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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) UM 1121
) REPLY
OREGON ELECTRIC UTILITY COMPANY, LLC, et) Motion to Reopen the Record
)
al.) CONSIDERARTION BY FULL COMMISSION
REQUESTED.
Application for Authorization to Acquire Portland
General Electric Company.

Portland Building Owners and Managers Association (BOMA) submits the following Reply to Applicants opposition to its motion. BOMA has moved the Commission to reopen the record for inclusion of new material resulting from Texas Pacific Group's (TPG) and Applicants' ongoing public statements regarding its intentions and plans for ownership of Portland General Electric (PGE.) and for inclusion of the vast amount of additional documents not now in the record.

Applicants again attempt to take attention away from the real issues here. The real issues are not whether BOMA should or could have entered evidence into the record before it was closed. The *only* real issues are what TPG seeks to keep out of the record and why.

What are Applicants and TPG afraid of?

TPG and the Applicants seek to prevent the record from being supplemented with:

Documentation of the significant opposition by the Public. Fueled by the Public's increasing discomfort with the possible direction that TPG will take with PGE and TPG's efforts to keep its plans secret, there is now strong opposition to the transaction, to the extent that any detail of it is actually known. Since TPG has not committed to pursuing a single path, neither the Public nor the Commission

can gauge the benefit or detriment from TPG's ownership. Everyone, except perhaps the TPG investors, think the idea of short term ownership and spinning off the assets of PGE is bad. The Public has made it clear that unless the terms and conditions change, the TPG sale should be stopped.

Evidence of What TPG will do to PGE. TPG's refusal to commit to how long it will hold PGE and the conditions under which it will liquidate its interest, as well as the structure of that arrangement is critically important to any decision in which Public interest is to be considered. Even TPG's refusal to commit is not in the record – nor is any information that TPG is willing to claim that describes its intentions.ⁱ Of course, the only reason why TPG is unwilling to clearly state what its intentions are is because it knows that Oregonians, if not the Commission, will reject them.

The rest of the documents. According to testimony presented by Thad Miller on behalf of TPG, TPG provided 20,700 pages of information in response to various data requests and in testimony.ⁱⁱ It has waived the protective order with respect to only 700 pages, much of it duplicative. What is in the rest of the documents -- particularly now when so many questions are being raised -- is crucially important to the Public. Yet, TPG wants to keep them secret.

Examples of the continuing Misstatements of Fact made by representatives of the Applicants. Applicants continue to make statements that are untrue. Whether this is because of confusion on the part of the speaker or an intentional effort to mislead doesn't matter. What is clear is that objectively false statements are being made without correction, as recently as January 25, 2005ⁱⁱⁱ. Approving the sale of PGE to entities willing to perpetuate a fraud on the Public is not in the Public's interest. But TPG opposes reopening the record to keep this information out of the Public eye. Unless the record is reopened the misrepresentations will not be considered by the Commission.

If anyone needs to be reminded, the negative consent rights held by TPG are not limited in any way, the local Board will not be able to sell or transfer the utility or to take any action unless it satisfies the parent companies, and the legal duty of the Board members is to the TPG shareholders, not PGE customers. In addition, while selling PGE might require PUC approval, selling the entity "Oregon Electric Utility Company" will not.

Examples of Viable Alternatives. TPG does not want the Commission to consider or have in the record that there are viable alternatives to the TPG purchase. One is distributing the PGE shares pro rata

to the Enron creditors. TPG argues that it is not a *viable* alternative but is unwilling to have the record reflect what this would mean for customers. A new alternative coming out after the record was closed is the proposal made by the City of Portland, with significant and strong support from other local governments. The City of Portland's proposal is not in the record. The Public believes that TPG has the burden of showing why its deal, with all of its warts and pimples, is better for the PGE customers than alternatives. To do that requires that the alternatives, including the City of Portland's, be included in the record.

As previously noted, when the record was closed, financing arrangements regarding ownership of Oregon Electric Utility Company, including the terms and conditions of the investments, had not been finalized and were not submitted to the Commission and Interveners. It is patently inappropriate to allow a transaction to occur based upon unsigned draft arrangements. It is equally inappropriate to make a decision of this magnitude without having all of the relevant material in the record. Only the applicants oppose reopening the record. Only the Public is harmed if it is not.

Applicants and TPG continue attempt to make the record one sided and illusory. The record is devoid of the misstatements in the news media, in submittals, and in prepared testimony. The record is devoid of alternatives to the TPG proposal. Most importantly, the record is devoid of any conclusive indications of what the arrangements are and what that will mean for customers in the near and long term. Interveners and the Public must be allowed to fully inquire into the truth and veracity of the public statements made by TPG and the Applicants, including in the news media and to filing agencies, to examine and analyze the documents submitted to OIC and other quasi and governmental entities, and to supplement the record with materials respecting the intentions and plans of TPG and the Applicants. Interveners and the Public have a right to know what the future holds and how this deal compares with alternatives.

If the Commission is determined to approve the transaction, it must do so with appropriate conditions sufficient to protect the customers and the public. It cannot do so without all the information on the record. All of the public statements, the new filings, and the significant inconsistencies must be

examined. BOMA asks the Commission to reopen the record for the inclusion of additional materials and consideration of the impact of this information upon any conditions being considered.

Dated this 27th day of January 2005.

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ⁱ There are many pages of documents in the record that describe a quick in and out strategy to a strategic buyer. However, TPG now claims that these documents are merely preliminary and do not reflect a chosen course.

ⁱⁱ See Testimony in the public hearing on January 25, 2005 by Thad Miller to the Senate Business and Economic Development Committee.

ⁱⁱⁱ Dr. Peter Kohler also gave written and oral testimony during the Senate Committee on January 25, 2005. In that testimony he stated among other things that the local board would be able to make important management decisions and that the negative consent rights were limited, all of which is untrue or misleading. In subsequent testimony Citizens Utility Board attempted to correct the record by specific reference to relevant documents in the record, such as the operating agreement, that contradict the statements made.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served BOMA’s Reply to Applicants Response to Motion to Reopen Record on the official service list for Docket No. UM 1121, by causing the same to be electronically served on January27 , 2004, upon all parties who have an email address on the official service list, and by U.S. Mail on January27, 2005 , postage-prepaid, to those parties who do not have an email address on the official service list.

Dated at Portland, Oregon, this 27th day of January, 2005.

By: _____

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