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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UM 1050—PacifiCorp's Opening Brief

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Opening Brief.

If you have questions about this filing, please contact Erin Apperson, Manager of Regulatory Affairs, at (503) 813-6642.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1050**

In the matter of

PACIFICORP, d/b/a PACIFIC POWER

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

PACIFICORP'S OPENING BRIEF

May 26, 2016

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

PACIFICORP’S OPENING BRIEF

I. INTRODUCTION

1
2 PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully submits this
3 Opening Brief to the Public Utility Commission of Oregon (Commission). PacifiCorp has
4 presented to the Commission a complete, integrated 2017 PacifiCorp Inter-Jurisdictional
5 Allocation Protocol (2017 Protocol) that was negotiated and agreed to by parties across four
6 jurisdictions (referred to individually as Party, or collectively as Parties), and requests that
7 the Commission adopt the 2017 Protocol in its entirety and without modification. Certain
8 Oregon Parties to the 2017 Protocol, Commission Staff (Staff), and the Citizens’ Utility
9 Board of Oregon (CUB) (referred to with the Company as Oregon Parties), support this
10 request. The existing allocation methodology, the 2010 Protocol, will expire on January 1,
11 2017, and the 2017 Protocol is designed to serve as an interim allocation methodology until a
12 more permanent allocation methodology can be developed.

13 The Industrial Customers of Northwest Utilities (ICNU) recommends that the
14 Commission approve the 2017 Protocol subject to two modifications: (1) eliminate Oregon’s
15 dynamic Embedded Cost Differential (ECD) cap and floor parameters; and (2) reduce the
16 Equalization Adjustment amount for Oregon. Additionally, ICNU and Noble Americas
17 Energy Solutions (NAES) request that the Commission preemptively address circumstances

1 that may or may not occur during the brief effective period for the 2017 Protocol, including
2 the allocation treatment of loads lost to direct access programs in Oregon and other states,
3 and load that may eventually be served by a voluntary renewable energy tariff (VRET)
4 resources. PacifiCorp’s Opening Brief explains why the Commission should adopt the 2017
5 Protocol in its entirety and without modification, and responds to the issues raised by ICNU
6 and NAES.

7 II. BACKGROUND

8 The Multi-State Process (MSP) was initiated in 2002, after PacifiCorp submitted
9 applications in each of its six jurisdictions seeking to create a process to consider cost
10 allocation in light of PacifiCorp’s status as a multi-jurisdictional utility.¹ In 2005, following
11 years of negotiations and discussions among stakeholders, the Revised Protocol was adopted
12 and approved by the commissions in Idaho, Oregon, Utah, and Wyoming.²

13 Following adoption of the Revised Protocol, stakeholders continued discussions
14 regarding allocation issues and addressed concerns emerging from implementation of the
15 Revised Protocol.³ As a result of those discussions, stakeholders negotiated and agreed to the
16 2010 Protocol, which was approved by the commissions of Idaho, Oregon, Utah, and
17 Wyoming in 2011 and 2012.⁴

¹ PAC/100, Dalley/3:5-7; Staff/100, Kaufman/3:9-10.

² PAC/100, Dalley/3:7-9; CUB/200, Jenks/2:23-25; *In the Matter of PacifiCorp Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, Docket No. UM 1050, Order No. 05-021 (Jan. 12, 2005).

³ PAC/100, Dalley/3:14-16.

⁴ PAC/100, Dalley/3:22-23; CUB/200, Jenks/5:12-14.

1 The 2010 Protocol is the allocation methodology currently in effect. However, the
2 2010 Protocol includes an expiration date—January 1, 2017.⁵ If no allocation methodology
3 is adopted prior to the expiration of the 2010 Protocol, the allocation methodology used for
4 Oregon rate filings will revert to the Revised Protocol.⁶ In November 2012, the MSP
5 standing committee, which includes a representative from each commission, and the Broad
6 Review Work Group (BRWG) began meeting to discuss an updated allocation methodology
7 to take effect after January 1, 2017.⁷ Over the course of approximately three years, the MSP
8 standing committee and BRWG collaboratively identified concerns with the 2010 Protocol,
9 conducted various studies, and developed potential solutions to incorporate into the 2017
10 Protocol.⁸

11 The 2017 Protocol is the result of a lengthy and involved process, in which
12 stakeholders from multiple states⁹ worked together to devise an allocation methodology that
13 all Parties believe is a fair and reasonable interim approach for allocations across
14 PacifiCorp’s system. The 2017 Protocol uses the 2010 Protocol as a starting point, but also
15 includes several new features including the following (which are discussed in greater detail
16 in later sections of this Opening Brief):

⁵ PAC/100, Dalley/4:1-3.

⁶ *In the Matter of PacifiCorp, dba Pac. Power, Petition for Approval of Amendments to the Revised Protocol Allocation Methodology*, Docket No. UM 1050, Order No. 11-244 at 3 (July 5, 2011).

⁷ The negotiations of the 2017 Protocol included more than 50 individuals representing state commission policy and advocacy staffs, industrial customers, and consumer groups from Idaho, Oregon, Utah, Washington, and Wyoming. PAC/100, Dalley/4:10-14.

⁸ PAC/100, Dalley/4:3-8; Staff/100, Kaufman/3:14-15.

⁹ The Parties ultimately signing the 2017 Protocol include PacifiCorp, Public Utility Commission of Oregon Staff, the Citizens’ Utility Board of Oregon, the Idaho Public Utilities Commission Staff, Utah Division of Public Utilities, Utah Office of Consumer Services, Wyoming Office of Consumer Advocate, Wyoming Industrial Energy Consumers, and the Wyoming Public Service Commission Staff. PAC/100, Dalley/5:4-11. The Utah Association of Energy Users participated in the negotiations, but, along with ICNU, in the end refused to agree to the terms of the 2017 Protocol.

- 1 • For Oregon, a general rate case stay-out provision under which the Company
2 commits that it will not file a rate case with rates effective before
3 January 1, 2018;¹⁰
- 4 • For Oregon, a dynamic ECD with parameters to ensure Oregon customers receive
5 the benefits of northwest hydro and provide greater certainty to the Company
6 regarding recovery of its costs;¹¹
- 7 • An Equalization Adjustment designed to mitigate cost recovery challenges
8 experienced by the Company resulting from inconsistent implementation of the
9 2010 Protocol;¹²
- 10 • A termination date of December 31, 2018, with the option to extend to
11 December 31, 2019, if desired by Parties, to allow for future negotiations of a
12 more permanent allocation methodology that accounts for significant changes in
13 circumstances expected to occur over the next several years;¹³
- 14 • A flexible process to address regulatory or other significant changes in
15 circumstances during the effective period for the 2017 Protocol;¹⁴ and
- 16 • A commitment that PacifiCorp will study alternative inter-jurisdictional allocation
17 methodologies to inform future MSP negotiations.¹⁵

18 The Parties intend for the 2017 Protocol to be a short-term transitional methodology to serve
19 as a bridge between the 2010 Protocol and the next allocation methodology.¹⁶ The short-
20 term nature of the 2017 Protocol is especially important, as there is uncertainty regarding the
21 implementation impacts of the United States Environmental Protection Agency's rules
22 governing carbon emissions from existing power plants under section 111(d) of the Clean Air
23 Act (Rule 111(d)), other emerging climate-related issues, PacifiCorp's evaluation of
24 participation in a Regional Independent System Operator (ISO), and other possible changes
25 in multi-jurisdictional issues.¹⁷

¹⁰ PAC/100, Dalley/24:19-21; Staff/100; Kaufman/6:7-10; CUB/200, Jenks/9:2-7.

¹¹ PAC/100, Dalley/15:18-19; Staff/100, Kaufman/5:5-16; CUB/200, Jenks/7:14-19.

¹² PAC/100, Dalley/16:12-22.

¹³ PAC/100, Dalley/11:22-12:4; CUB/200, Jenks/9:9-22.

¹⁴ PAC/100, Dalley/23:19-24:16.

¹⁵ PAC/100, Dalley/23:5-11; CUB/200, Jenks/8:9-25.

¹⁶ PAC/100, Dalley/12:10-12.

¹⁷ PAC/100, Dalley/12:12-16; Staff/100, Kaufman/3:15-17.

1 revenue requirement and is intended to recognize the differences among the states’
2 implementation of the 2010 Protocol with respect to the ECD adjustment.²² The Equalization
3 Adjustment is designed to mitigate the recovery shortfall experienced under the 2010
4 Protocol while Parties continue to analyze other options and negotiate a more permanent
5 allocation methodology.²³ The Equalization Adjustment does not completely resolve the
6 Company’s under-recovery issues, but substantially reduces the allocation gap.²⁴ While
7 PacifiCorp does not expect to fully recover its prudently incurred costs under the 2017
8 Protocol, the Equalization Adjustment represents a significant improvement over the 2010
9 Protocol and is a fair short-term compromise solution.

10 **2. The 2017 Protocol Insures that Oregon’s Share of PacifiCorp’s Costs is**
11 **Equitable in Relation to Other States.**

12 The Commission’s equitable sharing goal requires that “all states concerned be dealt
13 with fairly and equally.”²⁵ “As long as Oregon, along with the other five states, pay an
14 appropriate share of its costs under the [2017] Protocol, then the equitable sharing goal has
15 been met.”²⁶ Here, the 2017 Protocol retains many of the elements of the 2010 Protocol that
16 were already found to satisfy this goal.²⁷ The 2017 Protocol includes several additional
17 measures that further ensure that all states are dealt with fairly and equally. First, as
18 described above, the Parties negotiated an Equalization Adjustment to be included in the

²² PAC/100, Dalley/16:12-13.

²³ PAC/100, Dalley/16:19-22.

²⁴ PAC/100, Dalley/6:13-15.

²⁵ Order No. 05-021 at 6.

²⁶ *Id.*

²⁷ See Order No. 11-244 (describing the Commission’s MSP goals and finding that the 2010 Protocol was appropriate); PAC/100, Dalley/8:1-14.

1 2017 Protocol to account for inconsistent implementation of the 2010 Protocol and mitigate
2 the allocation gap.²⁸

3 Second, the Parties agreed that the dynamic ECD from the 2010 Protocol would
4 continue in the 2017 Protocol subject to modifications, and will be included as a component
5 of each state's revenue requirement.²⁹ As agreed to by the Parties, Oregon's ECD will vary
6 to reflect the relative value of hydro resources, and the ECD value will be subject to
7 identified parameters, specifying a lower limit of \$8.238 million and an upper limit of
8 \$10.5 million for the first general rate case filed under 2017 Protocol.³⁰ If the Company files
9 a second general rate case using the 2017 Protocol, the lower limit will remain the same, but
10 the upper limit will increase to \$11.0 million.³¹ Staff estimates that the ECD in the 2017
11 Protocol, as compared to the Revised Protocol, will provide Oregon customers \$2.4 to
12 \$3.3 million of savings annually over the course of 2017 Protocol effective period.³²

13 ICNU argues that the MSP process in general does not produce equitable allocation,
14 and claims that Oregon customers have not been held harmless by the merger of Pacific
15 Power & Light and Utah Power & Light.³³ To support its claims, ICNU relies on a
16 generalized comparison of rate increases for Oregon and Utah as evidence of cost-shifting
17 resulting from the MSP.³⁴ ICNU's analysis and conclusions, however, were explicitly
18 rejected by the Commission in 2005 as failing to account for factors other than allocation of

²⁸ PAC/100, Dalley/16:16-22; Staff/100, Kaufman/12:17-20.

²⁹ PAC/100, Dalley/17:10-23; CUB/200, Jenks/7:9-12.

³⁰ PAC/100, Dalley/17:13-17.

³¹ PAC/100, Dalley/17:15-17.

³² Staff/100, Kaufman/9:11.

³³ ICNU/100, Mullins/9:1-3, 9:15-17.

³⁴ ICNU/100, Mullins/9:3-17.

1 costs impacting the average price per megawatt-hour difference between Oregon and Utah.³⁵
2 ICNU’s assertion that the difference in rate increases between Oregon and Utah is evidence
3 of cost-shifting is unsupported. The Company, Staff, and CUB agree that the 2017 Protocol
4 produces equitable allocation results for Oregon customers.³⁶

5 **3. The 2017 Protocol Meets the Public Interest Standard in Oregon.**

6 The Oregon Parties believe that the 2017 Protocol meets the Oregon public interest
7 standard.³⁷ First, the 2017 Protocol represents a significant improvement upon the 2010
8 Protocol for both PacifiCorp and its customers. Through the Equalization Adjustment, the
9 2017 Protocol will allow PacifiCorp an improved opportunity to recover its prudently
10 incurred costs.³⁸ Additionally, the ECD parameters will ensure that Oregon customers
11 continue to benefit from northwest hydro resources.³⁹ The Company and other Oregon
12 Parties believe that the 2017 Protocol will produce just and reasonable rates for Oregon
13 customers.

14 Second, the 2017 Protocol includes an agreement that PacifiCorp will not file a new
15 general rate case with rates effective before January 1, 2018.⁴⁰ This general rate case stay-
16 out provision provides value to customers by minimizing the frequency and magnitude of
17 rate changes and relieves the parties and the Commission of the administrative burden of rate
18 case litigation.

³⁵ Order No. 05-021 at 7; *see also* TR. 101:17-103:13 (Mullins).
³⁶ PAC/100, Dalley/29:11-21.
³⁷ PAC/300, Dalley/1:11-13; TR. 135:19-136:10 (Kaufman); TR. 121:7-11 (Jenks) (“We negotiated an agreement that we think is reasonable. It’s a compromise. I do think it’s reasonable. I do think it’s in the public interest. I do think it’s a reasonable outcome for the next two to three years.”).
³⁸ PAC/100, Dalley/16:12-22.
³⁹ CUB/200, Jenks/7:8-19.
⁴⁰ PAC/100, Dalley/24:19-21; CUB/200, Jenks/9:2-7.

1 Third, the flexibility built into the 2017 Protocol to account for changed
2 circumstances is in the public interest. Under Section XIII.D of the 2017 Protocol, Parties
3 have provided for an informal process through which any Commission or Party may submit a
4 proposal for modifications if it believes that the 2017 Protocol no longer produces just and
5 reasonable results or is otherwise no longer in the public interest.⁴¹ Before the Party makes a
6 request for deviation from the 2017 Protocol, the Parties will convene to attempt to resolve
7 the process through informal discussions.⁴² If the Parties are unable to resolve the issue
8 informally, any party to the 2017 Protocol may request that the Commission rescind, alter, or
9 amend its order in connection with the 2017 Protocol.⁴³

10 Fourth, the negotiated expiration date for the 2017 Protocol is in the public interest
11 because it allows Parties to reconvene and negotiate a new allocation methodology that will
12 address impending changes such as implementation of Rule 111(d), other emerging climate-
13 related issues, PacifiCorp’s evaluation of participation in a Regional ISO, and other multi-
14 jurisdictional allocation issues.⁴⁴ CUB also believes that the expiration date of the 2017
15 Protocol is in the public interest, as it “ensures that there is an agreement, rather than a free-
16 for-all with all states implementing their own ‘optimal’ cost allocation,” and gives Parties a
17 deadline for establishing a more permanent solution.⁴⁵

18 Fifth, PacifiCorp has committed to performing studies of alternative allocation
19 methodologies that will inform future negotiations, and must complete the studies by March

⁴¹ PAC/100, Dalley/23:21-23.

⁴² PAC/100, Dalley/24:2-5.

⁴³ PAC/100, Dalley/24:8-16.

⁴⁴ PAC/100, Dalley/12:12-16.

⁴⁵ CUB/200, Jenks/9:18-22.

1 31, 2017.⁴⁶ If the Company does not present the studies by the agreed upon deadline, Oregon
2 customers will receive a monthly credit in the amount of the Equalization Adjustment
3 (\$216,667) for each month of delay.⁴⁷ Staff and CUB requested the studies and agree that the
4 studies will provide a benefit to Oregon customers.⁴⁸

5 Sixth, if the 2010 Protocol expires without the adoption of a new agreement, Oregon
6 will revert to the Revised Protocol.⁴⁹ According to Staff's analysis, the 2017 Protocol "will
7 likely result in lower rates for Oregon customers" than would be available under the default
8 to the Revised Protocol, primarily because of the Oregon ECD and rate case stay-out
9 provision.⁵⁰ Specifically, when comparing the 2017 Protocol with the Revised Protocol,
10 Staff forecasted that the 2017 Protocol would produce significant savings for Oregon
11 customers in 2017, along with modest savings for Oregon customers in 2018 and 2019.⁵¹

12 In sum, the Oregon Parties believe that the 2017 Protocol appropriately balances
13 customer and Company interests, will produce rates that are just and reasonable, and is
14 consistent with Oregon's public interest standard.

15 **B. Oregon's Dynamic ECD with Identified Parameters is a Reasonable**
16 **Compromise that Provides Protections for Customers and the Company.**

17 The ECD parameters are part of a compromise struck between the Parties to ensure
18 that Oregon customers benefit from PacifiCorp's legacy ownership of northwest hydro
19 resources and to provide additional certainty to PacifiCorp and its customers.⁵² Nonetheless,
20 ICNU argues that the ECD should not include an upper limit, and relies on certain

⁴⁶ PAC/101, Dalley/16:3-8.

⁴⁷ PAC/101, Dalley/16:8-12.

⁴⁸ Staff/100, Kaufman/10:11-19; CUB/200, Jenks/8:9-25.

⁴⁹ Order No. 11-244 at 3.

⁵⁰ Staff/100, Kaufman/7:6-8.

⁵¹ Staff/100, Kaufman/9:9-10.

⁵² CUB/200, Jenks/7:8-19.

1 foundational studies provided early in the MSP discussions to justify its argument that the
2 benefits under the ECD would exceed the upper limit proposed in the 2017 Protocol.⁵³ The
3 studies ICNU cites are flawed for two reasons: (1) the foundational studies are based upon
4 stale data and have been superseded by more recent data in the Company’s revised forecasts;
5 and (2) the foundational studies contain outdated and simplifying assumptions, which have
6 been refined for greater accuracy in the Company’s revised forecasts.

7 The foundational studies, which form the basis of ICNU’s analysis, rely on forecasts
8 provided by the Company in August 2014 using 2013 data.⁵⁴ Over the course of 2017
9 Protocol negotiations, updated data became available, and PacifiCorp revised the dynamic
10 ECD calculations to reflect its current projections.⁵⁵ The updated ECD calculations
11 demonstrate that the Oregon dynamic ECD projections during the effective period for the
12 2017 Protocol are within the range of the ECD parameters.⁵⁶ Staff agrees that the
13 preliminary ECD estimates upon which ICNU relies are “out of date and no longer
14 accurate.”⁵⁷ ICNU is aware that more recent data is available, but inexplicably refuses to use
15 the updated data in its analysis.⁵⁸

16 Additionally, the foundational studies were provided to the Parties as a tool to study
17 allocations, and not for the purpose of predicting revenue requirement at a granular level.⁵⁹
18 The foundational studies contained simplifying assumptions that the Company would not use
19 in a rate proceeding, and also relied on assumptions from the Company’s 2013 projections,

⁵³ ICNU/100, Mullins/11:18-20.

⁵⁴ PAC/300, Dalley/9:18-20.

⁵⁵ PAC/300, Dalley/9:20-21.

⁵⁶ PAC/200, McDougal/7:10-14; PAC/300, Dalley/10:1-2; TR. 29:14-18 (Dalley).

⁵⁷ Staff/200, Kaufman/4:10-11; see also TR. 133:24-134:8, 134:19-25 (Kaufman).

⁵⁸ TR. 105:11-14 (Mullins).

⁵⁹ PAC/400, McDougal/4:12-16.

1 2014 Integrated Resource Plan (IRP) update, 2013 load forecasts, and other dated
2 assumptions.⁶⁰ The revised ECD forecasts have been updated to include more recent data
3 and assumptions, and are based on test year data filed by the Company as part of its
4 Wyoming general rate case, Docket 20000-469-ER-15.⁶¹ These projections reflect more
5 recent forecasts for the effective period for the 2017 Protocol.⁶² A comprehensive review of
6 the Company's actual data from the annual Results of Operations reports and general rate
7 cases filed in Oregon reveals that the ECD values have not previously reached the levels
8 shown in the MSP Foundational Studies.⁶³ ICNU's reliance on outdated data and
9 assumptions, and failure to acknowledge more recent data lends no support to its argument.

10 Despite the fact that the 2017 Protocol is a newly negotiated agreement rather than an
11 extension of the 2010 Protocol, ICNU asserts that the ECD upper limit is a material change
12 from the 2010 Protocol, and therefore is not appropriate for an interim protocol.⁶⁴ To the
13 contrary, the Oregon Parties agree that the ECD parameters are appropriate precisely because
14 the 2017 Protocol is an interim agreement.⁶⁵

15 ICNU also claims that the Oregon dynamic ECD should not contain an upper limit
16 because Oregon customers bear a disproportionate share of the costs for hydro facilities.⁶⁶
17 First, ICNU's contention that Oregon customers bear a "disproportionate" share of costs for
18 hydro facilities ignores the fact that a significant portion of those costs are the product of a

⁶⁰ PAC/400, McDougal/4:16-5:7.

⁶¹ PAC/400, McDougal/5:17-6:1.

⁶² PAC/400, McDougal/6:1-3.

⁶³ PAC/400, McDougal/8:8-9:1.

⁶⁴ ICNU/100, Mullins/11:20-12:1.

⁶⁵ Staff/200, Kaufman/5:7-6:11; CUB/200, Jenks/9:9-16.

⁶⁶ ICNU/100, Mullins/12:1-3.

1 policy decision by the State of Oregon regarding removal of Klamath dams.⁶⁷ This policy
2 decision was based on an agreement signed in 2010 by then-Oregon Governor Ted
3 Kulongoski and codified by legislation passed by the Oregon legislature providing for a
4 surcharge for Klamath dam removal.⁶⁸

5 Second, the ECD parameters were negotiated among the Oregon Parties to strike a
6 balance that recognizes Oregon customers' investments in northwest hydro facilities, while
7 still mitigating risk of under-recovery for PacifiCorp.⁶⁹ Notably, Staff agrees that the 2017
8 Protocol provides "sufficient short term compensation" for Oregon's share of hydro
9 expenses, and that there is no need to address Klamath dam removal as part of the 2017
10 Protocol, as the 2017 Protocol will have expired by the time the Klamath Dam removal
11 benefits materialize.⁷⁰

12 Finally, both the ECD upper and lower limits must be considered. The Oregon
13 Parties negotiated the lower limit as a protection for Oregon customers, and the upper limit as
14 a protection for PacifiCorp.⁷¹ Although PacifiCorp's current projections demonstrate ECD
15 benefits for the 2017 Protocol effective period that are within the range of the ECD
16 parameters,⁷² PacifiCorp's 2015 Oregon Results of Operations show that Oregon customers
17 would have benefitted from applying the lower limit in the parameters to the dynamic ECD.⁷³
18 Given that Oregon ECD projections have historically been trending downward, there is a

⁶⁷ PAC/300, Dalley/10:13-11:2.

⁶⁸ PAC/300, Dalley/11:1-2; TR. 32:10-19, 33:16-19 (Dalley).

⁶⁹ CUB/200, Jenks/7:8-19.

⁷⁰ Staff/200, Kaufman/6:18-22.

⁷¹ TR. 117:21-118:4 (Jenks) (explaining CUB's support for the ECD cap and floor).

⁷² PAC/200, McDougal/7:8-14.

⁷³ In 2015, the Oregon ECD was \$7,638,373. PAC/500, Page 2. *See also* TR. 29:19-25 (Dalley).

1 possibility that customers will benefit from the lower limit of the ECD parameters.⁷⁴ Staff
2 also noted that removing the ECD lower limit could result in harm to Oregon customers.⁷⁵
3 Including the dynamic ECD parameters in the 2017 Protocol equitably protects and balances
4 the interests of PacifiCorp’s customers with the Company’s ability to recover its prudently
5 incurred costs.

6 **C. The Equalization Adjustment is Reasonable Even Considering Recent**
7 **Legislative Changes.**

8 ICNU argues that the Equalization Adjustment was found to be reasonable by Parties
9 only before passage of Senate Bill (SB) 1547, which allows for the removal of expired
10 production tax credits (PTCs) from rates outside a general rate case.⁷⁶ ICNU also suggests
11 that the Parties did not take into account the availability of a PTC mechanism when
12 negotiating the 2017 Protocol, and accordingly the passage of SB 1547 amounts to changes
13 circumstances that would merit a reduction to the Equalization Adjustment.⁷⁷ ICNU’s
14 argument regarding the timing of SB 1547 presenting changed circumstances is not credible
15 because the Oregon Parties were finalizing negotiation of the 2017 Protocol during the
16 pendency of UM 1662, in which PacifiCorp and Portland General Electric Company were
17 proposing a tracking mechanism to allow for removal of expired PTCs from rates outside of
18 a general rate case.⁷⁸ Staff, CUB, and ICNU all participated in UM 1662, and were aware as
19 they were negotiating the 2017 Protocol that a PTC mechanism may be adopted.⁷⁹ The
20 Commission did not ultimately issue its order rejecting the PTC mechanism until after

⁷⁴ Staff/200, Kaufman/4:3-7.

⁷⁵ Staff/200, Kaufman/5:10-12.

⁷⁶ ICNU/100, Mullins/19:16-21.

⁷⁷ ICNU/100, Mullins/20:4-6.

⁷⁸ PAC/300, Dalley/3:2-8.

⁷⁹ PAC/300, Dalley/3:9-11, 13:15-17.

1 PacifiCorp signed the 2017 Protocol.⁸⁰ Most importantly, despite their opposition to a PTC
2 mechanism in UM 1662, Staff and CUB have not taken the position that their support for the
3 2017 Protocol as a whole was in any way undermined by the passage of SB 1547.⁸¹

4 **D. The General Rate Case Stay-Out Provides Value to Customers that is Not**
5 **Materially Diminished by the Passage of SB 1547.**

6 The 2017 Protocol was negotiated to include an Oregon general rate case stay-out
7 provision, which provides that PacifiCorp will not have any pending general rate case
8 requesting rates effective before January 1, 2018.⁸² Due to the general rate case stay-out,
9 Oregon’s Equalization Adjustment of \$2.6 million annually would be deferred from January
10 1, 2017, until the 2017 Protocol Equalization Adjustment is reflected in base rates through
11 PacifiCorp’s next general rate case.⁸³

12 While there may be some changes to customer rates outside of a general rate case, the
13 stay-out provision benefits customers by providing a measure of certainty regarding the costs
14 reflected in PacifiCorp’s base rates through January 1, 2018.⁸⁴ Indeed, CUB noted that
15 “[n]ew capital investments—including clean air investments that had been identified, but not
16 acknowledged in the 2013 IRP—will not be put into rates in 2016 or 2017, and will be
17 subject to regulatory lag before they can be put into rates in 2018.”⁸⁵ ICNU argues, however,
18 that the passage of SB 1547 has diminished the value of the stay-out provision because

⁸⁰ *In the Matter of Portland Gen. Elec. Co. and PacifiCorp, dba Pac. Power, Request for Generic Power Cost Adjustment Mechanism Investigation*, Docket No. UM 1662, Order No. 15-408 (December 18, 2015).

⁸¹ TR. 129:7-12 (Jenks); TR. 143:17-21 (Kaufman).

⁸² PAC/100, Dalley/24:19-21.

⁸³ PAC/100, Dalley/24:21-25:2.

⁸⁴ PAC/300, Dalley/12:15-17; CUB/200, Jenks/9:3-4.

⁸⁵ CUB/200, Jenks/9:4-7; *see also* TR. 129:2-3 (Jenks) (“the real benefit of [the rate case stay-out] is in capital costs”).

1 PacifiCorp may seek to remove PTCs from rates outside of a general rate case.⁸⁶ ICNU’s
2 insinuation that removal of the PTCs may create a windfall for PacifiCorp despite the rate
3 case stay-out period is without merit. While it is true that PacifiCorp may now remove PTCs
4 from rates as they expire without the need for a general rate case, this result is fair because
5 PacifiCorp will not continue to receive the credit after the PTCs expire. Indeed, at the May
6 17, 2016 hearing in this proceeding, CUB’s witness explained:

7 [M]y assumption has never been that [the rate case stay-out] can make
8 the Company give me tax credit that it’s not getting from the federal
9 government. And the Company wouldn’t seek a deferral or some
10 other mechanism in order to avoid passing through those tax credits to
11 customers.⁸⁷

12 Similarly, Staff’s witness testified at hearing that the passage of SB 1547 had limited impact
13 on Staff’s analysis supporting the 2017 Protocol: “[The passage of SB 1547] doesn’t really
14 impact . . . my testimony regarding the value of the 2017 Protocol.”⁸⁸ ICNU’s argument that
15 the passage of SB 1547 reduces the value of the general rate case stay-out provision is plainly
16 contradicted by the testimony of the Company, Staff, and CUB.

17 **E. The 2017 Protocol Provides Adequate Flexibility to Address Future Changes in**
18 **Circumstances, Obviating the Need for Commission Findings Regarding**
19 **Hypothetical Changes to Direct Access or VRET.**

20 The 2017 Protocol includes flexibility for Parties to reconvene and discuss
21 modifications in the event of changed regulatory or other circumstances.⁸⁹ Because the 2017
22 Protocol accounts for the possibility of future changes, the Commission should reject the
23 suggestions by ICNU and NAES that the Commission make preemptive findings to address

⁸⁶ ICNU/100, Mullins/20:1-4.

⁸⁷ TR. 129:7-12 (Jenks).

⁸⁸ TR. 143:17-21 (Kaufman).

⁸⁹ PAC/100, Dalley/23:19-24:5.

1 hypothetical circumstances that may or may not occur during the brief two to three-year
2 effective period of the 2017 Protocol.

3 **1. Section X of the Protocol Provides Appropriate Procedures to Address**
4 **Lost Load for Direct Access and Changed Regulatory Circumstances.**

5 In the event of changed circumstances regarding direct access, the 2017 Protocol
6 contemplates that Parties will reconvene to discuss any necessary modifications.⁹⁰ While
7 ICNU’s position is not entirely clear, it appears that ICNU initially proposed that the
8 Commission’s order on the 2017 Protocol include acknowledgement by the Commission that
9 the 2017 Protocol provides the Commission with full discretion over the allocation treatment
10 of loads lost to direct access programs in Oregon and other states.⁹¹ At hearing, ICNU’s
11 witness, Bradley Mullins, indicated that he “[doesn’t] think we need to address that issue at
12 this time.”⁹² NAES also makes a similar request, requesting that the Commission clarify that
13 if any findings in UE 267 are modified through future orders, that the treatment of opt-out
14 direct access load in the 2017 Protocol be made consistent with those future orders.⁹³
15 Addressing hypothetical changes to the direct access programs in Oregon or other states is
16 unnecessary, as Section X of the 2017 Protocol provides that if new laws or regulations
17 regarding direct access are adopted, the treatment of loads lost to those programs may be re-
18 determined in a manner consistent with the new laws and regulations.⁹⁴

19 **2. It Would be Premature for the Commission to Address Allocation of**
20 **Load Served Under a VRET.**

⁹⁰ PAC/101, Dalley/9:11-11:2.

⁹¹ ICNU/100, Mullins/23:9-17.

⁹² TR. 112:23-24 (Mullins).

⁹³ Noble Solutions/100, Higgins/5:2-6.

⁹⁴ PAC/300, Dalley/3:19-4:1.

1 Consistent with the fact that the Company currently does not have a VRET or provide
2 service under a VRET,⁹⁵ the 2017 Protocol does not address treatment of loads that could
3 potentially in the future be served under a hypothetical VRET. NAES recommends that the
4 Commission find that load served by PacifiCorp-owned VRET resources would not
5 constitute a reduction in load for purposes of the 2017 Protocol.⁹⁶ Staff and PacifiCorp agree
6 that it is unnecessary and premature for the Commission to make a finding regarding VRET
7 load in this proceeding.⁹⁷ Any determination regarding the treatment of VRET loads should
8 be addressed with the context of a proceeding specifically addressing that issue.

9 **F. The 2017 Protocol is an Integrated Document and Modification of Any Material**
10 **Term Risks the Entire Agreement.**

11 The Parties negotiated the 2017 Protocol as an integrated document, and accordingly,
12 each component of the 2017 Protocol is critical to the success of the agreement as a whole.⁹⁸
13 Even the terms that are specific to each state were incorporated and agreed to by all the
14 Parties.⁹⁹ ICNU proposes that the Commission conduct a line by line review of the 2017
15 Protocol and modify certain terms that ICNU finds objectionable, and argues that this would
16 be consistent with the Commission's approach to the 2010 Protocol.¹⁰⁰ ICNU ignores the
17 fact that processes for the 2010 Protocol and the 2017 Protocol are quite different, and most
18 importantly, that the modifications to the 2010 Protocol were proposed by the parties to that
19 proceeding through a settlement agreement rather than being imposed by the Commission at
20 the urging of a single party.

⁹⁵ TR. 70:22-25 (Dalley).

⁹⁶ Noble Solutions/100, Higgins/8:17-21.

⁹⁷ PAC/300, Dalley/5:5-9; TR. 71:10-14 (Dalley); Staff/200, Kaufman/2:15-21.

⁹⁸ PAC/100, Dalley/7:19-21.

⁹⁹ PAC/300, Dalley/2:8-14.

¹⁰⁰ ICNU/100, Mullins/27:12-16.

1 In 2010, PacifiCorp filed an initial 2010 Protocol *prior* to starting negotiations with
2 the parties. PacifiCorp then engaged in negotiations with the parties to that proceeding, and
3 the parties agreed and stipulated to modifications to the filed 2010 Protocol, and requested
4 that the Commission adopt the 2010 Protocol subject to the negotiated modifications.¹⁰¹ In
5 contrast, when PacifiCorp filed the 2017 Protocol, the terms had already been negotiated and
6 vetted among the Parties across four jurisdictions, and PacifiCorp, Staff, and CUB have
7 requested that the Commission approve the 2017 Protocol without modification.¹⁰²

8 The Company, along with Staff and CUB, urge the Commission not to modify the
9 2017 Protocol. The Parties signing the 2017 Protocol agreed to the document as an
10 integrated whole, including the careful balance of allocation among jurisdictions, the Oregon
11 dynamic ECD with parameters, and the Equalization Adjustment. If the Commission
12 changes the 2017 Protocol, each party could reevaluate whether it still agrees to be a
13 participant in the agreement.¹⁰³ A change to any particular term would alter the balance
14 struck between the Parties, and subject the 2017 Protocol to risk of modification in another
15 jurisdiction or possibly unravel the 2017 Protocol in its entirety.¹⁰⁴

16 IV. CONCLUSION

17 The 2017 Protocol is a complete, integrated agreement designed to serve as an interim
18 allocation methodology until a more permanent methodology can be adopted. The Parties
19 across four jurisdictions have invested a significant amount of effort and resources to achieve
20 a compromise solution that is an improvement over the 2010 Protocol and the Revised

¹⁰¹ TR. 19:3-10 (Dalley); Order No. 11-244 at 2-3.

¹⁰² TR. 18:20-19:2 (Dalley).

¹⁰³ TR. 22:22-25 (Dalley).

¹⁰⁴ TR. 120:20-22 (Jenks) (if there were a modification to the 2017 Protocol, “[a]t that point, all states, all parties have a chance to review that and would have the chance to pull out.”).

1 Protocol, and fairly balances customers and Company interests. PacifiCorp, along with the
2 Staff and CUB, respectfully request that the Commission approve the 2017 Protocol in its
3 entirety without modification.

Respectfully submitted this 26th day of May, 2016.

A handwritten signature in black ink, appearing to read 'Matthew McVee', written over a horizontal line.

Matthew McVee
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