

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 In the Matter of PORTLAND GENERAL
4 ELECTRIC COMPANY Application for an
5 Order Authorizing the Issuance of
6 62,500,000 Shares of New Common Stock
7 Pursuant to ORS 757.410 *et seq.*

8 and

9 In the Matter of STEPHEN FORBES
10 COOPER, LLC, as Disbursing Agent, on
11 behalf of the RESERVE FOR DISPUTED
12 CLAIMS Application for an Order Allowing
13 the Reserve for Disputed Claims to Acquire
14 the Power to Exercise Substantial Influence
15 over the Affairs and Policies of Portland
16 General Electric Company Pursuant to ORS
17 757.511

Case Nos. UF 4218/UM 1206

**CITY OF PORTLAND'S RESPONSE TO
THE UTILITY REFORM PROJECT'S
APPLICATION OF RECONSIDERATION**

18 **INTRODUCTION.**

19 On February 13, 2006, the Utility Reform Project (URP) filed an application with the
20 Commission for reconsideration of Order No. 05-1205. URP's application noted that the
21 Commission erred by concluding that:

22 1. [T]he proposed issuance of new PGE common stock meets the
23 applicable legal standard for exemption, because 'ratepayers will
24 not be harmed by the issuance of new securities.' OPUC Order No.
25 05-1250, p. 12.

26 2. [T] he proposed exercise of substantial influence [by Stephen
Forbes Cooper, LLC] over PGE meets the applicable legal standard
for approval, because the application 'will serve the public utility's
customers in the public interest.' OPUC Order No. 05-1250, pp.
13.

URP Application, p. 2, lines 5-14.

The City of Portland supports URP's application for reconsideration of Order No. 05-
1250 under OAR 860-014-0095(3). The Commission committed errors of law and fact essential
to its decision. Additionally, there is new evidence indicating that the Commission has failed to
properly exercise its statutory responsibilities for overseeing persons exercising substantial

1 influence over the utility.

2 URP argues that the Commission failed to properly consider the negative effects of the
3 proposed transaction upon ratepayers. The aspect noted by URP is only one of several failures by
4 the Commission in its hastened consideration in this proceeding. In joining URP, the City of
5 Portland explains additional reasons that require the Commission’s reconsideration of Order No.
6 05-1205.

7 **DISCUSSION.**

8 **1. OAR 860-014-0095(3)(c): The Commission committed errors of law and fact in
9 Order No. 05-125.**

10 **a. The Commission committed legal error in applying the wrong standard for
11 exempting the issuance of new securities from statutory requirements.**

12 In applying ORS 757.412, the Commission made no attempt to ascertain the plain
13 meaning of “public interest” as required under *Portland General Electric Co. v. Bureau of Labor
14 & Industries*, 317 Or 606, 611, 859 P2d 1143 (1993). *Compare, Northwest Natural Gas Co. v.
15 Oregon Public Utility Com’n*, 195 Or App 547, 99 P3d 292 (2004) (agency may not “ignore[] the
16 meaning of the words that the legislature used”). Instead, the Commission leapt to the
17 conclusion that the “ratepayers will not be harmed by the issuance of new securities [and] no
18 current shareholder’s value will be shortchanged by receiving new stock . . .”. Order No. 05-
19 1250.¹

20 The Commission’s determination that “ratepayers will not be harmed by the issuance of
21 new securities” is borrowed whole cloth from the test developed for ORS 757.511. *In re Oregon
22 Electric Utility Co., LLC*, Order No. 05-114, UM 1121, 240 P.U.R.4th 141, 2005 Ore. PUC
23 LEXIS 99, * 39 to *41 (March 10, 2005). Conflating these two standards constitutes plain error.
24 The testimony offered by the proponents was focused upon the “net benefits” test under ORS
25 757.511. The substantial evidence on ORS 757.412 was offered by the City, showing that the

26 ¹ The Commission failed to note that Enron Corporation is PGE’s sole shareholder. The Commission’s concern for the potential harm to Enron’s value is entirely misplaced.

1 purpose was to benefit Enron’s creditors, not the utility or the ratepayers. “Public interest” must
2 be determined in light of legislative purpose, otherwise it is an uncertain and indefinite criterion.
3 *Compare, Pierce Freight Lines v. Flagg*, 177 Or 1, 58, 159 P2d 162 (1945).

4 In citing to legislative history, the Commission relied upon testimony from a proponent to
5 conclude that the legislature contemplated that guidelines might be written into a Commission
6 order. First, this testimony was offered by an industry witness, not a legislator on the floor, and
7 thus provides little insight as to legislative intent. A witness’s testimony only provides insights
8 as to the intent of the Oregon Legislative Assembly as a whole “when such testimony is
9 consistent with the enacting legislators' own acts and comments”. *State ex rel. Oregon Health*
10 *Sciences Univ. v. Haas*, 325 Or 492, 508, 942 P2d 261 (Or. 1997) (*citing State v. Guzek*, 322 Or
11 245, 260, 906 P2d 272 (1995)). Second, the Commission failed to note that on the same day, the
12 same person told the House Committee that if the legislation passed, industry would work with
13 the Commission to define the scope and extent of exemptive authority provided by the bill. *See*,
14 *Testimony, House Committee on General Government, HB 2646, March 10, 1997* (statement of
15 William E. Peressini) (Tape 40, A, 210-220). It is the failure of the agency to subsequently
16 develop standards that concerns the City as contributing directly to the *ad hoc* nature of the
17 Commission’s determination in Order No. 05-1205.

18 This same person also indicated that the interest that would be protected by the legislation
19 was that of the ratepayers, not the utility or its shareholders. *Id.* But that is not how the
20 Commission interpreted the statutory standard. This interpretation is an error of law.

21 **b. The Commission committed legal error in citing prior determinations for the**
22 **unsupportable proposition that “access to markets” satisfies the “public**
23 **interest”.**

24 “[T]he legislature cannot grant an administrative agency the power to regulate unless
25 some standard or yardstick is provided in the act as a guide to the administrative agency; in other
26 words, the authority to regulate may not be left wholly to the whim and caprice of such agency.”

1 *Demers v. Peterson*, 197 Or 466, 470, 254 P2d 213 (1953). In its defense, the Commission
2 asserted that it previously determined the meaning of “public interest” as “providing access to
3 markets”. Order No. 05-1250, at 9. However, the prior decisions relied upon by the Commission
4 do not support this proposition. Rather, they stand for the rule that the issuance of new securities
5 by a utility is subject to rigorous examination and oversight by the Commission, in furtherance of
6 its responsibilities under ORS 757.415.

7 In UF 4211, the Commission responded to a request by Idaho Power Company for
8 permission under ORS 757.415 to issue and sell up to \$300 million of new debt securities. In
9 approving the application, the Commission stated:

10 Idaho represents that the proceeds will only be used for purposes
11 allowed by law. Such purposes include the acquisition of utility
12 property, the construction, extension or improvement of utility
13 facilities, the improvement or maintenance of service, the
14 discharge or lawful refunding of obligations that were incurred for
utility purposes (such as higher cost debt or preferred stock) or the
reimbursement of Idaho's treasury for funds used for the foregoing
purposes, as permitted under ORS 757.415(1).

15 Order No. 04-672, 1-2.

16 In UF 4200, the Idaho Power Company asked for regulatory approval of the issuance of
17 up to \$49.8 million in new debt securities. The Commission described Idaho Power's proposed
18 use of this new debt as being “consistent with ORS 757.415”. Order No. 03-454, at 1.

19 In UF 4198, Avista applied for authority under ORS 757.480 and ORS 757.415 to issue
20 \$150 million in debt securities. The Commission did not exempt the issuance from regulatory
21 oversight merely because it would provide access to financial markets. Rather, staff's
22 recommendation noted that ORS 757.415 restricts the purposes for which new securities may be
23 issued. Order 03-347, at 5 n 1. In turn, the Commission required that Avista provide detailed
24 reports showing compliance with the statutory requirements. *Id.*, at 2-3.

25 A cursory examination of these decisions reveals the “public interest” identified in Order
26 No. 02-1250 to be a gross mischaracterization. In each of these prior orders, the Commission

1 noted that the applicants would otherwise comply with ORS 757.415. Only in this proceeding
2 has the Commission seized upon the conclusory statement in the staff recommendation to wholly
3 exempt the utility from statutory compliance. Repeating the phrase “access to markets” through
4 a series of staff recommendations does not gild it with any substance.

5 The proposition that access to financial markets is in the public interest reduces the test to
6 a meaningless circularity. After all, access to financial markets to raise capital is the underlying
7 basis for any stock issuance. This approach does nothing at all to protect ratepayers. This type of
8 approach was rejected by the Commission in Order No. 04-231; UF 4205, 2004 Ore. PUC
9 LEXIS 191 (April 29, 2004). Access to capital markets can not stand as the basis for
10 determining “public interest”.

11 The record in this proceeding establishes, clearly and without ambiguity, that PGE’s
12 transition to publicly traded company was to occur through objective, pre-determined events,
13 such as Enron’s settlement of claims,² not according to any “marketability” of new shares. The
14 Commission’s reliance upon these prior determinations as providing support for its determination
15 constitutes an error of law.

16 **c. There is no evidence in the record to support the Commission’s**
17 **determination that the issuance of new PGE common stock will not create**
18 **proceeds.**

19 The Commission determined that there would be no “new net proceeds” from the
20 issuance of new PGE common stock. Order No. 05-1250, at p. 10. The Commission also cited
21 PGE’s arguments that a larger number of tradable shares would yield “a more ‘attractive per
22 share market price’ in public trading.” Order No. 05-1250 at 12. The Commission also referred
23 to PGE’s assertions that the stock issuance would provide “common equity needed to support its
24 credit ratings and provide working capital for utility functions.” *Id.* The Commission concluded
25 that this would result in “improved financial strength” for PGE. *Id.*, at 2.

26 //

² Enron Bankruptcy Plan, §32.71(b).

1 One of the ironies of the stock market is the emphasis on activity.
2 Brokers, using terms such as ‘marketability’ and ‘liquidity,’ sing
3 the praises of companies with high share turnover... but investors
4 should understand that what is good for the croupier is not good for
5 the customer. A hyperactive stock market is the pick pocket of
6 enterprise.

7 Warren E. Buffett, *The Essays of Warren Buffett: Lessons for Corporate America* (1998).

8 In another proceeding before the Commission, it was determined that the issuance of even
9 a single share having no new market value, and a par value of only \$1, required review and
10 approval under ORS 757.400 to 757.480. *In re Portland General Electric Application seeking*
11 *authority to issue one share of \$1 par Junior Preferred Stock*, UF 4192, Order 02-674, p. 2
12 (September 30, 2002). Determining that there will not be any net proceeds created by the
13 issuance of new PGE common stock, with a potential market value of over \$1 billion, cannot be
14 harmonized with the Commission’s determination that Enron’s creditors will benefit by the
15 creation of new tradable market shares, or that the utility’s balance sheet will be improved by
16 increased liquidity for equity. The Commission’s multiple conclusions on this aspect are
17 arbitrary and capricious.

18 The Commission’s interpretation of “proceeds” is inconsistent with other readings. *Cross*
19 *of Malta Bldg. Corp. v. Straub*, 257 Or 376, 476 P2d 921, 479 P2d 505 (1971) (proceeds from
20 revenue bonds sold to fund veteran’s home mortgage program); *State ex rel. Sprague v. Straub*,
21 240 Or 272, 400 P2d 229, 401 P2d 29 (1965) (interpreting “proceeds” as used in Art. IX, § 3 of
22 the Oregon Constitution).³ The Commission’s approach is diametrically opposed to these prior
23 interpretations of the term “proceeds”.

24 Fundamentally, what the Commission has failed to address is how the issuance of new

25 ³ See also, Letter to Alfred A. Hampson, Chairman, Travel Information Council, OP-5518 (December 30, 1983)
26 (proceeds from the sale of “logos” on signs located on highway rights of way purchased with highway funds must be
deposited into dedicated highway fund); 41 Op Atty Gen 37 (1980), (receipts from parking lots on sites purchased or
leased with highway funds, after deduction of administrative expenses, must accrue to the dedicated highway fund);
37 Op Atty Gen 349 (1975) (“rents and profits” from exploration leases of mineral and geothermal resource rights
must accrue to dedicated highway fund if property purchased with highway funds).

1 PGE common stock is in the public interest, more so than merely distributing the existing
2 common stock. Make no mistake, someone is benefiting from this transaction. But how the
3 “public” will be served is wholly missing from the Commission’s determination, and from the
4 record in this proceeding. This may not be a popular sentiment, nor is it an easy task. However,
5 the law surrounding this transaction requires that the Commission undertake to complete this
6 analysis.

7 The Commission’s determination is not supported by “cogent, competent, material and
8 substantial evidence.” *Pierce Freight Lines, supra*, 177 Or at 38. PGE neither met its burden of
9 producing evidence nor of establishing the given proposition. *In re Portland General Elec. Co.*,
10 UE 115, Order No. 01-777, 212 PUR 4th 1, 2001 WL 1346291 (August 31, 2001),
11 *reconsideration denied*, Order No. 01-988, 213 PUR 4th 376, 2001 WL 1708039 (November 20,
12 2001). The Commission’s determination constitutes an error of fact.

13
14 **d. The Commission committed legal error by failing to undertake a mandatory
legal obligation.**

15 Despite having inquiry authority over utility compliance with municipal ordinances under
16 ORS 756.160, the Commission declined in Order No. 05-1250 to exercise its jurisdiction. The
17 Commission’s investigatory responsibilities under this statute are absolute and mandatory: “The
18 Public Utility Commission **shall** inquire into any neglect or violation of any law of this state or
19 any law or ordinance of any municipality thereof relating to public utilities”. ORS 756.160(1)
20 (emphasis added.) “The term ‘shall’ is a command expressing what is mandatory.” *Bacote v.*
21 *Johnson*, 333 Or 28, 34, 35 P.3d 1019 (2001) (holding courts had mandatory duty to assess
22 person's ability to pay costs and the amount of costs to be repaid) (citation omitted).

23 In summarily dispensing of the City’s request, the Commission cited to a prior agency
24 determination. Order No. 05-1250 at 23 (citing Order No. 05-114, 35 n 20). The footnote
25 referenced by the Commission indicated that the Commission did not believe it had jurisdiction
26 over the franchise question, and that it was not related directly to the transaction. The footnote,

1 and the prior decision, did not involve any substantive discussion of the Commission's
2 responsibilities under ORS 757.160. Indeed, the footnote contained no substantive discussion at
3 all. Therefore, it provides no support whatsoever for the Commission's determination. The
4 Commission's conclusion constitutes an error of law.

5
6 **2. OAR 860-014-0095(3)(a): There is new evidence which is essential to the
Commission's determination in Order No. 05-125.**

7 **a. Despite the Commission's approval of Stephen Forbes Cooper, LLC as**
8 **exercising substantial influence over PGE, there has been a substitution that**
9 **the Commission is not reviewing.**

10 In Order No. 05-1205, the Commission approved the exercise of substantial influence
11 over PGE by Steven Forbes Cooper, LLC as Disbursing Agent, under ORS 757.511. Testimony
12 and argument was directed toward Stephen Forbes Cooper, LLC as the person that would be
13 affiliated with PGE by indirectly controlling more than 5% of PGE shares.

14 SFC is owned 50% by Stephen Forbes Cooper and 25% each by
15 Leonard LoBiondo and Michael E. France. SFC is providing
16 management services to Enron and the other Debtors. SFC's sole
17 business is providing services to Enron and other Enron related
18 Debtors. It has no other business. Also attached to this
19 Application is a copy of an agreement between SFC and Kroll
20 Zolfo Cooper, LLC, which provides that all amounts received by
21 SFC for providing services to Enron and the other Debtors acting
22 in any capacity pursuant to the Plan will be the property of, and
23 shall be paid to, Kroll Zolfo Cooper, LLC. Kroll Zolfo Cooper,
24 LLC is owned 100% by Kroll, Inc., which is owned 100% by
25 Marsh, Inc., which is owned 100% by MMC, a publicly traded
26 corporation.

20 Application, p. 20, lines 7-15 (footnotes omitted). Testimony of Elizabeth Kardos, general
21 counsel for Kroll Zolfo Cooper, LLC was offered exclusively for the purposes of supporting this
22 testimony. PGE-SFC/200/Kardos/1/lines 1-6.

23 On January 10, 2006, a notice of hearing was sent out in the Enron bankruptcy case of a
24 request to substitute BDHLR, LLC for Stephen Forbes Cooper, LLC. A copy of this notice is
25 attached to the City's response as COP 115. No notice of this proposed substitution was sent out
26

1 to parties in this proceeding. Nor is there any indication in the bankruptcy court's records that the
2 Commission responded to the notice.

3 On February 9, 2006, the bankruptcy court issued an order authorizing the substitution of
4 BDHLR, LLC as the trustee for the Disputed Reserve Claims fund, in place of Stephen Forbes
5 Cooper, LLC. A copy of this notice is attached to the City's response as COP 116. This
6 information was unavailable and not reasonably discoverable before the issuance of Order No.
7 05-1205. OAR 860-014-0095(3)(a).

8 The Commission has failed to exercise its statutory responsibilities regarding this
9 substitution. ORS 757.511(1) refers to "any person" who exercises substantial influence. The
10 new limited liability company, composed of the directors of Enron Corporation, will control,
11 directly or indirectly, five percent or more of the voting securities of such public utility within the
12 meaning of ORS 757.511(1) and ORS 757.015(1). The statutory definition of "person" includes
13 limited liability companies. ORS 174.100(5).

14 Under ORS 757.511, the Commission has a mandatory duty to undertake an investigation
15 and to reach a determination on whether a person may exercise substantial influence over a
16 utility. Similarly, ORS 757.160(1) imposes a mandatory duty upon the Commission to
17 investigate any neglect of Oregon statutes. "'Shall' is a command: it is 'used in laws,
18 regulations, or directives to express what is mandatory.'" Webster's Third New Int'l Dictionary,
19 2085 (unabridged ed 1993)[.]" *Preble v. Department of Revenue*, 331 Or 320, 324, 14 P3d 613
20 (2000) (other citations omitted).

21 The Legislature requires the identification of persons exercising substantial influence as
22 an essential pre-condition of an ORS 757.511 proceeding. *Compare*, UM 1209, Order No. 06-
23 082, pp. 4-5 (February 24, 2006). By foregoing regulatory oversight under ORS 757.511 for
24 BDHLR, LLC, the Commission is apparently recognizing a new exemption from the statutory
25 requirements. The Commission must focus on the "person", not the office that "person" may
26 occupy.

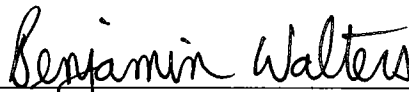
1 In the alternative to reopening this proceeding to consider and respond to this new
2 evidence, the City requests that the Commission formally undertake an investigation of the
3 Commission's duty to review and approve a new person exercising influence over PGE. ORS
4 756.160; ORS 756.511.

5 **CONCLUSION.**

6 The Commission must reconsider the legal and factual errors that riddle Order No. 05-
7 1205. In addition, the Commission should re-open the proceeding to consider the new evidence
8 that Stephen Forbes Cooper, LLC will not actually serve as the person exercising substantial
9 influence over PGE, but some other, heretofore unidentified entity. Alternately, the Commission
10 should open a new proceeding to investigate the exercise of influence over PGE by BDHLR,
11 LLC under ORS 757.511.

12 Dated this 28th day of February, 2006.

13 Respectfully submitted,

14 

15 _____
16 Benjamin Walters, OSB #85354
17 Senior Deputy City Attorney
Of Attorneys for City of Portland

18 **Attachments:**

19 COP 115: Notice of Hearing on Motion of Reorganized Debtors for Order, Pursuant to 11 U.S.C.
§105(A), in Aid of Plan Consummation and Authorizing Transition of Chapter 11 Plan Roles
from Stephen Forbes Cooper, LLC to BDHLF, LLC

20 COP 116: Order, Pursuant to 11 U.S.C. §105(A), in Aid of Plan Consummation and Authorizing
21 Transition of Chapter 11 Plan Roles from Stephen Forbes Cooper, LLC to BDHLF, LLC (Feb. 9,
2006)

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Hearing Date: February 9, 2006 at 10:00 a.m. (New York time)
Objection Deadline: February 3, 2006 at 5:00 p.m. (New York time)

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1 Chase Manhattan Plaza
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(212) 530-5000
Attorneys for Reorganized Enron
Corp., et al.

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In re: : Chapter 11
:
ENRON CORP., et al., : Case No. 01-16034 (AJG)
:
: Jointly Administered
Reorganized Debtors. :
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NOTICE OF HEARING ON MOTION OF REORGANIZED DEBTORS FOR ORDER, PURSUANT TO 11 U.S.C. § 105(a), IN AID OF PLAN CONSUMMATION AND AUTHORIZING TRANSITION OF CHAPTER 11 PLAN ROLES FROM STEPHEN FORBES COOPER, LLC TO BDHLR, LLC

PLEASE TAKE NOTICE that a hearing to consider the Motion Of Reorganized Debtors For Order, Pursuant To 11 U.S.C. § 105(a), In Aid Of Plan Consummation And Authorizing Transition Of Chapter 11 Plan Roles From Stephen Forbes Cooper, LLC To BDHLR, LLC (the "Motion") shall be held before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on **February 9, 2006, at 10:00 a.m. (New York time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE THAT responses or objections, if any, to the Motion and the relief requested therein must be made in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court's case filing system and, by all other parties-in-interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and shall be served in accordance with General Order M-242 and upon:

(a) Enron Corp., 1221 Lamar, Suite 1600, Houston, Texas 77010, Attn.: General Counsel (Facsimile 713-646-2107); (b) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn.: Luc A. Despins, Esq. and Abhilash M. Raval, Esq. (Facsimile 212-530-5219), attorneys to Reorganized Enron Corp., et al.; (c) Bell, Boyd & Lloyd LLC, 70 West Madison Street, Suite 3100, Chicago, Illinois 60602, Attn.: John S. Delnero, Esq. (Facsimile 312-827-8000), attorneys to Board of Directors of Reorganized Enron Corp.; and (d) the Office of the

United States Trustee, 31 Whitehall Street, New York, New York
10004, Attn: Mary Elizabeth Tom, Esq.; so as to be actually
received by not later than 5:00 p.m. (New York time) on
February 3, 2006.

Dated: New York, New York
January 10, 2006

By: /s/ Luc A. Despins
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Attorneys for Reorganized Enron
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
ENRON CORP., et al., : Case No. 01-16034 (AJG)
: Jointly Administered
Reorganized Debtors. :
-----X

ORDER, PURSUANT TO 11 U.S.C. § 105(a), IN AID OF PLAN
CONSUMMATION AND AUTHORIZING TRANSITION OF CHAPTER 11 PLAN
ROLES FROM STEPHEN FORBES COOPER, LLC TO BDHLR, LLC

Upon consideration of the Motion Of Reorganized Debtors For Order, Pursuant To 11 U.S.C. § 105(a), In Aid Of Plan Consummation And Authorizing Transition Of Chapter 11 Plan Roles From Stephen Forbes Cooper, LLC To BDHLR, LLC, dated January 10, 2006, (the "Motion");¹ and it appearing that the relief requested in the Motion is in the best interests of the Reorganized Debtors, the creditors and all parties in interest; and, it appearing that notice of the Motion was timely, adequate, proper and sufficient and constituted the best notice practicable under the particular circumstances, and no other or further notice of the Motion is required; and the Court having reviewed the Motion, and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that, the Motion is granted in its entirety; and it is further

ORDERED that, all objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein which are not otherwise resolved in this Order, are overruled on the merits; and it is further

ORDERED that, the Reorganized Debtors are authorized, pursuant to section 105(a) of the Bankruptcy Code, to replace Stephen Forbes Cooper, LLC ("SFC") as Common Equity Trustee and Preferred Equity Trustee with BDHLR, LLC as of April 30, 2006; and it is further

ORDERED that, all notice requirements to effectuate the replacement of SFC with BDHLR, LLC shall be deemed to be satisfied; and it is further

ORDERED that, the Reorganized Debtors are authorized to execute, modify or amend any documents or forms that they deem in their discretion to be necessary or advisable to effectuate the terms of this Order and for the purposes set forth in the Motion; and it is further

ORDERED that, from and after the entry of this Order,
the payment of the Termination Fee is hereby irrevocably waived.

Dated: New York, New York
February 9, 2006

s/ Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing CITY OF PORTLAND'S RESPONSE TO THE UTILITY REFORM PROJECT'S APPLICATION OF RECONSIDERATION on the individuals on the attached Service List by electronic mail or by U.S. Postal Service to individuals without electronic mail in a sealed envelope with postage paid, and deposited in the post office at Portland, Oregon on said day.

DATED this 28th day of February, 2006.

Benjamin Walters

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

**SERVICE LIST
UF 4218 / UM 1206**

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