

July 12, 2004

Via Facsimile, Electronic and U.S. Mail

Ms. Cheryl Walker
Oregon Public Utility Commission
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of Oregon Electric Utility Company, LLC, et al., Application for
Authorization to Acquire Portland General Electric Company
Docket No. UM 1121

Dear Ms. Walker:

Enclosed please find an original and six (6) copies of the Letter to ALJ Logan regarding the Joint Reply of PGE, Enron, and the Applicants to ICNU's Brief on *In Camera* Review of Disputed Materials on behalf of the Industrial Customers of Northwest Utilities in the above-captioned Docket.

Please return a file-stamped copy of the letter in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

Ruth A. Miller

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Letter to ALJ Logan regarding the Joint Reply of PGE, Enron, and the Applicants to ICNU's Brief on *In Camera* Review of Disputed Materials on behalf of the Industrial Customers of Northwest Utilities upon the parties listed below by causing the same to be electronically served on all parties who have an email address on the official service list, and by U.S. Mail, postage-prepaid, to those parties who do not have an email address on the official service list.

Dated at Portland, Oregon, this 12th day of July, 2004.

Ruth A. Miller

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July 12, 2004

Via Facsimile, Electronically, and U.S. Mail

Hon. Kathryn A. Logan
Administrative Law Judge
Oregon Public Utility Commission
550 Capitol Street, N.E.
Salem, OR 97310

Re: UM 1121 – Joint Reply of PGE, Enron, and the Applicants to ICNU’s Brief on *In Camera* Review of Disputed Materials

Dear Judge Logan:

On July 2, 2004, the Industrial Customers of Northwest Utilities (“ICNU”) and Portland General Electric Company (“PGE” or the “Company”) entered into a Stipulation Regarding Deposition (“Stipulation”), which established a process to resolve, on an expedited basis, a discovery dispute related to PGE’s response to ICNU data request (“DR”) 5.1. Under the process established in the Stipulation, PGE was to submit certain materials to you for an *in camera* review to determine whether certain information in the materials was non-responsive to DR 5.1 and/or privileged and confidential. The Stipulation also called for ICNU and PGE to submit briefs regarding these issues. PGE filed its brief on July 2, 2004, and ICNU filed its brief on July 6, 2004. The Stipulation did not call for additional briefs regarding the dispute. Nevertheless, on July 8, 2004, PGE, Enron, and the Applicants submitted a “Joint Reply” in response to ICNU’s Brief even though reply briefs were not permitted by the Stipulation. ICNU considers this submission wholly inappropriate and inconsistent with the Stipulation.

With respect to PGE, the Company’s actions are is inconsistent with the agreement in the Stipulation. ICNU and PGE agreed to a process by which the ALJ would resolve the disputed issues. That agreement did not call for PGE to file a responsive brief that, for the most part, set forth an entire argument that the Company failed to make in its July 2, 2004 Brief. ICNU accordingly did not have an opportunity to respond to these arguments. The ALJ already has had to resolve a number of discovery disputes in this proceeding and additional disputes between ICNU and the parties are ongoing. PGE’s actions will discourage agreements regarding informal resolution of discovery disputes in this proceeding.

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With respect to TPG and Enron, these entities had indicated no interest in the substantive issues surrounding the dispute prior to submitting the Joint Reply. On June 28, 2004, legal counsel for PGE, Enron, and the Applicants met with counsel for ICNU to discuss the dispute regarding the Company's response to DR 5.1. Counsel for the Applicants and counsel for Enron expressed no concern about the disclosure of materials of "common interest" to the three entities even though PGE had made clear that it had redacted or withheld certain information on that basis. In fact, the only interest that either attorney for the Applicants or Enron expressed was concern that resolution of the dispute not result in further delay to the procedural schedule.

In addition, Enron and the Applicants could have joined the Stipulation and briefed the issues according to an agreed-upon schedule. Instead, Enron and the Applicants chose to wait to present any argument about the applicability of the joint defense privilege until ICNU had submitted its only brief on the issue. Indeed, PGE's Brief included virtually no discussion of the joint defense privilege in the context of this proceeding. The Joint Reply, however, is devoted almost exclusively to that issue. Although PGE, Enron, and the Applicants state that they would "not object" if ICNU filed a reply brief, such a reply brief would only further burden the ALJ with additional filings that were not contemplated by the Stipulation. Furthermore, informal resolution of discovery issues will have little value in this proceeding if all parties are free to endlessly brief the issues without regard to the written agreements that have been made.

Finally, ICNU is concerned about the tactic at work in the Joint Reply, in which PGE, Enron, and the Applicants present no substantive argument on the joint defense privilege until after ICNU had addressed this issue. It is inherently unfair for the parties to present their arguments in this manner and the ALJ should discourage such tactics should they be used in the future. Accordingly, ICNU urges you to disregard the improper Joint Reply Brief.

Sincerely yours,

Melinda J. Davison

cc: Service list (via email)