

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 307

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER,

6 2017 Transition Adjustment Mechanism.

STAFF'S CROSS-ANSWERING BRIEF

7 **I. INTRODUCTION**

8 Staff of the Public Utility Commission of Oregon (Staff) responds to the Response Briefs
9 submitted by the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of
10 Northwest Utilities (ICNU), and Noble Americas Energy Solutions LLC (Noble). Staff's
11 testimony in this case addressed a number of larger issues that were also raised by CUB, ICNU
12 and Noble. However, Staff's Cross-Answering Brief is limited to the following selected issues
13 raised by intervenors, which Staff addressed in its cross-answering testimony:¹

- 14 (A) Coal Costs for Jim Bridger Plant;
15 (B) Direct Access Issues; and
16 (C) Prudence of long-term coal contracts.

17 Staff stands by its recommendation that the Commission find PacifiCorp (or Company)
18 imprudent for its failure to analyze market alternatives for coal fueling the Company's Jim
19 Bridger plant, and impose a disallowance based on the savings to customers associated with a
20 2017 conversion to PRB coal.

21 Staff also continues to recommend that the Commission reject each of the two direct
22 access proposals presented by Noble for the reason that each was previously decided by the

23 ¹ While not otherwise discussed in this Cross-Answering Brief, Staff has the following
24 observations about two EIM benefits issues presented by CUB in its Response Brief. First, the
25 purpose of determining EIM intra-regional benefits, Staff disagrees with CUB's possible
26 suggestion at page 10 of its Response Brief that the CAISO Counterfactual and PacifiCorp's
GRID model are not identical, or nearly so. See Staff Response Brief at 37-42. Second, as to
inter-regional EIM benefits, Staff agrees with and supports CUB's recommendation that
historical sales, not historical transmission allocation, should be used to calculate EIM export
benefits. See CUB's Response Brief at 14-15 and Staff/300, Crider/14.

1 Commission last year in its Order No. 15-394 and the Order still applies to the circumstances
2 presented by PacifiCorp's 2017 TAM filing.

3 As to the prudence of minimum take provisions in the Company's more recent long-term
4 coal supply agreements, Staff continues to advocate for a final prudence review to take place in
5 the Company's 2017 power cost adjustment mechanism (PCAM).

6 III. ARGUMENT

7 **(A) The Commission has not definitively addressed whether its affiliate interest transfer**
8 **pricing rules apply to PacifiCorp's affiliate coal mining operations.**

9 Along with Staff, ICNU also raised concerns about the escalating coal costs at Bridger
10 Coal Company (BCC), the primary fuel source for the Jim Bridger plant.² Staff and ICNU agree
11 that the Company's reliance on BCC is more expensive than market alternatives currently, and
12 this trend is expected to continue into the future.³ To address this issue, ICNU proposed a
13 reduction to the Company's NPC based on its calculation of BCC at the market rate pursuant to
14 the Commission's lower of cost or market affiliate rules.⁴ This is distinct from Staff's
15 recommendation to calculate the benefits that customers would have gained had the Company
16 switched to PRB coal for 2017. However, under both sets of analyses, PRB coal is a less
17 expensive alternative to BCC coal in 2017.⁵

18 In testimony, Staff indicated that it is neutral on the application of the Commission's
19 affiliate interest rules to BCC, and did not substantively address the assumptions and calculations

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23 ² CUB's Opening Testimony also generally raised concerns about coal costs at Jim Bridger plant,
24 but its recommendation focused on the NPC impact of the selective catalytic converter (SCR)
25 equipment installed on Jim Bridger units 3 and 4. CUB/100, McGovern/3-7; CUB/200,
26 McGovern/32. CUB did not make a specific recommendation related to increased production
costs for Bridger Coal Company.

25 ³ ICNU/100, Mullins/11-13; Staff/200, Kaufman/27-47.

26 ⁴ ICNU's Response Brief at 7.

⁵ ICNU's Response Brief at 7; Staff's Response Brief at 10-11.

1 in ICNU's proposed adjustment to BCC costs.⁶ Although Staff continues to advocate for a
2 prudence disallowance for the Company's failure to conduct adequate, long-term analysis of
3 fueling options for Jim Bridger plant, Staff also recognizes that the Commission has historically
4 evaluated the reasonableness of BCC coal in the context of market alternatives, and has not
5 definitively ruled on whether its affiliate interest rules are applicable to affiliate coal companies.⁷

6 *1. The Commission has not unequivocally ruled on the application of its affiliate interest*
7 *rules to the Company's BCC mine.*

8 Most recently, the Commission addressed the application of its affiliate interest rules to
9 the Company's BCC coal costs in PacifiCorp's 2014 TAM.⁸ In that case, ICNU proposed that
10 BCC coal be repriced under the contract price for Black Butte coal pursuant to OAR 860-027-
11 0048(4)(e).⁹ OAR 860-027-0048(4)(e) provides, in relevant part, that services or supplies sold
12 by an affiliate to the utility, absent an applicable rate on file with the Commission or FERC,
13 should be recorded in the utility's accounts "at the affiliate's cost or the market rate, whichever is
14 lower." "Market rate" is defined as the "lowest price that is available from nonaffiliated
15 suppliers for comparable services or supplies."¹⁰ It is undisputed that BCC is an affiliate of
16 PacifiCorp.

17 In the Company's 2014 TAM, PacifiCorp challenged ICNU's argument that the lower of
18 cost or market pricing should be applied. Specifically, PacifiCorp argued that the Commission
19 has traditionally applied a cost-based standard to coal sales from the Company's affiliate mines,
20 and has never applied the lower of cost or market standard in a ratemaking proceeding.¹¹

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22 ⁶ Staff/400, Kaufman/9 and n. 24. Staff noted that should the Commission choose to apply its
23 lower of cost or market rules to BCC in this case, Staff should be permitted to recalculate
24 proposed adjustments to exclude facility upgrade costs.

24 ⁷ Staff/200, Kaufman/50.

25 ⁸ See *In re PacifiCorp*, OPUC Docket No. UE 264, Order No. 13-387 at 5-7 (Oct. 28, 2013).

25 ⁹ *Id.* at 5.

26 ¹⁰ OAR 860-027-0048(1)(i).

¹¹ Order 13-387 at 5.

1 PacifiCorp went on to argue that the Commission’s standard for cost recovery for BCC “has
2 always been whether the cost is objectively reasonable” and relied upon the Commission’s
3 approval of the Company’s coal supply agreement as “fair, reasonable and not contrary to the
4 public interest.”¹² PacifiCorp also argued that “there is no lower price coal available from a non-
5 affiliate in this case, because the Black Butte mine does not have sufficient excess capacity to
6 supply the Bridger plant,” thereby creating an availability issue.¹³

7 The Commission ultimately found in favor of PacifiCorp and declined to apply its
8 affiliate interest rules to BCC.¹⁴ Importantly, however, the Commission noted that its decision
9 with regard to repricing BCC coal was based “on the record presented in [that] docket”¹⁵ and that
10 in order for the lower of cost or market argument to persuade the Commission, the proponent
11 must “articulate a persuasive market rate to be substituted for BCC pricing,”¹⁶ Distinct from the
12 record in the 2014 TAM, both ICNU and Staff have presented comprehensive analysis that
13 demonstrates that PRB is a viable, lower cost market alternative to BCC coal.

14 *2. The Commission has traditionally evaluated the reasonableness of BCC coal in the*
15 *context of market alternatives.*

16 ICNU asserts that the Commission has discretion to apply the the lower of cost or market
17 rule to BCC, and relies upon several cases to support its argument that the Commission’s
18 ultimate duty is to ensure that rates are fair, just and reasonable.¹⁷ Staff agrees with ICNU that
19 the Commission is bound to set rates that are fair, just and reasonable, and as Staff’s testimony
20 has demonstrated, the Commission has consistently evaluated the reasonableness of BCC costs

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23 ¹² *Id.* at 6.

24 ¹³ *Id.*

25 ¹⁴ *Id.*

25 ¹⁵ *Id.*

26 ¹⁶ *Id.* at 7.

¹⁷ ICNU’s Response Brief at 11.

1 by comparing those costs to market alternatives.¹⁸ In this case, both Staff's and ICNU's
2 testimony demonstrate that PRB is a lower cost alternative than BCC in 2017.

3 3. *Staff's proposed disallowance for BCC costs addresses the long-term nature of*
4 *captive coal mine costs.*

5 Staff further agrees with ICNU that the Commission's order in PacifiCorp's 2014 TAM
6 left open the possibility that the Commission would consider applying its lower of cost or market
7 rule to BCC, and that the Commission retains the legal discretion to do so. However, Staff
8 recommends that the Commission adopt its proposal for a prudence disallowance because Staff's
9 analysis looks beyond the confines of the 2017 TAM, and analyzes the long-term implications of
10 the Company's continued reliance on BCC coal.

11 **(B) Noble has failed to present compelling argument or evidence supporting its position**
12 **that the Commission should reverse its Order No. 15-394.**

13 As the first of its two issues, Noble requests that the Commission adjust the TAM to
14 provide a credit to departing direct access customers to recognize the value of "renewable energy
15 certificates" (RECs) that are "freed up" as a result of a customer leaving PacifiCorp's system.¹⁹
16 For its second issue, Noble asks the Commission reduce the Consumer Opt-Out Charge that is
17 applied to such departing direct access customers to recognize the generation costs that the
18 Company incurs after the direct access customer leaves its system.²⁰

19 Staff presented its argument that the Commission previously considered Noble's two
20 arguments in PacifiCorp's 2016 TAM (UE 296) and rejected both of them in its Order No. 15-
21 394.²¹ Staff stands by its position that the Commission's directive on both of these issues
22 remains applicable because the circumstances underlying the Order, which concerned the 2016
23 TAM, have not changed in the 2017 TAM.

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¹⁸ Staff/200, Kaufman/49-51.

25 ¹⁹ Noble Solutions/100, Higgins/18-22.

26 ²⁰ Noble Solutions/100, Higgins/26-27.

²¹ Staff/500, Gibbens/2-4.

1 1. Noble's freed-up REC argument fails: PacifiCorp will not be selling its freed-up RECs
2 and, as such, there is still no reliable method to value them. Order No. 15-394 on this
3 issue, rejecting Noble's arguments, still applies.

4 Staff agrees with Noble that RECs are freed-up when a PacifiCorp customer departs for
5 direct access and that the TAM calculation does not contain a credit for the value of these freed-
6 up RECs.²² However, the crux of the issue, as Noble acknowledges, is the method for
7 determining the *value* of a freed-up REC. The Commission previously addressed the issue of
8 valuing the RECs and concluded as follows:

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10 We reject all of Noble Solutions' proposed changes. Noble Solutions' formula
11 for valuing freed-up RECs assumes PacifiCorp will sell its RECs. As PacifiCorp
12 points out, today and for the foreseeable future, PacifiCorp will be banking RECs.
13 Further, PacifiCorp states if the RECs are sold in the future, departing direct
14 access customers will receive a share of the revenues from sales. At best, the net
15 present value of the value of any freed-up RECs is *de minimus*.²³

16 PacifiCorp presented both pre-filed testimony and testified at the oral hearing that the
17 situation has not changed since Order No. 15-394 was issued: the Company still cannot
18 adequately ascertain a reliable value for the freed-up RECs.²⁴ This is because, like in UE 296,
19 the Company still does not intend to sell freed-up RECs, but will bank them for the foreseeable
20 future.²⁵

21 Noble presents in this 2017 TAM proceeding a proposal for valuing the freed-up RECs
22 that it claims is significantly different from the proposal it posited in the 2016 TAM proceeding
23 (UE 296). Noble's proposal relies upon a *proxy* for freed-up REC sales, rather than actual freed-
24 up REC sales, to determine the REC's value. More specifically, Noble proposes to use the
25 Company's average price of its unstructured REC sales for 2015 as the proxy value for the freed-

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²² Noble Response Brief at 9.

25 ²³ Order No. 15-394 at 12.

26 ²⁴ PAC/400, Dickman/91; Hearing Transcript at 34-35 (Dickman); *see also* Staff/500, Gibbens/2.

²⁵ PAC/400, Dickman/89-90.

1 up RECs.²⁶ As an alternative to this approach, Noble also floated in its Rebuttal Testimony the
2 idea of using the price PacifiCorp paid for RECs it purchased under its recently-issued Request
3 for Proposals (RFP).²⁷ However, PacifiCorp testified in response that Noble's method for
4 valuing these RECs, a method that relies upon an assumed or proxy sales price for the freed-up
5 RECs, carries cost-shifting risks and should not be used.

6 There can be no serious dispute that using a proxy for freed-up REC sales is not as
7 informative as reviewing such sales themselves. But the Commission rejected Noble's valuation
8 proposal in UE 296 in part because it found that PacifiCorp would not actually be selling freed-
9 up RECs in the foreseeable future, but would be banking them instead.²⁸ The situation remains
10 the same in the present proceeding. As such, the true value of the freed-up RECs continues to be
11 elusive and not readily ascertainable. Under these circumstances, the Commission's Order No.
12 15-394 applies to Noble's freed-up REC issue presented in the present proceeding. Pursuant to
13 the Order, Noble's proposal should be rejected.

14 *2. Noble presents no new evidence, or persuasive arguments, in support of its position*
15 *that Order No. 15-394 should not apply to its Consumer Opt-Out Charge issue.*

16 The Consumer Opt-Out Charge addresses generation-related costs that PacifiCorp incurs
17 after the direct access customer leaves its system. Noble essentially argues that the Charge is
18 miscalculated because it incorporates an inflation adjustment to forecast the Company's fixed
19 generation costs in years six through ten.²⁹ As Noble acknowledges, the Commission ruled upon
20 its same argument in last year's TAM and the matter is currently on appeal before the Oregon
21 Court of Appeals.³⁰

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24 ²⁶ Noble Solutions/100, Higgins/21-22; Noble Solutions/200, Higgins/5.

25 ²⁷ Noble Solutions/200, Higgins/8.

26 ²⁸ PAC/400, Dickman/91; Hearing Transcript at 34-35 (Dickman); *see also* Staff/500, Gibbens/2.

27 ²⁹ PAC/400, Dickman/92.

³⁰ Noble Response Brief at 18.

1 Staff, as well as PacifiCorp, reviewed Noble’s arguments and “evidence” on this issue
2 and both reached the same conclusion: nothing of substance has changed from last year’s TAM
3 to this year’s.³¹ As such, the Commission Order No. 15-394, rejecting Noble’s same argument in
4 last year’s TAM, applies and the Commission should once again reject Noble’s
5 recommendations regarding this issue.

6 **(C) The Commission should rule on the prudence of minimum take requirements in**
7 **long-term coal contracts in a subsequent proceeding.**

8 CUB raised concerns about the prudence of the Company’s long-term coal contracts
9 executed since 2015.³² Specifically, CUB argued that the minimum take provisions in three of
10 the Company’s current coal-supply agreements, all executed after its 2013 integrated resource
11 plan (IRP), are imprudent and that the costs and impacts of the minimum take provisions should
12 be wholly eliminated from the TAM.³³

13 Staff’s testimony did not conclusively analyze the prudence of PacifiCorp’s most recent
14 coal contracts with minimum take provisions, but did note its concern that the contracts may not
15 be prudent when addressing the Company’s method of modeling coal plant dispatch.³⁴ Staff
16 agrees with CUB that the prudence of long-term coal contracts with take-or-pay provisions, in
17 light of the on-going uncertainty regarding federal and state environmental regulations, is
18 questionable.³⁵

19 Staff’s testimony initially questioned the prudence of these contracts in the context of the
20 inconsistencies between PacifiCorp’s coal supply planning documents and the Company’s
21 hedging policies. The Company’s coal hedging policy appears to rely on flexibility of volume
22 inventory to mitigate risks associated with minimum take provisions,³⁶ whereas in actual

23 ³¹ Staff/500, Gibbens/4; PAC/400, Dickman/92.

24 ³² CUB’s Response Brief at 17-18; CUB/100, McGovern/7-9.

25 ³³ CUB’s Response Brief at 17.

26 ³⁴ Staff/200, Kaufman/24.

26 ³⁵ Staff/200, Kaufman/24.

³⁶ Staff/400, Kaufman/38.

1 operations, PacifiCorp stated that inventory flexibility is not sufficient to mitigate the risks of
2 minimum take provisions.³⁷ However, in light of Staff's framing of the issue and
3 recommendation to address prudence in the Company's 2017 PCAM,³⁸ its testimony in this case
4 did not substantively address the prudence of take-or-pay provisions in coal contracts for the
5 Company's Huntington, Jim Bridger and Dave Johnston plants.

6 Staff's recommendation for Jim Bridger plant coal costs assumes complete reliance on
7 Powder River Basin (PRB) coal, which implies no minimum take requirements at Black Butte.
8 Staff's analysis was purely economic and related to long-term fueling for Jim Bridger plant, and
9 was not intended to comprehensively address the prudence of the Black Butte contract's take or
10 pay provisions in light of its recommendation to address this issue in the Company's 2017
11 PCAM. While not agreeing with PacifiCorp that the contracts are prudent, Staff agrees with
12 PacifiCorp that there is not sufficient evidence on the record in this proceeding to address the
13 prudence of these contracts.³⁹

14 Staff continues to believe a final prudence determination from the Commission for the
15 Company's recent coal contracts is premature at this time. CUB raised the concern that the
16 impact to NPC from dispatch of Huntington, Jim Bridger, and Dave Johnston will not be known
17 until the Company's final update of power costs, filed after the Commission issues an order in
18 this case.⁴⁰ A prudence determination in the Company's 2017 PCAM, combined with the
19 imposition of the Commission's modeling moratorium on PacifiCorp's manual modeling of
20 minimum take coal contracts, would manage CUB's concern.

21 IV. CONCLUSION

22 For the reasons stated above, Staff advocates that the Commission adopt Staff's
23 recommendations in this case. Namely, Staff recommends that the Commission address BCC's

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³⁷ Staff/400, Kaufman/40.

25 ³⁸ Staff/200, Kaufman/24.

26 ³⁹ PacifiCorp's Opening Brief at 29.

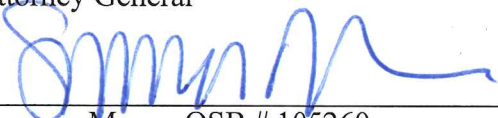
⁴⁰ CUB's Response Brief at 17.

1 overstated costs by finding the Company imprudent for failing to adequately analyze fuel costs at
2 Jim Bridger plant, and impose a disallowance accordingly. Staff also recommends that the
3 Commission reject each of the two direct access proposals presented by Noble, and that the
4 Commission find that a prudence determination for the Company's most recent coal supply
5 agreements with minimum take provisions be addressed in PacifiCorp's 2017 PCAM.

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7 DATED this 5th day of October, 2016.

8 Respectfully submitted,

9 ELLEN F. ROSENBLUM
10 Attorney General

11 
12 Sommer Moser, OSB # 105260
13 Michael Weirich, OSB # 824250
14 Assistant Attorneys General
15 Of Attorneys for Staff of the Public Utility
16 Commission of Oregon
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