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November 17, 2004

VIA HAND DELIVERY

Ms. Annette Taylor
Oregon Public Utility Commission
550 Capitol St. NE, Suite 215
PO Box 2148
Salem, OR 97308-2148

Re: UM-1121 – Oregon Electric Utility Company, LLC
Opening Brief of the Eugene Water & Electric Board and the
Bonneville Power Administration

Dear Ms. Taylor:

Enclosed for filing in the above-referenced docket are the original and five copies of the Opening Brief of the Eugene Water & Electric Board and the Bonneville Power Administration.

Please date stamp the extra copy of the brief and return it in the self-addressed envelope provided.

Thank you for your assistance in this matter. Should you have any questions regarding this matter, please feel free to contact me. Thank you.

Very truly yours,



Edward A. Finklea

EAF/lrs

cc: UM 1121 Service List (via U.S. Mail)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of)	
)	
OREGON ELECTRIC UTILITY)	Docket No. UM 1121
COMPANY LLC, et al.)	
)	
Application for Authorization to Acquire)	
Portland General Electric Company)	
)	
)	
)	

**OPENING BRIEF
OF THE
EUGENE WATER & ELECTRIC BOARD
AND THE
BONNEVILLE POWER ADMINISTRATION**

November 17, 2004

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

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In the Matter of)
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COMPANY LLC, et al.) WATER & ELECTRIC BOARD AND
) THE BONNEVILLE POWER
Application for Authorization to Acquire) ADMINISTRATION
Portland General Electric Company.)
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I.

INTRODUCTION

Pursuant to the procedural schedule established in this docket, the Eugene Water & Electric Board (“EWEB”) and the Bonneville Power Administration (“BPA”) hereby file their Opening Brief in the above captioned docket. EWEB and BPA have intervened in this proceeding because of their joint interest in the Trojan Nuclear Project (“Trojan”). EWEB is a co-owner and co-licensee with Portland General Electric (“PGE”) of Trojan. PGE is the majority owner and lead operator, holding a sixty seven and one half percent (67.5%) ownership share in Trojan. EWEB holds a thirty percent (30%) ownership share in Trojan. EWEB assigned its 30% share of the electric power generation from Trojan to BPA¹.

Activities relating to decommissioning and spent fuel responsibilities at Trojan are currently ongoing and will continue for many years into the future. Each Trojan co-

¹ In consideration of this assignment, BPA agreed to offset any payments that would otherwise be due to BPA by EWEB (for the purchase of other electric power and related electric transmission services) in an amount equal to EWEB’s share of the costs of Trojan.

owner is responsible for assuring the availability of funds necessary to pay its ownership share of the costs of Trojan decommissioning and the safe storage and ultimate disposal of Trojan spent nuclear fuel. As PGE's Trojan partners, EWEB and BPA have a significant interest in ensuring that PGE remains a financially strong utility that can meet these Trojan decommissioning obligations.

The application as proposed by the Oregon Electric Utility Company ("OEUC") changes the ownership and control of PGE in a manner that could impact the financial resources available to PGE to meet its Trojan obligations. The public interest will not be served if the proposed acquisition increases the probability that PGE or OEUC, as the owner of PGE and an entity capable of exercising substantial influence over the policies and actions of PGE, cannot meet its financial obligations with respect to Trojan.

The evidence produced by EWEB in this proceeding shows a substantial likelihood that PGE will incur unexpected Trojan decommissioning costs in the future. The evidence in this proceeding also shows that certain terms of the proposed acquisition will negatively impact the amount of funds available to pay any unexpected Trojan decommissioning costs.

II.

SUMMARY OF ARGUMENT

The central question the Oregon Public Utility Commission ("OPUC" or "Commission") must address in this proceeding is whether the proposed acquisition of PGE by OEUC meets the statutory requirements of ORS 757.511. Under Oregon law, OEUC has the "burden of showing that granting the application is in the public interest." ORS 757.511.

PGE's financial ability to complete the task of decommissioning Trojan impacts both PGE's present and future customers and the broader public interest. Thus, the OPUC must consider PGE's ongoing obligations with respect to Trojan in determining whether approval of the application meets the public interest standard in the statute.

EWEB and BPA do not take a position on whether or not the proposed acquisition of PGE by OEUC should be denied completely, or if conditions recommended by OPUC Staff and Interveners provide sufficient net benefits to ratepayers to warrant approving the acquisition. EWEB and BPA simply request the OPUC to adopt a narrow condition of approval to adequately protect PGE's ratepayers and the public at large from the financial consequences of PGE facing unanticipated Trojan expenses. The condition sought by EWEB and BPA is needed even if OPUC Staff and Intervener conditions are attached to approval of the acquisition. Present and future customers of PGE, and the broader public interest, are not served by an acquisition that weakens PGE's financial ability to complete the decommissioning of Trojan.

In this Opening Brief, EWEB and BPA will show the following:

- PGE has significant financial obligations associated with the decommissioning of the Trojan nuclear plant and the safe storage and ultimate disposal of spent nuclear fuel.
- The acquisition of PGE by OEUC, as presently structured, does not meet the public interest standard because it decreases the probability that PGE will meet its Trojan decommissioning obligations.
- The Commission has recognized that there is a great deal of uncertainty in the area of decommissioning a nuclear facility. The evidence in this proceeding

shows a substantial likelihood that PGE will incur unexpected Trojan decommissioning costs in the future.

- PGE may incur unexpected costs associated with Trojan if the NRC amends the regulations applicable to nuclear facility decommissioning or spent fuel management. An unexpected incident involving spent fuel stored at the site may also increase Trojan costs to the extent not covered by insurance. PGE may also incur additional unexpected costs if a permanent spent fuel repository is not completed and available by 2018 as contemplated by the PGE decommissioning plan.
- The funds currently collected through PGE rates may not be adequate to cover unexpected Trojan decommissioning costs incurred in the future. As a result, PGE would be required to utilize available cash or credit facilities to satisfy its Trojan obligations.
- The terms of the proposed acquisition will deplete the cash reserves available to PGE and raise the potential need for additional credit facilities to fund any unexpected Trojan decommissioning costs. At the same time, the proposed acquisition has eroded the corporate credit rating of PGE. These factors will combine to reduce PGE's ability to cover any Trojan contingencies with cash reserves or short-term borrowing.

To protect the public interest in this transaction, OEUC should be required to procure and maintain a bond or other credit support instrument in a reasonable amount to be determined by the Commission to pay any future PGE Trojan obligation not satisfied

by the Decommissioning Trust Fund. EWEB and BPA urge the OPUC to place such a bonding or other form of credit support condition on the proposed acquisition of PGE by OEUC.

III.

ARGUMENT

A. Decommissioning and spent fuel removal at Trojan is a large and unquantifiable liability of PGE's that the OPUC must address to approve the proposed acquisition by OEUC.

Ensuring that PGE has the financial wherewithal to meet its current and future obligations to decommission Trojan and safely dispose of the spent fuel is central to ensuring that the proposed acquisition by OEUC meets the “public interest” standard set forth in ORS 757.511. To meet its financial obligations and protect the public interest, PGE must have readily available funds to complete the task of properly decommissioning Trojan and safely storing the spent fuel until a permanent nuclear waste repository exists. The acquisition of PGE by OEUC, as presently structured, does not meet the public interest standard because the acquisition could deter PGE's ability to meet its Trojan obligations, thereby harming future ratepayers and the general public.

Trojan was a commercially operating nuclear power plant from March 20, 1976, until November 9, 1992. Exhibit EWEB 100, Beeson at 3. Although licensed to operate until 2011, PGE announced the permanent shutdown of Trojan in January, 1993 due to a degradation of steam generator tubes that ultimately forced a shutdown of the plant.

Portland General Electric Co., OPUC Docket UE-88, Order 95-322, at 26. (March 29, 1995). Since 1993, the focus of the co-owners has been on properly decommissioning

Trojan and safely storing the spent nuclear fuel on site until it can be transferred to a permanent waste repository².

In January of 1995, PGE submitted the first decommissioning plan for Trojan to the Nuclear Regulatory Commission (NRC). *Id.* The decommissioning plan proposed decontamination and dismantlement of the Trojan plant, the licensing and construction of an independent spent fuel storage installation (“ISFSI”) and transfer of the spent nuclear fuel (SNF) to the ISFSI. The decommissioning plan was approved by the NRC on April 15, 1996. *Id.*

PGE’s most recent filing with the NRC regarding the decommissioning is the Annual Report of the Status of Decommissioning Funding, filed by PGE in March, 2003. Trojan Nuclear Plant, NRC Docket 50-344 (March 27, 2003). At that time, the total estimated cost, start to finish, of decommissioning the plant, including spent fuel management, was approximately \$429,719,000, in 1997 dollars. As of January 1, 2003 the estimated remaining cost of decommissioning was over \$187 million. *See Annual Report of the Status of Decommissioning Funding for the Trojan Nuclear Plant in Accordance with 10 CFR 50.75(f)(1)*, submitted to the U.S. Nuclear Regulatory Commission by PGE on March 27, 2003, attached as Exhibit EWEB/103.

Radiological decommissioning in accordance with the decommissioning plan is currently ongoing at Trojan and is expected to be completed by early 2005. The dismantling of the reactor and adjacent facilities is also ongoing. The decommissioning

² According to the Nuclear Regulatory Commission, “Decommissioning” means to “remove a facility safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use.” 10 CFR § 50.2. The OPUC has an even broader definition of decommissioning to include “all activities related to removing total plant from service and restoring the site to unrestricted use.” OPUC Order No. 95-322, p. 58 (March 1995).

process is fraught with uncertainty, however, as the NRC could amend its regulations applicable to nuclear facility decommissioning. Exhibit EWEB 100, Beeson at 6.

The continued storage of the spent fuel on site poses even greater uncertainties than completing the task of decommissioning the power plant. The transfer of SNF from the spent fuel pool to the Trojan ISFSI was completed in September, 2003. Exhibit EWEB 100 Beeson at 6. NRC regulations applicable to spent fuel storage, however, could change over the years. Id. The Trojan decommissioning plan calls for the spent fuel to be transferred from the ISFSI to a permanent repository by 2018. The SNF in the ISFSI now must be stored safely, and without incident, until at least 2018. An incident involving spent fuel stored in the ISFSI could force Trojan's owners to incur considerable expense.

The final uncertainty is whether a permanent repository will exist by 2018 to accept the Trojan SNF. At this time, there is no permanent repository for the SNF and it is impossible to predict whether one will exist by 2018. The federal government has selected Yucca Mountain, Nevada, as the site for a permanent waste repository. The NRC is in the early stage of judging the acceptability of the Yucca Mountain license application³. Without decisive action by Congress and the NRC, and swift affirming action through the courts, constructing and operating a permanent repository at Yucca Mountain, Nevada, is likely to be delayed beyond 2018. Any delay in the opening of a permanent SNF repository will add costs and extend the number of years that PGE will have to incur its share of whatever costs are necessary until the SNF can be safely moved to a permanent repository. Only then will PGE and the other Trojan co-owners be relieved of further liability for the SNF.

³ See Vol. 69 Federal Register, 18557-65, (April 8, 2004).

Given these realities, the OPUC must conclude in this proceeding that the task of decommissioning Trojan and permanently disposing of the SNF is fraught with monetary uncertainty and will be an unfinished task for many years to come. Faced with such great financial uncertainties, the cash reserves and overall financial strength of PGE will be critical to the utility's ability to meet its financial obligations to properly decommission Trojan. Anticipated and unanticipated expenses associated with the continuing efforts to decommission Trojan will go on for many more years and can not be estimated with any degree of certainty at this time. What is certain is that a thinly financed PGE facing increasing liabilities due to unanticipated expenses associated with decommissioning Trojan, or with SNF storage in the ISFSI located at Trojan, could force PGE's owners to take significant actions, such as seeking rate increases to cover unanticipated Trojan expenses or defaulting on decommissioning obligations. Until decommissioning is complete, the long term financial health of PGE is critical to ensuring that all decommissioning tasks are completed safely and without harm to PGE's ratepayers or the public at large.

B. The decommissioning fund authorized by the OPUC in Order No. 95-322 does not negate the need to address the new risks to Trojan decommissioning posed by the highly leveraged acquisition of PGE by OEUC.

Both PGE and PacifiCorp⁴ (formerly, Pacific Power and Light (PP&L)) separately collect, through rates, funds necessary to cover their respective

⁴ PacifiCorp holds a two and one half percent (2.5%) ownership in Trojan.

decommissioning obligations. As of December 31, 2002, the Decommissioning Trust Fund balances were \$27.9 million for PGE and \$1.7 million for PacifiCorp.⁵

The funds set aside by PGE and PacifiCorp are in external trust funds that are administered in accordance with NRC regulations. 10 CFR 50.75(e)(1)(ii) provides that decommissioning funds must be in an external sinking fund “segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected.” Thus, the funds PGE and PacifiCorp have set aside for decommissioning Trojan must be in a trust fund that is not commingled with other assets of the utilities in order to be in compliance with NRC regulations.

PGE currently collects from ratepayers and contributes to the external Decommissioning Trust Fund approximately \$14 million per year to fund its share of decommissioning costs. The \$14 million figure has been approved by the OPUC as an annual surcharge to rates that has been collected since 1995. OPUC Order No. 95-322 at p. 60.

The existence of the Decommissioning Trust Fund does not eliminate the need to address Trojan in this transaction due to the uncertainties surrounding decommissioning and SNF storage and disposal. The first uncertainty is whether the current decommissioning surcharge will collect adequate funds. The second uncertainty is whether the task of decommissioning will last longer than the fund has been authorized to

⁵ The March, 2003 report notes that the decommissioning funding obligation of the Eugene Water & Electric Board (EWEB) is being fulfilled by the Bonneville Power Administration which has provided a statement of intent providing that funds will be available as needed.

exist. Both of these uncertainties impact how this Commission must view the proposed acquisition of PGE by OEUC.

The money currently in the Decommissioning Trust Fund is less than the estimated remaining costs of decommissioning Trojan. There was \$29 million in the external trust provided by PGE and PacifiCorp, with \$187 million in estimated remaining costs at the end of calendar year 2002. In PGE's 2003 FERC Form 1, the company reported that there was \$35 million in the Decommissioning Trust Fund, with \$22 million spent in calendar year 2003 on decommissioning and to store the spent fuel in the interim dry storage facility, the ISFSI. PGE stated in its FERC Form 1 that PGE made a one-time contribution of \$12 million to the Decommissioning Trust Fund in 2003 in addition to the \$14 million it collected from customers pursuant to OPUC authority. NRC regulations require each co-owner to maintain a collection schedule that ensures that each co-owner's portion of the total decommissioning activity expenditures will be fully funded.

Second, if decommissioning costs continue to be incurred after 2011, past statements by this Commission raise doubt as to whether PGE would be authorized to continue collecting funds from ratepayers. In the 1995 order approving the funding of decommissioning costs, the OPUC made the following observation:

“After 2011, Trojan would have been replaced by other resources in any case, so the generation of ratepayers after 2011 should not share in decommissioning costs.” Order 95-322 at p 60.

The above-quoted statement made by the OPUC in 1995 was part of the Commission's justification for allowing \$14 million to be collected from ratepayers to fund the annual contribution to the Decommissioning Trust Fund. However, the

statement leaves questions as to whether or not after 2011 the OPUC would authorize continued surcharges if the task of decommissioning has not been completed by that time.

This Commission has considerable limitations on what it can allow PGE to collect from ratepayers for Trojan investments⁶. Thus, this Commission must recognize that it may have only limited discretion as to what Trojan-related expenses it can allow PGE to collect from its customers in the future.

In cross-examination in this proceeding, OPUC Staff witness Brian Conway stated that the Staff did not include any conditions addressing Trojan because the decommissioning fund “is sufficient” to address PGE’s Trojan decommissioning obligations. Vol. 1, pp 68-69 (Oct. 20, 2004). While EWEB and BPA share OPUC Staff witness Conway’s hope that PGE’s Trojan liabilities can all be addressed through the Decommissioning Trust Fund, his total reliance on the fund to address these significant uncertainties is not prudent in the face of the highly leveraged acquisition structure. Staff’s assumption is not based on any concrete order of this Commission or any binding court precedent.

Staff’s assumption is also in direct contradiction with an admission by PGE in public documents regarding the ability of the Decommissioning Trust Fund alone to fully address Trojan decommissioning obligations. In a recent filing with the Securities Exchange Commission (“SEC”), PGE stated:

Management does not expect actual future decommissioning costs to change significantly from the current estimate. However, if actual costs significantly exceed the previously estimated amount, funds collected through rates may not be adequate to cover actual decommissioning costs and may require that PGE utilize

⁶ A thorough history of litigation over this Commission’s authority to authorize PGE to earn a return on, or a return of, its investment in Trojan, is found in a recent ruling of Commission Administrative Law Judge Kirkpatrick in Dockets DR/10/UE/88/UM 989, issued August 31, 2004. Ruling, Oregon Public Utility Commission, Docket No. DR 10/UE88/UM989 (August 31, 2004).

available cash and a credit facility to advance funds to the trust to cover any near term shortfall. Recovery of any such shortfall from customers would require OPUC approval.

Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ending December 31, 2003, filed with the Securities & Exchange Commission March 22, 2004, available at <http://www.sec.gov/Archives/edgar/data/784977/000078497704000008/final10k.pdf>>.

Page 42 of the PGE 10-K is attached as Exhibit EWEB/108.

PGE management recognizes that PGE's "available cash" and the strength of its credit may become critical to covering actual decommissioning costs. PGE recognizes the risk that the decommissioning fund will be insufficient. PGE management's frank admission is inapposite to the testimony of Commission Staff Witness Conway. Therefore, this Commission must go beyond the analysis of its Staff and address what other steps must be taken in conditioning OEUC's acquisition of PGE to protect customers and the general public from the consequences that would flow from PGE being unable to meet its Trojan decommissioning obligations. The degree of uncertainty surrounding the actual cost of decommissioning and the risks posed by continued on-site storage of the SNF requires this Commission to address Trojan obligations through a specific condition to this acquisition.

In the event of unanticipated expenses, insurance, cash and credit would be the three vehicles PGE would need to rely on to meet its financial obligations. Uncertainties regarding cash reserves, insurance and PGE's credit rating are where this Commission should focus to properly condition the OEUC acquisition to protect ratepayers and the general public from the risks posed by PGE being unable to cover its Trojan obligations.

C. This transaction poses risks to PGE's ability to meet its long-term commitments to decommission Trojan and remove all spent fuel.

The structure of the proposed OEUC acquisition of PGE will weaken the utility's financial strength by decreasing the funds available to pay any unexpected Trojan decommissioning costs. Many parties in this proceeding have raised concerns about the heavily leveraged nature of this transaction and the minimal assurances that OEUC and TPG have provided regarding how it will capitalize PGE. OPUC Staff Witness Conway has raised concerns about the structure of this acquisition, noting that Standard & Poor's has indicated that the highly-leveraged nature of the proposed transaction "is expected to decrease PGE's credit quality." Exhibit Staff/200, Morgan, p. 29, Exhibit Staff/202 Morgan 593. CUB witness Dittmer claims that after the acquisition, on a consolidated basis PGE's utility assets will be financed by a higher degree of debt than most publicly traded utilities, with debt comprising 75 percent of the utility's capital structure. Exhibit CUB/200 Dittmer at 3-5. *See also* Exhibit EWEB/105; Exhibit ICNU/400 at 6-4.

Under the terms of the proposed acquisition, \$240 million in cash that is available to PGE for any purpose today will be used to fund the purchase price through a dividend payment to OEUC. Exhibit EWEB 105. In the original application, OEUC proposed that PGE maintain only \$10 million in cash on hand after the acquisition, thereby significantly lowering the current PGE cash reserves. TR. Oct. 20, p. 23, lines 24-25. At the hearing, PGE admitted that its cash position would be even weaker than represented in the filing. On cross examination, PGE witness Piro admitted that at the end of the second quarter of 2004, PGE had \$200 million in cash on hand. TR. Oct. 20, p. 20, lines 22-23. Yet, if the acquisition is approved as filed, OEUC will be paid between \$220 and \$240 million as a "catch-up dividend." TR. Oct. 20, p. 21, lines 3-14. Thus, OEUC will need to issue new

debt to pay itself the entire “catch-up” dividend, thereby completely depleting PGE of its cash. TR. Oct. 20, p 21, lines 10-14.

Depleting PGE’s cash reserves raises the likelihood that PGE will have to borrow money to cover expenses if unexpected Trojan decommissioning costs are incurred in the near future. Yet at least one credit rating agency has put PGE’s already eroded corporate credit rating and all issue ratings on CreditWatch with negative implications as a result of the proposed acquisition by OEUC. *See* EWEB/105. OEUC proposes to supplant the cash reserves with certain revolving credit facilities at closing. TR. Oct. 20, p. 21, lines 13-20. These revolving credit facilities are expected, however, to include final terms allowing termination of the facility and cause acceleration of the debt repayment obligation if OEUC or PGE experiences financial difficulty and an event of default such as bankruptcy occurs. *See* Applicant’s Response to Request EWEB/OEUC 4, attached as EWEB/107.

OPUC Staff and several interveners have raised far more extensive concerns about the highly leveraged nature of the proposed acquisition. Many of the approval conditions advocated by OPUC Staff, ICNU and others attempt to improve on the structure of the transaction through “ring fencing” and other mechanisms intended to mitigate the fact that PGE will be financially weakened by the acquisition. OPUC Staff Witness Morgan noted that while the ring-fencing measures adopted by the OPUC when Enron purchased PGE were “some of the best in the nation”, they were “not sufficient to remove the risk of PGE being assigned non-investment grade debt” by rating agencies when Enron filed for bankruptcy. Exhibit Staff/200 Morgan at 31. Morgan described the state of PGE’s finances as “touch and go” when Enron first filed for bankruptcy, despite

the ring fencing provisions attached to that acquisition of PGE. Id. None of the conditions to the Enron purchase, and none of the conditions advocated by OPUC Staff in this proceeding, specifically address PGE's Trojan decommissioning liabilities.

A financially weakened PGE will have considerably less flexibility to cover any Trojan contingency with cash reserves or short-term borrowing. A significant unanticipated Trojan expense would either impose higher rates on PGE's customers, force higher cost of borrowing for all PGE debt, or jeopardize PGE's ability to meet its share of the expenses that would need to be incurred to address the problem at Trojan. The damage to ratepayers and the general public could be significant if such an eventuality came to pass. As a result, this Commission should force OEUC to guard against the potential financial crisis that would be precipitated by a need to cover significant expenses at Trojan.

Without conditioning the acquisition with protections that specifically address Trojan decommissioning liabilities, the Commission would have to deny the OEUC application to purchase PGE. The legal standard articulated by the OPUC in UM 1011 in interpreting ORS 757.511 is a two step analysis that focuses on: 1) whether the utility's customers "will be served" by the transaction; and 2) whether "granting the application is in the public interest." In prior Commission Orders approving mergers, the Commission has required the applicant to show a net benefit to customers to approve the transaction. See, e.g. *Sierra Pacific Resources*, UM 967, Order No. 00-702 at 6; *Scottish Power*, UM 918, Order No. 99-616 at 13; *Enron Corp.*, UM 814, Order No. 97-196 at 6.

OEUC has not met the burden of proving that the acquisition as proposed will not harm future ratepayers of PGE and the public at large by weakening PGE's ability to

complete the all important task of decommissioning Trojan. A Trojan-specific condition is needed if the application to purchase is to be approved.

D. OEUC should be required to post a bond to cover Trojan-related expenses as a condition of this acquisition.

The Commission should impose a specific bonding condition on any approval of the request by OEUC to purchase PGE to protect future ratepayers and the general public from a potential financial crisis that would be triggered by unanticipated expenses having to be incurred to complete the decommissioning of Trojan. Even if the conditions urged by OPUC Staff and other parties are attached to the approval, the acquisition of PGE by OEUC without the condition urged by EWEB and BPA does not meet the public interest standard because the acquisition could deter PGE's ability to meet its Trojan obligations.

In his testimony, EWEB witness Beeson urged the OPUC to impose two Trojan-specific conditions: one addressing insurance and the other requiring the posting of a bond. EWEB raised the insurance concern because on February 28, 2003, PGE requested that the NRC reduce "the primary financial protection requirement currently applied to the Trojan Nuclear Plant from \$100 million to \$25 million." See Request for Further Exemption from the Financial Protection Requirements of 10 CFR 140.11(a)(4) and Related Amendment to Indemnity Agreement No. B-78, submitted to the U.S. Nuclear Regulatory Commission by PGE on February 28, 2003. Exhibit EWEB/104. For many years, PGE has maintained \$100 million in liability insurance for Trojan-related losses. In his testimony, EWEB witness Beeson urged the Commission to require PGE to maintain the \$100 million in insurance. The insurance condition urged by EWEB is no longer necessary because the NRC recently rejected PGE's effort to reduce its insurance.

EWEB and BPA are therefore asking that the Commission impose only one remaining Trojan-related condition on the proposed acquisition. OEUC should be required to procure and maintain a fidelity bond, letter of credit, insurance policy or other credit support instrument in a reasonable amount to be determined by the OPUC to provide for the payment of any expenses associated with PGE's ownership interest in the Trojan Nuclear Facility and the Trojan independent SNF storage installation that are not paid by either funds available in the Decommissioning Trust Fund established by OPUC in Order No. 95-322 or other sources of funds available to PGE. This condition should remain in effect until such time as (a) PGE obtains the following senior secured bond ratings: (i) Standard & Poor's – A, (ii) Moody's – A2, and (iii) Fitch – A; or (b) all spent nuclear fuel is permanently removed from Trojan. OEUC would be required to maintain that bond or have it assumed by a subsequent purchaser of PGE unless PGE has Standard & Poor's – A, (ii) Moody's – A2, and (iii) Fitch – A or all spent nuclear fuel has been permanently removed from Trojan prior to the sale of PGE.

If the bonding condition recommended by EWEB witness Beeson is attached to the transaction, the Commission will ensure that OEUC's acquisition of PGE neither harms ratepayers nor the public at large. Without the bonding condition, the transaction fails the public interest standard because PGE's ability to meet its Trojan obligations may be eroded by the proposed acquisition. The mere existence of the Decommissioning Trust Fund alone does not negate the need for imposing a bonding condition on this transaction. The bond would protect against liabilities that could not be recovered through the Decommissioning Trust Fund, because they would require controversial additional surcharges to be imposed on future PGE customers' rates.

It is beyond dispute that the manner in which OEUC will acquire PGE will weaken PGE's financial position. Thus, without a bonding condition the Commission would have to conclude that the acquisition of PGE by OEUC will increase the probability that PGE will be unable to pay its share of all anticipated and unanticipated future costs related to Trojan decommissioning, SNF storage and ultimate permanent SNF disposal. A bonding condition is necessary for the acquisition by OEUC to meet the public interest standard in ORS 757.511, unless this Commission concludes that it will bind future Commissions and commit to imposing Trojan-related surcharges on PGE ratepayers for potentially decades into the future.

IV.

CONCLUSION

The bonding condition advocated by EWEB and BPA would protect the public interest against the disastrous consequences that would flow from PGE being unable to complete the task of decommissioning Trojan or incurring unanticipated expenses associated with spent fuel storage. Absent the conditions proposed by EWEB, the application by OEUC should be denied as having failed to demonstrate that the acquisition will not harm future ratepayers of PGE and the public at large by weakening PGE's ability to complete the all important task of decommissioning Trojan.

Respectfully submitted this 17th day of November, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this day served the foregoing OPENING BRIEF OF THE EUGENE WATER & ELECTRIC BOARD AND THE BONNEVILLE POWER ADMINISTRATION on the parties listed below by electronic mail and by hand delivery.

Dated in Portland, Oregon, this 17th day of November, 2004.

Respectfully Submitted,



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