

February 28, 2017

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**Re: UM 1050 – PacifiCorp’s Reply**

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits for filing its Reply in the above-referenced docket, in compliance with Administrative Law Judge Rowe’s February 7, 2017 Ruling.

Please direct informal correspondence and questions regarding this filing to me at (503) 813-6389.

Sincerely,



R. Bryce Dalley  
Vice President, Regulation

Enclosures

cc: UM 1050 Service List

## CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Reply on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

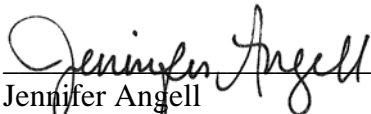
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Dated this 28<sup>th</sup> day of February 2017.

  
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 Jennifer Angell  
 Supervisor, Regulatory Operations

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1050**

In the Matter of the Application of  
PACIFICORP d/b/a PACIFIC POWER  
for an Investigation of Inter-Jurisdictional  
Issues

**PACIFICORP REPLY**

**I. INTRODUCTION**

In accordance with Administrative Law Judge (ALJ) Rowe’s February 7, 2017 Ruling, PacifiCorp, d/b/a Pacific Power (PacifiCorp or Company), files this Reply to the answers filed by Staff of the Public Utility Commission of Oregon (Commission), the Citizens’ Utility Board of Oregon (CUB), the Industrial Customers of Northwest Utilities (ICNU), and Sierra Club (collectively the Parties).

Contrary to the positions taken by the Parties, the one-year extension of PacifiCorp’s 2017 Inter-Jurisdictional Allocation Protocol (2017 Protocol) is necessary to develop an equitable allocation method, and Oregon-specific issues can be addressed in this docket, which is the Commission’s current investigation into allocation methodologies. PacifiCorp does not agree that a ‘new’ investigation docket will provide any additional benefit.<sup>1</sup> Additional Commissioner workshops can be scheduled to update the Commission and provide discussion on Oregon-specific issues, similar to the process during the early stages of Docket UM 1050. PacifiCorp also does not support Staff’s request for an evidentiary hearing before the Commission issues a decision on the extension of the 2017 Protocol. There are no

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<sup>1</sup> Order No. 02-193, (March 26, 2002).

witnesses and no need for cross-examination. Accordingly, the Commission can address Parties' arguments in a regularly scheduled public meeting or separate special public meeting. Finally, the Company expended significant efforts to analyze structural separation and other alternative allocation methodologies for presentation at the January 25, 2017 Commissioner Forum, and the results will greatly assist in future discussions. PacifiCorp appreciates Staff's acknowledgement of that effort and support for removing the potential of financial penalties.

## II. RESPONSE TO PARTIES' ANSWERS

### A. **The Commission Should Grant the Extension of the 2017 Protocol to Allow Sufficient Time for the Company and its Stakeholders to Negotiate an Allocation Methodology That Addresses Each State's Objectives**

PacifiCorp maintains that it is unlikely that stakeholders and the Company can reach consensus on a permanent allocation proposal for Commission approval before the currently scheduled expiration of the 2017 Protocol. PacifiCorp agrees with Sierra Club that the differences in state regulatory and environmental policies create significant challenges in the development of a fair inter-jurisdictional allocation methodology.<sup>2</sup> State policies regarding coal, however, are only one of the many issues that must be addressed. PacifiCorp discussed some of the issues it has identified with Multi-State Process (MSP) stakeholders in its February 22, 2017 MSP Workgroup meeting.<sup>3</sup>

Despite the complexity of the issues, the parties opposed the requested extension<sup>4</sup> or did not take an immediate position.<sup>5</sup> Staff specifically requested that the Commission

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<sup>2</sup> Sierra Club Answer at 3.

<sup>3</sup> During the February 22, 2017 MSP Workgroup meeting, the Company lead the discussion of a number of issues, including: treatment of existing coal resources; treatment of existing other resources; resource planning; allocation for new resources; treatment of qualifying facilities; policy-driven load changes; net power cost allocation; and transmission costs and revenue allocation.

<sup>4</sup> ICNU Answer at 1; Sierra Club Answer at 1.

<sup>5</sup> Staff Answer at 2; CUB Answer at 3.

schedule a hearing to determine whether PacifiCorp's request for a one-year extension should be granted arguing that additional information is necessary to determine whether the extension is appropriate. ICNU opposed any extension, as did Sierra Club. CUB did not oppose the extension, if it was concurrent with a new Commission investigation.

***1. Additional Process is Not Required to Grant PacifiCorp's Request Because the Commission Has Provided Parties with an Opportunity to be Heard and Can Address this Matter at a Regularly Scheduled Public Meeting or Special Public Meeting***

Staff argues that a hearing is required because ORS 756.568 provides the parties an opportunity to be heard.<sup>6</sup> Providing an opportunity for Parties to be heard does not necessarily require an evidentiary hearing.<sup>7</sup> An evidentiary hearing would not clarify the record in this proceeding because the Parties have not offered testimony and the Commission established a complete record regarding the 2017 Protocol through the fully litigated proceeding in 2016. Accordingly, the Commission has already provided the required opportunity under ORS 756.568 by establishing the procedures outlined in ALJ Rowe's February 7, 2017 Ruling. Discussion before the Commission at a public meeting would be sufficient to address the issues raised by the Parties. The information provided to date is sufficient for Staff to make an informed recommendation to the Commission before March 31, 2017.

Staff's argument that additional information is required to determine whether the extension is appropriate requires both a clarification and a response from the Company. Staff submitted its data request on January 13, 2017.<sup>8</sup> PacifiCorp provided its response on

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<sup>6</sup> Staff Answer at 2.

<sup>7</sup> *In re Universal Service*, Order No. 01-1063 (December 14, 2001) (“[T]he Commission has authority to amend its orders and act expeditiously on its own motion without hearing under [ORS] 756.568.”).

<sup>8</sup> Staff Answer, Attachment A at 1.

January 27, 2017, before the Company filed its Petition requesting extension. PacifiCorp objected to the request, stating that it had not completed the requested studies and was working on studies through the MSP that would include the requested information. The Company was hoping to consolidate the studies and data sets and provide all information to the MSP Workgroup. Staff did not renew its request for the information, either formally or informally, after PacifiCorp filed its Petition. After reviewing Staff's Answer to PacifiCorp's motion for an extension, PacifiCorp compiled the requested information for 2019 and provided a supplemental response. The supplemental response shows that for 2019, PacifiCorp's Oregon customers would receive an approximately \$5.9 million embedded cost differential benefit under the 2017 Protocol versus the Revised Protocol, based on updated Company information.<sup>9</sup>

PacifiCorp is also compelled to respond to Staff's position. Staff's argument that the extension is only appropriate if there is a renewed benefit analysis for 2019 appears to retreat from Staff's prior agreement to the 2017 Protocol. Staff claims that its recommendation is consistent with Section II of the 2017 Protocol providing that the Commission can "take such steps or provide such processes for public input as the Commission determines to be necessary or appropriate[.]"<sup>10</sup> The difference, however, is that Staff previously agreed to the terms of the 2017 Protocol, including the optional extension, and presented evidence supporting its position of benefits through 2019.<sup>11</sup>

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<sup>9</sup> See Attachment A to this Reply.

<sup>10</sup> Staff Answer at 4.

<sup>11</sup> Staff/100, Kaufman/8:1-2, filed April 1, 2016 (showing savings under the 2017 Protocol of \$3.3 million in 2019).



**2. *ICNU’s Answer Mischaracterizes the 2017 Protocol and the Commission’s Findings in Order No. 16-319, and Ignores the Commission’s Thorough Review of the 2017 Protocol During the Litigated Portion of the Proceeding in 2016***

The Commission approved the 2017 Protocol in Order No. 16-319, finding that it was, on balance, in the public interest because it is a short-term agreement between numerous stakeholders from different jurisdictions.<sup>12</sup> The 2017 Protocol was intended as a short-term agreement to provide PacifiCorp the opportunity to evaluate emerging issues in relation to inter-jurisdictional allocations.<sup>13</sup> The inclusion of an optional one-year extension provided the opportunity for the state commissions to evaluate PacifiCorp’s 2016 analytical efforts at the 2017 Commissioner Forum.<sup>14</sup> PacifiCorp’s 2016 analysis of regulatory impacts and alternative allocation methods emphasized the need for a long-term solution that addresses a number of complex issues, including the impacts of Senate Bill (SB) 1547.

In its Answer, ICNU makes a number of arguments and unsupported allegations without acknowledging the Commission’s review of the 2017 Protocol during a fully litigated proceeding. ICNU then mischaracterizes both the 2017 Protocol and Order No. 16-319. For example, ICNU claims that PacifiCorp is asking for emergency relief because the Company delayed the filing of its request.<sup>15</sup> In doing so, ICNU ignores the language in Section II of the 2017 Protocol that the January 2017 Commissioner Forum will discuss, among other things, “whether the 2017 Protocol should be extended for an additional one-year term[.]”<sup>16</sup> PacifiCorp filed its Petition as soon as possible after the discussion at the

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<sup>12</sup> Order No. 16-319 at 6.

<sup>13</sup> 2017 Protocol Section I.

<sup>14</sup> 2017 Protocol Section II.

<sup>15</sup> ICNU Answer at 10.

<sup>16</sup> 2017 Protocol Section II.

Commissioner Forum, and ICNU's allegation that PacifiCorp somehow delayed the filing to force an expedited action is simply not true.

While ICNU's convoluted arguments make a response difficult, the assertions fall, generally, into four categories. First, ICNU asserts that the approval in Order No. 16-319 was premised on the short-term nature of the 2017 Protocol, and that the one-year optional extension violates that premise and is not required. Second, ICNU argues that an extension is inappropriate until the Commission completes a separate process to review the extension *de novo*. Third, ICNU states that the Commission must first determine the cause of PacifiCorp's allocation shortfall. Finally, ICNU asserts that a shortened negotiation period will lead to quicker resolution of issues and agreement among the parties, despite all evidence to the contrary.

**a. ICNU Misinterprets the Commission's Order Regarding the Optional One-Year Extension**

ICNU's arguments are premised on an incorrect interpretation of the Commission's order. ICNU claims that the Commission expressly determined not to extend the 2017 Protocol to a third year.<sup>17</sup> ICNU attempts to support its contention by citing to the Commission finding that the 2017 Protocol is a short-term agreement.<sup>18</sup> ICNU, however, fails to further explain how the language in Order No. 16-316 foreclosed PacifiCorp request, or how three years, as opposed to two, changes the short-term nature of the agreement.

If the Commission had meant to foreclose the possibility of an extension, it would have used more definitive language. PacifiCorp had not requested the extension when it sought approval of the 2017 Protocol. Accordingly, the Commission stated that it did not

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<sup>17</sup> ICNU Answer at 1.

<sup>18</sup> ICNU Answer at 2-3.

“intend” to adopt the extension. A statement of the Commission’s intent regarding a future request is not binding. PacifiCorp’s analysis and the continued divergence of state policies has changed the context of the allocation discussions, and discussions regarding a more permanent solution are underway in the MSP.

If, however, ICNU’s interpretation is correct, PacifiCorp requests that the Commission modify Order No. 16-319, under ORS 756.568, and grant the one-year extension. This will provide the time required for PacifiCorp and its stakeholders to study and develop an equitable allocation method that meets the public interest standard and provides PacifiCorp an opportunity to recover its costs. The Commission has previously defined “good cause” under ORS 756.568 to include such things as changed circumstances, ratepayer interest, Commission failure to express its intent clearly in a previous order, and correction of a prior erroneous conclusion.<sup>19</sup>

**b. The Commission Has Already Conducted an Extensive Review of the 2017 Protocol and a Lengthy Investigation is Not Required to Grant the Extension**

ICNU claims that the requested extension cannot be granted without the completion of the new and independent Oregon-specific investigation.<sup>20</sup> ICNU argues that the Commission must open a new, separate investigation today, to run in parallel with the request to approve the one-year extension.<sup>21</sup> These arguments, however, are premised on the concept that the Commission has not already reviewed the 2017 Protocol. This is not the case. The Commission thoroughly reviewed the 2017 Protocol through a fully litigated proceeding.

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<sup>19</sup> See, e.g., *In re PacifiCorp*, Order No. 02-853 (December 10, 2002); *In re Portland General Elec. Co.*, Order No. 98-279 (July 13, 1998); *In re U.S. WEST Communications Co.*, Order No. 00-003 (January 3, 2000); *In re Portland General Elec. Co. et al.*, Order No. 92-557 (April 6, 1992); *In re Transportation Rates Charged by Gas Utilities*, Order No. 87-803 (July 23, 1997).

<sup>20</sup> ICNU Answer at 3.

<sup>21</sup> ICNU Answer at 4.

ICNU's challenges to the 2017 Protocol were rejected, and now ICNU claims that an extension requires an additional review that cannot be completed by March 31, 2017.<sup>22</sup> ICNU understands that a delay past March 31, 2017, forecloses the option of an extension. ICNU makes this argument despite evidence in the record in this docket showing that in 2019 Oregon customers would benefit based on the embedded cost differential parameters included in the 2017 Protocol.

**c. The Commission Found That the 2017 Protocol Provides for Equitable Sharing by Evenly Distributing the Equalization Adjustment Among the States That Participated in the Protocol**

ICNU argues that the 2017 Protocol should not be extended because two Parties argued that PacifiCorp allocation issues were caused by Utah's use of a rolled-in methodology and the Commission must determine the cause of PacifiCorp's allocation shortfall.<sup>23</sup> The Commission, however, made no such finding. In the discussion rejecting ICNU's request to reduce the equalization adjustment, the Commission stated that the parties had not fully explained the cause of the shortfall.<sup>24</sup> The Commission, however, did find that the 2017 Protocol provides for equitable sharing by evenly distributing the equalization adjustment among the states that participated in the protocol.<sup>25</sup> Accordingly, if all states have agreed to the one-year extension, the equitable sharing by evenly distributing the equalization adjustment would continue.

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<sup>22</sup> See ICNU Answer at 4, 5, 7, and 9.

<sup>23</sup> ICNU Answer at 3.

<sup>24</sup> Order No. 16-319 at 7.

<sup>25</sup> Order No. 16-319 at 6.

**d. PacifiCorp’s Analysis Has Identified a Number of Complex Issues, Requiring Substantial Analysis by Both the Company and Stakeholders to Reach Agreement on a Durable Allocation Methodology**

PacifiCorp is not facing the same issues of past negotiations. The 2017 Protocol was not significantly different from the 2010 Protocol, yet it took years to negotiate and not all parties agreed to the final terms. PacifiCorp now needs to develop a methodology that can address the diverging regulatory and environmental policies of its states. A long-term, durable allocation methodology is critical to address issues such as coal generation and resource portfolios, particularly given the passage of SB 1547 in Oregon and renewable generation goals in other states and cities. To be durable, however, an inter-jurisdictional allocation method cannot be negotiated solely on a state-by-state basis, meaning that a broader multi-state stakeholder process is required.

Despite the complexity of the issues and Parties’ request for additional state-specific studies and data,<sup>26</sup> ICNU believes the Company and its stakeholders can reach agreement in a little over a year. ICNU claims that the 2017 Protocol was negotiated in a few months, with the rest of the time spent on posturing of the parties.<sup>27</sup> PacifiCorp does not hold the same opinion. ICNU participated in the entire 2017 Protocol negotiation process, including the Oregon-specific negotiations, but refused to execute the final agreement. Now, ICNU argues that the “dithering and posturing” of other stakeholders prevented a quick resolution. Unfortunately, as ICNU is well aware, a thorough evaluation of the many allocation issues is a necessary component of the stakeholder processes before an agreement can be achieved.

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<sup>26</sup> ICNU Answer at 7.

<sup>27</sup> ICNU Answer at 8-9.

**B. UM 1050 is an Oregon-Specific Investigation, Making the Opening of a ‘New’ Investigation Unnecessary and Redundant**

All of the answers filed by parties requested that the Commission open a new investigation into PacifiCorp’s inter-jurisdictional allocation.<sup>28</sup> The parties, however, have overlooked that this docket, UM 1050, is an Oregon-specific investigation.<sup>29</sup> UM 1050 was opened to:

- (1) Determine an allocation methodology that will allow PacifiCorp an opportunity to recover its prudently incurred costs associated with its investment in generation resources;
- (2) Insure that Oregon’s share of PacifiCorp’s costs is equitable in relation to other states; and
- (3) Meet the public interest standard in Oregon.<sup>30</sup>

PacifiCorp has been responding to ongoing discovery as part of UM 1050.<sup>31</sup> PacifiCorp also provides intervenor funding for ICNU and CUB. Accordingly, the process requested by the parties already exists. Initiating a new investigation without terminating UM 1050 would only create a redundant proceeding.

CUB’s request for a contested case proceeding is also premature. The Parties have not offered a proposal for the scope or process of a new investigation. CUB, however, has requested that a new investigation be a contested case proceeding.<sup>32</sup> It is unclear to PacifiCorp what CUB seeks in a contested case proceeding. PacifiCorp had not yet proposed a new inter-jurisdictional allocation methodology for Commission approval. Instead, PacifiCorp is coordinating broad stakeholder discussions in the MSP with the intent of developing a consensus-based solution to the Company’s allocation issues.

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<sup>28</sup> Staff Answer at 2; CUB Answer at 3; ICNU Answer at 5; Sierra Club Answer at 1.

<sup>29</sup> Order No. 02-193.

<sup>30</sup> *Id.*

<sup>31</sup> *See* Staff Answer at 3; ICNU Answer at 7.

<sup>32</sup> CUB Answer at 7.

PacifiCorp understands CUB's desire for an Oregon-specific policy decision to assist in the MSP discussions.<sup>33</sup> The most vocal participants in the MSP, besides the Oregon Parties, are from Idaho, Utah and Wyoming. Such participation, however, has not diminished Oregon's role nor set Oregon-specific issues to the side. The Oregon Parties negotiated significant Oregon-specific provisions in the 2017 Protocol, and SB 1547 is a key driver to the MSP discussions. That being said, PacifiCorp supports expanding the scope of the UM 1050 to provide a forum for the Commission to provide guidance during the MSP negotiations.

PacifiCorp believes that the Parties' interest in an Oregon-specific proceeding can adequately be addressed in this docket. PacifiCorp believes an expanded process to update the Commission, study reasonable alternative allocation methodologies, and seek guidance from the Commission on specific legal or policy issues can be accommodated in this docket. A review of the procedural history in this docket indicates that the parties have previously held workshops before the Commission to discuss issues of concern to Oregon MSP participants. While PacifiCorp would prefer to maintain a consistent set of studies and data for all MSP participants, the Company has been responding to discovery from the Oregon Parties in UM 1050.<sup>34</sup> PacifiCorp is also not opposed to legal briefing in UM 1050 to clarify Oregon-specific legal constraints applicable to the MSP discussions. But any additional substantive Oregon-specific process would likely further limit PacifiCorp's ability to develop a multi-state allocation methodology and is unnecessary.

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<sup>33</sup> CUB Answer at 6.

<sup>34</sup> The Company will seek the support of the Oregon Parties to provide adequate time to conduct studies and consolidate discovery with the MSP data to avoid overly burdensome or duplicative efforts.

**C. PacifiCorp’s Efforts to Study Structural Separation and Other Alternative Allocation Methods Satisfy its Obligation Under Section XIV.3 of the 2017 Protocol**

Staff supports PacifiCorp’s request that the Commission acknowledge that PacifiCorp has met the requirement in Section XIV.3 of the 2017 Protocol, to the extent that such finding related only to the removal of the risk of financial penalties.<sup>35</sup> PacifiCorp appreciates Staff’s support on this issue. The Company spent a significant amount of time analyzing how structural separation could be accomplished and exploring other alternative allocation methods. PacifiCorp has not foreclosed any allocation methodology but, ideally, seeks a methodology that would be acceptable to all of the jurisdictions in which it operates. To be clear, however, while the analysis of structural separation provided valuable insights, any such reorganization would require the agreement of all six state commissions and the Company. Despite that limitation, PacifiCorp understands the underlying interest in structural separation and seeks an inter-jurisdictional allocation methodology that will provide each state with the flexibility to develop its own regulatory and environmental policies, while providing PacifiCorp an opportunity to recover its prudently incurred costs.

**III. CONCLUSION**

For the reasons discussed above, PacifiCorp respectfully requests that the Commission issue an order approving the one-year extension of the 2017 Protocol inter-jurisdictional allocation methodology by March 31, 2017, and acknowledge that PacifiCorp has met the requirement in Section XIV.3 of the 2017 Protocol.

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<sup>35</sup> Staff Answer at 5.



Respectfully submitted this 28<sup>th</sup> day of February 2017.



By: \_\_\_\_\_

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## **ATTACHMENT A**

**OPUC Data Request 76**

For the years 2018, 2019, 2022, and 2025:

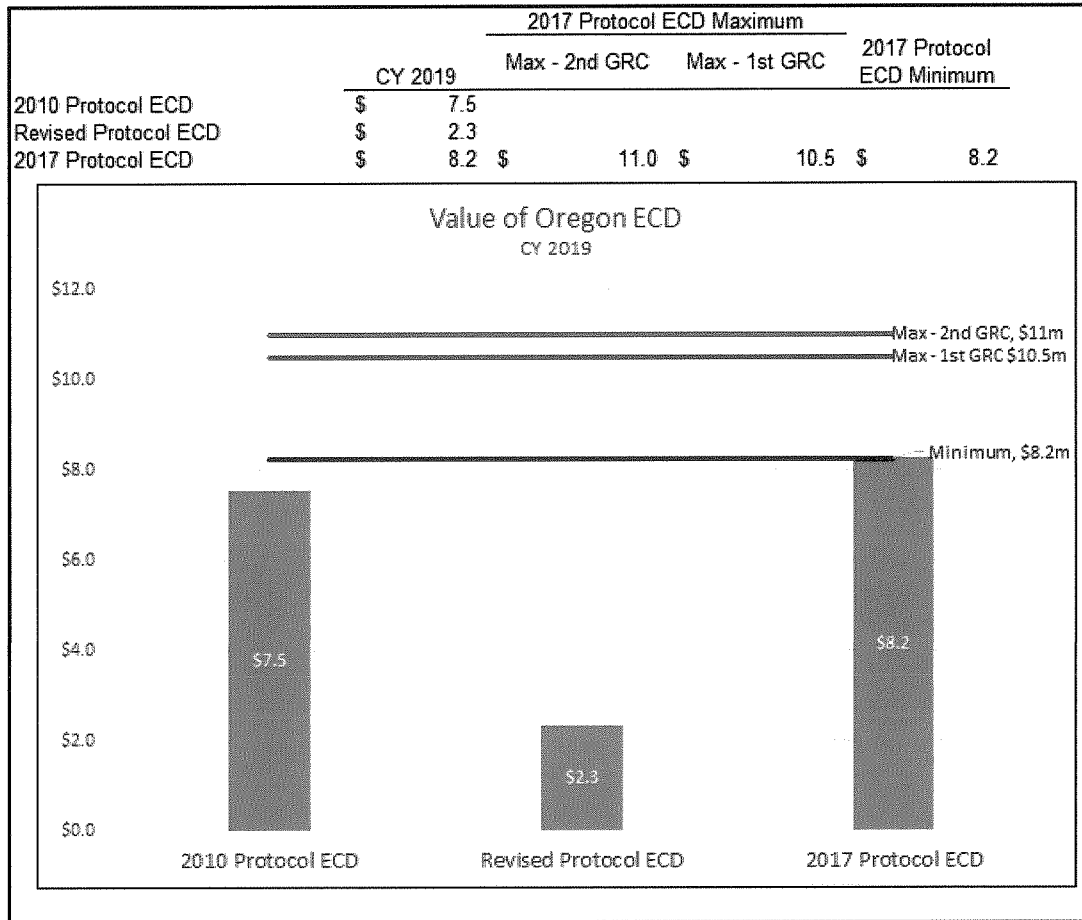
- (a) please provide the Oregon jurisdiction's annual MWh and the G&T revenue requirements under the Revised Protocol and the 2017 Protocol; and
- (b) for those same years, please also provide Oregon revenue requirements assuming Oregon also utilizes the WCA. Please provide this information and associated work-papers in electronic format, with formulae intact.

Please identify any assumptions that differ between the responses to parts (a) and (b) of this request.

**1<sup>st</sup> Supplemental Response to OPUC Data Request 76**

The Company continues to object to this request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Company responds as follows:

The Embedded Cost Differential (ECD) amounts for calendar year 2019 are shown in the table below. The value of the ECD is the primary difference between 2010 Protocol, Revised Protocol, and 2017 Protocol. Please note that the 2017 Protocol ECD is calculated consistent with the 2010 Protocol ECD, but is subject to maximum and minimum values.



Please see Confidential Attachment OPUC 76 1<sup>st</sup> Supplemental for the supporting workpapers for the calculations shown in the table above.

The confidential information is designated as Protected Information under Order No. 15-416 and may only be disclosed to qualified persons as defined in that order.

Despite PacifiCorp's diligent efforts, certain information protected from disclosure by attorney-client privilege or other applicable privileges or law may have been included in response to these data requests. Accordingly, PacifiCorp reserves its right to seek the return of any privileged or protected materials that may have been inadvertently disclosed, and respectfully advise that any inadvertent disclosure should not be considered a waiver of any applicable privileges or rights. PacifiCorp respectfully requests that you inform PacifiCorp immediately if you become aware of any such materials in these responses.