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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1050

In the Matter of
PACIFICORP

STAFF'S OPENING BRIEF

Request to Initiate an Investigation of Multi-
Jurisdictional Issues and Approve an Inter-
Jurisdictional Cost Allocation Protocol

I. Introduction

The 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol (2017 Protocol) is a stipulation for an interim inter-jurisdictional allocation agreement that would last for two years and expire on December 31, 2018, unless there is unanimous agreement among the Commissions to extend it for a third year.¹ The 2010 Protocol is set to expire on December 31, 2016, and the Revised Protocol would govern PacifiCorp d/b/a Pacific Power's (PacifiCorp) inter-jurisdictional allocations for Oregon unless the Public Utility Commission of Oregon (Commission) approves a new inter-jurisdictional allocation method.²

In Oregon, PacifiCorp, the Citizens' Utility Board of Oregon (CUB), and the Public Utility Commission of Oregon Staff (Staff) all support the 2017 Protocol as a reasonable short-term, non-precedential inter-jurisdictional allocation approach. The Industrial Customers of the Northwest Utilities (ICNU) also recommend approval of the 2017 Protocol, but request two modifications and one clarification. Specifically, ICNU requests that the 2017 Protocol should be modified to eliminate the proposed floor and caps on the Embedded Cost Differential (ECD) and that the Equalization Adjustment deferral should be reduced by the incremental revenues PacifiCorp receives in connection with its ability to forecast production tax credits outside of a

¹ The Commissions must decide whether or not to extend the 2017 Protocol for an additional year by March 31, 2017.

² See Staff/100, Kaufman/4, lines 16-19.

1 general rate case.³ ICNU also requests that the Commission clarify that the 2017 Protocol
2 provides it with full discretion over the allocation treatment of loads lost to direct access
3 programs in Oregon, as well as loads lost to direct access programs in other states.⁴

4 Noble Americas Energy Solutions LLC (Noble Solutions) does not make a
5 recommendation supporting or opposing the 2017 Protocol, but requests a Commission finding
6 that load served by a PacifiCorp voluntary renewable energy tariff (VRET) would not constitute
7 a reduction in load for purposes of the 2017 Protocol.⁵ In addition, Noble Solutions requests
8 clarification that if the Commission issues future orders that modify the findings in UE 267, then
9 the treatment in the 2017 Protocol Section X.A should be consistent with the terms in those
10 future orders.⁶

11 II. Discussion

12 1. **The 2017 Protocol is likely to result in lower rates for Oregon customers than if** 13 **Oregon were to default to the Revised Protocol.**

14 The three primary differences between the 2017 Protocol and the Revised Protocol are
15 the calculation of the ECD, an inclusion of an Equalization Adjustment, and a general rate case
16 stay-out provision.⁷ Other differences include that the 2017 Protocol treats Qualified Facility
17 (QF) contracts as system costs whereas the Revised Protocol directly assigns them to the
18 approving jurisdiction; direct access loads are treated differently; the 2017 Protocol treats simple
19 cycle combustion turbines as general thermal generation units whereas the Revised Protocol
20 treats them more consistent with peaking resources; and the 2017 Protocol includes a financial
21 incentive to PacifiCorp to provide information on alternative allocation methodologies.⁸

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23 ³ See ICNU/100, Mullins/2, lines 9-16.

24 ⁴ See Id. at lines 17-20.

25 ⁵ See Noble Solutions/100, Higgins/7, lines 17-23.

26 ⁶ See Id. at Higgins/9, line 19 through Higgins/10, line 2.

⁷ See Staff/100, Kaufman/5, lines 2-7.

⁸ See Id. at Kaufman/6, lines 11-22.

1 The Equalization Adjustment is a \$2.6 million annual charge to Oregon customers and
2 does not exist in the Revised Protocol.⁹ The Equalization Adjustment will begin to be deferred
3 beginning January 1, 2017, and will be reflected as a reduction to the existing credit balance to
4 be returned to customers in the Open Access Transmission Tariff revenue deferral account.¹⁰ In
5 isolation the Equalization Adjustment is not better for customers, but the 2017 Protocol also
6 includes a general rate case stay-out provision which is not included in the Revised Protocol,¹¹ a
7 financial incentive for PacifiCorp to provide requested studies which is not included in the
8 Revised Protocol, treatment of QF contracts as system allocated instead of assigned to the
9 approving jurisdiction, and a different ECD calculation.

10 The value of a general rate case stay-out provision depends on when a utility would
11 otherwise file a rate case and the rate change ultimately approved by the Commission.¹² From
12 1998 through 2015, PacifiCorp costs have increased at an average of 4.9 percent per year.¹³ In
13 its six rate cases since 2006, PacifiCorp has averaged an increase of 3.3 percent per rate case.¹⁴
14 Since PacifiCorp's most recent rate case in 2013, there has been low inflation, stable rate base
15 and reduced cost of capital.¹⁵ As a result, Staff used the smallest ordered general rate increase of
16 0.6 percent, which is equivalent to \$7.3 million in revenue, as a reasonable estimate of the value
17 of one year's worth of the general rate case stay-out provision included in the 2017 Protocol.¹⁶
18 In response to ICNU's argument that the deferral should be reduced by the incremental revenues
19 PacifiCorp receives in connection with its new ability under Senate Bill 1547 to forecast
20 production tax credits outside of a general rate case, Staff noted that its analysis of the potential

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⁹ See Id. at lines 1-4.

22 ¹⁰ See PAC/100, Dalley/24, line 21 through Dalley/25, line 4.

23 ¹¹ See Staff/100, Kaufman/6, lines 5-10.

24 ¹² See Id. at Kaufman/8, lines 5-7.

25 ¹³ See Id. at lines 8-9.

26 ¹⁴ See Id. at lines 9-10.

¹⁵ See Id. at lines 16-18.

¹⁶ See Id. at Kaufman/8, line 16 through Kaufman/9, line 4.

1 value of the general rate case stay-out provision included the newly allowed treatment of
2 production tax credits – otherwise the value of the general rate case stay-out provision would
3 have been much higher.¹⁷

4 In addition, the 2017 Protocol provides a financial incentive for PacifiCorp to perform
5 several requested studies that will help quantify and allocate the benefits of the merger under
6 different allocation methodologies.¹⁸ If PacifiCorp does not complete the required studies by
7 March 31, 2017, Oregon customers will receive a monthly credit of \$216,667, for each month
8 after this date that PacifiCorp has failed to provide the study results.¹⁹ In addition to the
9 Commission’s power to require PacifiCorp to do these additional studies, the 2017 Protocol
10 “provides a strong financial incentive for the Company to really push for generating the data.”²⁰

11 **2. The 2017 Protocol’s inclusion of a floor and a cap on the operation of the dynamic**
12 **ECD are reasonable in a short-term, temporary allocation agreement.**

13 At the hearing, ICNU’s witness testified that removal of the ECD floor and cap, if that
14 were the Commission’s only condition, would result in the 2017 Protocol being in the public
15 interest.²¹ If the 2017 Protocol would be in the public interest with the removal of the ECD floor
16 and cap, the 2017 Protocol must be reasonable if the ECD floor and cap are likely more
17 beneficial to customers than the ECD with no floor and cap. Therefore, the determination of
18 whether or not the 2017 Protocol is in the public interest and should be adopted revolves around
19 whether or not the ECD floor and cap are reasonable.

20 The 2017 Protocol’s ECD calculation works the same way as the 2010 Protocol, but the
21 2017 Protocol adds a floor and a cap to the results of the calculation. Specifically, the ECD in
22 the 2010 Protocol and 2017 Protocol contains two components – a hydro cost differential and a

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24 ¹⁷ See Staff/200, Kaufman/3, lines 9-17.

25 ¹⁸ See Staff/100, Kaufman/10 lines 7-19.

26 ¹⁹ See Id. at Kaufman/10, line 20 through Kaufman/11, line 4.

²⁰ See Hearing Tr. at 137, lines 4-10.

²¹ See Id. at 111, lines 18-22.

1 Mid-Columbia contract differential. The hydro differential is calculated as the difference
2 between the total dollars per megawatt cost of hydroelectric resources and the dollars per
3 megawatt cost of all pre-2005 resources multiplied by the megawatt hours of hydro generation.
4 The Mid-Columbia differential is calculated as the difference between the total dollars per
5 megawatt cost of Mid-Columbia contracts and the pre-2005 resources multiplied by the mid-
6 Columbia megawatt hours.²² The Revised Protocol performs a similar ECD calculation, but it
7 evaluates the cost of hydro resources against all other resources, including those added after
8 2005.²³ The Revised Protocol ECD calculation is forecasted to allocate fewer hydro endowment
9 benefits to Oregon relative to the 2017 Protocol.²⁴

10 ICNU argues that ECD may exceed the caps proposed in the 2017 Protocol.²⁵ However,
11 ICNU analysis relied on out-of-date foundational study data that is no longer the best
12 information available.²⁶ When cross-examined regarding the use of more recent data, Staff's
13 witness testified that the more recent data "contain more relevant inputs into the estimates than
14 the data [from the foundational studies]. As far as accuracy, because I believe the inputs are
15 more accurate, then I would assume that the results would be more accurate as well."²⁷
16 PacifiCorp's witness also testified on cross-examination that "there is a stark difference between
17 the amount of time that was spent trying to prepare the Wyoming general rate case versus
18 generic forecast that was done for the foundational studies. The foundational studies . . . were
19 done at a much higher level than what the rate case was done."²⁸ In addition, Staff noted that,
20 while there is no tractable method of assigning probabilities to ECD outcomes, the ECD has
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22 ²² See Staff/100, Kaufman/5, lines 8-16.

23 ²³ See Id. at lines 17-21.

24 ²⁴ See Id. at lines 22-23.

25 ²⁵ See ICNU/100, Mullins/13 at lines 9-18.

26 ²⁶ See Staff/200, Kaufman/4, lines 8-12.

27 ²⁷ See Hearing Tr. at 134, lines 19-25.

28 ²⁸ See Id. at 92, lines 7-14.

1 consistently decreased over the last ten years and that the factors causing the historic decrease
2 are unlikely to reverse.²⁹

3 When utilizing the more recent and accurate data and accounting for the fact that the
4 2017 Protocol treats QF contracts as system costs, Staff estimates that the 2017 Protocol ECD
5 calculation results in customer savings of \$2.4 to \$3.3 million per year as compared to the
6 Revised Protocol's ECD calculation.³⁰ Although Staff's estimates are based upon the best
7 information currently available, it does provide a reason that the ECD could be lower than
8 anticipated and that is if Utah QF contracts become active contracts and the Utah QF tariff pays
9 lower energy prices than the forecasted cost of other generation, which would decrease the cost
10 of all other generation and decrease the ECD.³¹

11 Based upon the best information currently available, the Commission should find the
12 ECD floor and cap reasonable because, while there is a possibility the cap would benefit Oregon
13 customers, there is also a possibility that removing the floor would hurt Oregon customers.³²
14 The 2017 Protocol as presented, with the ECD floor and cap, is slightly preferable over
15 excluding the floor and cap because it mitigates a little bit of risk for Oregon customers.³³

16 **3. The 2017 Protocol is a short-term, temporary agreement and the use of ECD floors**
17 **and caps is in no way precedential for future negotiations or agreements.**

18 ICNU argues that the Commission's acceptance of the ECD caps will be practically
19 precedential.³⁴ Staff disagrees. The 2017 Protocol is agreed to by stipulation and as such does
20 not represent precedent for future negotiations and Staff fully intends to continue to pursue a
21 long-term inter-jurisdictional allocation agreement that provides for a fair allocation of merger
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23 ²⁹ See Staff/200, Kaufman/4, lines 1-7.

24 ³⁰ See Staff/100, Kaufman/7, line 15 through Kaufman/8, line 2.

25 ³¹ See Staff/200, Kaufman/4, line 13 through Kaufman/5, line 6.

26 ³² See Id. at Kaufman/5, lines 7-12.

27 ³³ See Hearing Tr. at 135 lines 19 through 136, line 3.

28 ³⁴ See ICNU/100, Mullins/18, lines 11-17.

1 benefits.³⁵ In fact, the 2017 Protocol itself states that the agreement is for an interim
2 methodology and does not limit or comprise any party's ability to argue for a different ECD or
3 hydro endowment calculation in future negotiations.³⁶ In spite of these protections, if the
4 Commission were concerned that the ECD floors and caps could be viewed as precedential, its
5 order could clearly state that the agreement establishes no precedence for future negotiations.³⁷

6 **4. The Commission retains full discretion over the allocation treatment of loads lost to**
7 **direct access programs in Oregon, as well as loads lost to direct access programs in**
8 **other states.**

9 ICNU requests that the Commission clarify that it retains full discretion over the
10 allocation treatment of loads lost to direct access programs in Oregon, as well as loads lost to
11 direct access programs in other states, but every party agrees with ICNU's interpretation so there
12 is no need for clarification.³⁸ While parties agree with ICNU's interpretation, PacifiCorp argued
13 it was unnecessary to make an "anticipatory finding" to apply allocation conditions to other
14 states' loads lost to direct access.³⁹

15 This dispute was resolved through cross-examination when ICNU's witness testified that
16 he did not find the current protocol language on this issue to be inadequate and was not asking
17 for a Commission finding that it would treat Oregon loads lost to direct access consistently with
18 loads lost to direct access in other states, but only for acknowledgement that the Commission
19 retains the discretion to adopt consistent treatment.⁴⁰ No party disagrees that the Commission
20 retains full discretion over allocation of loads lost to direct access programs in Oregon and of
21 allocation of loads lost to direct access programs in other states.

22 ³⁵ See Staff/200, Kaufman/6, lines 3-8.

23 ³⁶ See generally 2017 Protocol, PAC/101, Dalley/3-4.

24 ³⁷ Staff has been also been equally clear that it does not consider the Equalization Adjustment to
25 be precedential, but only acceptable as a one-time concession as part of the overall and
26 temporary 2017 Protocol. See Staff/100, Kaufman/12, lines 13-20.

27 ³⁸ See PAC/300, Dalley/3, line 12 through Dalley/4, line 5.

28 ³⁹ See PAC/300, Dalley/4, lines 6-11.

29 ⁴⁰ See Hearing Tr. at 112, lines 9-24.

1 **5. There is no need to address VRET load as part of the 2017 Protocol.**

2 Noble Solutions requests that the Commission specifically find that load served by a
3 PacifiCorp VRET would not constitute a reduction in load for purposes of the 2017 Protocol.⁴¹

4 Both Staff and PacifiCorp argued that the treatment of VRET load for inter-jurisdictional
5 allocations should be determined in Docket No. UM 1690.⁴²

6 PacifiCorp submitted a letter to the Commission that they would not be submitting any
7 VRET proposals and there is currently no PacifiCorp VRET established.⁴³ Staff contends that
8 appropriate treatment of VRET load is already generally addressed in Section IV part A.4 of the
9 2017 Protocol where it provides that “costs and benefits associated with Resources acquired in
10 accordance with Jurisdiction-specific initiatives will be assigned on a situs basis to the
11 Jurisdiction adopting the initiative.”⁴⁴ The Commission retains the discretion to determine how
12 VRET load is treated as part of a VRET proceeding and need not decide the issue as part of the
13 2017 Protocol.

14 Finally, Noble Solutions requests that the Commission clarify that if it issues future
15 orders that modify the findings in UE 267, then the treatment in the 2017 Protocol should be
16 consistent with those terms in those future orders.⁴⁵ As described in Section 4 above, the
17 Commission retains full discretion over the allocation treatment of loads lost to direct access in
18 Oregon making it unnecessary to speak to what the Commission may or may not do in the future.

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23 _____
24 ⁴¹ See Noble Solutions/100, Higgins/7, lines 17-23.

25 ⁴² See Staff/200, Kaufman/2, lines 14-21.

26 ⁴³ See Hearing Tr. 75, lines 14-23.

⁴⁴ See Staff/200, Kaufman/2, lines 9-13.

⁴⁵ See Noble Solutions/100, Higgins/9, line 9 though Higgins/10, line 2.

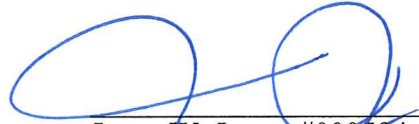
1 **III. Conclusion**

2 For the foregoing reasons, Staff respectfully requests that the Commission adopt the
3 stipulation in this case without modification.

4 DATED this 26 day of May, 2016.

5 Respectfully submitted,

6 ELLEN F. ROSENBLUM
7 Attorney General

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9 _____
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12 Of Attorneys for Staff of the Public Utility
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