

**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.)
_____)

**OPENING BRIEF OF THE
CITIZENS' UTILITY BOARD OF OREGON**

May 26, 2016



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I. Introduction

Pursuant to Administrative Law Judge (“ALJ”) Rowe’s Prehearing Conference Memorandum of February 19, 2016, the Citizens’ Utility Board of Oregon (“CUB”) submits its Opening Brief. In this brief, CUB addresses the merits of PacifiCorp’s (“PAC” or “the Company”) December 30, 2015 Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol (“the Petition”). The Petition requests that the Public Utility Commission of Oregon (“the Commission”) approve the 2017 Inter-Jurisdictional Allocation Protocol (“the 2017 Protocol”), which would make several changes to Oregon’s existing inter-jurisdictional allocation methodology (“the 2010 Protocol”). As stated in CUB’s testimony filed in this docket, CUB recommends that the Commission grant the Petition and approve the 2017 Protocol in its entirety.¹

¹ UM 1050 – CUB/200/Jenks/1, lines 3-4.

The purpose of the 2017 Protocol is to update PacifiCorp’s inter-jurisdictional allocation methodology filed in 2010, and subsequently approved by Order No. 11-244.² The 2017 Protocol is the result of extensive negotiations over the last three years with various interested stakeholders.³ Both CUB and Commission Staff have agreed to the terms in the 2017 Protocol.⁴

PacifiCorp’s Multi-State Process (“MSP”) began in 2002, when the Company filed applications in each of its six jurisdictions to create a process to consider issues related to its status as a multi-jurisdictional utility.⁵ After several years of discussions, PacifiCorp sought ratification of an inter-jurisdictional allocation protocol in Idaho, Oregon, Utah, and Wyoming.⁶ Following negotiations, the participants agreed to certain revisions to the protocol filed with the commissions (“the Revised Protocol”), which was approved by commissions in Idaho, Oregon,⁷ Utah, and Wyoming.⁸ Thereafter, subsequent and substantial discussions occurred to address various concerns raised by stakeholders in different states that resulted in amendments to the Revised Protocol (“the 2010 Protocol”).⁹ The 2010 Protocol was approved by the Commissions in Idaho, Oregon,¹⁰ Utah, and Wyoming. The 2010 Protocol Stipulation contained an express time

² *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050 at 1 (December 30, 2015).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 4.

⁶ *Id.*

⁷ The Revised Protocol was agreed to by the interested stakeholders on June 28, 2004, and approved by the Commission in Order No. 05-021 on January 12, 2005. *See In re Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, OPUC Docket No. UM 1050, Order No. 05-021 (January 12, 2005).

⁸ *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050 at 5 (December 30, 2015)

⁹ *Id.*

¹⁰ *In re PacifiCorp*, Docket No. UM 1050, Order No. 11-244 (July 5, 2011).

frame, and parties agreed that it would only be utilized for regulatory filings made prior to January 1, 2017.¹¹

The 2017 Protocol is the result of a general, carefully negotiated agreement that has been reached between representatives of PacifiCorp and certain Commission Staff members, CUB, and other interested parties from Idaho, Oregon, Utah, and Wyoming.¹² After approximately three years of discussions and negotiations, in November 2015 the signatories to the 2017 Protocol reached an agreement-in-principle that led to the final 2017 Protocol agreement that is being presented in this docket.¹³ The Industrial Customers of Northwest Utilities (“ICNU”) participated in discussions and negotiations, but did not sign the 2017 Protocol.¹⁴

We address:

1. Why CUB generally supports the 2017 Protocol, with references to specific residential consumer-favorable provisions; and
2. Why the concerns and requests for modification of other interested parties—specifically the Industrial Customers of Northwest Utilities (“ICNU”)—are unavailing.

II. Argument

CUB supports the 2017 Protocol for several reasons. A critical element of CUB’s support is that the 2017 Protocol maintains the dynamic Hydro Endowment from the 2010 Protocol, while retaining language that creates an expectation that this will continue

¹¹ *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050 at 5 (December 30, 2015).

¹² *Id.* at 6. (“Signatories to the 2017 Protocol include PacifiCorp, Public Utility Commission of Oregon Staff, the Citizens’ Utility Board of Oregon The Industrial Customers of Northwest Utilities participated in discussions and negotiations, but did not sign the 2017 Protocol.”).

¹³ *Id.*

¹⁴ *Id.*

beyond the short life of the agreement.¹⁵ Further, it includes a limited General Rate Case (“GRC”) stay-out provision that does not allow rates from a new PacifiCorp GRC to go into effect before January 1, 2018.¹⁶ Finally, CUB supports the 2017 Protocol because it is temporary in nature. If adopted, the 2017 Protocol would be in effect for two years with a possible one year extension. It will expire on December 31, 2018, unless all state commissions that approved the 2017 Protocol determine, by no later than March 31, 2017, that the term of the 2017 Protocol will be extended by an optional one-year extension through December 31, 2019.¹⁷ Therefore, there will continue to be pressure to reach a more permanent solution.¹⁸

ICNU has several concerns, but recommends that the Commission approve the 2017 Protocol with several modifications and clarifications. Those include that:

- 1) The 2017 Protocol should be modified to reflect the status quo Hydro Endowment for Oregon, eliminating the proposed caps and floor; and
- 2) The 2017 Protocol should be modified to reduce the Equalization Adjustment deferral by the amount of incremental revenues that the Company receives in connection with its ability to forecast production tax credits outside of a general rate case proceeding pursuant to Senate Bill (“SB”) 1547.¹⁹

This Brief will address the primary reasons that CUB is in support of the 2017 Protocol before responding to ICNU’s proposed modifications and clarifications with which CUB takes issue.

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¹⁵ UM 1050 – CUB/200/Jenks/7, lines 10-12.

¹⁶ *Id.* at 5-6.

¹⁷ UM 1050 – PAC/100/Daley/12, lines 1-4.

¹⁸ UM 1050 – CUB/200/Jenks/1, lines 6-8.

¹⁹ UM 1050 – ICNU/100/Mullins/2, lines 11-20.

A. CUB's Support of the 2017 Protocol

i. The 2017 Protocol Maintains the Hydro Endowment

The Hydro Endowment is a “recognition of PacifiCorp’s legacy ownership in the hydro resources located in the Northwest, which provide a preferential allocation of PacifiCorp hydro resources to customers in the Northwest.”²⁰ The fact that the 2017 Protocol maintains the 2010 Protocol’s Hydro Endowment is essential for CUB’s support. While PacifiCorp’s Direct Testimony in this matter adequately describes the history of the MSP, it fails to capture and address the underlying issue of the Hydro Endowment, and how it relates to the MSP.²¹ A brief discussion follows.

ii. The Hydro Endowment, and its Place in the Historical MSP

a. The Merger: Utah Power & Light Company and Pacific Power & Light Company

One of the most significant hurdles faced in reaching a cost allocation agreement in the MSP between the various PacifiCorp states was a disagreement over hydroelectric benefits.²² Resource cost allocation became an increasingly larger issue in the wake of the Utah Power & Light Company and Pacific Power & Light Company merger that created PacifiCorp.²³ At that time, in the 1980s, Pacific Power was a low-cost, hydro-based utility and Utah Power was a high-cost, coal-based utility.²⁴ Issues surrounding resource cost allocation were exacerbated by the fact that the Company was cutting different deals and agreements with various states.²⁵ During the merger, Utah believed it was promised that power supply costs would be merged, and Utah’s rates would

²⁰ *Id.* at 12, lines 7-9.

²¹ UM 1050 – CUB/200/Jenks/2, lines 2-3.

²² *Id.* at 7-9.

²³ UM 1050 – CUB/100/Jenks/2 (January 27, 2011).

²⁴ *Id.*

²⁵ *Id.*

subsequently fall.²⁶ Meanwhile, Pacific Power states believed, and continue to believe, that they were promised that the benefits of cheap hydropower would stay with the Northwest, and not be shared.²⁷ This disagreement was not resolved at the time of the merger, nor has it been resolved on a permanent basis since.

b. The Revised Protocol

In 2002, PacifiCorp and stakeholders from its service states undertook the first MSP effort to reach an agreement on cost allocation, resulting in the Revised Protocol.²⁸ These negotiations were very difficult, and revealed significant differences between Oregon and Utah. An agreement was reached because Oregon was willing to pay significant costs in exchange for long-term hydro benefits:²⁹

Utah was focused on forecasts of rates and trying to ensure that its rates were as close as possible to “Rolled-In” (Utah’s term for allocating hydro, clean air, and peaking costs equally across all states). . . . Oregon stakeholders, including CUB, were focused on securing the benefits of the Northwest hydro system for Northwest ratepayers. Oregon’s goal was a long-term agreement, whereby Northwest residents would pay for the early front-loaded costs of resources for the life of those licenses. In order to secure this agreement, Oregon stakeholders were willing to absorb the large costs associated with relicensing, and had to pay an additional \$97 million associated with in-state QF’s, in order to receive benefits.³⁰

In Order No. 05-021, the Commission approved the Stipulation that resulted in the Revised Protocol. There, the Commission noted that:

Oregon Parties [were] willing to accept responsibility for these higher near-term costs in the expectation that, as the relicensing costs are depreciated, Hydro-Electric Resources will yield long-term benefits to Oregon customers. For the foregoing reasons, *it is critical to Oregon Parties that their entitlement to Hydro-*

²⁶ *Id.*

²⁷ *Id.*; See *In re PacifiCorp*, OPUC Docket No. UF 4000, Order No. 88-767 at 5 (July 15, 1988) (Oregon’s order required that “[a]llocations within each division will be governed by that division’s existing jurisdictional allocation methods.”).

²⁸ *In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 05-021 at 3 (December 30, 2015).

²⁹ UM 1050 – CUB/Jenks/200/3, lines 1-2.

³⁰ UM 1050 – CUB/Jenks/100/2 (January 27, 2011).

*Electric Resources and Mid-Columbia Contracts not be abridged at any time in the future.*³¹

ICNU challenged the Stipulation, arguing that conditions were not sufficient to ensure the permanence of hydro benefits.³² However, the Commission did not find merit to this argument, stating that “[t]he Hydro Endowment is clearly viewed as a long term condition of the Revised Protocol and Stipulation. As such, we find it to be *sufficiently permanent*.”³³ As a signatory to the Revised Protocol, CUB agreed with the Commission’s determination that the Hydro Endowment was sufficiently permanent.

c. 2010 Protocol

CUB originally opposed to the 2010 Protocol, as we felt that it did not offer a sufficient long term commitment to a Hydro Endowment that benefitted Oregon ratepayers.³⁴ In CUB’s eyes, the 2010 Protocol underestimated the value of Northwest hydroelectric generation because it limited the duration of the Hydro Endowment.³⁵ That is, the 2010 Protocol removed any expectation that Oregon has long-term rights to Northwest hydro resources, and replaced it with an expectation that hydro benefits would be renegotiated every five years.³⁶ In the first iteration of the 2010 Protocol, Oregon customers were not eligible to receive the Hydro Endowment for the life of the hydro licenses even though Oregonians paid the front-loaded costs associated with hydro relicensing.³⁷

³¹ *In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 05-021 at 3 (December 30, 2015) (emphasis added). See 2005 Stipulation.

³² UM 1050 – CUB/200/Jenks/4, lines 6-8.

³³ OPUC Order No. 05-021 at 10 (emphasis added).

³⁴ UM 1050 – CUB/200/Jenks/4 at 18-19.

³⁵ *Id.* at lines 19-20.

³⁶ UM 1050 – CUB/Jenks/100/3-4 (January 17, 2011).

³⁷ *Id.*

However, CUB’s initial problems with the 2010 Protocol were assuaged, as these issues were addressed in settlement and a stipulation modifying the 2010 Protocol that was filed and approved by the Commission.³⁸ The stipulation contained provisions which made it clear that the Hydro Endowment would continue beyond the five year term of the 2010 Protocol.³⁹ Language was added to ensure that the parties could not propose Hydro Endowment-weakening mechanisms.⁴⁰ While a stipulation cannot be used to bind future Commission decisions, parties can agree to restrictions on their own advocacy.⁴¹ The stipulation provided that:

Unless otherwise recommended by the MSP Standing Committee, as long as CUB, ICNU, and Staff continue to support the use of the 2010 Protocol or the Revised Protocol for purposes of establishing PacifiCorp’s Oregon revenue requirement, ***PacifiCorp will not propose or advocate any material change in the Protocol provisions relating to Hydro-Electric Resources.***⁴²

The 2010 Protocol was also amended during settlement and the subsequent stipulation to allow the Hydro Endowment to change value as the value of hydroelectric resources changed.⁴³ The stipulation established a “dynamic” Hydro Endowment that changed in proportion with the changing value of hydro, and eliminated the potential to undervalue hydro benefits.⁴⁴

³⁸ UM 1050 – CUB/200/Jenks/5, lines 12-14.

³⁹ *In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 11-244, Appendix A at 2 (July 5, 2011).

⁴⁰ UM 1050 – CUB/200/Jenks/6, lines 1-2.

⁴¹ *Id.* at lines 3-4.

⁴² *In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 11-244, Appendix A at 7-8.

⁴³ UM 1050 – CUB/200/Jenks/6, lines 25-26.

⁴⁴ *Id.* at lines 28-31. *See In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. UM 1050, Order No. 11-244, Appendix A at 4 (“The Parties agree that, for ratemaking purposes, the two adjustments in the 2010 Protocol, Hydro ECD and Klamath Surcharge, will not be based on the six-year fixed levelized approach as proposed in the Company’s Petition. Instead, the adjustments will reflect test period costs elements for purposes of rate filings, and historic and pro forma cost elements for purposes of regulatory reporting.”).

d. 2017 Protocol

Maintaining the Hydro Endowment as a permanent part of PacifiCorp cost allocation was one of CUB's critical goals in these negotiations.⁴⁵ PacifiCorp was willing to agree to a dynamic Hydro Endowment, constrained by a floor and a cap.⁴⁶ CUB might not prefer having a cap on hydro benefits, but believes that this is a reasonable compromise in terms of negotiating an agreement, while maintaining a principled hydro endowment that changes as the value of hydro resources change.⁴⁷

CUB is also satisfied with the permanence of the Hydro Endowment as delineated in the 2017 Protocol. While the 2017 Protocol is only a two year agreement with a potential third year, PacifiCorp was willing to agree that the Revised Protocol—which CUB also supported—be the default mechanism for ratemaking after the 2017 Protocol ends.⁴⁸

iii. PacifiCorp East/West Divisional Split

CUB and other Oregon parties have been interested in examining the desirability of an East/West division of PacifiCorp's service territory for cost allocation purposes.⁴⁹ While CUB was disappointed that a study was not conducted to take a serious look at

⁴⁵ UM 1050 – CUB/200/Jenks/7, lines 8-9.

⁴⁶ *Id.* at lines 14-16.

⁴⁷ *Id.* at lines 16-18; *see also In re Petition for Approval of the 2017 Intra-Jurisdictional Allocation Protocol*, OPUC Docket No. 1050, Hearing Transcript at 117-118, lines 23-25, 1-4 (“We believed it was a reasonable compromise in terms of negotiating out an agreement of the fact that not all states were having dynamic on the other side, made the Company uncomfortable. And in terms of negotiations and trying to come to a reasonable settlement, compromises are made.”).

⁴⁸ UM 1050 – CUB/200/Jenks/7, lines 21-25; *see also* 2017 Protocol, UM 1050/Exhibit PAC/101 Dalley/17 (“The Oregon Parties agree that unless there is formal action by the [Commission] to adopt an alternate allocation methodology by January 1, 2019, or unless the 2017 Protocol is extended through 2019 under the terms of the 2017 Protocol, PacifiCorp will use the Revised Protocol allocation method for general rate case filings in Oregon after January 1, 2019.”).

⁴⁹ UM 1050 – CUB/200/Jenks/8, lines 9-11.

such a division during the creation of the 2017 Protocol, PacifiCorp has agreed to conduct a study with potential financial penalties for non-completion.⁵⁰

iv. General Rate Case Stay out Provision

CUB believes that the provision prohibiting the Company from implementing new rates from a GRC until January 1, 2018 is favorable to Oregon customers.⁵¹ While there will still be rate changes from various mechanisms besides a GRC, new capital investments—including clean air investments that have been identified, but not acknowledged in the 2013 IRP⁵²—will not be but into rates in 2016 or 2017, and will be subject to regulatory lag before they can be put into rates in 2018.⁵³

v. Limited Duration

The 2017 Protocol will last for two years, with a possible one year extension.⁵⁴ CUB believes that the short-term nature of this agreement is positive, especially since the parties and states that participated in MSP negotiations were unable to make progress on a permanent agreement.⁵⁵ As stated in its testimony, CUB opposed the idea of an interim agreement that had no end date because it would remove the need to actually resolve the outstanding issues that preclude a long-term agreement.⁵⁶ While CUB does not believe that the 2017 Protocol represents the “optimal” allocation of costs between PacifiCorp states, we believe that it is reasonable and in the public interest.

⁵⁰ *Id.* at lines 11-14; *see* 2017 Protocol, UM 1050/Exhibit PAC/101/Dalley/17 (“The Company commits to continued evaluation of alternative inter-jurisdictional allocation methods, including consideration of corporate structure alternatives, [and] *divisional allocation methodologies* If PacifiCorp does not distribute or present the results of its analysis on or before March 31, 2017, for each month the analysis is not provided after that date \$216,667 will be credited to the OATT revenue deferral balance unless otherwise waived by the Commission for good cause.”) (emphasis added).

⁵¹ 2017 Protocol, UM 1050/Exhibit PAC/101/Dalley/16.

⁵² *In re 2013 Integrated Resource Plan*, OPUC Docket No. LC 57, Order No. 14-252 at 6-8 (July 8, 2014).

⁵³ UM 1050 – CUB/200/Jenks/9, lines 4-7.

⁵⁴ UM 1050 – CUB/200/Jenks/9, line 9.

⁵⁵ *Id.* at 10-12.

⁵⁶ *Id.* at 14-16.

B. ICNU's Concerns and Proposed Modifications

i. Proposal to Eliminate Hydro Endowment Caps and Floor

ICNU was an active party during the development of the 2017 Protocol.⁵⁷ Throughout these negotiations, and at the time of this brief, ICNU has opposed any proposed imposition of a cap and floor on the Hydro Endowment.⁵⁸ In the 2017 Protocol, the Company has proposed to cap the Oregon Hydro Endowment at \$10.5 million in 2018 and \$11.0 million in 2019.⁵⁹ The Hydro Endowment floor has been proposed at \$8.2 million.⁶⁰ According to ICNU, the cap and floor proposed in the 2017 Protocol would “limit the benefits Oregon customers receive through the Hydro Endowment.”⁶¹

ICNU opposes the proposed cap and floor to the Hydro Endowment for a number of reasons. First, ICNU points to foundational studies conducted by PAC that show that the Hydro Endowment could potentially be “much higher than the caps proposed in the 2017 Protocol.”⁶² Second, ICNU sees imposing caps on the Hydro Endowment as a material change from the 2010 Protocol that is not suitable for an interim protocol.⁶³ Finally, ICNU contends that, because “Oregon customers already bear a disproportionate share of the costs associated with the Northwest hydro systems,” it does not believe fair to “propose limits on the benefits that Oregon customers receive through the Hydro

⁵⁷ UM 1050 – ICNU/100/Mullins/4, lines 6-9.

⁵⁸ *Id.* at 2, lines 1-3.

⁵⁹ UM 1050 – PAC/Dalley/101/17, lines 4-11.

⁶⁰ *Id.*

⁶¹ UM 1050 – ICNU/100/Mullins/3, lines 1-3.

⁶² UM 1050 – ICNU/100/Mullins/3, lines 3-6; *citing* UM 1050 – PAC/101/Dalley/15, lines 16-17.

⁶³ UM 1050 – ICNU/100/Mullins/11, lines 20-21, p. 12

Endowment.”⁶⁴ Essentially, ICNU believes that the proposed cap and floor serve to weaken the Hydro Endowment in Oregon.

As a consumer advocacy group, CUB is sympathetic to some of ICNU’s concerns regarding potentially weakening Oregon Hydro Endowment. However, CUB does not believe that eliminating the proposed cap and floor is appropriate in this matter, and urges the Commission to retain the structure in the proposed 2017 Protocol. CUB has supported the Hydro Endowment in the 2010 Protocol, the Revised Protocol, and supports to the cap and floor in the 2017 Protocol.⁶⁵

ICNU’s argument that the Hydro Endowment will likely be higher than the cap in the 2017 Protocol is particularly unavailing, as the amount of the Hydro Endowment has consistently decreased over the last ten years, with an overall negative historic trend.⁶⁶ Staff agrees with CUB that while removing the cap may benefit Oregon customers, the fact that it the Hydro Endowment will exceed the cap is highly unlikely.⁶⁷ Further, there is a real possibility that removing the floor would harm Oregon customers.⁶⁸

ICNU also raises a concern that the 2017 Protocol does not provide Oregon with a full Hydro Endowment, and that this sets a precedent for future interstate allocations.⁶⁹ Both Staff and CUB disagree with ICNU on both of these counts. The 2017 Protocol provides Oregon with its full historic hydro endowment, and since it was agreed to by stipulation, the 2017 Protocol does not represent any precedent for future negotiations.⁷⁰

Further, the cap and floor on the Oregon Hydro Endowment reduces risks to Oregon

⁶⁴ *Id.* at 12, lines 1-5.

⁶⁵ *See In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. 1050, Hearing Transcript at 117-118 lines 7-25, 1-4.

⁶⁶ UM 1050 – Staff/200/Kaufman/4, lines 3-7; *see* Staff/202 Response to OPUC to PAC DR 30.

⁶⁷ *Id.* at 5, lines 9-10.

⁶⁸ *Id.* at lines 10-11.

⁶⁹ *Id.* at lines 15-17.

⁷⁰ *Id.* at lines 18-21, p. 6 lines 3-4.

customers that the Hydro Endowment will be lower than the floor, and reduces the risk to the Company that if the Hydro Endowment is higher than the cap.⁷¹ Even though the Hydro Endowment is projected to be within the cap and the floor, we recognize that projections are often wrong. However, the cap and floor serve to protect all parties to this reasonable compromise in the event that projections are off.

As stated previously, CUB supported the cap and floor as part of a reasonable settlement. Importantly, CUB believes that the 2017 Protocol represents a more robust Hydro Endowment than in the Revised Protocol, which CUB also viewed as a reasonable proposal consistent with the principle of cost causality.⁷² Therefore, if the Revised Protocol represented a reasonable program in terms of the Hydro Endowment—and the 2017 Protocol Hydro Endowment with the proposed caps and floors will still likely be larger than the Revised Protocol—then the 2017 Protocol is reasonable and in the public interest from CUB’s perspective.⁷³ It is hard to argue that a cap and floor, by themselves, render a larger monetary value illegitimate. CUB urges the Commission to adopt the 2017 Protocol in a manner that maintains the proposed cap and floor to the Hydro Endowment.

ii. Proposal to reduce the Equalization Adjustment deferral by the amount of incremental revenues that the Company receives in connection with its ability to forecast production tax credits outside of a general rate case proceeding pursuant to SB 1547

CUB disagrees with ICNU’s argument that the 2017 Protocol should be modified to reduce the Equalization Adjustment deferral. In light of SB 1547, ICNU argues that

⁷¹ *Id.* at 5, lines 20-21, p. 6, lines 1-2.

⁷² *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. 1050, Hearing Transcript at 118 lines 5-10.

⁷³ *Id.* at lines 11-17.

the Company now stands to make a material increase in the amount of revenue it can collect outside of a general rate case proceeding.⁷⁴ This of particular import due to the GRC stay-out provision until January 1, 2018.⁷⁵ According to ICNU's estimates, the Company could potentially be allowed to collect approximately \$28.5 million of additional revenues due to the GRC stay-out provision.⁷⁶ To account for the changed circumstances, ICNU proposes that the Commission reduce the Company's equalization adjustment deferral of \$2.6 until its next GRC.⁷⁷

Both Staff and CUB disagree with ICNU's assertion that the 2017 Protocol should be modified. Although Staff agrees that SB 1547 reduces the value of the 2017 Protocol's rate case stay out provision, Staff notes that, in spite of SB 1547, Oregon rates will reflect current production tax credits regardless of when the Company files for a GRC.⁷⁸ It is also noteworthy that SB 1547 is an Oregon specific statute, and is therefore inherently limited in its applicability to PacifiCorp's *multi-state* plan ("MSP") that is at issue in this docket, and involves more than just Oregon parties.⁷⁹

Further, the production tax credit revenue that ICNU is referencing is actually tax credits that the Company will be receiving from the federal government, and not from Oregon ratepayers.⁸⁰ Updating the forecast of these tax credits annually as contemplated by SB 1547 ensures that the tax credits flow through to customers. ICNU's concern is not accurately forecasting a tax credit in order to ensure that customers receive that benefit. Instead, ICNU wants to put the Company in a position where it continues to

⁷⁴ UM 1050 – ICNU/100/Mullins/19, lines 18-21.

⁷⁵ 2017 Protocol, UM 1050/Exhibit PAC/101/Dalley/16.

⁷⁶ UM 1050 – ICNU/100/Mullins/19-20, lines 21-22, 1.

⁷⁷ *Id.* at 20, lines 4-6.

⁷⁸ UM 1050 – Staff/200/Kaufman/3, lines 11-14.

⁷⁹ *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050, Hearing Transcript at 121, lines 13-14.

⁸⁰ *Id.* at 128, lines 6-10.

provide tax credits to customers even after those tax credits are exhausted.⁸¹ However, ICNU fails to recognize that there are other mechanisms—including deferrals—that can be used besides a GRC to ensure that the Company can adjust its rates to reflect changes in federal taxes⁸² Indeed, deferred accounting applications have been used to track utility revenues and expenses resulting from tax structure changes pursuant to federal and state laws on many occasions.⁸³

Further, the GRC stay out provision directly states that deferrals can be filed during the GRC stay out period.⁸⁴ CUB believes there is some value to the stay out provision because it limits recovery of new capital investments. However, CUB has tried to avoid attributing too much value to the GRC stay out provision because it is inherently leaky. ICNU agrees that the value is limited and that the Company has other ways to adjust rates:

the value of the general rate case stay-out is often illusory, particularly since the Company will have many other ways to increase rates during the stay-out period.⁸⁵

ICNU further states that:

In addition, from my perspective, ratepayers seem to be confronted with an increasing number of single-issue ratemaking requests, which dilute the

⁸¹ See *id.* at lines 6-10.

⁸² See *id.* at lines 15-16.

⁸³ See *In re Idaho Power Company Deferral of Recognized Tax Benefits and in re Citizens Utility Board of Oregon and Oregon Industrial Customers of Idaho Power Application for Deferral of Tax Benefits Recognized by Idaho Power Company*, OPUC Dockets. No. UM 1562 and 1582, Order No. 13-160 at 2, 8 (April 30, 2013) (“This docket involves the interpretation and application of ORS 757.259, which provides a means to address extraordinary utility expenses or revenues outside a general rate case proceeding. . . . [T]he statute requires an initial application for deferral and notice and an opportunity for comment and a hearing. If the application is granted, the deferred amounts are subject to amortization in a subsequent rate proceeding.”); and *in re Utility Reform Project and Ken Lewis Application for Deferred Accounting*, OPUC Docket No. UM 1224, Order No. 09-316 at 6-7 (August 18, 2009) (“In Order No. 07-351, we authorized deferred accounting for revenue that is attributable to PGE’s liabilities for federal and state income, as calculated using the SB 408 methodology . . . PGE fails to convince us that any other methodology should be used to calculate the Deferral Amount.”).

⁸⁴ UM 1050 – Exhibit PAC/10/Dalley/16, lines 14-15.

⁸⁵ See UM 1050 – ICNU/100/Mullins/16, lines 2-3.

value of a stay out provision. In fact, it could be true that the stay-out provision ends up being harmful to ratepayers, as base rates—after accounting for all of the Company’s regulatory mechanisms—may need to be reduced.⁸⁶

CUB urges the Commission to deny ICNU’s request to adopt the 2017 Protocol with a modification that reduces the equalization adjustment deferral. CUB’s biggest concern in the 2017 was the permanence of the Hydro Endowment, and views the equalization adjustment and Company revenue issue as ancillary.⁸⁷ CUB believes that, as is, the 2017 Protocol represents a reasonable compromise that is in the public interest.

III. Conclusion

For all of the reasons discussed above, CUB believes that the Commission should approve PacifiCorp’s 2017 Protocol in its entirety and dismiss ICNU’s requests to modify. Pursuant to its authority, the Commission may approve the 2017 Protocol in its entirety, in part, or modify it. Staff also supports approval of the 2017 Protocol in its entirety as written, and notes that deviating from the agreement could cause other unintended consequences.⁸⁸ Perhaps most importantly, the 2017 Protocol states that if any state commission makes a material change to the 2017 Protocol, then all states, and all parties will have the opportunity to pull out as signatories.⁸⁹ The 2017 Protocol is the result of a carefully negotiated, complicated, and integrated agreement by many stakeholders, and CUB recommends that the Commission approve it in its entirety.

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⁸⁶ See UM 1050 – ICNU/200/Mullins/3, line 15, 4 lines 1-4

⁸⁷ *In re Petition for Approval of the 2017 Inter-Jurisdictional Allocation Protocol*, OPUC Docket No. UM 1050, Hearing Transcript at 124-125, lines 25, 1-2.

⁸⁸ *Id.* at 136, lines 7-10.

⁸⁹ See *id.* at 119, lines 5-9.

Respectfully submitted,

May 26, 2016

A handwritten signature in blue ink, appearing to read "Michael P. Goetz". The signature is stylized and cursive.

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