BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1121

In the Matter of	)
	)
OREGON ELECTRIC UTILITY	)
COMPANY, LLC, *et al.*,	)
	)
Application for Authorization to Acquire	)
Portland General Electric Company.	)
	)

OPENING BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

REDACTED VERSION

(Confidential Information Is Shaded)

November 17, 2004

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INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits this Opening Brief in Public Utility Commission of Oregon ("OPUC" or the "Commission") Docket No. UM 1121, recommending that the Commission deny the Application ("Application") of Oregon Electric Utility Company, LLC ("Oregon Electric") and Texas Pacific Group ("TPG") (collectively, the "Applicants") for an order authorizing Oregon Electric to acquire Portland General Electric Company ("PGE" or the "Company"). In this proceeding, the Commission must decide whether it serves PGE's customers and is in the public interest for an out-of-state private equity investment firm with no utility experience to acquire Oregon's largest electric utility in a highly leveraged buyout and then dispose of it after five to seven years. This buyout requires reorganizing PGE and a new subsidiary into a structure that the OPUC, the Securities and Exchange Commission ("SEC"), and the Federal Energy Regulatory Commission ("FERC") have never regulated before and will subject PGE to financial pressures that do not exist in the Company's current situation. The risks and harms posed by Oregon Electric's ownership do not outweigh the purported benefits of the proposed transaction, and the proposed transaction would not result in a net benefit to PGE's customers. The Commission should deny the Application.

For TPG, PGE is merely an investment opportunity. TPG will purchase the Company, dispose of it within five to seven years, and hope to reap a generous return. For PGE's customers, PGE's electric service is an essential component of living, working, and operating businesses in Oregon. ORS § 757.511 prevents captive customers of a monopoly utility from bearing the costs or risks associated with changes in utility ownership. This includes the costs associated with the high levels of debt that Oregon Electric will incur to acquire PGE

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and the risks associated with the restructuring of PGE that is necessary for the Applicants to own a utility but not be subject to the Public Utility Holding Company Act of 1935 ("PUHCA" or the "Act"). These costs and risks may be an inherent part of TPG's desire to acquire PGE or other investments, but they are not the responsibility of PGE's customers. ICNU recommends that the Commission deny the Application for the following reasons:

1. The Applicants have the burden under ORS § 757.511 to demonstrate that the proposed transaction will serve PGE's customers (i.e., provide a "net benefit") and is in the public interest. The Applicants have not met that burden. The record lacks evidence demonstrating that PGE's customers will be better off than in the absence of Oregon Electric's ownership. In addition, no party in this proceeding other than the Applicants has stated that it supports the transaction as proposed.

2. Despite the extensive testimony and evidence submitted in this proceeding, certain details of fundamental aspects of the proposed transaction are still relatively vague. The Applicants have not secured financing for the proposed transaction, have only recently requested SEC approval, and have not detailed basic aspects of certain conditions that they propose the Commission and customers accept as benefits. The Commission should not take it on faith that things will work out for the best and that Oregon Electric has the interests of PGE's ratepayers in mind.

3. The baseline against which the Commission should compare Oregon Electric ownership is PGE's current situation, which is a utility with stable credit ratings, adequate cash on hand, and that provides reliable service despite the turmoil surrounding Enron. PGE's electric rates are too high; however, the proposed transaction will likely lead to higher rates rather than lowering them. The Applicants have overstated the alleged benefit of removing PGE from Enron's ownership.

4. The risks and harms of Oregon Electric's ownership would likely degrade PGE's position as compared to the status quo. First, the substantial debt associated with the proposed transaction will place significant financial pressure on PGE, which undoubtedly will lead to rate increases. Second, the Applicants ask the Commission to adopt a novel new structure for PGE, the impacts of which are unknowable. Finally, the information provided by the Applicants indicates that they will seek to make significant cuts to PGE's operation and maintenance ("O&M") expenses. PGE customers should not be forced to assume risks of Oregon Electric's actions that are not known at this time.

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5. The benefits put forth by the Applicants are insufficient to remedy the harms and risks of acquisition by Oregon Electric. The Applicants' proposed rate credit is illusory, and the Applicants' proposed conditions do not provide adequate protection or transparency.

PGE's customers should either not bear the risk of Oregon Electric's ownership or receive adequate rate credits to offset that risk. The Commission should deny the Application because Oregon Electric is not offering either of those options. If, however, the Commission determines that customers will be served by removing PGE from Enron's ownership, then the Commission should adopt the package of conditions in Attachment A to this Opening Brief. These conditions, if adopted as a whole, will help ensure that PGE's customers are compensated for the risk of Oregon Electric's ownership, will better protect customers from unforeseen harm, and will help to make PGE's and Oregon Electric's operations more transparent.

BACKGROUND

On March 8, 2004, the Applicants filed the Application, seeking Commission authorization to acquire all of the outstanding common stock of PGE from Enron Corporation ("Enron") for approximately $1.4 billion.[1/] The Applicants stated that, upon the closing of the proposed transaction, Oregon Electric would be the sole shareholder of PGE and have a governance structure comprised of three entities: 1) Managing Member, LLC and its owners ("Managing Member"); 2) TPG Partners III, L.P. and TPG Partners IV, L.P.; and 3) certain passive investors. Managing Member includes Dr. Peter Kohler, Tom Walsh, Gerald Grinstein, Duane McDougall, and Robert Miller. Application at 6; Re Oregon Electric, OPUC Docket

[1/] On November 18, 2003, Enron and Oregon Electric executed a Stock Purchase Agreement for the sale of PGE. Enron's sale of PGE to Oregon Electric is subject to the conditions that, among other things, Oregon Electric receive certain regulatory approvals from the OPUC, SEC, and FERC.

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No. UM 1121, Application Amendment at 2 (July 12, 2004). The passive investors include the Bill & Melinda Gates Foundation and OCM Opportunities Fund III, L.P.

Staff and intervenors voiced concern about the Application's lack of detail and minimal information. At an April 15, 2004 prehearing conference, the parties agreed to a procedural schedule that called for the Applicants to submit supplemental testimony.

On April 20, 2004, the Applicants filed a Motion for Additional Protection ("Motion") seeking protection for four categories of information sought in discovery: 1) TPG's financial model; 2) TPG's private placement memoranda; 3) the TPG Funds III and IV investor list; and 4) minutes and materials from TPG's Investment Review Committee ("IRC")[2/] meetings. The Applicants sought to protect this material on the basis that it was irrelevant, highly sensitive, and should not be disclosed to parties other than Staff in unredacted form.

ICNU and the Citizens' Utility Board ("CUB") filed a Response to the Motion on May 5, 2004, arguing that the requested material was relevant and discoverable. On May 28, 2004, Administrative Law Judge ("ALJ") Smith denied the Motion. ICNU and the Applicants subsequently agreed to a method of disclosure. The Applicants' financial model and IRC documents have proven to be some of the most relevant and useful information that ICNU received in discovery.

On July 13, 2004, the Applicants filed an Amendment to the Application, naming three additional members of Managing Member and identifying individuals to be appointed to PGE's and Oregon Electric's Boards of Directors. OPUC Docket No. UM 1121, Application Amendment at 2. Dr. Peter Kohler, Duane McDougall, and Robert Miller were named as new

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[2/] The IRC is the governing body of TPG that approved the purchase of PGE from Enron.

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owners of Managing Member and also were appointed to the prospective Boards of PGE and Oregon Electric. Maria Eitel, Kirby Dyess, Jerry Jackson, and Dr. M. Lee Pelton were named to the prospective PGE Board. Id. at 1.

On July 16, 2004, Oregon Electric, Staff, ICNU, and PGE entered into a Partial Stipulation, agreeing that certain conditions would be adopted if the OPUC approves the proposed transaction. This Partial Stipulation is included in Staff/102, Conway/49-53.

On July 21, 2004, Staff and intervenors filed direct testimony. Staff, ICNU, and CUB all recommended that the Commission deny the Application. ICNU witnesses testified that: 1) the Applicants' proposed benefits were inadequate, insufficiently defined, or reflected service provided by any prudently run utility; 2) TPG's negative consent rights could impair PGE's ability to effectively run the utility; and 3) the proposed transaction would substantially increase the risk of impairment of PGE's financial integrity.

On August 16, 2004, the Applicants, PGE, and Enron filed rebuttal testimony responding to the opposition voiced by Staff and intervenors. The Applicants also identified conditions to which they were willing to agree, including a $15 million rate credit provided over five years beginning in 2007. Oregon Electric/100, Davis/31.

On September 9, 2004, Staff and intervenors filed surrebuttal testimony. Staff, ICNU, and CUB again recommended denial of the Application. Nevertheless, Staff and certain intervenors recommended conditions for adoption if the Application is approved. ICNU recommended: 1) a $97 million rate credit distributed over five years beginning in 2006; 2) stronger financial and ring fencing conditions; 3) better transparency conditions; 4) "end game" conditions; and 5) a direct access condition. Staff proposed a $75 million rate credit distributed

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over five years beginning in 2005. CUB asserted that the "starting place for rate credits is greater than $97 million." CUB/300, Jenks-Brown/36.

On October 11, 2004, the Applicants, PGE, and Enron submitted sur-surrebuttal testimony. The Applicants proposed a $43 million rate credit distributed over a period of five years beginning in 2007, subject to offsets in PGE's next rate case. Hearings were held on October 20 and 21, 2004.

ARGUMENT

The proposed transaction would subject PGE and its customers to significant harms and risks that result in customers being worse off than under the current status quo. Under these circumstances, the Applicants have two obligations to meet their burden to demonstrate that the proposed transaction provides a net benefit to customers and is in the public interest: 1) remedy the harms and risks of the proposed transaction to restore PGE customers to their current position; and 2) provide benefits that are significant enough to improve that position. The baseline against which the Commission should evaluate Oregon Electric's ownership is PGE's current situation today. As described below, the proposed transaction is wrought with uncertainty and risk for customers who currently receive reliable electric service. Furthermore, the Applicants' proposed benefits are either illusory or insufficiently protective. These conditions do not mitigate the risk of the proposed transaction and provide a net benefit to PGE's customers. As such, the Commission should deny the Application.

A. ORS § 757.511 Requires the Applicants to Demonstrate That the Proposed Transaction Results in Net Benefits for Customers

ORS § 757.511 provides that the Commission may approve Oregon Electric's acquisition of PGE if the Applicants demonstrate that "approval of the application will serve the

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utility's customers in the public interest." The Commission has interpreted this statute according to a two-step analysis. Re a Legal Standard for Approval of Mergers, OPUC Docket No. UM 1011, Order No. 01-778 at 11 (Sept. 4, 2001) ("Order No. 01-778"). First, the Commission must find that the proposed transaction will provide a net benefit to PGE's utility customers. Id. Second, it must find that the proposed transaction will not impose harm on Oregon citizens as a whole. Id. The Applicants bear the burden to demonstrate "that granting the application is in the public interest." ORS § 757.511(3).

1. The Commission Cannot Approve the Proposed Transaction Without a Finding of Net Benefits to Customers

In Order No. 01-778, the Commission found that the text and context of ORS § 757.511 indicated that the legislature intended for a net benefit standard, rather than a no harm standard, to apply to merger approvals. Order No. 01-778 at 10. Under the net benefit standard, "absence of customer harm is not sufficient" for approval. Id. The legislature placed "a higher affirmative duty on the Commission" to approve only those applications for acquisition of an Oregon utility that are "more than neutral with respect to utility customers." Id. Therefore, even if the Commission concludes that Oregon Electric would not harm PGE's customers, the Commission cannot approve the proposed transaction unless the Applicants demonstrate an actual net benefit to customers.

2. Commission Precedent Requires Rate Credits to Ensure Net Benefits

The net benefit standard requires the Applicants to show not only that they will offset any potential harm to PGE's customers, but also that customers will be better off than they would have been absent the transaction. See Re Enron, OPUC Docket No. UM 814, Order No.

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97-196 at 5-6 (June 4, 1997) ("Order No. 97-196").[3/] In the Enron merger order, the Commission defined the "net benefit" to customers in terms of two components: 1) "compensation," which Staff defined as money that offset potential harm from the merger; and 2) "benefit," which Staff defined as an "outcome which makes customers better off than they would be without the merger." Id. Similarly, in the Scottish Power merger the Commission found that: 1) net benefits would result from the transaction; and 2) any risks associated with the transaction were adequately mitigated by merger conditions. Re Scottish Power, OPUC Docket No. UM 918, Order No. 99-616 at 13, 15 (Oct. 6, 1999).

The Enron, Scottish Power, and Sierra Pacific transactions all included tangible rate credit benefits for customers. Id.; Order No. 97-196 at 6; Re Sierra Pacific, OPUC Docket No. UM 967, Order No. 00-702 at 3-4 (Oct. 30, 2000). Table 1 summarizes the rate credits in these proceedings.

Table 1: Rate Credits in Prior ORS § 757.511 Orders

	Year	Rate Credit/ Compensation	Period of Distribution
Enron	1997	$141 million[4/]	$36 M – 4 years $105 M – 8 years
Scottish Power	1999	$51 million	4 years
Sierra Pacific	2000	$97 million	6 years

[3/] While the Enron, Scottish Power, and Sierra Pacific orders predate Order No. 01-778, because the Commission found that the net benefit standard was satisfied in those cases, its reasoning is applicable here.

[4/] The Enron merger credit was denominated into:1) $36 million in guaranteed merger-related cost of service reductions distributed over four years beginning one year after the merger completion date; and 2) $105 million provided over eight years beginning immediately upon completion of the merger. Order No. 97-196, Appendix A at 5-8.

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Rate credit benefits are appropriate and necessary in utility acquisitions because ratepayers ultimately bear the burden of acquisition-related risks.[5/] The risks associated with new ownership often are unknown or difficult to quantify, and it is for this very reason that the Commission has required monetary benefits in prior orders. Order No. 01-778 at 11 ("Because potential harm from merger transactions is often difficult to verify, recent orders have required monetary terms as a way to demonstrate that customers will receive a net benefit."). Economic benefits, because they are readily quantifiable and easy to apply across all customer classes, are most appropriate for mitigating the significant risks ratepayers face from a change in utility ownership. The Applicants propose a $43 million rate credit distributed over a five-year period beginning in 2007. Oregon Electric/500, Davis/22. As described later in this Opening Brief, this amount is insufficient to either compensate customers for the risks involved or make customers better off than without Oregon Electric's ownership.

B. The Commission Should Examine the "Net Benefit" of Oregon Electric's Ownership against the Status Quo

Evaluating whether Oregon Electric's ownership will provide a "net benefit" to PGE's customers requires determining the appropriate baseline against which to consider the change in ownership. Indeed, the Commission stated in its order approving Enron's purchase of PGE that a "benefit" in the net benefit context is an "outcome which makes customers better off than they would be without the merger." Order No. 97-196 at 5. The Applicants urge the Commission to evaluate the proposed transaction without reference to any particular point of

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[5/] In the five years since ScottishPower purchased PacifiCorp, there have been three rate cases filed seeking to raise PacifiCorp's revenue requirement by over $221 million. In the five years prior to ScottishPower ownership, PacifiCorp filed one rate case.

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comparison: "[t]he Proposed Transaction should be evaluated on its own merits by determining the risks and benefits inherent in the proposal. If the benefits outweigh the risks and the public will not be harmed, our proposal should be approved." Oregon Electric/22, Davis/21. In other words, the Applicants ask the Commission to consider the proposed transaction in a vacuum. Under this analysis, the Commission would not consider the Applicants' proposals in light of PGE's current situation. Such a review would conflict with both the reality of PGE's current situation and the application of the net benefit standard.

Evaluating the proposed transaction in a vacuum is completely unreasonable. The Applicants' approach assumes that Oregon Electric has come to Oregon to provide electric service to customers who otherwise would sit in the dark. Customers have taken electric service from PGE and its predecessor companies for over 100 years. To argue that the Commission should evaluate the proposed transaction without reference to PGE's current status and operations is unreasonable. Almost any form of electric service provide by the Applicants would provide a net benefit under their standard.

Furthermore, the Applicants state that consideration of what would happen to PGE if the proposed transaction fails is inappropriate because "in the event our proposal is not approved, there is no clear outcome for PGE's future. There are only infinite *possible* scenarios." Id. at Davis/24. The Applicants overstate the uncertainty of PGE's future. In reality, there are two likely scenarios. PGE stated to FERC that "[i]f PGE is not sold, under the Chapter 11 Plan the shares of PGE's common stock will be distributed over time to the Debtors' creditors. Until shares are distributed to creditors, Enron will retain the right to sell PGE if it is determined that a sale would be in the best interest of the creditors." ICNU/805 at 5; see

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Enron/1, Bingham/4, 6. PGE's President and Chief Executive Officer ("CEO"), Peggy Fowler, stated that PGE's operation and service to customers "shouldn't be affected under . . . TPG ownership or a stock distribution." ICNU/906 at 25:11-15 (Fowler Deposition). In other words, PGE will continue to operate on its own if the sale to Oregon Electric is unsuccessful. The Applicants' claim that there are infinite possible scenarios against which there is no backdrop for comparison in the absence of Oregon Electric is untrue.

The Commission should not be distracted by the Applicants' attempt to paint PGE's situation as hopeless but for Oregon Electric's ownership. The appropriate baseline against which the Commission should evaluate the net benefit of the proposed transaction is PGE's current situation today. If the Commission intends to consider what will happen if the proposed transaction fails, however, the Commission may also take into account that PGE will continue to operate unaffected under the two likely scenarios described above. The evidence in the record demonstrates that the status quo for PGE is as follows:

1. The Applicants describe PGE as a "fundamentally sound utility with talented and dedicated employees, a high-quality service territory, well-maintained generation assets, and a long track record of solid customer service." Oregon Electric/3, Davis/6.

2. PGE is financially healthy, has a strong financial profile and adequate cash reserves, and generally maintained access to capital through the Enron bankruptcy. ICNU/201, Antonuk-Vickroy/3, 7.

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3. PGE's current credit ratings are as follows:

	Standard & Poor's	Moody's
Corporate Credit	BBB+	
Senior Secured	BBB+	Baa2
Senior Unsecured	BBB	Baa3
Preferred Stock	BBB-	Ba2

Id. at Antonuk-Vickroy/4, 6.

4. PGE will soon regain its authority to enter into wholesale power transactions at market-based rates.[6/]

5. PGE's parent company is in bankruptcy.

6. PGE is able to accomplish its daily operations with minimal interference from Enron. ICNU/906 at 18:14-18 (Fowler Deposition).

7. PGE's CEO stated that "Enron has let us operate . . . as a stand-alone company, allowed us to stay focused on providing safe, reliable, and cost-efficient energy to our customers, and the bankruptcy process has pretty much just gone on while we've continued to operate." Id. at 5:14-17 (Fowler Deposition).

8. PGE has a functional Board of Directors.

9. PGE is a "local" company. Id. at 30:13 (Fowler Deposition).

10. PGE operates under the benefits and protections provided by the Enron merger conditions.

11. PGE has no financial pressure from its parent company for debt service at the parent company level or for ongoing dividends.

12. PGE's affiliate transactions are regulated by the OPUC.

13. PGE's parent company is subject to PUHCA regulation.

6/ PGE agreed to suspend its market-based rate authority for a period of twelve months as part of the settlement in the show cause investigation into PGE's wholesale trading activities in FERC Docket No. EL02-114-000. That period expires on December 19, 2004.

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The risks and harms of the proposed transaction are described in the next section of this Opening Brief. These risks and harms substantially degrade PGE's position in relation to the status quo.

C. The Harms and Risks of the Proposed Transaction Will Degrade PGE's Position As Compared to the Status Quo

The Applicants' proposed acquisition of PGE poses significant risks for PGE customers. As described above, the baseline against which Oregon Electric's ownership should be judged is a fundamentally sound and financially healthy stand alone utility that provides reliable service, has access to capital, and operates under a relatively simple and transparent structure with minimal interference from its parent company. ICNU/906 at 5:14-17, 18:2-18 (Fowler Deposition). Oregon Electric's ownership poses a substantial risk of changing that situation. The Applicants request that the OPUC approve ownership of PGE that will: 1) put in place a unique and highly complex holding company structure that is designed for the sole purpose of avoiding a layer of regulation intended to protect customers; 2) create substantial financial risk for PGE due to the substantial debt; and 3) put customers at risk of unreasonable cuts in capital expenditures and O&M. In the absence of Oregon Electric, PGE will continue to operate as the financially healthy and reliable utility described above. Under Oregon Electric, however, PGE will be mired in a needlessly complex holding company structure and will face a credit rating downgrade, increased cost of revolver debt, and the prospect of unreasonable cost cutting at the hands of a firm that claims such "efficiencies" as its specialty. See ICNU/100, Schoenbeck/3, 16; PGE/100, Piro/21. Such risks may be tolerable to customers who rely on the services of TPG's companies such as Burger King and J.Crew, but they are entirely unacceptable for customers who rely on reliable electric service from PGE.

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1. The Applicants Propose to Embed PGE in an Unusual and Complex Holding Company Structure for the Sole Purpose of Avoiding PUHCA Regulation

One of the primary risks associated with transfer of ownership of any utility is the uncertainty caused by the unknown. That uncertainty is escalated in this proceeding by the Applicants' request that the Commission approve and endorse a unique holding company structure designed solely to allow TPG and Oregon Electric to avoid PUHCA regulation. This structure has two primary components: 1) organizing TPG, Oregon Electric, and PGE into what is known as a "PUHCA pretzel" structure so that TPG avoids qualifying as a "holding company" under PUHCA; and 2) transferring PGE's wholesale power trading operations to a new PGE subsidiary so that Oregon Electric can apply for an exemption from PUHCA as a holding company of an "intrastate" utility.

Neither the OPUC nor the SEC have regulated a structure exactly like this before, and customers do not benefit from it in any way. In fact, the complexity and lack of transparency associated with this structure will likely make customers worse off than under Enron because the impacts of such a structure on PGE are uncertain. The OPUC should not approve Oregon Electric's proposal to contort PGE merely to make the proposed transaction workable for the Applicants. PGE's customers should not be held responsible for the Applicants' desire to avoid PUHCA, a statute designed to protect customers.

a. The PUHCA Pretzel Allows TPG to Escape PUHCA Regulation but Retain Control over PGE

The general structure employed by the Applicants is known as a "PUHCA pretzel," because utility holding companies utilizing this structure "contort themselves organizationally to avoid violating the law or registration under [PUHCA]." The Public Utilities

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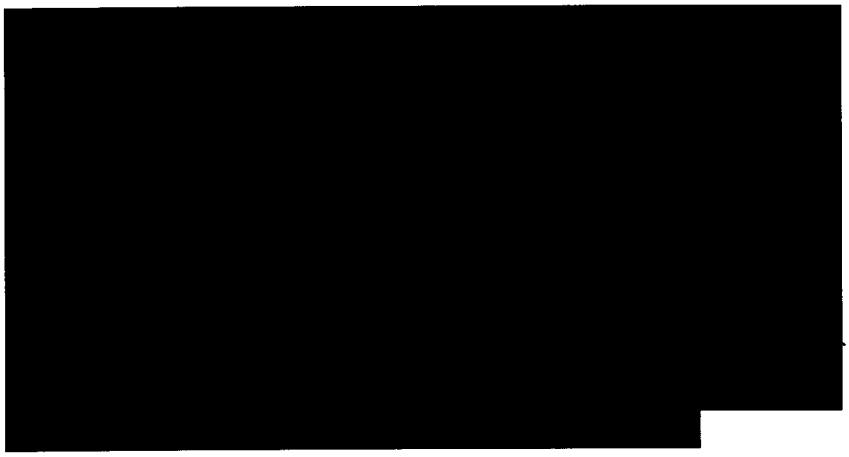
Holding Company Act of 2001: Hearing on S. 206 Before the Subcomm. On Securities and Investment of the Comm. On Banking, Housing, and Urban Affairs, 107th Cong. (2001) (Prepared Testimony of Mr. David L. Sokol, Chairman and CEO, MidAmerican Energy Holdings Company). TPG personnel described the PUHCA pretzel to the IRC as follows:



ICNU/102, Schoenbeck/6. TPG altered this structure slightly for the proposed transaction. TPG is using a limited liability company as the [redacted] rather than the [redacted] described above. Id. In TPG's structure, TPG is the [redacted] that provides the primary financing but retains little of the voting common stock, and Managing Member is the [redacted]. Id. Indeed, the owners of Managing Member have provided only 0.4% of the economic investment in Oregon Electric, but they will hold 95% of the voting shares. TPG, on the other hand, will hold only 5% of the voting shares despite contributing the majority of the equity financing. Application at 7. TPG's pretzel structure would not be complete, however, without the [redacted] through which TPG will maintain [redacted] over PGE and Oregon Electric. ICNU/102, Schoenbeck/6. These are the TPG consent rights that allow TPG to withhold its consent to actions of the PGE and Oregon Electric boards.

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i. SEC Approval of the PUHCA Pretzel Is Far from Certain

The primary purpose of employing the PUHCA pretzel structure is to keep TPG from having to register as a "holding company" as defined in PUHCA Section 2(a)(7). 15 U.S.C. § 79b(a)(7). This structure is designed primarily for TPG's benefit, not Oregon Electric's. If TPG were considered a "holding company" under PUHCA, TPG would not be permitted to acquire PGE while it held an interest in many of the other companies it owns. The Applicants initially indicated that TPG would request a "no action" letter from the SEC staff stating that the staff would not recommend enforcement against TPG to deem the firm a "holding company" under PUHCA. Oregon Electric/5, Schifter/6. Receipt of this no action letter is a condition of closing. Id. At the time the Application was filed, the Applicants "expected[ed] to be able to obtain the no-action letter." Id. at Schifter/3. Since that time, however, "SEC Staff has advised [TPG] that they're not prepared to issue a no-action letter" and that TPG should request a declaratory ruling on this issue from the SEC itself. Hearing Transcript ("Tr.") at 174:11-15; 180:21 - 181:4 (Schifter). TPG partner Richard Schifter acknowledged that this request was unusual for the SEC staff, and that the SEC had never issued such a ruling before. Id. at 183:6-7 (Schifter).

Despite SEC Staff's apparent refusal to provide a no action letter, the Applicants have now testified that they "are optimistic that the SEC will issue a declaratory order granting the application." Oregon Electric/900, Schifter/3. On October 21, 2004, however, the Director of the SEC's Division of Investment Management clarified that "SEC staff has given no assurances that the Commission would grant any such application." Letter from Paul F. Roye to

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Bryan Conway (Oct. 21, 2004). In other words, an SEC order finding that TPG is not a "holding company" is far from certain.

ii. Customers and PGE Bear Risks under the PUHCA Pretzel That Are Not Present under the Status Quo

The PUHCA pretzel structure poses a number of risks for PGE customers. First, the TPG consent rights ensure that ultimate control over the PGE Board will rest with TPG. As indicated above, the consent rights are constructed to allow TPG to maintain control over [redacted] ICNU/102, Schoenbeck/6. In PGE's current situation, there is no risk that an outside entity will have the ability to veto board decisions.

Second, the Commission will have no notice of when TPG withholds its consent regarding a particular action. As a result, the Commission will be unaware if TPG is making decisions that conflict with PGE's long-term interests. Although the Applicants have proposed a condition allowing the Commission to request a record of the exercise of a consent right, this proposed condition is insufficient. Oregon Electric/501, Davis/3. Commission access to books and records is one of the most fundamental conditions necessary for any utility acquisition to be in the public interest. Furthermore, the proposed condition only provides that the Commission shall have access to the record of such information—the Commission will have no way of knowing when to request such a record. The Commission should not be required to repeatedly ask for records that provide the most basic information necessary to monitor the unique structure for which the Applicants seek Commission approval. Finally, the record to which the Commission would have access likely would be subject to a protection order. See id. at Davis/9. As a result, PGE's customers may not have access to the record or have knowledge of what entity is making decisions for PGE.

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If the Commission intends to approve the proposed transaction, it should adopt condition number 11 in Attachment A. This condition provides that Oregon Electric will provide the record of TPG exercising a consent right to the Commission on a quarterly basis and at additional times upon request. Furthermore, this condition provides that information regarding the date, the subject matter, and the consent right at issue shall be made available to the public.

b. The Applicants Propose to Transfer PGE's Wholesale Power Trading Operations to a New Subsidiary So That Oregon Electric May Seek a PUHCA Exemption

The Applicants have added a wrinkle to the PUHCA pretzel that the SEC, OPUC, and FERC have not seen before. This change is intended to allow Oregon Electric (as opposed to TPG) to avoid PUHCA regulation. Oregon Electric will be considered a "holding company" under PUHCA if it acquires PGE and, thus, will either have to: 1) register as a holding company; or 2) qualify for an exemption from registering. On November 11, 2004, Oregon Electric filed an SEC application for an exemption from PUHCA under Section 3(a)(1) of the Act. Section 3(a)(1) excludes from regulation holding companies of utilities that are "predominantly intrastate." 15 U.S.C. § 79c(a)(1). In order to qualify for this exemption, the Applicants propose to transfer PGE's wholesale power trading operations to a newly created wholly owned subsidiary of PGE known as Portland General Term Power Procurement Company ("PPC").[7/] Re PGE, OPUC Docket No. UI 235, Application at 2 (Sept. 8, 2004). According to the Applicants, transferring PGE's term power sales to PPC, many of which are executed out of state, would reduce the percentage of PGE's out-of-state revenues below the SEC threshold for intrastate utilities. Id.; Re Oregon Electric et al., FERC Docket No. ER04-1206, Application of

[7/] PGE has requested certain authorizations related to creation of PPC in OPUC Docket UI 235.

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Oregon Electric, PGE, and PPC for PPC to Engage in Sales to Third Parties at Market-Based Rates and to Engage in Affiliate Transactions at Cost (Sept. 8, 2004); Enron, PUHCA Release No. 27782 (Dec. 29, 2003). For the PPC structure to function as intended, the Applicants must obtain regulatory approvals from the OPUC, the SEC, and FERC.

Creating PPC to fulfill PGE's wholesale power trading operations creates a number of risks for PGE's customers. As an initial matter, the SEC has never approved such a structure before for the purposes of the intrastate exemption. Thus, it is unclear whether the SEC considers such a structure appropriate or would want regulatory oversight over this arrangement. The SEC must have assurances from the OPUC that the Commission has the ability and authority to fully and adequately regulate all aspects of this arrangement. The ability to regulate this structure necessarily entails having conditions in place to ensure full access to information and transparency.

In addition, creating PPC leads to serious affiliate interest concerns that PGE would not have in the absence of the Applicants' proposal. On September 8, 2004, PGE and Oregon Electric submitted applications for approval of the PPC arrangement to both the OPUC and FERC. OPUC Docket No. UI 235, Application at 1; FERC Docket No. ER04-1206, Application at 1. These requests would be completely unnecessary absent the proposed transaction. It is unclear whether the approvals sought by PGE and Oregon Electric comply with the OPUC and FERC rules. The Commission should not in any way compromise the typical affiliate protections to make this deal work for Oregon Electric.

One of the requests that PGE and Oregon Electric have made in the OPUC application related to PPC is for waiver of the Commission's affiliate transfer pricing policy for

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transactions between PPC and PGE. OPUC Docket No. UI 235, Application at 5. This is a very significant request to strip away yet another layer of regulation under Oregon Electric's ownership. Oregon Electric proposes to create PPC to avoid PUHCA regulation, and it has claimed that OPUC "oversight of PGE is sufficient and that layering additional PUHCA requirements on Oregon Electric would not be useful." Oregon Electric/5, Schifter/4. At the OPUC level, however, Oregon Electric requests that the Commission waive one of its primary policies regarding affiliate transactions. Waiver of this policy would eliminate the layer of regulatory oversight upon which Oregon Electric relies to claim that PUHCA regulation is unnecessary.

The recent FERC and OPUC investigations into trading practices between PGE and Enron demonstrate the difficulty of monitoring and controlling such activities. Oregon Electric's statements in its FERC application for approval of PPC do not acknowledge the seriousness of customer concerns about this issue. Oregon Electric states that "transactions between PPC and PGE *cannot* give rise to the affiliate abuse concerns that FERC has identified with respect to transactions between a power marketer and its affiliated transmission-owning utility." FERC Docket No. ER04-1206, Application at 2 (emphasis added).

Oregon Electric created PPC to avoid PUHCA regulation, and it now asks FERC and the OPUC to waive certain of their basic regulatory requirements. If the Commission intends to approve the PPC structure, the interaction between PGE and PPC will require extensive regulatory oversight, not relaxation of the affiliate transaction rules. The potential for abuse in the PPC structure exposes customers to a risk that would not be present in the absence

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of Oregon Electric ownership, and the conditions that Oregon Electric proposes to impose on the PGE-PPC transactions are insufficient to mitigate that risk.

c. PGE Is Indifferent to Whether Its Parent Company Is Regulated under PUHCA

Despite all the contortions that the Applicants propose to avoid PUHCA, the evidence in the record demonstrates that PGE is relatively indifferent as to whether its parent company is a registered holding company. When Enron was required to register as a holding company under PUHCA earlier this year, PGE stated to the ratings agencies that "PGE does not believe that becoming a subsidiary of a registered holding company will have a material adverse affect on the Company." ICNU/806 at 16.

Neither customers nor the Company are served by Oregon Electric's complicated and opaque holding company structure or the various regulatory approvals that are required. The PUHCA pretzel will prevent the Commission and customers from knowing who actually is making decisions for PGE, and the PPC arrangement will expose customers to additional risks of affiliate abuses that would not be a concern without Oregon Electric. Furthermore, the house of cards set up by the Applicants to avoid PUHCA relies on a number of tenuous regulatory approvals, and it will easily topple if those approvals do not come together at the right time. The Commission should not get ahead of the uncertain approvals necessary for the proposed transaction to move forward.

2. PGE Would Not Experience the Financial Pressure from This Highly Leveraged Buyout in the Absence of Oregon Electric's Ownership

Staff, intervenors, and the ratings agencies all have expressed concern about the highly leveraged nature of the proposed transaction and the additional financial pressures that the

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debt will create for PGE. The Applicants estimate that they will need approximately $1.471 billion to fund the purchase price and fees associated with acquisition of PGE. Oregon Electric/3, Davis/15. This amount consists of: 1) $525 million in equity from the Applicants and the Passive Investors; 2) $582 million of senior secured term loan facilities and $125 million senior unsecured notes obtained by Oregon Electric; and 3) a $240 million special dividend from PGE to Oregon Electric upon closing.[8/] Id. at 26. In addition, Oregon Electric will assume $1.1 billion in PGE debt.

a. The Lack of Finality Regarding the Financing for the Proposed Transaction Adds an Unnecessary Element of Uncertainty

One of the primary risks and uncertainties associated with the proposed transaction is that the Applicants have not yet secured financing for the transaction. As a result, the Commission, Staff, intervenors, and apparently the Applicants do not know the specific terms and conditions on which the Applicants will obtain financing. When pressed about the financing details, the Applicants have continued to refer to the "highly confident" letter that Credit Suisse First Boston ("CFSB") provided to TPG on November 18, 2003, almost one year ago. The Applicants have provided no definitive evidence that the terms on which they will be able to obtain financing have not changed. Moreover, TPG's analysis of the proposed transaction indicates that [redacted]. ICNU/200, Antonuk-Vickroy/23. Given that TPG's focus will ultimately be on

[8/] The $240 million dividend represents an amount that PGE has retained because it has not paid a dividend to Enron since 2001. Oregon Electric/3, Davis/17. PGE Chief Financial Officer ("CFO") Jim Piro testified that the PGE Board would determine whether to pay a dividend of this amount to shareholders if the proposed transaction does not close. Tr. 22: 11-17 (Piro). Ms. Fowler stated that PGE currently has access to this cash for operating purposes. ICNU/906 at 20: 4-5 (Fowler Deposition).

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its overall return on its investment, this only underscores the importance of knowing the terms of the financing prior to determining whether the proposed transaction is in the public interest.

The Applicants have claimed throughout this proceeding that standard industry practice is to not finalize the full financing details until after the transaction is ready to close. Oregon Electric/200, Wheeler/18. That is not necessarily always the case, however. At the time Northwest Natural Gas Company filed its application to acquire PGE in 2001, that company provided an actual "commitment letter" from CFSB and Merrill Lynch that detailed the financing of the proposed acquisition with its application. Re Northwest Natural Holdco, OPUC Docket No. UM 1045, Application Exhibit 407 (Nov. 28, 2001). Part of the risk surrounding the financial aspects of the proposed transaction is the uncertainty about basic elements of the deal. The Applicants cannot meet their burden necessary to secure OPUC approval when the record does not include such fundamental evidence.

b. Standard and Poor's Likely Will Downgrade Certain of PGE's Ratings as a Result of the Oregon Electric Debt

The amount of debt in this transaction also is cause for concern. Standard and Poor's ("S&P") recognized the negative effect that the heavily leveraged consolidated balance sheet would have on PGE when it placed the Company on creditwatch negative just after Oregon Electric filed the Application: "[t]he acquisition will result in a heavily leveraged consolidated balance sheet of PGE and Oregon Electric. Accordingly, Standard & Poor's expects that PGE's ratings will be downgraded." ICNU/201, Antonuk-Vickroy/2. In a report that S&P provided to TPG in January 2004, the rating agency indicated that PGE's corporate credit rating would be downgraded from BBB+ to BBB as a result of the proposed transaction, and that the Company's

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senior unsecured debt rating would be downgraded from BBB to BBB-. Oregon Electric/200, Wheeler/15; ICNU/202, Antonuk-Vickroy/4.

The parties in this proceeding have generally expressed concern about the excessive debt in terms of the financial pressure that it will place on PGE to support Oregon Electric's debt payment. ICNU/200, Antonuk-Vickroy/7; Staff/200, Morgan/29-30, 35. This financial pressure creates risk and could harm customers in many ways, including requiring PGE to raise rates, cut costs, or limit risk exposure by implementing cost recovery or decoupling mechanisms. ICNU/200, Antonuk-Vickroy/33-34; Staff/200, Morgan/29-30. The increased debt also could result in limits on PGE's access to capital or increases in the Company's cost of capital.

The Applicants unsuccessfully attempted to explain away these concerns by arguing that their financial model runs show that PGE will not be required to cut costs or borrow funds to provide dividends to Oregon Electric as a result of the debt.[9/] Oregon Electric/200, Wheeler/5. PGE CFO Jim Piro testified at hearing, however, that PGE will likely fund a provision of the "catch up" dividend that is required at the close of the proposed transaction through "[e]ither long-term or short-term borrowings, depending on where [the Company is in its] financing plan." Tr. 21: 10-14 (Piro). Without this $240 million dividend, Oregon Electric may have had to issue additional debt to fund the proposed transaction. Under these circumstances, PGE is borrowing to fund a "catch up" dividend that would otherwise be a

[9/] The Applicants rely on the financial model runs performed to evaluate the proposed transaction to claim that they have adequately accounted for certain concerns expressed by Staff or intervenors. Oregon Electric/200, Wheeler/5; Oregon Electric/100, Davis/16-17. This is the same financial model that the Applicants sought to withhold from intervenors altogether at the beginning of this proceeding. Such actions are not reflective of an entity that is prepared to accept the level of transparency that should be required in the regulatory environment.

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dividend for debt service after the transaction closes. In other words, despite the Applicants' claims that PGE will not need to borrow to fund debt service dividends, the first thing the Company will do at the close of the proposed transaction is issue debt to fund a dividend. The highly leveraged structure of the proposed transaction undoubtedly will impact PGE, its credit ratings, and potentially its operations. This impact is a significant detriment to PGE customers.

c. A Ratings Downgrade Could Increase the Cost of PGE's Revolver When the Company Is Increasing Its Revolver Capacity

Mr. Piro also testified that the downgrade in PGE's unsecured debt rating predicted by S&P could increase the cost of PGE's revolver. Tr. 27: 3-9 (Piro); PGE/100, Piro/21. This increase in the cost of the revolver would occur at a time when PGE is planning to add new revolver capacity because the $240 million catch-up dividend will leave only $10 million in working cash with the Company. PGE/400, Piro/5; Tr. 23: 22-25 (Piro). Indeed, the Company "currently anticipate[s] that after payment of the Enron catch-up dividend and the closing of this transaction, PGE will acquire a new three-year, $250 million, unsecured revolver to support our short-term capital needs[,]" because the catch-up dividend will decrease PGE's cash on hand. PGE/400, Piro/5. Although Mr. Piro testified that it is not unusual for PGE to have $10 million in cash on hand, the alarming fact is that he also testified that PGE "use[s] [its] revolvers to manage all our working-cash needs; and as long as we have access to . . . that revolver, that's the most efficient way to finance our ongoing needs." Tr. 24: 3-6 (Piro). It appears that under Oregon Electric, access to that revolver may come on more expensive terms.

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d. PGE Will Experience the Increased Financial Pressure and Cost of Debt While the Company Is Financing Port Westward

The final problem with the increased financial pressure that PGE will experience under Oregon Electric's ownership is that it will occur at the same time that the Company is financing a $280 million capital investment in Port Westward. Mr. Piro testified that PGE will put in place long-term financing for Port Westward by: 1) meeting immediate and short-term cash needs with a combination of cash on hand, commercial paper, and revolver draws; and 2) issuing long-term debt equal to about one-half of the cost of Port Westward to replace any short-term debt the Company relied upon during the construction process. PGE/400, Piro/11. The debt service obligations related to the Port Westward financing will place additional financial pressure on PGE.

TPG's due diligence materials demonstrate that PGE and TPG [redacted] A September 2, 2003 TPG memorandum to the IRC states:

[redacted]

ICNU/903 at 4. A September 10, 2003 presentation to the IRC states that [redacted]

[redacted]

10/ TPG retained BCG to assist in due diligence related to the acquisition of PGE.

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[redacted] ICNU/903 at 6. Although the Applicants state that Oregon Electric has now "officially consented" to PGE's construction of Port Westward, this acquiescence in the Port Westward construction did not come easily or, perhaps, did not come at all. Oregon Electric/500, Davis/10. In fact, TPG went to the March 11, 2004 meeting of the PGE Board of Directors to make a presentation to the PGE Board and [redacted] See ICNU/802; ICNU/803. A TPG presentation titled "PGE Board Presentation March 10, 2004" posed the following question to the PGE Board:

[redacted]

ICNU/905 at 3. An e-mail sent by Jim Piro to TPG and PGE personnel after the March 11, 2004 board meeting indicated that PGE and TPG were to provide the board additional information regarding this issue:

[redacted] 11/

11/ ICNU did not receive in discovery a subsequent [redacted] regarding this issue. Thus, it is unclear whether TPG was correct that [redacted] The Applicants have indicated that they are now convinced that construction of Port Westward is in the best interest of customers. Oregon Electric/100, Davis/30.

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ICNU/803 at 1. Regardless of the appropriateness of [redacted] reflects the inherent tension between a highly leveraged short-term owner such as Oregon Electric and a utility that must make long-term resource decisions regardless of current ownership. It appears from the documents that [redacted]

3. Oregon Electric's Ownership Puts PGE Customers at Risk with Respect to Unreasonable Cuts in O&M and Capital Expenditures

Staff and intervenors also have testified that PGE and its customers are at risk of [redacted] under Oregon Electric's ownership. Staff/300, Durrenberger/3; CUB/100, Jenks-Brown/10-11. TPG's presentations to its IRC assumed cost reductions of between [redacted] per year in most scenarios. ICNU/100, Schoenbeck/16. ICNU does not oppose implementation of reasonable cost cuts and efficiencies in order to pass on such cost reductions to customers in rates. Nevertheless, PGE and its customers are at risk with respect to Oregon Electric's ownership because the information provided by the Applicants indicates that 1) Oregon Electric may seek to implement excessive or unreasonable cost reductions, and 2) PGE and/or Oregon Electric may retain the benefits of such cost reductions rather than passing them on to customers. Customers should be compensated for this risk if the proposed transaction is to be approved.

The Applicants have responded to the concerns about cost cuts with three primary arguments: 1) TPG compiled the information on which Staff and intervenors rely to project these cost cuts as part of its due diligence, and this information is not a reliable indicator of the cost cuts that Oregon Electric will implement; 2) Oregon Electric will undertake an internal review

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process after the close of the proposed transaction to determine the potential for efficiencies in PGE's operations; and 3) Oregon Electric and TPG have no incentive to make excessive cuts to O&M and capital expenditures. Oregon Electric/100, Davis/6, 8-10, 14. These explanations are insufficient to counterbalance the serious harm posed by any ill-advised cost reductions.

First, the only information that the Commission, Staff, and intervenors can use to formulate their conclusions in this proceeding is the information provided by the Applicants. The Commission, in particular, must make some basic assumptions as to Oregon Electric's actions to determine whether the proposed transaction is in the public interest. TPG's IRC approved the acquisition of PGE on September 15, 2003. ICNU/103, Schoenbeck/1. The presentation given to the IRC on that date refers to the [redacted] under the heading [redacted] and states that [redacted] ICNU/104, Schoenbeck/3, 5. In addition, TPG's presentation to Standard and Poor's regarding the proposed transaction assumes [redacted] in cost cuts. ICNU/100, Schoenbeck/20.

Regardless of the Applicants' claims that they do not intend to rely on the specific cost reductions identified in the due diligence reports, TPG's business model for PGE is to acquire the Company, attempt to increase efficiencies through cost cutting and other measures, and then sell the Company at a profit. Cost cuts are almost certain to occur; the question is how much Oregon Electric will cut costs and if those reductions will be reasonable. As Staff points out, the fundamental concern with respect to the Applicants' actions is the lack of certainty: "few of the specifics have been put into a written plan." Staff/1000, Durrenberger/4.

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Under these circumstances, the primary information that Staff, intervenors, and the Commission have to rely on is the Applicants' due diligence reports and presentations to the ratings agencies. Given that these reports and presentations all assume substantial cost reductions and identify the areas for cost reductions with specificity, the Commission, Staff, and intervenors would be remiss if they did not assign weight to that information in assessing the level of risk that Oregon Electric's ownership poses to PGE and its customers.[12/]

The potential cost reductions identified by these consultants occur in areas such as [redacted], which are essential to continued reliable service. Given the high cost customers paid related to the PacifiCorp Hunter outage, the OPUC should be very cautious in this area. One consultant report identified the following potential efficiencies at the [redacted]:

[redacted]

* * *

[redacted]

ICNU/107, Schoenbeck/2-3. Regarding the [redacted] the report states:

[redacted]

12/ The Applicants strenuously contested the efforts of ICNU, CUB, and the City of Portland to obtain most of the information that has proven to be the most insightful as to the Applicants' analysis of the proposed transaction prior to executing the Stock Purchase Agreement.

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[redacted]

Id. at Schoenbeck/6. The report on [redacted] noted departments requiring further analysis:

[redacted]

* * *

[redacted]

ICNU/108, Schoenbeck/2. Costs reductions achieved through [redacted] could have a dramatic impact on customer service and reliability. While PGE's costs are too high in certain areas and PGE should seek to improve efficiencies and eliminate waste, customers, not TPG, should see the benefits of any reasonable cost cuts.

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D. The Benefits Proposed by the Applicants Are Either Illusory or Insufficient to Remedy the Harms and Risks Posed by the Proposed Transaction

1. The Applicants' Proposed Rate Credit Is Illusory

The Applicants have offered as a benefit in this proceeding $43 million in "guaranteed rate credits" distributed to customers over five years beginning in 2007. Oregon Electric/500, Davis/22. In past acquisition proceedings, the Commission has approved monetary rate credits to customers to: 1) compensate customers for the risk of the new ownership; and 2) ensure that customers are better off than they would be without the new owner. Order No. 97-196 at 5-6. The Applicants' proposed rate credit is inadequate to either to offset the risk to customers of Oregon Electric's ownership or to make customers better off. Furthermore, scrutiny of the Applicants' proposal reveals that these rate credits are hardly "guaranteed."

The Applicants' proposed rate credit would amount to a 0.6% decrease in PGE's current rates, and the rate credit would not take effect until 2007. PGE has indicated that it is likely to file a rate case in late 2005, in which it will request to add Port Westward to rate base. As a result, it is unlikely that this rate credit would have any meaningful impact on customer rates. Additional rate credits are necessary if the Commission intends to compensate customers for the risk and harm of Oregon Electric's ownership.

Additional rate credits also are necessary if the Commission intends the monetary amount to fulfill the second element of the analysis described above: placing PGE's customers in a better position than they would be without Oregon Electric's ownership. Order No. 97-196 at 5-6. The evidence demonstrates that PGE's customers currently receive adequate electric service, and that most of the other alleged benefits offered by Oregon Electric are measures observed by any prudently run utility. ICNU/100, Schoenbeck/2, 5. The Applicants do not

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propose to markedly improve that situation. Furthermore, TPG's analysis of the proposed transaction projects returns on the investment in PGE of [redacted] per year in many instances. ICNU/100, Schoenbeck/16. Staff provided an example in which the returns to investors for the proposed transaction were increased by almost $40 million per year due to the double leverage of the Oregon Electric debt alone. Staff/200, Morgan/22-23. This amount is approximately equivalent to the entire $43 million rate credit proposed by the Applicants. This rate credit would reduce PGE's current rates by approximately $8.6 million per year, or 0.6%. This amount pales in comparison to TPG's expected returns.

Despite the Applicants' claim of a "guaranteed rate credit," closer scrutiny reveals that the rate credits customers would actually receive is speculative. First, customers would not receive the proposed rate credit until 2007, which would likely be two years into Oregon Electric's ownership. There is no basis for such an extended delay. Second, the Applicants claim that the proposed rate credit is based on what they believe is "an achievable level of savings in the next general rate case." Oregon Electric/500, Davis/23. When ICNU requested the analysis supporting this claim, however, the Applicants replied that "[n]o such documents exist." ICNU/501. Third, the Applicants propose to offset the rate credit by any savings that PGE demonstrates in its next rate case, but they have not analyzed all the ways that the Company could demonstrate such cost savings. ICNU/502. The Applicants acknowledged, however, that one way that they could achieve "cost savings" that would qualify to offset the proposed rate credit is to demonstrate that costs had not increased as much as they would have absent Oregon Electric's ownership. ICNU/503. Demonstrating such cost differences is always a matter of speculation and will undoubtedly result in arguments in the rate case about whether such

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"savings" actually exist. Under these circumstances, the $43 million that the Applicants proposed to provide to customers is anything but "guaranteed."

Finally, the rate credit proposed by the Applicants pales in comparison to the monetary amounts provided to customers in previous ORS § 757.511 proceedings. Moreover, the Commission must consider that the amounts provided to customers in those proceedings would be substantially more when evaluated in 2004 dollars. A summary of the rate credits provided in the Enron, Scottish Power, and Sierra Pacific proceedings, with estimates of what the rate credits would be worth in 2004 dollars, is provided in Table 2.

Table 2: Rate Credits in Prior ORS § 757.511 Orders with Estimated 2004 Amounts[13/]

	Year	Rate Credit/ Compensation	Estimated Amount in 2004 Dollars
Enron	1997	$141 million	$164 million
ScottishPower	1999	$51 million	$57 million
Sierra Pacific	2000	$97 million	$105 million

If the Commission intends to approve the proposed transaction, ICNU proposes that the Commission adopt a $97 million rate credit distributed to customers on a pro rata basis according to metered distribution load, over five years beginning on January 1, 2006. The full text of ICNU's proposed rate credit condition is included in Attachment A. ICNU's rate credit proposal is based on the rate credit adopted in the Sierra Pacific merger proceeding. Oregon Electric's ownership poses a more significant risk to customers than the risk and harm at issue in

13/ The "Estimated Amount in 2004 Dollars" is approximate.

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the Sierra Pacific proceeding. Thus, the starting point for a rate credit should be the $97 million credit adopted in Docket UM 967.

2. The Applicants' "Unified, Certain, and Stable Ownership" Would Replace One Short-Term Owner with Another

The Applicants have alleged that removing PGE from the uncertainty of Enron ownership is one of the benefits of the proposed transaction. Oregon Electric/3, Davis/22. Although Enron's continued ownership of PGE obviously is limited, the Applicants' proposal does not provide any long-term certainty. The model runs TPG used to analyze the proposed transaction generally assumed a sale of PGE in [redacted] or [redacted], after only [redacted] or [redacted] years of Oregon Electric ownership. ICNU/100, Schoenbeck/7. Before TPG even executed the stock purchase agreement, the IRC was evaluating [redacted] of PGE. Id.; ICNU/104, Schoenbeck/17-20. Such actions do not indicate ownership certainty. A revolving door of PGE owners is of no benefit to PGE customers.

3. "Local Participation on the Board" Is the Norm for Pacific Northwest Utilities

The Applicants have claimed in this proceeding that they will restore local focus to the PGE Board through a commitment to maintain five Oregonians on the ten-to-fourteen person PGE Board of Directors. This is not a tangible benefit to PGE customers. First, PGE's CEO stated in her deposition that PGE is a "local company" under current Enron ownership, despite the presence of Enron management on the PGE Board. ICNU/ 906 at 30:13 (Fowler Deposition). The Applicants have provided no evidence of any threat that PGE or its headquarters will be moved from Portland.

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Moreover, a local presence on the board of directors is the norm in the electric utility industry, especially here in the Northwest. ICNU/100, Schoenbeck/5. Northwest Natural Gas Company, Avista Corporation, Puget Sound Energy, and PacifiCorp all have overwhelming local representation on their boards of directors. Id. The Applicants' commitment to local representation on the PGE Board should be an expectation, not a benefit.

Furthermore, due to the complex nature of the holding company structure and control under Oregon Electric, it is doubtful that control of the PGE Board will truly be "local." According to PGE's CEO, PGE is a "local" company under Enron ownership, and Enron's role is "not much different than a regular board of directors." ICNU/906 at 18:2-3 (Fowler Deposition). Under Oregon Electric's ownership, however, the role of the PGE Board will not be like that of a "regular" board because most of its decisions will be subject to the TPG consent rights described above. Under these circumstances, it is doubtful that the PGE Board will either be in "control" or that the ultimate decisionmaking will be "local." Given TPG's lack of experience in the electric utility industry, function of the PGE Board under the Applicants' proposed structure poses more risk to customers than PGE's current situation.

The proposed PGE Board members have significant commitments in addition to PGE or Oregon Electric, which also calls into question whether this board truly is a benefit. Delta Airlines CEO Gerald Grinstein, for instance, testified that he resigned from his position on the University of Washington's Board of Trustees and has taken leave from many other boards in order to devote more time to Delta. Tr. 104-109 (Grinstein). Mr. Grinstein would only commit approximately 20-25% of his time to the Oregon Electric and PGE Boards. Tr. 109:1-2 (Grinstein). In addition, Dr. Peter Kohler has significant responsibilities as President of Oregon

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Health Sciences University, and estimates devoting only two days a month to his responsibilities as chair of the PGE Board and as a member of the Oregon Electric Board. Tr. 139:17-19 (Kohler). The amount of actual control and guidance that the new local board members will provide is speculative.

Finally, the new board appointed by TPG also presents a different dynamic because the owners of Managing Member each will personally invest at least $500,000 in Oregon Electric. ICNU/701 at 3-4. These board members will earn a return on their investment to the extent that TPG's investment is successful, which does not necessarily translate into success for customers.

4. Experience in Helping Companies through Transitions

TPG's "experience and expertise" in helping other companies through periods of transition also is of little benefit to PGE's customers. Application at 24. TPG has no experience in the utility industry. ICNU/100, Schoenbeck/8. Dr. Kohler testified that "PGE represents an entirely different type of investment in certain ways from what [TPG has] invested in before. They have invested in airlines with the regulatory component, but a public utility is different for TPG." Tr. 148: 17–22 (Kohler). Furthermore, out of all the various business leaders that the Applicants have appointed to provide local focus and expert guidance on the PGE Board, only Jerry Jackson, who lives in lives in New Orleans, has energy industry experience. Oregon Electric/23 at 7.

ORS § 757.511 indicates that an applicants' experience in operating a utility is an important factor in determining whether granting an application is in the public interest. Indeed, one of the basic pieces of information that the statute requires an applicant to provide is a

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description of the applicant's "experience in operating public utilities providing heat, light or power[.]" ORS § 757.511(2)(g). The Applicants' answer to the question of whether they have any experience operating an electric utility is "No." Oregon Electric/3, Davis/10.

5. Long-Term Planning to Secure Resources on a Cost-Effective Basis

Oregon Electric's assertion that it "will be able to make the best possible decisions regarding long-term planning" is unpersuasive. Application at 24. The disagreement about Port Westward described above demonstrates that the tension between PGE's long-term interests and the short-term interests of the Applicants already exist. Furthermore, PGE's current management has more experience in meeting the Company's long-term goals and obligations. PGE currently is planning for the long-term despite the uncertainty of the Enron bankruptcy. The primary long-term focus of TPG, on the other hand, is identifying PGE's next owner.

6. Reinvestment in the Business

The Applicant's commitment to "reinvest capital in PGE" is an obligation of every electric utility rather than a benefit to ratepayers. ORS § 757.020 requires every public utility "to furnish adequate and safe service, equipment and facilities." Capital investment to fulfill this obligation is a requirement, not a benefit. Moreover, PGE management should already be pursuing these actions and, if this is not occurring, action should be taken to correct this deficiency irrespective of corporate ownership.

Oregon Electric's commitment to use excess cash to reduce leverage may aid in the reduction of harm that the transaction creates, but it is not a benefit. The double leveraged structure of the transaction substantially increases debt as a percentage of consolidated

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capitalization. ICNU/200, Antonuk-Vickroy/5. Use of excess cash to reduce leverage imposed by the transaction should not be considered a benefit to PGE's customers.

7. Simplicity and Transparency

The Applicants also claim that the proposed transaction is "simple and straightforward" because "Oregon Electric is not a utility or a conglomerate that intends to integrate PGE into its other operating businesses." Application at 25. While the latter part of this statement may be true, the proposed transaction can hardly be described as simple and straightforward for all the reasons described in detail above.

E. Additional Conditions Are Necessary to Ensure That Customers Benefit and the Proposed Transaction Is in the Public Interest

ICNU proposed conditions to the Commission that are necessary if the Commission approves the proposed transaction. These are attached as Attachment A. ICNU does not support Oregon Electric's ownership of PGE; however, if the Commission intends to approve the proposed transaction, ICNU recommends that the Commission adopt the entire package of conditions in Attachment A. Certain of ICNU's proposed conditions provide protections or benefits that the Applicants did not address, but that are necessary to help ensure that customers are protected and that the proposed transaction is in the public interest. These specific conditions are described below.

ICNU proposed condition numbers 35 through 38 on Attachment A to protect PGE in the event that Oregon Electric enters bankruptcy. ICNU also suggested that Oregon Electric continue the "golden share" approach to bankruptcy protection implemented by PGE in 2002. ICNU/200, Antonuk-Vickroy/14; Re PGE, OPUC Docket No. UF 4192, Order No. 02-674 at 2 (Sept. 30, 2002). Oregon Electric has argued that the possibility of bankruptcy is

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remote; however, protecting customers from the potentially catastrophic effects of an Oregon Electric bankruptcy filing requires addressing this possibility, no matter how remote. Oregon Electric/200, Wheeler/11.

Oregon Electric proposed ring-fencing conditions similar to the Enron conditions and argued that those conditions will sufficiently protect PGE. Oregon Electric/200, Wheeler/11. Staff, however, testified that the Enron ring-fencing conditions did not adequately protect PGE during the Enron bankruptcy. Staff/200, Morgan/31-32. Moreover, PGE's CEO acknowledged that certain measures implemented after the Enron merger conditions were adopted, such as issuance of the golden share of stock, provided additional protection for PGE in the eyes of the ratings agencies:

> Q. Do you know of any additional protections that could have been adopted to prevent Enron's bankruptcy from impacting PGE?
>
> A. Ultimately the golden share was put in place by the board that did provide some additional protection. Or it was perceived as providing additional protection by, particularly, Moody's.

ICNU/906 at 11: 4-12 (Fowler Deposition). Furthermore, Oregon Electric will secure its term loans and revolving credit facility with a pledge of, and a priority lien on, the stock of PGE. Oregon Electric/3, Davis/17. As a result, the right of Oregon Electric's creditors to foreclose on that interest in the event of an Oregon Electric bankruptcy filing puts PGE at additional risk.

Other proposed conditions that are unique to ICNU are necessary to provide similar additional protection or to implement commitments made by Oregon Electric for which there are no conditions. First, the Applicants have stated that they "are committed to supporting restructuring efforts that are currently in place and also support moving towards competitive markets to the extent approved by the Commission and requested by PGE's customers." Oregon

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Electric/3, Davis/15. Condition number 46 in Attachment A would implement the Applicants' commitment and would put in place a direct access condition similar to the one adopted in the Enron merger proceeding. ICNU's proposed direct access condition not only would help to eliminate barriers to competition in electric service, it also would ensure that large customers seeking direct access benefit from additional options. ORS § 757.646(1).

Second, the Applicants stated in supplemental direct testimony that "Oregon Electric is willing to commit that PGE will provide periodic access to the PGE Board for the appropriate advocacy groups[;]" however, Oregon Electric never outlined this commitment or proposed a specific condition. Oregon Electric/22, Davis/11. Condition number 42 in Attachment A implements Oregon Electric's commitment. Such a condition will assist in ensuring transparency in the proposed holding company structure.

Third, ICNU recommends that the Commission adopt condition number 47 in Attachment A to help ensure that Staff and customer groups can enforce any of Oregon Electric's obligations if the Commission approves the proposed transaction. Both the Commission and customers have an interest in seeing that Oregon Electric and PGE abide by any conditions adopted in this proceeding.

Finally, ICNU proposes two conditions to address Oregon Electric's status as a short-term owner. These "end game" conditions are numbers 44 and 45 in Attachment A and are designed to ensure that the Commission has regulatory oversight of Oregon Electric's eventual disposition of PGE. The circumstances surrounding Oregon Electric dictate that any conditions of approval anticipate the sale PGE in the near-term future.

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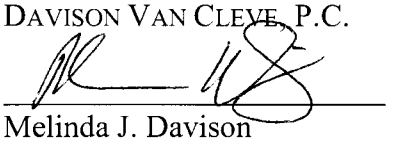
CONCLUSION

Oregon Electric's proposal to acquire PGE from Enron does not provide a net benefit to PGE customers. Quite simply, the alleged benefits offered by the Applicants are not substantial or certain enough to compensate customers for the risks and harms involved or to make customers better off than under the status quo. The Applicants have attempted to paint PGE's situation under Enron's ownership as hopeless; however, PGE's situation is not so dire. PGE has stated that customers will continue to receive adequate electric service whether or not the Commission approves Oregon Electric's proposal. Under these circumstances, there is no basis to invite the complexity and uncertainty associated with ownership by TPG and Oregon Electric. The Commission should deny the Application.

Dated this 17th day of November, 2004.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



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ATTACHMENT A – CONDITIONS [14/]

1. – 6. [Conditions in the July 16, 2004 Partial Stipulation]

7. The Commission or its agents may audit the accounts of Oregon Electric, its affiliates, and any subsidiaries that are the bases for charges to PGE to determine the reasonableness of allocation factors used by Oregon Electric to assign costs to PGE and amounts subject to allocation or direct charges. Oregon Electric agrees to cooperate fully with such Commission audits.

8. Oregon Electric and its affiliates shall not allocate to or directly charge to PGE expenses not authorized by the Commission to be so allocated or directly charged.

9. PGE shall maintain its own accounting system. PGE and Oregon Electric shall maintain separate books and records, both of which shall be kept in Portland, Oregon.

10. If the Commission believes that Oregon Electric and/or PGE have violated any of the conditions set forth herein, any conditions contained in other stipulations signed by Oregon Electric and PGE, or any conditions imposed by the Commission in its final order approving the Application (collectively, the "Conditions"), then the Commission shall give Oregon Electric and PGE written notice of the violation.

    a. If the violation is for failure to file any notice or report required by the Conditions, and if Oregon Electric and/or PGE provide the notice or report to the Commission within ten business days of the receipt of the written notice, then the Commission shall take no action. Oregon Electric or PGE may request, for cause, permission for extension of the ten-day period. For any other violation of the Conditions, the Commission must give Oregon Electric and PGE written notice of the violation. If such failure is corrected within five business days of the written notice, then the Commission shall take no action. Oregon Electric or PGE may request, for cause, permission for extension of the five-day period.

    b. If Oregon Electric and/or PGE fail to file a notice or written report within the time permitted in subparagraph a. above, or if Oregon Electric and/or PGE fail to cure, within the time permitted above, a violation that does not relate to the filing of a notice or report, then the Commission may open an investigation, with an opportunity for Oregon Electric and/or PGE to request a hearing, to determine the number and seriousness of the violations. If the Commission determines after the investigation and hearing (if requested) that Oregon Electric and/or PGE violated one or more of the Conditions, then the Commission shall issue an Order stating the level of penalty it will seek. Oregon Electric and/or PGE, as appropriate, may appeal such an order under ORS § 756.580. If the Commission's order is upheld on appeal, and the order imposes penalties under a statute that further requires the Commission to file a complaint in court, then the

[14/] Attachment A includes conditions that ICNU proposed in exhibit ICNU/301. In Attachment A, ICNU has rearranged the conditions from the order in which they appeared in ICNU/301 to reflect the numbering and order of conditions put forth by Oregon Electric and Staff.

Commission may file a complaint in the appropriate court seeking the penalties specified in the order, and Oregon Electric and/or PGE shall file a responsive pleading agreeing to pay the penalties. The Commission shall seek a penalty on only one of Oregon Electric or PGE for the same violation.

c. The Commission shall not be bound by subsection (a) in the event the Commission determines Oregon Electric and/or PGE has violated any of the material conditions, contained herein, more than two times within a rolling 24-month period.

d. Oregon Electric and/or PGE shall have the opportunity to demonstrate to the Commission that subsection (c) should not apply on a case-by-case basis.

11. Oregon Electric shall maintain and provide the Commission unrestricted access to a record of each instance in which TPG Applicants withhold their consent to a decision of the PGE Board of Directors. The record shall detail the basis for the decision, including any governing report or document that memorializes the exercising of the consent rights and shall identify the persons involved in making the TPG Applicant Consent Rights decision. Oregon Electric shall provide the records to the Commission on a quarterly basis and at any additional times upon request of the Commission. Nothing in this condition shall be deemed to be a waiver of Oregon Electric's or PGE's right to seek protection of information in such records. However, for each exercise of a consent right described in a record that has been provided to the Commission, the following information shall not be subject to protection and shall be made available to the public from the Commission: the date of the action; the subject matter; and the enumerated consent right authority (from Exhibit 7 to Oregon Electric's March 8, 2004 Application) under which the action was taken.

12. Oregon Electric and PGE shall maintain and provide the Commission unrestricted access to all books and records of Oregon Electric and PGE that are reasonably calculated to lead to information relating to PGE, including but not limited to, Board of Directors' Minutes, Board Subcommittee Minutes, and other Board Documents. Nothing in this condition shall be deemed to be a waiver of Oregon Electric's or PGE's right to seek protection of the information.

13. PGE, Oregon Electric, and their affiliates shall notify the Commission within 30 days of the formation of any subsidiary, affiliate, or partnership. Such notice shall include a copy of the business plan and capitalization strategy.

14. Oregon Electric and PGE shall provide the Commission access to all books of account, as well as all documents, data, and records of their affiliated interests, which pertain to transactions between PGE and all its affiliated interests.

15. [Not used]

16. PGE will not make any distributions to OEUC that would, or could reasonably be expected to, cause the common equity portion of PGE's total capital structure to fall below 48 percent.

a. "Total capital structure" is defined as common equity, preferred equity, and long-term debt.

b. "Long-term debt" is defined as (1) outstanding debt with an initial term of more than one year plus the sum of committed and drawn balances greater than $150 million on any of PGE's unsecured revolving lines of credit (Unsecured Revolvers); and (2) the sum of committed and drawn balances on PGE's secured revolving lines of credit (Secured Revolvers).

c. A "committed balance" is the sum of the commitments used to support any borrowing capacity or other purposes, such as a commercial paper program.

d. A "drawn balance" is sum of amounts drawn against the Revolvers.

e. Hybrid securities (e.g., convertible debt) will be assigned to equity and long term debt based on the characteristics of the hybrid security. The Commission, prior to their issuance, will determine the assignment of the equity and debt characteristics.[15/]

17. Oregon Electric agrees that the allowed return on common equity and other capital costs will not rise as a result of Oregon Electric's ownership of PGE. These capital costs refer to the costs of capital used for the purposes of rate setting, avoided cost calculations, affiliated interest transactions, least cost planning, and other regulatory purposes.

18. Oregon Electric guarantees that the customers of PGE shall be held harmless if, as a result of Oregon Electric's ownership of PGE, PGE has a higher revenue requirement.

19. Oregon Electric and PGE shall maintain and provide the Commission unrestricted access to all written information provided to stock or bond rating analysts, which directly or indirectly pertains to PGE or any affiliate that exercises influence or control over PGE. Such information includes, but is not limited to, reports provided to, and presentations made to, stock and bond rating analysts. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and videotapes, computer disks and electronically-stored information.[16/]

20. Oregon Electric agrees to provide for the benefit of PGE distribution customers, the annual Oregon Electric Credit set forth in Table 1. Within thirty (30) calendar days of the financial close of Oregon Electric's acquisition of PGE, PGE shall establish an Oregon Electric Credit Balancing Account and credit that account with the annual Oregon Electric Credit as set forth in Table 1. On the later of January 1, 2005, or the thirtieth calendar day following the financial close of Oregon Electric's acquisition of PGE, PGE shall credit the balancing account with the annual Oregon Electric Credit set forth in Table 1. Every January 1st after January 1, 2005, ending with January 1, 2009, PGE shall credit the balancing account with the annual Oregon Electric Credit set forth in Table 1. In the event that January 1 falls on a

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[15/] This condition has been revised slightly from the version in ICNU/301 to be consistent with the language in condition no. 16 in Staff/801.

[16/] This condition has been revised slightly from the version in ICNU/301 to be consistent with the language in condition no. 19 in Staff/801.

Saturday, Sunday, or national holiday for any year from 2005 to 2009, PGE shall credit the Oregon Electric Balancing Account with the amount set forth in Table 1 on the next business day.

Table 1

Later of 1-1-05 or 30 days after closing to 12-31-05	1-1-06 to 12-31-06	1-1-07 to 12-31-07	1-1-08 to 12-31-08	1-1-09 to 12-31-09
$20 million	$20 million	$19 million	$19 million	$19 million

The Oregon Electric Credit balancing account will accrue interest, compounded monthly, consistent with current Commission practices, on the unamortized balance at PGE's most recently authorized rate of return.

This rate credit will remain in place in the event that Oregon Electric sells or otherwise disposes of its interest in PGE. Notwithstanding the amounts of the Oregon Electric Credit in Table 1, any amounts that remain in, or remain to be credited to, the Oregon Electric Credit balancing account at the time of OPUC approval of a sale or other disposition of PGE by Oregon Electric shall be due in a lump sum within fifteen (15) days of the date of the OPUC's approval.

Amounts in the Oregon Electric Credit Balancing Account shall be distributed to customers as a bill credit designed to reduce the balance in the Oregon Electric Credit Balancing Account at the beginning of each calendar year to zero at the end of each calendar year. The bill credit shall be distributed pro rata based on the metered distribution load (in KWh) of each customer. The rate credit payments to customers shall begin on January 1, 2006.

21. Oregon Electric agrees that PGE will receive the sole benefit of the Stock Purchase indemnifications related to the following potential liabilities listed in the Stock Purchase Agreement: 1) Shared Special Indemnity Matters; 2) Non-Shared Special Indemnity Matters; and 3) Tax and Benefit Matters. For categories 1 and 2, this indemnification will be in the amount of no less than $94 million. For category 3, this indemnification is in the amount of no less than $1.25 billion.

22. – 23. [Not used]

24. PGE and Oregon Electric agree to hire, within twenty-four (24) months of the closing of the transaction, an independent outside auditor, approved by the Commission, to conduct an audit of PGE's operations. The audit will be conducted at PGE shareholders' expense and will be funded by PGE in an amount not less than $400,000. This audit will include an examination that includes, but is not limited to, the following areas:

    - Strategic and operational planning;
    - Budgeting;

- Capital expenditures;
- O&M expenditures;
- Measures of work planned and performed;
- Maintenance planning, performance, and backlogs;
- Performance measurement; and
- Comparative and trended expenditures and work performance.

25. Each PGE distribution to OEUC will be used by OEUC exclusively to pay direct operating expenses[17/] and debt service for at least five years and until all of the following conditions are met:

    a. The sum of the drawn balances of all PGE's Secured Revolvers is zero and there has not been a balance for three months; and

    b. OEUC has paid down at least $250 million of its outstanding debt as compared to the level of outstanding debt at closing, including the catch-up dividend from PGE.[18/]

26. No company, entity, or person, other than PGE, shall use PGE's regulated assets as collateral for any loan, guarantee, or other such use, without prior express Commission approval.

27. Oregon Electric shall not re-leverage, i.e., increase the amount of its outstanding long-term debt once it has been liquidated, if the increased debt would, or could reasonably be expected to, bring the consolidated capital structure below 40% common equity.

28. TPG Applicants[19/] will not allocate or direct bill Oregon Electric for any goods, services, supplies, or assets.

29. – 34. [not used]

Additional Conditions put forth by ICNU

35. PGE will be operated as a corporate and legal entity separate from all of its affiliates as defined by ORS § 757.015.

36. PGE and Oregon Electric commit to secure covenants that the lenders to the parent and affiliates will commit to rely solely on the creditworthiness of the parent and affiliates, based on the assets and equity interests owned by the parent and affiliates.

37. PGE and Oregon Electric commit that the repayment of parent and affiliate indebtedness (other than PGE and its subsidiaries) will be made solely from the assets of the said parent and affiliate (other than PGE and its subsidiaries), and not from any assets or pledge of assets

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17/ Direct operating expenses are expenses that were included from services, supplies, or assets provided by OEUC personnel directly and are not based on any type of allocation from an affiliate (parent or subsidiary).

18/ This condition has been revised slightly from the version in ICNU/301 to be consistent with the language in condition no. 25 in Staff/801.

19/ See Application at 6. TPG Applicants also includes Tarrant Partners.

of PGE. For the purposes of this condition, the parent's assets include dividends received by virtue of the parent's equity interest in PGE.[20/]

38. PGE and Oregon Electric commit to secure covenants that no lenders will take any steps to procure the appointment of a receiver or to institute any bankruptcy, reorganization, insolvency, wind up, liquidation, or like proceeding that includes PGE or any of its assets.

39. The Applicants[21/] will not allocate or direct bill PGE for any goods, services, supplies, or assets except compensation to the Applicants for fulfillment of responsibilities as members on PGE's Board of Directors as subject to condition no. 41 below.

40. Except for products and/or services included in schedules filed under Chapter 757 of the Oregon Revised Statutes, PGE, Oregon Electric, and their affiliates will provide the Commission with notification, within 30 days, of any new product and/or service, or any material change in the terms and conditions of existing products and/or services. The notification will include the name and description of the product and/or service, who it is offered to, and the specific terms and conditions.

41. PGE's revenue requirement shall not include more than 50% of the total fees and costs of PGE's Board of Directors. This does not preclude any party from advocating that ratepayers pay less than 50% of the total fees and costs of PGE's Board of Directors.

42. Oregon Electric and PGE commit that a representative from each customer group that is precertified to receive intervenor funding pursuant to OAR § 860-012-0100 may attend no less than two (2) of the regular meetings of the PGE Board of Directors per year. Attendance of customer groups of any more than two (2) of the regular meetings of the PGE Board shall be allowed at the Board's discretion. At each PGE Board meeting in which a representative of a customer group attends, PGE shall permit each customer group to make a presentation to the Board.

43. PGE will be subject to a process improvement and benchmarking review ("PIBR"), including a management audit. The PIBR shall include detailed review and benchmarking of PGE's functions, systems, and processes. The PIBR shall be performed by an independent third party (the "Auditor") with significant expertise in performing such audits. A customer advisory committee shall be established to assist in the selection of the Auditor and to monitor the progress of the audit. The Commission shall select the Auditor with input from the customer advisory committee. PGE shareholders shall pay the cost of the audit.

44. Oregon Electric, PGE, and TPG agree to not merge or dispose of PGE, to any party or entity, unless the sale is structured in such a manner that an ORS § 757.511 filing is required by the purchaser(s). This provision shall not apply in the event the stock controlling PGE is sold through a public offering.

[20/] The language in this condition has been revised slightly from the version in ICNU/301. Oregon Electric has indicated that it agrees to the language in this condition and that this condition was inadvertently omitted from the conditions in Oregon Electric/501. Oregon Electric/200, Wheeler/14; ICNU/506.

[21/] The Applicants for this condition means the Local Applicants and the TPG Applicants.

45. Oregon Electric, PGE, and TPG agree to not restructure PGE or Oregon Electric or convert the shares of PGE in a manner that does not require an ORS § 757.511 filing. This provision shall not apply in the event the stock controlling PGE is sold through a public offering.

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

ii. PGE shall develop and file, within six months of closing of the transaction, a plan to offer to all customers eligible for direct access who do not qualify for Schedule 483 a multi-year option to opt out of the cost of service rate with a fixed transition amount at least one time each year. The plan 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.

b. PGE shall offer all customers eligible for direct access an opportunity to elect direct access for a period of seven calendar days (similar to the current November offering) at least once 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.

c. PGE shall in consultation with customers eligible for direct access and energy service suppliers develop a new methodology for calculating energy imbalance penalties, which accounts for the benefits of the diversity of PGE's system. The goal of the methodology shall be to provide imbalance service 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.

d. PGE in consultation with customers eligible for direct access and energy service suppliers shall develop an option that allows direct access customers to purchase flat blocks of energy from energy service suppliers, while having the option 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.

47. Any party to OPUC Docket No. UM 1121 shall have the right to enforce violation of condition nos. 18, 20, 38, 43, and 44 by PGE or Oregon Electric in the appropriate Oregon state court or before the OPUC. Enforcement rights are given to the Commission, Commission Staff, and any customer group that is precertified to receive intervenor funding pursuant to OAR § 860-012-0100.

48. Oregon Electric agrees that PGE's ratepayers shall be held harmless for any liability associated with Enron's ownership of PGE.