

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UE-001734
)	
Complainant,)	ANSWER ON BEHALF OF
)	COMMISSION STAFF TO ICNU'S
v.)	MOTION FOR LEAVE TO FILE
)	RESPONSE TESTIMONY
PACIFICORP,)	
)	
Respondent.)	
)	
_____)	

This Answer is filed on behalf of Commission Staff in response to ICNU's June 6, 2002 "Motion for Leave to Submit Response Testimony of Industrial Customers of Northwest Utilities" (Motion).

ICNU provides insufficient support for its Motion. Staff therefore recommends the Commission deny the Motion.

ARGUMENT

ICNU made an informed, tactical decision not to file testimony in this case. ICNU knew the deadline for filing testimony in this case was July 2, 2001. (Motion at 2). ICNU's decision not to file testimony was "impacted by its active participation in settlement negotiations ... impacted its decision." *Id.* But other parties participating in settlement negotiations filed testimony on time. ICNU's Motion provides no basis for treating ICNU differently.

ICNU supplies two vague and unsupported allegations supporting the relief sought. First, ICNU alleges that "factual circumstances, especially regarding the impact

of the interim service territory agreement, have changed ...” Second, ICNU alleges that “over the past year, the parties’ status and positions have shifted ...” (Motion at 4).

ICNU knew its Motion would be opposed. (Motion at 3). WAC 480-09-420(3) requires pleadings to set forth any supporting facts. Other than reciting case procedural history, and supplying vague and unsupported allegations contained in the “Argument” section of its Motion, ICNU provides no factual support for these allegations.

Indeed, as to ICNU’s allegation of changes in factual circumstances, ICNU fails to provide a single specific change in any factual circumstance. ICNU does refer to the “impact of the interim service territory agreement.” But that is not a fact. It is an ambiguous reference to an apparent irrelevancy. That is because the interim service area agreement is no longer in effect. Facts related to the “impact” of an expired interim service territory agreement have no obvious bearing on this case. ICNU offers no facts, and no reasons why an expired interim service territory agreement has any relevance to this case.

ICNU’s second allegation, that there has been a “shifting of the parties’ status and positions,” also lacks factual support. ICNU identifies none of the parties who have allegedly shifted status and positions. ICNU also fails to state facts identifying the cause of the shift, when the shift occurred, what the parties’ positions and status were before and after the shift, and why the shift prevented those parties from filing testimony when its was due.

ICNU’s failure to provide the facts necessary to support its Motion leaves the Commission with only hollow allegations which are facially incorrect, and/or lack substantive support for the relief ICNU seeks. ICNU thinks granting its Motion will not

prejudice anyone. (Motion at 5). ICNU is wrong. Granting the relief sought by ICNU in this case, based on unsupported, vague allegations, is inherently prejudicial.

CONCLUSION

The Commission by order established a procedural schedule in this case, to which ICNU did not object. Those parties who chose to file testimony, filed testimony. Those parties who chose not to file testimony, did not file testimony. ICNU's choice was not to file testimony. ICNU's choice was a unilateral, tactical decision.

ICNU has advanced no specific, relevant change in facts or circumstances. ICNU should be held to the choice it made: The Commission should deny ICNU's Motion.

DATED this 11th day of June, 2002.

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