

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1050

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	OREGON CITIZENS' UTILITY
)	BOARD'S RESPONSE TO THE
Request to Initiate an Investigation of)	MOTION OF THE INDUSTRIAL
Multi-Jurisdictional Issues and Approve an)	CUSTOMERS OF NORTHWEST
Inter-Jurisdictional Cost Allocation)	UTILITIES TO DETERMINE THE
Protocol.)	RIGHTS AND STATUS OF ITS
)	EXPERT CONSULTANT
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0420(4), the Oregon Citizens' Utility Board ("CUB") hereby files its Response to the Motion of the Industrial Customers of Northwest Utilities ("ICNU") to Determine the Rights and Status of its Expert Consultant, Dr. Marc Hellman. CUB respectfully requests that the Administrative Law Judge ("ALJ") grant ICNU's motion, and find that: (1) Dr. Hellman may represent ICNU, and receive confidential information, in the MSP Workgroup meetings; and (2) Dr. Hellman may appear as a witness on behalf of ICNU in the above-referenced docket, pursuant to OAR 860-001-0330(2).¹ CUB agrees with ICNU that Dr. Hellman's extensive knowledge of PacifiCorp's ("the Company") Multi-State Process ("MSP") will benefit both the Public

¹ *In re Request to Initiate an Investigation of Multi-Jurisdictional Issues and Approve an Inter-Jurisdictional Cost Allocation Protocol*, OPUC Docket No. UM 1050, Motion of the Industrial Customers of Northwest Utilities to Determine the Rights and Status of its Expert Consultant at 1 (Jan. 26, 2018) (hereinafter "ICNU Motion.").

Utility Commission of Oregon (“the Commission”) and Oregon ratepayers if allowed to participate in the current broad review work group (“BRWG”) process and in any subsequent contested case or other proceeding.²

II. ARGUMENT

CUB believes that 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. PacifiCorp has prevented Dr. Hellman from viewing confidential information in the scope of the current, non-contested MSP BRWG.³ According to ICNU, this decision appears to be based on one or both of the following: (1) that the MSP BRWG process is a part of UM 1050, and OAR 860-001-0330 prevents Dr. Hellman from appearing on behalf of ICNU in this docket; and (2) Dr. Hellman has a conflict of interest in representing ICNU after having represented Commission Staff in the MSP process.⁴ For the following reasons, CUB disagrees with the Company.

A. OAR 860-001-0330 Does Not Preclude Dr. Hellman’s Participation

Since the current MSP BRWG process is not a contested case proceeding, PacifiCorp’s reliance on OAR 860-001-0330 as the basis to restrict Dr. Hellman’s participation is misguided. OAR 860-001-0330 provides in pertinent part:

- (1) A former Commission employee may not appear on behalf of other parties in contested case or declaratory ruling proceedings in which the former employee took an active part on the Commission’s behalf.
- (2) Except with the Commission’s written permission, a former Commission employee may not appear as a witness on behalf of other parties in contested

² ICNU Motion at 3.

³ ICNU Motion at 3.

⁴ ICNU Motion at 3.

case proceedings in which the former employee took an active part on the Commission's behalf.

Not only is the MSP BRWG process not a contested case⁵, these broad, multi-jurisdictional, informal negotiations do not have any current proceeding before the Commission. The fact that the MSP BRWG process uses the protective order from UM 1050 does not change the nature of the proceeding. The BRWG is a large process with representatives from all six jurisdictions within PacifiCorp's service territory. While these negotiations will inform the Company's proposal for a multi-state cost allocation methodology that will be vetted in a future contested case proceeding, it is not currently a contested case. OAR 860-001-0330 is inapplicable in this instance. Dr. Hellman should be allowed to appear on behalf of ICNU in the MSP BRWG process, and should be granted full access to confidential materials.

B. Policy and Statutory Considerations Dictate that Dr. Hellman May Appear on Behalf of ICNU in this Instance

The Commission should allow Dr. Hellman to participate in full on behalf of ICNU in this proceeding, and should find that he does not have a conflict of interest that would otherwise preclude his involvement. In an issue of first impression, the Commission wrestled with the implementation of OAR 860-012-0010 (now codified as OAR 860-001-0330) in Order No. 01-249.⁶ In those consolidated cases, ICNU sought Commission permission to allow a former Commission employee to appear as an expert

⁵ See ICNU Motion at 5.

⁶ *In re Portland General Electric Company's Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149 (UE 115)*, *In re PacifiCorp's Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149 (UE 116)*, OPUC Dockets No. UE 115 and UE 116, Order No. 01-249 (Mar. 21, 2001).

witness.⁷ While the Commission denied ICNU's request in that case, the motion and circumstances in this case are factually dissimilar.

In its Order No. 01-249, the Commission set out four guiding factors to consider regarding whether or not to allow a former Commission employee to appear as a witness on behalf of another party.⁸ Such a determination "must be made on a case-by-case assessment of all relevant factors."⁹ The Commission declined to identify every possible factor, but noted that it considers: (1) the nature of the former employee's prior role with the agency; (2) the type of proceeding, giving higher scrutiny to formal proceedings; (3) the length of time that has passed since the former employee left the agency; and (4) whether other parties agree to the former employee's appearance.¹⁰ In that case, the Commission denied ICNU's request on the basis that the proposed witness held a substantial role at the Commission, the proceedings were highly contested cases, little time had passed since the witness left the Commission, and parties opposed the witness appearing on behalf of ICNU.¹¹

In this case, Dr. Hellman undoubtedly held a substantial role at the Commission and relatively little time has passed since leaving that role. However, the other two factors, along with additional policy considerations, weigh heavily in favor of the Commission allowing Dr. Hellman to appear on behalf of ICNU. As mentioned, the current MSP BRWG process is not a contested or formal proceeding. At the very least, the Commission should allow Dr. Hellman to participate in these larger negotiations. His experience with PacifiCorp's MSP process is extensive, and his experience will aid the

⁷ Order No. 01-249 at 1

⁸ Order No. 01-249 at 5.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5-6.

Commission in its consideration of any updates or revisions to the current allocation methodology.¹²

Further, his experience will go a long way in benefitting Oregon generally. The MSP BRWG process is a markedly different process than any typical Commission proceeding. Not only are parties scrutinizing and analyzing a Company proposal, we are actively engaging in negotiations and settlement with a broad array of parties from other states. It is in the interest of the Commission and Oregon ratepayers to have as qualified and accomplished team as possible during these negotiations. Oregon parties need to be sure that we are representing the state's ratepayer's interests aggressively and competently as possible in the face of other states' proposals. Dr. Hellman's experience is invaluable to the MSP BRWG process.

Also, in reference to the fourth factor listed in Order No. 01-249, CUB supports Dr. Hellman's participation on behalf of ICNU in the MSP BRWG process and subsequent cases. When it denied ICNU's request in Order No. 01-249, the Commission noted that no party supported ICNU's request for consent to allow a former Commission employee to appear as an ICNU witness. That is not the case here. While the Company may oppose Dr. Hellman's involvement, CUB believes that Dr. Hellman adds great value to Oregon. According to the Commission, this factor "is an important element to consider and one that reflects the perception of fairness of allowing the former employee to appear in the matter."¹³ The MSP BRWG process is not a contested case, and Dr. Hellman's participation on behalf of ICNU will add great value to the Commission and Oregon ratepayers. The Commission should grant ICNU's motion, and allow Dr.

¹² ICNU Motion at 9.

¹³ Order No. 01-249 at 5.

Hellman to represent ICNU, receive confidential information in the MSP BRWG, and allow Dr. Hellman to appear as a witness in UM 1050.

III. CONCLUSION

For the foregoing reasons, CUB respectfully urges the Commission to grant ICNU's motion. The MSP is a unique proceeding with significant implications for Oregon ratepayers. Oregon's ability to effectively negotiate in the MSP BRWG setting requires the presence of skilled and knowledgeable representatives to ensure an equitable outcome for Oregon ratepayers. Dr. Hellman's extensive experience in the MSP setting is invaluable for Oregon customers, and will help develop a sound cost allocation methodology for later Commission review. The Commission should grant ICNU's motion and find that Dr. Hellman is not precluded from representing ICNU in MSP Workgroup meetings, and that Dr. Hellman may appear as a witness in this docket for ICNU.

Dated this 12th day of February, 2018.

Respectfully submitted,



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