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December 24, 2004
Oregon Public Utility Commission
Administrative Hearings Division
550 Capitol Street, NE, Suite 215
PO Box 2148
Salem, Oregon 97308-2148

Re: UM 1121

Dear Administrative Hearings Clerk:

Enclosed please find an original and five copies of BOMA's Motion to Lift Protective Order. The parties were served by electronic distribution where electronic addresses were available, otherwise by mail.

Thank you for your courtesy.

Sincerely,

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) Case UM 1121
OREGON ELECTRIC UTILITY COMPANY, LLC, et) Motion to Lift Protective Order
al.) CONSIDERARTION BY FULL COMMISSION
) REQUESTED.
)

Application for Authorization to Acquire Portland
General Electric Company.

Portland Building Owners and Managers Association ("BOMA") moves the full Commission for its Order Setting Aside the Protective Order previously entered in this Matter. Because of the significance of this Motion, BOMA requests that it be considered and determined by the full Commission.

DISCUSSION

A protective order was entered in this matter at the request of Applicants pursuant to OAR-860-12-035(1). In PUC proceedings, the entry of a protective order bears little comment since they are entered routinely upon request to prevent confidential information from being disclosed to the public. The slant is typically toward allowing protection for trade secrets and commercial information.

Citizens Utility Board of Oregon v, OPUC, 128 Or App 650, 877 P2d 116 (1994) sets forth the analysis required for a protective order to be issued. The Commission is required to consider not just whether the information sought is a trade secret or protected commercial information but also whether the applicant has established good cause for the issuance by demonstrating that disclosure will work a clearly defined and serious injury. As the court noted, a mere trifle is insufficient. It is a high standard. The applicant must provide substantial evidence, not mere conjecture, to show that as a matter of fact an injury will occur. Entry of a protective order is to be predicated upon factual findings based upon

substantial evidence. In this case, neither the Commission nor the ALJ considering the motion for a protective order required the Applicants to bring forth substantial evidence in support of the motion. Applicants did not make a factual case showing an identifiable risk of harm. The order was entered without a factual analysis of the evidence and findings of fact.

In seeking to have the protective order lifted, BOMA is asking that material in the judicial record that would tend to explain, controvert, or support statements that Applicants and (Texas Pacific Group TPG) have made publicly no longer be subject to a protective order. Such an action is available. In a case such as this, the Commission is required to balance the public's interest in disclosure against the potential harm to (in this case) to the Applicants.

Applicants themselves have put at issue the need for the removal of the protective order. They have placed advertisements and made public statements, including statements made during oral argument that are inconsistent with material contained in the protected material. The protective order should be lifted to make known information upon which the Public can gauge the truth and veracity of the statements made. At the very least, the protective order should be lifted as to Citizen Utility Board's (CUB) exhibits and testimony 100, 105,106,107,108, 109, 110, and 112. These exhibits relate to the very concerns raised by Intervenors including the tax benefits accruing to TPG, the anticipated value of the deal utilizing the structure employed and the use of negative consent rights, and exit strategies. With TPG and the Applicants making public statements indicating that they are advancing a friendly take over intending to benefit Oregonians, the public has a right to see the protected documents and to determine for itself whether TPG's public statements regarding the transaction are accurate.

Applicants have made fairly specific statements in the press, in advertisements, and in oral argument. For instance, OEUC has run several ads, featuring Junki Yoshida, George Passadore, Karla Chambers, and Mike McLaran. Each of the ads suggest that headquarters of PGE will remain in Portland, that the Oregon Electric Utility Company' (OEUC) Board will be able to make decisions that serve the needs of Oregonians, and that OEUC and TPG are dedicated to maintaining PGE as an independent utility. During the course of the oral argument, Applicants stated that they would seriously consider doing an IPO instead of a selling PGE to another investor conglomerate or utility in 5-7 years. The Public should be able to read TPG's own analysis of the transaction, financial structure, consent

rights, and exit strategies to determine whether the public statements are consistent with the internal documents. Germane information is found within many of the protected documents and certainly within CUB's exhibits and testimony indicated herein.

The Commission is obligated to consider OEUC's Application pursuant to ORS 757.500, 757.506, 757.511. It cannot substitute its own interpretation of the statute for the words that the statute actually employs. *Northwest Natural Gas Co, v PUC*, ___Or App___, ___P3d___ (October 13, 2004). Under the regulatory scheme, the Commission is required to deny any acquisition that potentially causes "unnecessary and unwarranted harm to utility customers." The acquisition must serve the utility customer's "public interest." This public interest standard includes net benefits (generally thought to be identifiable and quantifiable benefits) as well as the less quantifiable "no harm" standard. The truthfulness, the hidden or undisclosed intentions, and future plans for the utility are all part of the public interest. The public has a right to know. The Applicants should not be allowed to use the protective order prevent the public for knowing what the plans were for PGE and the benefits accruing to TPG. Protective orders are not to be used to prevent the disclosure necessary for the Public and the Commission to understand the transaction and to consider how it satisfies the customers' public interest.

SUMMARY

The Commission should lift the Protective Order entered in this case, at least with respect to CUB Exhibits and testimony 100, 105,106,107,108, 109, 110, and 112, and allow the Public to review and gauge the credibility of the public statements made at oral arguments, in the press, and in advertisements.

Dated this 23rd day of December, 2004

X

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served BOMA’s Motion to Lift Protective Order on the official service list for Docket No. UM 1121, by causing the same to be electronically served on December 19, 2004, upon all parties who have an email address on the official service list, and by U.S. Mail on December 24 2004, postage-prepaid, to those parties who do not have an email address on the official service list.

Dated at Portland, Oregon, this 24th day of December 2004.

By: _____

Ann L. Fisher

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