties argue that the transition charge can account for only the transition costs incurred during the five-year transition period,[21] the Commission rules provide otherwise. OAR 860-038-0160(7) specifically allows the recovery of transition costs over a different time period, up to ten years, than the period for which the transition costs are calculated.[22]

D. PacifiCorp's Calculation of its Transition Costs is Reasonable and the Stipulating Parties' Criticisms Are Not Supported by the Evidence.

For the first time, the Stipulating Parties claim in their reply brief that PacifiCorp's calculated transition costs for years six through 10 are unsupported because the Company assumed that its fixed generation costs would escalate to reflect inflation.[23] Relying only on the Brattle Group article cited in PacifiCorp's Opening Brief for an entirely different point (an article which the Stipulating Parties otherwise claim is irrelevant), the Stipulating Parties' argue that PacifiCorp's fixed generation costs should decline over time.

To be clear, the Company escalates its fixed generation costs at the average rate of inflation only and, in real terms, holds its fixed generation costs constant through year 10.[24] This is a conservative assumption, and one that is entirely consistent with past treatment of this component of the transition cost calculation.

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[20] Stipulating Parties' Post-Hearing Reply Brief at 3.

[21] Stipulating Parties' Post-Hearing Reply Brief at 3-4.

[22] OAR 860-038-0160(7) ("The Commission will determine the period of payment or recovery of transition costs or transition credits, provided such period will not exceed 10 years.").

[23] Stipulating Parties' Post-Hearing Reply Brief at 10.

[24] PAC/200, Duvall/5-6.

1 In its reply testimony, Staff supported PacifiCorp's escalation of fixed generation
2 costs for the first five years of the transition adjustment calculation:

> 3 **Q. Do you support PacifiCorp's projected escalation of**
> 4 **its fixed generation costs in the construction of the Schedule**
> 5 **200 base supply portion of the direct access?**
> 6
> 7 A. Yes. The desired escalation can be achieved by using
> 8 two approaches. The first is to forecast escalation in fixed
> 9 generation costs as PacifiCorp has done (aside from the staff
> 10 recommendation of limiting those charges to a five-year period
> 11 forecast). The second is to update the applicable fixed
> 12 generation rates as PacifiCorp has those rates changed through
> 13 general rate cases. The latter approach was supported in the
> 14 Docket UE 262 settlement. Staff is fine with either approach.[25]

15 The Stipulating Parties' new claim that fixed generation costs should decline over
16 time also conflicts with their own Stipulation. Under paragraph 10 of the Stipulation, fixed
17 generation costs are updated during the five-year transition period as PacifiCorp's Schedule
18 200 rates are changed. This is the same methodology used in PGE's current five-year direct
19 access program, which Staff described as resulting in "inclining fixed-cost transition fees."[26]
20 It is arbitrary for the Stipulating Parties to concede that fixed generation costs will be
21 inclining in the first five years of the transition costs calculation, but now claim that they
22 should decline in years six through 10.

23 E. The Stipulating Parties' Proposed Transition Charge Does Not Exceed the
24 Company's Actual Transition Costs During the Five-Year Transition Period.

25 The Stipulating Parties claim that their proposed transition charge is at least equal to
26 and often greater than the Company's actual transition costs during the five-year transition

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[25] Staff/100, Compton/6.

[26] *See* Docket No. UE 262, Staff/300, Compton/10-11. The Company requests that the Commission take official notice of this testimony under OAR 860-001-0460(1)(d).

1 period.[27] But this argument relies on the faulty premise that the calculation of transition costs
2 using GRID, rather than simply market prices, overstates the Company's actual transition
3 costs.[28] The Commission has previously rejected this argument, finding that the use of only
4 forecast market prices "may not accurately reflect an actual estimate of direct access costs,
5 because Pacific Power's utility operations are complex and multidimensional."[29] Staff also
6 recommended the use of GRID and testified that a GRID-based transition adjustment "offers
7 the most precise and accurate accounting of the impact that direct access is likely to have on
8 PacifiCorp's operations, costs and revenues[.]"[30]

9 The Stipulating Parties include the BPA transmission credit the Commission has
10 rejected for the one- and three-year direct access programs. Thus, under the Stipulating
11 Parties' proposal, customers participating in the Five-Year Program would actually pay a
12 lower transition charge than the Company's other direct access customers.

13 **F. Load Growth Will Not Eliminate PacifiCorp's Transition Costs or Prevent**
14 **Unwarranted Cost-Shifting to Non-Participating Customers.**

15 The Stipulating Parties claim that the Commission should conclude that load growth
16 will eliminate potential cost shifts, in part, because "PacifiCorp must make appropriate
17 planning responses to *expected* direct access load" when addressing projected load growth.[31]
18 For many reasons, load growth does not eliminate the existence of PacifiCorp's transition
19 costs in years six through 10.

[27] Stipulating Parties' Post-Hearing Reply Brief at 9 n.4 ("the record remains un-rebutted that the Stipulation's proposal includes a transition adjustment that is at least equal to *and often greater than* full recovery of transition costs for the five-year period . . .") (emphasis in original).

[28] Stipulating Parties' Post-Hearing Reply Brief at 9 (using GRID, rather than the market prices advocated by Noble Solutions and Wal-Mart, produces a higher transition charge).

[29] *In the Matter of PacifiCorp, dba Pacific Power, 2014 Transition Adjustment Mechanism*, Docket No. UE 264, Order No. 13-387 at 12 (Oct. 28, 2013) (internal quotations omitted).

[30] Order No. 04-516 at 5.

[31] Stipulating Parties' Post-Hearing Reply Brief at 13 (emphasis added).

1 First, whether GRID is calculating the transition adjustments under Schedule 201 for
2 years one through five, or the Consumer Opt-Out Charge under Schedule 296 for years six
3 through 10, GRID relies on PacifiCorp's current total system load forecast. In this way,
4 GRID incorporates PacifiCorp's forecasted system load growth in valuing the power freed-
5 up by Oregon direct access.[32] All else equal, system load growth increases the value of the
6 freed-up power reflected in Schedule 201 (years one through five) and in Schedule 296
7 (years six through 10). In this case, the impact of system load growth on PacifiCorp's
8 transition costs is embedded in PacifiCorp's calculations and mitigates (but does not
9 eliminate) these costs.

10 Second, the Stipulating Parties' argument is inconsistent with Staff's position in
11 docket UE 262 analyzing PGE's five-year program. In that case, Staff concluded that it was
12 unreasonable to assume that PGE would be able to defer planned resource acquisitions based
13 on departing direct access loads:

> 14 I must add that given the standard lead times and long-term
> 15 commitments for major generation units, and given the
> 16 requirement of the utility to meet all qualifying demands on a
> 17 cost-of-service basis, one can't arbitrarily drop resources from
> 18 a cost estimate based upon speculation regarding what loads
> 19 may or may not materialize.[33]

20 While Staff's arguments in docket UE 262 address planning adjustments in years one
21 through five, similar arguments apply to PacifiCorp in years six through 10, especially given
22 the facts that: (1) direct access load may depart incrementally over the term of the program,

[32] In PacifiCorp's Opening Brief at page 12, the Company noted that Section X of the 2010 Protocol precludes the argument that system load growth negates transition costs associated with the Five-Year Program. Section X assigns Oregon direct access load to Oregon for inter-jurisdictional allocation purposes and prevents the shifting of associated transition costs to other states. That said, it is important to recognize that PacifiCorp does take system load growth into account in determining the value of the transition costs for which Oregon is responsible under Section X of the 2010 Protocol.

[33] Docket No. UE 262, Staff/300, Compton/6.

1 rather than all at once in year one of the program; (2) PacifiCorp's Integrated Resource Plan
2 does not contemplate the addition of any new generation resources within the next 10 years,
3 so there are no resource acquisitions that could be delayed or avoided due to direct access
4 load;[34] and (3) PacifiCorp provided unrebutted evidence that savings from reduced front-
5 office transactions associated with loss of direct access load are already captured in the GRID
6 model runs that underlie PacifiCorp's transition adjustment calculations.[35]
7 Third, the Stipulating Parties also fail to rebut the argument that load growth does not
8 eliminate transition costs; it simply allows costs to be shifted to new customers, who will be
9 paying higher costs than they would otherwise pay if the direct access load had not
10 departed.[36] The Stipulating Parties have failed to identify a single case where the
11 Commission allowed less than full transition cost recovery based on the theory that load
12 growth will fully offset transition costs.
13 On this issue and others, the Stipulating Parties accuse PacifiCorp of "cherry picking"
14 statements from Federal Energy Regulatory Commission (FERC) orders,[37] and argue that
15 FERC precedent is irrelevant here. The Stipulating Parties misinterpret PacifiCorp's
16 arguments in its Opening Brief; their vigorous arguments about the FERC stranded cost
17 formula, including the lengthy discussion of the market or broker option,[38] respond to
18 arguments that PacifiCorp never made and completely distort FERC's decisions.[39]

[34] PAC/400, Duvall/7.

[35] PAC/400, Duvall/5-6.

[36] PAC/400, Duvall/5.

[37] Stipulating Parties' Post-Hearing Reply Brief at 8.

[38] *See* Stipulating Parties' Post-Hearing Reply Brief at 5-8.

[39] For example, the Stipulating Parties wrongly question PacifiCorp's description of a FERC decision awarding stranded cost recovery for a 20-year period. *See* Stipulating Parties' Post-Hearing Reply Brief at 8 n.3. Under FERC precedent, the reasonable expectation period (L) starts when the utility finishes incurring its last long-term generation costs on behalf of the departing customer. If a utility has no recent generation expenses, the L

1 To clarify, PacifiCorp agrees that FERC's stranded cost precedent is inapplicable to
2 this case and the Commission's decision in this case should not impact future stranded cost
3 recovery at FERC. Nevertheless, because FERC has indicated a willingness to defer to state
4 determinations on stranded cost issues,[40] the risk remains that limitations on transition cost
5 recovery in this case might encourage FERC to similarly cap stranded cost recovery in future
6 Oregon municipalization cases. This could occur if FERC applied a shorter reasonable
7 length of expected service (*i.e.,* five years instead of 10-20 years) or adopted arguments
8 around mitigation through load growth. This risk provides another policy reason why the
9 Commission should reject the Stipulating Parties' arguments in support of their five-year
10 program.

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period can begin before the customer's date of departure. In the more typical case, where a utility's generation investments are ongoing, the L period begins at the date of departure. For example, Xcel Energy described its stranded costs as "ongoing generation-related investments" in the estimate it prepared for the City of Boulder. Letter from William M. Dudley, Assistant General Counsel, *Xcel Energy*, to Thomas A. Carr, Boulder City Attorney, *City of Boulder Colorado Office of City Attorney* (June 3, 2011). In the FERC proceeding involving the municipalization of the City of Daytona, Florida Power & Light Company suggested that the L period should start on the date of departure because "FPL's generation investments are ongoing." Prepared Direct Testimony of Julie R. Solomon on behalf of Florida Power & Light Company, Docket No. ER12-46-000, Exhibit No. FPL-200 at 10 (Oct. 7, 2011).

Similarly, the Stipulating Parties wrongly assert that FERC's rejection of load growth mitigation arguments was "limited to the facts where there was no evidence the released capacity could be sold to new loads." Stipulating Parties' Post-Hearing Reply Brief at 8 n.2. In the cited cases, however, FERC's determination turned on the absence of a state commission determination that supported including load growth in the stranded cost calculation, despite evidence on record that the utilities were capacity deficient. In *City of Las Cruces, New Mexico v. El Paso Electric Co.*, Opinion No. 438, 87 FERC ¶ 61,201 (1999), the city argued that native load customers needed the power (the utility had been experiencing 20 MW annual growth) but a rate freeze foreclosed modifications. The administrative law judge adjusted stranded capacity for system load growth and reliability reserves, but FERC reversed, reasoning that there was no finding by the state commission that the utility could include the costs in rates of native load customers, and there were no other factors on record supporting including load growth. FERC was concerned that including load growth could result in a cost shift. In *City of Alma, Michigan*, Opinion No. 452, 96 FERC ¶ 61,163 (2001), the administrative law judge said *Las Cruces* established that load growth should be excluded from the stranded cost obligation unless the state commission has indicated that it should be included or there is other evidence that supports including load growth in the calculation, none of which was present. FERC affirmed, focusing on the absence of a state commission finding. FERC acknowledged that in both *Alma* and *Las Cruces,* the utility was capacity deficient but declined to find that this alone warranted adjusting stranded costs.

[40] PacifiCorp's Opening Brief at 7 n.24.

1 **G. Section X is a Barrier to the Stipulating Parties' Proposal and this is the**
2 **Improper Forum to Address Changes to Section X.**

3 The Stipulating Parties acknowledge that Section X of the 2010 Protocol potentially
4 presents a significant barrier to the adoption of their proposal, but urge the Commission to
5 assume that Section X will be modified in one way or another before the end of the first five-
6 year period.[41] There is no basis in the record for this assumption, and given the magnitude of
7 the potential cost-shift from Oregon to other states, the resolution of Section X may prove
8 complex and contentious.

9 In addition, the Stipulating Parties' recommendation that the Commission assume a
10 particular fix to Section X is improper outside of the Multi-State Process (MSP). Although
11 the Stipulating Parties recognize that the MSP is the appropriate forum to address changes to
12 Section X,[42] they effectively ask the Commission to decide *in this case* that Section X must
13 be modified to remedy the cost-shifting that their proposal creates.[43] The Commission has
14 recognized that the MSP is an important process and that issues involving PacifiCorp's
15 allocation methodology should be addressed there first.[44] Moreover, the Commission has
16 recognized that the allocation methodology should be examined holistically, not on a
17 piecemeal basis.[45] Making a unilateral determination regarding Section X in this case is

[41] Stipulating Parties' Post-Hearing Reply Brief at 14-15.

[42] Stipulating Parties' Post-Hearing Reply Brief at 15.

[43] Stipulating Parties' Post-Hearing Reply Brief at 14-16.

[44] *See In the Matter of PacifiCorp Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, Docket No. UM 1050, Order No. 05-021 at 10 (Jan. 12, 2005) ("We expect that if any state has issues about the Revised Protocol, these issues will be discussed by the Standing Committee."); *id.* at 11 ("We will allow that process [MSP] to be used to resolve any ongoing cost shifting.").

[45] Order No. 05-021 at 11 (rejecting additional conditions noting, "[w]e are also concerned that these proposed conditions would undermine the consensus reached among the states. To possibly jeopardize the overall agreement by adding unacceptable conditions to the Revised Protocol is not in the public interest.").

1 contrary to long-standing Commission policy and could interfere with revising Section X in
2 the MSP.

3 **H. There is No Basis to Distinguish the Commission's Past Precedent Rejecting a**
4 **BPA Transmission Credit.**

5 The Stipulating Parties continue to argue that the transition adjustment include a
6 credit for BPA transmission allegedly freed-up by departing direct access load.[46] The
7 Stipulating Parties claim that "PacifiCorp has not refuted the existence of its right to put
8 freed-up BPA transmission to other economic uses."[47]

9 On the contrary, PacifiCorp provided evidence in this case that:

10 • Even if the entire load in a particular load pocket elected to participate in the
11 Five-Year Program, the Company cannot reassign, sell, redirect, or elect not
12 to renew the point-to-point transmission contract serving that load pocket
13 because doing so would violate the Company's obligation as provider of last
14 resort in its balancing area.[48]

15 • BPA prohibits PacifiCorp from designating less than its total load at a
16 particular point of delivery (POD) as "Network Load." This means that even
17 if some portion of the load at a particular POD chose to participate in the
18 Five-Year Program, PacifiCorp's billing from BPA would still be based on
19 the entire metered load at the POD, including the direct access load.[49]

[46] Stipulating Parties' Post-Hearing Reply Brief at 17-19.

[47] Stipulating Parties Post-Hearing Reply Brief at 18.

[48] PAC/500 at 1; PAC/400, Duvall/21.

[49] PAC/500 at 3.

- Contrary to the Stipulating Parties' claim that PacifiCorp can use freed up BPA transmission to serve new loads,[50] PacifiCorp would be required to secure new network transmission rights from BPA to serve new load and cannot simply use existing transmission rights.[51]

In addition, the Stipulating Parties claim that the Commission's steadfast rejection of a credit for freed-up transmission for the one- and three-year direct access programs is distinguishable because under their five-year program, customers will provide four years notice of their intent to return to cost-of-service rates.[52] The Stipulating Parties' contend that four years is sufficient time for PacifiCorp to secure additional transmission if a customer chooses to return. The Commission has previously rejected this same argument in the context of PacifiCorp's three-year direct access program.[53] One additional year does not materially change the planning horizon, especially given the restraints on the purchase and sale of BPA transmission noted above.

I. The Commission Should Not Disregard its Announcement Date Rules to Allow for the Stipulating Parties' Proposed Enrollment Period.

The Stipulating Parties recommend that the Announcement Date for the Five-Year Program be November 1 of each year and continue for the entire month of November.[54] This recommendation is contrary to OAR 860-038-0275(1), which implements ORS 757.609(1) by setting November 15 as the Announcement Date for transition adjustments. For the first time in their Reply Brief, the Stipulating Parties ask the Commission to change or waive this

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[50] Stipulating Parties Post-Hearing Reply Brief at 18.

[51] PAC/500 at 2.

[52] Stipulating Parties' Post-Hearing Reply Brief at 17.

[53] *In the Matter of PacifiCorp dba Pacific Power 2013 Transition Adjustment Mechanism*, Docket No. UE 245, Order No. 12-409 at 17 (Oct. 29, 2012); Order No. 13-387 at 13-14.

[54] Stipulating Parties' Post-Hearing Reply Brief at 19-20.

rule. There is no good cause for granting a waiver, as required by OAR 860-038-0001(4). The Company's Five-Year Program proposes a three-week shopping window that commences on the same date as PacifiCorp's other direct access options.[55] The Stipulating Parties have not demonstrated that the value of adding one extra week to the shopping window offsets the potential confusion associated with setting different November Announcement dates for the Company's direct access programs.

J. PacifiCorp's Proposal Reasonably Limits Switching By Allowing Customers One Opportunity to Participate in the Five-Year Program.

The Stipulating Parties do not dispute that switching between direct access and cost-of-service rates can harm non-participating customers by shifting costs. PacifiCorp's proposal to limit customers to one election for the Five-Year Program provides reasonable protection against switching. If the Five-Year Program results in customers permanently leaving PacifiCorp's system, as the Stipulating Parties contend,[56] then there is little harm in adopting PacifiCorp's proposal—particularly when considered in light of the additional protections afforded. In addition, given the 175 aMW cap on the Five-Year Program, it is fair to limit participation to those customers most likely to elect and remain on direct access.

K. The Stipulation Should Not Be Afforded Any Deference.

The Stipulating Parties argue that their agreement should be afforded deference because it represents a resolution of the issues in this case.[57] However, the Stipulating Parties failed to address Administrative Law Judge (ALJ) Kirkpatrick's express conclusion

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[55] PAC/300, Steward/10 (with indicative transition adjustments posted one week before November 15 customers effectively have a four-week election window).

[56] Stipulating Parties' Post-Hearing Reply Brief at 21 (virtually none of PGE's customers have elected to return to cost-of-service rates).

[57] Stipulating Parties' Post-Hearing Reply Brief at 23-24.

1 that the Stipulation does not, in fact, resolve the issues in this case.[58] Without "resolution,"
2 the Stipulation should be afforded no deference.

3 The Stipulating Parties' current argument is inconsistent with how they presented
4 their agreement to the ALJ. When arguing that the Stipulation should be admitted into the
5 record as a settlement under OAR 860-001-0350, the Stipulating Parties claimed that the
6 Stipulation "only serves to aid resolution of the issues and develop the record in this
7 proceeding."[59] Accordingly, the ALJ found that the Stipulation has "value in terms of
8 administrative efficiency by narrowing the range of positions on issues and further
9 developing the record."[60] If the Stipulation was intended only as an administratively efficient
10 means to develop the record as the Stipulating Parties argued, then there is no basis to now
11 afford it deference.

12 The Stipulating Parties also contend that the Stipulation must be reviewed as an
13 integrated document and that they need not produce evidence supporting each of the
14 individual components of the Stipulation.[61] However, the order relied on by the Stipulating
15 Parties states that the Commission looks at the "record as a whole" when evaluating
16 settlements.[62] This does not mean that the Commission will approve a particular term in a
17 settlement if there is insufficient evidence in the "record as a whole" to support that term.
18 Rather, the order simply means that the Commission reviews the entire record to determine if
19 there is sufficient evidence.

[58] *In the Matter of PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Ruling at 3 (Nov. 15, 2013).

[59] *In the Matter of PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Joint Brief of Stipulating Parties in Support of Stipulation at 6 (Oct. 24, 2013).

[60] *In the Matter of PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Ruling at 3 (Nov. 15, 2013).

[61] Stipulating Parties' Post-Hearing Reply Brief at 24-25.

[62] Stipulating Parties' Post-Hearing Reply Brief at 25.

The Stipulating Parties also argue that if the Commission rejects all or part of the Stipulation, it should allow additional hearings to address the individual issues raised by the parties in their original testimony.[63] This request is also at odds with the Stipulating Parties' prior arguments. The Stipulating Parties previously argued that their agreement prevented the need for the Commission to "confront[] a myriad of different positions on all the issues in this proceeding."[64] The Stipulating Parties further argued that, "[t]here is no reason to unnecessarily require the Stipulating Parties to revert to, or for the Commission to resolve, the numerous previously filed positions, when the Stipulating Parties have agreed to resolve their disputed positions through a Stipulation."[65] Thus, if the Commission rejects all or part of the Stipulation, it should deny additional process to the Stipulating Parties.

III. CONCLUSION

PacifiCorp respectfully requests that the Commission approve Schedule 296, PacifiCorp's proposed Five-Year Program, as described in PacifiCorp's opening and reply testimony in this docket. The Five-Year Program is consistent with SB 1149, the Commission's rules, and the important policy considerations that have informed the implementation of direct access in Oregon. To understand the fundamental flaws in the Stipulating Parties' alternative proposal, the Commission need look no further than the Stipulating Parties' numerous, explicit requests that the Commission ignore or re-work key provisions of Oregon's direct access model. These requests are especially problematic as

[63] Stipulating Parties' Post-Hearing Reply Brief at 25-26.

[64] *In the Matter of PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Joint Brief of Stipulating Parties in Support of Stipulation at 6 (Oct. 24, 2013).

[65] *In the Matter of PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Joint Brief of Stipulating Parties in Support of Stipulation at 6 (Oct. 24, 2013).

1 applied to PacifiCorp because of the inter-jurisdictional allocation issues associated with its

2 status as a multi-state utility.

3 Approval of the Company's Five-Year Program will require PacifiCorp to file

4 updated calculations for its transition costs and Consumer Opt-Out Charge to reflect final

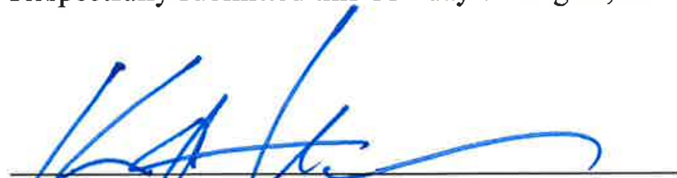
5 Schedules 200 and 201, as well as the most recent forward price curves. As with any final

6 TAM update, the filing will be subject to review by the Commission and the parties to ensure

7 that the calculations are complete and accurate and the rates produced are just and

8 reasonable.

Respectfully submitted this 11th day of August, 2014.



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CERTIFICATE OF SERVICE

1 I hereby certify that I served a true and correct copy of the foregoing document in
2 Docket UE 267 on the following named person(s) on the date indicated below by email
3 addressed to said person(s) at his or her last-known address(es) indicated below:
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