

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 178

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	RULING
)	
Filing of tariffs establishing automatic)	
adjustment clauses under the terms of SB 408.)	

DISPOSITION: SCOPE OF HEARING DEFINED

On February 27, 2009, Portland General Electric Company (PGE), the Industrial Customers of Northwest Utilities (ICNU), and Ken Lewis and the Utility Reform Project (collectively URP) filed cross-examination statements with the Public Utility Commission of Oregon (Commission) identifying the issues on which they intended to cross-examine witnesses during the hearing currently scheduled for March 4, 2009.¹ On Tuesday, March 3, 2009, a prehearing conference was held to discuss the appropriate scope of the hearing. Each party was asked to address whether the issues raised in its cross-examination statement were appropriate for hearing given that no party filed timely objections to the stipulation filed by Commission Staff and PGE on February 5, 2009.²

For the reasons discussed below, the hearing in this docket will be limited to the cross-examination of ICNU’s and PGE’s witnesses about the testimony filed by ICNU on January 28, 2009, and by PGE February 25, 2009.

DISCUSSION

Broadly speaking, the parties seek to cross-examine witnesses with respect to two general areas. ICNU and PGE seek to cross-examine each other’s witnesses about the written testimony filed by ICNU on January 28, 2009, and by PGE February 25, 2009. URP seeks to cross examine PGE’s and Staff’s witnesses about the issues raised in URP’s December 23, 2008, issue list.

ICNU and PGE. ICNU’s witness, Ellen Blumenthal, contends in testimony filed on January 28, 2009, that the protective order in this docket prevented ICNU from participating meaningfully in these proceedings by denying ICNU meaningful access to

¹ A ruling issued on March 2, 2009, mistakenly identified Staff as a party that filed a cross-examination statement. Staff filed no cross-examination statement.

² Staff and PGE filed a non-unanimous stipulation on February 5, 2009. On February 6, 2009, the period for filing objections to the stipulation was shortened to February 18, 2009. No objections were filed.

PGE's highly confidential tax documents. PGE's testimony disputes Ms. Blumenthal's assertions on this point. Because ICNU's testimony raises disputed issues of fact that bear on the adequacy of the procedures in this docket, cross-examination of witnesses on these issues is appropriate.

URP. URP seeks to cross-examine witnesses for Staff and PGE who filed testimony in support of the stipulation about issues raised in URP's issue list.³ URP's proposed cross-examination is beyond the scope of tomorrow's hearing for several reasons. First, URP's issue list addresses legal issues, not factual issues, and therefore raises no issue appropriate for hearing. Second, URP failed to raise timely objections to the stipulation filed in this docket and may not now cross-examine PGE's and Staff's witnesses about the testimony supporting that stipulation.⁴ Finally, even if URP had raised timely objections addressing issues of fact, which it did not, the issues raised by URP's issue list are, in any case, outside the scope of this phase of the proceeding.

It should be noted that URP was given ample time to raise factual issues that bear on the key issues in this docket. Deadlines were established for filing testimony on factual issues and for objecting to Staff and PGE's stipulation. URP filed no testimony of any kind, nor did it file timely objections to the stipulation. Because the issues raised in URP's issue list are legal in nature, however, URP may address those issues in its briefing.⁵

RULING

The hearing on March 4, 2009, will be limited to the cross-examination of ICNU's and PGE's witnesses about the testimony filed by ICNU and PGE, as discussed above. Any party may cross-examine ICNU's and PGE's witnesses on these issues. Cross-examination will be limited to statements of fact. The parties may argue at the briefing stage about the weight that should be given to the witnesses' legal assertions, but the witnesses should not be cross-examined in any depth about their legal opinions.

Dated this 3rd day of March, 2009, at Salem, Oregon.

Lisa D. Hardie
Administrative Law Judge

³ URP's issue list was filed on December 23, 2008. No testimony was filed addressing that issue list, except that Staff and PGE stated in testimony supporting the stipulation that URP's issues were beyond the scope of this proceeding. URP did not rebut this assertion.

⁴ URP contends that a party may file an objection to a non-unanimous stipulation at any time, and need not abide by a deadline established by the Commission rules or by the Administrative Law Judge. This interpretation would render meaningless OAR 860-014-0085(5), which gives a party 20 days to object to a stipulation.

⁵ URP may also seek to raise its issues in a separate proceeding, or it may choose to raise its issues as grounds to terminate the automatic adjustment clause under OAR 860-022-0041(9).