

1 or "serving the . . . customers in the public interest" logically requires comparing
2 the proposed transaction to its alternatives. It is true, of course, that Enron Corp.
3 continues to own all of PGE. But the practical alternatives to the proposed
4 transaction do not include Enron ownership of PGE for more than the limited
5 period needed to either (1) distribute PGE stock to the Enron creditors or (2) sell
6 PGE to another buyer. The Application does not appear to make a case that the
7 proposed transaction results in public benefit, compared with either or those two
8 alternatives.

9 While the City of Portland has been constrained by its confidentiality agreement
10 with Enron from disclosing information about its offer to buy PGE, the press has
11 reported that the City offered Enron \$2.2 billion for PGE. PORTLAND TRIBUNE, July
12 11, 2003. This would appear to compare favorably to the amount that would be
13 netted by Enron creditors from the proposed TPG transaction (although this
14 comparison is complicated by the indemnity provisions among OEUC, TPG, and
15 Enron). The purchase of all PGE assets by City of Portland for \$2.2 billion would,
16 presumably, have left Enron in possession of PGE's cash. If that cash (its
17 expected level at closing) is subtracted from the purchase price of the proposed
18 TPG transaction, it appears that Enron is receiving \$2.06 billion.

19 The City of Portland has undertaken studies provided a letter to this Commission
20 on June 23, 2004, indicating that a City purchase of PGE "would provide local
21 businesses and residents with a 10% rate advantage," even if all operational costs
22 stay the same. Even this comparison does not account for the advantage of
23 status as a public entity entitled to preference customer status from the federal
24 Bonneville Power Administration (BPA). Thus, compared with a City purchase of
25 PGE, the proposed TPG transaction does not appear to "serve the public utility's
26 customers in the public interest." In any event, the Applicants have not attempted

1 to demonstrate that their proposed transaction would benefit customers, when
2 compared with a City or other public entity purchase of PGE or its assets.
3 On the other hand, rejecting the proposed TPG transaction would leave Enron
4 able to otherwise sell PGE or its assets under the terms of the approved Plan of
5 Reorganization. While these terms call for Enron to sell PGE as an integrated
6 electric utility and not "piecemeal," the Plan does not entirely preclude the
7 separate sale of PGE assets (as there is no legal definition of "piecemeal," and
8 retaining at least one generating plant would maintain PGE's status as an
9 integrated electric utility). Thus, it appears possible that Enron would sell some or
10 all of PGE's transmission lines or generating plants to buyers other than the buyer
11 of the distribution system. Replacing these assets may increase rates for PGE
12 ratepayers, even beyond current levels. The State of Oregon would not be able to
13 preclude these separate sales of transmission and generating assets by
14 withholding state approval, if the state law requiring such approval is "relating to
15 financial condition." "[O]therwise applicable nonbankruptcy laws `relating to
16 financial condition' are expressly preempted under both §§ 1123(a) and 1142(a)
17 [of the U.S. Bankruptcy Code]." *Pacific Gas & Electric Co. v. California*, 350
18 F.3d 932, 949 (2003). If the Commission were to attempt to block such
19 transactions by invoking some authority that "relates to financial condition," its
20 attempt might be defeated.

21 **2. The Commission should require OEUC to disclose all of the owners of its**
22 **equity.**

23 The Applicants have declined to identify the investors in the funds that would be
24 used to buy the PGE stock. Those funds include TPG III, TPG IV, and apparently
25 some fund or funds at Oaktree Capital Management. Applicants' testimony
26 makes reference to the benefits of local control and ownership, yet Applicants

1 refuse to disclose the actual equity owners of OEUC. Applicants have at least
2 implied, in testimony and elsewhere, that the Oregon Public Employee Retirement
3 System (PERS) is a significant investor in OEUC. Unless the owners of OEUC
4 equity are disclosed, the accuracy of this statement cannot be determined.

5 Further, this lack of disclosure would appear contrary to ORS 757.511©), which
6 requires disclosure of "the source and amounts of funds or other consideration to
7 be used in the acquisition."

8 My additional recommendations are that the Commission, in deciding whether to
9 approve the transaction, require that the Applicants agree to the following conditions
10 and also agree not to contest their application in the future.

11 **3. The Commission should recognize the "double leveraged" capital structure**
12 **proposed by the Applicants for PGE.**

13 The Applicants propose that OEUC buys PGE. OEUC would have a capital
14 structure that includes at least \$707 million of new debt. But the Applicants
15 propose that most of this debt be considered "equity" on the PGE balance sheet.
16 The Commission should pierce the double leverage and consider the OEUC debt
17 to be PGE debt. This should result in lower rates for PGE ratepayers, compared
18 with not piercing the double leverage, because rate of return would be determined
19 on the basis of the embedded cost of debt instead of the higher rate typically
20 associated with a return on equity.

21 **4. The Commission should require PGE not to charge ratepayers for federal**
22 **and/or state and/or local income taxes, and all other taxes, that PGE does**
23 **not actually pay to government.**

24 Since 1997, PGE has charged ratepayers over \$650 million for "federal income
25 taxes" and "state income taxes" that have not been paid (or remained paid) to
26 those governments. It appears that continuing charges to PGE ratepayers for

1 "federal income taxes" and "state income taxes" which will not actually be paid to
2 government is an integral part of the Applicants' proposal, considering the
3 disparate balance sheets proposed for PGE and OEUC. The Commission should
4 not allow PGE to charge to ratepayers the alleged cost of any income taxes (or
5 other taxes) that are not actually paid to government. This should constitute a cap
6 on the cost of taxes to be charged to PGE ratepayers.

7 **5. The Commission should require crediting to ratepayers all gains on**
8 **subsequent sales of PGE or PGE Assets.**

9 TPG has indicated its intent to sell PGE within a short period of time (sometimes
10 expressed as 5-7 years, sometimes as a few more years). Since the proposed
11 transaction involves selling PGE at a price of less than 1.1 times depreciated book
12 value of PGE assets in service (considering that \$239 million of the payment is
13 expected to come from PGE cash), it is reasonable to expect that the subsequent
14 sale of PGE will result in significant gains to the owners under the proposed TPG
15 transaction. The Commission should adopt as a condition that all gains proceeds
16 of the sale of PGE stock or PGE assets be credited to ratepayers. Without such a
17 condition, the buyers under the proposed TPG transaction will stand to earn much
18 more than the regulated reasonable rate of return on their investment. They will
19 enjoy both the regulated return and the additional return realized upon the
20 subsequent sale of PGE or PGE assets.

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EDUCATION

Stanford Law School
 J.D. 1978

Editor, Stanford Law Review 1977-78
 Member, Stanford Law Review 1976-77
 Murie Award in Environmental Law 1978

LAW PRACTICE

Full-Time: 1987 - Present
 Part-Time: 1982 - 1986

Daniel W. Meek, Attorney
 Portland, Oregon

Utility Regulatory Proceedings and Litigation

Since 1982, I have represented electricity ratepayers, public interest groups, and others in many proceedings before federal agencies and before the Oregon, Washington, California, Nevada, and Idaho utility commissions and in subsequent litigation against the utilities and the regulatory agencies. My clients have included Utility Reform Project (URP), Oregon Legal Services, Idaho Fair Share, Citizens Utility Board of Oregon (CUB), commercial energy conservation firms, and others. I have also testified as an expert witness in rate cases.

Private Enterprise Conservation Projects

Since 1990, I have represented several residential energy service companies ("ESCOs") in the western U.S., including the largest such firms in the nation. These companies have projects completed or underway in Oregon, Washington, California, Maine, New York, New Jersey, Massachusetts, Illinois, and Texas. I served for 2 years on the California DSM Measurement Advisory Committee (CADMAC) established by the California Public Utilities Commission (CPUC).

Creation of Oregon's Largest Electric Cooperative

In 1987-88, Linda Williams and I organized and incorporated Oregon Trail Cooperative and negotiated the purchase of the CP National system in Oregon. Oregon Trail Coop began operating in October 1988 as Oregon's largest electric cooperative (\$30 million annual revenue) and as the first new electric cooperative in the United States in decades.

Nuclear Power Plant Activities

In 1998 and again in 2003, my clients prevailed in the Oregon courts in overturning decisions of the Oregon Public Utility Commission (OPUC) authorizing Portland General Electric Co. (PGE) to charge to ratepayers for undepreciated costs plus approximately \$300 million profits on the abandoned Trojan nuclear power plant.

UNITED STATES HOUSE OF REPRESENTATIVES

Staff Director and Senior Energy Adviser January 1985 - February 1987	House Committee on Interior Affairs, Subcommittee on General Oversight, Northwest Power, and Forest Management
Senior Energy Adviser and Legal Counsel May 1983 - December 1984	House Committee on Interior Affairs, Subcommittee on Mining, Forest Management, and the Bonneville Power Administration

High-Level Radioactive Waste Disposal

I authored the October 1986 joint report of 2 subcommittees (of the House Committee on Interior and Insular Affairs and House Committee on Energy and Commerce) exposing substantive and procedural error in the Department of Energy's selection of the Hanford Reservation in Washington as one of the 3 sites to be considered for the nation's first high-level radioactive waste repository.

Federal Nuclear Reactor Safety

The subcommittee undertook the first congressional investigation (including on-site inspection by a team of reactor experts) and hearings into the safety of the federal government's N-Reactor at Hanford, leading to its permanent shutdown.

Federal Power Projects

I undertook oversight of policies and operations of the Bonneville Power Administration (BPA), Northwest Power Planning Council, Bureau of Reclamation, Army Corps of Engineers, and other federal agencies involved in providing electricity in the Pacific Northwest.

I prepared, conducted, and published several subcommittee hearings on the Washington Public Power Supply System (WPPSS); electric power transmission in the Western U.S.; BPA revenue, rates, and conservation programs; use of solar energy; federal power marketing administration repayment, high-level nuclear waste disposal, and safety of federal government reactors producing plutonium for nuclear weapons.

CALIFORNIA ENERGY COMMISSION (CEC)

Attorney and Adviser May 1980 - May 1983	California Energy Commission Sacramento, California
Analyst, Nuclear Assessment Office January - September 1977	

I conducted hearings for, directed staff, and authored CEC's ***Electricity Tomorrow: 1981 Final Report*** on California electricity conservation and generation. It was the first CEC plan that recommended reliance on conservation, renewable resources, and cogeneration in place of the utilities' planned coal-fired power plants.

FEDERAL COURTS

Law Clerk 1978 - 1979	James M. Burns, Chief Judge U.S. District Court of Oregon
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I performed legal research and drafted opinions on pollution control at aluminum plants, rate authority under federal law for power from federal hydroelectric projects, personal injuries resulting from utility activities, and just compensation for property taken for federal water resources projects.

NATIONAL ACADEMY OF SCIENCES NATIONAL RESEARCH COUNCIL

Analyst 1976	National Research Council Committee on Nuclear and Alternative Energy Systems
Consultant 1975 - 1976	National Academy of Sciences Committee on Science and Public Policy

I worked on research and preparation of National Academy of Sciences books *Energy in Transition 1985-2010* (1978) and *Risks Associated with Nuclear Power* (1977) and supporting documents and studies.

STANFORD UNIVERSITY

Research Assistant 1974 - 1976	Stanford University Department of Engineering-Economic Systems
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I prepared papers on energy and environmental issues for member of Advisory Council to the Office of Technology Assessment (U.S. Congress).