

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.

Direct Testimony of Kevin C. Higgins

on behalf of

Noble Americas Energy Solutions LLC

April 1, 2016

DIRECT TESTIMONY OF KEVIN C. HIGGINS

Introduction

Q. Please state your name and business address.

A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

Q. By whom are you employed and in what capacity?

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting firm specializing in economic and policy analysis applicable to energy production, transportation, and consumption.

Q. On whose behalf are you testifying in this proceeding?

A. My testimony is being sponsored by Noble Americas Energy Solutions LLC (“Noble Solutions”). Noble Solutions is a retail energy supplier that serves commercial and industrial end-use customers in 16 states, the District of Columbia, and Baja California, Mexico. Noble Solutions serves more than 15,000 retail customer sites nationwide, with an aggregate load in excess of 4,500 MW. Noble Solutions’ retail customers are located in the service territories of 55 utilities. In Oregon, Noble Solutions is currently serving customers in Portland General Electric’s service territory and PacifiCorp’s territory.

Q. Please describe your professional experience and qualifications.

A. My academic background is in economics, and I have completed all coursework and field examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have served on the adjunct faculties of both the University

1 of Utah and Westminster College, where I taught undergraduate and graduate
2 courses in economics. I joined Energy Strategies in 1995, where I assist private
3 and public sector clients in the areas of energy-related economic and policy
4 analysis, including evaluation of electric and gas utility rate matters.

5 Prior to joining Energy Strategies, I held policy positions in state and local
6 government. From 1983 to 1990, I was economist, then assistant director, for the
7 Utah Energy Office, where I helped develop and implement state energy policy.
8 From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County
9 Commission, where I was responsible for development and implementation of a
10 broad spectrum of public policy at the local government level.

11 **Q. Have you ever testified before this Commission?**

12 A. Yes. I have testified in twenty-two prior proceedings in Oregon. These
13 proceedings include seven PacifiCorp Transition Adjustment Mechanism
14 (“TAM”) proceedings, UE 296 (2016 TAM), UE 264 (2014 TAM), UE 245 (2013
15 TAM), UE 227 (2012 TAM), UE 216 (2011 TAM), UE 207 (2010 TAM), and UE
16 199 (2009 TAM); six PacifiCorp general rate cases, UE 263 (2013), UE 246
17 (2012), UE 210 (2009), UE 179 (2006), UE 170 (2005), and UE 147 (2003), as
18 well as the PacifiCorp Five-Year Opt-Out case, UE 267 (2013).

19 In addition, I have testified in five PGE general rate cases, UE 283 (2014),
20 UE 262 (2013), UE 215 (2010), UE 197 (2008) and UE 180 (2006); the PGE Opt-
21 Out case, UE 236 (2012); and the PGE restructuring proceeding, UE 115 (2001).

22 I also filed testimony in Phase II of the Investigation into Qualifying
23 Facility Contracting and Pricing, UM 1610 (2015).

1 **Q. Have you participated in any workshop processes sponsored by this**
2 **Commission?**

3 A. Yes. In 2003, I was an active participant on behalf of Fred Meyer Stores
4 in the collaborative process initiated by the Commission to examine direct access
5 issues in Oregon, UM 1081. In 2012, I participated in drafting comments on
6 behalf of Noble Solutions as part of UM 1587, the Commission's investigation of
7 issues relating to direct access. And more recently, in 2015, I participated in
8 some of the stakeholder activities involving the Commission's investigation into
9 voluntary renewable energy tariffs ("VRETs").

10 **Q. Have you testified before utility regulatory commissions in other states?**

11 A. Yes. I have testified in approximately 185 proceedings on the subjects of
12 utility rates and regulatory policy before state utility regulators in Alaska,
13 Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky,
14 Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York,
15 North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Utah,
16 Virginia, Washington, West Virginia, and Wyoming. I have also prepared
17 affidavits that have been filed with the Federal Energy Regulatory Commission.

18

19 **Overview and Conclusions**

20 **Q. What is the purpose of your testimony in this proceeding?**

21 A. My testimony addresses Sections X and XI of the 2017 PacifiCorp Inter-
22 Jurisdictional Allocation Protocol ("2017 Protocol") that the Company has
23 submitted for approval.

1 **Q. Did Noble Solutions participate in the Multi-State Process (MSP) that led to**
2 **the development of the 2017 Protocol?**

3 A. No.

4 **Q. Are you offering a recommendation either in support or against approval of**
5 **the 2017 Protocol?**

6 A. No. My testimony addresses the interpretation of Sections X and XI in the
7 event that the 2017 Protocol is approved.

8 **Q. What are the primary conclusions and recommendations in your testimony?**

9 A. I offer the following primary conclusions and recommendations:

10 (1) Section X.A of the 2017 Protocol addresses the treatment of Oregon
11 Direct Access loads and Section XI addresses the treatment of loss or increase in
12 load generally. Neither section explicitly addresses the treatment of load served
13 under a PacifiCorp-supplied VRET. If the 2017 Protocol is approved, I
14 recommend that the Commission also find that load served by a PacifiCorp-
15 owned VRET resource would not constitute a reduction in load for purposes of
16 the 2017 Protocol. Otherwise, PacifiCorp may be able to use the 2017 Protocol to
17 create an undue competitive advantage for a PacifiCorp-owned VRET resource
18 over a competitively supplied direct access product.

19 (2) Section X.A.2 of the 2017 Protocol states that the treatment of 5-year
20 opt-out load taking service under the Oregon Direct Access program will be
21 “consistent” with specific orders issued in UE 267. Section X.A.3 then goes on to
22 state that to the extent Oregon adopts new laws or regulations regarding Oregon
23 Direct Access Programs, Oregon’s treatment of loads lost to Oregon Direct

1 Access Programs may be re-determined in a manner consistent with the new laws
2 and regulations. If the 2017 Protocol is approved, I recommend that the
3 Commission clarify that if the Commission issues future orders that modify the
4 findings in UE 267, then the treatment in Section X.A of 5-year opt-out load that
5 migrates to the Oregon Direct Access program will be made consistent with the
6 terms in those future orders. Otherwise, the Commission may be limiting its
7 ability to revise direct access programs in the future to the extent necessary to
8 remove barriers to competitively supplied electric energy under Oregon law.

9

10 **Sections X and XI of the 2017 Protocol**

11 **Q. Please describe Section X of the 2017 Protocol.**

12 A. Section X of the protocol addresses state programs that provide access to
13 alternative energy suppliers. It provides guidance regarding the allocation of
14 inter-jurisdictional costs when loads migrate to the types of alternative energy
15 suppliers covered by this section. Part A of this section addresses the treatment of
16 Oregon Direct Access Programs. It states in its entirety:

17 A. Treatment of Oregon Direct Access Programs:

18

19 This Section describes treatment of loads lost to Oregon Direct Access Programs
20 during the term of the 2017 Protocol.

21

22 1. Customers electing PacifiCorp's one- and three-year Oregon
23 Direct Access Programs - The load of customers electing to be served on
24 PacifiCorp's one- and three-year Oregon Direct Access Programs will be included
25 in the Load-Based Dynamic Allocation Factors for all Resources, and the
26 transition cost payments from these customers will be situs assigned to Oregon.

27

28 2. Customers electing PacifiCorp's five year opt-out program under
29 the Oregon Direct Access Program - The treatment will be consistent with Order
30 No. 15-060, as clarified through Order No. 15-067, of the Oregon Public Utility

1 Commission in Docket UE 267, and Oregon Schedule 296, which allow Oregon
2 Direct Access Program Customers to permanently opt-out of cost-of-service rates
3 after payment of ten years of transition costs in Oregon. During the ten-year
4 period for which Oregon Direct Access Customers are paying transition costs, the
5 Oregon Direct Access Customers' loads will be included in Load-Based Dynamic
6 Allocation Factors, and the transition cost payments from these customers will be
7 situs-assigned to Oregon. At the end of the 10-year period covered by the
8 transition cost payments, the loads of the Oregon Direct Access Customers will be
9 excluded from Load-Based Dynamic Allocation Factors. Thereafter, if an Oregon
10 Direct Access Customer elects to return to Oregon cost-of-service rates by
11 providing four-years notice under Schedule 267, its load will be included in Load-
12 Based Dynamic Allocation Factors at the time the customer returns to Oregon
13 cost of service rates.

14
15 3. To the extent Oregon adopts new laws or regulations regarding
16 Oregon Direct Access Programs, Oregon's treatment of loads lost to Oregon
17 Direct Access Programs may be re-determined in a manner consistent with the
18 new laws and regulations. In the event Oregon adopts such new laws or
19 regulations, the Company will inform the State Commissions and the Parties of
20 the same.

21
22 **Q. Do you have any comments regarding this passage?**

23 A. Yes. Subpart 1 indicates that the allocation of inter-jurisdictional costs
24 associated with one- and three-year Direct Access load will remain with Oregon
25 with no terminal date. Subpart 2 indicates that the treatment of 5-year opt-out
26 load will be "consistent" with two specific orders issued in UE 267. These orders
27 require ten years of transition costs for 5-year opt-out Direct Access customers.
28 The language in the 2017 Protocol indicates that the allocation of inter-
29 jurisdictional costs associated with 5-year opt-out Direct Access load will remain
30 with Oregon for ten years consistent with these orders.

31 One of the implications of Subpart 2 is that inter-jurisdictional costs will
32 continue to be allocated to Oregon for 5-year opt-out load for the duration of the
33 ten-year period for which participating customers are charged transition costs

1 pursuant to the Commission's orders in UE 267. This inter-jurisdictional cost
2 allocation is distinct from the treatment of load reductions addressed in Section XI
3 of the 2017 Protocol.

4 **Q. How does Section XI of the 2017 Protocol address load reductions?**

5 A. According to Section XI, the loss (or gain) of large customer load as well
6 as any change in load that is the result of changes in economic conditions will be
7 reflected in changes in the Load-Based Dynamic Allocation Factors used for
8 inter-jurisdictional cost allocation. That is, in general, a reduction in large
9 customer load results in a reduction in the affected jurisdiction's Load-Based
10 Dynamic Allocation Factor, all things being equal. The costs previously allocated
11 to the lost load would be spread across the larger customer base of the multi-state
12 system instead of remaining entirely with the state from which the load was lost.
13 This treatment is distinct from the treatment of Oregon Direct Access loads,
14 which remain *included* in the Load-Based Dynamic Allocation Factors under the
15 terms and time periods specified in Section X.A, and essentially traps the fixed
16 generation costs in Oregon.

17 **Q. What are the implications of the 2017 Protocol for any potential VRET load
18 supplied by PacifiCorp-owned resources?**

19 A. The 2017 Protocol does not make any references to VRET load.
20 However, if the 2017 Protocol is approved, and a PacifiCorp VRET program goes
21 forward, then I believe that there should be no reduction to Oregon's Load-Based
22 Dynamic Allocation Factors associated with VRET load supplied by PacifiCorp-
23 owned resources. This treatment would be consistent with the treatment of Direct

1 Access service in the 2017 Protocol and I believe it would be consistent with the
2 guidelines issued by the Commission regarding the design of draft VRETs. For
3 example, one of the guidelines issued by the Commission in Order No. 15-405
4 states that:

5 VRET terms and conditions (including the timing and frequency of VRET
6 offerings), as well as transition costs, must mirror those for direct access. PGE
7 and PacifiCorp may propose VRET terms and conditions that differ from current
8 direct access provisions but must proposed (sic) changes to their respective direct
9 access programs to match those changes. [Order at 2]
10

11 For VRET terms and conditions to fully mirror direct access, then Oregon's Load-
12 Based Dynamic Allocation Factors should not be reduced for load supplied by
13 PacifiCorp-owned resources.

14 **Q. What is your recommendation to the Commission regarding the application**
15 **of the 2017 Protocol to any potential VRET load supplied by PacifiCorp-**
16 **owned resources?**

17 A. If the 2017 Protocol is approved, then I recommend that the Commission
18 make an explicit finding that there will be no reduction to Oregon's Load-Based
19 Dynamic Allocation Factors associated with any VRET load supplied by
20 PacifiCorp-owned resources to the extent that no reduction is applied for Direct
21 Access load. Otherwise, PacifiCorp may be able to create a Company-owned
22 VRET product that effectively spreads stranded costs associated with a
23 customer's VRET election across the larger customer base of the multi-state
24 system, instead of being situs-assigned to Oregon customers for a ten-year period
25 as is the case with the five-year opt-out direct access program. The Commission
26 should ensure that the 2017 Protocol cannot be used to create a competitive

1 advantage for a PacifiCorp-owned VRET resource over a competitively supplied
2 direct access product. This principle should also extend to any future programs
3 that may be created that have similar attributes, i.e., specialty generation products
4 provided by the utility that implicates transition costs and competes with Direct
5 Access service.

6 **Q. Do you have any comments regarding the applicability of Section X.A.2 if the**
7 **Commission were to revise its findings in UE 267?**

8 A. Yes. The language in Section X.A.2 cites specifically to orders issued in
9 UE 267. If the 2017 Protocol is approved and if the Commission subsequently
10 revises aspects of its findings from UE 267 implicating the term over which
11 transition costs are calculated, then it seems that specific terms in Section X.A.2
12 addressing this issue should no longer apply. Further, Section X.A.3 provides that
13 if Oregon adopts new laws or regulations regarding Oregon Direct Access
14 Programs, Oregon's treatment of loads lost to Oregon Direct Access Programs
15 may be re-determined in a manner consistent with the new laws and regulations.
16 It seems this same interpretation should apply if the Commission issues any
17 orders that revise the findings in UE 267 that implicate the term over which
18 transition costs are calculated.

19 **Q. What is your recommendation to the Commission on this issue?**

20 A. If the 2017 Protocol is approved, I recommend that the Commission
21 clarify that if the Commission issues future orders that modify the findings in UE
22 267, then the treatment in Section X.A of 5-year opt-out load that migrates to the

1 Oregon Direct Access program will be made consistent with the terms in those
2 future orders.

3 **Q. Does this conclude your direct testimony?**

4 **A. Yes, it does.**