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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1050

In the Matter of

PACIFICORP

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

STAFF'S CROSS-ANSWERING BRIEF

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**I. Introduction**

As discussed in Staff's Opening brief, no party opposes the 2017 PacifiCorp Inter-Jurisdiction Allocation Protocol (2017 Protocol). However, the Industrial Customers of the Northwest Utilities (ICNU) have requested two modifications to the 2017 Protocol – namely, that the Embedded Cost Differential (ECD) floor and cap should be eliminated and that the Equalization Adjustment deferral should be reduced by the incremental revenues PacifiCorp d/b/a Pacific Power (PacifiCorp) receives in connection with its ability to forecast production tax credits outside of a general rate proceeding.

In addition, ICNU, along with Noble Americas Energy Solutions LLC (Noble Solutions) and the Northwest and Intermountain Power Producers Coalition (NIPPC), request clarification that the 2017 Protocol does not limit this Commission's discretion over treatment of direct access loads. Finally, Noble Solutions and NIPPC also request clarification on how Voluntary Renewable Energy Tariff (VRET) loads would be treated, if such a tariff was ever approved and utilized.

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**II. DISCUSSION**

**1. The 2017 Protocol stipulation is fair and reasonable and should be adopted.**

The 2010 Protocol is set to expire on December 31, 2016, and the Revised Protocol would govern PacifiCorp's inter-jurisdictional allocations for Oregon unless the Public Utility

1 Commission of Oregon (Commission) approves a new inter-jurisdictional allocation method.<sup>1</sup>  
2 The 2017 Protocol stipulation is presented as a short-term, interim agreement that is likely better  
3 for Oregon customers than defaulting to the Revised Protocol,<sup>2</sup> but does not establish precedent  
4 for future negotiations and Staff has stated its clear intention to continue to pursue a long-term  
5 inter-jurisdictional allocation agreement that provides for a fair allocation of merger benefits.<sup>3</sup>

6 As related to the Equalization Adjustment, ICNU argues that the Commission should not  
7 use a deferral to implement a settlement because ICNU objects to the deferral.<sup>4</sup> The Commission  
8 regularly uses deferrals to facilitate and implement settlements to achieve Commission  
9 objectives. As a practical matter, ICNU's position would give any one party the ability to limit  
10 the Commission's discretion on the use of deferrals to facilitate and implement settlements that it  
11 determines fair and reasonable. The Commission has the discretion to determine when an  
12 overall settlement is fair and reasonable, including the use of a deferral as one part of a  
13 settlement that reaches an overall fair and reasonable result.

14 If the Commission approves the Equalization Adjustment deferral, ICNU continues to  
15 argue that the Equalization Adjustment deferral should be reduced by the incremental revenues  
16 that PacifiCorp receives in connection with its ability to forecast production tax credits outside of  
17 a general rate proceeding, including a credit to customers if PacifiCorp collects more incremental  
18 production tax credit revenue than the Equalization Adjustment.<sup>5</sup> In support of its argument,  
19 ICNU attempts to frame the issue as whether the Equalization Adjustment in isolation is  
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22 <sup>1</sup> See Staff/100, Kaufman/4, lines 16-19.

23 <sup>2</sup> See Id. at Kaufman/7, lines 6-8.

24 <sup>3</sup> See Staff/200, Kaufman/6, lines 3-8.

25 <sup>4</sup> See ICNU Opening Brief at 14-15.

26 <sup>5</sup> See Id. at 18-19. Senate Bill 1547 allows PacifiCorp the opportunity to recover incremental revenues that PacifiCorp receives in connection with its ability to forecast production tax credits outside of a general rate proceeding. ICNU's proposed modification, to the extent it would credit those incremental revenues back to customers, including credits that could exceed the Equalization Adjustment, would seem to contravene the intent of the statute.

1 equitable, but appropriately framed the Equalization Adjustment is only one aspect of an overall  
2 settlement for which the overall results are fair and reasonable.

3 Specifically, ICNU states that it appears Staff views the Equalization Adjustment as an  
4 acceptable concession in exchange for PacifiCorp's commitment to provide studies,<sup>6</sup> but on the  
5 next page of its brief states that Staff testified the Equalization Adjustment was a concession in  
6 exchange for both PacifiCorp's commitment to perform cost studies and the rate case stay out  
7 provision.<sup>7</sup> However, when asked about these statements on redirect, Staff clarified that its  
8 review was based upon the entire 2017 Protocol, not individual terms.<sup>8</sup> When further pressed on  
9 the issue by counsel for ICNU, Staff testified that its intent was to highlight that it was a one-  
10 time concession associated with the 2017 Protocol.<sup>9</sup> As compared to the Revised Protocol and  
11 considered in its entirety, the short-term, interim agreement on the 2017 Protocol is fair and  
12 reasonable.

13 Even though ICNU argues that the Equalization Adjustment deferral is inappropriate, it  
14 admits that the 2017 Protocol would be in the public interest with the Equalization Adjustment  
15 deferral. At the hearing, ICNU's witness, Mr. Mullins, testified that if the ECD floor and cap  
16 were removed, the 2017 Protocol would be in the public interest.<sup>10</sup> In fact, ICNU argues that this  
17 entire contested case proceeding would have been unnecessary if PacifiCorp had agreed to  
18 eliminate the ECD cap.<sup>11</sup>

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22 <sup>6</sup> See Id. at 11.

23 <sup>7</sup> See Id. at 12.

24 <sup>8</sup> See Hearing Tr. at 149, lines 17-23.

25 <sup>9</sup> See Id. at 151, lines 3-16.

26 <sup>10</sup> See Id. at 111, lines 18-22.

<sup>11</sup> See ICNU Opening Brief at 5. The brief states that this proceeding could have been avoided if PacifiCorp agreed to eliminate the ECD caps, but it cites to testimony that states the 2017 Protocol would be in the public interest if the ECD floor and caps were eliminated.



1           **2. The inclusion of an ECD floor and caps are reasonable in the context of a short-**  
2           **term interim allocation agreement.**

3           ICNU continues to assert that the ECD may exceed the caps proposed in the 2017  
4 Protocol, but continues to do so based upon analysis of out-of-date foundational study data that is  
5 no longer the best information available.<sup>12</sup> In addition to relying on more recent and accurate  
6 data, Staff also accounted for the fact that the 2017 Protocol treats Qualifying Facility costs as  
7 system costs.<sup>13</sup>

8           ICNU also argues that the ECD calculations are difficult to forecast and have varied  
9 widely so the Commission should eliminate the ECD caps to protect customers from harm.<sup>14</sup>  
10 However, Staff noted that the ECD has consistently decreased over the last ten years and that the  
11 factors causing the historic decrease are unlikely to reverse.<sup>15</sup> Finally, using the best information  
12 currently available, Staff concluded that the 2017 Protocol as presented with an ECD floor and  
13 caps is slightly preferable over excluding the ECD floor and caps.<sup>16</sup>

14           ICNU also argues that the ECD floor and caps are unfair because the eastern states are  
15 not paying for the costs of Klamath dam removal.<sup>17</sup> However, Washington, Utah, Idaho and  
16 Wyoming would not be allocated any Klamath dam removal costs under either the Revised  
17 Protocol or the 2010 Protocol allocation methods. The 2017 Protocol is a short-term interim  
18 agreement that is not intended to be used as a basis for a long-term allocation agreement. In fact,  
19 Staff anticipates including the system benefits associated with the Klamath dam removal in its  
20 analysis of future long-term allocation agreements, but there is no need to specifically address

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23 <sup>12</sup> See generally Staff's Opening Brief at 5-6.

24 <sup>13</sup> See Id. at 6, lines 3-10.

25 <sup>14</sup> See ICNU Opening Brief at 6-8.

26 <sup>15</sup> See Staff/200, Kaufman/4, lines 1-7.

<sup>16</sup> See Tr. at 135, lines 19 through 136, line 3.

<sup>17</sup> See ICNU Opening Brief at 3-4.

1 that issue in the 2017 Protocol because the 2017 Protocol will not be in effect when those  
2 benefits materialize.<sup>18</sup>

3 ICNU argues that the 2017 Protocol would be in the public interest if only one change  
4 was made - the ECD floor and caps were eliminated. However, the record demonstrates that the  
5 ECD floor and caps are reasonable and that it is likely beneficial to Oregon in the context of a  
6 short-term agreement as compared to the Revised Protocol.

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

10 ICNU, Noble Solutions, and NIPPC all request that the Commission acknowledge or  
11 confirm that the 2017 Protocol does not alter the Commission's discretion related to treatment of  
12 direct access loads. No party disagrees that the Commission retains full discretion over direct  
13 access loads so there is no need to clarify this issue.

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

15 Noble Solutions requests that the Commission clarify that a load served by a PacifiCorp-  
16 owned resource under a VRET or similar program will be treated consistent with the inter-  
17 jurisdictional allocation of direct access loads.<sup>19</sup> NIPPC requests that the Commission recognize  
18 that a VRET or similar programs analogous to direct access will have terms and conditions that  
19 mirror PacifiCorp's direct access programs.<sup>20</sup>

20 PacifiCorp has stated that it does not intend to submit a VRET proposal under the  
21 Commission's parameters as there is no currently approved PacifiCorp VRET. As stated above  
22 in section 3, the Commission retains full discretion over the treatment of direct access loads.  
23 Because the Commission has the ability to address this issue if and when it may arise, there is no  
24 need to make a determination as part of the 2017 Protocol.

25 <sup>18</sup> See Staff/200, Kaufman/6, lines 12-22.

26 <sup>19</sup> See Noble Solutions Opening Brief at 2.

<sup>20</sup> See NIPPC Opening Brief at 1.

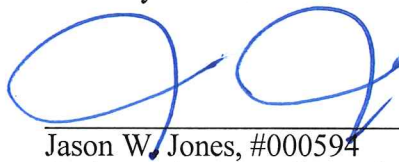
1 **III. Conclusion**

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

4 DATED this 5th day of June, 2016.

5 Respectfully submitted,

6 ELLEN F. ROSENBLUM  
7 Attorney General

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