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VIA ELECTRONIC FILING

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Public Utility Commission of Oregon
PO Box 2148
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**Re: Docket No. UM 1050 - In the Matter of PACIFICORP d/b/a PACIFIC POWER
Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Cost Allocation
Protocol**

Attached for filing in the above docket is an electronic copy of PacifiCorp's Response Brief.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1050**

In the matter of

PACIFICORP, d/b/a PACIFIC POWER

Petition for Approval of the 2017 Inter-
Jurisdictional Allocation Protocol.

PACIFICORP'S RESPONSE BRIEF

June 8, 2016

TABLE OF CONTENTS

- I. INTRODUCTION1
- II. ARGUMENT.....2
 - A. The Commission Should Approve the 2017 Protocol Because it is Consistent with the Public Interest.2
 - B. Modification of the Terms of the 2017 Protocol May Undermine the Carefully Crafted Multi-State Compromise.3
 - C. The Equalization Adjustment is an Essential Piece of a Negotiated Compromise, and Senate Bill (SB) 1547 Has No Relevance to the Equalization Adjustment.....5
 - 1. The Equalization Adjustment is a Fair and Equitable Negotiated Compromise.....5
 - 2. SB 1547 Has No Relevance to the Equalization Adjustment.....8
 - 3. The Equalization Adjustment Qualifies for a Deferral.....9
 - D. Oregon’s ECD Parameters Provide Benefits and Certainty for PacifiCorp’s Customers and for the Company.10
 - 1. The Foundational Studies Were Designed for a Limited Purpose and Contained Useful and Accurate Information Relevant for that Purpose.11
 - 2. The ECD Forecasts Have Consistently Trended Downward.12
 - 3. The Dynamic ECD Parameters Are Not Precedential For Future MSP Allocation Negotiations.13
 - E. Section X of the 2017 Protocol Provides a Process for Addressing Changes in Direct Access, Accordingly There Is No Need for the Commission to Make Specific Findings Regarding Direct Access in its Order on the 2017 Protocol.....13
 - 1. Section X.A.3 of the 2017 Protocol is Clear and Unambiguous.14
 - 2. The 2017 Protocol Will Not Prevent Any Modifications to Direct Access Deemed Necessary and Appropriate by the Commission.15
 - 3. The 2017 Protocol Adequately and Appropriately Addresses Direct Access Issues.....16
 - F. Because PacifiCorp Does Not Have a VRET, Addressing Loads that May be Served Under a VRET is Premature.....16
- III. CONCLUSION.....17

**BEFORE THE PUBLIC UTILITY COMMISSION
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PACIFICORP, d/b/a PACIFIC POWER
Petition for Approval of the 2017 Inter-
Jurisdictional Allocation Protocol.

PACIFICORP’S RESPONSE BRIEF

I. INTRODUCTION

1
2 PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully submits this
3 Response Brief to the Public Utility Commission of Oregon (Commission). The primary
4 issue in this case is whether the Commission should approve the 2017 PacifiCorp Inter-
5 Jurisdictional Allocation Protocol (2017 Protocol) in its entirety, as recommended by the
6 Company, Commission Staff (Staff), and the Citizens’ Utility Board of Oregon (CUB)
7 (referred to as Oregon Parties), or whether the Commission should approve the 2017 Protocol
8 subject to the modifications proposed by the Industrial Customers of Northwest Utilities
9 (ICNU). PacifiCorp and the other Oregon Parties urge the Commission to adopt the 2017
10 Protocol without modification. The 2017 Protocol satisfies the Commission’s standards for
11 inter-jurisdictional allocation, is in the public interest, and will produce just and reasonable
12 rates. Moreover, the 2017 Protocol represents a comprehensive and integrated agreement
13 that was negotiated and agreed to by parties across four jurisdictions (referred to individually
14 as Party, or collectively as Parties)¹ and is intended to serve as interim compromise until a
15 permanent allocation methodology can be negotiated.

¹ The Parties signing the 2017 Protocol included representatives of Idaho, Oregon, Utah, and Wyoming. PAC/100, Dalley/5:4-11.

1 ICNU, on the other hand, recommends that the Commission reduce the Equalization
2 Adjustment amount for Oregon and eliminate the upper and lower limit parameters for
3 Oregon’s dynamic Embedded Cost Differential (ECD). Additionally, ICNU, Noble
4 Americas Energy Solutions (NAES), and the Northwest and Intermountain Power Producers
5 Coalition (NIPPC) request that the Commission expand the scope of this proceeding to
6 address possible future changes to direct access load in Oregon and other states, and load that
7 may eventually be served by voluntary renewable energy tariff (VRET) resources.
8 PacifiCorp’s Response Brief explains why the Commission should adopt the 2017 Protocol
9 in its entirety and without modification, and responds to the issues raised in the Opening
10 Briefs of ICNU, NAES, and NIPPC.

11 II. ARGUMENT

12 A. The Commission Should Approve the 2017 Protocol Because it is Consistent with 13 the Public Interest.

14 The Company, CUB, and Staff recommend approval of the 2017 Protocol in its
15 entirety, and ICNU recommends approval of the 2017 Protocol subject to two modifications.²
16 ICNU argues the Commission’s standard of review for non-unanimous stipulations is
17 somehow heightened and that the Commission should view the contested stipulation without
18 a high degree of confidence.³ On the contrary, the Commission encourages “parties to
19 voluntarily resolve issues to the extent that settlement is in the public interest.”⁴ When
20 reviewing settlements, even contested ones, the Commission has consistently articulated the

² PacifiCorp’s Opening Brief at 20; Staff’s Opening Brief at 9; CUB’s Opening Brief at 16; ICNU’s Opening Brief at 1.

³ ICNU’s Opening Brief at 1-2.

⁴ *In the Matter of PacifiCorp, dba Pac. Power 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-432 at 6 (Oct. 30, 2009).

1 same standard—all stipulations are reviewed for their overall reasonableness and consistency
2 with the public interest.⁵ Here, the Company, Staff, and CUB have produced a robust
3 evidentiary record demonstrating that the 2017 Protocol is consistent with the public interest
4 and will, as a whole, produce just and reasonable rates.⁶

5 **B. Modification of the Terms of the 2017 Protocol May Undermine the Carefully**
6 **Crafted Multi-State Compromise.**

7 The 2017 Protocol was negotiated as a complete agreement and contains a provision
8 allowing each Party to reevaluate its support in the event of modification of a material term.⁷
9 ICNU disregards the clear language in the agreement and argues that the Commission’s
10 modification of the 2017 Protocol will not adversely impact approval in other states.⁸ To
11 support this contention, ICNU claims that Utah and Wyoming modified the 2010 Protocol
12 without consequence.⁹ Therefore, ICNU reasons that modification of the 2017 Protocol will
13 also have no consequence. ICNU’s reasoning is unpersuasive.

14 The process for negotiating the 2010 Protocol was fundamentally different than the
15 2017 Protocol.¹⁰ Similar to the process for approval of the 2010 Protocol in Oregon
16 described in the Company’s Opening Brief,¹¹ in both Utah and Wyoming, PacifiCorp filed an
17 initially proposed 2010 Protocol and then engaged in settlement conversations with the

⁵ *In the Matter of PacifiCorp, dba Pac. Power 2012 Transition Adjustment Mechanism*, Docket No. UE 227, Order No. 11-435 at 3 (Nov. 4, 2011); *In the Matter of PacifiCorp, dba Pac. Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket No. UE 267, Order No. 15-060 at 4 (Feb. 24, 2015), *reconsideration denied by* Order No. 15-195 (June 16, 2015).

⁶ PAC/300, Dalley/1:11-20; TR. 135:19-136:10 (Kaufman); TR. 121:7-11 (Jenks) (“We negotiated an agreement that we think is reasonable. It’s a compromise. I do think it’s reasonable. I do think it’s in the public interest. I do think it’s a reasonable outcome for the next two to three years.”).

⁷ PAC/100, Dalley/7:20-23; TR. 120:19-22 (Jenks).

⁸ ICNU’s Opening Brief at 21.

⁹ ICNU’s Opening Brief at 22-23.

¹⁰ PacifiCorp’s Opening Brief at 18-19.

¹¹ PacifiCorp’s Opening Brief at 18-19.

1 parties that ultimately resulted in several modifications to the Company’s proposed 2010
2 Protocol.¹² The commissions in Utah and Wyoming subsequently approved the 2010
3 Protocol as modified by the stipulated agreements.¹³ Neither the Wyoming nor Utah
4 commissions unilaterally imposed modifications beyond what was recommended by the
5 parties through their stipulated agreement.¹⁴

6 In contrast, the 2017 Protocol was negotiated and agreed to by the Parties in four
7 different jurisdictions prior to filing,¹⁵ and the Oregon Parties request that Commission
8 approve the 2017 Protocol without modification.¹⁶ Given the differences in process for the
9 2010 Protocol and 2017 Protocol, a material change to the 2017 Protocol imposed
10 unilaterally by the Commission would allow each Party to reconsider its support for the 2017
11 Protocol, and potentially jeopardize the entire agreement.¹⁷

12 Additionally, ICNU claims that in practice, states accept that other jurisdictions may
13 modify negotiated settlement terms, and that no reaffirmation proceedings were initiated in
14 response to Utah and Wyoming’s modifications to the 2010 Protocol.¹⁸ But simply because
15 there were no reaffirmation proceedings in 2010 and 2011 does not mean that the same
16 would be true today—particularly, given the integrated nature of the 2017 Protocol and the

¹² *In the Matter of the Application of PacifiCorp for an Investigation of Inter-Jurisdictional Issues*, Pub. Serv. Comm’n of Utah Docket No. 02-035-04, Report and Order at 3-5 (Feb 3, 2012) (hereinafter referred to as “Utah 2010 Protocol Order”); *In the Matter of the Application of Rocky Mountain Power Requesting Approval of Amendments to the Revised Protocol Allocation Methodology*, Wyo. Pub. Serv. Comm’n Docket No. 20000-381-EA-10 (Record No. 12624), Memorandum Opinion, Findings and Order Approving Stipulation at 2-5 (July 7, 2011) (hereinafter referred to as “Wyoming 2010 Protocol Order”).

¹³ Utah 2010 Protocol Order at 19; Wyoming 2010 Protocol Order at 12-13.

¹⁴ *Id.*

¹⁵ TR. 18:20-19:2 (Dalley).

¹⁶ PacifiCorp’s Opening Brief at 19; Staff’s Opening Brief at 9; CUB’s Opening Brief at 16.

¹⁷ TR. 120:20-22 (Jenks).

¹⁸ ICNU’s Opening Brief at 23.

1 different circumstances under which the 2017 Protocol was agreed to and presented to each
2 state.

3 **C. The Equalization Adjustment is an Essential Piece of a Negotiated Compromise,**
4 **and Senate Bill (SB) 1547 Has No Relevance to the Equalization Adjustment.**

5 As explained in the Company’s Opening Brief, the 2017 Protocol includes an
6 Equalization Adjustment that is a fixed dollar adjustment applied to each state’s revenue
7 requirement, and is intended to recognize the inconsistent implementation of the 2010
8 Protocol.¹⁹ ICNU argues that the Equalization Adjustment is inequitable and proposes that
9 the Commission condition its approval of the 2017 Protocol to eliminate or reduce the
10 Equalization Adjustment by the amount of incremental revenues that the Company will
11 eventually receive from phasing out expired production tax credits (PTCs) as a result of SB
12 1547.²⁰

13 **1. The Equalization Adjustment is a Fair and Equitable Negotiated**
14 **Compromise.**

15 The Equalization Adjustment is a negotiated compromise designed to mitigate the
16 allocation shortfall resulting from the differences in application of the 2010 Protocol.²¹ For
17 each state, the Equalization Adjustment represents approximately two-tenths of one percent
18 the state’s annual revenue requirement,²² and for Oregon, the annual Equalization
19 Adjustment amount is \$2.6 million.²³ ICNU argues that the allocation shortfall is caused by
20 Utah’s inconsistent application of the 2010 Protocol, and that PacifiCorp’s shareholders
21 should bear the responsibility for absorbing any shortfall arising from multi-jurisdictional

¹⁹ PacifiCorp’s Opening Brief at 5-6.

²⁰ ICNU’s Opening Brief at 8-9.

²¹ PAC/100, Dalley/8:4-9.

²² PAC/100, Dalley/29:14-16.

²³ PAC/101, Dalley/15:12-14.

1 allocations.²⁴ While some Parties to the 2017 Protocol may share this view,²⁵ the Parties
2 nonetheless considered the allocation shortfall to be an important issue for resolution during
3 the negotiation process for the 2017 Protocol.²⁶ Moreover, the Parties determined that the
4 Equalization Adjustment was a reasonable compromise approach to resolving the allocation
5 shortfall, and agreed to it as part of a negotiated package that was a compromise among the
6 Parties representing four jurisdictions, and because the 2017 Protocol is an integrated
7 agreement, each state has agreed to the Equalization Adjustment applicable to the other
8 states.²⁷

9 ICNU argues that the benefits to Oregon customers, including the general rate case
10 stay-out provision and the Company's commitment to perform allocation studies, do not
11 justify the Equalization Adjustment.²⁸ Regarding the value of the general rate case stay-out,
12 ICNU claims that "the Company would presumably be disinclined to file a general rate case
13 at present, regardless of a stay-out pledge, based on apparent evidence of overearning."²⁹
14 However, the evidence in the record based on the most recent Results of Operations shows
15 that PacifiCorp is in fact earning less than its authorized rate of return.³⁰

²⁴ ICNU's Opening Brief at 10-11.

²⁵ See, e.g., Staff/100, Kaufman/11:11-12:12.

²⁶ During the three year negotiation process for the 2017 Protocol, the Parties identified concerns with the 2010 Protocol and developed and analyzed potential solutions to incorporate into the 2017 Protocol. PAC/100, Dalley/4:3-8; Staff/100, Kaufman/3:14-15.

²⁷ PacifiCorp's Opening Brief at 5-6; Staff's Opening Brief at 3; CUB's Opening Brief at 16; TR. 27:7-11 (Dalley) ("[T]he terms that Oregon agreed to were also very important to other states, and vice versa. And so each state wanted to understand what other states were agreeing to as part of a collective package.").

²⁸ ICNU's Opening Brief at 11-14.

²⁹ ICNU's Opening Brief at 13.

³⁰ TR. 59:2-23 (Dalley).

1 ICNU also argues that most of the Company's rate increases occur outside of general
2 rate cases, and thus the value of a general rate case stay-out is limited.³¹ Yet, both CUB and
3 Staff were aware of the other regulatory mechanisms available to PacifiCorp to change rates
4 outside of a general rate case, but still believe that the general rate case stay-out provision is
5 favorable for Oregon customers.³² Specifically, CUB notes that as a result of the general rate
6 case stay-out provision, new capital investments, including clean air investments, will not be
7 put into rates in 2016 or 2017, and will be subject to regulatory lag before they are included
8 in rates in 2018, at the earliest.³³

9 ICNU also argues that the Equalization Adjustment is not justified by the Company's
10 commitment to perform allocation studies.³⁴ The Equalization Adjustment, however, was not
11 negotiated solely in exchange for the Company's commitment to perform allocation studies;
12 instead, it was negotiated as part of a total package of compromises. For example, Staff
13 notes that:

14 In isolation the Equalization Adjustment is not better for customers, but
15 the 2017 Protocol also includes a general rate case stay-out provision
16 which is not included in the Revised Protocol, a financial incentive for
17 PacifiCorp to provide requested studies which is not included in the
18 Revised Protocol, treatment of [qualifying facility] contracts as system
19 allocated instead of assigned to the approving jurisdiction, and a
20 different ECD calculation.³⁵

³¹ ICNU's Opening Brief at 13.

³² CUB's Opening Brief at 10, 15; Staff's Opening Brief at 3-4.

³³ CUB's Opening Brief at 10.

³⁴ ICNU's Opening Brief at 11-12.

³⁵ Staff's Opening Brief at 3.

1 The Equalization Adjustment is just one piece of a negotiated package which includes
2 substantial benefits for Oregon customers.³⁶

3 **2. SB 1547 Has No Relevance to the Equalization Adjustment.**

4 ICNU argues that one reason to eliminate the Equalization Adjustment is that it “was
5 held to be reasonable by Oregon signatories of the 2017 Protocol prior to a major change in
6 Oregon regulatory law—i.e., the passage of SB 1547 in March 2016.”³⁷ Since the passage of
7 SB 1547, however, no Oregon Party has changed its position on the reasonableness of the
8 Equalization Adjustment.³⁸ In fact, all Oregon signatories have acknowledged that SB 1547
9 has no bearing on their support for the 2017 Protocol.³⁹ In essence, ICNU attempts to make
10 an argument on behalf of the Oregon Parties that has been explicitly *rejected* by the Oregon
11 Parties. In its Opening Brief, ICNU strains to make this point, claiming that Staff agrees that
12 the passage of SB 1547 is relevant to the 2017 Protocol by selectively quoting Staff’s
13 testimony,⁴⁰ and selectively omitting the portion of Staff’s testimony clarifying that Staff’s
14 analysis of the value of the 2017 Protocol took into account the passage of SB 1547 and
15 revenues associated with the expiration of PTCs.⁴¹

16 Additionally, ICNU argues that “no party has even attempted to rebut Mr. Mullins’
17 calculation that the Company could potentially collect approximately \$28.5 million in
18 additional Oregon PTC revenues, as a result of SB 1547.”⁴² No party has rebutted ICNU’s

³⁶ PAC/300, Dalley/1:11-13; TR. 135:19-136:10 (Kaufman); TR. 121:7-11 (Jenks).

³⁷ ICNU’s Opening Brief at 8.

³⁸ PAC/300, Dalley/14:8-18; TR. 129:7-12 (Jenks); TR. 143:17-21 (Kaufman).

³⁹ PacifiCorp’s Opening Brief at 14-15; CUB’s Opening Brief at 14-15; TR. 142:21-143:21 (Kaufman).

⁴⁰ ICNU’s Opening Brief at 16.

⁴¹ Staff/200, Kaufman/3:11-12.

⁴² ICNU’s Opening Brief at 8-9. ICNU repeatedly mischaracterizes PTC forecasting “revenue” as additional revenue without ever acknowledging that the current source of the PTC benefit provided to customers is time-limited. SB 1547 simply allows PacifiCorp to stop providing a credit to customers when the Company stops receiving the credit upon its expiration.

1 calculation because it is totally irrelevant to the 2017 Protocol in general, and has no
2 connection to the Equalization Adjustment. During the May 17, 2016 hearing,
3 Administrative Law Judge (Judge) Rowe asked the Company and CUB about whether there
4 was any correlation between the Equalization Adjustment and PTC revenues, and both
5 explained that there is not.⁴³

6 Because SB 1547 has no relationship to the Equalization Adjustment, and because the
7 Oregon Parties have definitively stated that their support for the 2017 Protocol is unchanged
8 by the passage of SB 1547, the Commission should reject ICNU’s recommendations and
9 approve the entire 2017 Protocol, including the Equalization Adjustment.⁴⁴

10 **3. The Equalization Adjustment Qualifies for a Deferral.**

11 In the 2017 Protocol, the Oregon Parties agreed that Oregon’s Equalization
12 Adjustment of \$2.6 million annually (or \$216,667 monthly) will be deferred from
13 January 1, 2017, until the 2017 Protocol Equalization Adjustment is reflected in base rates
14 through the Company’s next general rate case.⁴⁵ ICNU suggests that the Equalization
15 Adjustment does not qualify for a deferral, arguing that “Oregon statute instructs the
16 Commission to approve a deferral only for ‘[i]dentifiable utility expenses or revenues, the
17 recovery or refund of which the commission finds should be deferred in order to ... match

⁴³ TR. 128:2-6 (Judge Rowe, Jenks); TR. 47:16-48:7 (Judge Rowe, Dalley) (“**JUDGE ROWE:** I guess I have a broader question about the equalization adjustment and PTC revenues. So there's a shortfall. The shortfall was due to how the states implemented the ECD. And now the Company will get additional PTC revenues in the TAM. Do those overlap at all with the shortfall that the equalization adjustment is trying to address?
DALLEY: No, they don't. And so the equalization adjustment is trying to address how the ECD was established among the different states. And so some states have zero ECD, some have dynamic ECD, some have fixed ECD. And because of the differences of how those were implemented, it creates a[n] allocation gap. Production tax credits themselves are not reflected in that calculation.”).

⁴⁴ PacifiCorp’s Opening Brief at 14-15; CUB’s Opening Brief at 14-15; TR. 142:21-143:21 (Kaufman).

⁴⁵ PAC/101, Dalley/15:14-17.

1 appropriately the costs borne by and benefits received by ratepayers[]”⁴⁶ and that “a black-
2 box adjustment” is not identifiable or capable of matching costs and benefits received by
3 ratepayers.⁴⁷ To the contrary, the Equalization Adjustment is in fact an identifiable expense.
4 The Company has explained the derivation of the Equalization Adjustment⁴⁸ and the amount
5 of the Equalization Adjustment for each state is shown in the 2017 Protocol.⁴⁹ Moreover, the
6 Commission has previously approved the use of a comparable deferral for the 2010
7 Protocol.⁵⁰ The 2010 Protocol and 2017 Protocol were both negotiated agreements, and the
8 expense proposed for deferral in connection with the 2017 Protocol is identifiable to the same
9 extent the 2010 Protocol amounts were identifiable. Thus, the Equalization Adjustment
10 qualifies for a deferral consistent with Oregon law and Commission precedent.

11 **D. Oregon’s ECD Parameters Provide Benefits and Certainty for PacifiCorp’s**
12 **Customers and for the Company.**

13 As explained in greater detail in the Company’s Opening Brief, the 2017 Protocol
14 retains the dynamic ECD for Oregon from the 2010 Protocol, but modifies the dynamic ECD
15 to include upper and lower limit parameters.⁵¹ Relying on the foundational studies provided
16 to Parties in 2014, ICNU claims that the upper limit parameter of the dynamic ECD may
17 harm Oregon customers.⁵² As extensively explained in Staff and the Company’s pre-filed
18 testimony, as well as at the May 17 hearing, and again in Staff’s and the Company’s opening

⁴⁶ ICNU’s Opening Brief at 15.

⁴⁷ ICNU’s Opening Brief at 15.

⁴⁸ PAC/100, Dalley/16:11-22.

⁴⁹ PAC/101, Dalley/14:16.

⁵⁰ *In the Matter of PacifiCorp, dba Pac. Power Application for a Deferred Accounting Order Approving Deferral of Costs Relating to Investigation of Inter-Jurisdictional Issues in UM 1050*, Docket No. UM 1539, Order No. 11-283 (Aug. 1, 2011).

⁵¹ PacifiCorp’s Opening Brief at 7; *see also* PAC/100, Dalley/17:10-23; CUB/200, Jenks/7:9-12.

⁵² ICNU’s Opening Brief at 3.

1 briefs, the foundational studies have been superseded by more recent and more accurate data,
2 and accordingly, the data upon which ICNU relies for its analysis is no longer relevant to the
3 dynamic ECD calculation.⁵³ Nonetheless, ICNU clings to the foundational studies and
4 makes the following arguments in support of their continuing relevance: (1) to discredit the
5 foundational studies is to discredit the entire Multi-State Process (MSP), and either the
6 foundational studies contain useful information or the Company acted in bad faith in
7 providing the foundational studies;⁵⁴ and (2) the ECD is difficult to forecast, adding to the
8 potential that the upper limit parameters of the ECD could be exceeded.⁵⁵ Additionally,
9 ICNU argues that the Commission’s approval of a dynamic ECD subject to the agreed
10 parameters may be harmful because it could be precedential.⁵⁶ These arguments are
11 unpersuasive.

12 **1. The Foundational Studies Were Designed for a Limited Purpose and**
13 **Contained Useful and Accurate Information Relevant for that Purpose.**

14 ICNU argues that the Company, by discrediting the reliability of the foundational
15 studies, is effectively discrediting “the value of the entire MSP process and the settlement
16 that it produced.”⁵⁷ As explained in the Company’s testimony, however, the data in the
17 foundational studies had a limited purpose: “The explicit purpose of the data was to study
18 allocations, not predict revenue requirement at a level commensurate with a proceeding used
19 to actually set rates.”⁵⁸ The data provided to the Broad Review Work Group was accurate at

⁵³ PAC/400, McDougal/4:5-5:13; Staff/200, Kaufman/4:10-11; see also TR. 133:24-134:8, 134:19-25 (Kaufman); PacifiCorp’s Opening Brief at 11-12; Staff’s Opening Brief at 5.

⁵⁴ ICNU’s Opening Brief 5-6.

⁵⁵ ICNU’s Opening Brief at 6.

⁵⁶ ICNU’s Opening Brief at 8.

⁵⁷ ICNU’s Opening Brief at 6.

⁵⁸ PAC/400, McDougal/4:12-14.

1 the time it was provided and appropriate for its intended purpose.⁵⁹ Ultimately, the Company
2 updated the data and revised its ECD forecasts, and the Parties were aware of and relied upon
3 the revised forecasts.⁶⁰ The foundational studies served their intended purpose, and the fact
4 that the Company later developed updated forecasts with refined inputs does not discredit the
5 MSP or suggest that the Company provided the data in the foundational studies in bad faith.

6 **2. The ECD Forecasts Have Consistently Trended Downward.**

7 PacifiCorp's most recent projections for Oregon dynamic ECD levels during the
8 effective period of the 2017 Protocol demonstrate that anticipated ECD benefits will be
9 within the dynamic ECD parameters.⁶¹ ICNU argues that the ECD levels have been difficult
10 to forecast, adding to the potential that the upper limit of the dynamic ECD may be exceeded
11 during the term of the 2017 Protocol.⁶² While it may be challenging to forecast the dynamic
12 ECD with precision due to the variable nature of the inputs influencing the value of the ECD,
13 PacifiCorp, Staff, and CUB all agree that the currently available evidence indicates that the
14 dynamic ECD forecasts have been trending downward for the past ten years, and no party has
15 provided evidence suggesting reversal of this trend.⁶³ Even PacifiCorp's most recent Oregon
16 Results of Operations report shows that Oregon customers would have benefitted in 2015
17 from application of the lower limit of the dynamic ECD parameters.⁶⁴ Importantly, both

⁵⁹ PAC/400, McDougal/6:3-6.

⁶⁰ PAC/400, McDougal/5:14-6:7.

⁶¹ PAC/200, McDougal/7:8-14.

⁶² ICNU's Opening Brief at 6-7.

⁶³ PacifiCorp's Opening Brief at 13-14; CUB's Opening Brief at 12; Staff's Opening Brief at 5-6 ("Although Staff's estimates are based upon the best information currently available, it does provide a reason that the ECD could be lower than anticipated and that is if Utah QF contracts become active contracts and the Utah QF tariff pays lower energy prices than the forecasted cost of other generation, which would decrease the cost of all other generation and decrease the ECD.").

⁶⁴ In 2015, the Oregon ECD was \$7,638,373. PAC/500, Page 2. *See also* TR. 29:19-25 (Dalley).

1 Staff and CUB have urged the Commission to approve the dynamic ECD with the upper and
2 lower limit parameters as more favorable to customers than the dynamic ECD without
3 parameters.⁶⁵

4 **3. The Dynamic ECD Parameters Are Not Precedential For Future MSP**
5 **Allocation Negotiations.**

6 In its Opening Brief, ICNU expressed concern that the dynamic ECD parameters may
7 create a precedent in future MSP allocation negotiations.⁶⁶ All of the Oregon Parties agree
8 that the 2017 Protocol is non-precedential, and the Company has specifically stated that “the
9 2017 Protocol does not limit or compromise any Party’s ability to argue for a different ECD
10 or hydro endowment calculation in any future inter-jurisdictional allocation
11 methodologies.”⁶⁷ Given that the Oregon Parties unanimously agree that the dynamic ECD
12 parameters are not precedential, it appears that no Party would be likely to make such an
13 argument, and ICNU’s concern is unfounded.⁶⁸

14 **E. Section X of the 2017 Protocol Provides a Process for Addressing Changes in**
15 **Direct Access, Accordingly There Is No Need for the Commission to Make**
16 **Specific Findings Regarding Direct Access in its Order on the 2017 Protocol.**

17 ICNU, NAES, and NIPPC argue that the Commission should acknowledge that it
18 retains the authority to make changes to the direct access program in Oregon, and that the
19 Commission has discretion over the allocation treatment for loads lost to direct access in
20 Oregon.⁶⁹ ICNU also argues that the Commission should acknowledge that it retains
21 discretion regarding the allocation treatment for loads lost to direct access in other states.⁷⁰

⁶⁵ Staff’s Opening Brief at 6; CUB’s Opening Brief at 12-13.

⁶⁶ ICNU’s Opening Brief at 8.

⁶⁷ PAC/100, Dalley/28:23-29:3; CUB’s Opening Brief at 12; Staff’s Opening Brief at 6-7.

⁶⁸ PAC/100, Dalley/28:23-29:3; CUB’s Opening Brief at 12; Staff’s Opening Brief at 6-7.

⁶⁹ ICNU’s Opening Brief at 20; NAES’s Opening Brief at 9-10; NIPPC’s Opening Brief at 5.

⁷⁰ ICNU’s Opening Brief at 20.

1 The Company believes no such findings are necessary, as Section X of the 2017 Protocol
2 provides flexibility to address any future changes in direct access.⁷¹

3 **1. Section X.A.3 of the 2017 Protocol is Clear and Unambiguous.**

4 NIPPC recommends that “the Commission’s order explicitly confirm that the
5 allocation of loads under the 2017 Protocol can change, if the Commission revises its direct
6 access programs” claiming, “[t]his clarification may be important to remove ambiguity in the
7 future.”⁷² Arguably, Section X of the 2010 Protocol may have been ambiguous regarding
8 future changes to the direct access program, and in the process leading up to the development
9 of the 2017 Protocol, Parties recognized the ambiguity regarding direct access as a
10 shortcoming in Section X of the 2010 Protocol.⁷³ Accordingly, Section X.A.3 of the 2017
11 Protocol was specifically negotiated to resolve perceived ambiguity in the 2010 Protocol.⁷⁴
12 As explained in the Company’s Opening Brief, Section X.A.3 of the 2017 Protocol is
13 designed to provide an agreed upon process for addressing changes in direct access loads in
14 Oregon,⁷⁵ and the language of the 2017 Protocol is unambiguous and speaks for itself:

15 To the extent Oregon adopts new laws or regulations regarding Oregon
16 Direct Access Programs, Oregon’s treatment of loads lost to Oregon
17 Direct Access Programs may be re-determined in a manner consistent

⁷¹ PAC/300, Dalley/4:6-11.

⁷² NIPPC’s Opening Brief at 7.

⁷³ PAC/100, Dalley/4:3-8; Staff/100, Kaufman/3:14-15.

⁷⁴ PAC/100, Dalley/8:12-14, 21:9-16; TR. 67:12-68:5 (Dalley) (The “Direct Access section, section [X], was probably the most—most discussed provision of the 2017 Protocol. And what we strove to accomplish was to—to put specific language in associated with Oregon's new five-year Direct Access or permanent Direct Access program for PacifiCorp, which didn't exist when we did the 2010 Protocol. And so the language that was negotiated ultimately as part of the protocol addresses both the one, three, and five-year programs for Oregon. But it also addresses, well, what happens if another state adopts Direct Access? Or what happens if Oregon modifies its Direct Access? And because it's difficult to know exactly how a state would implement those programs or what changes may be implemented here in Oregon, the provision in the protocol simply states that those changes will be brought back to the Broad Review Work Group for discussion, and potentially amendments.”).

⁷⁵ PacifiCorp’s Opening Brief at 17.

1 with the new laws and regulations. In the event Oregon adopts such
2 new laws or regulations, the Company will inform the State
3 Commissions and the Parties of the same.⁷⁶

4 The Commission should allow for the process contemplated in the 2017 Protocol to unfold
5 rather than make preemptive and unnecessary findings regarding hypothetical future changes
6 to direct access.

7 **2. The 2017 Protocol Will Not Prevent Any Modifications to Direct Access**
8 **Deemed Necessary and Appropriate by the Commission.**

9 NAES claims that in Docket No. UE 267, PacifiCorp relied on the 2010 Protocol to
10 “frustrate direct access” by arguing that Section X of the 2010 Protocol precluded the
11 stipulating parties’ attempt to rely upon the load growth spread across PacifiCorp’s entire
12 system to offset the departing direct access load and justify the use of only five years of
13 transition costs.⁷⁷ Yet, in its order approving PacifiCorp’s five-year direct access program
14 with a consumer opt-out charge and ten years of transition charges, the Commission did not
15 rely on Section X of the 2010 Protocol.⁷⁸ Instead, the Commission concluded that the
16 Company’s un rebutted evidence demonstrated that both the consumer opt-out charge and ten
17 years of transition charges were necessary.⁷⁹ Because the 2017 Protocol specifically
18 contemplates and addresses the possibility that there may be changes to direct access, the
19 2017 Protocol will not present any barriers to direct access or prevent modification of
20 Oregon’s direct access programs.

⁷⁶ PAC/101, Dalley/10:12-16.

⁷⁷ NAES’s Opening Brief at 5-8; NIPPC makes a similar argument in NIPPC’s Opening Brief at 7-8.

⁷⁸ Order No. 15-060 at 6-7.

⁷⁹ *Id.*

1 **3. The 2017 Protocol Adequately and Appropriately Addresses Direct**
2 **Access Issues.**

3 NAES and NIPPC appear to suggest that the Commission’s approval of the 2017
4 Protocol should take into account the promotion of direct access.⁸⁰ For example, NIPPC
5 states that the Commission’s public interest review of the 2017 Protocol should include the
6 protection of “[k]ey state laws and policies . . . : 1) ensure large customers can select direct
7 access, 2) promote electric industry competition, and 3) allow for diversity in electric
8 generation ownership.”⁸¹ The Company believes that direct access issues have been
9 thoroughly and appropriately addressed in the 2017 Protocol, and that the MSP is not the
10 appropriate venue to promote direct access or to re-litigate direct access issues that have been
11 conclusively resolved by the Commission. Accordingly, the Company urges the
12 Commission to let Section X of the 2017 Protocol stand on its own and decline to make
13 anticipatory findings regarding future changes to direct access.

14 **F. Because PacifiCorp Does Not Have a VRET, Addressing Loads that May be**
15 **Served Under a VRET is Premature.**

16 As explained in the Company’s Opening Brief, the Company does not currently have
17 a VRET or provide service under a VRET. PacifiCorp does not anticipate developing a
18 VRET in the near term.⁸² Both NAES and NIPPC argue that the Commission should make
19 an anticipatory finding regarding loads that may be served under a VRET at some time in the
20 future, and specifically that the Commission find that loads served under a VRET will be
21 treated the same as load lost to direct access under the 2017 Protocol.⁸³ PacifiCorp and Staff

⁸⁰ NAES’s Opening Brief at 5; NIPPC’s Opening Brief at 3.

⁸¹ NIPPC’s Opening Brief at 3.

⁸² PacifiCorp’s Opening Brief at 18.

⁸³ NAES’s Opening Brief at 10-11; NIPPC’s Opening Brief at 8.

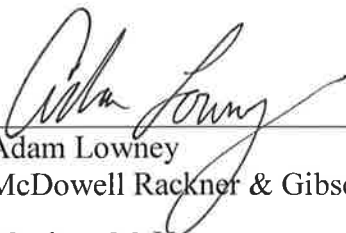
1 both recommend that the Commission decline to adopt any particular findings regarding
2 VRET in this proceeding, and instead allow for resolution of this issue pending further
3 development of the Commission’s docket addressing VRET, Docket No. UM 1690.⁸⁴

4 In response to the Company’s assertion that addressing loads served under a VRET
5 would be premature at this time, NIPPC contends that because PacifiCorp does not plan to
6 propose a tariff, there are no further proceedings in Docket No. UM 1690.⁸⁵ PacifiCorp
7 respectfully disagrees with this conclusion—there will be further proceedings in Docket No.
8 UM 1690 if and when PacifiCorp proposes a VRET. Until then, the issue is moot, and
9 addressing load that may be served under a VRET at some point in the future, before the
10 Commission has even approved a VRET for PacifiCorp, is unnecessary.

11 **III. CONCLUSION**

12 The Company, along with Staff and CUB, have demonstrated that the 2017 Protocol
13 is in the public interest and will produce just and reasonable rates. The Commission should
14 approve the 2017 Protocol in its entirety and without modification.

Respectfully submitted this 8th day of June, 2016.



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⁸⁴ PAC/300, Dalley/5:5-9; TR. 71:10-14 (Dalley); Staff/200, Kaufman/2:15-21.

⁸⁵ NIPPC’s Opening Brief at 11.