

**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 THE
CITIZENS' UTILITY BOARD OF OREGON**

April 1, 2016



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1 My name is Bob Jenks, and my qualifications are listed in CUB Exhibit 301¹.

2 **I. Introduction**

3 CUB supports the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol ("2017
4 Protocol"). It preserves the Hydro Endowment and allows time to consider a control area
5 split. It includes a limited General Rate Case ("GRC") stay-out that does not allow rates
6 from a new GRC to go into effect before January 1, 2018. It is temporary—two years with
7 a possible one year extension—so there will continue to be pressure to reach a more
8 permanent solution.

¹ CUB notes that while the caption of this docket ("In the matter of...") has changed from earlier MSP dockets, the docket number remains the same (UM 1050). CUB is therefore labeling this testimony as UM 1050/CUB/200 and qualifications as exhibit 201, to avoid confusion since there is already testimony identified as UM 1050/CUB/Jenks/100 on the record in UM 1050.

1 **II. Hydro Endowment**

2 PacifiCorp's Direct Testimony describes the history of PacifiCorp's Multi-State
3 Process that led us to this 2017 Protocol. While CUB does not disagree with PacifiCorp's
4 description, it fails to capture and address the underlying issue of the hydro endowment
5 and how it relates to MSP.

6 **A. Utah Power and Pacific Power Merger**

7 At the heart of the MSP disagreement over cost allocation between the various
8 PacifiCorp states is a disagreement over hydro benefits and the promises that were made
9 during the Utah Power and Pacific Power merger:

10 Since the merger of low-cost, hydro-based Pacific Power and high-cost,
11 coal-based Utah Power in the 1980s which formed PacifiCorp, resource
12 cost allocation between the PacifiCorp states has been a difficult issue,
13 made more difficult by the Company cutting different deals and
14 agreements with various states.

15 During the original merger, Utah believed it was promised that power
16 supply costs would be merged and Utah's rates would fall. The Pacific
17 Power states believed, and continue to believe, that they were promised
18 that the benefits of the cheap hydropower would stay with the Northwest
19 and not be shared.²

20 This disagreement was not resolved at the time of that merger, nor has it been
21 resolved on a permanent basis.

22 **B. Revised Protocol**

23 Fourteen years ago, PacifiCorp and stakeholders from the states in its service
24 territory undertook the first MSP effort to reach agreement on cost allocation, which
25 resulted in the Revised Protocol.³ Those negotiations were not easy and revealed

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

³ *In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No. at 3 (Dec. 30, 2015).

1 significant differences between Oregon and Utah. A deal was reached because Oregon
2 was willing to pay significant costs in exchange for long-term hydro benefits:

3 It became clear during these negotiations that the states were negotiating
4 different deals. Utah was focused on forecasts of rates and trying to ensure
5 that its rates were as close as possible to “Rolled –In” (Utah’s term for
6 allocating hydro, clean air, and peaking costs equally across all states).
7 Utah reserved the right to blow up any agreement that varied too greatly
8 from its preferred rates. Oregon stakeholders, including CUB, were
9 focused on securing the benefits of the Northwest hydro system for
10 Northwest ratepayers. Oregon’s goal was a long-term agreement,
11 whereby Northwest residents would pay for the early front-loaded costs of
12 hydro relicensing in exchange for receiving the benefits of the hydro
13 resources for the life of those licenses. In order to secure this agreement,
14 Oregon stakeholders were willing to absorb the large costs associated with
15 relicensing, and had to pay an additional \$97 million associated with in-
16 state QF’s, in order to receive our benefits.⁴

17 There was little doubt that Oregon parties focus during this MSP negotiation was
18 on long-term hydro benefits:

19 Throughout this proceeding, Oregon Parties have made clear the
20 importance of maintaining the Hydro-Electric Resources and Mid-
21 Columbia Contracts for Northwest citizens. An allocation of these
22 Resources to Oregon that is less than that contemplated by the Revised
23 Protocol is not acceptable to Oregon Parties. In order to secure the
24 allocation of the Mid-Columbia Contracts that is contemplated in the
25 Revised Protocol, Oregon Parties have accepted the allocation of the costs
26 of Existing QF Contracts that is contemplated in the Revised Protocol.

27 The parties to this Stipulation recognize that there is uncertainty regarding the
28 future value of the Mid-Columbia Contracts and that it is possible that, during the
29 remaining term of the Existing QF Contracts, the costs to Oregon customers
30 associated with the contemplated allocation of Existing QF Contracts will exceed
31 the benefits of the contemplated allocation of Mid-Columbia Contracts. However,
32 the Oregon Parties are prepared to assume this risk because they expect that the
33 contemplated allocation of Mid-Columbia Contracts will continue to provide
34 long-term benefits to Oregon customers after the expiration of the Existing QF
35 Contracts. Similarly, the parties to this Stipulation recognize that the addition of
36 relicensing costs to the Company’s ratebase may cause the Hydro-Electric
37 Resources to be more costly than other market opportunities in the near term, but
38 Oregon Parties are willing to accept responsibility for these higher near-term costs
39 in the expectation that, as the relicensing costs are depreciated, Hydro-Electric

⁴ UM 1050/CUB/Jenks/100/2 (January 27, 2011).

1 Resources will yield long-term benefits to Oregon customers. For the foregoing
2 reasons, it is critical to Oregon Parties that their entitlement to Hydro-Electric
3 Resources and Mid-Columbia Contracts not be abridged at any time in the
4 future.⁵
5

6 ICNU challenged that stipulation, arguing that conditions were not sufficient to
7 ensure that hydro benefits were permanent, but the Commission determined that the
8 hydro endowment was sufficiently permanent:

9 The Hydro Endowment is clearly viewed as a long term condition of the
10 Revised Protocol and Stipulation. As such, we find it to be sufficiently
11 permanent. We question whether we are even able to make a “permanent”
12 decision such as outlined by ICNU. The Oregon parties' expectations,
13 which are that the Hydro Endowment be long term, that it be recognized
14 by Utah, and that PacifiCorp not propose treatment of the hydro resources
15 that materially differs from the Revised Protocol, are met. We find that the
16 duration of the Hydro Endowment is sufficient.⁶

17 **C. 2010 Protocol**

18 CUB originally opposed the 2010 Protocol because we did not believe that it
19 offered a long-term commitment to a hydro endowment and, by fixing the hydro benefit
20 for the life of the Protocol, it underestimated the value of NW hydro:

⁵*In re Petition for Approval of Amendments to Revised Protocol Allocation Methodology*, OPUC Docket No.UM 1050, Order No. 05-021 at 3 (Dec. 30, 2015). *See* 2005 Stipulation. Attachment A page 2 of 103.

⁶ OPUC Order No. 05-021 at 10

1 However, CUB analysis finds that the PacifiCorp proposal is incompatible
2 with the earlier agreement. First, rather than recognize the long-term
3 stream of hydro benefits which Oregon customers paid for in the Revised
4 Protocol, the 2010 Protocol removes any expectation that Oregon has
5 long-term rights to Northwest hydro resources, and replaces it with an
6 expectation that every 5 years the states will renegotiate hydro benefits. It
7 is based on unreliable forecasts which cannot be verified and likely
8 underestimates Oregon’s share of hydro benefits. It guarantees that
9 Oregon customers do not get the hydro endowment for the life of the
10 hydro licenses, even though we paid the front-loaded costs associated with
11 hydro relicensing.⁷

12 These two issues were addressed in settlement and a stipulation modifying the
13 2010 Protocol, which was filed, and ultimately approved by the Commission. That
14 stipulation addressed CUB’s concerns with the hydro endowment.

15 ***i. The stipulation added language to make it permanent***

16 The stipulation contained provisions which made it clear that there was an
17 expectation that the hydro endowment would continue beyond the terms of the 5 year
18 term of the 2010 Protocol⁸. It clarified that the Revised Protocol—which included the
19 specific deal where Oregon parties agreed to absorb relicensing costs and QF costs in
20 exchange for long term hydro benefits—was the default that would go into place at the end
21 of the 2010 Protocol:

22 [t]he Parties further agree that for all general rate case filings subsequent to
23 December 31, 2016, PacifiCorp will utilize the Revised Protocol allocation
24 methodology, absent formal action by the Commission to adopt an alternate
25 allocation methodology for Oregon.⁹

⁷ UM 1050/CUB/Jenks/100/3-4(January 27, 2011).

⁸2011 MSP Oregon Party Stipulation, *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 2.

⁹*Id.* at 4.

1 **ii. The Stipulation added language to ensure that parties did not propose weakening**
2 **the hydro endowment.**

3 While a stipulation cannot be used to bind future Commission decisions, parties
4 can agree to restrictions on their own advocacy. The stipulation contained provisions that
5 restricted parties from proposing significant changes in the Hydro Endowment:

6
7 Notwithstanding the status of the 2010 Protocol as an inter-jurisdictional
8 cost allocation method, if PacifiCorp, Staff, or CUB proposes a material
9 change to the allocation methodology for Hydro-Electric Resources and
10 Mid-Columbia Contracts, the proposed change will be consistent with the
11 trade-off contained in the Revised Protocol between near-term negative
12 impacts of Existing QF Contracts and long-term positive impacts of Mid-
13 Columbia Contracts and the potential near-term costs and long-term
14 benefits of Hydro-Electric Resources as described in Sections 4 and 5 of
15 the 2004 Stipulation excerpted above.

16 Unless otherwise recommended by the MSP Standing Committee, as long
17 as CUB, ICNU, and Staff continue to support the use of the 2010 Protocol
18 or the Revised Protocol for purposes of establishing PacifiCorp's Oregon
19 revenue requirement, ***PacifiCorp will not propose or advocate any***
20 ***material change in the Protocol provisions relating to Hydro- Electric***
21 ***Resources***. Provided, however, the foregoing provision shall not prevent
22 PacifiCorp from complying with any Commission order. Staff, CUB, and
23 ICNU reserve all rights to object to recommendations of the MSP
24 Standing Committee.¹⁰(emphasis added)

25 **iii. It allowed the hydro endowment to change value as the value of hydroelectric**
26 **resources changed.**

27 The hydro endowment that was proposed by the Company was based on a one-
28 time only fixed forecast of future hydro benefits. This had the potential to undervalue
29 hydro benefits because the value of hydro changes over time. Therefore, the stipulation
30 established a “dynamic” hydro endowment that changed as the value of hydro changed,
31 as seen here:

¹⁰*Id.* at 7-8.

1 [t]he Parties agree that, for ratemaking purposes, the two adjustments in
2 the 2010 Protocol, Hydro ECD and Klamath Surcharge, will not be based
3 on the six-year, fixed levelized approach as proposed in the Company's
4 Petition. Instead, the adjustments will reflect test period cost elements for
5 purposes of rate filings, and historic and pro forma cost elements for
6 purposes of regulatory reporting.¹¹

7 **D. The 2017 Protocol**

8 Maintaining the hydro endowment as a permanent part of PacifiCorp cost
9 allocation was one of CUB's critical goals in these negotiations. A critical element of
10 CUB's support for the 2017 Protocol is that it maintains the dynamic hydro endowment
11 from the 2010 Protocol, while also retaining language that creates an expectation that this
12 will continue beyond the short life of this agreement.

13 *i. Dynamic Hydro Endowment.*

14 PacifiCorp attempted to reduce its non-recovery of power costs due to states using
15 different cost allocation methodologies, but it was willing to agree to a dynamic hydro
16 endowment, constrained by a floor and a cap. While CUB might prefer not having a cap
17 on hydro benefits, CUB believes this is a reasonable compromise that gives the Company
18 some level of certainty, while maintaining a principled hydro endowment that changes as
19 the value of hydro resources change.

20 *ii. Permanence of Hydro Endowment*

21 While the 2017 Protocol is only a two year agreement with a potential third year,
22 PacifiCorp was willing to agree that the Revised Protocol—which included the specific
23 deal where Oregon parties agreed to absorb relicensing costs and QF costs in exchange
24 for long term hydro benefits—be the default mechanism for ratemaking after the 2017
25 Protocol ends. The 2017 Protocol reads that:

¹¹2011 MSP Oregon Party Stipulation, *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.

1 [t]he Oregon Parties agree that unless there is formal action by the Public
2 Utility Commission of Oregon to adopt an alternate allocation
3 methodology by January 1, 2019, or unless the 2017 Protocol is extended
4 through 2019 under the terms of the 2017 Protocol, PacifiCorp will use the
5 Revised Protocol allocation method for general rate case filings in Oregon
6 after January 1, 2019.¹²

7

8 **III. Divisional Split Analysis.**

9 CUB and other Oregon parties have been interested in examining the desirability
10 of an east/west division of the company for cost allocation purposes (sometimes called a
11 divisional split or a control area spit). CUB was disappointed that a study was not
12 conducted to take a serious look at such a division during the creation of the 2017
13 Protocol. As part of the 2017 Protocol, PacifiCorp has agreed to conduct such a study
14 with potential financial penalties for non-completion:

15 The Company commits to continued evaluation of alternative inter-
16 jurisdictional allocation methods, including consideration of corporate
17 structure alternatives, *divisional allocation methodologies*, and potential
18 implications of the Environmental Protection Agency's final Rule 111(d),
19 and possible formation of a regional independent system operator. The
20 Company will distribute or present the results of its analysis, based on
21 information available, no later than March 31, 2017. If PacifiCorp does
22 not distribute or present the results of its analysis on or before March 31,
23 2017, for each month the analysis is not provided after that date \$216,667
24 will be credited to the OATT revenue deferral balance unless otherwise
25 waived by the Commission for good cause.¹³

26 **IV. Other Provisions.**

27 CUB believes that there are two other provisions that provide some benefit to
28 customers.

¹²2017 Protocol, *see* UM 1050/Exhibit PAC/101/Dalley/17. (emphasis added)

¹³*Idat* 16.

1 ***i. General Rate Case Stay Out Provision***

2 The Company agreed that it will not implement new rates from a General Rate
3 Case until January 1, 2018.¹⁴ While there may still be rate changes from various
4 mechanisms, CUB believes that this provision provides some value to customers. New
5 capital investments--including clean air investments that had been identified, but not
6 acknowledged in the 2013 IRP¹⁵--will not be put into rates in 2016 or 2017, and will be
7 subject to regulatory lag before they can be put into rates in 2018.

8 ***ii. Limited Duration.***

9 The 2017 Protocol will last for two years, with a possible one year extension.
10 CUB believes the short-term nature of the agreement is positive. The parties and states
11 that participate in MSP negotiations were not able to make much progress on a permanent
12 agreement. This is an interim agreement that fails to resolve some of the fundamental
13 issues, such as the different views between Oregon and Utah on the appropriate allocation
14 of hydro resources. CUB opposed the idea of an interim agreement that had no end date,
15 because it removes the need to actually resolve the outstanding issues that preclude a
16 long-term agreement.

17 An interim two to three year agreement, without any provisions to extend it
18 beyond three years, is reasonable. It ensures that there is an agreement, rather than a
19 free-for-all with all states implementing their own “optimal” cost allocation. This
20 provides security to PacifiCorp. However, it also maintains a deadline for resolving the
21 difficult issues that divide the PacifiCorp states. This presence of this resolution deadline
22 provides benefit to Oregon customers.

¹⁴*Idat* 16.

¹⁵*In re 2013 Integrated Resource Plan*, OPUC Docket No. LC 57, Order No 14-252 at6-8 (July 8, 2014).

1 **V. Conclusion**

2 CUB does not believe that the 2017 Protocol represents the “optimal” allocation
3 of costs between the PacifiCorp states. However, CUB does believe that it is reasonable
4 and in the public interest, because it maintains a permanent hydro endowment and
5 requires the Company to study a Divisional Split.

WITNESS QUALIFICATION STATEMENT

NAME: Bob Jenks

EMPLOYER: Citizens' Utility Board of Oregon

TITLE: Executive Director

ADDRESS: 610 SW Broadway, Suite 400
Portland, OR 97205

EDUCATION: Bachelor of Science, Economics
Willamette University, Salem, OR

EXPERIENCE: Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UE 233, UE 246, UE 283, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, UM 1355, UM 1635, UM 1633, and UM 1654. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

MEMBERSHIP: National Association of State Utility Consumer Advocates
Board of Directors, OSPIRG Citizen Lobby
Telecommunications Policy Committee, Consumer Federation of America
Electricity Policy Committee, Consumer Federation of America
Board of Directors (Public Interest Representative), NEEA