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December 3, 2004

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Ms. Annette Taylor  
Hearings Division  
Oregon Public Utility Commission  
PO Box 2148  
Salem, OR 97308-2148

Re: *In the Matter of Oregon Electric Utility Company, LLC, et al.*  
*Docket No. UM 1121*

Dear Ms. Taylor:

Enclosed for filing in the above-captioned proceeding is Strategic Energy LLC's Reply Brief. The originals of this letter and the brief and five copies of the brief are being sent by regular mail.

Sincerely,



Rochelle Lessner

cc: Service List *(via e-mail and regular mail)*

707352.0005/484781.1

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 Docket No. UM 1121

4 In the Matter of )  
5 OREGON ELECTRIC UTILITY COMPANY, ) **STRATEGIC ENERGY LLC'S**  
6 LLC, *et al.* ) **REPLY BRIEF**  
7 Application for Authorization to Acquire )  
8 Portland General Electric Company. )

9 Strategic Energy LLC (“Strategic Energy”) respectfully submits its Reply Brief in the  
10 above-captioned proceeding.

11 **INTRODUCTION**

12 As provided in its Opening Brief, Strategic Energy has no position on whether the  
13 Commission should or should not approve the Applicant’s request for authorization to acquire  
14 Portland General Electric Company. However, Strategic Energy asks that if it chooses to  
15 approve the Applicant’s request, the Commission include the following direct access condition,  
16 initially proposed by Industrial Customers of Northwest Utilities (ICNU), as a condition of  
17 approval:<sup>1</sup>

- 18  
19 27. a. i. PGE shall offer customers with aggregate load larger than  
20 1 aMW a three-year and a five-year option to opt out of the  
21 cost of service rate with a fixed transition amount under the  
22 same terms as current Schedule 483 (effective September 1,  
23 2004). The Schedule 483 offer shall be made each  
24 September for a 30-day period for so long as PGE is  
25 required to offer direct access.

26 <sup>1</sup> This direct access condition was originally numbered as “27” by ICNU in its surrebuttal  
testimony. In its Opening Brief, ICNU numbers this condition as “46”. In its Opening Brief,  
Associated Oregon Industries numbers this same condition as “37.” For consistency, Strategic  
Energy refers to this condition based on ICNU’s original number, 27.

1 ii. PGE shall develop and file, within six months of closing of  
2 the transaction, a plan to offer to all customers eligible for  
3 direct access who do not qualify for Schedule 483 a multi-  
4 year option to opt out of the cost of service rate with a fixed  
5 transition amount at least one time each year. The plan  
6 shall include a mechanism for determining the costs of  
administering such program for various size loads and  
aggregated loads and the appropriate allocation of costs.  
The plan shall include the opportunity for aggregation.

7 b. PGE shall offer all customers eligible for direct access an  
8 opportunity to elect direct access for a period of seven calendar  
9 days (similar to the current November offering) at least once  
10 each month. PGE shall make a filing within 90 days of closing  
of the transaction to initiate a process for developing and  
obtaining regulatory approval for the proposal.

11 c. PGE shall in consultation with customers eligible for direct  
12 access and energy service suppliers develop a new  
13 methodology for calculating energy imbalance penalties, which  
14 accounts for the benefits of the diversity of PGE's system. The  
15 goal of the methodology shall be to provide imbalance service  
16 to direct access customers on the same basis that PGE provides  
imbalance service to cost of service customers. PGE shall  
make a filing with the Federal Energy Regulatory Commission  
within 90 days of closing of the transaction requesting approval  
of such changes.

17 d. PGE in consultation with customers eligible for direct access  
18 and energy service suppliers shall develop an option that  
19 allows direct access customers to purchase flat blocks of  
20 energy from energy service suppliers, while having the option  
21 to purchase load shaping and other necessary services from  
PGE. PGE shall make a filing within 90 days of closing of the  
transaction to initiate a process for developing and obtaining  
regulatory approval for the proposal.<sup>2</sup>

22 / / /

23 / / /

24 / / /

25 \_\_\_\_\_  
26 <sup>2</sup> See Surrebuttal Testimony of Donald W. Shoenbeck (September 22, 2004) at ICNU/301,  
Schoenbeck/6-7.

1  
2 **ARGUMENT**

3 In addition to the reasons already set forth in Strategic Energy’s Opening Brief, the  
4 Commission should adopt ICNU’s direct access condition for the following reasons:

5 1. This condition conforms to the statement set forth in the Applicant’s Opening  
6 Brief that “Oregon Electric intends to work with PGE toward the objective of establishing a  
7 competitive electric energy market in Oregon.” (Oregon Electric’s Opening Brief at 12 (citing  
8 Oregon Electric/3, Davis/15)).

9 2. Associated Oregon Industries (AOI) a customer group that “represents a broad  
10 cross-section of commercial, retail and service-industry customers in the UM 1121 proceeding”  
11 takes the position that the application before the Commission in this proceeding does not serve  
12 PGE’s customers in the public interest. (Opening Brief of Associated Oregon Industries at 3,  
13 lines 7-8; at 28, lines 1-2). However, AOI also takes the position that if the Commission decides  
14 it can approve the application, the Commission should adopt a set of conditions “to help protect  
15 customers ... and continuity of programs benefiting customers, such as direct access.” (*Id.* at 34,  
16 lines 1-5). Pursuant to that recommendation, AOI urges adoption of the identical ICNU direct  
17 access condition recommended by Strategic Energy. (*Id.* at 42, lines 40-45; at 43, lines 1-24).

18 3. Industrial Customers of Northwest Utilities (ICNU), a group that represents the  
19 interests of industrial customers, recommends that the Commission deny the application.  
20 (Opening Brief of the Industrial Customers of Northwest Utilities at 2-3). However, ICNU also  
21 urges that if the Commission determines that it should approve an application, the Commission  
22 should adopt a set of conditions. (*Id.* at 3.) ICNU has reiterated that its direct access condition,  
23 now supported by Strategic Energy and AOI, should be adopted if the Commission approves the  
24 Applicant’s request. (*Id.*, Attachment A at 7.)

25 These reasons strongly suggest the Commission should do as urged by ICNU, AOI and  
26 Strategic Energy, if it decides to grant Applicant’s request. The statement of the Applicant about


1 its objective of establishing a competitive electricity market in Oregon affirms the Commission's  
2 stated support for competition and customer choice as in the public interest, and the language and  
3 legislative intent of SB 1149 with respect to direct access. (Strategic Energy LLC's Opening  
4 Brief at 3, lines 5-16). Moreover, the positions of the two customer groups supporting adoption  
5 of this condition, if the Commission approves an application, should be given great weight in  
6 determining whether approval of an application will serve the customers in the public interest as  
7 required by Oregon law. ORS 757.511(3).

8 **CONCLUSION**

9 As Strategic Energy previously argued, if the Commission approves the Applicant's  
10 request to acquire PGE, the Commission should condition such approval on ICNU's direct  
11 access condition 27, for the following reasons: (1) approval for the Applicant's request to  
12 acquire PGE must show a public interest; (2) direct access is in the public interest; (3) the  
13 Commission has in both prior cases of acquisition applications for PGE required a direct access  
14 condition; (4) ICNU has proposed a reasonable direct access condition; and (5) Applicant has not  
15 objected. As additional reasons, the two intervenors that represent the interests of the customers  
16 eligible for direct access, and therefore most affected by the proposed condition, also recommend  
17 adoption of this condition in the event that the Commission decides to approve the Applicant's  
18 request to acquire PGE. Further, this condition is consistent with the Applicant's stated goal to  
19 develop a competitive electricity market in Oregon

20 DATED: December 3, 2004.

21 Respectfully Submitted,  
22 LANE POWELL SPEARS LUBERSKY LLP

23  
24 By   
25 Rochelle Lessner, OSB No. 88-254  
26 Of Attorneys for Strategic Energy LLC

CERTIFICATE OF SERVICE

UM 1121

I hereby certify that I served, on the date given below, a true and correct copy of the foregoing STRATEGIC ENERGY LLC'S REPLY BRIEF upon the parties shown below, from the official service list for Docket No. UM 1121, by causing the same to be served electronically and by U.S. Mail, postage prepaid:

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DATED: December 3, 2004.

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By   
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