

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of)	
)	
OREGON ELECTRIC UTILITY)	
COMPANY, LLC, <i>et al.</i> ,)	RULING
)	
Application for Authorization to Acquire)	
Portland General Electric Company.)	

DISPOSITION: MOTION TO STRIKE DENIED

On October 12, 2004, the Industrial Customers of Northwest Utilities (ICNU) submitted a motion, asking for Oregon Electric Exhibits 800, 801, and 802 (testimony and exhibits of Daniel J. Bussel) to be stricken, and requesting expedited consideration. On October 13, 2004, I granted ICNU's request for expedited consideration, and gave Oregon Electric Utility Company, LLC (Applicants), until October 15, 2004, to respond. Applicants filed their response on October 14, 2004.

ICNU argues that Bussel's testimony and exhibits should be stricken because the testimony is legal argument and analysis rather than evidence. Further, ICNU contends that it does not have an opportunity to respond to Bussel's testimony with evidence. While ICNU may respond with argument in its brief, argument is not afforded the same weight as testimony.

Applicants respond, stating that Bussel's testimony is not legal argument, but rather admissible expert opinion testimony. According to Applicants, the testimony is admissible not only under the Commission's rules, but also under the Oregon Evidence Code and Federal Rules of Evidence. Because ICNU "opened the door" by having its own witness, John Antonuk, offer legal opinions regarding bankruptcy issues, it would not be fair to strike the testimony of Bussel.

Under OAR 860-014-0045(1)(b), relevant evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Bussel's testimony meets the standard of the administrative rule. The testimony arguably responds to an issue previously raised. Additionally, the testimony does not impinge on the Commission's authority to make its own legal interpretations. The motion to strike is denied.

Dated at Salem, Oregon, this 18th day of October, 2004.

Kathryn Logan
Administrative Law Judge