

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of the Application of OREGON
ELECTRIC UTILITY COMPANY, LLC, TPG
PARTNERS III, L.P., TPG PARTNERS IV,
L.P., MANAGING MEMBER LLC, NEIL
GOLDSCHMIDT, GERALD GRINSTEIN,
and TOM WALSH for an Order Authorizing
Oregon Electric Utility Company LLC to
Acquire Portland General Electric Company

**DIRECT TESTIMONY OF
SUSAN ANDERSON
ON BEHALF OF
THE CITY OF PORTLAND, OREGON**

July 21, 2004

I. INTRODUCTION

My name is Susan Anderson, and I am the director of the City of Portland Office of Sustainable Development. My office is responsible for energy policy issues, energy efficiency and renewable energy, solid waste and recycling, green building, and general sustainability issues. My qualifications are attached as Exhibit 1.

The intent of my testimony is to address issues of importance to the City of Portland and to many Portland businesses and residents. The City of Portland's interests in Portland General Electric (PGE) arise from several key facts:

- the City is one of PGE's 20 largest customers, with an annual PGE bill of over \$10 million;
- Portland residents and businesses represent about 25 percent of PGE's customers and retail electricity revenue; and
- PGE has thousands of miles of power lines and conduit in City-owned rights-of-way, and Portland is by far the largest city in which PGE operates.

In recognition of the critical importance of PGE to the well being of Portland's economy and community, the City Council identified the following interests in Resolution No. 36093, adopted unanimously on August 28, 2002:

1. safe, reliable electricity service;
2. stable, reasonable rates;
3. protection for customers and employees against liability for the actions of Enron or its debts;
4. company management that is responsive to local needs, priorities and employees;
5. commitment to local economic development; and,

6. environmental protection.

On March 17, 2004, the Portland City Council reiterated its commitment to protecting these interests in adopting Resolution No. 36205 authorizing the City to file for participation in the current proceeding.

PGE is a vital part of Portland's economy and community, and the City is keenly interested in ensuring that PGE emerge from Enron ownership in a way that brings benefit to PGE ratepayers and communities.

This testimony addresses the following issues:

1. The validity of the franchise agreements under which PGE claims to operate in Portland is legally uncertain. The City seeks a commitment from Texas Pacific Group that PGE will negotiate a modern franchise with the City within a reasonable timeframe.¹
2. Under Texas Pacific Group ownership, PGE ratepayers would be subjected to significantly increased risk as a result of extremely high debt levels at Oregon Electric.
3. Texas Pacific Group's proposal provides no assurance of responsiveness to local priorities. Contrary to Texas Pacific Group's testimony, the Texas Pacific Group's proposed organizational structure provides no meaningful local input to key corporate decisions at PGE. Residing or working in the Pacific Northwest cannot override a director's primary fiduciary duty to represent the interests of shareholders. Ultimately, Texas Pacific Group's consent rights over any substantive decision making would trump any element of local representation.

4. Texas Pacific Group ownership would lead to a re-sale of PGE within 10 years, and quite possibly much sooner, prolonging the uncertainty around PGE's future and leading to possible disconnect between the long-term interests of PGE's ratepayers and the short-term focus of its potential owners.
5. Texas Pacific Group's commitment to environmental protection—specifically energy efficiency and renewable energy—is vague and offers no accountability.
6. Funding for bill-payment assistance for low-income households is increasingly inadequate, and Texas Pacific Group's current proposal fails to address this issue meaningfully.
7. Texas Pacific Group has declined to identify a clear baseline against which to compare its proposal. This obscures the Oregon Public Utility Commission's (PUC) statutory responsibility to weigh of the “net benefits” of the proposed transaction.
8. Texas Pacific Group appears likely to benefit significantly from filing taxes on a consolidated basis with PGE but is unwilling to share potential benefits with ratepayers.

In short, Texas Pacific Group's proposal adds new and significant risks for PGE ratepayers while delivering minimal benefits. In its current form, Texas Pacific Group falls well short of proving that the proposed transaction will result in a “net benefit” for PGE's customers.

II. FRANCHISE TO OPERATE IN THE CITY OF PORTLAND

PGE claims to operate in the public right of way in Portland as the successor in interest to five separate franchises dating from the 1880s and 1890s. The legal validity of these franchises is uncertain. Regardless of the legal status of these nineteenth century documents, the franchises are

¹ Throughout this testimony, “Texas Pacific Group” refers to TPG Partners III, L.P., TPG Partners IV, L.P., Oregon

archaic and poorly suited to the contemporary issues that arise between utilities and municipalities.

The City of Portland is by far the largest municipality in which PGE operates. Its residents and businesses are responsible for a significant share of PGE's revenues. Establishing a modern franchise that clearly delineates the rights and responsibilities of PGE and the City of Portland is in the interest of PGE as well as its customers, both in Portland and elsewhere.

In April, 2004, the City Council adopted a resolution instructing staff to develop a franchise agreement with PGE. City representatives have met with PGE since then. Subsequent meetings are scheduled. The City is optimistic that this process will lead to a franchise that reflects the current relationship. However, it is important to emphasize that, unless and until this process results in a final, signed agreement, PGE's legal authority to use and occupy the public right-of-way within Portland remains uncertain.

In the application by Sierra Pacific to merge with PGE, the parties agreed to stipulated conditions that included a commitment by Sierra Pacific "to make all reasonable efforts to develop and obtain approval of a modern utility franchise with the City of Portland within two years following the completion of the merger." Order 00-702, Appendix C, at p. 5. The Commission's final order acknowledged that the commitments embodied in the stipulated conditions were in the public interest. Order 00-702, at p. 8. To provide certainty for PGE, its owners, and its customers, Texas Pacific Group should commit, without reservation, to similar conditions in this proceeding.

III. INCREASED RISKS FOR RATEPAYERS

The Texas Pacific Group' proposed transaction introduces significant new risks to PGE ratepayers. These risks arise from two basic aspects of the transaction:

1. Unprecedented levels of consolidated debt at Oregon Electric and PGE.
2. Texas Pacific Group's intent to hold PGE for a relatively short period of time.

The Commission has set PGE's minimum equity level at 48 percent. As noted in the joint testimony of John Antonuk and Randall Vickroy on behalf of the Industrial Customers of Northwest Utilities, Oregon Electric's high level of debt will significantly increase pressures upon PGE to deliver sufficient dividends to meet Oregon Electric's debt-service payments. ICNU/100/Antonuk-Vickroy. In turn, this limits PGE's flexibility in making needed investments in its operations and maintenance. At the same time, the heavy debt burden borne jointly by PGE and Oregon Electric increases the likelihood of credit downgrades by the rating agencies, which would have direct and strongly negative consequences for PGE ratepayers. ICNU/100/Antonuk-Vickroy/15; Exhibit ICNU/203, Antonuk-Vickroy/1-2. The other risk presented to ratepayers is the inability to share financial risks of PGE's operations with shareholders.

The Commission must consider the double leveraging aspects of the proposed transaction. Under this theory, the true costs of a subsidiary's equity capital is computed as a weighted average of the parent's debt and equity costs. Otherwise, Texas Pacific Group will receive economic benefits from the higher equity returns associated with its equity, but also an artificial (doubly leveraged) return on PGE's equity.

Texas Pacific Group's intention to sell PGE within a relatively short time, introduces an second, significant risk.² Texas Pacific Group's fundamental motivation—to maximize the return on its investment during the relative short time during which it may own PGE—creates a

² The issue of temporary ownership is discussed in further detail in Part VI of this testimony, below.

powerful incentive to cut costs at PGE in order to improve PGE's earnings reports as Texas Pacific Group prepares to sell the company.

This issue exemplifies a larger disconnect between Texas Pacific Group's interests, which are defined by short-term concerns, and the public interest, which has a much longer time horizon. This disconnect is a particularly acute concern for PGE, which is facing critical long-term planning decisions on acquiring power-generation resources. It is imperative that PGE's owners and board make decisions about resource-acquisition from a long-term perspective. The temporary ownership Texas Pacific Group has proposed offers precisely the opposite.

These two forms of risk are only the two most obvious concerns. We share the concerns otherwise discussed in more detail in the testimony of James Dittmer, witness for the Citizens' Utility Board (see CUB/____), and in the joint testimony of John Antonuk and Randall Vickroy, witnesses for the Industrial Customers of Northwest Utilities (see ICNU/100). Texas Pacific Group must mitigate these risks. Where that is not possible, Texas Pacific Group must commit to compensating ratepayers financially for all added risks introduced by the proposed transaction. Failing such a commitment, the proposed transaction provides no net benefits to PGE's customers.

IV. NO MEANINGFUL FINANCIAL OR OPERATIONAL BENEFIT

Texas Pacific Group's initial filing with the PUC offered no financial benefit, claiming instead that a new board, vague commitments to local involvement, and freedom from the specter of Enron's bankruptcy constituted sufficient benefit by themselves. In supplemental testimony submitted on May 27, 2004, Kelvin Davis proposed a financial benefit to ratepayers in the form of providing ratepayers a share of any profits in excess of the 10.5 percent return on equity (ROE) authorized by the Commission.

While any attempt to generate a financial benefit for ratepayers is welcome, Texas Pacific Group's offer is inadequate in several respects. First, through accounting and other measures, companies may manage the reported ROE and therefore avoid the need to share any excess with ratepayers. Second, PGE's actual ROE has lagged significantly below the authorized 10.5 percent in recent years. As recently noted in *PGE's Regulated Results for Operations for 2003*, as submitted to the PUC on June 1, 2004, during the 2003 calendar year, PGE's "2003 earnings test ROE" was 7.69 percent, while in 2002, it was 8.09 percent. It is unclear whether PGE will experience an ROE any where close to 10.5 percent in the foreseeable future. Finally, and most importantly, if PGE earns significantly in excess of the ROE, then the Commission should require a rate case to adjust PGE's rates, rather than accepting a mechanism for "refunding" over-earnings.

In terms of PGE operations, Texas Pacific Group's initial testimony indicated clearly that the utility would maintain its current course, stating, "Oregon Electric plans no changes that may have a significant impact on the policy, management, operations, or rates of the electric utility" *Application*, Appendix A, at p. 3. In subsequent testimony, Texas Pacific Group has indicated that it intends to undertake a comprehensive review of PGE's operations to try to identify potential efficiencies and opportunities (Supplemental Direct Testimony of Kelvin Davis, p. 4). Under any circumstances, a comprehensive review by a new owner would be prudent. Just as certainly, it can not be characterized as a net benefit to PGE's customers.

With no clear operational changes and no meaningful financial benefit, Texas Pacific Group's claim of net benefit rests heavily on intangible benefits such as "transparency and simplicity", (*Application*, at p. 25) and "local participation on the board." *Id.*, at p. 23. The latter is discussed in the next section.

V. RESPONSIVENESS TO LOCAL PRIORITIES

Texas Pacific Group has consistently emphasized the role of “local” applicants in providing strategic direction to PGE. Texas Pacific Group has pledged to maintain at least five Oregonians on PGE’s board of directors at all times. Texas Pacific Group repeatedly refers to local involvement as a key benefit of the proposed transaction. *See, e.g., Application*, at pp. 3, 6, 15, 19, and 23.

Texas Pacific Group’s efforts to identify seven individuals with varying degrees of connection to Oregon, who are willing serve on PGE’s board are laudable. However, the specifics of this claim have been a moving target, with participants withdrawing and being named. Texas Pacific Group filed an amendment to its application less than two weeks ago announcing the names of seven proposed members of PGE’s board. The City’s concern is not the identity of those persons. The focus must remain upon the directors’ fiduciary obligations to serve and protect the interests of Texas Pacific Group as PGE’s parent corporation and sole shareholder. No local ties can override first and overarching responsibility of any corporate director: to protect and serve the interests of the corporation and the shareholder.

Any significant action by PGE’s board is subject to consent rights held by Texas Pacific Group that severely constrain the ability of board members, Oregon residents or otherwise, to make important decisions about PGE. As Texas Pacific Group has acknowledged, it “anticipate[s] that many, if not most, of the major [PGE] Board actions over the past year would have been subject to TPG’s consent.” Applicants’ Responses to Request CUB/OECU 2b, Bates OE 103992

Texas Pacific Group’s claim of any benefit derived from meaningful local involvement in PGE’s board is also undermined by how it has addressed issues under the Public Utility Holding

Company Act (PUHCA). Texas Pacific Group has indicated that, if PUHCA is repealed, Texas Pacific Group would exercise direct control of PGE, rather than acting through Oregon Electric, which would be a registered holding company under PUHCA. *Application*, Exhibit 3, at p. 9. In a Portland City Council work session on April 7, 2004, Commissioner Erik Sten asked Kelvin Davis if he agreed with the statement, “If PUHCA was here or not here we would get the same results, in terms of how it would see, feel, and act to us.” Mr. Davis replied, “I think that is right.”³ This exchange is referenced in a letter from Commissioner Erik Sten to Securities and Exchange Commission Chair William Donaldson on April 27, 2004. *See* Exhibit 2, attached to this testimony and incorporated as if set forth in full.

Mr. Davis’s assertion that the repeal of PUHCA would have no impact on the results of its involvement in PGE appears to be in conflict with its claim that PGE’s board will have wide discretion to make decisions for PGE. If Texas Pacific Group would have direct control of PGE’s board under a PUHCA-repeal scenario and Mr. Davis assures us that PUHCA repeal will have no impact on PGE’s management decisions, then the obvious conclusion is that Texas Pacific Group intends to exercise direct control of PGE under the proposed ownership structure.

The presence and participation of persons with “local connections” on PGE’s board may have symbolic value, but it provides no substantive net benefit for PGE’s customers.

VI. LONG-TERM STABILITY

Texas Pacific Group cites stability as a key benefit of the proposed transaction, suggesting that its ownership would “bring an emphatic and expedient end to [the] uncertainty” arising from Enron’s bankruptcy. *Application*, at p. 23. However, Texas Pacific Group is at best

³ These comments can be reviewed at an on-line video archive of City Council meetings at <http://www.portlandonline.com/index.cfm?c=28259>; this exchange begins at 57:40 in the April 7, 2004 work session.

another interim owner whose investment expectations and outlines are out of step with the realities of utility operations and capital cycles.

How much stability would Texas Pacific Group bring to PGE? Texas Pacific Group has acknowledged that its governing policies limit its investments in any particular asset to no more than 12 years. *Application*, Exhibit 3, at p. 4. It is otherwise widely reported that Texas Pacific Group's typical investment horizon is five to seven years.⁴ Regardless of whether the time horizon is five, seven, ten or twelve years, it seems inevitable that PGE will be sold again. Texas Pacific Group's filing offers no information about how the next sale would lead to a stable successor.

Replacing Enron ownership with Texas Pacific Group ownership would simply perpetuate PGE's position on the auction block. For the past four years, Enron has tried to maximize its investment by selling PGE; Texas Pacific Group would keep PGE in precisely the same situation, prepared to sell or distribute stock at whatever point it believes would maximize return on its investment. There is nothing intrinsically wrong with TPG looking out for its interests and the interests of its investors. However, there is no benefit to be gained by PGE's customers in continuing the uncertainty of short-term ownership.

⁴ "[TPG] says that it generally maintains investments for five to seven years." Global Association Of Risk Professionals, Ken Silverstein, Director, Energy Issues Analysis "Energy Risk - Going Private" (July 6, 2004) <http://www.garp.com/risknews/newsfeed.asp?Category=6&MyFile=2004-07-06-8969.html> (accessed July 16, 2004); "If [TPG] gets PUC approval, it is expected to flip PGE to another owner in five to 7 years." *KINK Considers: City and PGE* http://kink.fm/news_more.php?id=1109_0_2_0_M3 (accessed July 16, 2004); "If the history of Texas Pacific is any guide, however, in five to seven years the future of PGE as we know it may again be up in the air." Rob Smith, "Opinion: Texas Pacific deal raises questions", *Portland Business Journal*, (November 21, 2003) <http://portland.bizjournals.com/portland/stories/2003/11/24/editorial2.html> (accessed July 16, 2004); "[TPG] says that it generally maintains investments for five to seven years, although nothing precludes them from being kept longer . . . [S]ome investment advisors say that the new owners might want to sell their stake outright or to take the entity public in the near term to maximize their returns." <http://powermarketers.net/contentinc.net/newsreader.asp?ppa=8kowu%5DZghmlgnsWUgc%7DGL%7Dbfej%5B!> (accessed July 16, 2004).

The relatively short length of time Texas Pacific Group would hold PGE is of particular concern because of PGE's need to make critical long-term decisions about power-supply resource acquisition. Under PUC oversight, PGE has developed a set of proposed actions to ensure that it acquires appropriate, cost-effective power-supply resources for its customers.⁵ PGE is currently awaiting PUC approval to carry out the proposed actions, many of which will require substantial financial investment. Continuing any disconnect between the utility's needs to undertake long-term planning and investment strategies and the owner's short-term interests in capital flow can only harm the ratepayers and be detrimental to Oregon as a whole.

Texas Pacific Group notes the significance of these coming decisions and acknowledges that "PGE's management has been working diligently on these issues". *Application*, at p. 24. In the very same sentence, Texas Pacific Group then casts uncertainty on whether it will commit to having PGE follow through on its proposed actions. Texas Pacific Group states that PGE management would "benefit from the guidance and direction of a strong board in making critical decisions that will impact rates over time." *Application*, at p. 24.

While a well informed board can and must make important contributions to decisions such as resource acquisition, the implication is that Texas Pacific Group will exercise its influence at the eleventh hour of a lengthy, careful planning process. This highlights the possible tension between the need for long-term utility investment planning, and the short-term interest of Texas Pacific Group. As a short-term owner, Texas Pacific Group's fundamental motivation is to maximize the re-sale value of PGE in the short-term; the underlying goal of the resource-planning process, by contrast, must be to balance ratepayer costs and environmental protection over a significantly longer timeframe.

⁵ *Delivering New Choices for PGE's Customers: Proposed Action Plan, Integrated Resource Plan*. January 2004.

To address concerns about the length of time Texas Pacific Group will maintain its investment in PGE, Texas Pacific Group should begin by describing and committing to a process they would follow in divesting PGE. Texas Pacific Group should provide specific timelines and procedures for how it intends to restructure, sell, transfer, and/or dispose of PGE. In particular, Texas Pacific Group should commit to structuring any private sale or distribution in a transparent fashion, as well as committing to review under ORS 757.511 so that ratepayer interests, as well as the interests of Oregon citizens as a whole, are protected.

The Commission should carefully evaluate Texas Pacific Group's proposed transaction to determine if there is any intent to divest PGE in ways that might circumvent an open forum for identifying and addressing impacts upon ratepayers and Oregon citizens. Texas Pacific Group should commit to a process for informing ratepayers of planned divestment of PGE and a specific set of options for transferring PGE to a subsequent owner. Those options should include granting the first right of refusal to purchase PGE to a public entity that meets qualifications such as credit rating and public involvement practices.

By its own account, Texas Pacific Group's involvement in PGE is temporary. Any possible benefit attributable to Texas Pacific Group's involvement with PGE should be correspondingly and significantly discounted. By identifying the way it would transfer PGE to a subsequent owner, Texas Pacific Group can ameliorate, though not eliminate, concerns with the length of time it would own PGE.

VII. ENERGY EFFICIENCY AND RENEWABLE ENERGY

Energy efficiency and the development of renewable energy resources are critical to sustainable development. These twin goals have served as the cornerstones of the City of

Portland's energy policy for 25 years. During that time, Portland's energy policies have consistently called for improving energy efficiency and increasing the use of renewable energy. The City of Portland first adopted a formal energy policy in 1979 and updated it in 1990 and again in 2001, when it was incorporated into a joint plan between the City of Portland and Multnomah County, entitled *Local Action Plan on Global Warming*.

As established in the *Local Action Plan on Global Warming*, The City's current policy, has set a goal of meeting all new load growth with energy efficiency measures and acquiring 170 average megawatts of power from new renewable resources by 2010.⁶ The City can only hope to achieve these ambitious goals through the continuing, active participation of PGE as the dominant electrical utility within the City.

The City of Portland joins in separate testimony as one of the Joint Public Interest Parties that addresses the importance of maintaining and strengthening PGE's recent progress in pursuing energy efficiency and renewable resources. *See* Joint Public Interest Parties/100. The City views the proposals in that testimony as essential minimum guarantees of Texas Pacific Group's commitment to environmental protection.

A. Energy Efficiency

The Energy Trust of Oregon provides energy efficiency and renewable-resource programs for PGE customers funded through a three-percent public purpose fee levied on electric bills. The Energy Trust is essential to the near-term success of clean energy in Oregon, and PGE has been a cooperative partner in the Energy Trust's efforts to date.

Texas Pacific Group's proposal makes broad statements about its commitment to environmental protection, stating that it "looks forward to enhancing PGE's performance in

⁶ <http://www.sustainableportland.org/Portland%20Global%20Warming%20Plan.pdf>, (accessed July 16, 2004)

environmental, energy efficiency, and renewable resource areas”. *Application*, at p. 21. The proposal also indicates that Texas Pacific Group would meet the minimum legal requirement of supporting the three-percent public purpose fee. A commitment that PGE will continuing to follow the status quo after consummation of the proposed transaction provides no net benefits to PGE’s customers.

Recent studies indicate that Oregon’s three-percent public purpose fee captures only a part of the cost-effective energy efficiency that is available, and that expenditures of closer to four or five percent might be more appropriate (see, for example, “Conservation Resource Potential in the Fifth Power Plan,” Northwest Power and Conservation Council).⁷ Texas Pacific Group should commit to undertaking cost-effective conservation efforts above and beyond the minimum three percent included as part of PGE’s integrated resource planning process.

B. Renewable Energy

The City of Portland’s renewable energy goal—170 average megawatts by 2010—is aggressive, equating to about 19 percent of total local electricity use. The City is taking measures to move toward this goal, including a commitment to purchase 100 percent renewable electricity for all City facilities and operations by 2010, equivalent to about 150,000 megawatt-hours.

PGE has been an important partner to the City on several individual renewable-energy projects, including an innovative biogas-powered fuel cell at the City’s Columbia Boulevard Wastewater Treatment Plant. PGE has also taken part in meetings that led to the development of the City’s energy and global warming policies, including participating on the policy and technical

⁷ http://www.nwppc.org/news/2004_04/3.pdf, (accessed July 16, 2004)

advisory committees of the City's 1993 CO₂ Reduction Strategy, the first local climate change action plan in the U.S.

Texas Pacific Group's proposal to work toward 10 percent renewables by 2012, based on 1:2 peak capacity (Supplemental Direct Testimony of Kelvin Davis, p. 12) is a step in the right direction, but the proposal has three serious shortcomings:

1. It is based on an inappropriate measure (1:2 peak).
2. It sets a target for a future date when Texas Pacific Group would quite likely no longer own PGE. Therefore Texas Pacific Group would not be accountable for meeting this pledge.
3. It is overly conditional, pledging to try to add renewable resources to PGE's resource mix. A commitment to try is encouraging, but offers no accountability. Moreover, Texas Pacific Group indicates it would instruct PGE to "vigorously pursue" renewables "if economical." Clearly, if an investment is economical, PGE should make it, not simply "pursue" it.

1. Appropriate Measure

In terms of environmental protection, a key measure of the value of renewable resources is the amount of fossil-fuel resources displaced by renewables. This is typically measured in terms of energy, meaning megawatt-hours, rather than peak capacity, measured in megawatts. Peak capacity is a particularly confusing measure for renewable resources since load factor varies widely among different resources. Wind turbines, for example, typically produce an average of between 30 to 35 percent of the nameplate capacity.

An appropriate measure for Texas Pacific Group's commitment to renewable energy would be a percent of overall retail energy sales, measured in megawatt-hours. This would

provide a clear measure of the benefit arising from renewable resources added to PGE's resource mix and could be readily verified.

2. Interim Targets

Because its ownership of PGE may likely be for a relatively short period of time, it is important for Texas Pacific Group to establish interim targets as part of its commitment to renewable energy. Texas Pacific Group should commit to supplying a minimum of 7 percent of PGE's retail MWh sales with new renewable resources (as defined in OAR 860-038-0005) by 2007, 8 percent by 2010, and 10 percent by 2014. This approach would allow for continuing verification of the benefits associated with Texas Pacific Group's commitment.

3. Verifiable Commitment

In its current form, Texas Pacific Group's commitment to renewables is doubly hedged. First, Texas Pacific Group is only suggesting that it will "vigorously pursue" rather than actually implement renewables. Second, Texas Pacific Group is pledging to invest only "if economical." Texas Pacific Group could fulfill its current commitment to renewable resources without generating a single kilowatt-hour of renewable power.

To make a meaningful, verifiable commitment, Texas Pacific Group should commit to achieving the interim targets described above and to make economical investments in renewables a priority both in resource planning and acquisition of power-generation.

In addition to these specific commitments, the City asks Texas Pacific Group to work closely with the Renewable Northwest Project and other interested parties to ensure constructive and verifiable commitments to renewable energy.

VIII. ASSISTANCE FOR LOW-INCOME CUSTOMERS

The City of Portland appreciates Texas Pacific Group's recognition of the importance of bill-payment assistance for low-income households (Supplemental Direct Testimony of Kelvin Davis, p. 12). Indeed, with utility bills higher than ever and Oregon continuing to experience high unemployment and a sluggish economy, assistance for low-income customers is more important than ever.

Texas Pacific Group's offer to match PGE's contribution to Oregon HEAT is a step in the right direction but is an exceedingly modest offer. The City supports the proposals set forth in the testimony of Community Action Directors of Oregon/Oregon Energy Coordinators Association and Multnomah County. The City of Portland asks that Texas Pacific Group work closely with the social-service community to develop a proposal that provides adequate relief to low-income families.

IX. APPROPRIATE BASE CASE AGAINST WHICH TO COMPARE TEXAS PACIFIC GROUP'S PROPOSAL

In requiring the Commission to review utility acquisitions, the Oregon legislature showed specific concern about utility ownership by a company like Texas Pacific Group. The relevant statute states:

An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

The PUC has previously noted that an attorney for Northwest Natural Gas testified in favor of the legislation, expressing concerns about precisely the type of heavily leveraged transaction Texas Pacific Group now proposes:

The advent of innovative and highly speculative financing techniques. . . has made it possible for very large corporations to be taken over with relatively small equity investments. In one way or another, the assets of the acquired company are used to service the acquisition debt. This could have a serious effect on the ability of an acquired utility to continue to provide adequate service to Oregon customers at reasonable rates.

In the same order in which this testimony was noted, the Commission established “net benefits” as the appropriate standard for reviewing proposed utility mergers. The PUC determined this means that a transaction must satisfy two separate tests. First, a proposed transaction must provide “a net benefit to the utility’s customers”. Second, a proposed merger; must “not impose a detriment on Oregon citizens as a whole.”

The Commission order clearly indicated that the net benefits test is not reducible to merely economic considerations. At the same time, the PUC observed that potential the benefits and harms may be difficult to establish and quantify. Thus, recent mergers were therefore only approved when the transaction included monetary benefits as a means of ensuring net benefits.

Texas Pacific Group has declined to propose a clear base case, or alternative scenario, against which to compare its proposed acquisition. Instead, Texas Pacific Group argues that its proposal must be considered “on its own merits by determining the risks and benefits inherent in the proposal.” *Supplemental Direct Testimony of Kelvin Davis*, at p. 21. Should the PUC find this inadequate, Texas Pacific Group argues that the only legitimate comparison is to “the status quo—PGE’s current circumstances under Enron ownership,” since the “risks and benefits can be readily be determined” (id., p. 23). Texas Pacific Group’s suggestion is flawed, however, in that the “status quo” of PGE at this point in time is change: It is an inescapable fact that control over PGE is shifting away from Enron, one way or another.

Under ordinary circumstances, a credible comparison would be to continuing control and operation by the current owner of the utility. However, this case does not present “ordinary”

circumstances. Change in ownership of Portland General Electric is inevitable at this point in time.

As the PUC has noted, the Legislature granted it considerable discretion within the statute. In this case, consideration of the total set of circumstances is essential. In the current proceeding, these circumstances include the bankruptcy of the current owner, Enron, and Enron's commitment, as part of its bankruptcy reorganization plan, either to sell PGE to generate cash for its creditors or to distribute value to the creditors, whether in the form of PGE common stock or otherwise.

In circumstances such as this, it is appropriate for the Commission to exercise the broad discretion given to it by the Legislature, even if it puts the Commission in the position of "second-guessing" the business decisions of Enron and its creditors. The plain meaning of "net benefit" requires some form of comparison. In order to apply the net benefits test, the Commission must compare Texas Pacific Group's proposal with an alternative. Comparison with Enron's continuing control and ownership of PGE, as Texas Pacific Group suggest, would be meaningless: It will not simply not happen.

The question of the appropriate comparison is admittedly difficult, but one the Commission must address. It is clear that in the absence of Texas Pacific Group ownership, either any of the following scenarios have varying degrees of plausibility:

- Enron may distribute stock;
- A different private purchaser may acquire PGE; or
- A public entity may acquire PGE.

By accepting the sale of PGE to Texas Pacific Group in the first instance, rather than accepting a distribution of PGE stock, Enron's Creditors' Committee has expressed a clear

preference for cash. While the default course of action in Enron's Plan of Reorganization is to distribute PGE stock to creditors, the bankruptcy court could allow Enron to amend its plan to satisfy the creditors. The option of public ownership of PGE has received considerable attention and remains one possible option. Publicly owned electric utilities have an impressive record of delivering stable, locally responsive service to customers and communities at competitive rates. *See*, COP/200, the testimony of Alan Richardson on behalf of the City of Portland.

There are several baselines against which Texas Pacific Group's proposal could and should be compared. The PUC is obliged to establish one or more credible, plausible alternative scenarios in order to weigh the relative benefits of Texas Pacific Group's proposal. In weighing these scenarios, the Commission could employ the appropriate discount factors used in any reasonable business analysis in weighing the likelihood of various outcomes.

X. CORPORATE INCOME TAXES

Texas Pacific Group has indicated that Oregon Electric and PGE would file income taxes on a consolidated basis. *Application*, at p. 22. Oregon Electric would not own any businesses other than PGE, and would thus have no other business income outside of payments from PGE. *Application*, Exhibit 2, at p. 8 and Exhibit 3, at p. 14. Oregon Electric's source for servicing its acquisition debt would be dividends from PGE, anticipated to be \$80 to \$100 million annually. *Application*, at p. 18.

Because Oregon Electric's debt service payments would provide a deduction against its income, Oregon Electric's tax obligations would be reduced. Despite the tax benefits of this financial structure, Texas Pacific Group has made clear that they do not intend to share any of

this benefit with ratepayers, who, under current PUC practice, pay rates that are based on estimated PGE taxes if PGE were a stand-alone company.

The high levels of debt that provide a tax benefit to Oregon Electric also impose higher risk on ratepayers, as noted above. Since ratepayers bear added risk from the high debt, they should also share the financial benefit from the tax deductions. The City asks Texas Pacific Group to consider a mechanism through which tax estimates that are incorporated into rates are reviewed and adjusted annually based on actual tax payments to the state and federal governments.

XI. CONCLUSION

Texas Pacific Group's testimony to date has not alleviated the City's concerns about issues of fundamental importance to the City and its residents and businesses. Texas Pacific Group's current proposal adds significant new financial risks, offers no long-term stability, makes only minimal commitments to environmental protection and low-income customers, and fails to afford meaningful local accountability. The City believes Texas Pacific Group's proposal, in its current form, has not demonstrated net public benefits sufficient for the Commission to approve the proposed transaction.

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2004, I mailed an original and five copies of the foregoing TESTIMONY OF SUSAN ANDERSON ON BEHALF OF THE CITY OF PORTLAND, OREGON to:

ADMINISTRATIVE LAW JUDGE KATHRYN LOGAN
ADMINISTRATIVE LAW JUDGE CHRISTINA M. SMITH
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and on July 21, 2004, I hereby certify that the foregoing document was electronically mailed to all Persons on the Service List maintained by the Public Utility Commission for the UM 1121 proceeding who had an e-mail address posted. I further certify that for those persons on the Service List who were not identified as having an e-mail address, a copy was sent by first class mail, contained in a sealed envelope, with postage paid, and deposited in the post office at Portland, Oregon on said day.

/s/ Benjamin Walters
Benjamin Walters, OSB #85354
Deputy City Attorney
Of Attorneys for City of Portland

Qualifications of Susan Anderson

I am Director of the City of Portland Office of Sustainable Development, a municipal department responsible for utility regulatory issues, energy conservation services, solid waste and recycling, green building, and providing a focal point for sustainable development activities in Portland.

I received undergraduate degrees in economics and environmental science from the University of California and a master of urban and regional planning degree from the University of Oregon.

From 1984 to 1987, I directed the local government programs for the Oregon Department of Energy. From 1987 to 1991, I directed an environmental consulting firm specializing in energy education and technical outreach. My clients included state and federal agencies, local governments and schools.

I served as Director of the City of Portland Energy Office from 1991 to 2001, when the Energy Office became part of the City's Office of Sustainable Development. I have been Director of the Office of Sustainable Development since 2001. Portland City Council Resolution No. 36205 instructed my office to take part in the UM 1121 proceeding.

I was appointed by the Energy Facility Siting Council to The Climate Trust in 1998 and currently am Board Chair. I have received numerous national and international energy and environmental awards for innovative leadership promoting renewable resource development and energy efficiency.



CITY OF
PORTLAND, OREGON
COMMISSIONER ERIK STEN

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27 April, 2004

William H. Donaldson, Chair
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Dear Chair Donaldson:

Since Enron announced its agreement to sell Portland General Electric (PGE) to the Texas Pacific Group (TPG), I have been concerned that TPG is not an appropriate owner. For obvious reasons, who owns PGE and the final terms of the sale are of utmost importance to regional leaders and Oregon's economy because PGE serves 40% of all Oregon families and businesses. Historically, this region had a competitive economic advantage of low power rates; an advantage lost, in part, due to mismanagement of Enron. There are many leaders in Oregon who are no longer willing to sit on the sidelines.

I have been a member of the Portland City Council since 1996 and am elected at large by the citizens of Portland. Almost two years ago, Mayor Vera Katz and the rest of the Portland City Council asked me to lead the Portland City Council's efforts to ensure that there is a good result from Oregonians out of the Enron bankruptcy.

On April 7, 2004, the Portland City Council held a public hearing on Enron's agreement to sell Portland General Electric to the Texas Pacific Group. The purpose of the hearing was to help the Portland City Council understand the agreement between Enron and the Texas Pacific Group and to grasp how TPG, as outlined in its filing to the Oregon Public Utility Commission (PUC), intended to operate PGE in order to figure out the implications for Oregonians. Mr. Kelvin Davis, a partner of the Texas Pacific Group was present to answer questions on behalf of the company at the public hearing.

As you may be aware, Texas Pacific Group has formed another company, the Oregon Electric Utility Company (OEUC) in order to comply with the Public Utility Holding Company Act (PUHCA.) In their filing to the PUC and during the hearing, representatives of the TPG have been very straightforward regarding their intentions for governance.

EXHIBIT 2
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Page Two
Letter to Chair Donaldson
April 26, 2004

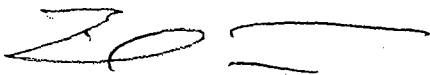
Included in the March 8 filing to OPUC is a very comprehensive list of negative consent rights, which TPG will assert over OEUC. It was unclear to me what, if any, decisions Oregon Electric would be able to make without oversight from TPG. When I brought my concerns to Mr. Davis' attention, he said that should PUHCA be repealed, Oregon Electric would be dissolved. Further, he said that regardless of whether Oregon Electric is in place or not, the governance of the utility would essentially be the same. While he was very eloquent in explaining his position, it was clear to me that TPG would assert the same controls over OEUC and PGE through negative consent rights or voting shares aligned with economic interests. You can reference the full exchange between Mr. Davis and I during the April 7th public work session at the following link:

<http://www.portlandonline.com/index.cfm?c=28259>

My belief is that TPG is not meeting the spirit of PUHCA, if not the letter. In a speech that I recently delivered to the City Club of Portland, which I have attached, I went so far as to say that I thought that TPG was setting up Oregon Electric in order to evade PUHCA. Obviously, that is for you and the Commission to decide but I urge you to review it very closely. I believe that many of the conditions that led to the enactment of PUCHA many decades ago have reemerged in both Enron's business practices and the handling of its bankruptcy. Without proper interpretation of the law, the legacy of Enron will continue in our state. There is a lot at stake for Oregonians in this transaction and the City of Portland will be very involved to see that we get a good result.

I very much appreciate your time and attention. If you have any questions and would like to discuss this further you may contact me at: 503.823.3589.

Sincerely,



Erik Sten
(KG:/energy/future of PGE/TPG/Letter to Donaldson)

EXHIBIT 2
PAGE 1 OF 3

Page Three
Letter to Chair Donaldson
April 26, 2004

- c. Governor Neil Goldschmidt, Chair, Oregon Electric Utility Company
Kelvin Davis, Partner, Texas Pacific Group
The Honorable Ron Wyden, United States Senate
The Honorable Gordon Smith, United States Senate
The Honorable Earl Blumenauer, United States House of Representatives
The Honorable David Wu, United States House of Representatives
The Honorable Darlene Hooley, United States House of Representatives
Chair Lee Beyer, Oregon Public Utility Commission
Commissioner Ray Baum, Oregon Public Utility Commission
Commissioner John Savage, Oregon Public Utility Commission
The Honorable Vera Katz, Mayor, City of Portland
The Honorable Jim Francesconi, Portland City Council
The Honorable Randy Leonard, Portland City Council
The Honorable Dan Saltzman, Portland City Council

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Page 2 – SERVICE LIST

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of the Application of OREGON
ELECTRIC UTILITY COMPANY, LLC, TPG
PARTNERS III, L.P., TPG PARTNERS IV,
L.P., MANAGING MEMBER LLC, NEIL
GOLDSCHMIDT, GERALD GRINSTEIN,
and TOM WALSH for an Order Authorizing
Oregon Electric Utility Company LLC to
Acquire Portland General Electric Company

**DIRECT TESTIMONY OF
ALAN H. RICHARDSON
ON BEHALF OF
THE CITY OF PORTLAND, OREGON**

July 21, 2004

Introduction and Qualifications

I am Alan H. Richardson, President & CEO of the American Public Power Association (“APPA”). My office address is American Public Power Association, 2301 M Street N.W., Washington, D.C. 20037.

APPA is the national service organization representing the interests of more than 2,000 not-for-profit, publicly-owned electric utilities throughout the United States. In total, these public power systems serve electricity to about 43 million Americans, or nearly 15 percent of the country’s end-use customers. APPA member utilities serve some of the nation’s largest cities, such as Los Angeles, California; Orlando, Florida; San Antonio, Texas; and, Seattle, Washington. The majority of public power utilities are located in small and medium-sized communities in every state except Hawaii. The purpose of my testimony is to characterize the benefits of public ownership of an electric utility, which is one possible scenario if the Oregon Electric Utility Company were not to acquire Portland General Electric. I am offering this testimony on behalf of the City of Portland, Oregon.

Public power has proven to be a viable alternative for communities currently being served by investor-owned utilities. Public power’s characteristics – local control, not-for-profit operations, lower rates, reliable service, and financial stability – constitute a business model that has worked well for more than a century and continues to work well in communities across the country today.

Despite years of upheaval in the electric utility industry, public power utilities have remained stable and true to their fundamental obligation to citizen-customers – the obligation to serve. By 2005 more than one out of every four public power utilities will have been in business for more than 100 years.

Although it takes considerable time and effort, communities have succeeded in establishing their own local public power utilities: 16 new public power utilities were formed in the last 10 years and 46 in the last 20 years. The length of time it took these new public power utilities to form varied with local circumstances, but typically was about three to four years. The amount of time required is generally directly proportional to the strength of the opposition to the transaction by the incumbent utility. The end result has been communities that achieved substantial benefits including lower rates and better service.

The City of Hermiston, Oregon, formed a public power utility in 2001 after a four-year effort. The transition to a public power utility went smoothly and Hermiston residents now pay lower rates than they were paying under the local investor-owned utility. Customer service, rather than lower rates, was the primary reason for forming the 5,000-meter community-owned utility. The new public power utility has made responsive customer service a priority, restoring to customers the ability to pay bills in person, an option that was lost when the investor-owned utility closed its local office.

The Long Island Power Authority (LIPA) in New York is the largest of the new public power utilities. LIPA replaced the investor-owned Long Island Lighting Company in 1998 to deliver electricity to more than 1.1 million customers. LIPA is a consumer-owned governmental body that was created by the state legislature to tackle the escalating cost of electricity on Long Island.

After LIPA purchased the investor-owned utility's transmission and distribution system, it reduced electric rates across the board by an average of 20 percent. Since LIPA was formed more than \$2 billion has been pumped into the local economy by businesses and individuals who saved that amount on electricity costs. The savings came from LIPA owning the distribution system and using its tax-exempt status to refinance the IOU's enormous debt at a lower rate and

also from LIPA's exemption from paying federal income taxes. (The option of tax-exempt financing to acquire PGE facilities has been foreclosed by Congress. Still, a public agency owner of PGE could use tax-exempt financing for new facilities and would also, as a unit of local government, be exempt from Federal income taxes.) Also, LIPA's management worked for savings through cost reductions and power supply competition.

In addition to the positive economic benefit to Long Island, LIPA put special attention on the distribution system's safety and reliability. Employee morale improved dramatically with LIPA's fresh start, its nonprofit, public-service outlook, and its new emphasis on safety. LIPA continues to work to improve system reliability with an investment of over \$1 billion for ongoing capital and circuit improvement programs, a dynamic maintenance program, a vigorous forestry program and employees who are committed to service excellence. LIPA is highly rated for service restoration and is in the top tier for uninterrupted service among all New York State utilities with above-ground service.

LIPA's relationship with business and industrial customers on Long Island is a priority for the utility and it takes an active role in business and civic organizations. LIPA's commitment to Long Island includes an emphasis on regional development through economic development incentives. It provides qualified businesses with the opportunity to obtain rate incentives and energy efficiency audits. More than 300 companies have taken advantage of LIPA's economic development program, creating or retaining nearly 50,000 jobs.

The reasons for forming a new, local publicly-owned electric utility are diverse. Most often public power systems are created in response to citizens' desires for local control and lower rates. Public power communities have local control over how electricity is provided to homes and businesses. Local control and not-for-profit operation of the electric system result in lower rates and higher quality electric service.

Public power utilities are governed through locally elected or appointed officials. Citizens have a direct voice in utility decisions about electric rates, services, and special programs offered to the community. This form of governance takes place at the ballot box and by participation in city council and utility board meetings, and through public hearings, citizen advisory committees, task forces and other public forums. Public power utilities conduct their business in the sunshine and are subject to local scrutiny. Citizens have public notices and access to meetings, planning alternatives, reports and cost estimates. It is a core attribute of public power that citizens can participate in decisions on budgets, rates, facility siting, power supply reliability and customer service.

The citizens who started the Emerald People's Utility District (Lane County, Oregon) in 1983 did so out of a commitment to local control and citizen involvement. The values of the PUD's elected Board of Directors were and continue to be comprised of a fierce devotion to the customer-owners to provide them with excellent service at the least, most responsible cost. After the Emerald PUD purchased the system from Pacific Power & Light, customers immediately began to see better system reliability, and all rates were initially lowered by 5 percent. A Citizen Advisory Committee was formed to help with budgeting and finance, rate design, and planning for power resource acquisition. All customers have direct access to their Board members.

Many communities want to create a public power utility because public ownership brings with it the potential for lower rates. Year after year, since the end of World War II, data from the U.S. Department of Energy demonstrates that investor-owned utilities, on average, charge more for electricity than public power systems. In the most recent data year of 2002, residential customers of investor-owned utilities paid average rates that were 13 percent above those paid by customers of publicly- owned systems. In addition, commercial customers of investor-owned utilities paid 8 percent more for electricity than public power customers in 2002. There was

essentially no difference in the average rates paid by industrial customers of publicly-owned and investor-owned utilities.

Public power utilities have lower electric prices because they:

- Are accountable to the consumer-owners they serve;
- Are not-for-profit and do not pay dividends to often distant stockholders;
- Have lower administrative costs and are managed more efficiently;
- Have rates set locally by citizen-controlled boards that operate in the sunshine;
- Do not pay federal income tax because they are entities of state or local government;
- Are eligible to issue revenue bonds that are tax-exempt from federal income tax for capital expenses; and
- May have access to lower-cost hydroelectric power marketed at wholesale by federal and state agencies.

While the lower rates of some public power systems are explained in part by their access to tax-exempt financing and access to federal hydropower, lower rates are in large part due to the very nature of public power's not-for-profit, cost-scrutinized, locally controlled operations.

While a federal hydropower allocation is beneficial, many public power utilities provide low rates without this benefit. For example, when Clyde, Ohio, formed a public power utility in 1989, it had no federal hydropower program but still was able to set its initial rates 25 percent below the investor-owned utility's rates. In 2002, Clyde's rates were 38 percent below those of the local investor-owned utility. Nearly three-quarters of the nation's public power utilities do not have the advantage of power purchased from the federal power marketing administrations, yet they consistently provide electricity at lower rates.

While maintaining lower rates, public power utilities contribute payments in lieu of taxes, transfers to the general fund, and/or free or reduced-cost services for the city. The amount of financial support for other city services is set by the local governing board of the

public power utility, but on average public power utilities make equal or greater financial contributions to state and local governments in comparison with investor-owned utilities.

When all taxes, tax equivalents and contributions to state and local government are considered, the median amount contributed by public power systems in 2000, the most current year for which data are available, was 14 percent higher than investor-owned utilities (5.7% vs. 5.0% of electric operating revenues). Not only is the investor-owned utilities' contribution rate lower, but their median amount contributed has recently declined 16% (from 5.8% in 1998 to 5.0% in 2000).

Public power utilities make good business decisions every day, as demonstrated by their consistently lower rates, reliable service and solid financial credit ratings. Public power utilities hire competent experienced managers from the same pool of qualified electricity industry professionals as the investor-owned utilities do, but they are singly focused, measuring success by how well they serve their customers and the community, rather than by profit margins.

Nationally, public power credit ratings remain exceptionally strong. In the recent words of credit analyst Peter Murphy of Standard & Poor's:

The stability of the public power sector in the past year resulted from a continued commitment by public power utilities to conservative business strategies, and prudent responses to volatile commodity prices for both fuel and power, including improved hedging activity that helps mitigate the impact of price swings. Public power utilities nationwide continue to adapt both operationally and financially to new challenges, which bodes well for credit quality.

Finally, public power provides the ability for citizens to shape the programs and energy policies that reflect a community's values. Austin Energy, the 354,000-meter public power utility serving Austin, Texas, has a 10-year goal that calls for renewable energy and energy efficiency to meet 35 percent of the utility's energy needs by 2020. The goal relies on Austin Energy's energy efficiency and green power programs, which are among the most successful in the nation.

Austin Energy's GreenChoice program reduces Austin Energy's carbon dioxide emissions by an amount equivalent to taking 60,000 cars off the road -- approximately 297,500 tons per year of carbon dioxide reduction. Austin's GreenChoice and Green Building programs, designed to encourage sound environmental choices, are a service to the community.

In summary, public power utilities deliver important benefits to their customers and their communities. Public power utilities are community-owned, locally controlled, not-for-profit institutions that keep economic benefits at home, provide programs and policies that reflect community values, and are solely motivated to provide excellent service to customers.

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2004, I mailed an original and five copies of the foregoing TESTIMONY OF ALAN H. RICHARDSON ON BEHALF OF THE CITY OF PORTLAND, OREGON to:

ADMINISTRATIVE LAW JUDGE KATHRYN LOGAN
ADMINISTRATIVE LAW JUDGE CHRISTINA M. SMITH
PUBLIC UTILITY COMMISSION OF OREGON
ATTN: CHERYL WALKER
550 CAPITOL ST., NE., SUITE 215
PO BOX 2148
SALEM, OR 97308-2148

and on July 21, 2004, I hereby certify that the foregoing document was electronically mailed to all Persons on the Service List maintained by the Public Utility Commission for the UM 1121 proceeding who had an e-mail address posted. I further certify that for those persons on the Service List who were not identified as having an e-mail address, a copy was sent by first class mail, contained in a sealed envelope, with postage paid, and deposited in the post office at Portland, Oregon on said day.

/s/ Benjamin Walters
Benjamin Walters, OSB #85354
Deputy City Attorney
Of Attorneys for City of Portland

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