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February 27, 2009

***Via Electronic and US 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**

Dear Filing Center:

Enclosed please find an original and one (1) copy of the Motion to Allow Cross-  
Examination by Telephone on behalf of the Industrial Customers of Northwest Utilities  
("ICNU") in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Allison M. Wils  
Allison M. Wils

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Motion to Allow Cross-Examination on behalf of the Industrial Customers of Northwest Utilities upon the parties, shown below, on the official service list by causing the foregoing document to be deposited, postage-prepaid, in the U.S. Mail, or by service via electronic mail to those parties who waived paper service.

Dated at Portland, Oregon, this 27th day of February, 2009.

/s/ Allison M. Wils  
Allison M. Wils

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UE 178**

In the Matter of	)	
	)	
OREGON PUBLIC UTILITY STAFF	)	
	)	<b>MOTION TO ALLOW CROSS</b>
Requesting the Commission Direct	)	<b>EXAMINATION BY TELEPHONE OF</b>
	)	<b>THE</b>
PORTLAND GENERAL ELECTRIC	)	<b>INDUSTRIAL CUSTOMERS OF</b>
COMPANY	)	<b>NORTHWEST UTILITIES</b>
	)	
to File Tariffs Establishing Automatic	)	<b>[EXPEDITED CONSIDERATION</b>
Adjustment Clauses Under the Terms of	)	<b>REQUESTED]</b>
SB 408.	)	
	)	

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Pursuant to OAR § 860-013-0031 and the hearing officer’s authority under OAR § 860-012-0035, the Industrial Customers of Northwest Utilities (“ICNU”) respectfully requests that the Public Utility Commission of Oregon (“OPUC”) allow ICNU witness Ellen Blumenthal to participate in cross-examination via telephone. Ms. Blumenthal lives in Texas, and has submitted testimony that is very limited in nature. It is not essential that she appear in person for cross-examination. Portland General Electric Company (“PGE”) will not be deprived of due process by conducting cross-examination via telephone. Further, ICNU will not be forced to pay unnecessary travel and lodging costs for Ms. Blumenthal if, as has been the recent trend, PGE fails to actually cross-examine ICNU’s witness.

**ARGUMENT**

Under OAR § 860-012-0035, an Administrative Law Judge (“ALJ”) has authority to regulate the course of a hearing and to decide procedural matters. The ALJ is further required

to “conduct a fair and impartial hearing.” OAR § 860-012-0035(2). In this Docket, the ALJ has both the ability and sufficient reasons to justify a grant of ICNU’s request.

First, no statute or rule precludes cross-examination by telephone in an OPUC hearing. The governing statute for contested cases like UE 178 mandates only that “[e]very party shall have the right of cross-examination of witnesses who testify . . . .” ORS § 183.450(3). Moreover, due process is not violated in agency proceedings when cross-examination is conducted via telephone. Babcock v. Employment Div., 72 Or App 486, 491 (1985). In Babcock, a judicial review of an Employment Appeals Board decision, the petitioner asserted a due process objection to telephone hearings. Id. at 490. Finding, *inter alia*, that the petitioner had an opportunity to cross-examine a witness via telephone, the court concluded: “neither do we believe that requiring the parties to appear in person would lessen the risk of erroneous deprivation of petitioner’s interest . . . . We find no deprivation of due process.” Id. at 491.

Second, allowing Ms. Blumenthal to be cross-examined by telephone would be fair. On the last two occasions in which PGE filed statements indicating that it would cross-examine an ICNU witness, PGE failed to do so.<sup>1/</sup> Most recently, PGE stated its intent to cross-examine Ms. Blumenthal and did not do so. In light of this recent tendency of PGE, requiring the same witness to journey thousands of miles—only to risk never actually being cross-examined *a second time* within five months—would be manifestly unfair. Alternatively, permitting Ms. Blumenthal to be cross-examined by telephone would still be fair to PGE, while not subjecting both ICNU and its witness to the risk of a substantial loss in time and money.

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<sup>1/</sup> On July 18, 2008, PGE filed its intent to cross-examine ICNU witness John Martin in UE 196. In the hearing conducted on July 23, 2008, Mr. Martin was not cross-examined by PGE. Likewise, on October 3, 2008, PGE filed its intent to cross-examine ICNU witness Ellen Blumenthal. Ms. Blumenthal travelled from Texas to attend the October 10 hearing; however, PGE did not cross-examine her.

Finally, due to the limited nature of Ms. Blumenthal's testimony in this Docket, no unfairness would result from a cross-examination by telephone. As stated in the response to PGE's lone data request, Ms. Blumenthal has not viewed PGE's tax reports. The scope of Ms. Blumenthal's testimony is confined to two issues: 1) the inconsistencies between OAR § 860-022-0041 and the requirements of SB 408; and 2) the impossibility of conducting a meaningful review of any tax reports under current safe room requirements. ICNU/100, Blumenthal/2, 6. With only these narrowly defined issues available for cross-examination, no unfair or impartial consequences will accrue from allowing Ms. Blumenthal to respond via telephone.

ICNU contacted PGE regarding this motion, and PGE's counsel stated that PGE would oppose cross-examination by telephone. PGE has filed a statement of its intent to cross-examine Ms. Blumenthal for thirty minutes to an hour.

#### **EXPEDITED CONSIDERATION REQUEST**

Since the hearing in this Docket is scheduled for March 4, 2009, ICNU respectfully requests expedited consideration of this Motion.

Dated this 27th day of February, 2009.

Respectfully submitted,

/s/ Jesse E. Cowell

Melinda J. Davison

Jesse E. Cowell

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Of Attorneys for Industrial Customers  
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