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December 6, 2010

Via Electronic and U.S. 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 OREGON PUBLIC UTILITY STAFF Requesting the Commission direct PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY, to file tariffs establishing automatic adjustment clauses under the terms of SB 408
Docket No. UE 177 (4)

Dear Filing Center:

The Industrial Customers of Northwest Utilities hereby files this Reply to PacifiCorp's Supplemental Exhibit to Response in Opposition to ICNU's Motion to Modify the Protective Order, in the above referenced matter.

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

Sincerely yours,

/s/ Jacqueline E. Smith
Jacqueline E. Smith

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply to PacifiCorp's Supplemental Exhibit to Response in Opposition to ICNU's Motion to Modify the Protective Order on behalf 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, where paper service has not been waived.

Dated at Portland, Oregon, this 6th day of December, 2010.

/s/ Jacqueline E. Smith
Jacqueline E. Smith

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

UE 177

In the Matter)	
)	
OREGON PUBLIC UTILITY STAFF)	
)	
Requesting the Commission Direct)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES' REPLY TO
PACIFICORP, dba PACIFIC POWER &)	PACIFICORP'S SUPPLEMENTAL
LIGHT COMPANY,)	EXHIBIT TO RESPONSE IN
)	OPPOSITION TO ICNU'S MOTION TO
to File Tariffs Establishing Automatic)	MODIFY THE PROTECTIVE ORDER
Adjustment Clauses Under the Terms of)	
SB 408.)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge's Ruling, dated December 1, 2010, the Industrial Customers of Northwest Utilities ("ICNU") files this Reply to PacifiCorp's Supplemental Exhibit to PacifiCorp's Response to ICNU's Motion to the Modify the Protective Order. The Supplemental Exhibit is a letter from Portland General Electric Company ("PGE"), which claims that ICNU has "violated" the terms of a letter agreement merely because ICNU has informed the Commission of the fact that PGE has provided ICNU's expert tax witness with a copy of PGE's tax report ("PGE Letter"). Contrary to the accusations of both PGE and PacifiCorp, ICNU has not violated the terms of any Commission protective order or any agreements regarding the handling of highly confidential material; rather, ICNU has at all times carefully protected all highly confidential tax material. The fact the PGE wrote the letter, and

provided it to PacifiCorp to file in this docket shows that that the utilities are acting in concert to unreasonably restrict access to information and limit the effective implementation of SB 408.

II. BACKGROUND

On November 2, 2010, ICNU filed a Motion to Modify the Protective Order (“Motion”) in UE 177. The Motion did not seek to broadly modify the protective order, or even allow ICNU’s attorneys to gain access to material designated highly confidential by PacifiCorp. Instead, ICNU requested that the protective order be modified to allow Ellen Blumenthal, ICNU’s tax expert to have a copy of PacifiCorp’s highly confidential documents at her home office in Corpus Christi, Texas.

The Motion explained that ICNU has in good faith endeavored to work under the requirements of the Commission’s protective order, but the protective order has proven to be too burdensome and costly, and has prevented ICNU from conducting a meaningful review of any of PacifiCorp’s tax filings. The Motion and accompanying affidavit of Ms. Blumenthal explained that she has been provided copies of the PGE tax report and other highly confidential PGE information at her place of business, and that there has been no improper disclosure of any highly confidential information by Ms. Blumenthal. This information was intended to show that providing Ms. Blumenthal with highly confidential information does not create a risk of inappropriate disclosure.

PacifiCorp filed a Response in Opposition to ICNU’s Motion (“Response”) on November 17, 2010, arguing that ICNU’s “problematic behavior with respect to PGE’s tax report docket in 2008-2009 directly undermines ICNU’s contention” that disclosure of highly confidential material will not create an unreasonable risk of disclosure. Response at 6.

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PacifiCorp focused on Ms. Blumenthal's testimony on cross-examination, in which Ms. Blumenthal explained that she destroyed the report that was inadvertently sent to her using a shredding service that shredded documents in her driveway under her careful observation. Re Portland Gen. Elec. Co., Docket No. UE 178, Hearing Transcript at 23-25 (March 4, 2009). PacifiCorp did not allege that the documents in Ms. Blumenthal's possession were not actually shredded.

Notably, PGE, the party supposedly harmed in this circumstance, did not make any arguments that ICNU has mishandled any confidential material. PGE had an opportunity to file a response to ICNU's motion, but did not do so. In fact, PGE continues to provide its tax reports to Ellen Blumenthal at her home office, and has never expressed concern about the way ICNU has handled or destroyed any actual tax information.

On November 29, 2010, PacifiCorp filed as a supplemental exhibit to its Response the PGE Letter, which is a November 23, 2010 letter from PGE to ICNU's attorney Melinda Davison. The PGE Letter responds to an email sent by Ms. Davison to PGE's attorney David White. Ms. Davison's email is attached as Exhibit A. The PGE Letter claims that ICNU violated a letter agreement ("Letter Agreement") between PGE and ICNU by informing the Commission that PGE had provided confidential documents to Ms. Blumenthal. The Letter Agreement is attached as Exhibit B. PGE's claim that ICNU breached the Letter Agreement appears to rest on a statement in an email from PGE's attorney, which interpreted the Letter Agreement to mean that "ICNU will not use the fact that PGE has made an accommodation in this docket as precedent." PacifiCorp states that ICNU's alleged violation of the Letter Agreement is relevant to the consideration of the Motion.

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III. REPLY

ICNU disagrees that it has violated the Letter Agreement. Nowhere in the Motion did ICNU argue that PGE's "accommodation" of providing confidential documents created a "precedent" that should be applied to PacifiCorp. Instead, ICNU merely pointed out the objective fact that ICNU's expert had been provided copies of PGE's tax report, and no improper disclosures have occurred. The Letter Agreement does not prohibit ICNU from disclosing the fact that ICNU's expert received copies of information designated as highly confidential. Further, the Letter Agreement explicitly provides that "ICNU reserves the right to challenge the protective order."

PGE's Letter does not state or otherwise imply that ICNU has actually mishandled any confidential documents, raise any concerns with Ms. Blumenthal's destruction of confidential material, or allege that ICNU has in any way failed to properly treat confidential material at all times consistent with the protective order and Letter Agreement. ICNU has carefully protected all confidential tax information that it has been provided. Neither PacifiCorp nor PGE have alleged that ICNU has actually mishandled, wrongfully released or done anything inappropriate with any confidential information.

The Letter Agreement was designed to ensure that PGE's decision to provide ICNU's consultant with the tax report will not be viewed as precedent for how PGE will respond to future requests. Consistent with this limitation, the Motion did not seek to require PGE to provide Ms. Blumenthal with copies of highly confidential documents, subject to ICNU's agreement to the Letter Agreement. ICNU is not relying upon the fact that PGE made a decision to accommodate ICNU as "precedent" that must be applied to PacifiCorp, but is instead merely

pointing out to the Commission the facts that Ms. Blumenthal has been provided access to the confidential tax documents by PGE for several years now and that there has been no controversy regarding her actual handling of those documents.

PGE's interpretation of the Letter Agreement demonstrates the absurdity of the current highly confidential protective order process. Under the current protective order, ICNU cannot review the most relevant tax information outside of a safe room, unless PGE or PacifiCorp agree to provide the information. PacifiCorp has refused to provide any highly confidential information outside of the safe room, while PGE has agreed to provide ICNU with the confidential tax reports, subject to ICNU agreeing to the terms of the Letter Agreement. Apparently, PGE's intention was to condition its "accommodation" on retaining the ability to withhold documents at anytime, as well as prohibiting ICNU from even disclosing to the Commission the fact that PGE provided Ms. Blumenthal with highly confidential information. Even if the Letter Agreement is as expansive as PGE claims it is (which is not ICNU's interpretation), the Commission should disregard the Supplemental Exhibit as an abuse of the process.

ICNU is the only party in the SB 408 tax cases that has retained a third party tax expert to review the extremely complex and technical tax issues involved in implementing SB 408. As ICNU detailed in its Motion, the safe room procedures effectively prevent meaningful review by any outside expert. Unfortunately, it appears that the utilities are now actively working together to use the safe room procedures as a tactic to limit ICNU's participation in these cases. ICNU has been provided with PGE's complete tax report outside of the safe room and this has not resulted in any wrongful disclosures. No party has claimed that ICNU has

PAGE 5 – ICNU'S REPLY

disclosed confidential information or otherwise violated the protective order. A majority of PacifiCorp's "complaints" focus on an absurd interpretation of Ms. Blumenthal's shredding of the tax report. Nevertheless, ICNU has been forced to expend its resources fighting for the ability to review and use the information in the tax report to implement the intent of SB 408, rather than actually using its resources to participate in the cases.

IV. CONCLUSION

ICNU has not violated the protective order or the PGE Letter Agreement, nor has it mishandled any confidential material. The existing protective order has effectively prevented ICNU and its consultant from conducting an adequate review of PacifiCorp's tax reports. The Commission should modify the highly confidential protective order in this proceeding to allow ICNU's consultant to receive and review a copy of the documents that have been designated highly confidential by PacifiCorp.

Dated this 6th day of December, 2010.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion A. Sanger

Melinda J. Davison

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Of Attorneys for Industrial Customers
of Northwest Utilities

Exhibit A

From: Melinda J. Davison
Sent: Friday, November 19, 2010 1:29 PM
To: 'David White'
Subject: UE 177

Dear David-

PacifiCorp continues to oppose granting Ellen access to their tax report. I am not sure if you read their response to our latest motion but I found it highly offensive. PacifiCorp spends a great deal of time arguing that Ellen has mishandled PGE's documents because she shredded the tax report you sent to her a couple of years ago. I think you are on the service list, if you do not have their response I am happy to send it to you. In a reply I would like to represent that PGE has never accused Ellen of mishandling their documents. In fact, PGE continues to provide Ellen with a copy of your tax report and does not believe that she took any inappropriate actions with regard to her handling of your confidential/highly confidential material. Please let me know your thoughts. Thanks Melinda

Melinda J. Davison
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The message (including attachments) is confidential, may be attorney/client privileged, may constitute inside information and is intended for the use of the addressee. Unauthorized use, disclosure, or copying is prohibited and may be unlawful. If you believe you have received this communication in error, please delete it and call or email the sender immediately. Thank you.

Exhibit B

OCT 15 2010



Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204
PortlandGeneral.com

October 15, 2010

Ms. Melinda Davison
Davison Van Cleve PC
333 SW Taylor, Suite 400
Portland, OR 97204

Ms. Ellen Blumenthal
GDS Associates, Inc.
13517 Queen Johanna Court
Corpus Christi, TX 78418

Re: UE 178 – Tax Report for 2009

Dear Ms. Blumenthal and Ms. Davison:

We are enclosing for delivery to Ms. Blumenthal, the 2009 Tax Report and associated work papers, which include material that Portland General Electric Company ("PGE") has identified as highly confidential pursuant to the terms of the Protective Order in UE 178, Order No. 06-033 (the "Protective Order"). We are providing the enclosed highly confidential material conditioned on our mutual understanding reflected in this letter. We have provided Ms. Davison with a draft of this letter and she has acknowledged the agreement of the Industrial Customers of Northwest Utilities ("ICNU") to its terms.

PGE is amenable to providing the enclosed highly confidential documents as a limited exception to the terms of the Protective Order, which otherwise require viewing of highly confidential material in the Portland or Salem safe rooms. Ms. Blumenthal is an out-of-town consultant, and the Commission order adopting the Protective Order urged the utilities to work with out-of-town experts to determine whether special arrangements could be made. We have agreed to make such a special arrangement in this case. By providing copies of the enclosed highly confidential documents PGE does not waive any of the terms of the Protective Order or waive its classification of these documents as highly confidential.

Ms. Blumenthal agrees to treat the highly confidential documents in a manner consistent with the terms of the Protective Order. PGE's decision to make a special arrangement in this instance should not be viewed as a precedent for how it will respond to future similar requests in this proceeding or in future tax report proceedings. PGE and ICNU agree and acknowledge that PGE's production of the highly confidential documents shall not be used by ICNU in this proceeding or any other proceeding for any purpose. PGE understands that ICNU reserves the right to challenge the Protective Order and that litigation challenging the Protective Order is currently pending before the Oregon Court of Appeals.

UE 178

Ms. Melinda Davison

Ms. Ellen Blumenthal

October 15, 2010

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Pursuant to the terms of the Protective Order, Ms. Blumenthal is required to either destroy or return confidential material within 90 days after final resolution of this proceeding. If Ms. Blumenthal elects to destroy the highly confidential material, she will provide PGE with written confirmation that she has destroyed all copies of confidential material received in this docket for the 2009 tax report.

Very truly yours,



Randall J. Dahlgren

Director, Regulatory Policy & Affairs

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