



**HYDROPOWER
REFORM
COALITION**
*Putting water, wildlife,
and people back in rivers.*



December 3, 2004

Attn: Kathryn Logan
Administrative Law Judge
Administrative Hearings Division
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148

**Re: In the Matter of Oregon Electric Utility, Company, LLC, et al.
Application for Authorization to Acquire Portland General Electric Company
UM 1121 – Reply Brief**

Dear Ms. Logan:

Enclosed for filing is an original and five copies of the Hydropower Reform Coalition and American Rivers' Reply Brief in the above-referenced proceeding. Copies of this filing have been served to all parties listed for this proceeding.

If you have any questions or need additional information, please do not hesitate to call.

Sincerely,

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1121

<p>In the Matter of</p> <p>OREGON ELECTRIC UTILITY, COMPANY, LLC, et al.</p> <p>Application for Authorization to Acquire Portland General Electric Company.</p>	<p>REPLY BRIEF of the</p> <p>HYDROPOWER REFORM COALITION and AMERICAN RIVERS</p>
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I. INTRODUCTION

The Hydropower Reform Coalition and American Rivers (hereafter, “Coalition”) hereby submits a reply brief in response to Staff’s opening brief.¹ Specifically, our brief addresses Staff’s failure to independently advance conditions that will protect Portland General Electric’s (PGE) hydropower assets and program management from the risks of Oregon Electric Utility Company’s (OEUC) proposed acquisition. The Coalition believes that explicit conditions are necessary to meet the Commission’s public interest standard and assure that risks from OEUC’s acquisition of PGE are properly mitigated.

II. STANDARDS and AUTHORITIES

The Public Utility Commission (Commission) is vested with the authority to approve utility acquisition applications only if granting the application can be demonstrated to result in net benefits to Oregon and its citizens or it “will not impose a detriment on Oregon citizens as a whole.”² The Commission is also empowered to expressly condition its approval with mitigation measures that alleviate risks to Oregonians.³

III. ADDITIONAL CONDITIONS ARE NECESSARY TO MEET THE PUBLIC INTEREST STANDARD.

¹ *Staff’s Opening Brief*, November 17, 2004, UM 1121.

² Order No. 01-778, at 11.

³ ORS 757.511(3)

In order for any acquisition of PGE to be in the public interest, the Commission must ensure adequate protection of the stability, programmatic oversight, and environmental mitigation activities of PGE's hydropower facilities.

PGE's hydropower facilities are important. The management of PGE's five hydroelectric projects is a significant piece of the environmental and energy picture in Oregon. These facilities generate nearly 600 MW of power to serve ratepayers and provide variable power on demand – a valuable role in a utility's energy mix. Due to laudable commitments from its leadership, PGE has recently committed to various environmental and quality of life measures, such as passing anadromous fish into more than 220 miles of river in the Deschutes River Basin; assuring adequate water quality in popular recreational reservoirs such as Lake Billy Chinook; and dam removal in the Sandy and Little Sandy watersheds. These commitments are as strong as the management makes them. Further, PGE is presently developing the terms of its license for the Clackamas River project, five dams that – among many other things – control flows over rocky beaches where Estacada residents congregate on hot days. In sum, these hydropower facilities deliver power to ratepayers, supply PGE with a crucial part of its energy mix, and affect tremendous natural resources whose well-being directly benefits Oregonians.

The risks to the PGE's first-rate hydropower management are real. First, OEUC intends only short-term ownership of PGE,⁴ while hydropower licenses and their commitments are executed for 30 to 50 year durations. Shortsighted decisions made during OEUC's tenure will irrevocably impact the extensive remainder of the licensed term; that is, decades. Second, in its initial analyses, OEUC specifically identified the hydropower program as an excellent prospect for financial trimming – in other words, there is a lot of room to cut.⁵ OEUC has offered nothing concrete to assure that it does not intend to significantly reduce the hydropower program. Finally, there is no meaningful commitment from OEUC to maintain the level of environmental stewardship that PGE has exhibited and which its customers demand. Proposed board members' pastimes hardly constitute what should be a basic assurance of maintaining existing commitments.

Despite the Coalition's testimony, appearance at settlement negotiations, and independent negotiations of which Staff was kept apprised, Staff's opening brief fails to address any of the risks described above.

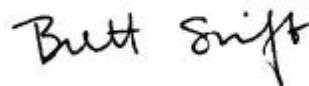
⁴ A maximum of twelve years. Application, Exhibit 3, p.4.

⁵ See exhibits CUB/301/Jenks&Brown/1 and ICNU/100/Schoenbeck/14.

The Coalition urges the Commission to move beyond Staff's brief in considering the serious risks to PGE's energy assets and environmental footprint. At a minimum, the Commission must explicitly condition any approval of the application with commitments to existing licensing processes and fulfillment of the terms of PGE's licenses and decommissioning plans. In our testimony before the Commission, the Coalition suggests conditions that we believe will either eliminate or mitigate the risks described above.⁶

Without expressly conditioning the transaction, the Commission risks allowing the integrity of PGE's hydropower program to disintegrate and thus, the Commission fails to meet the requisite public interest standard.

DATED this 3rd day of December, 2004.



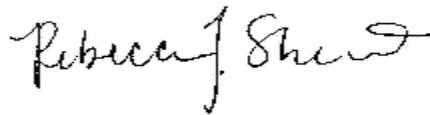
Brett Swift, J.D.
Deputy Director, Northwest Office
American Rivers

⁶ See HRC/100/Sherman&Swift/6-7

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2004, I served the foregoing UM 1121 brief of American Rivers and the Hydropower Reform Coalition upon the following service list compiled by the Commission in this proceeding, either by electronic mail where provided or by mailing a copy in a sealed envelope, postage prepaid, and depositing the envelope at the United States Post Office in Portland, Oregon.

Respectfully submitted,



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