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September 21, 2005

Annette Taylor
Oregon Public Utility Commission
Administrative Hearings Division
PO Box 2148
Salem, OR 97308-2148

Re: **UF 4218 / UM 1206**

Dear Ms. Taylor:

Enclosed for filing in the above-referenced dockets are the original and five copies of Points and Authorities in Support of Request for Official Notice. Please contact me with any questions regarding this filing.

Yours truly,

Michael M. Morgan

ps
cc: Service Lists
Enclosures

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UF 4218 / UM 1206**

In the Matter of the Application of PORTLAND GENERAL ELECTRIC COMPANY 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 the Application of STEPHEN FORBES COOPER, LLC, as Disbursing Agent, on behalf of the RESERVE FOR DISPUTED CLAIMS, 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

**POINTS AND AUTHORITIES IN
SUPPORT OF REQUEST FOR
OFFICIAL NOTICE**

Portland General Electric Company ("PGE") and Stephen Forbes Cooper, LLC, as Disbursing Agent, on behalf of the Reserve for Disputed Claims ("SFC") (collectively, the "Applicants") submit this Points and Authorities in support of their request, filed on August 10, 2005, that the Commission take official notice of the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated July 2, 2004, including Plan Supplement and all schedules and exhibits thereto (the "Plan").

OAR 860-014-0050(1)(a) authorizes the Commission or Administrative Law Judge ("ALJ") to take official notice of "all matters of which the courts of the State of Oregon

take judicial notice." Rule 201 of the Oregon Rules of Evidence governs judicial notice of adjudicative facts. *See* ORS 40.060. Rule 201(b) provides that a judicially noticed fact must be free from reasonable dispute because it is either: (a) generally known within the territorial jurisdiction of the trial court or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

The fact that is the subject of the Applicants' request is the Plan and its confirmation by the United States Bankruptcy Court for the Southern District of New York on July 15, 2004 ("Confirmation Order"). The Confirmation Order is Exhibit 1 to the Application in this proceeding and is sponsored by the testimony of James J. Piro and Mitchell S. Taylor. PGE-SFL(RDC)/100, Piro-Taylor/1. The Plan is Exhibit A to the Confirmation Order.

Oregon courts routinely take judicial notice of public records such as the Plan and Confirmation Order "whose accuracy cannot reasonably be questioned." *Tiner v. Clements*, 173 Or App 168, 169, 20 P3d 262 (2001) (court judgments of convictions); *Confederated Tribes v. Employment Dept*, 165 Or App 65, 70, 995 P2d 580 (2000) (election results); *US National Bank v. Heggemeier*, 106 Or App 693, 695 n2, 810 P2d 396 (1991) (date of entry of judgment); *Nasef v. U & I Investments*, 91 Or App 344, 347, 755 P2d 136 (1988) (existence of proceeding in another state). Courts have also taken judicial notice of bankruptcy orders and records, just like the Confirmation Order and Plan. *See, e.g., Tuma v. Firstmark Leasing Corp.*, 916 F2d 488, 491 (9th Cir 1990) (court took judicial notice of records in a bankruptcy proceeding); *Huntsinger v. Shaw Group*, 2005 WL 10603 (D Or, Jan. 18, 2005) *3 (court took judicial notice of bankruptcy court order).

Applicants are requesting that the Commission or ALJ take official notice of the Plan and that it has been confirmed by the Bankruptcy Court. Applicants do not seek official notice of the truth of the contents of the Plan. *See Arlington Ed Assn v. Arlington Sch. Dist. 3*, 177 Or App 658, 665 (2001) ("there is a distinction between judicially noticing the existence of a court record and noticing the truth of the contents of that record. . . . Although it may be appropriate to judicially notice the former, it is inappropriate to notice the latter").

Accordingly, the Applicants' request for official notice should be granted.

RESPECTFULLY SUBMITTED this 21st day of September, 2005.

PORTLAND GENERAL ELECTRIC
COMPANY

STEPHEN FORBES COOPER, LLC,
Disbursing Agent, on behalf of the Reserve for
Disputed Claims

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