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July 9, 2004

Via Facsimile, Electronic and U.S. Mail

Ms. Cheryl Walker
Oregon Public Utility Commission
P.O. Box 2148
Salem OR 97308-2148

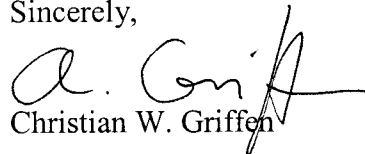
Re: In the Matter of Oregon Electric Utility Company, LLC, et al., Application for
Authorization to Acquire Portland General Electric Company
Docket No. UM 1121

Dear Ms. Walker:

Enclosed please find an original and six (6) copies of the Motion for Partial Stay of Commission Order No. 04-352 and ALJ Ruling Clarifying Order of the Industrial Customers of Northwest Utilities, Citizens' Utility Board and Associated Oregon Industries.

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

Sincerely,



Christian W. Griffen

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of)	
)	MOTION FOR PARTIAL STAY OF
OREGON ELECTRIC UTILITY)	COMMISSION ORDER NO. 04-352 AND
COMPANY, LLC, et al.,)	ALJ RULING CLARIFYING ORDER
)	
Application for Authorization to Acquire)	
Portland General Electric Company)	
_____)	

Pursuant to OAR § 860-013-0031 and OAR § 860-014-0093, the Industrial Customers of Northwest Utilities (“ICNU”), the Citizens’ Utility Board (“CUB”), and the Associated Oregon Industries (“AOI”) (collectively, the “Joint Intervenors”) submit this Motion for Partial Stay of Oregon Public Utility Commission (“OPUC” or the “Commission”) Order No. 04-352 and Administrative Law Judge (“ALJ”) Kathryn Logan’s Clarifying Ruling, dated July 1, 2004 (“ALJ Logan July 1 Ruling”) (collectively, the “Intervenor Funding Orders” or the “Orders”). The Orders require Joint Intervenors to submit detailed billing information related to their participation in this proceeding. Joint Intervenors are requesting a partial stay of the requirement to submit detailed billing reports in advance of a Request for Payment of an Issue Fund Grant, because Joint Intervenors intend to submit an Application for Reconsideration and/or Clarification of that portion of the Intervenor Funding Orders. Although an Application for Reconsideration and/or Clarification would not be due until August 23, 2004, Joint Intervenors intend to submit their Application for Reconsideration and/or Clarification no later than July 23, 2004.

In a separate filing, Joint Intervenors are contemporaneously submitting Intervenor Funding Grant Reports in partial compliance with the Intervenor Funding Orders.

Joint Intervenors are submitting summaries of their billings and are not, at this time, submitting the detailed billing information requested in the Intervenor Funding Orders. The Intervenor Funding Grant Reports include accurate summaries of the amounts Joint Intervenors have incurred in this proceeding.

Joint Intervenors request that the Commission stay the effect of the portion of the Intervenor Funding Orders that require detailed billing reports pending the resolution of Joint Intervenors' soon to be filed Application for Reconsideration and/or Clarification of the Orders for the following reasons:

- 1) Joint Intervenors would be unduly prejudiced if they were required to provide detailed billing reports, even in the format clarified by ALJ Logan's July 1 Ruling, to adverse parties during the pendency of the proceeding. Joint Intervenors are aware of no other parties, out of over 40 parties in this proceeding, that are required to submit billing information. Release of such detailed billing information at this time in this proceeding would reveal litigation strategies that would be extremely prejudicial;
- 2) The release of the billing statements would reveal litigation strategy, communications with clients, and the specific nature of services provided, and thus, potentially violate attorney/client privilege and the work product doctrine; and
- 3) Providing billing statements to third parties during the pendency of the proceeding is not consistent with the Intervenor Funding Agreement approved in Docket No. AR 462.

ARGUMENT

The partial stay of a Commission order is appropriate under OAR § 860-014-0093, which permits the extension of the effective date of, or the date to comply with, an order. A stay is necessary in this instance because an application for reconsideration and/or clarification does not stay or postpone the need to comply with an original order. OAR § 860-014-0095(5). The Commission rules specifically state that “[u]nless ordered by the Commission

under OAR 860-014-0093, an order granting an application for rehearing or reconsideration shall not stay or postpone compliance with the original order.” Id.

The Commission has the statutory authority to stay any orders pursuant to ORS § 756.568. Re Metro One Telecommunications, Inc., IC 1, Order No. 03-462 at 1 (Aug. 1, 2003). The Commission’s rules provide no explicit factors for the Commission to consider in granting a stay; however, the Commission has relied upon the provisions of the Administrative Procedure Act (“APA”) and the Attorney General’s Model Rules of Procedure when deciding whether to grant a stay. Re Portland General Electric Co., UE 115, Order No. 01-842 (Sept. 28, 2001); Re Investigation of Universal Serv. in the State of Or., UM 731, Order No. 01-140 at 2 (Jan. 29, 2001). The Commission has stated that it will grant a stay of the effectiveness of any order when a party can show that: 1) they will experience an irreparable injury; and 2) they have asserted a colorable claim of error in the order. Re Metro One Telecommunications, Inc., IC 1, Order No. 03-462 at 2 (Aug. 1, 2003).

In considering the harm that will result from either the grant or denial of a stay, the Commission should also balance the potential harm suffered by Joint Intervenors from immediate enforcement of the order, the harm suffered by other parties, and any public harm that may result from delay. See Von Weidlein Int’l, Inc. v. Young, 16 Or. App. 81, 88, 515 P.2d 936, 937 (1973); ORS § 19.350(3)(d). The Commission should “evaluate the relative hardship to the parties and the extent to which irreparable harm will occur in the absence of a stay.” See Armatta v. Kitzhaber, 149 Or. App. 498, 501, 943 P.2d 634, 635 (1997). To show irreparable injury, a party must demonstrate that injury would probably occur, and whether the “injury is irreparable depends not upon on the magnitude of the injury, but upon the completeness of a remedy in law.” Arlington School Dist. No. 3 v. Arlington Educ. Ass’n, 184 Or. App. 97, 102 (2002).

Joint Intervenors would be irreparably harmed if the Intervenor Funding Orders are not partially stayed because the information contained in the billing reports reveals the litigation and research strategy of Joint Intervenors, which could be used by other parties in this proceeding to gain an unfair advantage. If Joint Intervenors filed the detailed billing reports with the Commission in this proceeding, they would be required to serve them on each party. OAR § 860-013-0070. Release of this information could also violate Joint Intervenors' counsels' ethical obligation to not disclose information protected by the attorney/client privilege. Once this information is released to opposing parties, the injury will be irreparable because no remedy could cure the harm.

In contrast, no other party will suffer harm from a partial stay of the Intervenor Funding Orders, because Joint Intervenors' billing records are not relevant to the substantive issues in UM 1121. In addition, no harm would occur since no Joint Intervenor has requested payment of their grants. The information directed to be released by ALJ Logan was requested for the sole purpose of monitoring the Intervenor Funding Grant.

Pursuant to the APA and the Commission's precedent, a party seeking a stay of an agency order must show that there is a "colorable claim of error in the order." ORS § 183.482(3); Re Metro One Telecommunications, Inc., IC 1, Order No. 03-462 at 2 (Aug. 1, 2003). The Oregon Court of Appeals has interpreted "colorable claim of error" as one that is "substantial and nonfrivolous, or seemingly valid, genuine, or plausible." Bergerson v. Salem-Keizer Sch. Dist., 185 Or. App. 649, 660 (2003).

The Intervenor Funding Agreement requires detailed billing information when a party submits a request for payment. Re Temporary Rules Defining Qualifications for Certification as an Intervenor Eligible for Intervenor Funding and Specifying Conditions for Terminating Certification, AR 462, Order No. 03-388, Attachment B, Section 7.3 at 28 (July 2,

2003). None of Joint Intervenors have submitted a Request for Payment of an Issue Fund Grant. The Commission erred in the Intervenor Funding Orders by: 1) requiring Joint Intervenors to file privileged documents, which must be served on all parties to this proceeding; 2) directing Joint Intervenors to release information that would reveal their litigation strategies to all parties; and 3) failing to abide by the Intervenor Funding Agreement, which requires Joint Intervenors to provide detailed information only after a Request for Payment has been made. Thus, a colorable claim of error exists and a stay is necessary.

CONCLUSION

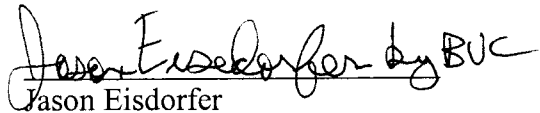
Joint Intervenors object to submitting detailed billing reports prior to filing a Request for Payment of the Intervenor Funding Grant, because such submission would be: 1) unduly prejudicial; 2) in violation of the attorney/client privilege and work product doctrine; and 3) inconsistent with the Intervenor Funding Agreement. Therefore, Joint Intervenors request that the Commission stay that portion of the Intervenor Funding Orders requiring the submission of detailed billings pending the outcome of the Application for Reconsideration and/or Clarification that Joint Intervenors intend to file in this Docket no later than July 23, 2004.

WHEREFORE, ICNU, CUB, and AOI request that the Commission grant Joint
Intervenors' Motion for Partial Stay of the Intervenor Funding Orders.

Dated this 9th day of July, 2004.

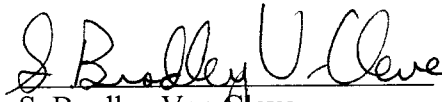
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Motion for Partial Stay of Commission Order No. 04-352 and ALJ Ruling Clarifying Order of the Industrial Customers of Northwest Utilities upon the parties listed below by causing the same to be electronically served on all parties who 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 9th day of July, 2004.


Christian W. Griffen

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