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December 3, 2004

**VIA HAND DELIVERY**

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

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

Dear Ms. Taylor:

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

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

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

Very truly yours,

  
Edward A. Finklea

EAF/ls

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

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1121**

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

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

**December 3, 2004**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1121**

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

**I.**

**INTRODUCTION**

Eugene Water & Electric Board (“EWEB”) and the Bonneville Power Administration (“BPA”) hereby file their Reply Brief pursuant to the schedule established in this proceeding. EWEB and BPA reply specifically to Enron’s assertion in its Opening Brief that the condition sought by EWEB and BPA to protect against potential Trojan liabilities should be rejected outright. Enron Opening Brief at 21. Oregon Electric Utility Corporation (“OEUC”) and Portland General Electric Company (“PGE”) do not address the proposed condition in their Opening Briefs.

**II.**

**ARGUMENT**

The vast majority of evidence in the record now before the Oregon Public Utility Commission (“OPUC” or “Commission”) focuses on whether the highly leveraged nature of the Texas Pacific Group (“TPG”) ownership plan will weaken the financial health and

long term credit of PGE. EWEB and BPA raise only one issue in this voluminous record: The applicants are requesting this Commission to approve the transaction without protecting PGE's customers and the general public from the serious financial uncertainties surrounding the Trojan Nuclear Plant ("Trojan"). EWEB and BPA have similarly proposed only one straight forward condition: This Commission should require the applicants or PGE, as a condition of approval of the acquisition, to post a bond in an amount sufficient to ensure that the ratepayers and the general public are protected from the possibility that PGE is rendered unable to pay unexpected Trojan expenses.

EWEB and BPA find it inconceivable that Enron simply dismisses the proposed Trojan condition with a one sentence response and a footnote. Enron Opening Brief, p. 21, fn. 12. Trojan decommissioning is one of the largest potential contingencies that could cause cash or credit problems for the highly leveraged PGE if the proposed acquisition is approved by this Commission. At some time during TPG/OEUC's ownership, PGE could be forced to spend millions more than is currently collected through rates to cover its share of Trojan decommissioning costs. These expenses could go on for years. Such an open ended financial drain on PGE's cash, should it occur, would be a substantial burden on PGE's borrowing capability and ultimately the financial health of the utility.

Rather than ignore or dismiss this potential liability, EWEB and BPA propose a carefully and narrowly drawn solution. Requiring applicants to post a bond to cover any Trojan expenses that exceed the amounts currently collected through the decommissioning fund would fully protect ratepayers of PGE and the general public from a potential financial crisis.

The bonding requirement recommended by EWEB and BPA is a very reasonable condition to place on the acquisition proposal. If the proposed transaction results in a financially robust and stable PGE, as claimed by applicants, then the bond will not be difficult or expensive to acquire and maintain. If nothing occurs that causes PGE to have to rely on the bond while TPG/OEUC owns PGE, then TPG/OEUC can redeem the bond if and when it sells PGE.

The OPUC Staff is recommending that this Commission put all its reliance on the decommissioning fund to address Trojan expenses during TPG/OEUC's tenure as PGE's owner. (Tr. Vol. 1, pp 68-69 (Oct. 20, 2004)). Relying solely on the decommissioning fund poses the risk to PGE customers that at some time, higher rate surcharges will be the only avenue for PGE to pursue to address unexpected expenses that are likely to be incurred before the task of decommissioning Trojan is complete. The bonding condition recommended by EWEB and BPA gives this Commission an opportunity to provide current and future ratepayers with more protection from the uncertainties of decommissioning a nuclear power plant and permanently disposing of the spent fuel than are provided by the decommissioning fund. Future ratepayers of PGE would be the primary beneficiaries of the bonding requirement sought by EWEB and BPA. It would not be designed simply to "protect parties with whom [PGE] has contracts," contrary to Enron's footnote assertion. Enron Reply Brief, fn. 12.

OEUC has raised numerous arguments in its Opening Brief that question the authority of the Commission to place many of the conditions sought by customer representatives on an order otherwise authorizing the acquisition. The bonding condition sought by EWEB and BPA, in contrast, is well within the authority of this Commission to

impose when addressing the acquisition of a utility that owns a nuclear power plant that is being decommissioned. Other state regulatory commissions have routinely exercised this type of oversight to protect ratepayers and the public interest when the sale of a utility involves a nuclear plant. For example, the Wisconsin Public Service Commission recently rejected the proposed sale of an operating nuclear plant by the current owners. See, Platts, Megawatt Daily, (November 22, 2004) (Attachment A to EWEB/BPA Reply Brief.)

### III.

#### CONCLUSION

This Commission would be acting prudently and would be on solid legal ground by placing the bonding condition urged by EWEB and BPA on the TPG/OEUC acquisition. The condition would protect PGE's future ratepayers from paying higher surcharges for a longer period of time should unexpected Trojan expenses become a reality. By adopting the bonding condition, this Commission will have acted decisively now to protect future ratepayers of PGE from a potential regulatory and financial crisis. EWEB and BPA would only benefit from such a bonding condition if some time in the future PGE would otherwise not be capable of meeting its Trojan decommissioning obligations. PGE's future ratepayers and the general public would directly benefit from the existence of a bond long before EWEB and BPA in the midst of a Trojan-driven financial crisis that would have caused the bond to be necessary. EWEB and BPA urge the Commission to adopt the bonding condition unless the application to acquire PGE is rejected outright.

Respectfully submitted this 3<sup>rd</sup> day of December, 2004.

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# Megawatt Daily

Monday, November 22, 2004

## Wisconsin PSC vetoes nuclear plant sale

Wisconsin regulators Friday rejected the proposed sale of the 574-MW Kewaunee Nuclear Power Plant by its owners, subsidiaries of WPS Resources Corp. and Alliant Energy Corp., to Dominion Resources, based in Richmond, Va.

The Wisconsin Public Service Commission voted 2-1 against the \$220 million deal, saying it was not in the public interest. Commissioners opposing the deal were concerned that once the plant in Carlton, Wis., was sold to an out-of-state company, state oversight of the facility would be lost.

WPS Resources and Alliant Energy said Friday that they may still seek to sell the nuclear power plant. "We continue to believe the timing is right to sell the plant," said Barbara J. Swan, president of Wisconsin Power & Light, an Alliant subsidiary. "We will

*(continued on page 13)*



**Plant sale denied ...** from page 1

consider our options after further review and discussion and proceed in the best interests of our customers and other stakeholders."

Although Dominion agreed to various conditions as part of the deal, the PSC said those conditions would be vacated if Dominion decided to sell the plant to another company. "WPS, Alliant and Dominion made a strong case for this sale and agreed to conditions regarding storage of imported radioactive wastes and returning the site to a greenfield after decommissioning," said PSC Chairwoman Burnie Bridge. "I have concerns about the Public Service Commission's authority to impose the same conditions on future owners in context of this application."

If the deal had been approved, Green Bay, Wis.-based Wisconsin Public Service Corp., which owns 59% of the plant, and Wisconsin Power & Light, based in Madison, Wis., were going to buy the plant's output through 2013.

The proposed deal was the first case in Wisconsin where an investor-owned utility had asked to sell a regulated power plant to an out-of-state firm. The sale of the Kewaunee plant would have made the facility a wholesale generation plant and exempted it from state regulation, including authority over future sales of the nuclear facility to other companies, the PSC said. The plant's operating license from the Nuclear Regulatory Commission expires in 2013.

## CERTIFICATE OF SERVICE

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

Dated in Portland, Oregon, this 3<sup>th</sup> day of December, 2004.

Respectfully Submitted,

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