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## *Via Electronic Filing*

Chair Lisa Hardie  
Commissioner Stephen Bloom  
Commissioner Megan Decker  
Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, Oregon 97301-3398

Re: PUBLIC UTILITY COMMISSION OF OREGON,  
Investigation into PacifiCorp, dba PACIFIC POWER's  
Oregon Specific Cost Allocation Issues.  
**Docket No. UM 1824**

Dear Commissioners:

The Industrial Customers of Northwest Utilities (“ICNU”) files this letter to comment on Public Utility Commission of Oregon (“OPUC” or “Commission”) Staff’s Report in this docket. More specifically, as Staff anticipated, these written comments are offered to set forth ICNU’s position on the UM 1824 issues addressed therein.<sup>1/</sup> In short, ICNU largely agrees with many of the assessments made by Staff, including Staff’s overall recommendation that issues raised by PacifiCorp (or the “Company”) “be considered in 2018, and in the context of substantive cost allocation proposals.”<sup>2/</sup>

ICNU found the most recent UM 1824 workshop to be constructive, held on October 27, 2017, with all parties in attendance participating actively and in good faith. In this sense, parties were able to meaningfully consider and discuss the various issues raised by PacifiCorp “now,” as contemplated by Administrative Law Judge (“ALJ”) Rowe.<sup>3/</sup> Nevertheless, such discussion seemed to reveal, from ICNU’s perspective, that the Company and other parties primarily agreed that they might be in fundamental *disagreement* on the substance of issues raised by PacifiCorp. In other words, the further need for substantive legal briefing and

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<sup>1/</sup> Staff’s Report at 2 (Nov. 1, 2017).

<sup>2/</sup> Id. at 1.

<sup>3/</sup> Scheduling Memorandum at 2 (Oct. 11, 2017).

adjudication on UM 1824 issues by the Commission “later,” as also contemplated by both ALJ Rowe and the Commission,<sup>4/</sup> appeared to be accepted as highly probable by all parties.

For example, parties were directed to discuss PacifiCorp’s suggestion “that any recommended allocation methodology for Oregon, if proposed, should include a thorough discussion of the impact of Senate Bill 1547.”<sup>5/</sup> In the “now” at the recent workshop, parties seemed in full agreement that certain provisions of Senate Bill (“SB”) 1547 would need to be interpreted and given practical application by the Commission, in relation to future Oregon cost allocation, and particularly in regard to the future evaluation of prudence associated with a bevy of coal-related investments. Parties seemed to equally agree, however, that resolution and certainty would necessitate legal briefing first—an endeavor plainly suited for a potential contested case setting in 2018.

Likewise, pursuant to issues raised by the Company, ALJ Rowe directed parties to “... address any legal impediment to a proposed allocation methodology.”<sup>6/</sup> In the “now” at the workshop, parties had a lively discussion on whether various law may create future legal impediments to the establishment of any potential cost allocation methodology which might be proposed by parties. From ICNU’s perspective, this discussion was fruitful in understanding some of the positions that the Company and other parties may be concerned about in a contested case. That said, the only certainty appeared to be the probability of strong disagreement on the interpretation and application of OPUC precedent, and possibly even federal precedent and U.S. Constitutional provisions. Moreover, as ICNU had suggested, eventual determination on whether actual impediments exist could depend entirely on the specifics of an allocation methodology proposed. Therefore, the appropriate forum to fully address such issues would necessarily be “later,” in a 2018 contested case setting.

For these reasons, ICNU believes that Staff is correct in recommending that UM 1824 issues should not only be considered in 2018, but specifically “in the context of substantive cost allocation proposals.”<sup>7/</sup> As Staff noted, ICNU has also been active in developing potential alternative allocation methodologies,<sup>8/</sup> which are intended to be “consistent with cost-causation principles that are reasonable for Oregon customers,” as the Commission contemplated when opening UM 1824.<sup>9/</sup> In addition to specific methodologies Staff and ICNU (and potentially other non-Company parties) may propose, ICNU would expect that the Company may also present its own preferred methodology in a contested case proceeding in 2018. Thus, the end result—a Commission decision rendered “in the context of substantive cost allocation proposals”—would ensure that principles established were developed not in the abstract, but with proper consideration of real world facts and applicable law.

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<sup>4/</sup> Id.; Docket No. UM 1050, Order No. 17-124 at 4 (Mar. 29, 2017) (anticipating that “this investigation may likely require contested case proceedings to develop an evidentiary record for final Commission action”).

<sup>5/</sup> Scheduling Memorandum at 1.

<sup>6/</sup> Id. Comments on this point would essentially apply also to the third PacifiCorp issue parties were directed to discuss—i.e., “whether the proposal complies with Commission precedent and would result in just and reasonable rates.” Id.

<sup>7/</sup> Staff’s Report at 1. See also id. at 3-4.

<sup>8/</sup> Id. at 3.

<sup>9/</sup> Order No. 17-124 at 4.

If ICNU and Staff vary on any point, then it would likely be as to “... Staff’s objective that its proposal go beyond simply addressing a ‘long-term *Oregon* ... resolution of these key underlying issues,’ and will instead be found to be just and reasonable on a fair-minded, objective basis before all of the states’ commissions.”<sup>10/</sup> While Staff’s goal is laudable, it seems to overlook a primary need for the Commission’s creation of an independent Oregon-specific proceeding, parallel to the Multi-State Process (“MSP”): “we underscore that Oregon retains *significant differences of opinion* with the other three states as to several key allocation issues, such as the use of a rolled-in method of inter-jurisdictional allocation.”<sup>11/</sup> That is, if agreement on “just and reasonable” and “fair-minded” interjurisdictional allocation methodology were as readily achieved across all states as Staff’s statement might suggest, then UM 1824 process would have been unnecessary in the first place. Yet, ICNU cannot so easily dismiss the “significant differences of opinion” which exist between Oregon and “rolled-in” states.

Ultimately, ICNU agrees that the Commission was right to open this proceeding with the expectation and intention of UM 1824 culminating in “... a long-term Oregon resolution of these key underlying issues.”<sup>12/</sup> If other states later reverse course and find an approach other than the “rolled-in method” produces just and reasonable results, on an “objective basis,” then ICNU would be the first to applaud Staff for developing such an approach. But, an “objective basis” to each state may depend upon the statute and precedent of that state, which will inevitably vary. Accordingly, the quest for an approach in UM 1824 which may be approved by all states may not be the best use of the Commission’s and parties’ limited time and resources, as perfectly illustrated by well-known contention over SB 1547 requirements among various states.

Finally, Staff notes the Company’s questions and concerns about how contested case process in UM 1824 should interact with MSP negotiation in 2018.<sup>13/</sup> Like Staff, ICNU “understands PacifiCorp’s concern,”<sup>14/</sup> although ICNU does not foresee any sufficiently considerable difficulties which would weigh against continuing to run UM 1824 in parallel with the MSP. For instance, contested case process in UM 1824 could be suspended if MSP negotiation was deemed promising by Oregon participants in 2018, much like proceedings are customarily held in abeyance while parties pursue potential settlements. Conversely, ICNU sees tremendous benefit in attempting to develop Oregon-specific allocation methodologies in parallel with the MSP, should MSP negotiation be deemed unpromising or other states emerge as hostile to reasonable Oregon outcomes—thereby necessitating the “long-term Oregon resolution” that UM 1824 is designed to secure.

ICNU commends parties for collaborative efforts in UM 1824 so far, especially as very significant potential differences in perspective and interpretation have already been acknowledged, and are anticipated in any future proceedings. In this light, ICNU is optimistic that contested case process in 2018 would be conducted fruitfully and help the Commission

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<sup>10/</sup> Staff’s Report at 4.

<sup>11/</sup> Order No. 17-124 at 5 (emphasis added).

<sup>12/</sup> Id.

<sup>13/</sup> Staff’s Report at 4.

<sup>14/</sup> Id.

achieve its original goal of developing a long-term Oregon resolution to interjurisdictional cost allocation for PacifiCorp and its Oregon customers.

Sincerely,

/s/ Jesse E. Cowell

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