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June 8, 2016

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 Inter-Jurisdictional Allocation Protocol
Docket No. UM 1050

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Cross-Answering Brief of the Industrial Customers of Northwest Utilities.

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

CROSS-ANSWERING BRIEF

OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

June 8, 2016

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I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") respectfully submits this Cross-Answering Brief, responding to the briefing arguments of Oregon Public Utility Commission ("OPUC" or the "Commission") Staff and the Citizens' Utility Board of Oregon ("CUB"). For the reasons explained herein, the briefing of these parties provides additional support for the two limited recommendations of ICNU, provided here again for convenience:

- Elimination of the proposed caps and floor on Oregon's Hydro Endowment or Embedded Cost Differential ("ECD") calculation; and
- Reduction of the $2.6 million annual Oregon Equalization Adjustment deferral in proportion to the amount of incremental revenues received as a direct result of Senate Bill ("SB") 1547 provisions on production tax credit forecasting, which Oregon signatories to the 2017 Protocol are on record as having not considered.

II. RESPONSE

A. Staff's Continuing Resistance to Settlement Modification Is Due to Improper Analysis and Unpersuasive Reasoning

1. Staff Improperly Constrains and Limits its Analysis

During the course of this proceeding, Staff was asked whether its support for the 2017 Protocol is based upon a constrained two-fold analysis in which Staff limited itself only to analyzing "future Oregon rates under either the Revised Protocol or the 2017 Protocol, without analysis of an approval subject to any modifications or conditions."[1/] In response, Staff answered yes, adding that: "There could be other alternatives and staff is not going to speculate as such."[2/] In so doing, Staff omits any consideration of potential benefits achieved through alternatives, such as the modifications proposed by ICNU.

[1/] ICNU/201, Mullins/1 (Staff Response to ICNU Data Request ("DR") 7.5 to Staff).
[2/] Id.

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To be clear, ICNU is also supporting the approval of the 2017 Protocol, but recommends that the Commission adopt two discrete modifications as an alternative to the approval of an "as-filed" 2017 Protocol. Staff's election not to analyze "other alternatives," or "any modifications or conditions" that would potentially make the 2017 Protocol more reasonable, is contrary to OPUC standards. The Commission has explained that "in *every* settlement we look at the proposed outcome as a point in *a range of possible outcomes*."[3/] The Commission should not "adopt the stipulation in this case without modification,"[4/] based on an incomplete Staff analysis that purposefully rejects comparison of the "range of possible outcomes."

Notably, Staff acknowledges that, upon expiration of the 2010 Protocol, the Revised Protocol would govern "for Oregon *unless* the Public Utility Commission of Oregon (Commission) approves a *new* inter-jurisdictional allocation method."[5/] Therefore, the Commission plainly has authority to approve a "new" alternative to the Revised Protocol.

Moreover, under OAR § 860-001-0350, the Commission has affirmed that its authority includes the power to adopt a settlement stipulation like the 2017 Protocol "in its entirety, or [to] adopt it with modifications to its terms."[6/] Thus, the Commission should not constrain its analysis to exclude one of the "possible outcomes" contemplated upon expiration of the 2010 Protocol, i.e., the adoption of modifications to the 2017 Protocol designed to protect ratepayers.

[3/] Re Nw. Natural Gas Co., UM 1717, Order No. 15-297 at 7 (Sept. 28, 2015) (emphasis added).
[4/] Staff's Opening Brief at 9:2-3.
[5/] Id. at 1:12-15 (emphasis added). See UM 1050, Order No. 11-244, App. A at 4:2-5 (July 5, 2011).
[6/] Re PacifiCorp, UE 267, Order No. 15-060 at 4 (Feb. 24, 2015).

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2. Staff Arguments Against Settlement Modifications Are Unpersuasive

a. ECD Caps Are Unsupported by Evidence or Sound Reasoning

Staff's support for implementing ECD caps is also premised upon a narrowly constrained, two-fold comparison between outcomes under the "as-filed" 2017 Protocol and Revised Protocol: "Staff estimates that the 2017 Protocol ECD calculation results in customer savings … *as compared to* the Revised Protocol's ECD calculation."[7/] As an initial matter, this is an improper basis for specific analysis, as neither Staff nor ICNU contend that the Revised Protocol calculation methodology should be approved in favor of what is proposed in the 2017 Protocol. Rather, the only relevant issue being contested in this proceeding is the proposed capping of the ECD, which in all events will be determined under 2017 Protocol calculations.

Staff also frames consideration of proposed ECD limitations by stating that "the [as-filed] 2017 Protocol must be reasonable if the ECD floor and cap are likely [to be] more beneficial to customers than the ECD with no floor and cap."[8/] However, Staff's evidence supports, if anything, ICNU's recommendation to eliminate caps.

Staff contends that "the ECD has consistently decreased over the last ten years and [] the factors causing the historic decrease are unlikely to reverse."[9/] As ICNU explained in prior briefing, this sort of argument actually demonstrates that there is no benefit to the adoption of the caps, and only significant risk to Oregon ratepayers. That is, if presumed downward trends continue, then caps are essentially superfluous. Conversely, if low ECD projections and downward trend assumptions prove inaccurate, then Oregon customers will be harmed considerably by the needless implementation of artificial ECD caps.

[7/] Staff's Opening Brief at 6:4-6 (emphasis added).
[8/] Id. at 4:16-17.
[9/] Id. at 5:20-6:2.

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Further, Staff's attempts to discredit higher ECD projections, presented through the Company's foundational studies, are less than persuasive. Staff continues to assert that ICNU "relied on out-of-date foundational study data that is no longer the best information available,"[10/] and points to PacifiCorp testimony alleging "a stark difference between the amount of time that was spent trying to prepare the Wyoming general rate case versus generic forecast that was done for the foundational studies."[11/]

Yet, Staff does not account for the fact that the test year data upon which it relies had been rejected by the Wyoming Public Service Commission—in spite of supposedly being the "best information available," which purportedly contains "the allocation factors necessary to calculate Oregon's share of the [embedded cost] differential."[12/] The rejection of such data raises significant questions about the reliability of the information Staff favors, at least in relation to the updated foundational studies presented to MSP parties just a few months before the Company filed its Wyoming general rate case ("GRC").[13/]

On the other hand, if the evidence rejected by the Wyoming Commission is, in fact, reliable, the Company appears to have sought to induce agreement to the 2017 Protocol using studies conducted at a starkly inferior "level than what the rate case was done" with.[14/] It follows that the Settlement requires a far more searching review than Staff's limited comparison to the Revised Protocol.

10/ Id. at 5:11-12.
11/ Id. at 5:16-18 (quoting McDougal, TR. 92:7-11).
12/ ICNU/300, at 5-6 (Company Responses to ICNU DRs 25.2 & 25.3).
13/ As Staff itself has testified, the updated foundational studies were presented on October 16, 2014, while the Company filed its Wyoming case on March 3, 2015—a span of less than five months. Compare Staff/200, Kaufman 4:9, with ICNU/300, at 5 (Company Response to ICNU DR 25.2).
14/ Staff's Opening Brief at 5:18-19 (quoting McDougal, TR. 92:12-14).

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In all events, Staff's support for implementation of ECD limitations must be considered tenuous, at best: "The 2017 Protocol as presented, with the ECD floor and cap, is *slightly preferable* over excluding the floor and cap because it *mitigates a little bit of risk* for Oregon customers."[15/] The possibility of a "slightly preferable" outcome, potentially mitigating no more than "a little bit of risk," is an unconvincing basis to implement a major change to the ECD that could have considerable rate impacts. For many years, Oregon ratepayers have shouldered the burdens associated with the Northwest hydro resources, both accepting the full risk of water-year variance, and the mantle of stewardship of our precious natural resources. In return, the ECD ensures that they receive the full benefits of Northwest Hydro. No convincing argument has been presented to justify erosion of that compact. Certainly, caps that in practical terms shift far more risk to customers than they mitigate should be rejected.

b. Staff Does Not Adequately Justify the Proposed Equalization Adjustment Rate Increase

On brief, Staff explains that, taken "[i]n isolation the Equalization Adjustment is not better for customers …."[16/] Nevertheless, Staff does not support ICNU's recommendation to modify the settlement to reduce the amount of the Equalization Adjustment deferral because, among other things, "the 2017 Protocol also includes a general rate case stay-out provision" and "a financial incentive for PacifiCorp to provide requested studies."[17/]

As explained in ICNU's initial brief, supporting the Equalization Adjustment as a "financial incentive" for the provision of allocation studies is an unjustifiable basis for Staff's

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15/ Id. at 6:14-15 (emphasis added).

16/ Id. at 3:4-5.

17/ Id. at 3:5-7. The "other things" included in the 2017 Protocol include qualifying facility contract treatment and different ECD calculations, in comparison to the Revised Protocol, which both Staff and ICNU support and are, therefore, not in contention. Id. at 3:8-9.

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"concession" to an annual $2.6 million rate increase. The Commission can simply order the Company to perform such studies without PacifiCorp exacting up to $7.8 million from Oregon ratepayers over the potential term of the 2017 Protocol. Indeed, Staff expressly acknowledges "the Commission's power to require PacifiCorp to do these additional studies."[18/] Thus, with no real value provided by the study "incentive," only the GRC stay-out remains as a provision potentially providing value to offset the proposed Equalization Adjustment rate increase.

As with the potential ECD cap, however, Staff's discussion of the value of the stay-out provision highlights the need for settlement modification to ensure a reasonable ratepayer outcome. For instance, Staff affirms: "The value of a general rate case stay-out provision depends on when a utility would otherwise file a rate case and the rate change ultimately approved by the Commission."[19/] But, this renders the assignment of any reasonably certain value to the stay-out period extremely difficult, given the informational asymmetry dilemma testified to by witness Bradley G. Mullins. Eroding this value further is the possibility that base rates may need to be reduced, an outcome that CUB acknowledges on brief.[20/]

Staff notes that "PacifiCorp costs have increased at an average of 4.9 percent per year" since 1998;[21/] but, Staff does not acknowledge evidence demonstrating that 62% of rate increases over the last decade have been implemented outside of a general rate case.[22/] Needless to say, this fact materially affects the value of a stay-out provision that is only applicable to general rate cases. To this end, "CUB has tried to avoid attributing too much value to the GRC

18/ Id. at 4:8-9.
19/ Id. at 3:10-11.
20/ Opening Brief of CUB at 15-16 (May 26, 2016) (quoting ICNU/200, Mullins/3:15-4:4).
21/ Staff's Opening Brief at 3:12.
22/ ICNU/100, Mullins/16:6-7.

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stay out provision because it is *inherently leaky*."[23/] CUB also points out that, as testified by Mr. Mullins, "the value of the general rate case stay-out is often illusory, particularly since the Company will have many other ways to increase rates during the stay-out period."[24/] This agreement by CUB and ICNU militates against Staff's reliance on the value of the stay-out period as a reasonable "concession" in exchange for a $2.6 million Equalization Adjustment.

B. CUB Offers No Evidence Against Conditional Approval of the 2017 Protocol

Upon close examination, CUB's support for approval of the 2017 Protocol, as-filed, is largely in alignment with ICNU's support for approval of the 2017 Protocol, subject to two discrete conditions. The settlement modifications recommended by ICNU regard issues that CUB considers "ancillary," and CUB has offered no compelling evidence to show that the public interest would be better served by an "as-filed" approval of the 2017 Protocol, rather than a conditional approval adopting the modifications proposed by ICNU.

1. CUB's Rationale for Supporting the 2017 Protocol Does Not Conflict with ICNU's Recommendation for Conditional Approval

According to CUB, "[t]he purpose of the 2017 Protocol is to update PacifiCorp's interjurisdictional allocation methodology filed in 2010."[25/] Yet, CUB's own testimony demonstrates that little of fundamental value was accomplished through the new settlement.

As CUB witness Bob Jenks explained, the 2017 Protocol "fails to resolve some of the fundamental issues, such as the different views between Oregon and Utah on the appropriate allocation of hydro resources."[26/] From an Oregon perspective, this unresolved matter may be

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23/ Opening Brief of CUB at 15 (emphasis added).
24/ Id. (quoting ICNU/100, Mullins/16:2-3).
25/ Id. at 2.
26/ CUB/200, Jenks/9:12-14.

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the fundamental issue, with Mr. Jenks also testifying that "disagreement over hydro benefits and the promises that were made during the Utah Power and Pacific Power merger" are "*[a]t the heart of the MSP disagreement* over cost allocation …."[27/] Thus, CUB recognizes the lack of specific, fundamental progress achieved.[28/] The Commission should not erode the ECD, or offer PacifiCorp an Equalization Adjustment, when issues caused by the Company's promises at the time of the merger have not been resolved.

While CUB has proposed accepting the Settlement as filed, its statements regarding ICNU's proposals are largely friendly to ICNU's issues. CUB states that it has "tried to avoid attributing too much value to the GRC stay out provision because it is inherently leaky."[29/] CUB also concedes that ICNU's argument regarding SB 1547 impacts is "of particular import due to the GRC stay-out provision."[30/] Thus, CUB agrees with ICNU that the stay-out provision "value is limited."[31/]

CUB "supports the 2017 Protocol because it is temporary in nature."[32/] Similarly, ICNU's recommendation for modification of the 2017 Protocol is premised, in part, on the basis that the settlement is not permanent. Since ICNU agrees with CUB that the 2017 Protocol fails to resolve fundamental issues at the heart of MSP disagreement over Oregon/Utah cost allocation, the *limited* term of the 2017 Protocol is a salient feature, to the extent that the settlement is approved at all. CUB's conclusion that "there will continue to be pressure to reach

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27/ Id. at 2:7-9 (emphasis added).
28/ Opening Brief of CUB at 10 ("parties and states that participated in MSP negotiations were unable to make progress on a permanent agreement").
29/ Id. at 15.
30/ Id. at 14 (referring to the "material increase in the amount of revenues [the Company] can collect outside of a general rate case proceeding").
31/ Id. at 15.
32/ Id. at 4.

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a more permanent solution" equally applies if the Commission conditionally approves the settlement.

Further still, CUB notes that "PacifiCorp was willing to agree that the Revised Protocol [will] be the default mechanism for ratemaking after the 2017 Protocol ends."[33/] This hardly represents an achievement, however, in that the Revised Protocol is already the default mechanism after the 2010 Protocol ends.[34/] Thus, PacifiCorp's alleged "willingness" to agree on this matter is irrelevant and not an issue being contested.

2. CUB Positions on ECD Caps and the Equalization Adjustment either Support ICNU's Proposed Modifications or Are Unsupported by Evidence

a. CUB Does Not Persuasively Support ECD Cap Implementation

CUB asserts that "[t]he fact that the 2017 Protocol maintains the 2010 Protocol's Hydro Endowment is *essential* for CUB's support."[35/] ICNU agrees that maintenance of the status quo is essential, which is precisely why ICNU recommends that the 2017 Protocol be approved, subject to the condition that the preexisting, *fully* dynamic Hydro Endowment in the 2010 Protocol be retained—i.e., without the implementation of an artificial cap.

As CUB explains, "Pacific Power states believed, and continue to believe, that they were promised that the benefits of cheap hydropower would stay with the Northwest, *and not be shared*."[36/] If applied, however, Oregon ECD caps could result in the loss of hydropower benefits in direct conflict with this promise.

[33/] Id. at 9.
[34/] UM 1050, Order No. 11-244, App. A at 4:2-5.
[35/] Opening Brief of CUB at 5 (emphasis added).
[36/] Id. at 6 (emphasis added).

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Further, limitations on the ECD would also violate a "critical" basis for the Commission's acceptance of the original MSP settlement. According to CUB, the Commission noted that "***it is critical to Oregon parties that their entitlement to Hydro-Electric Resources … not be abridged at any time in the future***."[37/] Yet, by definition, ECD caps would "abridge" future Hydro Endowment benefits in the future, if and when applied.

Likewise, before the Commission conditionally approved the 2010 Protocol, CUB points out: "Language was added to ensure that the parties could not propose Hydro-Endowment-weakening mechanisms."[38/] Yet, the ECD cap cannot reasonably be construed as anything other than a "Hydro-Endowment-weakening mechanism," in that the caps would limit or constrain the receipt of benefits by Oregon ratepayers. Indeed, Staff and CUB agree that "removing the cap may benefit Oregon customers."[39/] In this sense, an ECD cap would not "maintain the 2010 Protocol's Hydro Endowment," but would instead weaken the status quo.

Notwithstanding, CUB argues that ICNU's proposal to modify the settlement "is particularly unavailing," based on "*the fact* that it the Hydro Endowment [sic] will exceed the cap is *highly unlikely*."[40/] Assuming, for the sake of argument, that it is an actual "fact" that the Oregon ECD calculation is "highly unlikely" to exceed the cap during the 2017 Protocol term, this fact would support adoption of ICNU's proposal to modify the settlement by eliminating the cap. That is, at best, this only demonstrates that there is no realistic benefit to the adoption of caps. If CUB is correct, then the caps will be proven superfluous. If CUB is wrong, however,

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37/ Id. at 6-7 (citing UM 1050, Order No. 05-021 at 3 (Dec. 30, 2015) (emphasis in original).
38/ Id. at 8.
39/ Id. at 12.
40/ Id. (emphasis added).

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then Hydro Endowment benefits could be materially abridged and Oregon ratepayers harmed by application of ECD caps.

CUB asserts that, "[t]hroughout [MSP] negotiations … ICNU has opposed any proposed imposition of a cap and a floor on the Hydro Endowment."[41/] Similarly, during three years of regularly held MSP meetings leading up to the 2017 Protocol,[42/] CUB did not support the imposition of ECD caps until the very end, in the fall of 2015. CUB does not offer a convincing reason that the Commission should follow its lead and reverse its position on retention of the full hydro endowment.

b. CUB's Opposition to Equalization Adjustment Modification Is Not Supported by Evidence or Compelling Reason

Although CUB opposes a reduction of the Equalization Adjustment deferral, CUB provided no evidence in this proceeding to support its position. At hearing, Mr. Jenks affirmed that his testimony did not contain a single mention of either the Equalization Adjustment or the annual $2.6 million rate increase facing Oregon ratepayers.[43/] This leaves the testimony of ICNU unrebutted from CUB's perspective, including Mr. Mullins' calculation of $28.5 million in potential rate increases during the rate case stay-out period due to the passage of SB 1547.

Mr. Jenks also testified at hearing that, to the best of his recollection and understanding, the Equalization Adjustment is related to alleged interstate allocation shortfalls caused by Utah and Washington.[44/] Since CUB claims to support 2017 Protocol terms

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41/ Id. at 11.
42/ PAC/200, McDougal/2:17-18.
43/ Jenks, TR. 124:9-16.
44/ Jenks, TR. 125:12-126:5.

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"consistent with the principle of cost causality,"[45/] there would be no rational basis to maintain a $2.6 million annual rate increase not alleged to have been caused by Oregon.

On brief, CUB finds it "noteworthy that SB 1547 is an Oregon specific statute, and is therefore inherently limited in its applicability to PacifiCorp's *multi-state* plan [sic] that is at issue in this docket, and involves more than just Oregon parties."[46/] Essentially, this argument attempts to improperly place the interests of other states and the Company's interests, relative to operations in its other states, ahead of the Oregon public interest. This line of argument should be rejected in Oregon, just as it is in other MSP states.[47/]

Lastly, CUB alleges that "ICNU wants to put the Company in a position where it continues to provide tax credits to customers even after those tax credits are exhausted."[48/] This is incorrect. ICNU recommends a reduction to the Equalization Adjustment deferral only until the Company's next general rate case, when a holistic review of the Company's entire revenue requirement, including expired production tax credits, can be performed.

III. CONCLUSION

ICNU respectfully recommends that the Commission adopt the two settlement modifications proposed, as consistent with the public interest and as necessary to protect Oregon ratepayers. Also, ICNU continues to request that the Commission expressly acknowledge its full discretion over the allocation treatment of loads lost to direct access programs.

45/ Opening Brief of CUB at 13.

46/ Id. at 14 (emphasis in original).

47/ E.g., Re Rocky Mountain Power, Wyoming Public Service Commission ("PSC") Docket No. 20000-381-EA-10 (Record No. 12624), Memorandum Opinion, Findings and Order Approving Stipulation at ¶ 49 (July 7, 2011) ("The public interest must come first in our decisions; and, as the Wyoming Supreme Court has stated, the desires of the utility are secondary to it.").

48/ Opening Brief of CUB at 14-15.

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Dated this 8th day of June, 2016

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