

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 178 (2)

4 In the Matter of the

5 OREGON PUBLIC UTILITY STAFF
6 Requesting the Commission direct

7 PORTLAND GENERAL ELECTRIC
8 COMPANY to file tariffs establishing automatic
adjustment clauses under the terms of SB 408.

STAFF BRIEF

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10 Pursuant to the schedule in this proceeding, the Public Utility Commission of Oregon
11 Staff (“Staff”) hereby submits its brief.

12 **BACKGROUND**

13 On October 15, 2008, Portland General Electric Company (“PGE”) filed a tax report as
14 required by Senate Bill 408, codified in ORS 757.267, 757.268, 757.210 and OAR 860-022-
15 0041. On December 23, 2008, Staff and the Utility Reform Project and Ken Lewis (collectively
16 “URP”) each submitted an issues list. On January, 14, 2009, PGE filed a revised tax report for
17 2007. On January 28, 2009, the Industrial Customers of Northwest Utilities (“ICNU”) filed
18 direct testimony. Throughout the proceeding, Staff conducted a series of workshops and
19 settlement conferences on November 18, 2008, December 9, 2008, December 15, 2008, January
20 8, 2009, and January 23, 2009. Although provided notice, neither ICNU nor URP participated or
21 attended the workshops or settlement conferences. On February 5, 2009, Staff and PGE filed a
22 Stipulation and Joint Supporting testimony, which resolved all issues between Staff and PGE
23 related to PGE’s 2007 Tax Report filing. On February 25, 2009, PGE filed rebuttal testimony to
24 ICNU’s direct testimony. On March 4, 2009, an evidentiary hearing was held consistent with the
25 parameters outlined in ALJ Hardie’s ruling issued March 3, 2009.

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1 DISCUSSION

2 The issue in this proceeding is whether the Public Utility Commission of Oregon
3 (“Commission”) should approve the Stipulation between Staff and PGE resolving all outstanding
4 issues in this docket. ICNU and URP raise arguments against adoption of the Stipulation.

5 ICNU filed testimony on two issues, both of which the Commission has previously
6 decided. First, ICNU argues that OAR 860-022-0041 is inconsistent with the requirements of SB
7 408. Second, ICNU argues that the safe room procedures adopted in the Commission’s
8 protective order in this docket prevented ICNU from meaningful participation.

9 URP did not file testimony or objections to the Stipulation. However, based upon URP’s
10 issue list and the evidentiary hearing, URP may argue that an earnings review should be
11 performed when the SB 408 calculation results in a surcharge to PGE customers.

12 A. The Stipulation is compliant with both OAR 860-22-0041 and SB 408.

13 The purpose of this proceeding is to determine whether the Stipulation regarding PGE’s
14 2007 Tax Report is compliant with OAR 860-022-0041, which implements SB 408. In
15 PacifiCorp’s 2006 Tax Report filing last year, ICNU made the same arguments that it is now
16 making in this proceeding regarding OAR 860-022-0041, alleged inconsistencies with the
17 requirements of SB 408. In UE 177, the Commission found challenges to the rule to be beyond
18 the scope of the proceeding and found that the calculation of the surcharge was compliant with
19 both OAR 860-022-0041 and SB 408. *See* Order No. 08-201 at 4. ICNU provides no new
20 evidence or arguments that alter the Commission’s conclusion in Order No. 08-201.

21 B. The Commission has previously rejected ICNU’s arguments related to the Protective
22 Order.

23 In UE 177, involving PacifiCorp’s 2006 Tax Report, ICNU raised arguments related to
24 the safe room procedures adopted in the Protective Order. *See* Order No. 06-033. In adopting
25 the Protective Order, the Commission determined that disclosure could seriously harm the
26 producing utility and it adopted “a safe-room discovery mechanism to govern the use of highly

1 confidential information.” Id. at 4-5. ICNU offers no new rationale to alter the Commission’s
2 previous adoption of the Protective Order as necessary to protect highly confidential information.

3 C. The Commission has previously determined that earnings tests are not appropriate under
4 SB 408.

5 Although URP did not file any testimony or objections to the Stipulation, it may argue
6 that an earnings review should be required before PGE is allowed to surcharge the SB 408
7 calculation for its 2007 Tax Report. Neither SB 408 nor OAR 860-022-0041 requires an
8 earnings review. As a result, URP may argue that the Commission should adopt a policy of
9 requiring an earnings review when the SB 408 calculation results in a surcharge.

10 URP may argue that the Commission looked at earnings for 2005, and thus, should do so
11 in PGE’s 2007 Tax Report. However, that earlier Commission decision was before the effect of
12 SB 408 and before the Commission’s decision in AR 499. *See* 06-532. In AR 499, the
13 Commission cited its Order No. 06-400 for the conclusion that an earnings test offset could net
14 out the automatic adjustment clause and that the Commission believed that would be contrary to
15 the intent of the legislature. *See* Order No. 06-532 at 10 *citing* Order No. 06-400 at 8-9.

16 The Commission did note that while it believed that earnings tests would be contrary to
17 the intent of SB 408, it would consider concerns related to the consequences of the “double
18 whammy” problem. *See* Order No. 06-532 at 11. As Staff testified to in this proceeding, if the
19 Commission was interested in URP’s issues, including those related to an earnings review, it
20 should establish a rulemaking or generic proceeding to consider whether its previous conclusion
21 should be reversed. Based upon the record in this proceeding, there is no reason to reverse the
22 Commission’s previous determination that an earnings review would be contrary to the intent of
23 the legislature.

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1 CONCLUSION

2 For the foregoing reasons, Staff respectfully requests that the Stipulation be adopted in its
3 entirety.

4 DATED this 13th day of March 2009.

5 Respectfully submitted,

6 JOHN R. KROGER
7 Attorney General

8
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12 Of Attorneys for Staff of the Public Utility
13 Commission of Oregon.
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1 **CERTIFICATE OF SERVICE**

2 I certify that on March 13, 2009, I served the foregoing STAFF BRIEF upon all parties of
3 record in this proceeding by delivering a copy by electronic mail and by mailing a copy by
4 postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper
5 service.

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