

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 236

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

ORDER

Investigation into the Changes Proposed for  
the 3 and 5 year Cost of Service Opt-Out  
Program for Large Non-Residential Customers.

DISPOSITION: STIPULATION ADOPTED; NEW GENERIC DOCKET TO  
BE OPENED.

**I. INTRODUCTION**

In this order, the Public Utility Commission of Oregon (Commission) adopts a stipulation between Portland General Electric Company (PGE), the Industrial Customers of Northwest Utilities (ICNU), Noble Americas Energy Solutions, LLC (Noble Solutions) and the Commission Staff. In their stipulation the parties resolve all issues relating to PGE. We also adopt the parties' recommendation to open a generic docket to address other direct access issues that are generic in nature – applicable equally to PacifiCorp, dba Pacific Power.

**II. PROCEDURAL HISTORY**

On June 30, 2011, PGE filed an application and tariff revisions seeking to update certain aspects of its long-term opt-out programs for large non-residential customers. The cost of service update implements the provision of OAR 860-038-0275(5), which provides that “at least once each year, electric companies must offer customers a multi-year direct access program with an associated fixed transition adjustment.” Additionally, PGE proposed changes to its program “to reflect the current operating environment including recently revised cost-of-service rate schedules, and to reduce the potential impacts of these programs on nonparticipants.”

Providence Health & Services and Noble Solutions each filed comments with the Commission protesting PGE’s proposed changes.<sup>1</sup> On August 23, 2011, the Commission suspended PGE’s tariff filing.

<sup>1</sup> Providence Health & Services did not file a petition to intervene.

A prehearing conference was held on September 26, 2011. On November 9, 2011, PGE filed additional testimony regarding its proposed changes. The parties conducted discovery and held two settlement conferences.

### III. DISCUSSION

#### A. The Stipulation

Following discussions, the parties reached a settlement of all issues and filed a stipulation for Commission adoption. The stipulation is attached as Appendix A. As noted by the parties in their testimony in support of the stipulation, in its initial testimony PGE proposed seven changes to its program. The proposed changes were as follows:

1. Lower the Schedules 485 and 489 participation level to 200 MWa<sup>2</sup> from 300 MWa.
2. Remove the 2 percent rate impact limiter related to true-up of fixed generation revenue requirements.
3. Shorten the enrollment window to the last half of September.
4. Change the Schedule 120 Transition Adjustment calculation applicable to 3- and 5-year opt-out customers to be on the same basis as the Schedule 128 Short-Term Transition Adjustments.
5. Require three-year notice to return to COS<sup>3</sup> pricing for new participants of the 5-year opt-out commencing in 2013.
6. Remove the Schedule 84 Large Load Split Service Rider.
7. Eliminate the Quarterly Direct Access Enrollment windows.

The parties addressed each of these proposed changes in the stipulation and reached the following resolutions:

#### 1. *Participation Level*

PGE initially proposed this change to help mitigate the impacts of the fixed generation cost true-up on no-participants. Because the parties found another way to mitigate these impacts, they concluded that PGE's proposed reduction was not necessary.

#### 2. *Rate Impact Limiter Removal*

PGE proposed the change because it believed the current language allowed for the possible interpretation that PGE shareholders would bear the burden for the amounts

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<sup>2</sup> average annual megawatt.

<sup>3</sup> cost of service.

exceeding the 2 percent limiter. PGE believed that interpretation would result in a de facto disallowance of costs previously deemed to be just and reasonable.

In the stipulation the parties agreed to provisions that reduce the likelihood that impacts will exceed 2 percent. They also agreed to an automatic adjustment clause that would provide PGE shareholders certainty of recovery in the event the impacts do exceed 2 percent. With these changes, the parties agreed to keep the 2 percent rate impact limiter in place, subject to additional parameters, including a participation cap, as specified in the stipulation.

### **3. *Shorten the Enrollment Window***

PGE proposed to shorten the enrollment window to mitigate the potential large true-up impacts on non-participants that might result from large enrollment in the long-term opt-out program due to changes in wholesale market prices. Because of the effective annual participation cap, PGE's concern is greatly mitigated. Hence, the parties agreed that the current September month-long window should remain in effect.

### **4. *Change the Schedule 129 Transition Adjustment***

PGE proposed a methodological change to the calculation basis of the Schedule 129 Transition Adjustment because of concerns with the consistency, accuracy, and equity of the current method. The proposed changes allow for inclusion of short-term resources and recognize the difference in energy prices across rate schedules and delivery voltages. Going forward there would remain only slight differences between the calculation of the Schedules 128 and 129 Transition Adjustments.

In their stipulation the parties adopted PGE's proposed changes.

### **5. *Three Year Notice***

PGE proposed this change for future participants to be more consistent with the Integrated Resource Planning process. Other parties argued that the current two-year notice provision is reasonable. In their stipulation the parties agreed to make no change in the current notice provisions.

### **6. *Eliminate Schedule 84 Split Load Service Rider***

PGE proposed to eliminate Schedule 84 because that option potentially increases the volatility of PGE's cost of service loads on a percentage basis. PGE would have to provide the same amount of load following capacity, the costs of which would be spread over less energy. In their stipulation the parties agreed to eliminate Schedule 84.

### **7. *Eliminate the Quarterly Direct Access Window***

PGE proposed to eliminate the quarterly direct access windows because it perceived a lack of interest from customers, based on low participation levels. PGE also wished to

reduce the administrative burden of having multiple direct access enrollment windows each year.

The parties agreed that two of the three Quarterly Direct Access Windows should be eliminated. The Second Quarter Window will remain in its current form to allow for direct access enrollment of customers who intended to enroll in the Annual Window, but for some reason were unable to do so.

#### **B. The Generic Proceeding**

Although the parties settled the issues relating to each of the changes proposed by PGE, they did not settle all issues relating to direct access. The reserved issues relate to franchise fees and the lack of competitive suppliers, given that only one energy service supplier (ESS) is currently offering to serve direct access customers in Oregon. They propose that the Commission convene a generic proceeding to consider these other issues.

According to the parties, one or more cities in PGE's service territory has indicated that it may seek to impose franchise fees on ESSs. Currently PGE recovers the costs related to franchise fees (that are not directly assigned) through its system usage charge. The system usage charge applies to all customers, regardless whether they are taking direct access. If a city imposes a franchise fee on an ESS (which would be passed on to the customer) and PGE continues to collect the system usage charge, the direct access customer would be required to pay twice for franchise fees, causing a disincentive to elect direct access. Meanwhile, because of the way franchise fees are collected in rates, there can be costs imposed on PGE for franchise fees when a customer that was served by an ESS chooses to return to PGE's sales service in a year other than a general rate case test year. The parties propose that franchise fee-related issues be explored in the generic proceeding.

The parties note that the direct access rules have been in place for nearly ten years. They believe that the investigation should allow parties to propose changes to the rules to improve the program and increase participation.

#### **C. Commission Resolution**

We find the terms of the stipulation to be reasonable and adopt it. The stipulation improves PGE's direct access program, while maintaining protections for non-participating customers. Our review of the stipulation was greatly enhanced by the parties' testimony, where they went through each of PGE's proposed changes and explained how each change was addressed, and the reasons for their proposed resolutions.

Regarding their proposed generic proceeding, we agree that issues identified by the parties are not specific to PGE and should be addressed more broadly. We recognize that the lack of competitive suppliers in direct access (a single ESS) suggests that changes to the program may be necessary. The franchise fee issue has implications for customers, suppliers, and for the utilities that should be addressed on a timely basis. The generic proceeding is the appropriate procedural vehicle to consider these matters.

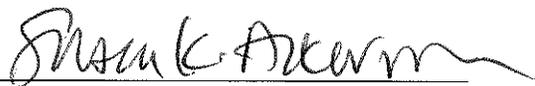
## IV. ORDER

IT IS ORDERED that:

1. The Stipulation between Portland General Electric Company, the Industrial Customers of Northwest Utilities, Noble Americas Energy Solutions, LLC, and the Staff of the Public Utility Commission of Oregon is adopted and attached as Appendix A.
2. Advice No. 11-14 is permanently suspended.
3. Portland General Electric Company shall file tariff sheets consistent with this order.
4. A new docket will be opened to address generic issues relating to direct access.

Made, entered, and effective FEB 23 2012.

  
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**John Savage**  
Commissioner

  
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**Susan K. Ackerman**  
Commissioner

  
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**Stephen M. Bloom**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**UE 236**

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION	)	
OF OREGON	)	<b>STIPULATION</b>
	)	
Investigation into the Changes Proposed	)	
for the 3 and 5 year Cost of Service Opt-Out	)	
Program for Large Non-Residential	)	
Customers.	)	

This Stipulation (“Stipulation”) is among Portland General Electric Company (“PGE”), Staff of the Public Utility Commission of Oregon (“Staff”), the Industrial Customers of Northwest Utilities (“ICNU”), and Noble Americas Energy Solutions, LLC. (“Noble Solutions”) (collectively, the “Parties”). There are no other parties in this docket.

**I. INTRODUCTION**

On June 30, 2011, PGE filed an application and tariff revisions seeking to update certain aspects of PGE’s long term opt-out programs for large non-residential customers. A prehearing conference was held on September 26, 2011, and a procedural schedule was set for this docket. On November 9, 2011, PGE filed additional testimony regarding the seven specific changes requested. The Parties reviewed PGE’s filing and work papers, and sent and responded to data requests. The Parties held two settlement conferences/workshops. As a result of those discussions, the Parties have reached agreement settling the issues raised in this docket as set forth below. The Parties request that the Commission issue an order adopting this Stipulation.

**II. TERMS OF STIPULATION**

1. This Stipulation settles all issues in this docket.

2. The minimum demand thresholds of 250 kWa per site, and 1 MWa in aggregate in tariff Schedules 485 and 489 will remain in effect.

3. PGE's cost-of-service opt-out options under Schedule 485 and Schedule 489 and the 2% rate impact limiter related to fixed generation costs contained in PGE Schedule 129, Special Condition 2, will be amended as follows:

- a. At least four weeks prior to the beginning of the long-term shopping window, PGE will estimate and either post on its website, or state in a transmittal letter to an advice filing, the maximum amount of incremental load that can switch to the long-term opt-out program without violating the 2% rate impact limiter. For those Enrollment Periods in which the Schedule 129 Transition Adjustment is expected to be a positive charge to participants, the revenues from Schedule 129 will be applied to the 2% rate impact test.
- b. The amount of incremental load that is eligible to switch to the long-term opt-out program in any given non-rate-case year will be subject to a Participation Cap that is defined to be the larger of: (1) the amount of load identified in Section 3.a, above, or (2) the amount of load that has submitted formal notice to PGE of participation in the long-term opt-out program up to and including the entire load of the first customer causing the amount of load identified in Section 3.a, above, to be exceeded.
- c. For purposes of qualifying under the Participation Cap identified in Section 3.a, above, customers will be permitted to enter the long-term opt-out program on a first come, first served basis, determined by the date and time that the

customer submits its formal notice to PGE. Formal notice will be a signed Schedule 485 or Schedule 489 Agreement.

d. Except for the overall participation limit of 300 MWa, there will be no limit on incremental participation in the long-term opt-out program for enrollment periods that fall within the rate-effective period applicable to a new general rate case.

e. There will continue to be an overall participation limit of 300 MWa.

4. The 2% rate impact limiter will remain in place, subject to the provisions in paragraph 3, above. If, the provisions of paragraph 3 notwithstanding, switching to the long-term opt-out program would cause a net rate impact on PGE Cost-of-Service customers exceeding the 2% rate impact limiter, PGE will be made whole through a balancing account of the costs exceeding the 2% rate impact limiter. This balancing account will be considered an “automatic adjustment clause” as defined in ORS 757.210.

5. The enrollment period for the long-term opt-out program shall commence each September 1 and will last through the month of September, closing at 5:00 PM PST, September 30 or the last business day preceding September 30 if September 30 falls on a weekend. PGE will post indicative cost of service rates on its website concurrent with the opening of the program window each year.

6. The Schedule 129 Transition Adjustment applicable to three- and five-year opt-out customers will be calculated on the same basis as the Schedule 128 Transition Adjustments.

7. Participants in the five-year opt-out program must continue to provide two-years’ notice for return to COS pricing as defined in the current Schedules 485 and 489.

8. Both the Third and Fourth Quarter Schedule 128 Balance of Year windows will be terminated. The Second Quarter Balance of Year window will continue in its current form.

9. ICNU has identified two potential disincentives to participation in PGE's direct access programs, including the multi-year opt out options. First, one or more cities within PGE's service territory have indicated that they may seek to impose franchise fees on energy service suppliers (ESSs). Currently, PGE recovers the costs related to franchise fees that are not directly assigned through its system usage charge. The system usage charge applies to all large customers, regardless of whether they are on direct access. If a city imposes a franchise fee on an ESS (which will be passed on to the customer) and PGE continues to collect the system usage charge, the direct access customer could be required to effectively pay twice for franchise fees, which could create an inappropriate disincentive to elect direct access. PGE believes that because of the way franchise fees are collected in rates, there can be costs imposed on PGE for franchise fees when a customer that was served by an ESS when rates were set in a particular test year chooses to return to cost of service in other than a general rate case test year. This particular situation results in inadequate recovery of PGE's franchise fee obligation because PGE will incur franchise fee obligations on the energy revenues of the returning customer's load when these energy revenues and the corresponding franchise fee revenue requirements were not in the test period forecast. ICNU's second issue is that only one energy service supplier is currently offering to serve direct access customers in Oregon. ICNU believes that the lack of competitive suppliers is a result of onerous certification requirements for participating in the Oregon direct access market. PGE does not agree.

The Parties agree that these issues should be investigated; however, the parties disagree on the appropriate solutions. ICNU has proposed that PGE offer large customers the option of

allowing them to buy from the wholesale market in a manner similar to Puget Sound Energy's Schedule 449 program. PGE is uncertain whether this type of program could or should be implemented. ICNU also believes that franchise fees should not be collected through the system usage charge. However, there is no agreement on how to resolve potential franchise fee issues.

While the issues being raised in this case involve PGE, the same and other issues apply to PacifiCorp's direct access programs, including program participation levels; therefore, the parties believe that a generic Commission investigation is the appropriate procedure for resolving these disputes. In addition, an investigation would provide an opportunity to address any other revisions to the direct access rules that may be proposed by parties to the investigation docket.

To address these issues, the Parties agree to request and support a Commission investigation into the following:

- a) How to reduce or eliminate franchise fee-related disincentives to both potential direct access customers and PGE.
- b) Consideration of a "Puget Sound Energy-type" open access program for customers with peak demand of 10 MW or greater.
- c) Update direct access rules as needed.

10. PGE agrees to offer a multi-year opt out consistent with this stipulation for the September enrollment period in September 2012 for a January 1, 2013 start date, and for the September enrollment period in 2013 for a January 1, 2014 start date. The parties agree to convene again no later than January 2014 to discuss and evaluate the effectiveness of the long-term opt-out program, to propose any changes to program parameters, and to attempt to reach consensus on a request for Commission approval of subsequent enrollments in multi-year opt out programs.

11. Proposed revised tariff Schedules 128 and 129, containing the changes agreed to herein, are attached hereto as Exhibit A.

12. The Stipulating Parties recommend and request that the Commission approve this Stipulation as an appropriate and reasonable resolution of the issues in this docket.

13. The Stipulating Parties agree that this Stipulation is in the public interest and will result in rates that are fair, just, and reasonable.

14. The Stipulating Parties agree that this Stipulation represents a compromise in the positions of the Stipulating Parties. Without the written consent of all parties, evidence of conduct or statements, including but not limited to term sheets or other documents created solely for use in settlement conferences in this docket, are confidential and not admissible in the instant or any subsequent proceeding, unless independently discoverable or offered for other purposes allowed under ORS 40.190.

15. If the Commission rejects all or any material part of this Stipulation, or adds any material condition to any final order which is not contemplated by this Stipulation, each Stipulating Party reserves the right (i) pursuant to OAR 860-001-0350(9), to present evidence and argument on the record in support of the Stipulation and (ii) pursuant to OAR 860-001-0720, to seek rehearing or reconsideration. Nothing in this paragraph provides any Stipulating Party the right to withdraw from this Stipulation as a result of the Commission's resolution of issues that this Stipulation does not resolve.

16. This Stipulation will be offered into the record in this proceeding as evidence pursuant to OAR § 860-01-0350(7). The Stipulating Parties agree to support this Stipulation throughout this proceeding and in any appeal, provide witnesses to sponsor this Stipulation at the hearing (if specifically required by the Commission), and recommend that the Commission issue

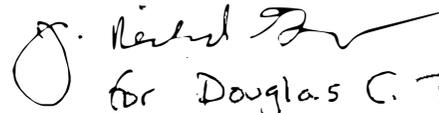
an order adopting the settlements contained herein. The Stipulating Parties also agree to cooperate in drafting and submitting an explanatory brief or written testimony required by OAR § 860-01-0350(7).

17. By entering into this Stipulation, no Stipulating Party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed by any other Stipulating Party in arriving at the terms of this Stipulation, other than those specifically identified in the Stipulation. Except as provided in this Stipulation, no Stipulating Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.

18. This Stipulation may be signed in any number of counterparts, each of which will be an original for all purposes, but all of which taken together will constitute one and the same agreement.

DATED this 10 day of January, 2012.

ORDER NO. 12 057

  
for Douglas C. Tingey

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PORTLAND GENERAL ELECTRIC  
COMPANY

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STAFF OF THE PUBLIC UTILITY  
COMMISSION OF OREGON

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INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

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NOBLE AMERICAS ENERGY  
SOLUTIONS, LLC.

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PORTLAND GENERAL ELECTRIC  
COMPANY

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STAFF OF THE PUBLIC UTILITY  
COMMISSION OF OREGON

*S. Bradley Ullve*  
INDUSTRIAL CUSTOMERS OF  
NORTHWEST UTILITIES

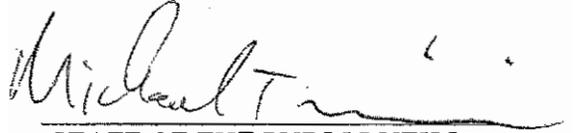
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NOBLE AMERICAS ENERGY  
SOLUTIONS, LLC.

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