BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1121

In the Matter of the Application of OREGON ELECTRIC UTILITY COMPANY, LLC, TPG PARTNERS III, L.P., TPG PARTNERS IV, L.P., MANAGING MEMBER LLC, NEIL GOLDSCHMIDT, GERALD GRINSTEIN, and TOM WALSH for an Order Authorizing Oregon Electric Utility Company LLC to Acquire Portland General Electric Company	INTERVENOR CITY OF PORTLAND'S ISSUES

INTRODUCTION

Less than three years ago, the Oregon Public Utility Commission determined the legal standard for the Commission's approval of mergers under ORS 757.511. *In re Legal Standard for Approval of Mergers*, UM 1011, Order No. 01-778, 212 PUR 4th 449, 2001 WL 1285993 (September 4, 2001). The OPUC determined that the statute requires a two part inquiry: first, will the merger provide net benefits to the utility's customers, and second, a demonstration the proposed transaction will not impose a detriment on Oregon citizens as a whole. In assessing a proposed merger, the Commission considers the total set of concerns presented by the application.

The range of issues presented by the present Application are numerous and significant, including the structure of the resulting business entity, the anticipated short-term holding of PGE by the acquiring entity, the restructuring of PGE which will occur after the closing of the merger transaction, and the amount of quantifiable benefits for ratepayers which can be identified at this point in time.

ISSUES

1. Franchise Agreement with City of Portland.

The Oregon Public Utilities Commission has authority to allocate utility service territories under the provisions of ORS Chapter 758. However, the authority of Oregon cities to regulate use of the public right-of-way remains preserved. ORS 758.470(1).

PGE claims to operate within City of Portland streets as a successor in interest to five separate franchises issued in the 1880s and 1890s. All of these franchises purport to be perpetual. The continuing legal validity of these franchises is questionable.

Given these ancient franchises and their complete lack of relevancy in a modern urban setting, how will OEUC/TPG act to ensure that PGE, as it sole corporate asset, has a modern, relevant relationship with the City of Portland? What are OEUC and TPG's positions regarding the City of Portland's ability to control and regulate, by modern franchise, PGE's use of and operations within the public right-of-way and other City property? What measures will OEUC and TPG agree to, if any, to provide assurances to the City of Portland that the merger will not affect the City of Portland's ability to control and regulate the public right-of-way by franchise? What measures are available to provide reasonable assurances that OEUC and TPG will deal with Oregon cities in good faith on these issues?

Will OEUC/TPG commit to having PGE develop and enter into a new, modern franchise agreement with the City of Portland by December 2004?

2. Future Sale of PGE Transmission and Distribution Assets.

From the initial stages of this proceeding, Texas Pacific Group has clearly indicated its intentions to own PGE for a decade or less. What will be the timing of OEUC/TPG's disposition of this asset? What conditions will protect ratepayers from the risks of the utility being controlled by an owner with admittedly short-term perspectives?

Given the expressed intentions, what commitments will OEUC and TPG make about the eventual process for divesting of PGE's equity?

Given that TPG has clearly indicated that it will eventually transfer PGE as an asset, if OEUC/TPG chooses to resell all or part of PGE's transmission and distribution system in the future, will OEUC/TPG agree to offer the City of Portland a right of first refusal to purchase PGE's electricity transmission and distribution systems?

3. Continued Commitment to the Environment.

Will the resulting business entity be capable of providing the quality and level of services now offered to customers?

The City of Portland has adopted specific policy initiatives to improve and advance the environmental quality and sustainability of energy supplies and patterns of energy usage. For example, the City Council has adopted a Local Action Plan on Global Warming that includes goals for long-term investment in energy efficiency and the development of renewable resource generation. How will the merger affect PGE's commitment to the City's adopted policies on the environment and energy?

These goals may be met in part by continuing PGE's commitment to the public purpose provisions of SB 1149. In the event that these public purpose provisions are revised or repealed, will PGE agree to propose, and will OEUC/TPG actively support, one or more alternatives under which PGE will collect public purpose funds? At a minimum, PGE should fund public purposes at existing levels, through a non-bypassable charge. To the extent possible, PGE/OEUC should permit self-direction by customers with loads over 1 aMW in the same manner as is now provided?

How will PGE, OEUC and TPG otherwise address current City goals related to minimizing the adverse environmental impacts of utility generation, transmission and distribution?
Should they affirmatively commit to actively supporting low-income bill payment assistance at current levels, if not at increased levels.

4. Quality of Service.

Does the proposed transaction expose customers to risks of lower service quality? Will the merger between PGE and OEUC negatively affect the quality of service to PGE customers within Portland? Will the resulting business entity be capable of economically and reliably providing the services offered to customers now and in the future? Possible service issues may include, among others, uncomplicated and continuous access to electricity supply, high reliability of the distribution system, the technical quality of the power delivered, and adequate customer service at the retail level.

What regulatory safeguards can be put in place to ensure that the inevitable financial pressures caused by the need to service higher debt loads do not negatively affect service quality?

5. Electricity Rates.

Does the proposed transaction expose customers to greater risks of higher rates?

What effect will the merger have on electricity rates for the City, its residents, and local businesses? How will the merger produce cost efficiencies or other opportunities to reduce electric rates more than if the merger were not consummated?

Customers within the City of Portland spend over $300 million annually for PGE supplied electricity and services. As an existing PGE customer, the City of Portland spends $11 million annually for electric energy and utility services, in the following general categories: 1) Street lights and signals, $5.1 million; 2) Wastewater and water treatment, $4.0 million; and 3) Buildings and other facilities, $2.3 million. As a prudent manager of public funds and operator of public facilities, the City desires access to the lowest reasonable electric rates.

How will the merger increase the availability of lower cost electricity? How will OEUC/TPG identify and take advantage of cost reductions and efficiencies beyond those already identified and implemented? What particular expertise does OEUC/TPG bring to analyzing utility administration and operations? What is the anticipated timeline for OEUC/TPG's evaluation and implementation of cost reduction measures?

6. Economic Development and Utility Infrastructure.

Will the merger have any impact on PGE's role in meeting regional commitments to higher density development? PGE has been, and continues to be, one of the key players in developing the urban infrastructure necessary to serve City residents and utility customers. PGE has supported efforts to build public infrastructure that encourages high-density development, ultimately benefiting its ratepayers through lower costs of service. Continuing participation and support for these efforts will be necessary to meet the regional goals identified in Metro's 2040 plan and other public policies. What commitments will OEUC and TPG make to continuing PGE's support for these efforts?

How will PGE, OEUC and TPG address current City goals related to undergrounding of overhead electric utility infrastructure?

7. Protection of Local Employees.

PGE is a major employer within the Portland region. What assurances will OEUC/TPG provide that PGE will continue to serve the Portland region as an "employer of first choice"?

The Portland region continues to suffer under one of the highest unemployment rates in the country. The Application provides little information about where OEUC/TPG will seek cost efficiencies in PGE's future operations. The Application contains no discussion of protecting local jobs. Given the growing trend of "outsourcing" jobs to reduce staff costs, what measures can be put in place to provide assurance that OEUC will protect local jobs wherever practical? Does OEUC/TPG anticipate that it will primarily achieve cost efficiencies through workforce reductions? When will OEUC/TPG's intentions be shared?

8. PGE's Role as a Corporate Citizen.

PGE is an important corporate citizen in the Portland region. The City of Portland values PGE's past contributions and existing support for public causes. The City of Portland hopes that these efforts will be continued, if not strengthened. What assurances will OEUC/TPG provide that PGE will continue to serve both as a significant participant in civic causes and contributor to local charities?

Are OEUC and TPG willing to make commitments to PGE's corporate charitable activities, and to the Portland General Foundation, beyond vague assurances? Beyond the commitment of financial resources, are PGE, OEUC and TPG willing to consider creative uses of PGE assets, such as land swaps or property donations, if appropriate? Are PGE, OEUC and TPG willing to commit to sharing administrative resources, such as software, training or other systems, if feasible and transferable?

9. Protection for Ratepayers from Monopoly Service Provider controlled by a Holding Company.

Does the proposed transaction expose customers to greater risks from unjust exactions arising from the structure and form of the resulting business entity?

Standard & Poor's recently issued a report finding that the Public Utility Holding Company Act ("PUCHA") has played a valuable role in preventing registered holding companies from engaging in practices such as investment in noncore business industries like savings and loan, insurance, aircraft leasing, real estate, telecom, emerging market utilities, independent power, and energy marketing and trading that have been the cause of significant financial difficulties for non-registered holding companies. Standard & Poor's, *Is PUHCA Beneficial or Detrimental to U.S. Utilities' Credit?*, p. 1 (February 19, 2004). In its application, TPG openly discussed its anticipation that PUCHA will be repealed. In their intertwined history, PGE and Oregon have experienced first-hand the difficulties of holding companies draining funds from local utilities, causing economic dislocations for employees, residential and business customers and government. *See*, Craig Wollner, *Electrifying Eden, Portland General Electric 1889-1965*, pp. 139 -156 (Oregon Historical Society 1990).

What conditions will serve to protect ratepayers and the region from suffering through a cycle of repeating past economic dislocations?

Will the holding company structure result in higher costs for the subsidiaries, in the sense of paying taxes through the parent organization? What regulatory safeguards can be put in place to ensure that money is not shifted inappropriately between related corporate entities?

10. Protection for Ratepayers from Unprecedented Debt/Equity Ratios.

Does the proposed transaction present conflicts with the interests of Oregon customers?

A recent Standard & Poor's credit report placed the ratings of Tucson Electric Power Co. (TEP) on credit watch with negative implications. Standard & Poor's report was in response to an announcement that UniSource Energy Corp., TEP's corporate parent, would "sell 100% of the company to a private equity firm for about $3 billion, including the assumption of $2.1 billion in debt." The rating agency noted that the proposed transaction was highly leveraged, "rais[ing] concerns about management's commitment to credit quality.**"** *See*, Standard & Poor's, *U.S. Utilities Ratings Decline Continued in 2003, but Pace Slows* (Jan. 29, 2004).

Under OEUC's current proposal, the merger transaction will be financed with large amounts of debt and historically unprecedented debt/equity ratios. The debt levels for OEUC will result in significant financial pressures to maintain rates at current levels, if not rate increases. OEUC will correspondingly be under pressure to use any efficiency savings resulting from the acquisition to accelerate debt repayment. This financing arrangement requires that customers rather than shareholders assume much of the financial risk in the transaction while providing only minimal benefits to ratepayers for this additional risk burden.

What is the benefit to customers of assuming this risk? What mechanisms are available for having OEUC/TPG share some of the potential financial benefits of the proposed structure with ratepayers?

Under the proposed debt/equity ratio, how can risk possibly be distributed equitably among shareholders and ratepayers? How can ratepayers be compensated for the additional financial risks that they will bear?

11. Preventing TPG from Exercising Undue Influence over PGE's operations.

In the Application, TPG identified over twenty "negative consent" rights. These rights give TPG veto power over OEUC board decisions on a wide array of corporate transactions, financings, acquisitions, sales, and corporate governance. Given this structure of corporate control, what would prevent TPG from exerting a controlling influence over OEUC and hence PGE?

In light of TPG's "negative consent" rights" over OEUC as PGE's sole shareholder, what conditions can be created to prevent TPG from exercising undue influence over PGE?

12. Conditions Allowing Public Access to Corporate Decision-Making and Dealings.

In the Application, TPG notes that it is a privately held entity. As a result, it is not subject to the sunshine effects that flow from the required filings with the Securities & Exchange Commission for publicly traded corporations. In the merger of PacifiCorp with Scottish Power, the Oregon Public Utility Commission imposed conditions to address concerns of tracking corporate operations half-way around the world. Similar conditions were discussed in the context of the proposed acquisition of PGE by Northwest Natural.

What conditions will be imposed to provide transparent corporate decision-making and address corporate accountability? Will OEUC/TPG provide non-voting positions to representatives of public interests on various corporate committees, e.g., executive compensation and audit, to provide public transparency? What about access to Management Letters written by outside auditors?

During Enron's ownership of PGE, certain intercompany corporate dealings only came to light as a result of information being provided to the Oregon Public Utility Commission by third-parties. What conditions may be considered to address the Commission's ability to track intercompany loans, dividends, security transactions, sales of utility assets, proxies, and other transactions, as well as intercompany services, sales, and construction contracts, in light of TPG's private status?

13. Protecting Ratepayers from the Impacts of Reorganizing PGE.

Does the proposed transaction present conflicts with the interests of Oregon customers?

The Application described the anticipated restructuring of PGE's out-of-state trading operations. However, the OPUC has argued elsewhere that PGE's customers enjoy significant benefits from these out-of-state trading operations.

> Retail rates for customers of Portland General are based on the OPUC's approved prudent costs of providing service to customers, which includes the costs of wholesale power netted against any margins received from the sale of wholesale power. As a result, it benefits Oregon ratepayers that Portland General transacts purchases and sales of electricity at wholesale in the most cost effective markets available in the Western Interconnection, regardless of where such markets happen to be located.

Securities & Exchange Commission, *In re Applications of Enron Corp.*, SEC File No. 3-10909, 2003 WL 431882 (February 6, 2003). How will benefits to Oregon ratepayers of PGE's out-of-state trading operations be preserved if the business is restructured to allow the Applicants to avoid the application of PUCHA to their corporate structure? How will Oregon ratepayers be protected from any short-term and/or long-term costs of reorganization pursued by the Applicants to avoid the application of PUCHA to their corporate structure?

14. Protecting PGE Ratepayers from the Possible Influence of PERS.

Does the proposed transaction present conflicts with the interests of Oregon customers?

The Application states that "pensioners in Oregon are among the people who will benefit from TPG's investments." The State of Oregon has suffered significant disruption and political upheaval as a result of the lack of identity of interests between Oregon Public Employee Retirement Systems petitioners and taxpayers. In its investment in a fund which includes the ownership of utility as a corporate asset, PERS interests may not be identical with those of ratepayers. In particular, the long-term interests in investments in utility assets such as generation or transmission facilities may not coincide with investor interests in allowed rate of return, retained earnings, and dividend payments.

15. Long Term Assurances of the Benefits of Local Control.

The Application highlights local control as one of the benefits to be enjoyed by ratepayers as a result of the proposed transaction. The Application states that PGE's board will have "at least five Oregonians". The Application particularly refers to the makeup of the OEUC board will include "prominent local citizens." What assurances exist for in the long-term of Oregonians of equal stature and public esteem being involved in this corporate structure?

The Application further indicates that if PUCHA is repealed, voting control on the OEUC board will be redistributed to TPG in proportion to its equity holdings. In that event, how will there be any meaningful "local control", given the absolute voting control that TPG will wield over PGE's sole shareholder?

16. Determining the Benefits and Risks of the Proposed Transaction.

Given the unique aspects of the proposed transaction, and the numerous issues posed by the structure of the resulting business entity, how will the Commission compare whether the proposed transaction will result in net benefits to customers? How will the Commission determine whether the proposed transaction will not impose a detriment on Oregon citizens as a whole?

The Commission should consider the fullest range of possible alternatives to the proposed transaction in evaluating the net benefits to ratepayers. Such an evaluation should include possible municipal acquisition of PGE. The possible uncertainty of any particular alternative should not stand as an absolute bar to its inclusion and consideration. As in any evaluation process, economic or otherwise, appropriate discount factors can be applied to assess the potential benefits of any particular option in contrast to the benefits that may be provided by the proposed transaction.

17. Commitment to Prior Merger Approval Conditions.

Of the conditions agreed to in the Scottish Power and Enron merger approvals, what conditions will OEUC and TPG agree to? Which ones will OEUC and TPG want to modify? What would be the basis for modification? How should these prior conditions of approval be modified? Should any additional conditions be considered?

In particular, will OEUC/TPG agree to a condition that the cost of capital for PGE will not be higher than if it were a stand alone entity? How can this be addressed in ring fencing measures?

Will OEUC/TPG agree to customer performance guarantees and service quality standards?

CONCLUSION

By enumerating issues in this docket, the City of Portland is not precluded from raising additional issues in this proceeding or from modifying the issues as presented. The City of Portland is also not foreclosed from proposing additional conditions or from modifying any of its suggested conditions as this proceeding moves forward.

By suggesting any possible conditions, the City of Portland is not indicating at this time that it is in favor of the Commission approving this Application, subject to any proposed conditions. The City of Portland has not yet had sufficient opportunity to evaluate the Application, to review responses to data requests, or to consider the views of other parties, to reach any conclusions regarding the merits of the proposed transaction as a whole.

The City of Portland remains open to considering and evaluating the analysis, comments, and views of all other parties, including the Applicants, in developing its recommendations and position in this proceeding.

Dated this 13th day of May, 2004.

Respectfully submitted,

/s/ Benjamin Walters
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Deputy City Attorney
Of Attorneys for City of Portland

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2004, I mailed an original and five copies of the foregoing INTERVENOR CITY OF PORTLAND'S ISSUES to:

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and on May 13, 2004, I hereby certify that the foregoing document was electronically mailed to all Persons on the Service List maintained by the Public Utility Commission for the UM 1121 proceeding who had an e-mail address posted. I further certify that for those persons on the Service List who were not identified as having an e-mail address, a copy was sent by first class mail, contained in a sealed envelope, with postage paid, and deposited in the post office at Portland, Oregon on said day.

/s/ Benjamin Walters
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