ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 28, 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 POST-HEARING REPLY BRIEF OF STIPULATING PARTIES with a certificate of service in the above-captioned docket. This filing is made on behalf of the Stipulating Parties.

Sincerely,

Johanna M. Riemenschneider
Senior Assistant Attorney General
Of Attorneys for the Staff of the Public Utility Commission of Oregon

Enclosures
JMR:krt /DM5630147
c: UE 267 Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 UE 267

4 In the Matter of: PACIFICORP dba PACIFIC POWER 5 Transition Adjustment, Five-Year Cost of Service Opt-Out 6	JOINT POST-HEARING REPLY BRIEF OF STIPULATING PARTIES

7

8 **I. INTRODUCTION AND SUMMARY**

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

16 The Stipulating Parties' pre-hearing brief addressed the merits of each element of the
17 Stipulation and the reasons why the Public Utility Commission of Oregon ("OPUC" or
18 "Commission") should approve the Stipulation in its entirety, as an integrated whole. The
19 Stipulating Parties will not repeat, in this brief, the arguments made in their pre-hearing brief. In
20 this post-hearing brief, we will respond to arguments in PacifiCorp's post-hearing brief.

21 PacifiCorp's proposal to institute a Consumer Opt-Out Charge ignores the policies
22 underlying Oregon's direct access law. Contrary to PacifiCorp's assertions, Oregon's policy is
23 to encourage meaningful opportunities for competitive retail service while providing for the
24 recovery of projected transition costs in a manner that prevents unwarranted shifting of costs to
25 non-participating customers. In order to promote competitive choice, the Commission must

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create incentives for the utility to make appropriate operational responses to mitigate potential stranded costs resulting from departing customer load. PacifiCorp's proposed Consumer Opt-Out Charge does not reflect the State's policy objectives respecting direct access.

Contrary to the State's objectives, PacifiCorp seeks a program that provides it with no incentive to mitigate alleged stranded costs. PacifiCorp's proposed approach, if adopted, would thwart the right of its customers to purchase generation from an alternative supplier. PacifiCorp's proposed approach fails to provide any balance between the policy supporting retail choice and the policy protecting non-participating customers.

PacifiCorp's position in this case, if adopted by the Commission, would make it difficult, if not impossible, for eligible customers in PacifiCorp's service territory to gain a meaningful opportunity to obtain their generation supply from an alternative supplier. There would be no purpose in approving PacifiCorp's proposed program because it is hard to conceive of any customer ever participating in it. The Stipulating Parties recommend that the Commission adopt the Stipulation without modification and direct PacifiCorp to implement a five-year opt-out program consistent with the terms described therein.

II. ARGUMENT

The Commission directed PacifiCorp to file a five-year opt-out program modeled after Portland General Electric Company's ("PGE") program that allows a qualified customer to pay five years of fixed transition charges and then no longer be subject to transition adjustments. *In re Public Utility Commission of Oregon: Investigation of Issues Relating to Direct Access*, OPUC Docket No. UM 1587, Order No. 12-500 at 10 (Dec. 30, 2012). PacifiCorp instead proposed to require long-term opt-out customers to pay 20 years of alleged stranded costs in a five-year period. PacifiCorp's revised proposal ratchets back the stranded cost calculation period to 10 years, but PacifiCorp still fails to justify recovery of alleged stranded costs for a period longer than 5 years after the point when the direct access customer stops receiving generation

1 from PacifiCorp.

2 The fundamental issue in this case is how long a customer must be responsible to pay
3 PacifiCorp for generation-related costs after the customer stops receiving or relying on
4 generation from PacifiCorp. The Stipulating Parties submit that the use of the ongoing valuation
5 method for a five-year period, as directed by the Commission in Docket No. UM 1587, is lawful,
6 reasonable and provides the appropriate incentive for PacifiCorp to mitigate any potential
7 stranded costs. PacifiCorp's arguments to the contrary are misplaced.

8 **A. PacifiCorp Overstates the Legal Standard for Transition Charges.**

9
10 **1. Oregon's Direct Access Law Provides the Commission with Discretion in Crafting a Transition Adjustment Mechanism for Direct Access Customers.**

11 The State's direct access law provides far more discretion to the Commission in setting
12 transition adjustment rates than PacifiCorp suggests. Nothing in the Commission's statutory
13 authority requires the Commission to assign to direct access customers all stranded costs that the
14 utility alleges it may incur. Instead, the law prevents *unwarranted* cost shifting and provides the
15 Commission with the discretion to determinate the appropriate level of the "transition charge" or
16 the "transition credit." ORS 757.600(31), (32); ORS 757.607(2).

17 A "transition charge" is "a charge or fee that recovers all *or a portion* of an uneconomic
18 utility investment." ORS 757.600(31) (emphasis added). An "uneconomic utility investment"
19 includes generation investments "that were prudent at the time the obligations were assumed but
20 the full costs of which are no longer recoverable as result of ORS 757.600 to 757.667, absent
21 transition charges." ORS 757.600(35). The law does not allow recovery for utility acquisitions
22 and future front-office transactions outside the transition period. Even for generation
23 expenditures made prior to the time the customer leaves, the law specifically allows the
24 Commission to "determine that full or partial recovery of the costs of uneconomic utility
25 investments . . . is in the public interest." ORS 757.607(2).

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1 The Commission's administrative rules require PacifiCorp to use the "ongoing valuation"
2 method. *See* OAR 860-038-0005(41), -0140. The administrative rules provide that "'ongoing
3 valuation' means the process of determining transition costs or benefits for a generation asset by
4 comparing the value of the asset output at projected market prices *for a defined period* to an
5 estimate of the revenue requirement of the asset *for the same time period*." OAR 860-038-
6 0005(41) (emphasis added). The Stipulation does just that. Under the Stipulation, participating
7 customers must pay a transition charge equal to the difference between the value of the freed-up
8 output at projected market prices *for a defined period of five years* and an estimate of the revenue
9 requirement of the assets *for the same time period of five years. Id.*
10 The Stipulation is consistent with the administrative rules, under which an opt-out
11 customer pays "a transition charge equal to 100 percent of the net value of the Oregon share of
12 all . . . uneconomic utility investments of the electric company as determined pursuant to . . . an
13 ongoing valuation," and that ongoing valuation occurs for a five-year period. OAR 860-038-
14 0160(1). The structure agreed upon in the Stipulation is consistent with PGE's five-year opt-out
15 program and the Commission's decision to "adopt a PGE-type model for Pacific Power." Order
16 No. 12-500 at 9.
17 PacifiCorp characterizes the Stipulation as a program that will shift millions of dollars in
18 utility generation costs to non-participating customers. This is not so. Even though opt-out
19 customers will receive no generation service from PacifiCorp during the five-year transition
20 period, PacifiCorp will receive full cost recovery from opt-out customers for PacifiCorp's
21 generation resources for five years. The logic behind the direct access law and the
22 Commission's administrative rules is to provide PacifiCorp with a reasonable opportunity (and
23 incentive) to adjust its portfolio in a manner that holds the Company and other customers
24 harmless. Exhibit Stipulating Parties/100 at 10. The Stipulation accomplishes this objective.
25 PacifiCorp overlooks the policy requirement that transition charges should provide the
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1 appropriate incentive for the utility to take steps to mitigate transition costs, such as amending
2 Section X of the Multi-State Process ("MSP") and putting unused Bonneville Power
3 Administration ("BPA") transmission rights to a beneficial use. *See In re Investigation of*
4 *Transition Costs for Electric Utilities*, OPUC Docket No. UM 834, Order No. 98-353 at 20 (Aug.
5 24, 1998) ("Utilities should expect to show they have maximized the value of their assets and
6 minimized the costs associated with those assets. We may allow less than full recovery of
7 transition costs to ensure mitigation takes place."); *accord* ORS 757.607(2). In stark contrast to
8 PacifiCorp's proposal, the Stipulation encourages PacifiCorp to take reasonable measures to
9 reduce its portfolio costs in view of its modified load obligations.
10 In summary and contrary to PacifiCorp's assertions, the direct access law does not
11 require the Commission to accept PacifiCorp's 10-year transition cost projections as the
12 transition charge that must be assigned to the long-term opt-out program participants during the
13 five-year transition period. The Stipulation reflects an appropriate balancing of the need to
14 protect non-participating customers while encouraging PacifiCorp to manage its portfolio costs.
15
16 **2. The Federal Energy Regulatory Commission Orders Cited By PacifiCorp Do Not Expand the Transition Period Otherwise Required and Allowed Under State Law.**
17
18 PacifiCorp also selectively cites portions of the Federal Energy Regulatory Commission's
19 ("FERC") orders addressing stranded cost recovery as justification for the Consumer Opt-Out
20 Charge. The cited FERC orders are, however, largely irrelevant to PacifiCorp's proposal as they
21 pertain to an entirely different set of facts arising after FERC's landmark Order No. 888. *See*
22 *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission*
23 *Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting*
24 *Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, 61 Fed.Reg. 21,540 (1996), *clarified,* 76
25 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *on reh'g,* Order No. 888-A, FERC Stats. and
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1 Regs. ¶ 31,048, 62 Fed.Reg. 12,274, *clarified,* 79 FERC ¶ 61,182 (1997), *on reh'g,* Order No.
2 888-B, 81 FERC ¶ 61,248, 62 Fed.Reg. 64,688 (1997), *on reh'g,* Order No. 888-C, 82 FERC ¶
3 61,046 (1998). Specifically, PacifiCorp focuses on FERC's conclusion in these cases that load
4 growth would not absorb the stranded costs under FERC's formula for calculating stranded costs.
5 On their face, these FERC orders apply to stranded costs in a different context and thus do not
6 support PacifiCorp's position in this case.

7 First, FERC's orders are not relevant to this case. FERC determined that it regulates
8 stranded costs in only two circumstances: (1) when a wholesale requirements customer uses open
9 access transmission to cease to take service from its historical supplier; and (2) when a group of
10 retail customers of a utility use that utility's transmission system to access wholesale power and
11 form a new distribution utility (also known as "municipalization"). Neither of those
12 circumstances exists in this case. In the circumstance of a state retail direct access program,
13 FERC made a policy determination "that the recovery of retail stranded costs . . . is primarily a
14 matter of local or state concern that should be left with the state commissions." Order No. 888,
15 61 Fed.Reg. at 21,650. "Order No. 888 does not permit utilities to seek recovery from the
16 [FERC] of stranded costs associated with retail wheeling customers if a state regulatory authority
17 with authority to address retail wheeling stranded costs has in fact addressed such costs,
18 regardless of whether the state regulatory authority has allowed full recovery, partial recovery, or
19 no recovery." Order No. 888-A, 62 Fed.Reg. at 12,412.[1]

20 Second, FERC's formula for stranded cost recovery is not applicable to PacifiCorp's
21 potential stranded costs. The FERC formula calculates stranded costs by comparing the utility's
22 lost revenue from the departed customer to the utility's competitive market value estimate of the
23 freed-up resources over the length of time (referred to as "L") that the utility could reasonably

24
[1] While PacifiCorp suggests that this case will set precedent for future municipalization cases, the
25 Commission will have full rights to weigh in on any such proceedings at FERC to protect Oregon's interests.
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1 expect to serve the customer. Order No. 888, 61 Fed.Reg. at 21,658. This formula is
2 conceptually similar to OPUC's ongoing valuation exercise. Under FERC's test, however, "if a
3 customer believes the utility's competitive market value estimate (CMVE) is too low, it can
4 market or broker the released capacity and associated energy and reduce its stranded cost
5 obligation." *Id.* at 21,659. "This option is intended to protect a departing customer from a low
6 utility estimate of CMVE, which would result in a higher stranded cost charge to the customer."
7 Order No. 888-A, 62 Fed.Reg. at 12,422.

8 In fact, FERC stated:

9 The formula is not to be used for recovering stranded costs associated with retail
10 wheeling. We believe the formula is unworkable in this scenario because one of its key elements — the option for a customer to market or broker the utility's
11 power — may not be practicable for retail customers.

12 Order No. 888, 61 Fed.Reg. at 21,658 n.864.

13 Parties to this proceeding have raised the same concern expressed by FERC: that the
14 utility has an incentive to inflate transition cost estimates with a low estimate of the market value
15 of freed-up power (which in this case PacifiCorp has calculated through GRID). But unlike
16 FERC's formula, PacifiCorp's long-term opt-out program does not include the right for the
17 customer or the electricity service supplier ("ESS") to purchase and resell PacifiCorp's freed-up
18 generation at the projected market value. Therefore, PacifiCorp's reliance on the FERC formula
19 (and FERC's statements regarding treatment of load growth in that formula) is misplaced. Given
20 these differences, the Commission's decision in this case should not rely upon the FERC's
21 statements regarding the report of load growth on the calculation of stranded costs.

22 Moreover, FERC's position on load growth is not as clear as PacifiCorp represents.
23 Consistent with the Stipulating Parties' position in this case, FERC has reasoned that "costs may
24 be stranded only if they are not fully recovered from another customer; that is, the released
25 capacity may be either left unsold or resold at a price below full embedded cost." Order No.
26

888-A, 62 Fed.Reg. at 12,427. According to FERC, "If the released capacity is resold to a third-party customer at full embedded cost-based rates, then no costs would be stranded and the formula would not have to be used." *Id.* In the case of departing load on the PacifiCorp system, the existing resources should be sold at full embedded costs to the new loads, and thus load growth is relevant.[2]

In short, PacifiCorp's attempt to "cherry pick" statements from FERC orders in a different context does not overcome the fact, acknowledged by PacifiCorp, that system load growth will more than make up for the maximum direct access load loss at issue with the five-year opt-out program.[3] PacifiCorp can completely mitigate its alleged stranded costs in years six through ten through load growth alone. In combination with other mitigation measures, the Stipulation's proposed transition charge more than guarantees that costs will not be shifted to non-participating customers.

B. When the Correct Legal Standard Is Applied, the Consumer Opt-Out Charge Is Unreasonable as it Fails to Balance the State's Objectives with Respect to Direct Access.

1. The Five-Year Transition Charge Set Forth in the Stipulation is Lawful and Reasonable.

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[2] While PacifiCorp points to two municipalization cases where FERC chose not to allow for consideration of load growth, both cases were expressly limited to the facts where there was no evidence the released capacity could be sold to new loads. *See City of Alma, Michigan*, 96 FERC ¶ 61,163, at 61,712-61,713 (2001); *City of Las Cruces, New Mexico v. El Paso Elec. Co.*, 87 FERC ¶ 61,201, at 61,746 (1999).

[3] PacifiCorp also incorrectly states in a footnote that FERC has awarded stranded cost recovery for a 20-year period. *See PacifiCorp's Opening Brief* at 7 n.23 (citing *City of Las Cruces, New Mexico*, 87 FERC ¶ 61,201). A careful reading of *City of Las Cruces, New Mexico* reveals that, although the reasonable expectation period (L) was 20 years, FERC only found a stranded cost obligation from the date of actual departure that would occur in or after 1999 through 2006 – resulting in a stranded cost obligation of only one to seven years. 87 FERC ¶ 61,201, at 61,750 n.32; *see also City of Alma, Michigan*, 96 FERC ¶ 61,163, at 61,715, 61,723 and Appendix (finding an L of 15 years from 1990 to 2004, but calculating the stranded cost obligation to be only one to four years based upon the future date of departure from the system in 2001, 2002, 2003, or 2004). The stranded cost obligation in these orders is consistent with, or shorter than, the five-year period in the Stipulation.

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2 The Stipulation largely adopts PacifiCorp's method of calculating the transition
3 adjustment for a given year under the ongoing valuation method. Notwithstanding testimony by
4 Stipulating Parties Noble Solutions and Wal-Mart stating that PacifiCorp should calculate its
5 transition adjustment rate using market prices to value freed-up generation, the Stipulating
6 Parties acceded to PacifiCorp's proposal to use the GRID model, which "may make additional
7 wholesale market sales, reduce market purchases, or reduce generation from its thermal
8 resources." Exhibit PAC/200, Duvall/4. Relying upon the GRID model produces a higher
9 transition charge for participating customers in any given year. Exhibit Noble Solutions/100,
10 Higgins/13-14. This fact should be considered by the Commission as it determines the
11 reasonableness of the Stipulation.
12 Under the Stipulation, the proposed Schedule 200 and Schedule 296 transition
13 adjustment, taken together, ensure that a shopping customer pays a "transition charge that is *at*
14 *least equal to (and often greater than)* the difference between cost of service rates and market
15 prices." Exhibit Stipulating Parties/100 at 9 (emphasis added).[4] The Stipulation is designed to
16 prevent cost shifts to customers that remain on PacifiCorp's cost-of-service rates during the five
17 years identified in Order No. 12-500.

18 **2. PacifiCorp Has Not Put Evidence In the Record of Any Actual Cost-Shift Following a Five-Year Transition Charge.**
19
20 PacifiCorp insists that it has proven the existence of additional transition costs that will
21 occur after the five-year transition adjustment period that will total $56.9 million on a nominal
22 basis, or $35.4 million on a net present value basis. *PacifiCorp's Opening Brief* at 10.
23 PacifiCorp ignores critical facts, however, related to the computation of transition costs. In fact,

24 [4] Although PacifiCorp sought discovery on this assertion and had the opportunity to cross-examine the Stipulating Parties on the point, the record remains un-rebutted that the Stipulation's proposal includes
25 a transition adjustment that is at least equal to *and often greater than* full recovery of transition costs for the five-year period of the ongoing valuation described in the administrative rules.
26

1 the record contains no comprehensive analysis of projected stranded costs beyond the five-year
2 transition period.

3 PacifiCorp's stranded cost claim is based on an illustrative example of how PacifiCorp's
4 transition adjustment proposal would work. As clearly indicated in PacifiCorp's filed testimony,
5 the potential stranded cost calculated by PacifiCorp is simply an extension of this illustrative
6 example. *See* Exhibit PacifiCorp/200, Duvall/5-6; Exhibit PacifiCorp/ 202; Exhibit
7 PacifiCorp/400, Duvall/4; Exhibit PacifiCorp/402.

8 The key assumption of PacifiCorp's illustrative example is that participating customers
9 are deemed to be responsible for paying PacifiCorp's current fixed generation charge, Schedule
10 200, escalated at the rate of inflation, for the time period prescribed by PacifiCorp, i.e., 20 years
11 in the case of PacifiCorp's initial proposal, and 10 years in the case of PacifiCorp's revised
12 proposal. *See* Exhibit Stipulating Parties/100 at 22-23. PacifiCorp provides no basis to conclude
13 that the continuation of Schedule 200 charges in years six through ten actually corresponds to
14 fixed costs that are reasonably assignable to the participating opt-out customers, however.
15 Rather, the $35.4 million in stranded costs asserted by PacifiCorp simply arises as an extension
16 of the unsupported assumption that participating customers are responsible for the current
17 Schedule 200 charges after the five-year transition period.

18 The sources cited by PacifiCorp's own brief demonstrate the fallacy of PacifiCorp's
19 stranded cost calculation. Specifically, PacifiCorp relies upon observations by "experts from the
20 Brattle Group" to support arguments related to load growth. *See PacifiCorp's Opening Brief* at
21 11-12 (quoting G. Basheda, et al, *The FERC, Stranded Cost Recovery and Municipalization,* 19
22 Energy L. J. 351 (1998)).[5] But PacifiCorp fails to mention that a major point of the article is that
23 a stranded cost calculation cannot assume that the current fixed generation costs of the stranded
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25 [5] For reasons discussed *infra*, the Brattle Group article's observations regarding load growth have no applicability in the context of Oregon's direct access law.

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1 assets will remain constant. Basheda, et al, 19 Energy L. J. at 364-371 & App. A. The article
2 explains as follows:

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> Under standard regulatory accounting, the net present value of all revenue requirements, less the operating costs of the units, is the net book value of the plant. For any set of generating plants going forward, revenue requirements are generally a steadily declining function. This is because the number of generating units stranded declines over time as plants reach the end of their useful lives and because traditional utility revenue requirements are the sum of depreciation, return, taxes, and operating costs which decline for a plant as it gets older and its book value (hence aggregate annual depreciation and return) declines to zero.

9 *Id.* at 367. Thus, while the revenue requirement component of the stranded cost calculation
10 should <u>decline</u> over time, PacifiCorp's stranded cost calculation assumes that the revenue
11 requirement of the stranded assets *will escalate* from the current fixed Schedule 200 charge at the
12 rate of inflation for up to 20 years. There is no basis for PacifiCorp's assumption, and its
13 stranded cost calculation is therefore fatally flawed.

14 Moreover, PacifiCorp's GRID analysis and stranded cost projection assumes that Section
15 X of the MSP will not be amended – thus trapping the projected difference in value of
16 PacifiCorp's GRID runs in Oregon in rates to be assessed solely to non-participating Oregon
17 customers. As explained in Section B.4 below, this is not a reasonable assumption. In any
18 event, Section X does not handcuff the Commission's decision in this case or override the
19 mandates of Oregon's direct access law.

20 PacifiCorp's projections in its modeling are far from conclusive evidence of any costs it
21 will actually incur, let alone a cost that would later be found prudent to assess to non-
22 participating Oregon customers. The Commission has stated that its objective is to adopt a
23 "long-range transition adjustment that values resources based not only on PacifiCorp's actual
24 operational responses, but actual operational responses that are based on appropriate planning."
25 *In re Public Utility Commission: Investigation into Direct Access Issues for Industrial and*
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1 *Commercial Customers Under SB 1149*, OPUC Docket No. UM 1081, Order No. 04-516 at 12
2 (Sept. 14, 2004).
3 Unfortunately, PacifiCorp has only conducted an analysis of stranded costs under
4 PacifiCorp's business-as-usual assumptions in GRID that are used in the one-year and three-year
5 programs where customers return to cost-of-service rates. PacifiCorp failed to perform an
6 analysis that assumes more appropriate system planning in the face of long-term (and likely
7 permanent) departing load. PacifiCorp's analysis ignores its duty to mitigate transition costs for
8 a five-year opt-out period.
9 Additionally, PacifiCorp overlooks the fact that the participating customer will pay
10 *substantial* transition charges under the terms of the Stipulation. In fact, the customer will pay
11 PacifiCorp for five years' worth of fixed costs and conservatively priced transition adjustments
12 for electricity that the customer will never receive – just for the right to stop buying electricity
13 from PacifiCorp. Under the Stipulation, in order to account for projected direct access load,
14 PacifiCorp will have five years to unwind existing transactions, stop acquiring additional
15 generation resources, stop acquiring expensive front-office transactions, and take appropriate
16 steps to address Section X of the MSP. It is reasonable to require PacifiCorp to engage in these
17 appropriate steps to accommodate maximum departing load of 175 average megawatts ("aMW")
18 out of PacifiCorp's system load of 7,000 aMW. PacifiCorp's GRID runs do not demonstrate that
19 other Oregon customers' rates will increase if PacifiCorp takes appropriate steps to mitigate
20 stranded costs.
21 Finally, PacifiCorp's argument ignores a fundamental question regarding the
22 implementation of the five-year opt-out program: namely, when has a customer that no longer
23 purchases power from PacifiCorp fulfilled its obligation to pay for the product it no longer
24 purchases from the Company? The Stipulating Parties believe the answer to this question is
25 "five years" – an answer that follows directly from the Commission's order in Docket No. UM
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1 1587. Order No. 12-500 at 9. Rather than implement the Commission's directive, PacifiCorp
2 seeks to circumvent it by asserting stranded cost claims that derive directly from the construction
3 of its own illustrative example, which arbitrarily assigns Schedule 200 cost responsibility to
4 participating customers beyond the five-year transition cost period ordered by the Commission.

5 **3. System Load Growth Will Eliminate Potential Cost Shifts.**

6 PacifiCorp plans and operates its system on an integrated basis. As a result of this
7 integrated planning and operation, PacifiCorp's Oregon customers currently pay for the costs of
8 load growth on the Company's eastern system. Exhibit ICNU/100, Schoenbeck/6. Decisions to
9 acquire costly new resources are based upon *system* load growth, not just Oregon load growth.
10 *See, e.g., In re PacifiCorp: 2011 Integrated Resource Plan*, OPUC Docket No. LC 52, Order No.
11 12-082 at 3 (March 9, 2012). Thus, load growth on the entire system is relevant to the
12 Company's ability to mitigate stranded costs associated with long-term direct access in Oregon.

13 The record demonstrates that the maximum departed load of 175 aMW will easily be
14 replaced by system load growth, which is projected to be 512 aMW from 2013 to 2020. Exhibit
15 Stipulating Parties/100 at 24. In other words, load growth is projected to be almost three times
16 as large as the maximum direct access load by 2020 (175 aMW x 3 = 525 aMW). PacifiCorp
17 does not seriously dispute that after the five-year transition period, new system load will arise
18 that will pay for the embedded costs of existing generation resources that no longer serve the
19 departed direct access load.

20 Yet PacifiCorp argues that system load growth cannot be assumed to replace lost direct
21 access load. *PacifiCorp's Opening Brief* at 10-11. The Commission has specifically stated,
22 however, that PacifiCorp must make appropriate planning responses to expected direct access
23 load. Order No. 04-516 at 12. Accordingly, ignoring direct access loads in resource planning
24 and load growth analyses is not reasonable.[6]

25

26 [6] PacifiCorp also cites Order No. 98-353. But that order does not discuss load growth; it instead

1 PacifiCorp even appears to assert that Oregon direct access customers must compensate
2 customers in other states for any inability to rely upon load growth to acquire new resources that
3 will be lower in costs than the average of PacifiCorp's existing high-cost resources. *See*
4 *PacifiCorp's Opening Brief* at 11-12 (*quoting* G. Basheda, et al, 19 Energy L. J. at 374 and App.
5 B). But Oregon's direct access law requires direct access customers to compensate PacifiCorp
6 for uneconomic utility investments "that *were* prudent at the time the obligations *were* assumed"
7 – not for the lost benefits of a future resource that PacifiCorp no longer needs to acquire because
8 of the direct access election. ORS 757.600(35) (emphasis added). After the five-year transition
9 period, ample new load will be available to pay for costs of embedded resources that the
10 departed direct access load no longer requires.

11
12 **4. Section X of the 2010 Multistate Allocation Protocol Is Not a Barrier to Adoption of the Stipulation.**

13 PacifiCorp argues that Section X of the 2010 MSP Protocol ("2010 Protocol") supports
14 PacifiCorp's proposed Consumer Opt-Out Charge and provides grounds to reject the Stipulation.
15 *PacifiCorp's Opening Brief* at 10, 16-18. The Company fails to account for the fact that the
16 2010 Protocol expires in 2016, well before the initial transition period for the five-year opt-out
17 program runs. *In the Matter of PacifiCorp's Petition for Approval of Amendments to Revised*
18 *Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 11-244 at 3, App. A
19 (July 5, 2011). The initial transition period for a five-year opt-out program, if adopted for 2015,
20 will run through 2019. Exhibit Stipulating Parties/100 at 24. Any cost-shifting issue arising
21 under an allocation methodology like Section X would begin in transition year six, the year
22 2020.

23 PacifiCorp cannot justify a Consumer Opt-Out Charge in 2014 based on an allocation
24 methodology that may or may not be in effect in 2020. When the Commission adopted the 2010
25

stands for the proposition that PacifiCorp must mitigate its stranded costs. *See* Order No. 98-353 at 20.

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1 Protocol for Oregon, it was adopted with a 2016 sunset date, and the parties involved were
2 already planning to commence discussions in 2013 for future allocation options. Preliminary
3 discussions regarding a successor to the 2010 Protocol began in 2012. Order No. 11-244 at 4-5.
4 Those discussions are underway and Staff has raised the direct access issue. Exhibit Stipulating
5 Parties/100 at 24. The Stipulating Parties have explained in detail why Section X is outdated and
6 should be changed following the 2016 expiration of the 2010 Protocol. *Id.* at 25-26.[7]

7 Thus, the process is in place to address Section X and its impact on the long-term opt-out
8 program. This process is advancing many years before any issues with cost-shifting can arise.
9 PacifiCorp alleges that how direct access loads will be treated for cost allocation purposes must
10 be resolved now by applying Section X because otherwise, it "*might* be in the position of
11 needing to honor customers' opt-out elections, even though these elections clearly cause
12 unwarranted cost shifts." *PacifiCorp's Opening Brief* at 17 (emphasis added). Such speculation
13 does not justify the imposition of a 10-year Opt-Out Charge years before any cost shift may
14 materialize and which can be addressed at that time.

15 In the event that Section X is not revised by the time of the expiration of the 2010
16 Protocol, the Commission is not required to ratify a new protocol that includes Section X or
17 revert to the Revised Protocol. The Commission has plenary authority to adopt an allocation
18 methodology for Oregon and is not bound to continue to adhere to the Section X language.

19 The Commission has adopted a set of goals that must be met before any new MSP
20 protocol is adopted, which includes ensuring that Oregon's share of PacifiCorp's costs is
21 equitable in relation to other states and meets the public interest standard. *In the Matter of*
22 *PacifiCorp's Petition for Approval of Amendments to Revised Protocol Allocation Methodology*,
23 OPUC Docket No. UM 1050, Order No. 02-193 at 1-2 (Mar. 26, 2002); *see also* Order No. 11-

24

[7] Even if the Commission does not adopt an alternate allocation methodology to replace the 2010
25 Protocol, PacifiCorp will revert to the Revised Protocol from 2005 for Oregon rate cases, which provides an added incentive for review of the 2010 Protocol. Order No. 11-244 at 3.

26

244 at 1; *In the Matter of PacifiCorp's Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 05-021 at 1-2 (Jan. 12, 2005). Given the current evidence that vacated capacity would subsequently be used to accommodate system growth, thereby avoiding costly new plant additions, the Commission may support altering or eliminating Section X on the basis of fundamental equity considerations.

Nor is Section X necessarily binding while the 2010 Protocol remains in effect. The Commission has recognized that it retains the right to review an MSP protocol at any time. Order No. 05-021 at 11. The terms of the 2010 Protocol recognize that flexibility is necessary in the regulatory process, and if the Commission finds in good faith that the 2010 Protocol does not produce results that are just, reasonable and in the public interest, then the Commission will not be bound by the 2010 Protocol. Order No. 11-244, App. A at 7.

Finally, Staff has brought this issue before the Standing Committee to revise Section X as required by either the Revised Protocol or the 2010 Protocol. Given the processes that are in place or available to address any cost-shifting issues under Section X, the Commission can conclude that the Consumer Opt-Out Charge is not needed to accommodate Section X, and the Stipulation may be approved at this time.

5. Requiring 10 Years of Payments in Five Years Is Unreasonable.

The "ongoing valuation method" assesses a transition adjustment over a defined period based upon a comparison of the asset value at projected market prices for that period to the estimated revenue requirement for that same period. *See* OAR 860-038-0005(41). The customer pays the transition costs (or receives transition benefits) on a year-by-year basis for a specified period of time.

The fundamental difference between the Stipulation's proposal and PacifiCorp's proposal is that the Stipulating Parties adhered to the ongoing valuation method for a five-year period while PacifiCorp essentially proposed accelerated recovery of 20 (now 10) years of alleged

1 transition costs in a five-year period. Imposing 10 years of alleged costs in a five-year period of
2 recovery assures that the opt-out program would be a negative value proposition for participants
3 for the full five years, dooming the program to failure. *See* Exhibit Noble Solutions/100,
4 Higgins/5, 14, 20. Instead of paying twice for generation-related costs as proposed in the
5 Stipulation (once to PacifiCorp and once to the ESS), the participating customers under
6 PacifiCorp's proposal would essentially pay *three times* for generation-related costs in the five-
7 year transition period. The Commission should not allow PacifiCorp to "front-load" speculative
8 future stranded costs in a customer's five-year transition adjustment.

9 **C. The BPA Transmission Credit Is A Reasonable Element of the Stipulation.**

10 PacifiCorp unreasonably maintains that it could lose 175 aMW of load to a long-term
11 (and likely permanent) opt-out, but that in doing so, it would realize no value from freed-up BPA
12 transmission. As a result, PacifiCorp proposes to require five-year opt-out customers to pay for
13 BPA transmission twice – once through net power costs assessed through Schedule 296 for BPA
14 transmission that the direct access customers will not use, and a second time through the ESS for
15 BPA transmission the direct access customers will use. Exhibit Stipulating Parties/100 at 19.

16 The Company's position on the BPA transmission credit is not credible and is not
17 consistent with its duty to mitigate transition costs. It is reasonable to include a modest credit to
18 the five-year opt-out customers' transition adjustment to account for the value of the BPA
19 transmission made available to PacifiCorp by the opt-out election.

20 PacifiCorp relies on rulings rejecting use of a BPA transmission credit in its one-year and
21 three-year out-out programs as the "controlling cases." *PacifiCorp's Opening Brief* at 20. The
22 one-year and three-year programs are distinguishable, however, because in the one-year and
23 three-year programs, the customer is allowed to return to cost-of-service rates without
24 meaningful advance notice – providing at least some justification for PacifiCorp to hold BPA
25 transmission rights idle for that customer's return.

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1 In contrast, five-year opt-out customers are unlikely to return to cost-of-service rates, and
2 the Stipulation requires any returning customers to provide four years' notice. *See* Exhibit
3 Stipulating Parties/100 at 20. Four years is more than an adequate amount of time for PacifiCorp
4 to obtain the necessary BPA transmission rights to serve the returning customer, without holding
5 idle BPA transmission rights for the entire time the customer is receiving direct access service.
6 PacifiCorp raises the specter of customers returning in an emergency situation in which
7 the ESS stops providing service. PacifiCorp has provided no evidence, however, that such
8 emergency returns of customers have ever occurred in PGE's program or are likely to occur in
9 PacifiCorp's program. In any event, PacifiCorp is entitled to charge such emergency-return
10 customers the above-market costs of securing short-term transmission that may be needed to
11 serve them. *See* OAR 860-038-0280(3).
12 Moreover, PacifiCorp has not refuted the existence of its right to put freed-up BPA
13 transmission to other economic uses. PacifiCorp is contractually allowed to reassign, or sell, its
14 BPA point-to-point ("PTP") transmission rights to another party, including an ESS. Exhibit
15 Stipulating Parties/100 at 18. PacifiCorp may also redirect the use of a BPA PTP right to
16 different points of receipt and delivery. Exhibit Stipulating Parties/300 at 3-5. PacifiCorp
17 admits that it has previously made these types of adjustments to its BPA PTP transmission rights.
18 *Id.* at 1, 6.
19 Additionally, if loads served with BPA network transmission rights were reduced by
20 declining loads, PacifiCorp could later use those same network transmission rights to serve
21 growing loads. *Id.* at 7-8. While it may be true that PacifiCorp is not required to take these
22 mitigating steps in the context of a one-year or a three-year opt-out program, it is not reasonable
23 for PacifiCorp to hold idle BPA transmission rights after a customer provides notice of intent to
24 enter into the five-year opt-out program.
25 The bottom line is that BPA transmission rights have value that PacifiCorp can and
26

1 should use to mitigate its transition costs. The Stipulation does not provide direct access
2 customers with the full value of BPA PTP rights. Instead, the credit is conservatively set at
3 ($1.61)/MWh for service in 2015, which is only about half of the BPA PTP rate of $3.166/MWh
4 (the rate that results when measured on an *average* load factor basis). Exhibit Stipulating
5 Parties/100 at 18. Long-term opt-out customers deserve this conservative credit for this
6 economic utility investment freed up by their direct access election.

7 **D. The Stipulation's Eligibility Criteria Are Reasonable.**

8 The Stipulation contains reasonable minor clarifications to the eligibility criteria for the
9 five-year opt-out, and the Stipulating Parties rely on the arguments contained in their pre-hearing
10 brief regarding this issue. *See Stipulating Parties Pre-Hearing Brief* at 17-18. In its pre-hearing
11 brief, PacifiCorp argues that including a common billing address for eligibility purposes would
12 inappropriately allow a broadening of the scope of the program by allowing for aggregation of
13 meters with no corporate relationship. *PacifiCorp's Pre-Hearing Brief* at 16. PacifiCorp's
14 argument is without merit, as inclusion of additional meters is restricted under the Stipulation to
15 meters located "on the same property." *Stipulation* at ¶14.

16 There is little, if any possibility under the terms of the Stipulation for unrelated entities to
17 aggregate meters under the five-year opt-out. If the Commission finds that such a risk is present,
18 the Stipulating Parties agree that the use of "corporate entity" as opposed to "billing address" is
19 consistent with the Stipulation and would not constitute an additional material condition to the
20 Stipulation.

21 **E. The Stipulation's Enrollment Period Is Reasonable.**

22 The Stipulation contains the only reasonable proposal in this docket for the enrollment
23 period, which is that enrollment should occur for a month-long period, during November each
24 year. *See Stipulation* at ¶ 15; Exhibit Stipulating Parties/100 at 26-27. Completing enrollment in
25 November avoids the end-of-year logistical problems identified by PacifiCorp. *See Stipulating*
26

1 *Parties' Pre-Hearing Brief* at 19-20.

2 PacifiCorp argues that the direct access law mandates that the enrollment window may
3 not commence any sooner than November 15. *PacifiCorp's Opening Brief* at 20-21. But the
4 statute merely requires the Commission to set a date by which the utility must announce prices
5 that will be charged for electricity in the subsequent calendar year. ORS 757.609(1). The
6 statute does not require that date to be November 15. And the administrative rules do not
7 prohibit the Commission from finding good cause to use a different "Announcement Date" than
8 the November 15 date contained in OAR 860-038-0275(1). *See* OAR 860-038-0001(4)
9 (allowing waiver of the administrative rules for good cause shown).

10 In practice, the election window for PGE's five-year opt-out program already occurs in
11 September of each year – well before the "Announcement Date" in the administrative rule. *See*
12 *In re Public Utility Commission of Oregon: Investigation into the Changes Proposed for the 3*
13 *and 5 year Cost of Service Opt-Out Program for Large Non-Residential Customers*, OPUC
14 Docket No. UE 236, Order No. 12-057 at 3 (Feb. 23, 2012). Furthermore, the operation of
15 PGE's program is consistent with the administrative rule regarding multi-year opt-out programs,
16 which requires the multi-year opt-out program to be offered "[a]t least once each year" without
17 requiring the program to be offered on November 15. OAR 860-038-0275(5).

18 Given the logistical problems (identified by PacifiCorp) with holding an election window
19 in December, the Commission should conclude that the election window should commence on
20 November 1 of each year. The Commission should waive OAR 860-038-0275(1) to the extent
21 that it applies to a five-year opt-out program. Commencing the election period on November 1
22 may not be possible this year due to the existing schedule in the docket regarding PacifiCorp's
23 2015 Transition Adjustment Mechanism ("TAM") (Docket No. UE 287). However, PacifiCorp
24 should be directed to make the appropriate filing to shift the schedule for its annual TAM filing

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1 such that the enrollment window can commence on November 1 in future years.[8]

2 **F. The Stipulation Does Not Allow Customers to "Frequently" Switch Back and Forth.**

3 The Stipulation allows customers to return to cost-of-service rates only after providing
4 PacifiCorp with *four years* of advance notice. *Stipulation* at ¶ 11. After returning, the customer
5 could again enroll in the five-year program, but such a customer would again pay a new round of
6 transition adjustments for five more years. In other words, the customer would face a nine-year
7 time span between its date of notice to return and its switch back to pure, market-based pricing
8 through an ESS.

9 PacifiCorp suggests, nevertheless, that the Stipulation's design provides "incentives for
10 customers to *frequently* switch back and forth based on market conditions." *See PacifiCorp's*
11 *Opening Brief* at 22 (emphasis added). On this unreasonable basis, PacifiCorp argues that
12 customers that return to cost-of-service must be banned from again participating in the five-year
13 program.

14 The Stipulation eliminates the possibility of customers "frequently" switching back and
15 forth to take advantage of market conditions. Switching from cost-of-service to market-based
16 pricing every nine years is not frequent, even if customers could ever be expected to do so.
17 Notably, PGE's five-year program has only a three-year notice provision, but virtually no
18 customers have exercised the right to return. Exhibit Stipulating Parties/100 at 20.[9] PacifiCorp's
19 position on this point appears to be designed to deter participation in the program.

20 **G. The Stipulation Is Consistent with Oregon's Policy of Retail Choice.**

21

22 [8] If PacifiCorp's 2015 TAM is resolved in a more timely manner than provided in the schedule for that docket, the Commission should direct that PacifiCorp file the long-term opt-out rates for an enrollment period encompassing the entire month of November this year.

23

24 [9] Although the Stipulating Parties' testimony states that no PGE customers have returned to cost of 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
25 rates. The customer's remaining accounts remained on the five-year opt-out. Exhibit Stipulating Parties/100 at 20, including Errata to the Joint Testimony (May 15, 2014).

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1 The policy behind Oregon's direct access law is that "retail electricity consumers that
2 want and have the technical capability should be allowed, either on their own or through
3 aggregation, to take advantage of competitive electricity markets as soon as is practicable." Or
4 Laws 1999 ch. 865. PacifiCorp's customers have never had that option, and its proposal in this
5 case does not offer a viable competitive structure. *See, e.g.,* Order No. 04-516 at 2 (stating in
6 2004, "[n]o customers have elected direct access in PacifiCorp's service territory. . ."); Exhibit
7 Stipulating Parties/301 (containing the Commission's July 2013 Oregon Electric Industry
8 Restructuring Status Report, which states that only 1.4 percent of eligible customer load in the
9 PacifiCorp service territory was participating in direct access service).
10 There is no dispute that PacifiCorp's customers desire a reasonable opportunity to
11 purchase generation other than that available under PacifiCorp's cost-of-service options.
12 PacifiCorp itself recently asserted that its large customers seek alternatives to PacifiCorp's
13 traditional supply in the form of renewable generation alternatives. In ongoing Docket No. UM
14 1690 to implement recently enacted House Bill 4126, PacifiCorp asserted: "Recent discussions
15 with technology industry prospects working with the state of Oregon have highlighted interest in
16 availability of 'Green Tariffs' based on experience with models in other states." *PacifiCorp's*
17 *Statement of Principles*, OPUC Docket No. UM 1690 (June 16, 2014).[10] The ability of
18 customers to obtain generation alternatives, including renewable energy options, without
19 adversely affecting other customers is hindered by PacifiCorp's long-standing refusal to
20 implement the mandates of the direct access law with a five-year program.
21 The Commission now has two clear options: (1) adopt the Stipulating Parties' proposal,
22 which closely follows the model provided by PGE's five-year opt-out program and is likely to
23 result in a program in which customers will participate; or (2) adopt PacifiCorp's proposal that,
24

25 [10] The Stipulating Parties request that the Commission take official notice of this filing under OAR
26 860-001-0460(1)(d).

1 even as modified by PacifiCorp's reply testimony, fails to comply with the Commission's
2 directive in Docket No. UM 1587 and imposes insurmountable obstacles to participation in a
3 direct access program. The Stipulation advances Oregon's policy of retail choice, while
4 PacifiCorp's proposal frustrates that policy.

5
6 **H. PacifiCorp Misstates the Legal Standards Applicable to Commission Review of the Stipulation.**

7 PacifiCorp makes three arguments regarding the legal standard to be applied by the
8 Commission in its review of the Stipulation: 1) The Stipulation does not merit "deference"
9 under the Commission's policy encouraging voluntary resolution of issues; 2) The evidentiary
10 burden with respect to particular terms of the Stipulation is not affected by the integrated nature
11 of the Stipulation; and 3) The Stipulating Parties should not be allowed to re-litigate issues if the
12 Stipulation is rejected or a modification is proposed by the OPUC. *PacifiCorp's Opening Brief*
13 at 3-5. The Stipulating Parties address each of these arguments in turn.

14 **1. Customary Deference to a Stipulation.**

15 PacifiCorp contends that the Stipulation should not be accorded deference under
16 Commission policy encouraging the voluntary resolution of issues between parties. *PacifiCorp's*
17 *Opening Brief* at 3. The applicable "deference" standard is that the Commission encourages
18 "parties to voluntarily resolve issues to the extent that settlement is in the public interest." *In re*
19 *PacifiCorp's 2010 Transition Adjustment Mechanism*, OPUC Docket No. UE 207, Order No. 09-
20 432 at 6 (Oct. 30, 2009).

21 The Commission states: "When considering a stipulation, we have the statutory duty to
22 make an independent judgment as to whether any given settlement constitutes a reasonable
23 resolution of the issues." *In the Matter of PacifiCorp's Request for a General Rate Revision*,
24 OPUC Docket No. UE 210, Order No. 10-022 at 6 (Jan. 26, 2010). Only the Commission can
25 determine what constitutes an actual and final "resolution." That said, the fact that the OPUC

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1 actively encourages parties to "resolve" issues and reach "settlement" means that the
2 Commission imparts real meaning to these terms before a final determination is made.
3 Accordingly, deference must be extended to stipulations—even if the stipulations do not include
4 all interested parties.

5 The Company argues that there is a prerequisite of "adverse interests" before any
6 resolution of issues can occur. *PacifiCorp's Opening Brief* at 4. The ALJ found, however, that
7 the Stipulation "satisfies the terms of OAR 860-001-0350," and that settlement as defined under
8 the rule does not require "adverse" parties to agree.[11] *Ruling* at 3. In summary, since the
9 Stipulation does resolve issues among the Stipulating Parties, it is entitled to deference.

10 **2. Evidentiary Production with an Integrated Stipulation.**

11 The Company urges the Commission to reject the Stipulating Parties' contention that
12 particular Stipulation terms should be approved because the Stipulation is an integrated
13 settlement. *PacifiCorp's Opening Brief* at 4. PacifiCorp asserts that the Stipulating Parties fail
14 to meet their burden of production if the evidence does not support each and every settlement
15 term, independently. Quite the opposite, the decisions cited by PacifiCorp support the
16 Stipulating Parties' contention that evidence demonstrating the reasonableness of the *entire*
17 settlement is sufficient to meet the production burden for each element of the Stipulation. *See*
18 *Stipulating Parties' Pre-Hearing Brief* at 6-7.

19 PacifiCorp quotes a Commission holding that stipulating parties "have the burden of
20 producing evidence to support their argument in opposition to the utility's position."
21 *PacifiCorp's Opening Brief* at 4 (quoting *In re Portland Gen. Elec. Co. Application to Amortize*
22 *Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009)). While
23 that is undoubtedly true, in this case, the burden of production stands in relation to the entire
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25 [11] In fact, the Stipulation represents a compromise in the positions of multiple parties with diverse interests.

26

1 Stipulation, which is an integrated "argument" comprised of many individual terms.

2 The Company then asserts that the burden of production "is not negated or lessened by
3 the fact of the Stipulation," citing to three cases to support this proposition. *PacifiCorp's*
4 *Opening Brief* at 4 & n. 15. Again, the statement is correct, but PacifiCorp's assertion does not
5 support the argument that each and every term of the Stipulation must individually satisfy an
6 evidentiary production test. In *In re Portland Gen. Elec. Co. 2012 Annual Power Cost Tariff*,
7 OPUC Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011), the Commission explains:
8 "To reach a determination on whether proposed rates are just and reasonable, we look at the
9 record *as a whole* and make a determination based on the preponderance of the evidence." Order
10 No. 11-432 at 3 (emphasis added). *In re PacifiCorp*, Docket Nos.UM 995/UE 121/UC 578,
11 Order No. 02-469 at 75 (July 18, 2002)), the Commission held: "Where some parties oppose a
12 stipulation . . . we will adopt a stipulation only if competent evidence supports it."

13
14 **3. Further Hearings Following Rejection or Proposed Modification of the Stipulation.**

15 The Company cites to no authority which would preclude the Commission from allowing
16 further hearings if the Stipulation is not adopted. *Stipulation* at ¶ 21. Moreover, although OPUC
17 rules provide that a second hearing is not *required* in certain circumstances involving settlement
18 determination, the rules plainly afford the Commission discretion to order further hearings.
19 OAR 860-001-0350(8), (9). Indeed, the Commission has granted a second hearing in analogous
20 circumstances following the rejection of stipulated terms. *In re PacifiCorp*, OPUC Docket No.
21 UE 94, Order No. 98-107 (Mar. 19, 1998).

22 The Stipulation is a compromise among ten parties, representing the interests of
23 ratepayers, large industrial consumers, large commercial consumers, independent power
24 producers, and retail energy service suppliers. The Stipulation is also a compromise regarding
25 individual issues raised by these parties in their original testimony. If the Commission rejects the
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1 Stipulation, the Commission should consider whether a further hearing is necessary to address
2 the individual issues raised in parties' original testimony in this case.

3 **III. CONCLUSION**

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

7

8 DATED this 28th day of July 2014.

9 Respectfully submitted,

10 ELLEN F. ROSENBLUM
Attorney General

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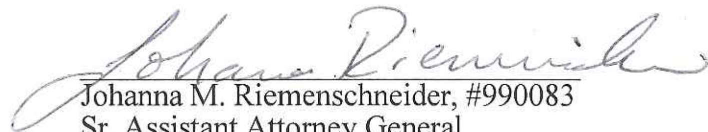

12 Johanna M. Riemenschneider, #990083
13 Sr. Assistant Attorney General
Of Attorneys for Staff of the Public Utility
14 Commission of Oregon

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16 Filed on behalf of the Stipulating Parties

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CERTIFICATE OF SERVICE/SERVICE LIST

I hereby certify that on July 28, 2014, I served the foregoing JOINT POST-HEARING REPLY BRIEF OF STIPULATING PARTIES document upon all parties of record in this proceeding by electronic mail only as all parties have waived paper service.

W
PACIFICORP, DBA PACIFIC POWER
OREGON DOCKETS
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W
BOEHM KURTZ & LOWRY
KURT J BOEHM **(C)**
36 E SEVENTH ST - STE 1510
CINCINNATI OH 45202
kboehm@bkllawfirm.com

W
CARL FINK
628 SW CHESTNUT ST, STE 200
PORTLAND OR 97219
cmfink@blueplanetlaw.com

W
RICHARDSON ADAMS, PLLC
GREGORY M. ADAMS **(C)**
PO BOX 7218
BOISE ID 83702
greg@richardsonadams.com

W
EXELON BUSINESS SERVICES COMPANY
CYNTHIA FONNER BRADY
4300 WINFIELD RD
WARRENVILLE IL 60555
cynthia.brady@constellation.com

W
EDWARD FINKLEA
326 FIFTH ST
LAKE OSWEGO OR 97034
efinklea@nwigu.org

W
WALMART STORES INC
KEN BAKER
2001 SE 10TH ST
BENTONVILLE AR 72716
ken.baker@wal-mart.com

W
WAL-MART STORES, INC.
STEVE W CHRISS **(C)**
2001 SE 10TH ST
BENTONVILLE AR 72716-0550
stephen.chriss@wal-mart.com

W
CABLE HUSTON BENEDICT ET AL
THOMAS M GRIM **(C)**
1001 SW FIFTH AVE STE 2000
PORTLAND OR 97204-1136
tgrim@cablehuston.com

W
NOBLE AMERICAS ENERGY SOLUTIONS, LLC
GREG BASS
401 WEST A ST., STE. 500
SAN DIEGO CA 92101
gbass@noblesolutions.com

W
CONSTELLATION NEWENERGY, INC.
JOHN DOMAGALSKI
550 WEST WASHINGTON BLVD, STE 300
CHICAGO IL 60661
john.domagalski@constellation.com

W
PUBLIC UTILITY COMMISSION OF OREGON
MARC HELLMAN **(C)**
PO BOX 1088
SALEM OR 97308-1088
marc.hellman@state.or.us

W
ENERGY STRATEGIES LLC
KEVIN HIGGINS **(C)**
215 STATE ST - STE 200
SALT LAKE CITY UT 84111-2322
khiggins@energystrat.com

W
NW & INTERMOUTAIN POWER PRODUCERS COALITION
ROBERT D KAHN
PO BOX 504
MERCER ISLAND WA 98040
rkahn@nippc.org

W
BOEHM, KURTZ & LOWRY
JODY KYLER COHN **(C)**
36 E SEVENTH ST STE 1510
CINCINNATI OH 45202
jkyler@bkllawfirm.com

W
SHELL ENERGY
JOHN LESLIE
600 WEST BROADWAY SUITE 2600
SAN DIEGO CA 92101
jleslie@mckennalong.com

W
SHELL ENERGY NORTH AMERICA
MARCIE MILNER
4445 EASTGATE MALL STE 100
SAN DIEGO CA 92121
marcie.milner@shell.com

W
PACIFIC POWER & LIGHT
JOELLE STEWARD **(C)**
825 NE MULTNOMAH STE 2000
PORTLAND OR 97232
joelle.steward@pacificorp.com

W
CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP
RICHARD LORENZ **(C)**
1001 SW FIFTH AVE - STE 2000
PORTLAND OR 97204-1136
rlorenz@cablehuston.com

W
MOUNTAIN WEST ANALYTICS
BRADLEY MULLINS **(C)**
333 SW TAYLOR STE 400
PORTLAND OR 97204
brmullins@mwanalytics.com

W
PORTLAND GENERAL ELECTRIC
DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

W
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
MARY LYNCH
5074 NAWAL DRIVE
EL DORADO HILLS CA 95762
mary.lynch@constellation.com

W
PUC STAFF - DEPARTMENT OF JUSTICE
JOHANNA RIEMENSCHNEIDER **(C)**
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4796
johanna.riemenschneider@doj.state.or.us

JAY TINKER
121 SW SALMON ST 1WTC-0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

W
SAFEWAY INC
LISSA MALDONADO
5918 STONERIDGE MALL ROAD
PLEASANTON CA 94588-3229
lissa.maldonado@safeway.com

W
HUTCHINSON COX COONS ORR & SHERLOCK
SAMUEL L ROBERTS **(C)**
777 HIGH ST STE 200
PO BOX 10886
EUGENE OR 97440
sroberts@eugenelaw.com

W
DAVISON VAN CLEVE PC
S BRADLEY VAN CLEVE **(C)**
333 SW TAYLOR - STE 400
PORTLAND OR 97204
bvc@dvclaw.com

W
COMPETE COALITION
WILLIAM MASSEY
1201 PENNSYLVANIA AVE NW
WASHINGTON DC 20004
wmassey@cov.com

SANGER LAW PC
IRION A SANGER
1117 SE 53RD AVE
PORTLAND OR 97215
irion@sanger-law.com

W
SAFEWAY INC
GEORGE WAIDELICH
5918 STONERIDGE MALL RD
PLEASANTON OR 94588-3229
george.waidelich@safeway.com

W
MCDOWELL RACKNER & GIBSON PC
KATHERINE A MCDOWELL **(C)**
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
katherine@mcd-law.com

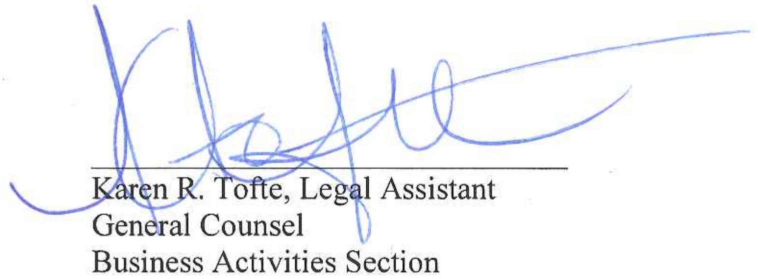
W
FRED MEYER STORES/KROGER
NONA SOLTERO
3800 SE 22ND AVE
PORTLAND OR 97202
nona.soltero@fredmeyer.com

W
MCKENNA LONG & ALDRIDGE LLP
STEFANIE WARREN
600 W BROADWAY STE 2600
SAN DIEGO CA 92101
swarren@mckennalong.com

W

DAVISON VAN CLEVE
JOSHUA D WEBER **(C)**
333 SW TAYLOR STE 400
PORTLAND OR 97204
jdw@dvclaw.com

(C) = Confidential



Karen R. Tofte, Legal Assistant
General Counsel
Business Activities Section