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June 22, 2004

*Via Facsimile, Electronically, 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 copies of the Response of the Industrial Customers of Northwest Utilities to the Ruling Regarding the Deposition of Peggy Fowler in the above-captioned Docket.

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

Sincerely,



Ruth A. Miller

Enclosures  
cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1121**

In the Matter of	)
	)
OREGON ELECTRIC UTILITY	) RESPONSE OF THE INDUSTRIAL
COMPANY, LLC, et al.,	) CUSTOMERS OF NORTHWEST
	) UTILITIES TO THE RULING REGARDING
Application for Authorization to Acquire	) THE DEPOSITION OF PEGGY FOWLER
Portland General Electric Company	)
_____	)

Pursuant to Administrative Law Judge (“ALJ”) Kathryn Logan’s Ruling issued on June 21, 2004, in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UM 1121 (“Ruling”), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response regarding the deposition of Portland General Electric Company’s (“PGE” or the “Company”) President and Chief Executive Officer, Peggy Fowler. Under the standard set forth in the Ruling, it is appropriate for ICNU to take the deposition of Ms. Fowler. The information that ICNU seeks from Ms. Fowler is relevant to this proceeding and complies with the standards in ORCP 36B(1). As a result, the ALJ should order the deposition of Ms. Fowler to proceed.

**ARGUMENT**

The Ruling directs ICNU to: 1) specify the information it seeks from Ms. Fowler; and 2) show how this information meets the standard in ORCP 36B(1). Ruling at 4. ICNU seeks to take the deposition of Ms. Fowler “in order to obtain additional information relating to the proposed transaction.” Re Oregon Electric Utility Company et al., OPUC Docket No. UM 1121, Notices of Deposition for Peggy Fowler, Kelvin Davis, and an Individual from Texas Pacific

Group at 1 (May 13, 2004). To demonstrate that the deposition of Ms. Fowler is consistent with the standards in the ALJ's Ruling, ICNU describes the information it intends to obtain from Ms. Fowler in more detail below.

**A. ICNU Seeks to Obtain from Ms. Fowler Information that She Has Voluntarily Provided in Past ORS § 757.511 Proceedings**

The record in this proceeding currently contains no evidence regarding PGE's perspective on the purchase of the Company by Oregon Electric Utility Company ("OEUC") and Texas Pacific Group ("TPG") (collectively the "Applicants"). It is important, in a proceeding such as this, that ICNU, the Commission, and the other parties understand PGE's perspective on ownership by the Applicants. In past ORS § 757.511 proceedings, Ms. Fowler has voluntarily provided through testimony and clarification sessions an "overview of th[e] transaction from PGE's perspective." Re Northwest Natural Holdco et al., OPUC Docket No. UM 1045, NW Natural/300, Fowler/1 (Nov. 28, 2001); Re Sierra Pac. Res., OPUC Docket No. UM 967, PGE/100 (June 9, 2000); Re Northwest Natural Gas Co., OPUC Docket No. UM 1045, Transcript of Clarification Sessions (Jan. 9, 2002). ICNU intends to question Ms. Fowler in this proceeding in order to obtain the same type of information that she has provided in the past.

This information includes but is not limited to:

- The changes within PGE under Enron ownership;
- The effectiveness of the merger conditions from the Enron proceeding;
- Whether PGE was a "local company" under Enron's ownership;
- The situation PGE currently is facing under Enron ownership;
- How ownership by the Applicants would change PGE's current situation;

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- PGE’s perspective on ownership by the Applicants;
- Whether PGE will benefit from ownership by the Applicants;
- Whether customers will benefit from ownership of PGE by the Applicants;
- Whether the transaction as currently proposed will provide a “net benefit” to customers;
- How PGE expects the potential transition from ownership by Enron to ownership by the Applicants to take place;
- Any changes in PGE’s operations or costs that the Company expects as a result of the potential change in ownership;
- Ms. Fowler’s expectations as to her role at PGE under new ownership and the role of the PGE Board of Directors;
- Any plans for PGE should the proposed transaction not be successful; and
- Whether alternatives to the proposed transaction would benefit customers.<sup>1/</sup>

ICNU also intends to question Ms. Fowler regarding the issues raised by her public statements about the proposed transaction. For instance, at the Portland City Council work session, Ms. Fowler stated: “In terms of stable ownership, I believe that Oregon Electric is a good ownership solution for PGE. For over four years now, I’ve been CEO of a company that’s been for sale. My co-workers have been doing a great job, but we’re ready to move forward. We’re excited by Oregon Electric’s proposal; this option gets us out from under Enron quickly.” Peggy Fowler, Portland City Council Work Session (Apr. 7, 2004). Furthermore, Ms.

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<sup>1/</sup> ICNU identifies these issues to demonstrate that the information that ICNU intends to obtain from Ms. Fowler is relevant or reasonably calculated to lead to the discovery of admissible information, as called for by the Ruling. Identification of these issues does not limit ICNU’s rights to explore additional areas of inquiry that are reasonably calculated to lead to admissible evidence regarding the proposed transaction.

Fowler is in a unique position as PGE's highest corporate official and the only PGE employee that the Applicants have stated they will name to the PGE Board. ICNU intends to question Ms. Fowler about why ownership by the Applicants is a good solution for PGE and its customers, and to gain understanding of her unique knowledge of how PGE has operated under Enron ownership and how that operation may change. All of these topics are relevant and appropriate for discovery.

**B. The Information that ICNU Intends to Obtain from Ms. Fowler Meets the Standards in ORCP 36B(1)**

As described above, ICNU intends to question Ms. Fowler about topics that are relevant to the proposed transaction in order to obtain the type of information that PGE and Ms. Fowler have provided in previous ORS § 757.511 proceedings. The Ruling directs ICNU to show that this information meets the standard in ORCP 36B(1). Ruling at 4. ORCP 36B(1) allows discovery of information “regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery . . . .” The Oregon courts and the Commission have interpreted the reference to relevance in this provision to mean that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence. Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991). In the Ruling, the ALJ characterized the showing that ICNU must make to justify deposing Ms. Fowler as a demonstration “that the information [ICNU] seeks from Ms. Fowler is relevant, or

reasonably calculated to lead to the discovery of admissible information.” Ruling at 3. The information sought by ICNU meets these standards.<sup>2/</sup>

Rule 401 of the Oregon Evidence Code defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” One fact that is of consequence to the Commission’s determination in this proceeding is whether the proposed transaction will provide a “net benefit” to PGE’s customers. Re Legal Standard for Approval of Mergers, OPUC Docket No. UM 1011, Order No. 01-778 at 10 (Sept. 4, 2001); ORS § 757.511(3). Obtaining information about all of the issues described above will help ICNU and the Commission to determine whether the proposed transaction will benefit PGE’s customers. For instance, changes in PGE’s operations or costs that are implemented as a result of the proposed transaction could have a substantial impact on PGE’s service. If the impacts on service are negative, it is unlikely that customers would benefit from the proposed transaction.

Furthermore, the Applicants have claimed that customers will benefit by the strategic leadership that OEUC and TPG can provide to guide PGE out of the “present industry turmoil.” Re OEUC et al., OPUC Docket No. UM 1121, Application of OEUC et al. to Acquire PGE at 24 (Mar. 8, 2004). Obtaining information from Ms. Fowler about the effects of the alleged turmoil in the industry on PGE will shed light on whether the strategic direction provided

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<sup>2/</sup> All applications filed under ORS § 757.511 must address certain common issues. PGE has put the type of information sought by ICNU at issue in previous ORS § 757.511 proceedings, indicating that the information is relevant in such proceedings. See Re OEUC et al., OPUC Docket No. UM 1121, Ruling Denying Motion for Additional Protection at 3 (May 28, 2004). It is reasonable to conclude, under these circumstances, that the information sought by ICNU is relevant in the present proceeding as well.

by the Applicants will benefit PGE and its customers. Finally, the Applicants have claimed that they will re-establish local focus for PGE. Id. at 3. ICNU intends to obtain information about the current level of “local focus” at PGE in order to evaluate whether there has been a lack of such focus. These considerations all are relevant to the proposed transaction.

The information sought by ICNU also meets the standard established by the ALJ in that it is reasonably calculated to lead to discovery of admissible information. ICNU intends to question Ms. Fowler about her first-hand knowledge of the proposed transaction, which she has demonstrated through her public statements. Peggy Fowler, Portland City Council Work Session (Apr. 7, 2004); Press Release, Enron Corp., Enron to sell Portland General Electric to Oregon Electric Utility Co. (Nov. 18, 2003). Questioning Ms. Fowler about the personal knowledge she has demonstrated regarding the proposed transaction is likely to lead to additional evidence regarding the transaction. Furthermore, Ms. Fowler is in a unique position in that she has been the CEO of PGE while the Company has been for sale for the past four years and she is the only PGE employee that has been named to the new PGE Board of Directors. Questioning Ms. Fowler about the uncertainty surrounding ownership of PGE and how the Applicants propose to bring that uncertainty to an end is reasonably calculated to lead to information regarding the transaction that is not explained in the Application. Such information will help to determine whether ownership of PGE by the Applicants will serve the public interest.

### **CONCLUSION**

ICNU intends to depose Ms. Fowler about issues that are relevant to the proposed transaction and topics about which Ms. Fowler has readily provided information in past

ORS § 757.511 proceedings. This information is relevant and discoverable. As a result, ICNU's deposition of Ms. Fowler should proceed.

WHEREFORE, ICNU requests that the ALJ deny PGE's Motion for Protective Order.

Dated this 22nd day of June, 2004.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



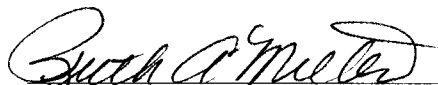
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Of Attorneys for the Industrial Customers of  
Northwest Utilities



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response of the Industrial Customers of Northwest Utilities to the Ruling Regarding the Deposition of Peggy Fowler upon the parties, shown below, on the official service list for Docket No. UM 1121, by causing the same to be electronically served on all parties whom 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 22nd day of June, 2004.

  
 Ruth A. Miller

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