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May 14, 2014

Attention: Filing Center
Public Utility Commission of Oregon
3930 Fairview Industrial Drive SE
P.O. Box 1088
Salem OR 97308-1088

Re: *PACIFICORP, dba PACIFIC POWER, Transition Adjustment, Five-Year
Cost of Service Opt-Out*
PUC Docket No.: UE 267
DOJ File No.: 860115-GB0282-13

Enclosed for filing with the Commission today are an original and five copies of the
JOINT PRE-HEARING BRIEF OF STIPULATING PARTIES with certificate of service/service
list in the above-captioned docket.

Sincerely,


Johanna M. Riemenschneider
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Business Activities Section

Enclosures
JMR:jrs/#5302391
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 PRE-HEARING BRIEF OF
STIPULATING PARTIES

9 **I. INTRODUCTION AND SUMMARY**

10 Pursuant to the scheduling order in this docket, Staff of the Public Utility Commission of
11 Oregon (“Staff”), Industrial Customers of Northwest Utilities (“ICNU”), Noble Americas Energy
12 Solutions LLC (“Noble Solutions”), Wal-Mart Stores, Inc. (“Wal-Mart”), Shell Energy North
13 America (US), LP (“Shell Energy”), Constellation NewEnergy, Inc. (“Constellation”), Fred
14 Meyer Stores, Inc./Kroger, Co. (“Fred Meyer”), the Northwest and Intermountain Power
15 Producers Coalition (“NIPPC”), Safeway Inc. (“Safeway”) and Vitesse, LLC (“Vitesse”)
16 (collectively referred to as “the Stipulating Parties”) hereby submit their pre-hearing brief.

17 Under a direct access program, the direct access customer continues to use the utility’s
18 distribution system but bypasses the utility as the ultimate power supplier and instead obtains
19 energy from another supplier. This case presents the opportunity for the Public Utility
20 Commission of Oregon (“Commission” or “OPUC”) to reverse over a decade of PacifiCorp’s
21 direct access program failure, and implement a viable direct access program for PacifiCorp’s
22 large nonresidential customers.

23 The Commission has already determined PacifiCorp must offer a five-year opt-out
24 program modeled after the successful program offered for many years by Portland General
25 Electric Company (“PGE”). However, PacifiCorp’s proposed program failed to respond to the
26 Commission’s directive and ultimately resulted in the Stipulating Parties entering into an

1 agreement regarding reasonable terms without PacifiCorp. The Commission thus has two
2 options before it: (1) adopt the Stipulating Parties' proposal that closely follows the model
3 provided by PGE's program and is likely to result in a program in which customers will
4 participate; or (2) adopt PacifiCorp's proposal that, even as modified by PacifiCorp's reply
5 testimony, fails to comply with the Commission's directive in Docket No. UM 1587 and imposes
6 insurmountable obstacles to direct access that will likely result in no meaningful change in the
7 poor participation to date in PacifiCorp's direct access programs.

8 For the reasons set forth below and in the Stipulating Parties' testimony, the Stipulating
9 Parties recommend that the Commission adopt the Stipulation without material modification and
10 direct PacifiCorp to implement a five-year opt-out program with the terms described therein.

11 II. BACKGROUND

12 A. Oregon's Direct Access Law.

13 Initially enacted in 1999, Oregon's direct access law ("S.B. 1149") specifically instructs
14 the Commission to develop policies to "eliminate barriers to the development of a competitive
15 retail market structure[.]" ORS 757.646(1). In its findings supporting the legislation, the
16 legislative assembly declared that "retail electricity consumers that want and have the technical
17 capability should be allowed, either on their own or through aggregation, to take advantage of
18 competitive electricity markets as soon as is practicable." Or Laws 1999 ch. 865. The direct
19 access law requires that all nonresidential retail customers be allowed direct access to
20 competitive markets by purchasing generation services from Commission-certified electricity
21 service suppliers ("ESS"). See ORS 757.600(6), (16), -601(1), -649(1)(a).

22 The direct access law also directs that the provision of direct access to some retail
23 electricity customers "must not cause the unwarranted shifting of costs to other retail electricity
24 consumers of the electric company." ORS 757.607(1). It further authorizes transition charges or
25 credits that the Commission finds to be in the public interest, as follows:

26 The direct access, portfolio of rate options and cost-of-service rates may include

1 transition charges or transition credits that reasonably balance the interests of
2 retail electricity consumers and utility investors. The commission may determine
3 that full or partial recovery of the costs of uneconomic utility investments, or full
or partial pass-through of the benefits of economic utility investments to retail
electricity consumers, is in the public interest.

4 ORS 757.607(2).¹ Thus, the Commission has broad discretion in determining the appropriate
5 calculation of transition adjustment rates to prevent unwarranted shifting of costs.

6 The Commission's regulations require use of the "ongoing valuation" method, which
7 compares the value of the freed-up generation asset output at projected market prices for a
8 defined period to an estimate of the revenue requirement of the asset for the same time period.
9 See OAR 860-038-0005(41), -0140. The logical premise behind the ongoing valuation method is
10 to credit or charge direct access customers the difference between market prices and cost-of-
11 service rates during the specified time period. See Noble Solutions/100, Higgins/12-13.
12 Additionally, the Commission's direct access regulations further require: "At least once each
13 year, electric companies must offer customers a multi-year direct access program with an
14 associated fixed transition adjustment." OAR 860-038-0275(5).

15 **B. The OPUC's Directive That PacifiCorp Implement A Five-Year Opt-Out Program.**

16 Despite the clear intent of S.B. 1149, PacifiCorp has not yet developed direct access
17 programs that provide viable options for eligible customers to take advantage of competitive
18 electricity markets. Notably, according to the Commission's January 2012 Oregon Electric
19 Industry Restructuring Status Report, only 1.4 percent of eligible customer load in the PacifiCorp
20 service territory was participating in direct access service compared to 10.7 percent participation
21 in the PGE service territory. Noble Solutions/100, Higgins/4. The major difference between the
22 two utilities' programs is that PGE has implemented OAR 860-038-0275(5) by allowing large
23 non-residential customers to achieve full market-based pricing by leaving cost-of-service based

24 ¹ An "uneconomic utility investment" is a utility investment that was prudent when the investment
25 or obligations were assumed, but the full costs of which cannot be recovered as a result of direct access
26 absent transition charges. ORS 757.600(35). 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).

1 rates after paying PGE transition charges for five years. *See* Noble Solutions/100, Higgins/7-8.
2 The PGE five-year opt-out program carefully balances the customer’s right to market access
3 against generation fixed cost recovery and has proven to be a successful model. Noble
4 Solutions/100, Higgins/9. In contrast, PacifiCorp has never offered a direct access program that
5 allows customers to achieve full market-based pricing – thus thwarting the intent of S.B. 1149
6 that customers with the technical capability to do so should be entitled to take advantage of
7 competitive electricity markets.

8 After investigating this discrepancy between the utilities, the Commission directed
9 PacifiCorp to file a tariff for a five-year opt-out program modeled on PGE’s program. *In re*
10 *Public Utility Commission of Oregon: Investigation of Issues Relating to Direct Access*, OPUC
11 Docket No. UM 1587, Order No. 12-500 (2012). The Commission stated, “We find no basis to
12 maintain this difference in the programs of the two utilities. Accordingly, we adopt a PGE-type
13 model for Pacific Power.” *Id.* at 9. The Commission directed that PacifiCorp file a tariff for a
14 “five-year opt out program that allows a qualified customer to go to direct access and pay fixed
15 transition charges for the next five years, and then to be no longer subject to transition
16 adjustments – for so long as that customer remains a direct access customer (on the Pacific
17 Power system).” *Id.* The Commission further explained that PacifiCorp may tailor its program
18 to fit its particular circumstances. *Id.*

19 **C. Proceedings in This Docket.**

20 On February 28, 2013, PacifiCorp filed its proposed five-year opt-out tariff in Advice No.
21 13-004, Schedule 296-Transition Adjustment, Five-Year Cost of Service Opt-Out (“Schedule
22 296”). Although the Commission adopted a program with five years of transition adjustments,
23 PacifiCorp’s proposed Schedule 296 called for 20 years of projected transition adjustments
24 crammed into five years. PAC/100, Steward/6; Staff/100, Compton/10. PacifiCorp’s proposal
25 includes a five-year transition adjustment for the estimated transition costs occurring after the opt
26 out election, which is similar to PGE’s five-year opt-out charge. Stipulating Parties/100 at 23.

1 PacifiCorp's proposed Schedule 296 in Advice No. 13-004 also included a proposed "Consumer
2 Opt Out Charge," however, for projected stranded costs occurring in years six through twenty
3 after the opt out election, which has no analogue in the PGE program. Stipulating Parties/100 at
4 23. Additionally, PacifiCorp's proposal included other provisions that are fundamentally
5 inconsistent with a PGE-type five-year program, including a ban on allowing the five-year opt-
6 out customers from returning to cost of service rates. PAC/100, Steward/7; Noble Solutions/100,
7 Higgins/6. The Commission suspended Schedule 296 to investigate the filing and set a
8 procedural schedule. Order No. 13-130. On June 14, 2013, PacifiCorp filed its opening
9 testimony. On September 13, 2013, Commission Staff, ICNU, Noble Solutions,
10 Constellation/Shell, and Wal-Mart filed reply testimony.

11 The parties participated in a settlement conference on September 26, 2013, and the
12 Stipulating Parties entered into the Stipulation, which they subsequently filed on October 21,
13 2013. The Stipulating Parties consist of Staff and nine intervenors, listed above, representing the
14 varied interests of ratepayers, large industrial customers, large commercial customers,
15 independent power producers, and retail energy service suppliers. PGE took no position on the
16 Stipulation. PacifiCorp opposes the Stipulation. In the Stipulation, the Stipulating Parties
17 compromised their individual positions on several issues to develop a comprehensive set of
18 reasonable terms for PacifiCorp's five-year opt-out program. The Stipulation follows the general
19 framework of PGE's five-year opt-out program and reflects a reasonable balance of providing a
20 meaningful five-year opt-out program that is comparable to PGE's program, while at the same
21 time preventing cost shifts. Stipulating Parties/100 at 3.

22 The Stipulation is an integrated document. The Stipulation expressly states that should
23 the Commission reject all or any material part of the Stipulation, each of the Stipulating Parties
24 reserves the right to withdraw from the Stipulation. *Stipulation* at ¶ 21. If any Stipulating Party
25 withdraws, all Stipulating Parties "agree that pursuant to OAR 860-010-0350(9), further hearings
26 should be held to fully address the issues in this case because, by entering into this Stipulation at

1 this stage in the proceedings prior to hearing and legal briefing, the Stipulating Parties have
2 foregone the ability to fully develop and present their individual positions” *Stipulation* at ¶
3 21.

4 Over PacifiCorp’s objection, Administrative Law Judge Kirkpatrick issued a ruling on
5 November 15, 2013, admitting the Stipulation into the record. Pacific Power subsequently
6 requested an extension of the suspension period to January 1, 2015, which was granted in Order
7 No. 13-430. The Stipulating Parties filed joint testimony in support of the Stipulation on January
8 17, 2014. PacifiCorp filed reply testimony on March 27, 2014, wherein it revised its position
9 and expressly agreed with several terms of the Stipulation. However, PacifiCorp maintained,
10 albeit in modified form, its proposed Consumer Opt Out charge, in addition to a five-year
11 transition adjustment charge. PacifiCorp opposed other elements of the Stipulation, as well. The
12 hearing is scheduled for May 22, 2014.

13 III. ARGUMENT

14 A. The Legal Standard Applicable to Review of Contested Stipulations

15 The Commission has broad power to set just and reasonable rates. ORS 756.040. As
16 with the filing of any new rates, PacifiCorp bears the burden to show that its proposed Schedule
17 296 rates for the PGE-type five-year opt-out program are just and reasonable. ORS 757.210(1).
18 The burden of proof is borne by the utility throughout the proceeding. *In re Portland General*
19 *Electric Co.: 2012 Annual Power Cost Update*, OPUC Docket No. UE 228, Order No. 11-432, at
20 3 (Nov. 2, 2011).

21 The Commission may approve non-unanimous stipulations where substantial competent
22 evidence on the record shows the stipulation will result in just and reasonable rates. *See*
23 *PacifiCorp Request for a General Rate Revision*, Docket No. UE 210, Order No. 10-022 at 6
24 (Jan. 26, 2010). The Commission must “make an independent judgment as to whether any given
25 settlement constitutes a reasonable resolution of the issues.” *Id.* However, the Commission
26 “may evaluate the validity of the rates based on the reasonableness of the overall rates, not the

1 theories or methodologies used or individual decisions made.” *Id.* (quoting *In re Portland Gen.*
2 *Elec. Co.*, Docket DR 10, *et al.*, Order No. 08-487 at 7-8 (Sept. 30, 2008)). The reasonableness
3 of overall rates, not particular methodologies, is the “key concern.” *Id.* at 7. The Commission
4 has therefore approved a stipulated overall rate of return, despite the fact that a party opposed the
5 stipulation and the stipulating parties did not even “agree among themselves on the individual
6 capital components that make up that return.” *Id.* The Commission has stated that its primary
7 role is not to “examine any . . . specific cost categories in detail, but rather to determine whether
8 the Stipulation as a whole results in just and reasonable rates.” *Id.* at 10.

9 **B. The Commission Should Approve the Stipulation Without Material Modification.**

10 The Stipulation sets forth a comprehensive five-year opt-out program for PacifiCorp that
11 closely adheres to the PGE-type model. The Stipulation decreased the number of differing
12 positions of the numerous parties to this docket on highly complex issues to present an overall
13 compromise program design that will result in just and reasonable rates. The Commission’s
14 policy has been to encourage voluntary resolution of issues “to the extent that settlement is in the
15 public interest.” *In re PacifiCorp’s 2010 Transition Adjustment Mechanism*, Docket No. UE
16 207, Order No. 09-432 at 6 (Oct. 30, 2009). The Commission should therefore approve the
17 Stipulation as a “compromise of different positions” which represents “a reasonable resolution”
18 of the issues. *In re PacifiCorp*, Docket UE 210, Order No. 10-222 at 5. The Commission should
19 review the overall reasonableness of the entire Stipulation; however, for ease of presentation, the
20 remainder of this brief individually discusses each of the terms of the Stipulation, which are
21 further itemized in Appendix A to this brief.

22 **1. Transition Costs and Adjustments.**

23 The Stipulation contains a reasonable transition adjustment methodology that generally
24 follows the principles of PGE’s five-year program, with adjustments to account for PacifiCorp’s
25 unique circumstances. However, PacifiCorp’s proposal is a radical departure from PGE’s five-
26 year program, and cannot even be fairly characterized as a PGE-type program. Although

1 PacifiCorp has revised its initial proposal, even PacifiCorp's modified proposal would result in
2 unjust and unreasonable rates being assessed to any customer who enters PacifiCorp's five-year
3 opt-out program.

4 **a. Summary of Stipulation's Schedule 200 and Schedule 296 rates.**

5 In addition to paying the ESS for electricity delivered, the Stipulation program requires
6 that during the five-year transition period, the direct access customer will continue to pay the full
7 cost of PacifiCorp's fixed generation charge, Schedule 200, and will also be subject to a
8 transition adjustment, Schedule 296. Stipulating Parties/100 at 9. These charges are
9 conceptually analogous to the charges assessed to PGE customers under PGE's five-year opt-out
10 program. Stipulating Parties/100 at 23.

11 The Schedule 200 charge makes a participating customer fully responsible for recovery
12 of PacifiCorp's fixed generation costs during the transition period – even though the customer is
13 buying its generation service from another supplier. Stipulating Parties/100 at 10. The five-year
14 transition provides PacifiCorp with an ability to recover the costs of supply commitments
15 PacifiCorp made to serve the customer prior to the direct access election. Stipulating Parties/100
16 at 10. The reasoning for not assessing the utility's fixed generation costs into perpetuity is that
17 the opt-out customer has provided notice through the opt-out election that the Company no
18 longer needs to plan to provide generation service to this customer and should adjust its future
19 generation and procurement accordingly. Stipulating Parties/100 at 10. Five years of fixed cost
20 recovery is consistent with the PGE program. Stipulating Parties/100 at 11.

21 The transition adjustment rate in the Stipulation's proposed Schedule 296 represents the
22 difference between net power costs in rates and the market value of freed-up energy, which is
23 calculated with PacifiCorp's GRID model. Stipulating Parties/100 at 9, 12. Agreeing to use
24 GRID is a compromise position of Stipulating Parties that argued that PacifiCorp should
25 calculate its transition adjustment rate using market prices consistent with Oregon's
26 administrative rules and PGE's direct access program. *See* OAR 860-038-0005(41), -0140;

1 Noble Solutions/100, Higgins/13-16; Walmart/100, Chriss/12; Stipulating Parties/100 at 13.

2 Taken in combination with Schedule 200, the Stipulation's proposed Schedule 296
3 transition adjustment ensures that a shopping customer pays a transition charge that is at least
4 equal to (and often greater than) the difference between cost of service rates and market prices.
5 Stipulating Parties/100 at 9. Thus, the Stipulation is designed to prevent cost shifts to customers
6 that remain on PacifiCorp's cost of service rates. Stipulating Parties/100 at 9. The Stipulation's
7 method calculates the value of freed up energy through PacifiCorp's GRID model with several
8 adjustments to PacifiCorp's proposed calculation, as explained in more detail below.

9 **b. Mitigate GRID's blending of thermal costs and market prices.**

10 The first modification to PacifiCorp's initially proposed transition adjustment calculation
11 is an adjustment to GRID assumptions regarding thermal generation costs. PacifiCorp's use of
12 GRID produces a valuation of freed-up energy that is based on a blend of market prices and
13 thermal generation costs. Stipulating Parties/100 at 12. Generally speaking, including
14 PacifiCorp's thermal generation in the calculation lowers the estimated value of freed up power
15 and increases overall charges assessed to direct access customers during the transition period.
16 Stipulating Parties/100 at 12-13. For several years in the annual proceedings to calculate
17 Schedule 294 and 295 rates, PacifiCorp has implemented a post-GRID adjustment that partially
18 mitigates this negative impact on direct access. Stipulating Parties/100 at 13-14. The mitigation
19 estimates the value of thermal generation at a simple monthly average of the COB price, the
20 Mid-Columbia price, and the avoided cost of thermal generation as determined by GRID.
21 Stipulating Parties/100 at 13-14. The Stipulation adopts this same mitigation provision for
22 Schedule 296. *Stipulation* at ¶ 12(d). Although PacifiCorp's initial filing did not include this
23 mitigating adjustment, PacifiCorp no longer opposes use of this mitigation provision. PAC/400,
24 Duvall/18.

25 **c. Eliminate the distinction between heavy load and light load hours.**

26 The next modification to PacifiCorp's initially proposed transition adjustment calculation

1 makes the differential between heavy load and light load hour rates in the Schedule 296 rate
2 consistent with the differential existing under Schedule 201 for net power costs assessed to
3 bundled customers. PacifiCorp's initially proposed Schedule 296 uses the GRID model's
4 differentiation for heavy load and light load hour pricing, but that use is inconsistent with the
5 differential in the Schedule 201 rates that direct access customers avoid. Stipulating Parties/100
6 at 14. The Stipulation eliminates PacifiCorp's proposed differential, and thereby eliminates an
7 artificially large Schedule 296 rate rebate for direct access customers during heavy load hours
8 and an artificially large rate penalty during light load hours. *Stipulation* at ¶ 12(a); Stipulating
9 Parties/100 at 15. PacifiCorp has now abandoned its initial proposal on this point, and agrees
10 with the Stipulation proposal. PAC/400, Duvall/19.

11 **d. Assume 50 average megawatts of annual opt-out increments.**

12 The Stipulation also modifies the assumption in PacifiCorp's initial proposal that the
13 entire eligible load of 175 average megawatts ("aMW") will opt out each year for purposes of
14 calculating the transition adjustment. Generally speaking, the greater the amount of assumed
15 direct access load used for purposes of the GRID run used to value freed up power, the larger the
16 overall charge will be to the direct access customers during the transition period. Stipulating
17 Parties/100 at 16-17. Based on experience with PGE's program, it is reasonable to assume that
18 only 50 aMW will elect to opt out each year. Stipulating Parties/100 at 17. Thus, the Stipulation
19 methodology assumes that an additional 50 aMW of incremental load opts out each year, up to
20 the program cap of 175 aMW. *Stipulation* at ¶12(b). PacifiCorp has now abandoned its initial
21 proposal on this point, and agrees with the Stipulation proposal. PAC/400, Duvall/19.

22 **e. Include a Bonneville Power Administration transmission credit.**

23 The Stipulation's compromise methodology also modifies PacifiCorp's proposal by
24 including a Bonneville Power Administration ("BPA") transmission credit in the Schedule 296
25 transition adjustment calculation. This type of transmission credit has been utilized in PGE's
26 five-year opt-out program for several years. Stipulating Parties/100 at 19, 21. Yet PacifiCorp

1 opposes inclusion of any BPA transmission credit in its five-year opt-out program.

2 The transmission credit is necessary because freed up transmission assets are an
3 “economic utility investment” for which direct access customers should receive a transition
4 credit. *See* ORS 757.600(10), (32); ORS 757.607(2). The cost of PacifiCorp’s BPA
5 transmission is included in net power costs and is therefore assessed to direct access customers
6 through the proposed Schedule 296, absent an offsetting credit in the transition adjustment
7 calculation. Stipulating Parties/100 at 19. Despite paying PacifiCorp for this transmission,
8 direct access customers are not permitted to use this transmission for delivery to their loads
9 under PacifiCorp’s direct access programs. Stipulating Parties/100 at 19. Instead, the direct
10 access customer must separately (re)purchase BPA transmission through their ESS, thus paying
11 for it twice under PacifiCorp’s proposal. Stipulating Parties/100 at 19.

12 The transmission credit is justified because PacifiCorp may put transmission no longer
13 used by the long-term opt-out customers to other economic uses. PacifiCorp is contractually
14 allowed to reassign, or sell, its BPA point-to-point (“PTP”) transmission to another party,
15 including an ESS. Stipulating Parties/100 at 18. The Stipulating Parties will offer evidence at
16 the hearing that PacifiCorp may redirect the use of a BPA PTP right to different points of receipt
17 and delivery. The Commission should not accept PacifiCorp’s position that it could lose 175
18 aMW of load to a long-term (and likely permanent) opt out, but somehow realize no value from
19 freed up BPA transmission. Long-term opt-out customers deserve a credit for this economic
20 utility investment freed up by their direct access election.

21 The Stipulating Parties’ BPA transmission credit proposal is conservative. The
22 Stipulation conservatively proposes that the BPA transmission credit would be based on 80% of
23 the BPA PTP rate with a 100% load factor and would change over the five-year transition period
24 if BPA’s PTP rates change. *Stipulation* at ¶12(c). Based on the BPA PTP rates in effect on
25 October 1, 2013, the BPA transmission credit would be (\$1.61)/MWh for service in 2015.
26 Stipulating Parties/100 at 18. This valuation is conservative because it is only about half of the

1 BPA PTP rate of \$3.166/MWh (the rate that results when measured on an *average* load factor
2 basis). Stipulating Parties/100 at 18. Thus, while PacifiCorp claims it cannot always free up and
3 resell or reuse BPA transmission, the Stipulation’s proposal already accounts for that possibility.

4 Although a BPA credit is not currently a part of PacifiCorp’s other direct access
5 programs, the merits of a BPA transmission credit are increased in the Stipulation’s five-year
6 opt-out program. PacifiCorp has opposed a transmission credit in its annual opt-out programs
7 where customers return to cost of service rates after one or three years of direct access.

8 Stipulating Parties/100 at 20. PacifiCorp has reasoned that because direct access customers may
9 return to cost of service rates, the company must continue to plan for these customers, and
10 therefore retain the transmission rights to serve these customers. Stipulating Parties/100 at 20.
11 However, with the five-year opt-out, it is unlikely that customers will return to cost of service
12 rates. In fact, while customers in PGE’s five-year program are entitled to return with advance
13 notice, almost no PGE customers have returned to cost of service rates after participating in the
14 five-year opt-out program. Stipulating Parties/100 at 20.² Moreover, the Stipulation proposal
15 requires returning customers to provide four years’ notice before returning, providing adequate
16 time to plan for their return. Stipulating Parties/100 at 20.

17 The Commission should not accept PacifiCorp’s argument that its status as the
18 emergency supplier for long-term opt-out customers justifies its refusal to recognize a BPA
19 transmission credit. The Commission’s administrative rules require PacifiCorp to provide
20 “emergency default service” only when an ESS stops providing service, and require PacifiCorp
21 to charge the returning customer rates necessary to recover the costs of providing such
22 emergency service. *See* OAR 860-038-0280(3). PacifiCorp has provided no evidence that such
23 emergencies have ever occurred to date under its existing programs, or have ever occurred in

24
25 ² Although the Stipulating Parties’ testimony states that no PGE customers have returned to cost of
26 service, the Stipulating Parties subsequently became aware in preparing a discovery response that 0.1
aMW representing one small account on PGE’s five-year opt-out program returned to cost-of-service
rates. The customer’s remaining accounts remained on the five-year opt-out.

1 PGE's five-year opt-out program. Nor does PacifiCorp explain why it cannot secure short-term
2 transmission rights necessary to serve customers returning in the rare circumstance that a
3 customer is entitled to return immediately in an emergency.

4 Finally, the BPA transmission credit is part and parcel with the other elements of the
5 Stipulation. Parties to the Stipulation conceded materially distinct positions on other issues to
6 arrive at the compromise that includes the BPA transmission credit, and reserved their right to
7 litigate those positions should the Commission remove any elements of the Stipulation, such as
8 the BPA transmission credit. The Commission should consider the inclusion of the BPA
9 transmission credit in light of the overall reasonableness of the Stipulation's resolution of the
10 various complex issues related to creation of a viable PGE-type five-year opt-out program for
11 PacifiCorp. *See PacifiCorp Request for a General Rate Revision*, Docket UE 210, Order No. 10-
12 022 at 6. The evidence on the record shows the Stipulation will result in just and reasonable
13 rates with inclusion of the BPA transmission credit.

14 **f. Eliminate PacifiCorp's Consumer Opt Out Charge.**

15 The Stipulation's final and most important change to PacifiCorp's proposed transition
16 adjustment rates is to eliminate PacifiCorp's proposed Consumer Opt Out Charge. *Stipulation* at
17 ¶ 9. As initially proposed, this charge compressed PacifiCorp's estimate of stranded generation
18 costs for years six through twenty into an annual Consumer Opt Out Charge assessed during the
19 five-year transition period. *See PAC/200, Duvall/5*. In other words, in *addition* to the recovery
20 of Schedule 200 and the transition adjustments associated with the first five years after the
21 customer's opt-out election, PacifiCorp proposed that program participants pay for alleged
22 stranded costs reaching twenty years into the future at the same time. *Stipulating Parties/100* at
23 22. The Company will fully recover any stranded costs within five years without the need to
24 engage in the inaccurate exercise of estimating generation and market costs beyond that
25 timeframe. Although PacifiCorp has revised its proposal to limit the Consumer Opt Out charge
26 to years six through ten, the revised proposal is still unjustified and should therefore be rejected

1 by the Commission for several reasons.

2 First, the evidence demonstrates that PacifiCorp's system will adjust to the lost load
3 within five years. Based upon input from the Company, it will take less than five years for
4 expected system load growth to fill the maximum void created by the departing five-year opt-out
5 customers. Stipulating Parties/100 at 11. The maximum departed load of 175 aMW is a small
6 proportion of PacifiCorp's system load of 7,000 aMW and will easily be replaced by system load
7 growth, which is projected to be 512 aMW from 2013 to 2020. Stipulating Parties/100 at 24.
8 PacifiCorp claims that it plans and operates its system on an integrated basis, and Oregon
9 currently pays for the costs of load growth on the Company's eastern system. ICNU/100,
10 Schoenbeck/6. Thus, load growth on the entire system is relevant.

11 Additionally, expensive front-office load-meeting transactions can be scaled back in
12 anticipation of the reduced direct-access-related loads, thus reducing PacifiCorp's supply
13 commitment in response to long-term opt outs. Staff/100, Compton/12. PacifiCorp's Integrated
14 Resource Plan indicates that its preferred portfolio consists of over 1,000 MW of summer peak
15 season front office transactions for the next dozen years on the west side of its system alone,
16 which typically take place on a year-by-year (or so) basis and can be adjusted downward within
17 the five-year transition period when 175 aMW of load may elect direct access. Staff/100,
18 Compton/10. According to PacifiCorp, however, the Commission's direct access regulation on
19 cost shifts "does not contain a front-office transaction exception." PAC/400, Duvall/6 (citing
20 OAR 860-038-0160(1)). Contrary to the legal argument of PacifiCorp's witness, the direct
21 access law and regulations require PacifiCorp to make appropriate adjustments to its portfolio
22 when customers elect to opt out of cost of service rates on a long-term basis. Scaling back
23 expensive front office transactions is an appropriate response that, on a system-wide basis,
24 should enable the Company to absorb load loss from Oregon's modest direct access program.

25 PacifiCorp also relies heavily on a provision of the Multi-State Process ("MSP") that it
26 argues will prevent load growth in other states from absorbing the lost direct access load.

1 PacifiCorp's argument points to a provision in Section X of the 2010 MSP Protocol, adopted by
2 Wyoming, Utah, Idaho, and Oregon, and used by California, that effectively requires that Oregon
3 ratepayers continue to be allocated the generation (and transmission) costs associated with direct
4 access load even after customers have permanently elected direct access service. Stipulating
5 Parties/100 at 25; Noble Solutions/103. This provision is outdated. It was originally intended to
6 allow Oregon to retain the allocation of load responsibility for the purpose of permitting Oregon
7 to transfer freed-up resources among Oregon customer classes, which is no longer of interest.
8 Stipulating Parties/100 at 25. Additionally, the 2010 Protocol runs only through the end of 2016,
9 and Oregon Staff has already taken steps with other parties to seek amendment of this section of
10 the MSP. Stipulating Parties/100 at 24. The transition period for a five-year opt-out program, if
11 adopted effective 2015, would run through 2019, well after the MSP would have been amended.
12 Stipulating Parties/100 at 24.

13 Moreover, even in the absence of changes to Section X of the MSP, nothing binds the
14 State of Oregon and the OPUC to continue to adhere to the unfair direct access provision that
15 will stymie implementation of S.B. 1149 for PacifiCorp. The current MSP's treatment of
16 Oregon's direct access load loss is unlike treatment of load loss in other states associated with
17 industrial load shutting down or relocating, energy efficiency programs, and customers switching
18 to self-supply with behind the meter generation. Stipulating Parties/100 at 26. Only Oregon's
19 direct access program is singled out in a manner that traps the cost of the departing load in the
20 state of origin. Stipulating Parties/100 at 26. As noted above, PacifiCorp operates its system as
21 a whole, and its Oregon customers (including direct access eligible customers) have been paying
22 for load growth in other states because PacifiCorp claims to operate its system as an integrated
23 whole. It would be unjust and unreasonable to deprive Oregon customers of the benefits of that
24 load growth in this case where Oregon seeks to implement a viable direct access program. The
25 Commission should not allow Section X to present a barrier to the Commission's ability to
26 finally develop a viable direct access program for PacifiCorp, as envisioned by S.B. 1149 over a

1 decade ago.

2 PacifiCorp's proposed Consumer Opt Out Charge contradicts the Commission's directive
3 that PacifiCorp adopt a PGE-type five-year program. In substance, PacifiCorp's proposal is a
4 20-year (now 10-year) transition adjustment scheme that is condensed down into a five-year
5 package. Stipulating Parties/100 at 23. The Commission's Order 12-250 allows PacifiCorp to
6 "tailor its program to fit its circumstances." *In re Public Utility Commission of Oregon:*
7 *Investigation of Issues Relating to Direct Access*, Docket No. UM 1587, Order No. 12-500 at 9.
8 However, there are no special circumstances that warrant PacifiCorp's imposition of 10 years of
9 transition costs rather than the five-year transition charge adopted in the PGE model. *See*
10 Stipulating Parties/100 at 23. The Stipulation's elimination of the Consumer Opt Out Charge is
11 reasonable and necessary to prevent unjust rates being assessed to participants of PacifiCorp's
12 five-year opt-out program.

13 In sum, for the five-year period directed in Order No. 12-500, the Stipulating Parties'
14 proposal follows the Commission's regulations to provide a reasonable calculation of "the value
15 of the asset output at projected market prices *for a defined period* to an estimate of the revenue
16 requirement of the asset for the *same time* period." OAR 860-038-0005(41) (emphasis added).
17 In contrast, PacifiCorp's proposal relies entirely on Section X to justify a transition cost in the
18 first five years that exceeds the actual transition costs in those same five years. Front-loading ten
19 years of alleged costs into a five-year period of recovery is inconsistent with the administrative
20 rules and assures that the opt-out program would be a negative value proposition for participants
21 for the full five years, dooming the program to failure. *See Noble Solutions/100, Higgins/5, 14,*
22 *20.* Even if the Commission were to conclude that transition costs extend beyond the five-year
23 transition period, it would be less onerous for these costs to be recovered by extending the period
24 in which transition adjustments are recovered to match the period for which costs are being
25 recovered. In no event should the Commission allow front-loading of these alleged costs into the
26 first five years as PacifiCorp has proposed.

1 **2. Eligibility For the Five-Year Opt-Out Program.**

2 The Stipulation generally adopted PacifiCorp's eligibility requirements for participation
3 in the program, with clarifications that the Stipulating Parties did not believe to be substantive.
4 Stipulating Parties/100 at 5. PacifiCorp's proposal allows customers to participate in the five-
5 year opt-out if they currently receive delivery service under Schedules 47, 48, 747, 748; or if the
6 customer can aggregate 2 MW or more of load under a single corporate name under delivery
7 service Schedules 30, 47 and/or 48, or 730, 747, and/or 748. PAC/101, Steward/1.

8 The Stipulation contains a clarification to these criteria. Under the Stipulation, once a
9 meter meets the opt-out eligibility requirement, all other nonresidential meters billed to the same
10 *entity* or billing address, as opposed to the same corporate *name*, with lesser annual usage located
11 on the same property are also eligible to opt out at the time the large nonresidential customer
12 elects to opt out of cost-based supply service for that property. *Stipulation* at ¶ 14. For these
13 other meters, the Stipulation states that the Schedule 296 transition charge will be the charge
14 associated with the largest meter at the premises. *Stipulation* at ¶ 14. This element of the
15 Stipulation recognizes that it would be more efficient and reasonable to allow a customer to
16 include accounts on the same property in its opt out. Stipulating Parties/100 at 6. The
17 Stipulation's clarification was also intended to allow an entity with central utility bill processing,
18 a common billing address, and energy management, but operating under different trade names, to
19 include all of their facilities that would otherwise be eligible to opt out. Stipulating Parties/100
20 at 6.

21 In its reply testimony, PacifiCorp has agreed to allow accounts of the same corporate
22 *entity*, as opposed to the same corporate *name*, to aggregate otherwise eligible meters, but
23 opposed the Stipulation's inclusion of accounts below the eligibility criteria in the aggregated opt
24 out. PAC/300, Steward/7-10. PacifiCorp's objection to allowing inclusion of meters on the
25 same premises billed to the same entity appears to be an attempt to frustrate success of the
26 program by limiting opportunities for customers with smaller accounts on a single property, and

1 should be rejected. All of the accounts at issue would be nonresidential accounts eligible for
2 direct access programs. ORS 757.601(1). According to PacifiCorp’s witness, billing different
3 customer classes under the same transition adjustment rate would violate ORS 757.310(2), which
4 prohibits a utility from charging different rates to two customers with substantially similar
5 services. This legal argument is meritless. The customer’s accounts on the same property would
6 no longer be purchasing generation service from PacifiCorp and would instead each be taking the
7 same type of distribution related services from PacifiCorp. Additionally, the Commission has
8 broad discretion to set transition adjustment rates. ORS 757.607(2). The Stipulation’s
9 clarification is a reasonable part of the overall compromise embodied by the Stipulation.

10 **3. The Program Cap.**

11 The Stipulation adopts PacifiCorp’s proposed program cap of 175 aMW. *Stipulation* at ¶
12 13. The Stipulation further provides that any party may propose that the size of the cap be
13 increased during the program term. *Stipulation* at ¶ 13. PacifiCorp provided no testimony in
14 response to the clarification that any party may request that the Commission increase the size of
15 the 175 aMW cap, and this issue appears to be uncontested.

16 **4. Right to Return to Cost of Service Rates.**

17 The Stipulation provides that a customer participating in the five-year opt-out program
18 should be allowed to return to cost of service rates with four years’ notice to PacifiCorp.
19 *Stipulation* at ¶ 11. Although PGE’s program allows customers to return with three years’
20 notice, PacifiCorp’s initial proposal for its PGE-type program was to *never* allow the direct
21 access customers to return to cost of service rates. *Stipulating Parties/100* at 7-9. PacifiCorp’s
22 reply testimony has conceded the reasonableness of providing the right to return with four years’
23 advance notice, but PacifiCorp has proposed a new condition. PacifiCorp now proposes that
24 once a customer returns to cost-of-service rates, it may not again participate in the five-year opt
25 out program. *PAC/300, Steward/6*. PacifiCorp’s limited concession appears to be motivated to
26 allow PacifiCorp to now argue that the five-year program is not “permanent,” rather than by a

1 genuine interest in making a reasonable recommendation in response to the Commission's
2 directive to implement a PGE-type program. PacifiCorp takes the position that this single return
3 condition is necessary to prevent excessive switching back and forth between options, but
4 provides no testimony or evidence to support the theory that participants in this five-year opt-out
5 program would engage in such behavior. *See* PAC 300/Steward/2.

6 The Stipulating Parties oppose PacifiCorp's new conditions on the right to return to cost
7 of service rates because these new conditions will discourage eligible customers from
8 participating in the program. These are not conditions of PGE's program, which also contains a
9 year less of notice than the four-year notice contained in the Stipulation for PacifiCorp's
10 program. The Stipulation's proposal is reasonable without PacifiCorp's new conditions.

11 **5. Treatment of New Loads.**

12 The Stipulation reserves the right of any party to argue in a future proceeding for
13 different transition adjustment treatment for new loads. *Stipulation* at ¶ 17. Treatment of new
14 loads was a concept proposed by Vitesse. Although a number of Stipulating Parties shared some
15 level of interest in the issue, Staff did not agree that the issue was appropriate to be addressed in
16 this Stipulation, and thus the issue is reserved for a future proceeding. *Stipulating Parties/100* at
17 21. PacifiCorp did not address this issue in its reply testimony, and does not appear to contest
18 reservation of the right to address treatment of new loads.

19 **6. Election Window.**

20 The Stipulation calls for the election window to be held for a month-long period, during
21 November each year. *Stipulation* at ¶ 15. This duration is necessary to give customers adequate
22 time to work through all of the details and approvals necessary to execute a long-term opt-out
23 commitment. *Stipulating Parties/100* at 26. The proposed one-month election window also is
24 consistent with the election window for PGE's five-year program. *Stipulating Parties/100* at 27.
25 PacifiCorp argues against a month-long window in November on the ground that, under the
26 current transition adjustment mechanism ("TAM") guidelines, PacifiCorp posts the transition

1 adjustment rates on November 15. PAC/300, Steward/10. PacifiCorp's solution is to use a
2 three-week window beginning on November 15. PacifiCorp argues that the election window
3 cannot reach too late into December prior to commencement of direct access service on January
4 1, because PacifiCorp is entitled to take 13 business days to complete the necessary transactions
5 with the ESS. PAC/300, Steward/11 (citing OAR 860-038-0445(8)-(9)).

6 The Stipulation's proposal is more reasonable than PacifiCorp's proposal. The
7 Stipulating Parties do not oppose shifting the timing of the month-long window into December to
8 the extent possible, at least for the first year of the program where the existing procedural
9 schedule in the 2015 TAM (Docket No. UE 287) calls for final transition adjustment rates to be
10 posted on November 17, 2014. *See* Stipulating Parties/100 at 27. However, based on
11 PacifiCorp's own argument, PacifiCorp's proposal to extend the window even a week into
12 December leaves barely enough time for the ESS to establish necessary direct access service in
13 the 13 business days PacifiCorp argues it will take to complete the transaction. In future years,
14 PacifiCorp should simply make its annual TAM filing two weeks earlier to enable it to post the
15 final transition adjustment rates on November 1st, and there will be no need to shift the window
16 into December. Thus, the Stipulation's inclusion of a month-long window in November is
17 reasonable. PacifiCorp should be directed to make the appropriate filing to shift the schedule for
18 its annual TAM filing.

19 **7. Program Term.**

20 The Stipulation sets a program term of at least four annual election windows
21 commencing with the November 2014 election window, for service years 2015 to 2018.
22 *Stipulation* at ¶ 16. The Stipulation further states that the Stipulating Parties will reconvene to
23 evaluate the effectiveness of the program no later than January 2017, and recommends that the
24 Commission instruct PacifiCorp to participate in such meetings. *Stipulation* at ¶ 16. This is the
25 same term as applies to the current PGE program. *Stipulating Parties/100* at 27. PacifiCorp also
26 appears to agree that, if the Stipulation is adopted, the parties should reconvene to evaluate the

1 program. PAC/300, Steward/12-13. Thus, the program term appears to be uncontested.

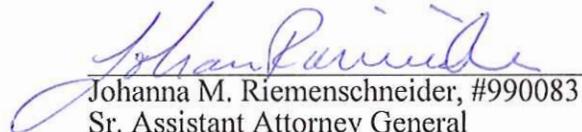
2 **IV. CONCLUSION**

3 For the reasons set forth herein, the Stipulating Parties recommend that the Commission
4 adopt the Stipulation without material modification and direct PacifiCorp to implement a five-
5 year opt-out program with the terms described in the Stipulation.

6 DATED this 14th day of May 2014.

7
8 Respectfully submitted,

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**UE 267 STIPULATING PARTIES' PREHEARING BRIEF
ADDENDUM A**

Issue	Stipulation Position	PacifiCorp's Reply Position
Schedules 200 and 296	Assess fixed generation rates and transition adjustment rates for five-year transition period without additional Consumer Opt Out Charge	Opposed to Stipulation. Would compress ten years of fixed generation and transition adjustment rates into a five-year payment
Blending of thermal costs and market prices	Use same mitigation provision as in Schedule 294 and Schedule 295	Agrees with Stipulation
Heavy load and light load hours distinction	Eliminate distinction between heavy load and light load hours	Agrees with Stipulation
50 aMW Load Increments	Assume that 50 aMW of load, not 175 aMW, opts out each year	Agrees with Stipulation
BPA Transmission Credit	Include a BPA transmission credit equal to approximately half of the full value of BPA PTP transmission	Opposed to Stipulation. Would provided no BPA transmission credit
Consumer Opt Out Charge	Eliminate Consumer Opt Out Charge	Opposed to Stipulation
Eligibility	Allow all of single entity's nonresidential accounts at the same site to be included in an eligible account's opt out	Opposed to Stipulation.
Program Cap	175 aMW, with right for any party to request an increase	Expressed no agreement or opposition
Right to Return to Cost of Service Rates	Allowed with four years' notice	Opposed to Stipulation. Would require additional condition that four years begins at end of year of notice and forever bar returning customer from five-year program
Treatment of New Loads	Reserves right of any party to address treatment of new loads	Expressed no agreement or opposition
Election Window	Month-long window during November each year	Opposed to Stipulation. Would provide only a three-week window beginning November 15
Program Term	2015 to 2018 Service years, with a meeting to evaluate the program by January 2017	Agrees with Stipulation

CERTIFICATE OF SERVICE

I hearby certify that on May 14, 2014, I served the foregoing JOINT PRE-HEARING BRIEF OF STIPULATING PARTIES document upon all parties of record in this proceeding by electronic mail only as all parties have waived paper service.

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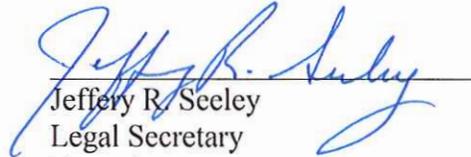
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DATED this 14th day of May, 2014.


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