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BEFORE THE OREGON PUBLIC UTILITIES COMMISSION

UF 4218/UM 1206

**In the Matter of PORTLAND GENERAL
ELECTRIC CO.**

**Application for an Order Authorizing the
Issuance of 62,500,000 Shares of New
Common Stock Pursuant to ORS 757.410 et
seq. (UF 4218)**

and

**In the Matter of STEPHEN FORBES
COOPER, LLC, as Disbursing Agent, on
behalf of the RESERVE FOR DISPUTED
CLAIMS**

**Application for an Order Allowing the
Reserve for Disputed Claims to Acquire the
Power to Exercise Substantial Influence
over the Affairs and Policies of Portland
General Electric Company Pursuant to ORS
757.511 (UM 1206)**

**APPLICATION FOR
RECONSIDERATION OF
OPUC ORDER NO. 05-1250
BY UTILITY REFORM
PROJECT**

Pursuant to ORS 756.661 and 860-014-0095, the Utility Reform Project (URP) hereby applies for reconsideration of OPUC Order No. 04-597.

This application is timely filed within 60 days of the date of service of the order, which was December 14, 2005.

We address the elements of OAR 860-014-0095(2) below. We have combined elements (b) and (e).

1 **(a) THE PORTION OF THE CHALLENGED ORDER WHICH THE APPLICANT**
2 **CONTENDS IS ERRONEOUS OR INCOMPLETE.**
3

4 The erroneous portions of the challenged order are:

- 5 1. That which concludes that the proposed issuance of new PGE
6 common stock meets the applicable legal standard for exemption,
7 because "ratepayers will not be harmed by the issuance of new
8 securities." OPUC Order No. 05-1250, p. 12.
9
- 10 2. That which concludes that the proposed exercise of substantial
11 influence over PGE meets the applicable legal standard for
12 approval, because the application "will serve the public utility's
13 customers in the public interest." OPUC Order No. 05-1250, pp.
14 13-23.
15

16 Both of these conclusions are erroneous, because neither takes into account the
17 effect of a prompt 30 percent stock distribution on the income taxes to be included
18 in PGE rates and which PGE ratepayers must pay.

19 **(b) THE PORTION OF THE RECORD, LAWS, RULES, OR POLICY OF THE**
20 **COMMISSION RELIED UPON TO SUPPORT THE APPLICATION.**
21

22 **(e) ONE OR MORE OF THE GROUNDS FOR REHEARING OR**
23 **RECONSIDERATION SET FORTH UNDER SECTION (3) OF THIS RULE.**
24

25 OAR 860-014-0095(3) states:
26

27 The Commission may grant an application for rehearing or
28 reconsideration if the applicant shows that there is:
29

30 (a) New evidence which is essential to the decision and which was
31 unavailable and not reasonably discoverable before issuance of the
32 order;
33

34 (b) A change in the law or agency policy since the date the order was
35 issued, relating to a matter essential to the decision;
36
37

1 (c) An error of law or fact in the order which is essential to the
2 decision; or

3
4 (d) Good cause for further examination of a matter essential to the
5 decision.

6
7 Discussion addressing OAR 860-014-0095(2)(b) and (e) follows. OPUC Order No.
8 05-1250 qualifies for reconsideration under subsections (c) and (d) of OAR 860-
9 014-0095(3).

10 The Commission concludes that the proper comparator to the proposed deal is
11 "the continued ownership by Enron in search of an opportunity to dispose of PGE."
12 OPUC Order No. 05-1250, p. 15. The Commission sees "no evidence in the record
13 that there is a plausible sale on the horizon." *Id.* Under continued Enron
14 ownership, PGE would remain consolidated with Enron for income tax purposes.
15 As noted in several SEC annual reports filed by PGE and by Enron, Enron expects
16 never to pay income taxes, due to billions of dollars in carryforward losses. For
17 example:

18 Enron's 2003 tax return was filed on September 14, 2004. As noted in
19 paragraph B. above, Enron expects to have substantial NOLs from
20 operations in years preceding 2003. Enron had 2003 NOLs sufficient to
21 eliminate Enron's regular and alternative minimum income tax liabilities
22 for 2003 and expects to have sufficient NOLs to offset its regular income
23 tax liability for all subsequent periods through the date of consummation
24 of its Chapter 11 Plan.
25

1 PGE Form 10-K Report for 2004, p. 56.¹ Because state and local income taxes in
2 Oregon are tied to the taxable income reported by the consolidated filer, the
3 expectation of zero future Enron federal income tax liability should also apply to
4 future state and local income tax liabilities in Oregon.

5 Thus, if PGE remains owned by Enron, the amount to be paid on PGE's
6 income in federal, state, and local income taxes would remain at zero for several
7 years to come, until the consummation of the Enron Chapter 11 Plan. If correctly
8 implemented by the Commission, SB 408 (2005) will remove all income tax charges
9 from PGE rates, as of January 1, 2006, the effective date of the automatic
10 adjustment clause required by that statute. Removing federal and state income tax
11 charges from PGE rates would reduce PGE's expected retail revenue by \$92.6
12 million, as the Commission's final order in UE 115 authorized PGE to charge \$77
13 million per year for federal income taxes and \$15.6 million per year for state income
14 taxes.

15 But Enron has stated that it cannot or will not include in its consolidated
16 returns any corporation, unless it owns at least 80% of that corporation. Under the
17 proposal in this docket, PGE will fail that test in just a few months. In fact, the
18 Applicants tout the deconsolidation of PGE from Enron as some sort of benefit, but
19 it is certainly not a benefit for PGE ratepayers. This deconsolidation will cost PGE

20 1. URP requests official notice of this matter pursuant to OAR 860-014-0050(1)(a), (1)(e),
21 and (1)(f).

1 ratepayers approximately \$93 million per year for the foreseeable future, as it will
2 remove PGE from one of the extremely rare benefits of being owned by Enron--the
3 opportunity to avoid paying income taxes.

4 SB 408 was enacted so that the benefit of this opportunity is captured by
5 ratepayers, not by PGE's shareholder. But OPUC Order No. 05-1250 then nullifies
6 the application of SB 408 to PGE by removing PGE's consolidation with Enron for
7 income tax purposes. It will have the effect of stopping a \$93 million-per-year rate
8 reduction that otherwise would go into effect, via the SB 408 automatic adjustment
9 clause, as of January 1, 2006. Nothing in OPUC Order No. 05-1250 recognizes
10 this huge detriment to PGE ratepayers, which will be the direct result of the
11 approvals provided by OPUC Order No. 05-1250.

12 Consequently, OPUC Order No. 05-1250 is premised upon an error of fact--
13 that approval of the PGE and Cooper applications will be in the public interest and
14 will serve the public utility's customers in the public interest, which this Commission
15 has interpreted as a requirement that the application show a benefit for ratepayers
16 or at least not cause them any harm. As a result, OPUC Order No. 05-1250 also
17 commits fundamental error of law, because approval of the applications depends
18 upon making a proper findings of fact that granting the applications would be in the
19 public interest and would "serve the public utility's customers in the public interest."
20

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing APPLICATION FOR RECONSIDERATION OF OPUC ORDER NO. 05-1250 BY UTILITY REFORM PROJECT by mailing a true and correct copy thereof, placed in a sealed envelope and deposited in the U.S. Postal Service at Portland, Oregon, this day, with postage prepaid, to every person on the service list in the UF 4218/UM 1206 proceeding below.

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23 I also served the service list by emailing this document in text-searchable PDF
24 format to every email address on the service list by using the Email Service List
25 (comma delimited) link on the OPUC web site for this docket.
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29 Dated: February 13, 2006
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Daniel W. Meek