

1 The proposed rules define an "affiliate" as any affiliated interest within the meaning of
2 ORS 757.015. This is an unreasonably broad definition that ignores the affiliate's business and
3 markets and places the Commission in the position of regulating competitive markets outside of
4 its expertise. ORS 757.015 was included in the public utility statutes to ensure that transactions
5 between public utilities and their affiliates do not adversely affect the public utility's customers,
6 not to empower the Commission to regulate the affiliate's conduct in unrelated markets.

7 The definition of "affiliate" must be tied to the competitive market SB 1149 was enacted
8 to develop – the competitive market for electricity. For this reason, PacifiCorp supports the
9 definition of "affiliate" contained in the PGE proposed rules. If a party believes SB 1149 was
10 enacted to promote the development of any other competitive market, the party should identify
11 the target market and explain why Commission intervention is required. PacifiCorp is willing to
12 consider limited expansions of the definition of "affiliate" provided the targeted markets are
13 within the scope of SB 1149.

14 2. Standard Offer Service. PG&E National Energy Group argues that the
15 Commission "should place strong limitations upon the marketing and provision of Standard
16 Offer service as a 'competitive option'" and proposes language to accomplish this purpose.
17 PG&E National Energy Group Comments, pp. 5-6. PacifiCorp does not have any incentive or
18 interest in promoting the Standard Offer service as a competitive option. The Company's
19 principal interest is in having flexibility to inform customers of the availability and terms of the
20 Standard Offer and assisting them in making informed decisions. Customers will request this
21 assistance, and the line between information and marketing can be hazy. There may also be
22 circumstances in which a reasonable level of marketing of the Standard Offer would be
23 warranted. Considering the cost of service basis for the Standard Offer, the Commission's
24 control over the terms and conditions of the Standard Offer and the ambiguity between
25 information and marketing, a ban on marketing the Standard Offer should not be adopted without
26 a better understanding of the harm it is intended to prevent.

1 This recommendation appears to be related to PG&E Nation Energy Group's transmission
2 access issues. PacifiCorp recommends continuing the discussion of this issue as part of the
3 transmission access discussions.

4 3. Transmission Access. The proposed rules still contain extensive provisions
5 attempting to regulate access to and terms and conditions of PacifiCorp's transmission services.
6 For the reasons explained in the Comments of PacifiCorp on Legal Issues Raised by Draft Rules,
7 dated October 4, 2000, these proposed rules intrude into areas within the exclusive jurisdiction of
8 the FERC. PacifiCorp cannot accept a Code of Conduct at the state level that conflicts with its
9 open access transmission tariff (OATT) and FERC jurisdiction. PacifiCorp could not comply
10 with these proposed rules without violating its OATT and FERC Order 888. In particular,
11 PacifiCorp could not comply with the special contract rules of OAR 860-038-0590(4) without
12 violating FERC's rules prohibiting preferential or discriminatory access to transmission services.
13 The provision in subsection (5) requiring the utility to seek FERC approval does not save these
14 terms, because subsection (4) is in direct conflict with FERC's requirements and objectives.

15 The provisions of subsection (2) requiring utilities to implement, to the extent possible,
16 the principles and recommendations of FERC Order No. 2000 are fatally vague and cannot be
17 accomplished. PacifiCorp cannot achieve the objectives of an RTO without the formation of an
18 RTO. PacifiCorp has been a leader in efforts to date to form an RTO. Its desire to create an
19 RTO cannot be questioned. Nevertheless, the actual creation and operation of an RTO is at best
20 a year or two away and certainly beyond the Company's individual control. It would be wasteful
21 and ineffective for PacifiCorp to try to create an RTO within its own organization to meet a rule
22 such as the Commission proposes.

23 The transmission requirements specified in PG&E National Energy Group's comments,
24 as PG&E National Energy Group admits, go beyond non-discriminatory access to the point of
25 enriching ESSs at the expense of cost of service customers. PG&E National Energy Group
26 Comments, pp. 9-10. Requirements (a) and (d) presume that direct access customers have

1 entitlements to a share of the utility's transmission contracts and generation resources sufficient
2 to meet their loads. SB 1149 does not create such entitlements and the concept is entirely
3 unworkable in the real world. PacifiCorp meets its customer loads using a variety of resources
4 and transmission paths. Particular customers are not served from particular market hubs over
5 particular transmission paths, and in some cases the Company cannot dedicate a transmission
6 path to one customer without additional cost that would have to be borne by other customers.
7 PacifiCorp supports non-discriminatory access to its transmission system but opposes the
8 concept of customer entitlement to existing resources and transmission rights.

9 PG&E National Energy Group's requirement (a) would require utilities to assign to ESSs
10 "commercially valuable transmission and distribution paths from generation market hubs to load
11 centers." This proposal has several serious flaws beyond the points noted above. First, the
12 Commission's authority under ORS 757.637 (concerning comparable access to transmission and
13 distribution facilities) appears not to extend beyond the utility's own transmission and
14 distribution facilities. Second, if anyone besides the utility has a right to use these
15 "commercially valuable" transmission rights, which PacifiCorp does not concede, it is the
16 customer and not the ESS. SB 1149 is not about transferring commercially valuable rights to
17 ESSs. What happens to these rights if the customer chooses another ESS, or returns to Standard
18 Offer service? Third, SB 1149 does not assure ESSs of access to power markets. It assures them
19 of access to customers. Access to wholesale power markets is governed by FERC open access
20 transmission tariffs and is subject to all the limitations of those tariffs and the available
21 transmission paths. Finally, transmission contracts typically do not permit use of the
22 transmission services by third parties, and SB 1149 states that it is not intended to affect the
23 terms and conditions of preexisting contracts. SB 1149, Sec. 43.

24 Requirement (d) would create "must-offer resources" and reserve to ESSs rights to
25 purchase power from these resources within load pockets at reasonable prices, presumably cost
26 based. This proposal would create encumbrances on generating resources that would constrain

1 the utility's marketing of power and ability to sell the resources. It would also give ESSs
2 valuable rights to embedded cost generating resources, instead of requiring them to participate in
3 direct access as competitive market participants.

4 **Conclusion**

5 PacifiCorp is willing to work with the Staff and other parties to address concerns about
6 the Standard Offer and transmission access issues presenting a barrier to the development of
7 competitive electricity markets in Oregon. The next steps should be to learn more about the
8 specific transmission problems presented by direct access and the existing mechanisms for
9 dealing with the identified problems. Workshops are the best forum for doing this. Certainly,
10 written comments are insufficient for working through these problems. Transmission issues are
11 scheduled to be discussed in the November 16, 2000 workshop in Dockets UE 115/116.
12 PacifiCorp recommends using that workshop to discuss the transmission issues raised in this
13 docket as well.

14 DATED: November 3, 2000.

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