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March 1, 2018

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 PACIFICORP, dba PACIFIC POWER
Request to Initiate an Investigation of Multi-Jurisdictional Issues and
Approve an Inter-Jurisdictional Cost Allocation Protocol
Docket No. UM 1050

Dear Filing Center:

Please find enclosed the Response of the Industrial Customers of Northwest Utilities to PacifiCorp's Motion for Leave to Respond and Response in the above-referenced docket.

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

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1050

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER)	RESPONSE OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Request to Initiate an Investigation of Multi-)	UTILITIES TO PACIFICORP'S
Jurisdictional Issues and Approve an Inter-)	MOTION FOR LEAVE TO RESPOND
<u>Jurisdictional Cost Allocation Protocol.</u>)	AND RESPONSE

I. INTRODUCTION AND ARGUMENT

Pursuant to OAR 860-001-0420, the Industrial Customers of Northwest Utilities (“ICNU”) files this Response in Opposition to PacifiCorp’s (or “Company”) Motion Requesting Leave to Respond and Response to the Industrial Customers of Northwest Utilities’ Reply. The Commission’s rules establish a procedure for substantive motions in which the moving party (in this case ICNU) bears the burden of proof and persuasion and, as a consequence, is entitled to the last word through a reply.^{1/} The Company’s motion and response undermines this process. PacifiCorp has not established good cause for filing a response.

The Company argues that a response is warranted because ICNU included new exhibits in its reply.^{2/} Those exhibits, however, were included to support ICNU’s response to accusations the Company made about ICNU’s conduct, which were not raised until PacifiCorp filed its response. ICNU, therefore, could not have addressed this issue in its initial motion.

^{1/} OAR 860-001-0420; AR 535, Order No. 10-400 at 16 (Oct. 14, 2010).

^{2/} PacifiCorp Motion at 2.

PacifiCorp also notes that ICNU's timeline in its Reply left out a phone call between its counsel and PacifiCorp's counsel.^{3/} That is true, and it was left out because it was insubstantial. While PacifiCorp's counsel did express the Company's concern with Dr. Hellman's participation in MSP Workgroup meetings, that concern was based on OAR 860-001-0330, which ICNU's counsel explained on the call was limited to contested case proceedings and not MSP Workgroup meetings (a fact that has been amply demonstrated through this process). After some further discussion, PacifiCorp's counsel said that he would discuss ICNU's position internally with his client. Thus, nothing was resolved, and no final position was communicated, on this call. If anything, the only result from this call was that it compelled ICNU to have Dr. Hellman attend the one and only phone call he participated in with the MSP parties (a call that lacked any discussion of confidential information). This ensured PacifiCorp would in fact determine its final position on Dr. Hellman's appearance for ICNU at these meetings. Since PacifiCorp fully and finally communicated its objection to Dr. Hellman's participation in MSP Workgroups, ICNU has excluded him from all such process.

The Company also argues that a response is warranted because ICNU has "modifie[d] its request in such a way that it raises new issues of law."^{4/} That is wrong. ICNU's Reply did withdraw one of the two requests it made in its initial motion, but the initial motion made it clear that those two requests are distinct and severable.^{5/} Thus, withdrawing one has no impact on the other. The fact that PacifiCorp chose to conflate the two requests in its response to ICNU's motion is no reason to give it a second bite at the apple.

^{3/} PacifiCorp Motion at 4.

^{4/} PacifiCorp Motion and Response at 3.

^{5/} ICNU Motion at 3, 10.

Now that PacifiCorp has decided to address ICNU's request related to Dr. Hellman's participation in MSP Workgroup meetings, it argues that the Commission has no authority to "direct PacifiCorp to take action outside of the UM 1050 proceeding."^{6/} ICNU does not necessarily disagree with this. At the least, the MSP Workgroup meetings exist in a gray area where there is some Commission oversight – including the existence of the Commission-approved MSP Intervenor Funding Agreement, a Commissioner's Forum, and exchange of confidential information under the protective order in UM 1050 – but where the Commission appears to lack the authority to compel participation akin to its statutory authority to grant interventions. But PacifiCorp's legal argument can be turned on its head. The MSP Workgroups are, fundamentally, a negotiation between states over how to allocate the costs of the Company's system. Just as the Commission may not have the authority to *compel* PacifiCorp to take action in this forum, it is equally the case that PacifiCorp would appear not to have the authority to *prohibit* a party from bringing the representatives of its choice to this negotiation, absent a legal justification.

That is why ICNU framed its request as it did. It asked the Commission to find that Dr. Hellman "may" participate in MSP Workgroup meetings and receive confidential information in those meetings^{7/} – that "there is no legal prohibition against Dr. Hellman representing ICNU in the MSP Workgroups."^{8/} The issue is whether Dr. Hellman is legally conflicted out of participating in the *informal* MSP process. If the Commission determines that he is not, then there would appear to be no basis on which PacifiCorp could exclude him.

^{6/} PacifiCorp Motion and Response at 6.
^{7/} ICNU Motion at 1.
^{8/} ICNU Reply at 2.

Moreover, PacifiCorp's only justification for prohibiting Dr. Hellman from viewing confidential information related to the MSP appears to be tied to its broader objection to his participation at all in this process, rather than a concern that he will violate the restrictions on this information. Thus, even if the Commission cannot force PacifiCorp to provide this information, if it finds that Dr. Hellman may participate in the MSP process, the Company's justification for withholding confidential information falls away.

There is, therefore, significant value to ICNU in the Commission ruling on its requested relief. ICNU's motion represents its only recourse against PacifiCorp's actions and will clarify its rights in the MSP Workgroup process.

II. CONCLUSION

PacifiCorp has not established good cause for filing its response to ICNU's reply, and its motion and response should therefore be denied. The Commission should grant ICNU's requested relief, as articulated in its Reply.

Dated this 1st day of March, 2018.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

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Of Attorneys for the Industrial Customers of
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