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December 19, 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 Reply Comments of the Industrial Customers of Northwest Utilities ("ICNU") and the Reply 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 OREGON, Investigation into the Treatment of New Facility Direct Access Load.	)))))))	REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

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

II. COMMENTS

Dr. Fitch-Fleischmann responds to the majority of issues raised by other parties in their opening comments. These comments are limited to addressing a single issue supported by Portland General Electric Company, PacifiCorp, and the Citizens' Utility Board – that a reduced or eliminated transition charge should apply only to new loads committing to purchase "green" energy.[1/]

[1/] PacifiCorp Opening Comments at 8; PGE Opening Comments at 11; CUB Opening Comments at 6.

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As Staff notes, the direct access law does not limit an electricity service supplier's resource choices.[2] Those resource choices are constrained only by the obligation to comply with the renewable portfolio standard.[3] Furthermore, under the current law, providing certain customers with economic benefits through reduced or eliminated transition charges based on the type of energy they commit to consume when on direct access would constitute unlawful discrimination and unduly preferential rates or services.

ORS § 757.310 prohibits a utility from charging different rates for "a like and contemporaneous service under substantially similar circumstances." And ORS § 757.325 prohibits utilities from giving any "undue or unreasonable preference or advantage" to one customer over another. The Commission has found that it may "permit rates tailored to the need of individual customers – again, so long as there is a *reasonable economic justification* for doing so."[4]

ICNU argued in its opening brief in this docket that exempting new loads from transition charges would not result in rate discrimination or an undue preference *relative to existing loads*. That is because there is a "reasonable economic justification" for distinguishing between these types of customers. Transition charges are designed to ensure that a customer electing direct access does not harm remaining customers by requiring them to assume greater fixed system costs. A customer for whom the utility has already invested in resources to serve (i.e., an existing load) would impose costs on other customers if it transitions to direct access that

[2] Staff Opening Comments at 14.
[3] ORS 469A.065.
[4] Re Portland General Electric Company, Docket Nos. UE 101/DR 20, Order No. 97-408, 1997 WL 913205 at *5-*6 (Oct. 17, 1997) (emphasis added).

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a customer the utility has not planned for would not.

That circumstance is fundamentally different from imposing different transition charges on customers solely based on the type of energy they commit to purchase. A customer that leaves for direct access and commits to purchase 100% green energy will impose exactly the same costs on the system as a customer who does not commit to purchase 100% green energy. The regulated rate a customer pays in the form of a transition charge is wholly unrelated to that customer's choice of energy products once on direct access.

In other words, regardless of a customer's energy choices on direct access, the transition charge a customer pays is always for a "like or contemporaneous service" – it is to pay for the utility's fixed costs to the extent necessary to hold other customers harmless. The customer's choice of energy products does not alone provide a basis for charging that customer a different transition charge.

Exempting certain customers from transition charges based on their choice of energy, therefore, lacks any economic justification, and is therefore discriminatory. Further, it will either unduly prefer customers who select 100% green energy by allowing them to shift costs to remaining customers by not paying transition charges they otherwise should, or it will unduly prejudice customers who do not select 100% green energy by requiring them to subsidize remaining customers by paying transition charges that are unnecessary to hold them harmless.

PGE and PacifiCorp are correct that SB 979 would have limited reduced transition charges to customers who committed to purchasing renewable energy. But SB 979 did not pass. ICNU does not dispute the *legislature's* authority to eliminate transition charges only for customers who commit to purchase renewable energy, but until that time, the Commission

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must act within its existing statutory authority.[5/] That authority expressly precludes rate discrimination and undue preferences.

As other parties have noted, expansion of Oregon's direct access program can only increase green energy purchases.[6/] Energy service suppliers are required to comply with the RPS to the same extent as PGE and PacifiCorp, and customers have the option on direct access to go even further. No doubt many will, but requiring them to do so is not only unnecessary to further Oregon's environmental goals, it is illegal under current law.

Dated this 19th day of December, 2017.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

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[5/] Gearhart v. Public Utility Comm'n of Oregon, 356 Or. 216, 231-32 (2014) ("The powers and duties of the PUC … are limited to those expressly authorized or necessarily implied by statute").
[6/] Comments of B. Fitch-Fleischmann for ICNU at 6; Comments of Calpine Energy Solutions at 9.

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December 19, 2017

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

I. Introduction

Based on the parties' opening comments in this docket, the Industrial Customers of Northwest Utilities ("ICNU") maintains its recommendation that the Commission establish a rebuttable presumption that a utility has not planned to serve new loads of 10 average MW ("aMW") or larger, including increases of this size to existing facilities. ICNU's proposed size threshold is supported by the opening comments of PacifiCorp, NIPPC, and Calpine (and consistent with the range suggested by Vitesse).

As stated by ICNU and other parties in their opening comments, the central issue when determining transition charges for customers that elect to use direct access lies in determining whether a utility (1) has and (2) should have incurred costs to serve the load in question. ICNU is concerned that the utilities' opening comments are silent regarding the second of these points and instead treat the planning process as if it is set in stone. In these comments, I elaborate on this point and address several issues raised by other parties in opening comments.

ICNU maintains that if a utility has not incurred costs in anticipation of serving a future load that subsequently elects direct access, or if the utility incurred such costs when it was not reasonable to do so, then there is no basis for assigning transition charges and to do so would constitute unwarranted cost shifting and would be likely to hinder economic development in Oregon. In the case of large new sources of load, it is both unlikely that the utility will have incurred costs specifically to serve that load and it is straightforward for the utility to update its planning processes to ensure that it does not incur costs to serve such a load if conditions, including Commission policy, deem it appropriate.

Determining whether a utility has incurred costs in anticipation of serving a particular new load is not straightforward, largely because a utility's decisions about generation resources are based on aggregate system loads (as is appropriate given the economies of scale underlying current technologies). Fortunately, there are parameters by which the Commission may establish simple thresholds or timeframes to serve as clear signals to utilities and (potential) customers. These thresholds will also facilitate the determination of appropriate transitions charges, provide clarity for utility planning processes, and protect existing utility customers. Namely, these parameters include restrictions on the size and timing of a new load's eligibility to use direct access without transition charges.

II. The Commission should use clear eligibility requirements to provide transparency to customers and to give clear direction to utilities to adjust their planning processes.

In its opening comments, PacifiCorp also proposes a threshold size of 10 aMW for new loads that may pay a reduced or no transition charge. The utility also proposes a six-factor "balancing test" that would be fully within its control to implement. ICNU commends PacifiCorp for putting forth a proposal for other parties to respond to.

PacifiCorp's agreement on a 10 aMW threshold demonstrates that NIPPC's proposed alternative eligibility threshold of a 20% increase above the highest two-month period of use during the prior three years is unnecessary. This alternative requirement could penalize customers who are adding new facilities to very large existing loads without any indication that it is necessary to ensure a utility has not planned for this increase.

While ICNU agrees with PacifiCorp on the threshold amount, ICNU does not support PacifiCorp's proposed balancing test because it is ambiguous, leaves too much discretion in the hands of the utility, and demands a degree of certainty from load forecasts that is simply not possible to achieve. A rebuttable presumption that a 10 aMW load increase should be eligible for reduced or eliminated transition charges is a better tool for the Commission because it still allows the utility the opportunity, if it believes it is appropriate, to demonstrate that it did in fact reasonably incur costs in planning for a particular load increase without the Commission ceding all authority to the utility on this issue.

PacifiCorp's proposed "test" is in fact only a list of factors that it proposes to consider; it does not actually describe what would be "balanced" or the conditions that would determine eligibility. This ambiguity would make it difficult for potential customers to make important operational decisions, which in turn would make it more difficult for the utility to forecast whether the customer's load will ultimately become the utility's responsibility. Whereas planning, transparency and clarity are beneficial to all involved, ambiguity is harmful and adds uncertainty. Furthermore, to force customers' possible choices to be an outcome of the utility planning process would be completely backwards and antithetical to the Commission's directive to remove barriers to a competitive retail market. Utility planning processes should be responsive to and reflective of customers' likely actions, and they should not be used to constrain customer choice.

If the Commission establishes a policy that allows new loads over a certain size to use direct access with reduced transition charges, utilities should adjust their load forecasts downward by an estimate of the portion of new customers and new load that they forecast will make this choice. In other words, utilities should continue to plan for incremental load growth among existing customers, growth driven by new customers of typical size, and a portion of (rather than all) potentially large discrete increases in load. While this introduces an additional estimate into the forecasting methodology (i.e., the portion of large increases to load that will elect direct access), it should not be construed as introducing much complication. Adding one ingredient to a dish need not complicate the recipe. In this case, allowing new customers the option of direct access will *reduce* the probability of additions to utility load and therefore *reduce* the likelihood that utilities will need to acquire additional generation resources.

III. The determination of whether a utility has incurred costs to serve a particular load increase should not be based on a comparison of a utility's load with its load forecast.

The margin of error contained in utility forecasting processes is large. For example, PGE's most recent IRP considers load growth scenarios that differ by as much as 275 MW as early as 2018[1/], and PacifiCorp's 2017 IRP considers a range of load growth scenarios that differ by over 400 MW as early as 2018.[2/] Utilities should be expected to incur costs to get within a manageable margin of error of expected future loads, and then meet shorter-term fluctuations in load through operational and contracting actions, which do not require additional fixed costs that would require recovery from direct access customers. Forecasts should in no way be viewed as bright lines that offer a precise target or a precise threshold for comparisons.

If a new load's eligibility for direct access were to be determined by a comparison of the utility's load with its forecast, as proposed by the utilities, it would be inconsistent with the principles of cost-causation and would pin the burden of all possible sources of planning error on potential direct access participants. Many factors determine a utility's load and under the utilities' proposal the new load's eligibility could very well depend on the weather, even though today's weather clearly cannot change the costs already incurred by a utility one year or even one month ago. It can, however, change whether the addition of new load would bump the utility above its forecast, but to make this the basis of direct access eligibility would be inconsistent with the principle that transition charges should be based on costs incurred by the utility. It would also create a problem of circular causation for the forecast: the load forecast would depend on the probability of new loads, which depends on the probability a new customer will use direct access, which depends on the customer's eligibility, which the utilities propose should depend on the forecast. In this scenario, a high forecast would decrease eligibility for direct access, which would then increase the utility's load. The reverse would hold for low forecasts. ICNU recommends that the Commission find more solid ground for establishing eligibility criteria.

Moreover, to base a new load's eligibility for direct access on the utility's forecast would create further incentives for the utility to manipulate or "game" its forecast and thereby capture customers. ICNU is sympathetic to concerns that customers could potentially "game" their eligibility by temporarily shutting down operations to later appear as a new load. However, consistency requires concern for all potential sources of gaming, and a utility could manipulate its forecast far more easily, and with less cost, than a customer could manipulate its electricity usage. For all of these reasons, ICNU recommends against conditioning eligibility for direct access on a comparison with the utility's forecast.

IV. ICNU agrees that the costs to a utility of serving as provider of last resort for direct access customers may need to be included in reduced transition charges.

To the extent that direct access customers' reliance on provider of last resort ("POLR") services from the utility imposes demonstrable costs on cost-of-service ("COS") customers, ICNU does not object to assigning a reduced transition charge that is reflective of such costs. ICNU also supports allowing for flexibility in the obligations that the utility has to serve as POLR for new direct access load. For example, the Commission could allow new direct access load to opt out of receiving POLR services from the utility. Alternatively, a utility could provide POLR services under an agreement in which it buys from the market and only to the extent there is sufficient market availability. The customer could then pay all costs the utility incurs to provide this service, which would presumably leave remaining customers unharmed. This idea is

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1/ See Appendix A to these comments. PGE provided this data in response to an information request from ICNU.

2/ See Appendix B to these comments, or PacifiCorp 2017 IRP, Appendix A, page 19, Figure A.11.

already reflected in PacifiCorp's current system for emergency-default service, in which a direct access customer who returns to the utility before the appropriate notice period has elapsed pays prices based on market rates (plus a premium).

V. The Commission should be cautious if it is to consider allowing utilities to compete for new direct access loads by offering non-COS rates.

Both PGE and PacifiCorp argue in their opening comments that regulated utilities should be allowed to compete for new direct access load. ICNU does not oppose this position in concept, but is concerned that if utilities are allowed to provide non-COS rates to compete with electric service suppliers (ESSs) for new direct access loads, it will be difficult to ensure that the utilities do not use resources paid for by COS customers in these efforts. If the Commission decides to allow utilities to offer non-COS rates to compete with ESSs, it should establish clear safeguards to ensure that the utility does not misappropriate resources paid for by COS customers in these efforts.

Additionally, the utilities are already in competition with ESSs via their offer of COS rates. If the utilities believe they have the ability to provide non-COS services that customers will prefer over their COS offerings, it raises the question of why the utilities' COS offerings are not already more favorable to customers. Furthermore, the argument that "[p]rohibiting utilities from competing for new customer load would actually provide ESSs with a competitive advantage by entirely eliminating a market participant"[3] does not make sense. Regulated utilities are not allowed to compete in insurance markets, but there is no concern that this gives insurance companies a competitive advantage. The introduction of a regulated monopoly into an otherwise competitive market is far likelier to distort that market than contribute to its competitiveness.

VI. If the Commission chooses to cap the amount of new load eligible for direct access with reduced transition charges, these caps should be independent of the caps for direct access eligibility for existing loads.

The utilities' justification for the caps on their current direct access programs was that they were concerned that excessive migration of load 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 for new loads. Therefore, ICNU disputes that any cap is necessary for new loads. However, if the Commission wishes to restrict the amount of new load that may go straight to direct access with reduced transition charges, ICNU recommends that these caps be incremental to the existing caps and that they be large enough to ensure that major new loads that would deliver significant economic benefits to Oregon by locating here would be eligible to participate. ICNU recommends a cap of 400 aMW, if a cap is to be imposed at all, and that this cap be revisited as the Commission gains experience with this program.

VII. Conclusion

Utilities control their planning processes and can adjust them in the face of new evidence that large additions to their load will become less likely, and this is true regardless of what causes this likelihood to fall. Assigning "transition" charges to new load that wishes to use direct access should only be done in the

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3/ PacifiCorp Opening Comments at 9.

face of clear evidence that the utility *has and should have* incurred costs in anticipation of serving this load. Otherwise, there is no basis for such charges. Allowing new loads to take direct access with transition charges no greater than truly reflective of the costs the utility must incur for these loads is consistent with cost-causation principles and with the Commission's duty to "eliminate barriers to the development of a competitive retail market structure" and "mitigate the vertical and horizontal market power of incumbent electric companies."[4]

Thank you for the opportunity to provide these comments.

Sincerely,

/s/ Ben Fitch-Fleischmann

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4/ ORS 757.646(1)

APPENDIX A – LOAD FORECAST SCENARIOS FROM PGE 2016 IRP

In response to an informational request from ICNU, Portland General Electric provided the data in columns A through E below.

A	B	C	D	E	F		H	I
PGE 2016 IRP Peak Demand Forecast Scenarios								
year	base	high	low	high2	low2		Range	high - low
2016	3,529	3,529	3,529	3,529	3,529		0	0
2017	3,652	3,594	3,506	3,639	3,462		190	88
2018	3,659	3,629	3,486	3,701	3,426		275	143
2019	3,674	3,671	3,473	3,773	3,378		395	198
2020	3,677	3,723	3,469	3,854	3,338		516	253
2021	3,730	3,784	3,481	3,946	3,338		608	303
2022	3,763	3,846	3,484	4,039	3,310		729	362
2023	3,796	3,909	3,488	4,134	3,293		841	421
2024	3,830	3,972	3,501	4,231	3,278		952	471
2025	3,865	4,037	3,499	4,329	3,264		1,065	538
2026	3,900	4,102	3,513	4,429	3,249		1,180	589
2027	3,936	4,168	3,528	4,530	3,234		1,297	640
2028	3,973	4,235	3,543	4,634	3,218		1,416	692
2029	4,010	4,303	3,559	4,739	3,202		1,537	744
2030	4,048	4,371	3,575	4,847	3,186		1,660	796
2031	4,086	4,441	3,592	4,956	3,172		1,784	849
2032	4,125	4,511	3,609	5,067	3,161		1,906	903
2033	4,165	4,583	3,627	5,181	3,150		2,030	956
2034	4,205	4,655	3,645	5,296	3,139		2,157	1,010
2035	4,247	4,728	3,663	5,413	3,129		2,285	1,065
2036	4,296	4,803	3,683	5,533	3,118		2,416	1,120
2037	4,347	4,878	3,703	5,655	3,107		2,548	1,175
2038	4,399	4,954	3,723	5,780	3,096		2,683	1,231
2039	4,451	5,032	3,744	5,906	3,085		2,821	1,288
2040	4,505	5,110	3,766	6,035	3,075		2,961	1,345
2041	4,560	5,190	3,788	6,167	3,064		3,103	1,402
2042	4,615	5,270	3,811	6,301	3,054		3,248	1,460
2043	4,672	5,352	3,834	6,438	3,043		3,395	1,518
2044	4,730	5,435	3,859	6,578	3,033		3,545	1,576
2045	4,788	5,519	3,883	6,720	3,022		3,698	1,636
2046	4,848	5,605	3,912	6,865	3,012		3,853	1,694
2047	4,909	5,696	3,941	7,014	3,002		4,012	1,755
2048	4,972	5,788	3,971	7,165	2,992		4,173	1,817
2049	5,035	5,882	4,002	7,319	2,982		4,337	1,880
2050	5,100	5,976	4,034	7,477	2,972		4,505	1,942

APPENDIX B – LOAD FORECAST SCENARIOS FROM PACIFICORP 2017 IRP

In response to an informational request from ICNU, PacifiCorp provided the data in columns A through E below, which underlies Figure A.11 (Appendix A – Load Forecast) of PacifiCorp's 2017 IRP.

A	B	C	D	E		G	H	I
Coincident Peak - Megawatts (MW)*								
	1-in-20 Weather	High	Base Case	Low		Min	Max	**Range**
2017	10,419	10,273	10,130	9,982		9,982	10,419	**437**
2018	10,517	10,412	10,225	10,029		10,029	10,517	**489**
2019	10,606	10,536	10,310	10,069		10,069	10,606	**537**
2020	10,702	10,651	10,403	10,136		10,136	10,702	**565**
2021	10,822	10,800	10,518	10,214		10,214	10,822	**609**
2022	10,931	10,943	10,624	10,291		10,291	10,943	**651**
2023	11,013	11,043	10,706	10,342		10,342	11,043	**701**
2024	11,114	11,164	10,804	10,400		10,400	11,164	**764**
2025	11,232	11,323	10,920	10,494		10,494	11,323	**828**
2026	11,246	11,350	10,931	10,484		10,484	11,350	**866**
2027	11,342	11,459	11,021	10,557		10,557	11,459	**902**
2028	11,417	11,571	11,096	10,597		10,597	11,571	**974**
2029	11,532	11,697	11,207	10,679		10,679	11,697	**1,018**
2030	11,623	11,813	11,295	10,742		10,742	11,813	**1,071**
2031	11,728	11,931	11,397	10,807		10,807	11,931	**1,124**
2032	11,874	12,109	11,536	10,921		10,921	12,109	**1,188**
2033	11,963	12,212	11,622	10,971		10,971	12,212	**1,241**
2034	12,018	12,280	11,677	11,014		11,014	12,280	**1,266**
2035	12,138	12,422	11,793	11,109		11,109	12,422	**1,313**
2036	12,277	12,574	11,925	11,203		11,203	12,574	**1,372**
2037	12,378	12,697	12,026	11,290		11,290	12,697	**1,407**

Figure A.11 – Load Forecast Scenarios for 1-in-20 Weather, High, Base Case and Low, pre-DSM