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February 15, 2011

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem, OR 97308-2148

Re: In the Matter of OREGON PUBLIC UTILITY STAFF Requesting the
Commission direct PORTLAND GENERAL ELECTRIC COMPANY to
file tariffs establishing automatic adjustment clauses under the terms of SB
408
Docket No. UE 178 (4)

Dear Filing Center:

The Industrial Customers of Northwest Utilities hereby files this Reply to PGE's
Motion to Strike in the above referenced docket.

Thank you for your assistance, and please do not hesitate to contact our office if
you have any additional questions.

Sincerely yours,

/s/ Sarah A. Kohler
Sarah A. Kohler

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply to PGE’s Motion to Strike on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 15th day of February, 2011.

/s/ Sarah A. Kohler
Sarah A. Kohler

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 178(4)**

In the Matter of)	
)	
OREGON PUBLIC UTILITY STAFF)	
)	ICNU’S RESPONSE TO PGE’S
Requesting the Commission Direct)	MOTION TO STRIKE AND
)	ALERNATIVE MOTION TO FILE
PORTLAND GENERAL ELECTRIC)	RESPONSE TESTIMONY
COMPANY)	
)	
To File Tariffs Establishing Automatic)	
Adjustment Clauses Under the Terms of)	
SB 408.)	
)	

I. INTRODUCTION

Pursuant to OAR § 860-001-0420(5), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response to Portland General Electric Company’s (“PGE”) Motion to Strike the Objections and Testimony of Ellen Blumenthal (“Motion to Strike”), or in the Alternative, File Response Testimony (“Alternative Motion”). As described in its Objections to the Stipulation, ICNU disputes the merits of the Stipulation. The Testimony of Ellen Blumenthal filed in support of the Objections is necessary and permissible for ICNU to provide the factual and evidentiary basis for its Objections to the Stipulation. All portions of ICNU’s Objections and Ms. Blumenthal’s Testimony are within the scope of Re Portland Gen. Elec. Co., Docket No. UE 178(4). Further, these documents were filed in accordance with the

Commission's rules and the Administrative Law Judge's ("ALJ") orders in this docket.

Accordingly, PGE's Motion to Strike should be denied.

ICNU does not object to PGE's Alternative Motion, which would allow PGE to file responsive testimony. In fact, in the event the Commission grants the Alternative Motion, ICNU and PGE have reached agreement on the time for filing the Response Testimony, the turnaround time for data requests and the hearing date.

II. ARGUMENT

Pursuant to the Ruling issued by ALJ Wallace on January 12, 2011, ICNU filed Objections to the Stipulation on February 7, 2011. At the same time, ICNU also filed the Testimony of Ellen Blumenthal in support of its Objections. On February 9, 2011, PGE filed a Motion to Strike the Objections and Testimony of ICNU, or in the Alternative, File Response Testimony, and requested expedited consideration of its Motion.

1. ICNU'S Objections and Testimony Are Within the Scope of the Proceeding

PGE complains that ICNU's Objections and Testimony are outside the scope of this Docket and alleges that ICNU has misrepresented its scope of work to the Commission. Motion to Strike at 2-3. PGE refers to the Commission order rejecting ICNU's initial request for intervenor funding: "The appropriate scope of UE 177(4) and UE 178(4) is to determine whether the tax reports filed by Pacific Power and PGE are in compliance with OAR 860-022-0041." Re PacifiCorp and Re Portland Gen. Elec. Co., Dockets Nos. UE 177(4) and UE 178(4), Order No. 11-002 at 1 (Jan. 5, 2011). ICNU's revised intervenor funding budget, which was approved by the Commission on January 19, 2011 (Order No. 11-023), specifically included responding to the

proposed Stipulation. Through its Objections and Testimony, ICNU is responding to the issues raised in the Issues List and in the Stipulation.

The Stipulation, as well as the Staff Issues List and settlements in other SB 408 cases, puts the treatment of deferred taxes in the rules implementing SB 408 squarely at issue in this proceeding. “Because of the potential ambiguity in the current rule language, Staff has begun a temporary rule-making proceeding to clarify and change this section of the Commission’s administrative rules and make it consistent with the intent of SB 408.” Re Avista, Docket No. UG 171(4), Joint Testimony/200, Bird et al./6-7 (Jan. 31, 2011). Staff raised the potential normalization violation problem for PGE in its Issues List. Re Portland Gen. Elec. Co., Docket No. UE 178(4), Joint Testimony in Support in of Stipulation/105, Bird-Feighner-Tinker/4 (Jan. 14, 2011). Ms. Blumenthal recommends that OAR § 860-022-0041(4)(d) be amended to prevent the adjustments to taxes paid for deferred taxes from exceeding the amount necessary to meet normalization requirements. Re Portland Gen. Elec. Co., Docket No. UE 178(4), ICNU/100, Blumenthal/9 (Feb. 7, 2011). Through its Objections and Testimony, ICNU suggests a remedy for a problem initially identified by Staff. ICNU’s proposed remedy is an alternative to the approach for deferred taxes used in the Stipulation Tax Report.

Taking PGE’s argument to its logical endpoint would allow only PGE, Staff, and CUB to address the proposed rule change as it applies to the Stipulation, and would bar ICNU from providing any comment on this issue. This result would be unfair, and would undermine the purpose of allowing parties to file Objections to the Stipulation. Because ICNU’s Objections and Testimony address issues raised in the Stipulation and in the Issues List, ICNU’s Objections

and Testimony are well within the scope of this Docket. Accordingly, PGE's Motion to Strike should be denied.

2. ICNU'S Objections and Testimony Were Properly Filed

PGE claims that ICNU's Objections and Testimony were unexpected, and not permitted by Commission rules. Motion to Strike at 4. PGE further claims that ICNU failed to file an issues list in December 2010 and that ICNU failed to file testimony on January 13, 2011. Id. at 3. PGE is wrong for several reasons. First, ICNU's decision not to file testimony on January 13, 2011 was appropriate. Second, there are no Commission rules that restrict ICNU's ability to file Testimony in support of its Objections, and ICNU's actions in doing so were procedurally proper. Furthermore, ICNU has filed testimony in support of objections in prior SB 408 cases. Finally, ICNU did, in fact, circulate an Issues List to all parties on December 22, 2010.

On January 11, 2011, Staff filed a Motion to Modify the Schedule because Staff, PGE, and CUB had reached an agreement in principle and intended to file a Stipulation. On January 12, 2011, the procedural schedule in this docket was amended to allow the filing of the Stipulation on January 14, 2011, Testimony in Support of the Stipulation on January 21, 2011, and to allow for Objections to the Stipulation to be filed on February 7, 2011. It would have been a waste of ICNU's resources to file Testimony responsive to PGE's initial filing and then *again* file Objections and Testimony responsive to the Stipulation. In addition, the Stipulation represents a change in PGE's position compared to the original filing; therefore, it was more appropriate to file testimony addressing the Stipulation. ICNU's decision to file Objections and

Testimony responsive to the Stipulation is consistent with the procedural schedule adopted by the ALJ in this proceeding and is entirely reasonable.

The Commission rules allow for the filing of written objections to a Stipulation, and do not prohibit or limit the filing of testimony in support of written objections. OAR § 860-001-0350(8). The Commission rules further provide that written objections may be based on the merits of the stipulation. Id. Objections to the merits of a stipulation require testimony to establish the factual and evidentiary basis in support of the written objections. In a previous SB 408 proceeding, ALJ Hardie ruled: “Because the stipulation is non-unanimous, however, other modifications are appropriate. The schedule should allow the opportunity for a full round of testimony addressing the stipulation, should the parties wish to file such testimony.” Re Portland Gen. Elec. Co., Docket No. UE 178(2), Ruling Modifying Schedule (Feb. 6, 2009). As in UE 178(2), the Stipulation in UE 178(4) is non-unanimous and the parties should have an opportunity to file testimony addressing the Stipulation.

Additionally, ICNU has filed Objections and Testimony in previous SB 408 proceedings. In Re PacifiCorp, Docket No. UE 177(2), ICNU filed Objections to the Stipulation and Testimony in support of its Objections on February 25, 2009. This was accepted by the Commission. In fact, ICNU is unaware of any proceeding in which testimony opposing a stipulation was rejected as procedurally improper.

PGE claims that the filing of ICNU’s Testimony is procedurally defective because the Testimony was not accompanied by “an appropriate formal motion” and because ICNU did not confer with PGE prior to filing the Testimony. Motion to Strike at 4. PGE cites no Commission rule requiring ICNU to obtain permission from PGE to file testimony, nor does

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PGE cite any Commission rule requiring ICNU to file a motion seeking leave to file testimony in a contested case proceeding. Also, the Commission accepted testimony in support of an objection without a motion for leave to file supporting testimony in UE 177(2). ICNU's Objections and Testimony suffer from no procedural defects and PGE's Motion to Strike on this basis should be rejected.

3. If PGE'S Alternative Motion to File Response Testimony is Granted, the Agreed Upon Schedule Should be Adopted

ICNU does not object to PGE's Alternative Motion; however, ICNU objects to PGE's proposed schedule. PGE's proposed date for filing Response Testimony is February 17, 2011, which would allow parties only two business days to prepare for the February 22, 2011 hearing after the Response Testimony is filed. ICNU and PGE have reached agreement on a schedule in the event that PGE's Alternative Motion is granted. If the Commission grants PGE's Alternative Motion, ICNU requests that the Commission adopt the following agreed upon schedule:

Response Testimony	February 18, 2011
ICNU Discovery	February 21, 2011
PGE Responses to ICNU Discovery Related to Response Testimony	February 24, 2011 (noon)
Hearing	February 25, 2011

III. CONCLUSION

For the foregoing reasons, PGE's Motion to Strike the Objections and Testimony of ICNU should be denied. If the Commission grants PGE's Alternative Motion to File Response Testimony, the Commission should adopt the Schedule agreed to by ICNU and PGE.

Dated this 15th day of February, 2011.

Respectfully submitted,

/s/ S. Bradley Van Cleve

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