

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 178(4)**

In the Matter of

OREGON PUBLIC UTILITY  
COMMISSION STAFF

Requesting the Commission Direct  
PORTLAND GENERAL ELECTRIC  
COMPANY

To file tariffs establishing automatic  
adjustment clauses under the terms of  
SB 408

**MOTION TO STRIKE OR, IN THE  
ALTERNATIVE, FILE RESPONSE  
TESTIMONY**

**EXPEDITED TREATMENT  
REQUESTED**

Portland General Electric Company ("PGE") hereby submits this motion to (1) strike the Industrial Customers of Northwest Utilities' ("ICNU") testimony and objections or, in the alternative, (2) amend the procedural schedule to permit PGE and other parties supporting the Stipulation to file responsive testimony. Pursuant to OAR 860-001-0420(3), we certify that we have conferred with ICNU regarding this motion and confirm that ICNU opposes the Motion.

We request expedited consideration of this Motion given that the hearing in this docket is scheduled for February 22 and the Commission is required by statute to issue a final order no later than April 13, 2011. We request that responses to this Motion be filed on February 11 and that a ruling on the Motion be issued on February 15. Pursuant to OAR 860-001-0420(7), we have conferred with ICNU regarding our proposed schedule for expedited treatment of this Motion and ICNU does not support it. PGE is ready to file

response testimony by February 17 if needed and permitted based upon the ruling on this Motion.

**I. ICNU'S TESTIMONY AND OBJECTIONS SHOULD BE STRICKEN**

On February 7, 2011, ICNU filed objections to the Stipulation in this docket and supporting testimony, including exhibits. ICNU's objections and supporting testimony are based not on the existing SB 408 rules or the temporary rule Staff has proposed in UE 177, but rather an alternative Ms. Blumenthal proposes to the Commission's rules:

Ms. Blumenthal's recommendation in this case provides an alternative and more appropriate method for addressing the problem that the rule change proposed in UE 177(4) is designed to address.

Objection at 2. ICNU's citation to the proposed rule change in UE 177 is misleading. That rule change concerns the normalization floor calculation (OAR 860-022-0041(d)), which is one of four methods for calculating "taxes paid" – the others being the standalone, consolidated, and apportionment methods. Ms. Blumenthal admits that PGE's "taxes paid" amount in the Stipulation does not use the normalization floor method but rather is based on the consolidated method. ICNU/100, Blumenthal/9. What Ms. Blumenthal proposes is an alternative treatment of deferred taxes whereby all deferred tax benefits are flowed through to customers except for those related to depreciable utility property. In any event, ICNU is clear that what Ms. Blumenthal proposes is inconsistent with the Commission's current rules or the proposed temporary rule. *Id.*/9 ("While the proposed rule change does not directly impact the taxes paid calculation in the Stipulation in this case, it is an important change in the understanding of the IRC normalization requirements. ICNU believes that it is important to amend the rule so that the adjustments to taxes paid for deferred taxes does not exceed the amount necessary to meet normalization requirements.").

ICNU's objection and supporting testimony should be stricken as outside the

scope of this docket. In rejecting ICNU's initial intervenor funding budget request, the Commission described the scope of this docket: "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 860-0022-0041. We acknowledge ICNU's argument is that OAR 860-022-0041 is not consistent with the intent of SB 408, but note that the Court of Appeals recently rejected that argument in *Industrial Customers of Northwest Utilities v. PUC*, \_\_\_ Or App \_\_\_ (December 30, 2010)." Order No. 11-002 (Jan. 5, 2011). In response to Order No. 11-002, ICNU represented that "[t]he proposed work in this Revised Budget is consistent with the scope of proceeding identified in Order 11-002." ICNU Revised Budget for Issue Fund Grant at 1.

ICNU's objection and supporting testimony fail to evaluate the Stipulation under the existing Commission rules or even under the proposed temporary rule. Instead, it uses its own "alternative" rule for treating deferred taxes under the consolidated method used to determine "taxes paid" under the Stipulation. Not only is this inconsistent with ICNU's representations to the Commission but it exceeds the scope of the proceeding as detailed in Commission Order No. 11-002. As such, the objection and support testimony, including exhibits, should be stricken. Because the entirety of ICNU's objections and supporting testimony concerns "alternative" rules for implementing SB 408, we request that the objections and supporting testimony, including exhibits, be stricken in their entirety.

ICNU's supporting testimony, including exhibits, should also be stricken because there is no provision in the Commission rules or procedural orders in this docket permitting such testimony. Under the schedule adopted in this docket, ICNU had an opportunity to file an issues list in December 2010 and rebuttal testimony on January 13, 2011. ICNU filed neither even though its proposed alternative treatment of deferred taxes was an issue that could have been raised with respect to PGE's initial filing. The applicable Commission rule (OAR 860-001-0350(8)) and the January 12 scheduling ruling provide for

objections to a settlement stipulation but authorize no opposition testimony. ICNU's filing of supporting testimony was unaccompanied by an appropriate formal motion, and ICNU made no efforts to confer with PGE regarding the filing of testimony. As such, ICNU's supporting testimony, including exhibits, should be stricken.

**II. IN THE ALTERNATIVE, RESPONSIVE TESTIMONY SHOULD BE PERMITTED**

If the motion to strike is not granted, PGE requests the opportunity to file responsive testimony. As noted above, ICNU's supporting testimony was unexpected, and unauthorized by the Commission rules and procedural rulings in this docket. The initial schedule provided for PGE to file response testimony but ICNU declined to file testimony at the time provided under the schedule. ICNU's testimony contains numerous factual claims that are appropriate for response testimony and that could not be adequately addressed solely through briefs. For example, Ms. Blumenthal's testimony makes various representations regarding the treatment of deferred taxes that is required to avoid a normalization violation. ICNU/100, Blumenthal/10. Accordingly, we request that PGE and other parties to the Stipulation have the opportunity to file response testimony if the motion to strike is not granted. PGE is ready to file such response testimony by February 17, which would allow the hearing on February 22 to proceed according to the existing schedule.

DATED this \_\_\_\_\_ day of February 2011.

TONKON TORP LLP

PORTLAND GENERAL ELECTRIC  
COMPANY

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Of Attorneys for Portland General Electric  
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## CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing MOTION TO STRIKE, AND, IN THE ALTERNATIVE, FILE RESPONSE TESTIMONY by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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DATED this 9th day of February, 2011.

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