BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1050

In the Matter of PACIFICORP, dba PACIFIC POWER, Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol.	)))))))	THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION OPENING BRIEF

I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition ("NIPPC") submits this opening brief requesting that the Oregon Public Utility Commission (the "Commission" or "OPUC") clarify two provisions of the 2017 PacifiCorp (or the "Company") Inter-Jurisdictional Allocation Proposal ("2017 Protocol"). NIPPC does not take a position on whether the Commission should approve the 2017 Protocol, and is not recommending any modifications or revisions. Instead, NIPPC recommends that the Commission's order confirm that the 2017 Protocol will not allow PacifiCorp to gain any further competitive advantage over Electricity Service Suppliers ("ESS") or the market generally. Specifically, NIPPC recommends that the Commission explicitly recognize that the 2017 Protocol: 1) is not an obstacle or bar to Oregon making revisions to its direct access programs; and 2) should they emerge, ensure that a Voluntary Renewable Energy Tariff ("VERT") and other similar programs analogous to direct access will have the terms and conditions that mirror PacifiCorp's direct access programs.

PacifiCorp, Staff, NIPPC, Noble Americas Energy Solutions LLC ("Noble Solutions"), and the Industrial Customers of Northwest Utilities ("ICNU") all appear to

agree that the 2017 Protocol allows Oregon to adopt new policies regarding direct access.[1] PacifiCorp, however, has taken contrary positions in the past and the Company's testimony on this issue is not entirely clear. To protect against the Company attempting to leverage any ambiguity to its commercial advantage, the Commission needs to make it abundantly clear that the 2017 Protocol does not impose any limitations on the Commission's ability to revise its direct access programs in the future.

PacifiCorp has not raised any substantive objections to reaffirming the Commission's previous conclusion that the VRET shall be treated similarly to direct access programs, and Staff agrees that the Commission has previously concluded that VRETs must mirror direct access programs. However, PacifiCorp opposes any clarification regarding the VRET as "premature", and Staff believes that this issue should be addressed in a separate proceeding.[2] It is appropriate to clarify the issue **now**, because the 2017 Protocol is a generic and foundational document that broadly applies to the allocation of all PacifiCorp's costs and benefits. Reaffirmation is critical, because history has demonstrated that PacifiCorp will use any ambiguity in its cost allocation methodology to promote its own competitive position and limit direct access.

II. BACKGROUND

PacifiCorp was formed out of the merger between Utah Power and Light Company and Pacific Power and Light Company in 1988.[3] In order to gain approval of the merger, the applicants "committed indefinitely that Pacific's customers will not be

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1 PAC/300, Dalley/3; Noble Solutions/100, Higgins/4-5; ICNU/100, Mullins/23. The Citizens' Utility Board of Oregon does not appear to have taken a position.

2 Staff/200, Kaufman/2; PAC/300, Dalley/19-20.

3 Re Application of PacifiCorp and PC/UP&L Merging, Docket No. UF 4000, Order No. 88-767 at 2-3 (July 15, 1988).

harmed by the merger", including acknowledging that Oregonians should not subsidize Utah Power customers.[4] The Commission approved the merger based on this promise.

The Commission has approved or otherwise allowed the use of a variety of cost allocation proposals in the nearly thirty years since the merger. The Commission has adopted key foundational principals when it allocates costs between PacifiCorp's states, including insuring "that Oregon's share of PacifiCorp's costs is equitable in relation to other states" and requiring that they "[m]eet the public interest standard in Oregon."[5] The Commission should continue to rely on those principles to ensure that Oregon's unique public policies are protected and the public interest is not harmed. Key state laws and policies that should be protected include those that: 1) ensure large customers can select direct access, 2) promote electric industry competition, and 3) allow for diversity in electric generation ownership.[6]

The Oregon legislature originally passed direct access in mid-1999, which was scheduled to start in March 2002.[7] The Commission was also given new statutory responsibilities, which include "developing policies to eliminate barriers to the development of a competitive retail market structure" and "to mitigate the vertical and horizontal market power of incumbent electric companies . . . ."[8]

PacifiCorp's direct access program has been in a near continual process of implementation, including an extraordinary volume of administrative litigation and

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4 Id. at 22.

5 Re PacifiCorp, Request to Initiate an Investigation of Multi-Jurisdictional Issues, Docket No. UM 1050, Order No. 02-193 at 1-2 (Mar. 26, 2002).

6 ORS § 757.601; ORS § 757.646(1); ORS § 469A.075(4)(d).

7 Re Application of Portland Gen. Elec. Co. for Approval of the Customer Choice Plan, Docket No. UE 102, Order No. 00-110 (Feb. 22, 2010); ORS § 757.601; Sen. B. 1149, 70th Or. Legis. Assemb., Reg. Sess. (1999).

8 ORS § 757.646(1).

refinement.[9] Despite numerous changes that have been made in contested case orders, there is not even a modest level of direct access participation in PacifiCorp's service territory, with only 1.4% of PacifiCorp's eligible customers purchasing power from an ESS.[10] The low participation rates are not due to a lack of interest, which is demonstrated by the efforts of Georgia Pacific and other large customers to leave PacifiCorp's system and essentially purchase power from the market.[11]

The 2017 Protocol builds upon two cost allocation methodologies, the Revised Protocol (that was ratified in 2005) and the 2010 Protocol (that was adopted with

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9 E.g., Re PacifiCorp, dba Pac. Power, 2016 Transition Adjustment Mechanism, Docket No. UE 296, Order No. 15-394 at 12 (Dec. 11, 2015); Re PacifiCorp, dba Pac. Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, Docket No. UE 267, Order No. 15-060 at 4-13 (Feb. 24, 2015); Re PacifiCorp, dba Pac. Power, 2014 Transition Adjustment Mechanism, Docket No. UE 264, Order No. 13-387 at 13-14 (Oct. 28, 2013); Re PacifiCorp, dba Pac. Power, 2013 Transition Adjustment Mechanism, Docket No. UE 245, Order No. 12-409 at 16-17 (Oct. 29, 2012); Re PacifiCorp, dba Pac. Power, 2012 Transition Adjustment Mechanism, Docket No. UE 227, Order No. 11-435, Appendix A at 4 (Nov. 4, 2011); Re PacifiCorp, dba Pac. Power, 2011 Transition Adjustment Mechanism, Docket No. UE 216, Order No. 10-363 at 3 (Sept. 16, 2010); Re PacifiCorp, dba Pac. Power, 2010 Transition Adjustment Mechanism, Docket No. UE 207, Order No. 09-432 at 4-5 (Oct. 30, 2009); Re PacifiCorp, dba Pac. Power, 2009 Transition Adjustment Mechanism Schedule 200, Cost-Based Supply Service, Docket No. UE 199, Order No. 08-543, Appendix A at 7 (Nov. 12, 2008); Re Pac. Power & Light Co., dba PacifiCorp, Request for a General Rate Increase in the Company's Oregon Annual Revenues, Docket No. UE 170, Order No. 05-1050 at 20-21 (Sept. 28, 2005); Re OPUC Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149, Docket No. UM 1081, Order No. 04-516 at 9-13 (Sept. 14, 2004).

10 OPUC, Oregon Electric Industry Restructuring Status Report (2015) available at: http://www.puc.state.or.us/electric_restruc/statrpt/2015/July_2015_Status_Report.pdf.

11 Re Georgia-Pacific Consumer Products (Camas) LLC and Clatskanie People's Utility District Application for Declaratory Ruling, Docket No. DR 49, Order No. 15-299 at 1-5 (Sept. 29, 2015); see also: https://www.pacificpower.net/millersburg (discussing City of Millersburg and Wah Chang efforts).

modifications in 2011).[12] While there is disagreement among some parties regarding whether these past methods were reasonable, all of the Protocols have included provisions to protect Oregon ratepayers or otherwise account for unique Oregon policies, including protecting Oregon's low cost hydroelectric resources, rate limitations, flexibility to pursue renewable portfolio standard requirements, and direct access accommodations.[13] Any cost allocation methodology should not impede direct access or serve as another tool for PacifiCorp to limit competition.

This phase of the proceeding was opened to adopt the 2017 Protocol, because the 2010 Protocol is set to expire on December 31, 2016.[14] NIPPC intervened in this proceeding because the 2017 Protocol could have a significant impact on direct access and non-utility resource generation ownership. NIPPC did not file testimony, but supports in its entirety the testimony of Kevin Higgins on behalf of Noble Solutions. NIPPC also supports the recommendation of Bradley Mullins on behalf of the ICNU regarding direct access programs in Oregon (which is essentially the same as Mr. Higgins' recommendation). However NIPPC does not take a position on Mr. Mullins' recommendations on any other issues, including the allocation of costs of direct access programs in other states.

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12 Re PacifiCorp Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol, Docket No. UM 1050, Order No. 05-021 (Jan. 12, 2005) ("Revised Protocol"); Re PacifiCorp, dba Pac. Power, Petition for Approval of Amendments to Revised Protocol Allocation Methodology, Docket No. UM 1050, Order No. 11-244 (July 5, 2011) ("2010 Protocol").

13 See e.g., PAC/100, Dalley/15-17, 20-22, 24-26, 28-29.

14 PAC/101, Dalley/2.

III. ARGUMENT

1. The Commission Should Explicitly Recognize that the 2017 Protocol Does Not Limit Its Ability to Revise Direct Access Programs

The 2017 Protocol provides the Commission with greater flexibility than the 2010 Protocol in terms of being able to make changes in Oregon's direct access programs. There may not be any material disagreement on this issue, and there is no reason why the Commission should not explicitly recognize that the 2017 Protocol does not in any way limit its discretion to revise direct access programs.

The 2017 Protocol states that Oregon can adopt new direct access laws or regulations, and that the cost allocation methodology may be revised to account for these changes. Specifically:

> To the extent Oregon adopts new laws or regulations regarding Oregon Direct Access Programs, Oregon's treatment of loads lost to Oregon Direct Access Programs may be re-determined in a manner consistent with the new laws and regulations.[15]

This provision exists because the 2017 Protocol treats direct access load changes different from other load changes. Under the 2017 Protocol, ordinary large load changes result in the costs associated with the lost load being "spread across the larger customer base of the multi-state system instead of remaining entirely with the state from which the load was lost."[16] The practical impact is that no state is penalized for loss of load, but all states pick up and pay for any extra costs (or share in any benefits).

Load loss due to direct access is addressed in a markedly different manner. The costs associated with loads that take direct access and switch from PacifiCorp to an ESS

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15 PAC/101, Dalley/10.

16 Noble Solutions/100, Higgins/7.

continue to be allocated within the state.[17] This "essentially traps the fixed generation costs in Oregon."[18] These additional costs are then charged to any customer that takes service with an ESS, which has the practical impact of discouraging direct access. In this proceeding, no party is seeking to change the Commission's direct access policies or how the 2017 Protocol treats loss of loads due to direct access at this time.

The 2017 Protocol, however, allows Oregon the option to change its direct access programs, including how the costs of load loss will be allocated among PacifiCorp's states. PacifiCorp witness Bryce Dalley states "[n]one of the parties to this proceeding contest . . . that the 2017 Protocol provides the Commission discretion to address loads lost to Direct Access . . . ."[19] In support of this conclusion, Mr. Dalley points to Section X which clarifies that load loss can be revisited "if Oregon adopts new laws or regulations regarding direct access . . . ."[20]

NIPPC recommends that the Commission's order explicitly confirm that the allocation of loads under the 2017 Protocol can change, if the Commission revises its direct access programs. This clarification may be important to remove ambiguity in the future. For example, it is unclear whether PacifiCorp believes the Commission must negotiate and seek approval of other states regarding any changes in how Oregon may allocate inter-jurisdictional loads.[21] It is noteworthy that PacifiCorp previously argued that certain direct access changes were barred under the 2010 Protocol.[22] Since there is no reason to expect PacifiCorp has altered its outlook toward allowing viable direct

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17 Id.; see PAC/101, Dalley/10.
18 Noble Solutions/100, Higgins/7.
19 PAC/300, Dalley/3.
20 Id.
21 PAC/300, Dalley/13-18.
22 See Noble Solutions/200, Hearing Exhibit at 9, 13.

access programs, the Commission should make clear that the 2017 Protocol explicitly prevents PacifiCorp from making similar arguments in the future.

The Commission should clarify that the 2017 Protocol does not impose any limitations on its ability to revise direct access programs through administrative rules or **orders**. The 2017 Protocol specifically refers to changes in "Oregon laws or regulations",[23] and "regulations" are generally understood to include both rules and orders.[24] PacifiCorp, however, could argue in the future that "laws or regulations" are limited only to changes effectuated in statutes or rules. This is particularly important because the vast majority of the changes to PacifiCorp's direct access program have occurred through Commission orders rather than new administrative rules.[25] The Commission should clarify that load loss due to direct access will be treated consistently with any future Commission rules or orders so that it does not inadvertently limit its ability to revise direct access programs.

2. The VRET Should Be Treated the Same As Direct Access Programs Under the 2017 Protocol

The Commission should clarify that load served under a VRET, should one be authorized by the Commission, and any other similar programs will be treated the same as load lost due to direct access under the 2017 Protocol. As explained by Mr. Higgins, this will ensure that "the 2017 Protocol cannot be used to create a competitive advantage for a PacifiCorp-owned VRET resource over a competitively supplied direct access

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23 PAC/101, Dalley/10.

24 *Regulation*, BLACK'S LAW DICTIONARY (10th ed. 2014) (including "official rule or order, having legal force, usually issued by an administrative agency")

25 See orders cited supra note 9.

product."[26] The Commission has previously resolved this issue in its VRET investigation, concluding that VRETs need to have consistent terms and conditions with direct access to prevent the utilities from having a competitive advantage over ESSs.[27] The Commission should re-affirm this definitive and unambiguous final conclusion in its order in this case.

Direct access eligible Oregon customers currently have the option to purchase "green" power from an ESS, which means that both large and small customers already have existing voluntary renewable products (in so much as direct access is a real option for customers). An ESS direct access based renewable energy product offered to end use customers must pay transition charges, which includes the costs associated with any freed up load (which are currently allocated only to Oregon rather than all states under the 2017 Protocol).

Upon Commission approval, PacifiCorp is authorized under HB 4126 to offer its own voluntary renewable products, which could compete with ESS renewable direct access products. The Commission has explicitly conditioned its acceptance of any utility proposed VRETs, stating the proposals must have terms and conditions, including transition costs, that "mirror" and are consistent with direct access programs.[28] Without this protection, then PacifiCorp could spread the costs of any loads served under a VRET among all of its states (rather than just Oregon), which would create a competitive advantage for its own voluntary renewable product over a similar direct access renewable product. In order to treat both a VRET and renewable direct access products the same,

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26 Noble Solutions/100, Higgins/8-9.

27 Re OPUC Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 at 2 (Dec. 15, 2015).

28 Id.

any load served by PacifiCorp under its own specific VRET should include similar transition charges for loss of load as any charged to customers selecting direct access.[29]

The 2017 Protocol does not specifically address by name the VRET or other programs that have similar attributes to direct access. Instead, the VRET and other similar programs appear to be generally addressed under the provision that requires any costs associated with a state based resource should be allocated to that state. Specifically, the 2017 Protocol states that any resource that is "acquired in accordance with a Jurisdiction-specific initiative will be assigned on a situs basis to the Jurisdiction adopting the initiative."[30] This provision does not specifically address loads, but could be interpreted as stating that any costs associated with a renewable resource (including those associated with load that moves from cost of service rates to a VRET) should be assigned to Oregon. In addition, the 2017 Protocol does not state which Oregon ratepayers will shoulder these costs (i.e., to those customers taking service under the VRET or all Oregon customers). Given this lack of clarity, the Commission order approving the 2017 Protocol should simply reaffirm that the costs associated with load changes due to a VRET or similar program must be allocated in the same manner as direct access programs.

Commission Staff witness Lance Kaufman agrees that the Commission has concluded that VRET terms and conditions, including transition charges, should mirror direct access programs.[31] Mr. Kaufman also agrees that the costs of load lost due to a

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29 Noble Solutions/100, Higgins/7-8.
30 PAC/101, Dalley/6.
31 Staff/200, Kaufman/2.

VRET-type program should generally be allocated to Oregon under the 2017 Protocol.[32] Staff and PacifiCorp, however, argue that the specific issue of VRET should not be addressed in this proceeding, but only in a docket reviewing the VRET or other program.[33] For example, Mr. Dalley argues that it would be "premature" to resolve "policy matters that have not been decided by the Commission . . . ."[34] Mr. Kaufman describes the Commission's VRET order as "initial guidance".[35]

The Commission's conclusion requiring VRET programs to be consistent with direct access programs is not "premature", but is established policy. The Commission has specifically concluded that the VRET's transition charges and other terms and conditions "**must** mirror those for direct access."[36] In addition, there is unlikely to be much (if any) additional process in the VRET docket, because both PacifiCorp and Portland General Electric Company have informed the Commission that they disagree with the requirements for VRETs and are not planning to propose utility-specific tariffs.[37] Therefore, for all practical purposes, the Commission has definitively issued its final conclusion on issues related to the VRET.

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32 Id.

33 Id.; PAC/300, Dalley/19.

34 PAC/300, Dalley/19-20.

35 Staff/200, Kaufman/2.

36 Re OPUC Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 at 2 (Dec. 15, 2015) (emphasis added).

37 Re OPUC Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, PGE's Response to Commission Order No. 15-405 at 1-2 (Apr. 14, 2016); Re OPUC Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, PacifiCorp's Letter Stating It Will Not Be Making a VERT Tariff Filing at this Time at 1-2 (Apr. 14, 2016).

IV. CONCLUSION

Given PacifiCorp's history of using its cost allocation methodology to obtain an additional advantage over its market competitors, the Commission should make two clarifications to the 2017 Protocol, if it is approved. The Commission does not need to make any changes, but only explain its understanding of two key provisions. First, the Commission should clarify that the treatment of direct access related lost loads will be treated consistently with any changes in Oregon law or regulations (including Commission orders) regarding direct access. Second, the Commission should also clarify that the VRET and other programs similar to direct access will have the same treatment as direct access under the 2017 Protocol to prevent PacifiCorp from raising new barriers to direct access and market competition.

Dated this 26th day of May 2016.

Respectfully submitted,

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