

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 511**

In the Matter of	)	
	)	
Rulemaking to Adopt and Amend	)	COMMENTS OF THE INDUSTRIAL
Division 011 Rules	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES
	)	
	)	
	)	
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**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) submits the following comments regarding the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) proposed rule establishing a process for public access to information designated as confidential. ICNU’s comments propose minor modifications to proposed OAR § 860-011-0100 (Confidential Information) to improve and clarify the rule. ICNU’s proposed revisions would help establish clear guidelines for processing public records requests seeking information designated as confidential.

On October 13, 2006, the Commission proposed new rules regarding: 1) public records requests; 2) confidential information; and 3) fees and penalties. The Commission’s notice of proposed rulemaking included a copy and summary of the proposed rules. On October 25, 2006, Administrative Law Judge (“ALJ”) Grant issued a memorandum announcing a rulemaking hearing and summarizing the Commission’s rationale for proposing the new rules. The Commission has proposed the new rule

regarding confidential information to establish a process by which the Commission will process public requests for information that has been submitted as confidential and may be exempt from disclosure. The rule was proposed because the existing rules do not explain how the Commission will treat confidential information outside of a contested case in which a protective order exists.

## **II. COMMENTS**

ICNU believes it is important for the Commission to establish a process by which it will consider public requests for confidential information and ICNU generally supports the proposed OAR § 860-011-0100. The proposed rules appropriately place the burden on the person asserting confidentiality to demonstrate that the information should be exempt from disclosure, and specify that the provider clearly mark the information as confidential.

The proposed rule specifically provides a process for a party that has designated information as confidential to appeal a Commission determination that information is not confidential. The Commission should amend the proposed rule to clarify and/or provide a process for a member of the public to challenge a Commission decision that information is confidential.

The Commission should also clarify that the proposed rule does not address access to information designated as confidential in contested case proceedings in which a protective order exists. ALJ Grant's Memorandum explains that while "protective orders generally establish procedures governing the treatment of [confidential] information in contested case proceedings, the proposed rules establish

default standards for confidential filings where no protective order exists.” The proposed rule, however, not only adopts a default standard, but the text of the rule extends to all confidential information “designated under the terms of a protective order in a contested case proceeding.” Proposed OAR § 860-011-0100(2).

The Commission should clarify the proposed rule to ensure that requests for information designated as confidential in contested case proceedings are reviewed under the applicable protective order. ICNU understands that the proposed rule is intended to only address requests for information under the Oregon public records law. In addition, the schedule and process established in this proceeding do not provide an adequate forum to draft new rules regarding protective orders and the changes that may be necessary to prevent the abuse of overbroad designation of information as confidential. Therefore, while ICNU has concerns with how some parties are designating information as confidential in Commission proceedings and believes that the Commission should review how the current protective orders are being utilized, ICNU believes these concerns should be addressed in a different proceeding.

The proposed rule also adopts a six-year term on confidential information after which the Commission will remove the confidential designation unless the party asserting confidentiality seeks an extension. ICNU supports the concept of a sunset date on all information designated as confidential because the vast majority of the confidential information submitted to the Commission loses its sensitivity after the passage of time. A six-year time period, however, appears too long due to the short-term nature of much of the confidential information in Commission proceedings. ICNU recommends that the

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Commission adopt a three-year sunset provision on all confidential information, with the option for a party to obtain an extension.

### **III. CONCLUSION**

ICNU supports the adoption of a new rule to address the access of the public to information designated as confidential and urges the Commission to make minor modifications and clarifications to improve proposed OAR § 860-011-0100.

Dated this 27th day of November, 2006.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

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November 27, 2006

***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 a Rulemaking to Adopt and Amend Division 011 Rules  
**Docket No. AR 511**

Dear Filing Center:

Enclosed please find the original and one copy of the Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely,

/s/ Christian Griffen  
Christian W. Griffen

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Comments of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail to those parties who waived paper service.

Dated at Portland, Oregon, this 27th day of November, 2006.

/s/ Christian Griffen  
Christian W. Griffen

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