

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1837

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	RESPONSE OF NORTHWEST AND
OREGON,)	INTERMOUNTAIN POWER
)	PRODUCERS COALITION
Investigation into the Treatment of New Facility)	
Direct Access Load)	
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I. INTRODUCTION

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) submits this response to the Citizens’ Utility Board of Oregon’s (“**CUB**”) motion to amend the procedural schedule. CUB has requested that the Oregon Public Utility Commission (the “**Commission**”) make a legal determination as soon as possible to provide clarity on the Commission’s legal authority to take any action in this proceeding. CUB has taken the legal position that the Commission does not have the legal authority to reduce or eliminate transition charges for load desiring to take service through direct access that has not previously been served by the incumbent utility. Therefore, CUB’s motion is essentially a substantive proposal for the Commission to close the docket early. NIPPC opposes the Commission prematurely addressing any substantive issues in this proceeding because it is contrary to the procedural schedule previously agreed to by all parties (including CUB), is prejudicial to other parties that relied upon this schedule, would result in the Commission issuing a legal opinion based on an incomplete record, and is unnecessary because the Commission is already scheduled to resolve all issues in this proceeding within three months.

The Commission should be cognizant that the Legislature is observing this docket, and expecting that the Commission quickly take action to remove or eliminate burdensome transition charges from customers that locate their loads at new locations. In the Senate Business and Transportation work session regarding Senate Bill 979, which would have eliminated transition charges for new load that purchase renewable direct access, Committee Chair Senator Lee Beyer

stated that he talked to both the Commission Staff and Commission Chair Hardie and reached the conclusion that the Commission should first be provided an opportunity re-visit direct access.

Senator Beyer explained that since SB 1547 passed, things had:

changed a lot, particularly as you are talking about new load where people [are] coming on and the Commission Chair has assured me that they see that change and want to encourage and be supportive for economic development and of people coming in who are willing to take a look at that and perhaps take a little more supportive look than they have in the past. I think that is good. What I told Commissioner Hardie is that we would let them do their job and if it seemed like they were not going on that way that we would be back in about 8 months and we would take another look at it. So I think the message we want to send to companies that are looking to Oregon as a place to do business and do green power is that we are indeed open for that.

This case should not be prematurely ended before the Commission is provided an opportunity to implement Senator Beyer's expectation.

II. RESPONSE

A. CUB's Proposal Is Inconsistent With the Process CUB Agreed to Use to Resolve All Issues in This Proceeding

The Administrative Law Judge, upon the request of Staff, set an unusual schedule in which the parties would first brief the legal question of whether the Commission has the legal authority to treat new non-residential direct access load differently than its current practice, and if so, whether that authority was subject to any legal parameters under existing law. Then, based upon this framing of the law, the parties would address policy issues regarding whether and how new direct access loads should be treated, including but not limited to what constitutes new load, how utilities can plan to ensure that new load can select direct access without adverse impacts on remaining captive customers, what rates should be paid by load that return to cost-of-service rates (if any), etc. Under the accepted schedule, the Commission only weighs in on the issues after both filings are complete.

CUB agreed to this schedule, and importantly, understood that some parties may reach the conclusion that the Commission does not have the legal authority to treat new loads differently than existing loads, but that all parties would have the opportunity to more fully investigate issues in the both phases of this proceeding. CUB agreed to a process that envisioned that CUB

might have legal concerns about the Commission's ability to impose different transition charges, but that any Commission resolution would occur after the filing of both legal briefs and comments. While it is entirely appropriate for CUB to take its legal position, it is inappropriate for CUB to seek to change a process that it previously agreed upon when there has been no change in circumstances.

B. CUB's Proposal Prejudices Parties that Relied Upon a Two Stage Process

NIPPC relied upon the established schedule to file a limited legal brief on the Commission's generic legal authority, and reserved its detailed arguments regarding specific programs and policy issues for later filing. If NIPPC had understood that it might not be provided an opportunity to submit later comments, then it would have drafted its legal arguments differently and more specifically tailored them to include the policy issues raised in this proceeding.

C. The Commission Lacks Sufficient Information to Resolve the Legal Issues at This Point in This Proceeding

The Commission and the public interest would be harmed by prematurely closing this proceeding. All of the legal arguments in this proceeding address abstract questions of pure law; however, the Commission rarely issues a legal interpretation in the absence of a full factual record, or at least an assumed set of facts or a set of alleged facts. While NIPPC (like all parties other than CUB) believes that the Commission has the legal authority to treat new loads differently than existing loads, if the Commission disagrees then any such order should be made in the context of specific proposals so that the extent and limits of the Commission's legal authority can be better understood. In the end, the Commission's legal conclusions should be based on a full range of recommendations and consideration of all the various policy proposals.

Given the genesis of this proceeding, it is particularly important for the Commission to issue a detailed and specific order, if it concludes that it lacks any legal authority to fully or partially exempt new loads from transition charges. As mentioned above, the Commission opened this investigation upon the request of Senator Beyer, who wanted the Commission to have the first opportunity to the fix problems associated with direct access, particularly in relation to new loads. If the Commission perceives there to be any limitations on the its legal authority, then the Commission needs to clearly and specifically identify such legal and factual boundaries so that

the legislature can amend the law to allow the Commission to be more supportive of direct access and communicate to the world that companies should invest their capital in Oregon because it is open for business.

D. This Case Is Already Scheduled to Be Complete in Less than Three Months

There is no need to issue an interim order regarding the Commission's legal authority because the final order is expected soon. On April 17, 2017, Senator Beyer gave the Commission a short eight-month opportunity to fix the problem of new loads being discouraged from locating in Oregon due to the assessment of large transition charges for service they had never taken and would never take, if forced to pay exit fees. Senator Beyer stated that if the Commission declined to fix direct access for new loads within this eight-month period, then the legislature "would be back in about eight months and we would take another look at it." That eight-month period ends in less than two months, which is in the middle of December and about the time final comments are due. Given this tight schedule, it is simply unreasonable to require the Commission to issue an interim order on the legal issues, in the abstract, and still meet Senator Beyer's timing goal.

III. CONCLUSION

For the reasons explained above, NIPPC opposes CUB's proposal to amend the schedule and for the Commission to issue an order resolving legal issues prior to the completion of final comments.

Dated this 2nd day of November 2017.

Respectfully submitted,



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