

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

February 3, 2017

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: PACIFICORP, dba PACIFIC POWER
Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional
Allocation Protocol
Docket No. UM 1050

Dear Filing Center:

Please find enclosed the Answer of the Industrial Customers of Northwest Utilities to PacifiCorp's Petition for Approval of the One-Year Extension Option of the 2017 Inter-Jurisdictional Allocation Protocol.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1050

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	ANSWER OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Petition for Approval of the One-Year)	UTILITIES
Extension Option of the 2017 Inter-)	
Jurisdictional Allocation Protocol.)	

I. INTRODUCTION

Pursuant to OAR § 860-001-0400, the Industrial Customers of Northwest Utilities (“ICNU”) submits this Answer to PacifiCorp’s (the “Company”) Petition for Approval of the One-Year Extension Option of the 2017 Inter-Jurisdictional Allocation Protocol (“Petition”). For the foregoing reasons, ICNU respectfully requests that the Public Utility Commission of Oregon (“OPUC” or the “Commission”) deny the Petition.

PacifiCorp is essentially asking the Commission to rescind its explicit determination *not* to extend the 2017 Protocol to an optional third year.^{1/} The Company requests the Commission to complete its review of the Petition and issue an order in precisely two months.^{2/} Given that the Petition is filed under ORS § 756.568, which does not allow for the rescission or amendment of an order barring “opportunity to be heard as provided in ORS 756.500 to 756.610,” the Petition may require a “super-expedited” procedural schedule for adequate resolution.^{3/} This is far too short a span to allow for full and reasonable process.

^{1/} Order No. 16-319 at 6 (Aug. 23, 2016).

^{2/} Petition at ¶ 3.

^{3/} See, e.g., Re OPUC, Docket UM 1610, Order No. 16-429 (Nov. 9, 2016) (opening “an expedited investigation” examining PacifiCorp’s non-standard avoided cost pricing); Re OPUC, Docket UM 1802,

II. ANSWER

While never expressly acknowledged by the Company, the Petition seeks Commission authorization to increase Oregon rates by another \$2.6 million via what may require a two-month process. That is, “[f]or the period that the 2017 Protocol *remains in effect*, a 2017 Protocol Adjustment will be added to each State’s annual revenue requirement”—for Oregon, the equalization adjustment amount, so long as the 2017 Protocol “remains in effect,” is \$2.6 million annually.^{4/} Since the Commission stated that it would only “use the 2017 Protocol in PacifiCorp rate proceedings filed from December 31, 2016 through December 31, 2018,”^{5/} the “[c]ontinuation of the 2017 Protocol through the end of 2019,” which the Company seeks through the Petition,^{6/} would allow PacifiCorp to increase revenue requirement by an additional \$2.6 million.

A. Approval of the 2017 Protocol Was Premised upon a “Short-Term” Duration of Two Years

In adopting the 2017 Protocol for use in just two years of potential Company rate proceedings, the Commission explained that the 2017 Protocol is “in the public interest because it is a short-term agreement.”^{7/} Thus, the first and apparently most salient feature commending the 2017 Protocol for approval, less than six months ago, was the “short-term” nature of the agreement. In fact, as confirmation of the importance of this “short-term” quality in reaching a determination (following an eight-month proceeding), the Commission announced that it did

Prehearing Conference Memorandum (Nov. 30, 2016) (adopting a procedural schedule setting a hearing *nearly six months* into the future, with provision for still further process involving post hearing briefs, in response to the Commission’s order to open the aforementioned “expedited” investigation).

^{4/} Order No. 16-319, App. A at 14 (emphasis added).

^{5/} Order No. 16-319 at 6.

^{6/} Petition at ¶ 9.

^{7/} Order No. 16-319 at 6.

“not intend to adopt the one-year extension contemplated in the 2017 Protocol.”^{8/} Yet, a full reversal of this stated intent is what the Company hopes to accomplish within two months.^{9/}

The Commission acknowledged that the 2017 Protocol is “a contested stipulation.”^{10/} Moreover, although Staff supported the adoption of the two-year term of the 2017 Protocol, the Commission noted that “Staff and ICNU maintain that the majority of the allocation shortfall is due to Utah choosing to treat costs as rolled-in, without any form of ECD.”^{11/} In other words, two of the three non-Company parties agreed that the \$2.6 million Oregon equalization adjustment was not actually “a remedy for the allocation shortfall.”^{12/} This fact seems to support the Commission’s measured finding, again after months of process, that approval of the 2017 Protocol was in the public interest—not because Oregon had been found to have actually caused the Company’s alleged inter-jurisdictional shortfall, or that a \$2.6 million was just based on confirmed cost-causation principles—but, merely because the agreement was “short-term” for an express two-year duration.

B. No Action Should Be Taken before Completion of the New and Independent Oregon-specific Investigation Ordered by the Commission

Even following eight months of process, the Commission was apparently uncertain of the actual basis for PacifiCorp’s alleged inter-jurisdictional shortfall, or Oregon’s equitable share (if any), having found only that “the parties have not fully explained the cause of the shortfall.”^{13/} To this end, after having adopted the 2017 Protocol for a two-year term, the Commission ordered: “We will open a new investigation by the end of November 2016 into

^{8/} Id.
^{9/} The alternative seems even worse—full reversal, without process, based only on a five-page-long Petition.
^{10/} Order No. 16-319 at 6.
^{11/} Id. at 3.
^{12/} Id.
^{13/} Id. at 7.

PacifiCorp’s inter-jurisdictional allocation.”^{14/} As of this date in early February 2017, however, this new investigation has yet to be officially mentioned at all by the Commission, let alone opened, notwithstanding that it comprised one half of the final order on the 2017 Protocol.

ICNU believes it would imprudent in the extreme, not to mention raising a bevy of procedural fairness issues, if the Commission were to attempt to accommodate the Company’s functional request—i.e., for super-expedited process, to rescind a favorable ratepayer determination, while still not taking any action on a new investigation that would address ratepayer concerns. Further, even if the Commission were to open the new, separate investigation today, to run in parallel with process on the Petition, concerns over adequacy of review would only be exacerbated if an attempt were made to resolve *both* proceedings within a mere two months.

From an Oregon ratepayer standpoint, the importance of a thorough and unrushed investigation into PacifiCorp’s inter-jurisdictional allocation can hardly be overstated. Having not resolved the basis for the Company’s alleged inter-jurisdictional shortfalls over the entire course of process on the 2017 Protocol, the Commission stated that the purpose of the new investigation was “so that we can conduct *detailed analyses* on a reasonable allocation method for the company and its Oregon customers.”^{15/} Needless to say, “detailed analyses” would be well-nigh impossible to complete adequately within two months, particularly if attempted in addition to parallel process on the Petition.

Yet, the Commission explicitly states that this new investigation was to be “[i]n addition” to existing activity associated with the multi-state process (“MSP”).^{16/} More

^{14/} Id. at 8 (Ordering ¶ 2).

^{15/} Id. at 6 (emphasis added).

^{16/} Id.

specifically, the Commission explained that it “will *simultaneously* work on our own investigation,” in order “to ensure that we can fully analyze Oregon-specific issues.”^{17/} In this light, any attempts to meld the new investigation with Petition process, or to directly couple a full analysis of “Oregon-specific issues” with issues raised by the Company in the context of the MSP Workgroup or Commissioner Forum, would directly contradict the Commission’s stated rationale in ordering the new investigation.

This is crucial to note because the Company is effectively seeking to couple “Oregon-specific” concerns in the Petition with existing process in the MSP. That is, based on information presented recently in the MSP, PacifiCorp “requests that the Commission acknowledge that the Company has evaluated alternative inter-jurisdictional allocation methods,”^{18/}—i.e., the very subject of the yet-to-be-opened investigation, allowing the Commission “to *independently explore* approaches consistent with cost-causation principles and that make sense for Oregon customers”^{19/} The Company states that “[s]uch acknowledgment does not foreclose continued discussion regarding any alternative inter-jurisdictional allocation methods.”^{20/} But, the practical effect of such acknowledgment, in the specific context of the Petition, would be to justify a hyper-expedited approval of a \$2.6 million increase to Oregon revenue requirement *before* the Commission has had an opportunity to “independently explore” the cost-causation associated with such a significant rate increase, or whether the Company’s proposed allocation actually “makes sense for Oregon customers.”

Moreover, the new investigation is necessary to ensure detailed analyses of Oregon-specific issues which cannot be considered, in any reasonable sense, to have been fully

^{17/} Id. (emphasis added).

^{18/} Petition at ¶ 10.

^{19/} Order No. 16-319 at 6-7 (emphasis added).

^{20/} Petition at ¶ 10.

addressed through MSP presentations. This is because the Commission ordered the new investigation on the express finding that, since “Oregon will be facing new and unique allocation issues due to the passage of SB 1547 A new investigation will allow us to analyze impacts of SB 1547.”^{21/} Conversely, MSP presentations are aimed, by definition, for review by stakeholders in all six PacifiCorp jurisdictions, and so will never be focused upon the interests and concerns of any single state such as Oregon,^{22/} even if the Company’s system-wide presentations factor SB 1547 to some extent.

C. Commission Standards Provide that Oregon-specific Issues Are of Equal Value to Regional Equity Concerns

In approving the 2017 Protocol for only a two-year term, the Commission cited to the 2002 order initiating this docket to affirm “previously-established standards” relevant to MSP protocols.^{23/} Specifically, the Commission has always considered the following factors as distinct and equally relevant to protocol determinations: 1) “Insure that Oregon’s share of PacifiCorp’s costs is equitable in relation *to other states*”; and 2) “Meet the public interest standard *in Oregon*.”^{24/}

Accordingly, the “Oregon-specific” need, for “detailed analyses on a reasonable allocation method for the company and its Oregon customers,” should be given no less weight than recent Company evaluations, as to what may be alleged to be “equitable in relation to other states.” Nor should Oregon-specific issues be considered outside of the independent and distinct context ordered so recently by the Commission. Yet, the fact that the Oregon-specific

^{21/} Order No. 16-319 at 6.

^{22/} See *id.* at 1 (stating that the MSP “allows the company to work with its states,” plural, “to develop an allocation protocol to divide total system costs among the states”).

^{23/} *Id.* at 6 & n.18 (citing Order No. 02-193 (Mar. 26, 2002)).

^{24/} Order No. 02-193 at 1-2 (emphasis added). *Accord* Order No. 05-021 at 2 (Jan. 12, 2005); Order No. 11-244 at 1 (July 05, 2011).

investigation has not even begun, while PacifiCorp only very recently “completed a *year-long* analysis of alternative inter-jurisdictional allocation alternatives,”^{25/} goes to the heart of fairness considerations at issue between the Company and Oregon ratepayers.

In short, ICNU believes it would be manifestly unfair to expect full and detailed analyses of Oregon customer concerns within two months, given that the Company admitted to the need for an entire year to conduct its own analysis. If the Petition is granted, however, then the Commission will essentially be making a significant adverse rate determination without affording ratepayers anything approaching an equal opportunity of review compared to what the Company enjoyed.

Although PacifiCorp presents the completion of its “year-long analysis” of allocation alternatives as primary among alleged “circumstances [that] have changed since the issuance of Order No. 16-319,”^{26/} thereby providing an ostensible justification for a grant of the Petition, little to nothing has changed for ratepayers. Specifically, the new investigation to “independently explore” allocation approaches “that make sense for Oregon customers” has yet to begin,^{27/} while Oregon parties have hardly had time to review Company responses to 26 Staff data requests in this docket relating to the Company’s own MSP analysis, while several more from the Citizens’ Utility Board of Oregon (“CUB”) are still outstanding.^{28/}

^{25/} Petition at ¶ 9 (emphasis added).

^{26/} Id.

^{27/} Order No. 16-319 at 6-7.

^{28/} PacifiCorp responses to OPUC data requests 63-88 were issued on January 27, 2017, while CUB data requests 2-8 were made on January 31, 2017.

D. Fair and Equitable Treatment of Company and Ratepayer Interests Should Foreclose any Rational Argument that Extension of the 2017 Protocol Is Necessary to Allow for Adequate MSP Negotiation

The reasonableness of timing considerations also sheds light on other Petition arguments. According to the Company, “there was a general agreement,” at the recent MSP Commissioner Forum, “that it would be unlikely that stakeholders and the Company could reach consensus on a permanent allocation proposal for Commission approval before the currently scheduled expiration of the 2017 Protocol.”^{29/} Since the currently scheduled expiration of the 2017 Protocol is at the end of 2018—and even allowing for a full nine months of process for state commissions to approve a “permanent allocation proposal,” meaning that MSP stakeholder “consensus” would need to be reached by about March 2018 under this construct—PacifiCorp is effectively claiming that 16 months of MSP is too short a span for equitable allocation determinations to be reached between states.

As an initial matter, ICNU is not persuaded that 16 months is too short of a window for MSP negotiation. Applicable to virtually any human endeavor, there is always a tendency for procrastination the longer the timeframe allowed, such that ICNU fully expects that longer MSP negotiation periods will simply translate to longer periods in which stakeholders avoid digging into substantive and determinative issues. Accordingly, the crux of negotiations will always be confined to a period much shorter than 16 months, regardless of the overall negotiation timeframe. From ICNU’s perspective, this is exactly what happened during the last round of MSP negotiations (resulting in the 2017 Protocol)—to be blunt, there seemed to be a lot of dithering and posturing until the mid- to late-summer of 2015, when stakeholders collectively

^{29/} Petition at ¶ 8.

appreciated the impending time constraints and effectively created the agreement within the last few months of 2015.

In any event, based on the recent Commissioner Forum discussions which PacifiCorp references, any “general agreement” on time constraints was essentially between the Company and Rocky Mountain Power (“RMP”) states, who all expressed support for an extension to the 2017 Protocol independent of any other considerations.^{30/} Thus, it may be naïve (to not at least consider) that the Company and RMP states might have a shared interest in taking the position, ingenuous or not, that MSP negotiations cannot be completed unless Oregon yields to pressure to extend the 2017 Protocol for something akin to “the common good.”

But, assuming for the sake of argument that 16 months *is* too short a span for equitable allocation determinations to be reached between states, which may be relevant to the Commission standard of ensuring that “Oregon’s share of PacifiCorp’s costs is equitable in relation to other states,”^{31/} this assumption would only emphasize an inability to satisfy another Commission standard. Namely, two months to consider the Petition would surely be insufficient, measuring by a comparable temporal rubric, to “[m]eet the public interest standard in Oregon,”^{32/} within the specific context of an equitable and “reasonable allocation method for the company and its Oregon customers.”^{33/} Otherwise, to interpret equity “in relation to other states” as satisfying “the public interest standard in Oregon”—as if the two standards were one and the

^{30/} Cf. *id.* at ¶ 8 (“Indeed, several of the state commissioners in attendance stated their support for extending the 2017 Protocol to allow for further discussions”). ICNU did not understand *any* of the state commissioners from Pacific Power states to have stated such support. In other words, the “several” here seems to refer exclusively to commissioners from RMP states, further demonstrating the divide between the Company’s western states and the seemingly aligned interests of the Company to its RMP states. The same division was also manifest based on commissioner statements concerning the continued review of structural separation alternatives.

^{31/} Order No. 02-193 at 1.

^{32/} *Id.* at 2.

^{33/} Order No. 16-319 at 6.

same—would be to make nonsense of the express distinction between these standards, as has been confirmed and separately recited by the Commission for fifteen years running.

E. The Company Is Fully Responsible for any Exigent Circumstances and Should Bear the Ensuing Consequences of Its Choices

Ultimately, if any allocation shortfall does exist which might place the Company at risk, in the event that the 2017 Protocol is not extended, the Commission observed that both Staff and ICNU had pointed out “that PacifiCorp agreed in its 1988 merger stipulation that shareholders would bear this type of shortfall.”^{34/} Hence, in weighing the Company’s claims of exigency against the potential harm to Oregon customers—e.g., of rushing through a process to rescind a recent final order determination, without adequate procedure to address Oregon-specific ratepayer concerns—ICNU firmly believes that the Commission should err on the side of allowing PacifiCorp to accept the shareholder risk that the Company recognized and voluntarily assumed when merging Pacific Power with eastern state interests.

The Company chose to wait until January 31, 2017, to file the Petition, seeking relief that PacifiCorp now claims is needed within two months. Thus, any emergency has been created by the Company, especially given that PacifiCorp originally presented its MSP allocation analysis to stakeholders six weeks prior to the Petition filing, at the MSP Workgroup on December 14, 2016.^{35/} ICNU respectfully submits that the Commission should not feel constrained by pressure, or any sense of compulsion, to now accede to the Company’s claims of exigency. Indeed, as the Commission has acknowledged, “Washington uses a Western Control Area methodology that is similar to a control area split” in place of MSP protocols,^{36/} and this

^{34/} Id. at 3.

^{35/} Petition at ¶ 7.

^{36/} Order No. 16-319 at 2 n.4.

fact has never prevented PacifiCorp from using its facilities to “operate as a single system on an integrated basis to provide service to *all* customers in a cost-effective manner.”^{37/}

Moreover, the Oregon Parties to the 2017 Protocol, including PacifiCorp, explicitly agreed to “State-Specific Terms” for Oregon, allowing the Commission “to adopt an alternate allocation methodology by January 1, 2019.”^{38/} That Oregon-specific term is distinct and separate from the option, also stated by the Oregon Parties, that the 2017 Protocol might alternatively be “extended through 2019 under the terms of the 2017 Protocol.”^{39/} This means that the Company (and other Oregon Parties) expressly conceded the Commission’s ability to electively wait until January 1, 2019—as an alternative to rushing through an protocol extension by March 2017—in order to adopt an allocation methodology applicable to Oregon customers in 2019. Thus, the Commission is under no immediate pressure to yield to a March 31, 2017 timeline, under the negotiated terms of the 2017 Protocol itself, to avoid the specter of not having a reasonable allocation methodology in place by 2019.

F. Potential Acknowledgment that the Company Has Satisfied Its Evaluation Requirement

PacifiCorp has requested acknowledgment of its evaluation of “alternative inter-jurisdictional allocation methods, including consideration of corporate structure alternative[s],” and has asked the Commission to find that the Company has “satisfied the requirement of Section XIV.3 of the 2017 Protocol.”^{40/} As noted above, ICNU is concerned that the practical effect of such acknowledgment, in the full context of the Petition, would be to justify a hyper-expedited approval of a \$2.6 million increase to Oregon revenue requirement *before* the

^{37/} Petition at ¶ 5 (emphasis added).

^{38/} Order No. 16-319, App. A at 13, 16.

^{39/} Id., App. A at 16.

^{40/} Petition at ¶ 10.

Commission has had an opportunity to “independently explore” reasonable allocation methods in the Oregon-specific docket which has been ordered, but not yet opened.

Nevertheless, ICNU would not necessarily oppose a finding that the Company had satisfied its evaluation requirement. The reason for potential caution, however, centers on whether the Company is taking its “corporate structure alternative” seriously. As CUB recently noted in the context of PacifiCorp’s annual Transition Adjustment Mechanism (“TAM”) process, the Company was ordered to host a number of TAM workshops.^{41/} Yet, CUB submitted a six-page letter to the Commission expressing “concern[] that the Company will approach these workshops as a compliance obligation rather than as a chance to collaborate with the parties and resolve some of the outstanding issues.”^{42/} Indeed, participation at the “first [TAM] workshop reinforced CUB’s concerns that the Company[] is approaching these workshops as a compliance requirement which it is obligated to host, and is not serious about collaborating with the parties to address concerns related to the TAM.”^{43/}

Likewise, ICNU is concerned that PacifiCorp is not serious about truly collaborating with MSP stakeholders on the structural separation models that form a primary basis of the Company’s alternative allocation evaluations, but has only presented them at the recent Commissioner Forum and MSP Workgroup as a pro forma compliance obligation. As already noted, state commissioners seemed to be sharply divided at the Commissioner Forum, along clear Pacific Power v. RMP lines, as to whether the Company’s structural separation alternatives should continue to be evaluated. That the Company would even pose the question of

^{41/} Re PacifiCorp, Docket UE 307, CUB’s Comments regarding Pacific Power TAM Workshops at 1 (Jan. 23, 2017).

^{42/} Id.

^{43/} Id. ICNU shares CUB’s concerns on the TAM process, noted here as relevant to party observations of Company behavior generally, which may bear upon PacifiCorp’s approach on MSP issues.

immediately removing structural separation models from further MSP discussion, having only just presented them to the commissioners, is a notable concern. But, the Petition also seems to imply a Company leaning away from the newly presented structural separation options, in favor of “a new allocation concept” developed by PacifiCorp and presented as an alternative to structural separation.^{44/}

To be perfectly clear, ICNU is simply expressing concerns, noting that another party has recently observed a pattern of Company behavior in another forum which could indicate that PacifiCorp may be approaching its presentation of alternative allocation methods more in the spirit of rote compliance than true collaboration. While ICNU does not take a strong position on whether the Company has satisfied its evaluation requirements per Section XIV.3 of the 2017 Protocol, the stated concerns add to the importance of proceeding without unnecessary haste regarding a determination on an extension to the 2017 Protocol, especially without adequate Oregon-specific process on reasonable allocations to Oregon customers.

III. CONCLUSION

ICNU fully appreciates that the Commission has broad discretion to determine how it will respond to the Petition. That said, ICNU sincerely hopes that the Commission will carefully consider the implications of using that discretion to potentially reverse, within two months, what ratepayers had understood to be thoroughly weighed determinations on the 2017 Protocol following more than eight months of process. Oregon customers were encouraged by what appeared to be the firm intent of the Commission not to extend the 2017 Protocol to a third year, apparently for the express purpose of allowing the Commission, Staff, and ratepayer advocates an opportunity to engage in a new and independent investigation into Oregon-specific

^{44/} Petition at ¶ 9.

cost-causation and reasonable allocation methods that could govern Oregon rates in 2019 and beyond.

Accordingly, if the Commission's intentions and explicit order to open a new Oregon-specific investigation remain firm, ICNU believes that the Commission, the Company, and all stakeholders could be saved considerable amounts of time and resources by a denial of the Petition. Presumably, ORS § 756.568 would direct that parties have an opportunity to be heard through additional process if the Commission is considering a grant of the Petition. Conversely, the Commission may be under no such constraints in electing not to amend or rescind Order No. 16-319, in any capacity, thereby justifying a simple denial of the Petition.

At the very least, if the Commission does not deny the Petition outright, ICNU requests that the new investigation ordered by the Commission be formally opened, and as soon as possible. While efforts to adequately conduct such process within two months would tax Oregon parties—in a manner far beyond what PacifiCorp claims other states cannot reasonably accomplish in 16 months of MSP negotiations—the prompt opening of the promised Oregon-specific investigation would offer ratepayers a modicum of process that has been delayed for more than two months now.

Dated this 3rd day of February, 2017.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Jesse E. Cowell

Jesse E. Cowell

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 (telephone)

(503) 241-8160 (facsimile)

jec@dvclaw.com

Of Attorneys for the

Industrial Customers of Northwest Utilities