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**Cc:** [Richard Lorenz \(rlorenz@cablehuston.com\)](#)  
**Subject:** RE: UM 2011 GENERAL CAPACITY INVESTIGATION - Scheduling Prehearing Conference  
**Date:** Wednesday, January 6, 2021 5:04:11 PM

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Here is David Brown being David Brown again.

The subject of electric utility capacity needs, necessarily tied to resiliency and ratepayer equity in regard to the attendant costs, is a subject for rulemaking. Policy in this area cannot be legally made by a contested case, it must be made by rulemaking under Oregon's Administrative Procedures Act. No doubt on this is possible.

The OPUC and its regulated utilities cannot require rulemaking participants to be approved, to be represented by counsel, to participate in elaborate legal processes in order to participate substantively, or to be sworn and subject to cross examination. For years now the OPUC has conducted "investigations" under the formal process of contested case proceedings, even though PUC history demonstrates this style of proceeding is very expensive, and restricts active public participation in favor of the usual utility-dominated parties. Recent court proceedings cast doubt on whether the outcomes of these "investigations" are even binding on the utility participants.

I recognize that the PUC has latitude to gather background information as it may determine. Perhaps if those information gathering proceedings were called "cheesebread" instead of "contested case" there would be less confusion about the need for judges to issue "rulings" and to suggest "settlements." Instead, the PUC staff could just get on with the process of making cheesebread.

I have objected in the past how frequently PUC rulemaking ends with a formal order at the end of the "cheesebread" process. In clear disregard of the APA and best regulatory process, rulemaking is concluded without actual rulemaking ever starting. (A rubber-stamp clean up process a couple of years later expands the abuse of the APA and does not fix a failure of rulemaking.)

The somber and urgent report made by the PUC two years ago at the end of the legislative-mandated internal review included promises to be more inclusive, to seek more input and participation by the public and members of the public often not heard from, and to eliminate barriers to that participation. The broad subject of regulated utilities keeping the lights on and at what cost and with what effect on ratepayers could hardly be of more urgent importance to rural and low income ratepayers. Find a way to include them.

Instead of waiting four weeks to have an unnecessary conference before an ALJ (who should not

even participate in rulemaking), please redesign UM 2011 to be the open, inclusive and robust policy process that was imagined in the report two years ago.

Thank you for your time.

David

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**From:** TOEWS Kimberly <kimberly.toews@state.or.us>

**Sent:** Tuesday, January 5, 2021 5:16 PM

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**Cc:** TOEWS Kimberly <kimberly.toews@state.or.us>

**Subject:** RE: UM 2011 GENERAL CAPACITY INVESTIGATION - Scheduling Prehearing Conference

Hello,

I was just informed of a conflict with the Judge for **Thursday January 28, or Friday January 29<sup>th</sup>**. Please let me know, if you can attend on **Monday January 25<sup>th</sup>**? I will be out of the office until Monday January 11<sup>th</sup>. I will advise you if we need to move the PHC to the first week of February. Thanks, Kim

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**From:** TOEWS Kimberly

**Sent:** Monday, January 4, 2021 12:17 PM

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**Subject:** UM 2011 GENERAL CAPACITY INVESTIGATION - Scheduling Prehearing Conference

Good Afternoon,

I anticipate scheduling a prehearing conference in these proceedings in the near term. By Monday January 11<sup>th</sup>, I request that interested parties provide availability for a prehearing conference on **Monday January 25<sup>th</sup>, Thursday January 28, or Friday January 29<sup>th</sup>**, or indicate whether they seek to postpone the procedural conference to provide time for settlement discussions. Please indicate if mornings or afternoons, work best for you. The purpose of the prehearing conference will be to establish a procedural schedule.

In advance of the prehearing conference, the ALJ requests that interested parties confer and jointly propose a procedural schedule to the extent possible. For any procedural milestones upon which the parties fail to agree, the ALJ requests that the parties submit individual proposals. All joint or individually proposed procedural schedules should be submitted via email to [kimberly.toews@state.or.us](mailto:kimberly.toews@state.or.us) by Thursday, January 21<sup>st</sup>.

Thank you in advance,

Kim Toews  
Administrative Hearing Division  
**971-239-6340 NEW Work Phone**  
503-510-0017 Cell

**\*\*\*Please use caution when opening links, attachments or responding to this email as it may have originated outside of PUC.\*\*\***