

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com  
Suite 400  
333 SW Taylor  
Portland, OR 97204

February 20, 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 Reply of the Industrial Customers of Northwest Utilities (“ICNU”) to PacifiCorp’s Response to ICNU’s Motion Determine the Rights and Status of its Expert Consultant.

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	)	REPLY OF THE INDUSTRIAL
	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES
Request to Initiate an Investigation of Multi-	)	
Jurisdictional Issues and Approve an Inter-	)	
<u>Jurisdictional Cost Allocation Protocol.</u>	)	

**I. INTRODUCTION**

Pursuant to OAR 860-001-0420(5), the Industrial Customers of Northwest Utilities (“ICNU”) files this Reply to PacifiCorp’s (or “Company”) Response to ICNU’s Motion to Determine the Rights and Status of its Expert Consultant.

Rather than address the relevant issues raised by ICNU’s Motion, PacifiCorp’s response is little more than an attempt to undermine the obvious value Dr. Hellman’s experience will bring to the Multi-State Protocol (“MSP”) process through gratuitous and inappropriate insinuations that Dr. Hellman might use that experience to lie about his prior testimony and past events, and through accusations about ICNU’s alleged actions that are demonstrably false. The Company’s Response is disappointing and does not serve itself, the Commission, or the State.

As the Oregon Citizens’ Utility Board (“CUB”) recognizes, “Dr. Hellman’s participation in ongoing MSP negotiations provides a benefit to both the Commission’s ability to ensure that any Company cost and resource allocation methodology is equitable to Oregon, and a

benefit to Oregon ratepayers generally.”<sup>1/</sup> The Commission, therefore, should find that Dr. Hellman is permitted to represent ICNU in the MSP Workgroup process and should deny the Company’s frivolous request to open an investigation to determine whether ICNU’s eligibility for funding under the MSP Intervenor Funding Agreement (“MSP IFA”) should be terminated.

However, because no process has been scheduled in this docket, and it is unclear when such process will begin, ICNU has determined at this time to withdraw its additional request to allow Dr. Hellman to appear as a witness for it in UM 1050 pursuant to OAR 860-001-0330(2). ICNU reserves the right to reassert this request when process resumes.

## II. ARGUMENT

### A. **There is no legal prohibition against Dr. Hellman representing ICNU in the MSP Workgroups and the Company’s policy concerns are self-serving and unpersuasive.**

ICNU’s Motion requested two rulings: first, a finding that Dr. Hellman may participate in MSP Workgroup meetings, and receive confidential information related to these meetings; and second, a finding that Dr. Hellman may appear as a witness for ICNU in the above-referenced docket pursuant to OAR 860-001-0330(2).<sup>2/</sup> As noted above, ICNU is withdrawing the latter request at this time. ICNU continues to request the former relief.

#### 1. There is no legal prohibition against Dr. Hellman representing ICNU in MSP Workgroups.

While PacifiCorp responds to both requests in ICNU’s Motion within the context of OAR 860-001-0330, one thing should be absolutely clear – as ICNU argued, this rule has

---

<sup>1/</sup> CUB Response at 2.

<sup>2/</sup> OAR 860-001-0330(2) states: “Except with the Commission’s written permission, a former Commission employee may not appear as a witness on behalf of other parties *in contested case proceedings* in which the former employee took an active part on the Commission’s behalf” (emphasis added).

nothing to do with the first (and now ICNU's only) request because MSP Workgroup meetings are not part of any contested case. PacifiCorp concedes this.<sup>3/</sup> This is important for a few reasons.

First, without much explanation, PacifiCorp raises the specter multiple times that it will be denied "due process" if Dr. Hellman represents ICNU.<sup>4/</sup> But the MSP Workgroup process is not even part of a Commission proceeding, much less a contested case. Thus, it would be impossible for PacifiCorp's due process rights to be violated by Dr. Hellman appearing at MSP Workgroup meetings because it has no such rights in that setting.<sup>5/</sup>

Second, PacifiCorp's position that allowing Dr. Hellman to represent ICNU in MSP Workgroup meetings would undermine the purpose of OAR 860-001-0330 is plainly erroneous because that rule has no applicability to any process that is not a contested case.<sup>6/</sup> This underscores the problem with PacifiCorp's intent to conflate the MSP Workgroups with the UM 1050 contested case proceedings. The two are not the same. As ICNU noted in its Motion, contested case proceedings are treated differently, and have different procedural protections, because they fully and finally determine a party's rights and obligations.<sup>7/</sup> The MSP

---

<sup>3/</sup> PacifiCorp Response at 3 ("UM 1050 is not currently in a contested phase").

<sup>4/</sup> Id. at 1, 2, 3, 4, & 7.

<sup>5/</sup> Davidson v. Oregon Gov't Ethics Comm'n, 300 Or. 415, 425-27 (1985) (finding that "due process requirements do not apply" to a process which was not a contested case). Even if PacifiCorp does have some due process rights in these workgroups, they would necessarily be minimal based on the three-factor Matthews balancing test: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Matthews v. Eldridge, 424 U.S. 319, 335 (1976); Logsdon v. SAIF Corp., 181 Or. App. 317, 321 (2002) (en banc). In the MSP Workgroup setting, no private interest is affected, nor is there any risk of an erroneous deprivation of such interest, as no interest is being determined by an administrative agency in that forum.

<sup>6/</sup> PacifiCorp Response at 3-4.

<sup>7/</sup> ICNU Motion at 5.

Workgroups fully and finally determine nothing. The importance of the distinction is apparent in the fact that the Commission explicitly limited the applicability of OAR 860-001-0330 to contested case proceedings. It easily could have expanded it to apply to all of its processes but chose not to.

Thus, the relevant inquiry with respect to whether Dr. Hellman is prohibited from representing ICNU in MSP Workgroups is to look to the *applicable* law. Contrary to PacifiCorp's contention that ICNU has not met its burden on this issue,<sup>8/</sup> ICNU's Motion analyzed every possible law or rule that could potentially prohibit Dr. Hellman's participation, and showed that none do.<sup>9/</sup>

The only allegation the Company makes on this issue is that Dr. Hellman's representation of ICNU "could be a conflict of interest" under ORS 244.040(5) on the basis that ICNU is paying Dr. Hellman for his consulting services and, therefore, he is receiving a benefit.<sup>10/</sup> But that is a plainly erroneous interpretation of this statute, which reads: "A person who has ceased to be a public official may not attempt to further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official." No Oregon court appears to have interpreted this subsection, but courts have interpreted other subsections of this statute and have uniformly held that "personal gain" refers to benefits a public employee receives or bestows on others as a direct consequence his or her position, such as a reduced purchase price

---

<sup>8/</sup> PacifiCorp Response at 2.

<sup>9/</sup> ICNU Motion at 7-8.

<sup>10/</sup> PacifiCorp Response at 7-8.

for a private car,<sup>11/</sup> or a state senator receiving payments from an outside vendor for “consulting services” and using his position in the senate to funnel service contracts to that same outside vendor.<sup>12/</sup> In other words, “the purpose of ORS 244.040 [as a whole] is to prevent public officials from using, attempting to use or appearing to use the power or influence of their office to obtain financial gain. It is also intended to prevent others from offering financial gain to public officials .... [T]he evil sought to be avoided is the actual or apparent misuse of the power and influence inherent in public office for private advantage.”<sup>13/</sup> Dr. Hellman’s representation of ICNU in MSP Workgroup meetings simply does not meet the intent of the statute.

To the extent this law is applicable here, all it even potentially prevents is Dr. Hellman using “confidential information gained in the course of or by reason of” his prior position as Administrator. This necessarily excludes confidential information the Company has shared with all parties to the MSP process (including ICNU) and is limited only to confidential information Dr. Hellman acquired because he was Administrator. There is no reason to believe Dr. Hellman cannot manage that restriction while still participating in MSP Workgroups.

Indeed, reading the statute as PacifiCorp proposes would prevent a former public official from ever getting paid to work for another organization in the same industry if the organization’s decision to hire the former public official was in any way based on the experience and information the former public official gained in the course of his or her employment with the government. Had the legislature intended that, PacifiCorp itself likely would have violated this law when it hired Kelcey Brown, Carla Owings, Rebecca Brown, and Sarah Link from the

---

<sup>11/</sup> Davidson, 300 Or. 415.

<sup>12/</sup> Groener v. Oregon Gov’t Ethics Comm’n, 59 Or. App. 459 (1982).

<sup>13/</sup> Davidson v. Oregon Gov’t Ethics Comm’n, 74 Or. App. 160, 170 (1985) (Warren, J. dissenting).

Commission. Or perhaps it would have violated similar laws in other states when it hired Andrea Kelly and Joelle Steward from the Washington Utilities and Transportation Commission, David Mosier from the Wyoming Public Service Commission, or Roger Weaver from the Utah Public Service Commission. PacifiCorp's monopoly on electric service does not also give it a monopoly on the ability to hire former utility commission employees.

Oregon law does prohibit certain public employees from "becom[ing] an employee or receiv[ing] any financial gain ... from any private employer engaged in the activity, occupation or industry" for a period of one year, including Public Utility Commissioners.<sup>14/</sup> Department of Justice attorneys are similarly restricted for a period of two years.<sup>15/</sup> The fact that the State saw fit to place these restrictions on specific public employees, but not others (including Staff Administrators), demonstrates that it did not intend to restrict these other employees in a similar manner. PacifiCorp may believe a conflict of interest exists here, but the State of Oregon does not.

2. PacifiCorp's policy concerns are unfounded and self-serving.

PacifiCorp's fundamental objection to Dr. Hellman's representation of ICNU, regardless of the forum, therefore, is not based on the law, but instead that it will be unfairly prejudiced if Dr. Hellman represents ICNU in any way in the MSP process. For instance, the Company expresses concern that Dr. Hellman's experience gives him knowledge of issues that have arisen in the past over the course of the MSP process.<sup>16/</sup> It notes that Dr. Hellman previously testified over a decade ago on a hybrid allocation methodology, which may be

---

<sup>14/</sup> ORS 244.045(1).

<sup>15/</sup> ORS 244.045(2).

<sup>16/</sup> PacifiCorp Response at 6-7.

considered again in UM 1824 - the Commission's Oregon-specific MSP docket.<sup>17/</sup> The Company also finds concerning the fact that "[m]ost of the current Staff representatives attending the MSP have not been involved in the MSP from the beginning" and that this would make it "impossible" for parties to determine whether Dr. Hellman's "statements or testimony regarding prior Staff positions were based on an accurate recollection of his employment by the Commission or biased by his current consulting engagement."<sup>18/</sup>

ICNU understands why *PacifiCorp* may want to limit the historical knowledge other parties have of the MSP process, but it fails to understand how this could be in the best interest of the *Commission* or the State of Oregon. Dr. Hellman's extensive experience with the MSP is precisely why CUB supports his participation, noting that this experience is "invaluable to the MSP [Workgroup] process" and "will go a long way in benefitting Oregon generally."<sup>19/</sup>

By contrast, *PacifiCorp*'s stated concerns that Dr. Hellman's long history with the MSP will somehow allow him to bamboozle current Staff and other parties are simply not credible, and certainly do not outweigh the benefits his experience brings. For one, suggestions that Dr. Hellman may selectively interpret his prior positions indicate an improper motive on the part of ICNU and Dr. Hellman for which *PacifiCorp* has no basis whatsoever. It would hardly be in ICNU's or Dr. Hellman's interest to undermine their credibility by taking plainly inconsistent positions. Similarly, the Company's concern that "Dr. Hellman may be incentivized to divulge confidential information gained in the course of his employment by the Commission for the

---

<sup>17/</sup> Id. at 6.

<sup>18/</sup> Id. at 6-7.

<sup>19/</sup> CUB Response at 5.



benefit of ICNU” is both baseless and irrelevant.<sup>20/</sup> Dr. Hellman has been careful to comply with his ethical obligations, obligations which are enforced not by the Commission but by the Oregon Government Ethics Commission. Thus, if PacifiCorp has concerns that are supported by actual evidence, it may bring those concerns to that agency, not make unsupported allegations to attempt to prohibit Dr. Hellman from representing ICNU on Commission-jurisdictional MSP-related matters.

Simply put, there is no legal restriction whatsoever in Dr. Hellman representing ICNU in the non-contested case MSP Workgroup process, and the value he brings (as CUB also recognizes) far outweighs PacifiCorp’s baseless and self-serving concerns.

**B. PacifiCorp’s allegations of misconduct on the part of ICNU and its representatives are wholly without merit and the Commission should deny its request for an investigation into whether ICNU’s intervenor funding should be terminated.**

In addition to opposing ICNU’s Motion, PacifiCorp accuses ICNU of “a willingness to ignore applicable rules” and questions the credibility of its counsel.<sup>21/</sup> If the Commission grants ICNU’s Motion, the Company requests an investigation to determine whether ICNU’s funding under the MSP IFA should be terminated.<sup>22/</sup> These accusations are, in a word, gratuitous.

First, PacifiCorp alleges that ICNU is violating the Commission’s order approving the MSP IFA because it stated in its Motion that Dr. Hellman need not sign the protective order in this docket because he had already executed a separate non-disclosure

---

<sup>20/</sup> PacifiCorp Response at 7.

<sup>21/</sup> Id. at 10.

<sup>22/</sup> Id. at 9.

agreement PacifiCorp provided that was for the express purpose of sharing confidential information in the MSP Workgroups.<sup>23/</sup> The Company conspicuously fails to mention that ICNU stated that Dr. Hellman was willing to be governed by the protective order if the Commission so determined:

Dr. Hellman is prepared to execute the Protective Order in this Docket if the Commission determines this is necessary for him to receive confidential information in the MSP Workgroup process. ICNU has refrained from doing so at this point, however, in the event the Commission determines that Dr. Hellman may not appear as a witness for ICNU under OAR 860-001-0330 and that signing the protective order in this Docket would violate this rule .... ICNU has not filed a protective order for Dr. Hellman at this time in an abundance of caution.<sup>24/</sup>

To be blunt, ICNU does not care whether its attorneys and consultants are subject to the protective order in this docket, a separate NDA, or a combination of both, and is willing to follow the Commission's direction in this regard. Contrary to PacifiCorp's concerns,<sup>25/</sup> ICNU sees no substantive difference between the NDA the Company provided and the UM 1050 protective order in terms of the confidentiality protections they provide to the Company.<sup>26/</sup> Nevertheless, if the Commission would like Dr. Hellman to sign the protective order in this docket, ICNU only requests that the Commission clarify that this is limited to receiving confidential information in MSP Workgroups and does not constitute Dr. Hellman's appearance in UM 1050 under OAR 860-001-0330.

The important point is that at no time has ICNU ever evidenced an intent to "ignore applicable rules" or not to "comply with its commitments."<sup>27/</sup> ICNU's consultants and

---

<sup>23/</sup> Id. at 8.

<sup>24/</sup> ICNU Motion at 6 n. 21.

<sup>25/</sup> PacifiCorp Response at 9-10.

<sup>26/</sup> Compare Order No. 15-416 with ICNU Motion Exh. D.

<sup>27/</sup> PacifiCorp Response at 10, 8.

attorneys have unequivocally committed to be bound by confidentiality restrictions acceptable to PacifiCorp and the Commission, in whatever form those restrictions are embodied. The Company has not identified a single instance in which Dr. Hellman or any ICNU representative has ever violated the terms of a protective order or non-disclosure agreement.

Section 7.1 of the MSP IFA identifies various circumstances in which a Participating Intervenor's eligibility for MSP Funds may be terminated. PacifiCorp relies on subsection (c), which states that the "organization has failed to comply with Commission orders or rules in a material way."<sup>28/</sup> The MSP IFA states that signatories to it agree to be bound by the UM 1050 protective order, and the Company reasons that ICNU's Motion alone violates this provision.<sup>29/</sup> Even if it could be plausibly argued that ICNU failed to comply with a Commission order from a mere request, made only out of an abundance of caution, for the Commission to recognize a Company-provided NDA that Dr. Hellman has already executed, it is hard to imagine how such a failure could be considered material. Even though Dr. Hellman is covered under an NDA at this point, ICNU has not provided him with any confidential information related to the MSP in consideration of PacifiCorp's objection to his participation in this process.<sup>30/</sup> The Company's assertion that ICNU has failed to Comply with the order approving the MSP IFA is plainly baseless.

PacifiCorp also accuses ICNU of "questionable behavior,"<sup>31/</sup> claiming that its "legal counsel requested a copy of the non-Oregon MSP NDA from an employee of PacifiCorp,"

---

<sup>28/</sup> Order 17-028, Appen. A at 16; PacifiCorp Response at 9.

<sup>29/</sup> Order 17-028, Appen. A at 9; PacifiCorp Response at 8-9.

<sup>30/</sup> Exh. F.

<sup>31/</sup> PacifiCorp Response at 1.

did not include the Company's legal counsel in this request, and sought different treatment for its legal counsel and Dr. Hellman without explaining why.<sup>32/</sup> Below are the facts in the sequence in which they occurred, none of which is subject to reasonable debate:

- Prior to this year, Jesse Cowell, a partner with Davison Van Cleve ("DVC"), led MSP-related issues for ICNU;
- Mr. Cowell has since left his employment with DVC, on December 15, 2017, and the undersigned counsel has replaced him on MSP-related matters for ICNU;<sup>33/</sup>
- On December 19, 2017, ICNU's counsel received an email from Jeffrey Barrett of PacifiCorp providing certain deliverables from the most recent MSP Workgroup;<sup>34/</sup>
- On January 2, 2018, ICNU's counsel responded to this email asking whether "there [is] a protective order that I need to sign? Additionally, ICNU has retained Marc Hellman to assist it with the MSP process. Same question for him."<sup>35/</sup>
- On the same day, January 2nd, Ted Weston of PacifiCorp responded to this email with "a copy of the MSP non-disclosure agreement, I would appreciate if you and Marc would sign the NDA and email me a PDF of the executed agreement." PacifiCorp's counsel was copied on this email.<sup>36/</sup>
- Also on the same day, January 2nd, PacifiCorp's counsel responded to Mr. Weston's email asking whether ICNU's counsel had filed an appearance in UM 1050 and stating that said counsel would need to execute the protective order in that docket.<sup>37/</sup>
- On January 3rd, ICNU's counsel responded to PacifiCorp's counsel indicating that he had appeared in UM 1050 and would file a protective order signature page.<sup>38/</sup> This email also included the signed NDAs for ICNU's counsel and Dr. Hellman. ICNU's counsel filed the requested signatory page on the same day.<sup>39/</sup>

---

<sup>32/</sup> PacifiCorp Response at 10.

<sup>33/</sup> UM 1050, ICNU's Request to Change the Service List, Removing Jesse Cowell and adding Tyler Pepple (Dec. 15, 2017).

<sup>34/</sup> ICNU Motion, Exh. B.

<sup>35/</sup> Id.

<sup>36/</sup> Id., Exh. C at 1.

<sup>37/</sup> Exh. G.

<sup>38/</sup> Id.

<sup>39/</sup> UM 1050, ICNU's Signatory Page related to Protective Order No. 15-416 (Jan. 3, 2018).

- On January 17th at 3:00 pm, Dr. Hellman participated in a conference call with the MSP parties to prepare for the Commissioner Forum scheduled for January 26th. Dr. Hellman clearly identified himself as representing ICNU on that call.<sup>40/</sup>
- On the same day, January 17th, at 3:49 pm, PacifiCorp’s counsel emailed ICNU’s counsel stating that PacifiCorp “does not consent to Marc Hellman receiving confidential information” in the MSP process.<sup>41/</sup>
- Since receiving this email, Dr. Hellman has not represented ICNU in any MSP processes, including the January 25th and 26th Workgroup meetings or the January 26th Commissioner Forum. ICNU has also not provided any confidential information to Dr. Hellman produced in the MSP process.<sup>42/</sup>

Contrary, therefore, to PacifiCorp’s suggestions that ICNU’s counsel deliberately circumvented PacifiCorp’s counsel in order to acquire a non-Oregon MSP NDA from an unsuspecting PacifiCorp employee, ICNU’s counsel responded to an email from PacifiCorp related to the MSP and asked whether there was “a *protective order* that I need to sign?”<sup>43/</sup> ICNU’s counsel was wholly unaware of the existence of what PacifiCorp claims is a “non-Oregon MSP NDA” until *PacifiCorp* provided it and requested that counsel for ICNU and Dr. Hellman both sign it.<sup>44/</sup> When PacifiCorp did provide its “non-Oregon MSP NDA,” its counsel was copied on the email and, therefore, cannot claim to have been ignorant of the situation from this time on.

Nevertheless, its counsel’s first response was to request that ICNU’s *counsel* execute the protective order in this docket while saying nothing about Dr. Hellman.<sup>45/</sup> ICNU’s counsel then responded that “we will get the [protective order] filed today” and provided the

---

<sup>40/</sup> Exh. F.

<sup>41/</sup> ICNU Motion, Exh. E.

<sup>42/</sup> Exh. F.

<sup>43/</sup> ICNU Motion, Exh. B (emphasis added).

<sup>44/</sup> The NDA is styled as a letter agreement and nowhere indicates that it is “non-Oregon.” ICNU Motion, Exh. D.

<sup>45/</sup> Exh. G.

executed NDAs for Dr. Hellman and ICNU's counsel at the same time.<sup>46/</sup> Consequently, ICNU's counsel is currently covered under both the NDA and the UM 1050 Protective Order. ICNU did not consider it to be necessary to have Dr. Hellman sign the UM 1050 protective order both because PacifiCorp had not requested it and because it had retained Dr. Hellman at that time only to participate in the MSP Workgroup process which, again, is not part of the UM 1050 contested case process. Hence, the "different treatment" of Dr. Hellman and ICNU's counsel under the various confidentiality agreements was a direct result of PacifiCorp's own actions; PacifiCorp explicitly requested that counsel and Dr. Hellman sign the NDA and only requested that counsel sign the UM 1050 protective order. ICNU never "sought" this differing treatment. It was only attempting to comply with the Company's own requests. This includes keeping Dr. Hellman out of the MSP Workgroup process once the Company unequivocally expressed its opposition to his participation.

PacifiCorp's other allegations of misconduct and "inconsistencies" are similarly baseless. The Company notes that "Exhibit B to the Motion indicates that ICNU had already retained Dr. Hellman before requesting the non-Oregon MSP NDA. Dr. Hellman's affidavit, however, states that he was not retained until January 15, 2018."<sup>47/</sup> The difference in dates here is simply due to the fact that Dr. Hellman did not execute a retainer agreement formalizing his representation for ICNU in the MSP process until January 15th, but the two parties had agreed in principle to his representation before then. Dr. Hellman has also prepared a supplemental affidavit, attached to this Reply as Exhibit F, to more fully explain his role in the MSP process

---

<sup>46/</sup> Id.  
<sup>47/</sup> PacifiCorp Response at 10.

while he was employed with Staff. It also shows that Dr. Hellman has fully terminated his role with Staff at this time, including on the limited basis to provide Staff training.

### III. CONCLUSION

For the foregoing reasons, ICNU continues to request that the Commission find that Dr. Hellman may represent ICNU, and receive confidential information, in the MSP Workgroup meetings. ICNU is prepared to file a protective order in this docket for Dr. Hellman if the Commission finds this is necessary for him to receive confidential information in the MSP Workgroups and only requests clarification that doing so will not result in Dr. Hellman's "appearance" for ICNU in UM 1050 under OAR 860-001-0330. ICNU withdraws its additional request for Dr. Hellman to appear as a witness for it in UM 1050 at this time, but reserves its right to reassert this request later. Finally, ICNU also requests that the Commission deny PacifiCorp's baseless request for an investigation into whether ICNU's intervenor funding should be terminated under the MSP IFA.

Dated this 20th day of February, 2018.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242

tcp@dvclaw.com

Of Attorneys for the Industrial Customers of  
Northwest Utilities

Feb 20 18, 03:40p

p.1

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

In the Matter of	)	
PACIFICORP, dba PACIFIC POWER	)	AFFIDAVIT OF DR. MARC M. HELLMAN
Request to Initiate an Investigation of Multi- Jurisdictional Issues and Approve an Inter- Jurisdictional Cost Allocation Protocol.	)	

I, Marc M. Hellman, declare as follows:

1. During my term at the Public Utility Commission of Oregon, since roughly 2003, I represented PUC Staff at various PacifiCorp's multi-state protocol ("MSP") meetings, managed Staff assigned to analyze allocation alternatives, as well as testified on behalf of Staff in contested case dockets. I last testified on behalf of Staff in UM 1050 in 2004. I also led Staff negotiations that led to the Revised Protocol, 2010 Protocol and 2017 Protocol.
2. After my role as Administrator of Energy Rates, Finance and Audit ended, but while I acted as an advisor to Staff, from October 2017 through December 2017, I no longer performed my role as leading the Staff MSP team, including as representative and negotiator for Staff. I also ended attending on behalf of Staff any PacifiCorp MSP Workgroups. I have not attended any MSP Workgroup or Commissioners' Forum for any party since at least September 2017.
3. During my brief time at the PUC in January 2018, I had no role in advising and discussing PacifiCorp allocations issues and did not discuss these issues with any other PUC Staff or attorneys.



Feb 20 18, 03:41p

p.2

4. I resigned from the PUC effective January 30, 2018, and I do not expect to be reemployed by the PUC at any time in the future.
5. Since being retained to represent ICNU on MSP-related matters, I have attended only one conference call with other MSP parties, on January 17, 2018, to discuss and prepare for the Commissioner Forum on January 26, 2017. I announced myself as representing ICNU on that call. I did not attend the Commissioner Forum or the Workgroups on January 25th and 26th. I have not received any confidential information related to the MSP since my engagement for ICNU began.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

SIGNED this 20<sup>th</sup> day of February 2018.

  
DR. MARC M. HELLMAN

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of ~~January~~ <sup>February</sup> 2018.

  
Notary Public for Oregon  
My Commission Expires: 10/03/2020



**Tyler C. Pepple**

---

**From:** Tyler C. Pepple  
**Sent:** Wednesday, January 03, 2018 8:36 AM  
**To:** 'McVee, Matthew'; Weston, Ted  
**Cc:** Barrett, Jeffrey  
**Subject:** RE: MSP NDA  
**Attachments:** MSP NDA (TCP & MH).pdf

Thanks Matt. I've filed an appearance in UM 1050 and we will get the PO filed today. Attached are also the signed NDAs for Marc Hellman and me.

Tyler

**Tyler C. Pepple | Attorney**  
Davison Van Cleve PC  
333 SW Taylor St., Ste. 400  
Portland, OR 97204  
Office: 503.241.7242 | Cell: 410.371.1837  
Fax: 503.241.8160  
[E-mail](#) | [Web Site](#) | [Bio](#)



DAVISON VAN CLEVE

The message (including attachments) is confidential, may be attorney/client privileged, may constitute inside information and is intended for the use of the addressee. Unauthorized use, disclosure, or copying is prohibited and may be unlawful. If you believe you have received this communication in error, please delete it and call or email the sender immediately. Thank you.

---

**From:** McVee, Matthew [mailto:Matthew.McVee@pacificorp.com]  
**Sent:** Tuesday, January 02, 2018 1:05 PM  
**To:** Weston, Ted <Ted.Weston@pacificorp.com>; Tyler C. Pepple <tcp@dvclaw.com>  
**Cc:** Barrett, Jeffrey <Jeffrey.Barrett@pacificorp.com>  
**Subject:** RE: MSP NDA

Tyler - have you filed an appearance on UM 1050? You will need to execute that Protective Order.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** "Weston, Ted"  
**Date:** 01/02/2018 10:19 AM (GMT-07:00)  
**To:** [tcp@dvclaw.com](mailto:tcp@dvclaw.com)  
**Cc:** "Barrett, Jeffrey" , "McVee, Matthew"  
**Subject:** MSP NDA

Tyler,  
Attached is a copy of the MSP non-disclosure agreement, I would appreciate if you and Marc would sign the NDA and email me a PDF of the executed agreement.

Thank you

Ted Weston  
Rocky Mountain Power  
Idaho Regulatory Affairs Manager  
Work - 801.220.2963  
Cell – 801.230.9869  
[ted.weston@pacificorp.com](mailto:ted.weston@pacificorp.com)