

Noble Americas Exhibit 200
Witness: Kevin C. Higgins

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

In the Matter of PacifiCorp, dba)	
Pacific Power)	Docket No. UE-307
2017 Transition Adjustment)	
Mechanism)	

Rebuttal Testimony of Kevin C. Higgins

on behalf of

Noble Americas Energy Solutions LLC

August 12, 2016

REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

Introduction

Q. Please state your name and business address.

A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah,
84111.

Q. By whom are you employed and in what capacity?

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies
is a private consulting firm specializing in economic and policy analysis
applicable to energy production, transportation, and consumption.

**Q. Are you the same Kevin C. Higgins who pre-filed Opening Testimony in this
proceeding on behalf of Noble Americas Energy Solutions ("Noble
Solutions")?**

A. Yes, I am.

Q. What is the purpose of your Rebuttal Testimony in this proceeding?

A. My Rebuttal Testimony responds to the Reply Testimony of PacifiCorp
witness Brian S. Dickman in which Mr. Dickman opposes my proposal to adjust
the calculation of the Schedule 294, 295, and 296 transition adjustments to reflect
the value of freed-up Renewable Energy Certificates ("RECs").

I also respond to Mr. Dickman's opposition to my position that in
calculating the Schedule 296 Consumer Opt-Out charge, Schedule 200 costs
should not be escalated in Years 6 through 10, but rather should *decline* in each of
those years to reflect the decline in the Company's return on generation rate base

1 attributable to the departed customers' loads, due to the effects of increased
2 accumulated depreciation and amortization.

3 **Q. What are the primary conclusions in your Rebuttal Testimony?**

4 A. Mr. Dickman's objections are not reasonable grounds to reject my
5 proposals. I continue to recommend that the Schedule 294, 295 and 296 transition
6 adjustments should be adjusted to reflect the value of freed-up RECs. Otherwise,
7 direct access customers will unreasonably pay for Renewable Portfolio Standard
8 ("RPS")-related resources twice: once from their Electricity Service Supplier
9 ("ESS") and a second time from PacifiCorp, which banks the RECs paid for by
10 direct access customers for future use by cost-of-service customers. In the
11 alternative, PacifiCorp could agree to transfer to the ESS the RECs for which
12 these customers are paying the Company and receiving no credit. The ESS could
13 then, in turn, retire the RECs for each compliance year and pass on that value to
14 the customer.

15 Although in UE 296 the Commission did not accept my argument to adjust
16 the transition adjustments to reflect the value of freed-up RECs, the recent
17 passage of Senate Bill 1547 has significantly increased future Oregon RPS
18 requirements. The increase in the RPS will exacerbate the inequities in requiring a
19 double payment from direct access customers for RPS-related resources. This
20 change in circumstances warrants a further consideration of this issue by the
21 Commission in this case.

22 Further, in UE 296, I argued that in calculating the Schedule 296 Consumer
23 Opt-Out charge, Schedule 200 costs should not be escalated in Years 6 through 10

1 as proposed by PacifiCorp. Rather, Schedule 200 costs used in this calculation
2 should *decline* each year from Year 6 through Year 10 to reflect the decline in the
3 Company's return on generation rate base attributable to the departed customers'
4 loads, due to the effects of increased accumulated depreciation and amortization.
5 In my opinion, the effects of this decline in return should be passed through to the
6 Consumer Opt-Out charge in the Schedule 296 transition adjustment.

7 The Commission did not accept this argument in UE 296. However, this
8 matter is being appealed by Noble Solutions to the Oregon Court of Appeals. In
9 the event that this issue is reconsidered by the Commission, the appropriate
10 adjustments are presented in my testimony and exhibits in this docket.

11
12 **Response to Mr. Dickman on Whether to Credit the Value of Freed-Up RECs in the**
13 **Transition Adjustment for Direct Access Customers**

14 **Q. Briefly summarize the disagreement between you and the Company on the**
15 **issue of whether to credit the value of freed-up RECs in the calculation of the**
16 **transition adjustment for direct access customers.**

17 **A.** The Oregon RPS is applicable to both cost-of-service and direct access
18 service. When direct access customers purchase power from an ESS, the energy
19 provided by the ESS must meet RPS requirements, which at present require that
20 15% of supply come from qualifying renewable electricity when serving in the
21 PacifiCorp territory.¹ At the same time, direct access customers pay for the
22 renewable energy that PacifiCorp has acquired to meet the RPS for its cost-of-
23 service customers. The payments from direct access customers to PacifiCorp

¹ ORS 469A.052(1), 469A.065.

1 occur because the Company recovers its RPS-related costs both through Schedule
2 200, through which the fixed costs of utility-owned renewable generation are
3 recovered, and Schedule 201, through which power purchases of RPS-eligible
4 resources are recovered. Direct access customers are charged directly for
5 Schedule 200 and also pay for the difference between Schedule 201 costs and the
6 value of the freed-up power, as calculated through the transition adjustment
7 calculation.

8 In paying both the ESS and PacifiCorp for RPS power, direct access
9 customers are paying twice to meet RPS requirements. There is no dispute that
10 such a double payment occurs; the dispute between Noble Solutions and
11 PacifiCorp is whether something should be done about it. I believe the double
12 payment extracted from direct access customers is an unintended consequence of
13 the transition adjustment calculation. This result is both unreasonable and
14 inequitable. To remedy this problem, I recommend that direct access customers be
15 credited with the value of freed-up RECs in the calculation of the Schedule 294,
16 295, and 296 transition adjustments. I first made this proposal in UE 296, but the
17 Commission declined to adopt it, citing to PacifiCorp's arguments in opposition.

18 However, circumstances have changed since the Commission ruled on this
19 matter in UE 296. With the signing into law of Senate Bill 1547 in May 2016, the
20 Oregon RPS will increase significantly. Under the new law, the proportion of
21 resources that must be RPS-eligible is increased to 27% by 2025, 35% by 2030,
22 45% by 2035, and 50% by 2040. These and other significant changes in the RPS
23 requirements warrant a further consideration by the Commission to address the

1 problem caused by the inequity of requiring a double payment from direct access
2 customers for RPS-related resources.

3 In his Reply Testimony, Mr. Dickman continues to oppose my proposal.

4 **Q. What specific objections to your proposal does Mr. Dickman offer?**

5 A. Mr. Dickman restates the reasons offered by the Commission in denying
6 my proposal in UE 296. In its decision in that proceeding, the Commission
7 accepted PacifiCorp's argument that my adjustment necessarily assumes that
8 PacifiCorp will sell its RECs, when in fact PacifiCorp intends to bank the RECs
9 that are freed up by direct access customers. The Commission also cited to
10 PacifiCorp's representations that if the RECs are sold in the future, departing
11 direct access customers will receive a share of the revenues from sales, noting that
12 under such circumstances, the net present value of the value of any freed-up RECs
13 would be *de minimis*.

14 **Q. Is your recommended approach for valuing RECs freed up by direct access**
15 **dependent on the assumption that PacifiCorp must sell the freed-up REC?**

16 A. No. As I pointed out in my Opening Testimony, my argument recognizes
17 at the outset that PacifiCorp banks freed-up RECs for the purpose of the Oregon
18 RPS. The purpose of the valuation exercise is to establish a reasonable estimate
19 of the value of the banked RECs that are attributable to direct access customers.
20 While PacifiCorp may bank RECs for the purpose of the Oregon RPS, *the*
21 *Company also regularly sells RECs*. The value of the Company's REC sales can
22 be used to value the banked RECs for the purpose of incorporating the value of
23 freed-up RECs in the transition adjustment.

1 **Q. What about PacifiCorp's contention that if RECs are sold in the future,**
2 **departing customers will receive a share of the revenues from the sales?**

3 A. Under the scenario portrayed by the Company, if PacifiCorp elected to sell
4 RECs that were freed up (and had been paid for) by direct access customers, the
5 proceeds would be shared with *all* customers, with the direct access customers
6 receiving only a tiny pro rata share. I agree that under such a system the credit to
7 direct access customers would be *de minimis*. But this outcome is not a reason to
8 fail to credit direct access customers with the value of the RECs they free up, it is
9 a reason to reject the inequitable mechanism for allocating the benefits from
10 RECs freed up by direct access customers as depicted by the Company.

11 **Q. Can you provide a simple illustration of why the sharing of REC sale**
12 **proceeds described by PacifiCorp is inequitable when the RECs in question**
13 **are freed up by direct access customers?**

14 A. Yes. First, it is important to recognize that we are talking about RECs
15 that are freed up as a result of direct access. The RECs are freed up because
16 PacifiCorp's RPS obligation is *reduced* pro rata for the direct access load. And at
17 the same time, the ESS supplying the direct access customer is independently
18 required to meet Oregon's RPS standards for its direct access load.

19 So let's consider an example of how the sharing arrangement described by
20 Mr. Dickman would work. In 2015, PacifiCorp's total Oregon direct access load
21 was about 208,000 MWh. With a 15% RPS requirement, this translates into an
22 RPS requirement for the direct access load of about 31,200 MWh, meaning that
23 the direct access customers must fund the acquisition of 31,200 RECs through

1 their ESSs while PacifiCorp's RPS requirement is reduced by the same 31,200
2 RECs.

3 Let's assume, for illustrative purposes, a hypothetical value of \$1
4 unbundled REC.² If PacifiCorp sold the 31,200 freed-up RECs at this value, it
5 would produce revenues of \$31,200. Under the mechanism described by Mr.
6 Dickman, this \$31,200 would be shared among all of PacifiCorp's Oregon
7 customers, who, in 2015 consumed about 13 million MWh of power. Spreading
8 \$31,200 over 13 million MWh of retail load produces a credit of just over 2 tenths
9 of a cent per MWh on all retail MWh, including direct access load.³ For the direct
10 access customers, the 2 tenths of a cent per MWh, given their RPS requirement of
11 15%, translates into a credit of about 1.6 cents per REC.⁴

12 So under the mechanism that Mr. Dickman portrays as reasonable, direct
13 access customers would (1) free up RECs worth \$1 a piece, (2) they would incur a
14 cost of \$1 per REC themselves for their direct access load, (3) and they would
15 continue to fully pay for their pro rata share of PacifiCorp's RPS on half of cost-
16 of-service customers. Yet they would get back a credit for the RECs *they freed up*
17 of only 1.6 cents per REC. This is the result of the pro rata sharing that Mr.
18 Dickman portrays as reasonable. In my opinion, this result is fundamentally
19 unreasonable.

20 **Q. How does this result compare to your recommendation?**

² This value is in the general range of REC values that are identified in public sources. See, for example, pricing information compiled by the US Department of Energy at <http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5>.

³ \$31,200 / 13,000,000 MWh = \$.0024 per MWh.

⁴ \$.0024/REC / .15 = \$.016 /REC.

1 A. Under my recommended approach, in this example, the direct access
2 customers would be paid the full \$1 per REC for each REC they cause to be freed
3 up. Then, if PacifiCorp were to sell the freed-up RECs, the revenue from the sale
4 could be used to reimburse the Company for the payment to the direct access
5 customers.

6 **Q. Are there any alternatives to using the Company's REC sales to determine**
7 **the value of RECs freed up by direct access customers?**

8 A. Yes. PacifiCorp has issued a Request for Proposals ("RFP") to acquire
9 new RECs to help the Company meet its RPS obligations. As an alternative to
10 using PacifiCorp REC *sales* to value the RECs freed up by direct access
11 customers, the value of RECs *acquired* by the Company through the RFP could
12 be used to determine this value. If PacifiCorp will be paying third parties for
13 additional RECs necessary to meet the RPS standard, then there is no valid reason
14 for failing to recognize the value of RECs freed up by direct access customers,
15 which are banked for later use for the benefit of the Company's cost-of-service
16 customers. The RFP pricing should provide a convenient means for determining
17 this value. Moreover, this alternative approach dispenses with the Company's
18 contention that the Company's REC sales cannot be attributed directly to RECs
19 freed up by direct access. Additionally, the Company's recent acquisition of
20 RECs to meet the newly increased RPS standard is a materially different factual
21 circumstance than that in existence when the Commission addressed this issue last
22 year. The Company is no longer simply banking excess RECs but is also actively

1 acquiring RECs for future use and has stated it will continue to hold additional
2 REC RFPs to meet its new RPS requirements.

3 **Q. Does Mr. Dickman offer additional reasons for opposing your proposal?**

4 A. Yes. Mr. Dickman argues that valuing RECs would be administratively
5 burdensome. In support of his argument, Mr. Dickman asserts that if a REC
6 credit is provided to direct access customers, then remaining customers would
7 have to be surcharged. Further, Mr. Dickman contends that RECs that are
8 “hypothetically sold” would have to be separately tracked to ensure that if a direct
9 access customer returns to cost-of-service rates, the customer would not receive
10 any benefit from those RECs. Mr. Dickman raises the specter of having to create
11 “multiple REC banks” just to keep track of all of this information.

12 **Q. What is your response to Mr. Dickman’s arguments concerning the**
13 **administrative burden of adopting your proposal?**

14 A. Mr. Dickman’s arguments are without merit. First, the Company has
15 already contended that the REC values that would be provided to direct access
16 customers would be *de minimis*. No surcharge should be necessary to recover the
17 costs of credits that PacifiCorp maintains are too trivial or minor to merit
18 consideration. Further, to the extent that recovery is determined to be
19 appropriate, it could be accomplished through the recently-created Schedule 203,
20 the Renewable Resource Supply Deferral Adjustment, which recovers the costs
21 deferred for renewable resources as approved by the Commission, and which
22 apparently is not unduly burdensome for PacifiCorp to administer.

1 Second, it is difficult to take seriously Mr. Dickman's claim that crediting
2 direct access customers with the value of the RECs they free up would require
3 "multiple REC banks" to ensure that direct access customers who were credited
4 with freeing up RECs in one period did not receive the benefit of the banked REC
5 in a later period. In making this argument, Mr. Dickman fails to recognize that
6 the issue he raises concerning RECs acquired in one period and banked for use in
7 a later period really pertains to a much more general policy question of how to
8 rationalize paying for a resource in one period and using it later when the
9 composition of customers may have changed. Totally apart from direct access,
10 future customers who are not yet on the PacifiCorp system do not pay for RECs
11 that are acquired today and banked for later use. Yet Mr. Dickman shows no
12 concern and offers no proposals to establish "multiple REC banks" to ensure that
13 new cost-of-service customers, who join the system say in 2020, do not benefit
14 from banked RECs created in 2016. Yet, this is exactly what he contends would
15 be needed for direct access customers if they were credited with the RECs they
16 freed up. In fact, in the scenario posited by Mr. Dickman, direct access customers
17 are simply a specific case in the more general situation created when banking is
18 pursued. Today's direct access customers are not PacifiCorp's cost-of-service
19 customers, just as a cost-of-service customer who does not materialize until 2020
20 is not a PacifiCorp customer today. If a direct access customer returns to cost-of-
21 service rates pursuant to the terms and conditions of the Company's tariff then
22 that customer should be not be treated any differently than a brand new cost-of-
23 service customer. And just as it would be considered ill-advised to establish

1 “multiple REC banks” to ensure that future new customers did not receive the
2 benefits of RECs that are banked today, any proposal to subject direct access
3 customers to a proposal to require such tracking should be rejected as equally
4 frivolous, as well as discriminatory.

5 **Q. Are there any alternative approaches to accomplishing your objective?**

6 A. Yes. In my Opening Testimony, I suggested an alternative in which
7 PacifiCorp could agree to transfer to the ESS the RECs for which the ESS’s
8 direct access customers are paying PacifiCorp and receiving no credit. The ESS
9 could then, in turn, retire the RECs for each compliance year and pass on that
10 value to the customer. This solution would address all of PacifiCorp’s objections,
11 to the extent there is any merit to any of those objections, but PacifiCorp did not
12 respond to this proposal in its Reply Testimony.

13
14 **Response to Mr. Dickman Concerning the Escalation of Schedule 200 in the**

15 **Calculation of the Consumer Opt-Out Charge**

16 **Q. Briefly summarize the disagreement between you and the Company**
17 **regarding the escalation of Schedule 200 rates in the calculation of the**
18 **Consumer Opt-Out Charge.**

19 A. In UE 296, I recommended two refinements to the calculation of the
20 Consumer Opt-Out Charge. PacifiCorp’s calculation of the Consumer Opt-Out
21 charge is based on projected Schedule 200 costs for Years 6 through 10. Under
22 PacifiCorp’s approach, these projected costs are simply current Schedule 200
23 rates escalated at an assumed rate of inflation. However, I argued that it is not