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November 22, 2017

## *Via Electronic Filing*

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,  
Investigation into the Treatment of New Facility Direct Access Load.  
**Docket No. UM 1837**

Dear Filing Center:

Please find enclosed the Opening Comments of the Industrial Customers of Northwest Utilities (“ICNU”) and the Opening Comments of Dr. Benjamin Fitch-Fleischmann on behalf of ICNU in the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1837**

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION OF	)	OPENING COMMENTS OF THE
OREGON,	)	INDUSTRIAL CUSTOMERS OF
	)	NORTHWEST UTILITIES
	)	
Investigation into the Treatment of New Facility	)	
<u>Direct Access Load.</u>	)	

**I. INTRODUCTION**

Pursuant to the Administrative Law Judge’s October 30, 2017 Ruling, the Industrial Customers of Northwest Utilities (“ICNU”) files these Opening Comments in the above-referenced docket. These comments are being filed in conjunction with the opening comments provided on behalf of ICNU by Ben Fitch-Fleischmann, Ph.D, Senior Economist with Ecosystem Research Group, LLC.

**II. COMMENTS**

As Dr. Fitch-Fleischmann’s comments demonstrate, fundamental principles of economic theory justify exempting “new” loads from transition charges when those loads go straight to direct access so long as the utility has not incurred costs in planning for these loads. Indeed, this much should be self-evident. As Dr. Fitch-Fleischmann also demonstrates, however, there is no economic justification for treating increases to load at existing facilities differently from increases to load from new facilities. So long as it can be shown that the utility did not include this increased load in its planning process and, therefore, did not incur costs to serve this

load, existing customers are not harmed by allowing increases to load at existing facilities to take direct access without paying transition charges.

Whether new load is associated with a new facility or an increase at an existing facility, it is crucial to recognize that Oregon is in competition with other states for this economic activity. The Public Utilities Commission of Nevada, for instance, understands that direct access provides a means of fostering competition, not hindering it:

NRS Chapter 704B [Nevada's direct access law] is not intended to hinder growth and economic development in Nevada or give prospective businesses pause .... NRS Chapter 704B is intended to protect Nevada ratepayers and those businesses who exist and operate under Nevada's current regulatory compact with NV Energy and the investments *already made* under the existing paradigm. It should not be used to burden new businesses to Nevada where no meaningful relationship with NV Energy exists. Ratepayers should feel no financial impact.<sup>1/</sup>

Imposing unnecessary financial barriers on customers reduces the likelihood that they will bring their business here when they have viable alternatives in other states. Such barriers include imposing transition charges when none are necessary to protect existing customers. They also include requiring customers to construct extraneous new facilities simply to avoid transition charges, which is what the Commission would incentivize by eliminating transition charges for new facilities, but not for new load at existing facilities.

Even though these new loads would be direct access and not cost-of-service loads, the utilities should be as concerned as anyone to lose out on them. The economic activity from these load increases will in turn induce other economic activity in the form of jobs and new businesses that will bring additional cost-of-service load to the utilities' systems.

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<sup>1/</sup> PUCN Docket No. 17-04019, Advisory Opinion to Google on NRS Chapter 704B at 7-8 (Sept. 8, 2017) (emphasis in original).

Placing uneconomic and unjustified restrictions on new loads is not only economically harmful to the state, but also is likely to be environmentally harmful overall. Oregon ranks 48th in the nation in carbon emissions from the electricity sector.<sup>2/</sup> If businesses will consume electricity somewhere, they should do it here.

**A. Proposed criteria for exempting increases to existing loads from transition charges.**

To determine whether a utility has incurred costs to serve increases to existing loads, ICNU proposes to establish a rebuttable presumption that a utility has not planned to serve an increase of 10 average MW (“aMW”) or more.<sup>3/</sup> Additionally, ICNU also recommends that, to qualify for reduced or eliminated transition charges, the load increase must, in fact, be new. Thus, a customer would not be eligible if it shut down a portion of its operations for a period of time and then restarted those operations later. Under that circumstance, that customer would shift costs to remaining customers while its operations were shut down, and then would reverse this cost-shift upon restarting operations. ICNU does not consider that scenario to be similar to one in which a customer adds truly new load for which the utility has never planned.

ICNU proposes a 10 aMW threshold because it is large enough to exclude normal variations and minor increases in customer loads that would otherwise be captured within a utility’s system planning, and because 10 aMW represents the amount necessary to be designated as a “New Large Single Load” (“NLSL”) under the Northwest Power Act.<sup>4/</sup> Importantly, NLSL

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<sup>2/</sup> Energy Information Administration, Oregon Electricity Profile 2015, *available at*: <https://www.eia.gov/electricity/state/Oregon/>. The most recent year with data available is 2015.

<sup>3/</sup> Increases to existing load should be able to be sub-metered to segregate this load from existing cost-of-service load.

<sup>4/</sup> Northwest Power Act § 3(13).

status applies to any increase of 10 aMW or more, regardless of whether it occurs at a new or existing facility.<sup>5/</sup> ICNU is open to discussing alternative threshold criteria.<sup>6/</sup>

As noted, if a customer meets the threshold increase of 10 aMW, it would give rise to a *rebuttable* presumption that the utility has not planned for this load increase and, consequently, has not incurred costs to serve that increase. If the utility has in fact incurred such costs, it would be allowed to make such a showing before the Commission where the utility would bear the burden of proof to demonstrate both that it planned for and incurred costs to meet the load, and did so prudently.

**B. Proposed process for determining projected loads.**

New loads, whether at new facilities or increases to existing loads, do not, by definition, have historical consumption data on which to base a determination that a 10 aMW threshold will be met. ICNU, therefore, proposes a two-step process for establishing eligibility if a customer proposes to rely on the 10 aMW option. First, the customer must provide sufficient documentation to reasonably demonstrate that it will consume the threshold amount during the 12 months immediately following the date the customer commences direct access service.<sup>7/</sup> This is a factual issue, but could be accomplished by providing electric load information from similar facilities, annual load projections, transmission or distribution studies, or other reliable information. Second, the customer must demonstrate that its actual consumption, measured at the point of delivery, over the first 12-month period from the new load exceeded the required

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<sup>5/</sup> Id. This ignores facilities that have “contracted for/committed to” status, which is irrelevant for purposes of these comments.

<sup>6/</sup> As noted in Dr. Fitch-Fleischmann’s comments, ICNU is also open to discussing appropriate compensation to the utilities for acting as providers of last resort.

<sup>7/</sup> See, e.g., Nv. Admin. Code § 704B.300(1).

threshold. If the customer's actual usage falls below the 10 aMW threshold at the end of the study year, then applicable transition charges would apply.

### III. CONCLUSION

Allowing new loads to take direct access without paying transition charges has the potential to attract tremendous economic development to the State. This is in the public interest, particularly when doing so will have no negative impact on existing cost-of-service customers. Importantly, limiting the loads that can take advantage of this to new facilities has the potential to exclude a sizeable market in the form of increases to existing loads without any apparent economic rationale for doing so. The proper safeguards and criteria can allow these increased loads to be served through direct access without increasing costs to remaining customers. ICNU recommends that the Commission find that it is in the public interest to allow new loads to take direct access without paying transition charges, and that this finding extends to increases to loads at existing facilities that meet criteria necessary to ensure that such increases constitute truly new load and that their service under direct access will not harm existing customers.

Dated this 22nd day of November, 2017.

Respectfully submitted,

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November 22, 2017

Oregon Public Utility Commission  
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Salem, Oregon 97301

Re: UM 1837 – INITIAL COMMENTS ON BEHALF OF ICNU ON STAFF INVESTIGATION  
INTO THE TREATMENT OF NEW FACILITY DIRECT ACCESS LOAD

### **I. Introduction**

Thank you for the opportunity to provide initial comments on behalf of the Industrial Customers of Northwest Utilities (“ICNU”) regarding the treatment of new facility direct access load.

In summary, ICNU believes there are important differences between how utilities should plan to serve reasonably foreseeable incremental growth in existing customers’ load at existing facilities and how they should plan to serve large or lumpy increases in loads at both new and existing facilities. This is because utilities have greater certainty about the likely incremental increases to the loads of existing customers than they do about potential discrete jumps in load due to a new facility or a significant change to an existing customer’s operations. Because of the different degrees of uncertainty surrounding these different sources of load increase, and their differences in magnitude, utilities should treat them differently for planning purposes. Therefore, the costs incurred in anticipation of serving these different types of load increases are likely to be different and the Commission is justified in exercising its discretion to consider reduced or eliminated transition charges should a new load at a new facility wish to receive electricity via direct access.

The fundamental rationale for imposing a transition charge for direct access is to ensure that the utility’s remaining customers are not burdened with costs the utility incurred to serve the departing load. If a utility has not incurred costs to serve a particular future load, there is no basis for imposing a transition charge should that load use direct access. This is true regardless of whether the new load is at a new facility or an existing facility. On the surface, the association of a new load with an existing customer appears to provide a convenient measure of whether a utility should reasonably be expected to anticipate that increase in load. Though the utility may be reasonably expected to have better information about future loads for existing customers, this by no means guarantees that the utility has incurred or must incur costs to serve every possible load increase at existing facilities. If certain conditions are met that ensure a utility should not incur costs to serve an existing customer’s increase in load, then there is no economic basis for imposing a transition charge should this new load move to direct access.

In order to ensure that a utility has not incurred costs to serve a particular new load at an existing facility that seeks direct access, ICNU recommends that the Commission establish a threshold increase of 10 average megawatts (“MWa”) as sufficiently large to be indicative of a new load that utilities should not plan to serve. Even if utilities currently plan for such a load increase at existing facilities, nothing requires that they do so. Therefore, they need not incur costs in anticipation of such an increase. ICNU also agrees that loads at new facilities should be eligible to take direct access without paying transition charges so long as the proper criteria have been satisfied to ensure these loads do not impose costs on existing customers as a consequence of taking direct access. ICNU will review the recommendations of other parties with respect to loads at new facilities.

## II. General Comments

When determining whether to exercise its discretion to consider reduced or eliminated transition charges for certain new loads, the key issue in front of the Commission is not whether a load is “new.” Rather, the important question is whether a utility has (and should have) incurred costs in anticipation of serving the potential load in question.

The optionality that a customer has regarding its future electricity consumption is key to the issue of direct access transition charges because it directly affects whether and how a utility should plan, and potentially incur costs, to serve such customers’ potential future load. In fact, both existing and potential new customers with sufficient flexibility will likely consider the size of direct access transition charges when choosing new facility locations. The difference across firms in the flexibility they have is in fact fundamental to many basic economic models, which incorporate the degree of optionality that a firm has by separately considering fixed and variable (i.e., optional) costs. In addition to the greater uncertainty that utilities face when planning to serve *potential* customers, who are more likely to have flexibility in where and how they operate, utilities have far more evidence and historical data on the normal operations of existing customers. However, historical data on normal operations is unlikely to provide insight into the probability that an existing customer will pursue a significant change in operations.

Because of these differences in optionality and evidence, utilities confront greater uncertainty when planning for new load at new facilities and expansions at existing facilities than when planning for incremental growth that can be forecast using historical data. Utilities should therefore plan differently for these potential new large loads, and thereby incur different costs, than they do when planning for future loads whose growth is in line with their historical usage.

To the extent that a utility appropriately anticipates serving new load and incurs costs in the process, the Commission is clearly justified in assessing transition charges. However, the utility’s planning processes are not fixed. It may be that utilities’ current planning efforts result in added costs to serve potential new customers, but utilities can adjust these practices based on economic conditions, regulatory determinations, or any other relevant factors. Just as a fall in forecasted economic growth might lead a utility to plan for reduced load, a utility could respond similarly to regulatory decisions that reduce the probability that new customers will add to a utility’s load. Indeed, at the November 6<sup>th</sup> workshop in this docket, both PacifiCorp and Portland General Electric indicated that their current forecasting practices use information to incorporate future trends in direct access loads. In other words, existing practices already include a mechanism that could easily be updated should new policies or new information be expected to change the likelihood that customers will want to use direct access.



Furthermore, utilities cannot be expected to plan with perfect foresight. Therefore, there is a risk that the costs a utility incurs in anticipation of serving future load will not match exactly with the future load that materializes. If a utility incurs costs to serve a potential new load and the load in question does not materialize, including for reasons that are unrelated to direct access, existing customers are left to pay these costs.

Therefore, imposing transition charges for new loads, at its root, shifts the burden of deficiencies in the utility's planning from the utility to an entity that has no part in the utility's planning process. Allowing new loads to go straight to direct access may change the utilities' optimal planning process, but there is no reason to believe that it makes planning inherently more difficult. In fact, it is quite possible that the opposite is true. In either case, however, ICNU cautions the Commission against incorporating a utility's forecast into future determinations of transition charges for new loads because this would create incentives for a utility to manipulate its forecast.

For all of these reasons, ICNU recommends that the Commission consider allowing new customers to receive direct access with zero or reduced transition charges if these customers meet conditions that ensure the utilities have ample time and information to avoid incurring costs to serve these loads.

With respect to a new customer facility, ICNU does not take a position on the criteria that must be met to avoid transition charges and will review other parties' recommendations. ICNU submits, however, that new load additions at existing facilities are economically indistinguishable from load additions at new facilities so long as it can be shown that the utility did not plan for, and therefore did not incur costs to serve, this new load. ICNU discusses in the next section the criteria that should apply to load additions at existing facilities that would appropriately be exempted from transition charges without harming remaining customers.

### **III. New Load at Existing Facilities**

While some existing customers' load may be a simple function of their day-to-day response to economic and weather conditions, other customers may confront non-incremental decisions about whether to expand their operations. The fact that a firm is already a customer of an Oregon IOU should not on its own lead to the expectation that the utility will be able to anticipate its future growth, especially if this growth comes from an atypical expansion of the customer's operations that could not be anticipated with historical data.

Utilities may currently attempt to anticipate these non-incremental changes in the aggregate, but there is nothing about forecasting that requires them to do so. In fact, to the extent that they could avoid the possibility of anticipating a large increase that does not materialize, they would reduce the chance of saddling existing customers with unnecessary costs. In other words, if utilities could count on new large loads to go straight to direct access, they would not have to expose existing customers to the risk that they incur costs to serve this load with no guarantee that it will materialize. Even if the load increase in question could be anticipated via the utility's forecasting and planning efforts, the utility could easily be directed not to incur costs to serve it. Therefore, these potential large increases in load, even if occurring at existing facilities, warrant treatment similar to that described above for new loads at new facilities. To be clear, this applies only to load increases that represent a structural shift in the customers' use of electricity, as opposed to natural fluctuations or incremental growth. Furthermore, if the Commission

requires existing customers to pay full transition charges for direct access for new increases in their loads, it may inadvertently create incentives for economically inefficient behavior (e.g., installing new but unnecessary facilities or redundant metering infrastructure) based on how it defines a “new” customer.

For existing customers considering non-incremental increases in their load, ICNU recommends that the Commission apply a minimum threshold for an increase in load to ensure that these new loads are large enough to be distinguishable from the normal growth and fluctuations that utilities should plan for. ICNU recommends that, in order not to discriminate between firms based on their status as a current customer, the Commission consider an increase of 10 MWA to be sufficiently large to establish a rebuttable presumption that the utility should not have incurred costs in anticipation of this load increase. To the extent that the Commission is concerned that customers may attempt to game the system by temporarily shutting down their operations, the Commission could establish that such activities would invalidate the new load status of a subsequent increase.

#### **IV. Direct Responses to Staff’s Questions**

The comments above address many of the questions Staff has requested parties to answer. For completeness, additional answers are provided below.

1. *Should the Commission exercise its discretion and consider reduced or eliminated transition charges for new load?*

Yes.

2. *What constitutes new customer load, and what actions can invalidate new customer status?*

The important question is not whether a customer is “new,” but whether a utility should reasonably be expected to incur costs in anticipation of increases in load. “New” load could reasonably come from new or existing customers. If a customer were to reduce its load solely to increase it later to appear as new load, it would be reasonable for this to invalidate the “new” load’s eligibility for reduced transition charges for direct access.

3. *What types of new customer direct access loads can utilities accurately plan for?*

Utilities might reasonably plan for aggregate increases in new load from potential customers that wish to use direct access. However, without information on individual new customers, utilities should not be expected to plan for specific customer types or specific customers. More importantly, even if utilities could plan for these customers, they need not be required to.

4. *Do utilities currently have investments or costs rendered un-economic as a result of new direct access customers?*

This is a factual question that ICNU cannot address without additional information. If a utility claims that its existing customers would be harmed by a new direct access customer, the utility should document and explain that harm. The future is inherently uncertain regardless of the Commission’s policies on new direct access customers, and while allowing reduced transition charges for new direct access load might require utilities to adjust their planning practices, it would not make the utility planning problem more complicated than it already is. It is possible that utility planning practices may experience a

lag in responding to a sudden change in Commission policy, so it may be reasonable to give the utilities a short period to adjust.

5. *Can utilities plan in a manner that allows new customer direct access without adverse impacts on cost-of-service customers?*

Yes. If utilities could not do this (i.e., they did not have the ability to plan in a manner that allows for new customers to use direct access without adverse impacts on cost-of-service customers), then they also could not plan for new cost-of-service customers without imposing adverse effects on existing cost-of-service customers. Planning requires the utility to prepare to serve load from customers that may or may not materialize. If, as sometimes happens, utilities plan for more load than they experience, existing customers are left to pay the costs. This is true regardless of whether the anticipated load does not materialize because of economic conditions, direct access rules, or for any other reason. To the extent that anything—including Commission policy, economic factors, or anything else—affects the probability that new load will materialize, utility planning practices should be expected to incorporate all of the relevant information.

6. *Can utilities treat new customers differently from existing customers without discriminating?*

The short answer is yes, for both the economic reasons described above that justify treating new loads (at both new and existing facilities) differently from existing loads, and for the legal reasons that ICNU and other parties laid out in briefs filed earlier in this docket.

7. *Do transition adjustment charges mitigate risk to utilities and cost-of-service customers associated with the Provider of Last Resort requirements?*

The answer to this question depends on the nature of the POLR arrangement. For example, a utility could provide POLR services under an agreement in which it buys from the market to serve this customer and only to the extent there is sufficient market availability. The customer could then pay all costs that utility incurs to provide this service, which would presumably leave remaining customers unharmed. To the extent a direct access customer relies on POLR services from the utility that may impose some costs on cost-of-service customers, however, ICNU does not object to including a reduced transition charge that is reflective of such costs.

8. *What parameters can be placed on the type of new load receiving altered transition adjustment treatment to minimize cost shifting?*

With respect to new loads at existing facilities, a minimum threshold of load increase is a reasonable parameter to allow utilities to plan for direct access. Any requirements, which may need to be placed on both new customers and utilities, that ensure that utilities do not incur costs in anticipation of serving potential customers who do not materialize (either because they fail to materialize at all or because they elect to use direct access) would fulfill this purpose. ICNU recommends that the Commission consider an increase requirement threshold of 10 MWa as sufficient to establish a rebuttable presumption that the utility should not incur costs in anticipation of serving the load increase in question. With respect to new facilities, ICNU does not have a recommendation at this time and will review the recommendations of other parties.

9. *What are the consequences of modifying transition adjustments for new customers on cost-of-service customers?*

Any potential adverse consequences may be mitigated through appropriate updates to utility planning practices. Modified transition charges for new customers will not require utility forecasting practices to incorporate information or variables that are more complicated than what their existing forecasting practices already deal with.

10. *What provider of last resort obligations should be imposed on the utility for new direct access load?*

ICNU is open to allowing for flexibility in the obligations that the utility has to serve as provider of last resource for new direct access load. The Commission could consider allowing new direct access load to opt out of receiving provider of last resort services from the utility.

11. *In the event that new direct access load wants to return to cost of service rates, how should that be structured?*

This could be structured in the same way that it is handled when existing direct access load wishes to return to cost-of-service rates.

12. *Are there benefits to Cost of Service customers from Direct Access customers paying distribution charges?*

In the majority of circumstances, there are likely to be benefits to cost-of-service customers from direct access customers paying any charges, as these charges contribute to the utility's fixed delivery and general services costs. However, there may be circumstances where a large customer is directly assigned distribution costs because it uses facilities constructed specifically to serve it alone. In this case, this customer's payment of distribution charges may not impact other customers (positively or negatively).

13. *Should the source of energy (green energy vs thermal/market) be considered in a potential new program for new load and Direct Access?*

Unless the legislature wishes to pursue particular emissions goals through a new program for new load and direct access, ICNU sees no reason why customers who wish to receive direct access should be treated differently based on their preferences for pricing, a particular emissions profile, or any other reasons that might compel them to seek direct access. Because the renewable portfolio standard requirements apply to direct access, a program that allows expanded use of direct access could only result in greater or equal use of renewable sources of electricity. In addition, it could potentially be discriminatory for the Commission to give preferential economic treatment to certain customers based on their preference for a particular source of energy absent a legislative directive.

14. *Should a new program for new direct access load be included in the current program caps for existing direct access programs?*

No. The utilities' justification for the caps on their direct access programs was that they were concerned that too much load migration to direct access would impact the utilities' recovery of their fixed generation costs from their remaining cost-of-service customers. Because the very premise of allowing

new loads to transition to direct access without paying transition charges is that the utilities have not planned for these loads and, therefore, have not incurred fixed generation costs to serve these loads, this concern is irrelevant.<sup>1/</sup>

I look forward to working with parties and the Commission throughout this investigation.

Sincerely,

/s/ Ben Fitch-Fleischmann

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<sup>1/</sup> See, Docket No. UE 267, PacifiCorp Application at 2 (Feb. 28, 2013); Docket No. UE 236, Order No. 12-057 at 2 (Feb. 23, 2012).