

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 28, 2006

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street, NE
Suite 215
PO Box 2148
Salem, Oregon 97308

Re: Docket Nos. UM 1206/UF 4218

Dear Filing Center:

Enclosed please find the staff Response to the Utility Reform Project's Application for Reconsideration of OPUC Order No. 05-1250.

Thank you for your attention.

Very truly yours,

Stephanie S. Andrus
Assistant Attorney General

Enc.

c. Service list

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

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY 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)

STAFF RESPONSE TO APPLICATION FOR
RECONSIDERATION OF OPUC ORDER NO.
05-1250 BY UTILITY REFORM PROJECT

The Utility Reform Project (“URP”) requests reconsideration of OPUC Order No. 05-1250 in which the Commission authorized a Disputed Claims Reserve (“DCR”) created under Enron Corp.’s (“Enron”) Bankruptcy Plan to hold more than five percent of PGE stock for the purpose of distributing the stock to Enron creditors.¹ URP argues that the Commission erred in finding that transferring ownership of PGE away from Enron to Enron’s creditors “is in the public interest and will serve the public utility’s customers in the public interest” because the transfer “will have the effect of stopping a \$93 million-per-year rate reduction that otherwise would go into effect, via the SB 408 automatic adjustment clause, as of January 1, 2006.” (URP Application for Reconsideration at 5.) Because this tax issue could have been raised prior to the

¹ The Commission addresses two requests in Order No. 05-1250. The Commission authorized PGE to issue new stock under ORS 757.410 *et seq.* and authorized the DCR to own more than five percent of the stock under ORS 757.511.

1 time the Commission issued Order No. 05-1250 but was not, the Commission should not allow
2 reconsideration.

3 The criteria for granting reconsideration are set forth at OAR 860-014-0095(3), which
4 provides,

5
6 (3) The Commission may grant an application for rehearing or reconsideration if the
applicant shows that there is:

7 (a) New evidence which is essential to the decision and which was unavailable
8 and not reasonably discoverable before issuance of the order;

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

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

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

12 URP asserts the order contains errors of fact of law and that there is good cause for
13 further examination and thus, that reconsideration is warranted under subsections (c) and (d) of
14 the rule. Specifically, URP argues that when implemented, Senate Bill 408, which was adopted
15 by the Oregon legislative assembly in 2005, would require the removal of charges for taxes from
16 PGE rates if PGE is still owned by Enron. URP argues that therefore, separating PGE from
17 Enron does not benefit PGE ratepayers, but instead costs them approximately \$93 million per
18 year for the foreseeable future. (Application 4-5.) URP goes on to assert that in light of the
19 potential tax benefit stemming from application of SB 408, “OPUC Order No. 05-1250 is
20 premised upon on an error of fact – that approval of the PGE and Cooper applications will be in
21 the public interest and will serve the public utility’s customers in the public interest, which this
22 Commission has interpreted as a requirement that the application show a benefit for ratepayers or
23 at least not cause them any harm.” (Application 5.)

24 Although URP relies on OAR 860-015-0095(3)(c) and (d) as authority for its
25 reconsideration request, the request is properly addressed under OAR 860-015-0095(3)(a) and
26 (b). URP is asking the Commission to examine an issue that could have been raised prior to

1 the time the Commission issued OPUC Order No. 05-1250, but was not. OAR 860-015-
2 0095(3)(a) and (b) place limits on such requests. Reconsideration is allowed to consider an issue
3 not raised prior to the issuance of an order only when a party reasonably could not have been
4 expected to raise the issue because evidence was not available or because the order pre-dated a
5 change in law or policy. These circumstances are not present in this case.

6 The governor signed SB 408 into law on September 2, 2005. On September 15, 2005, the
7 Commission promulgated temporary rules implementing SB 408. The record in this case
8 closed on October 27, 2005, more than one month after the Commission adopted the temporary
9 rules implementing SB 408. Further, the Commission did not issue a final order in this matter
10 until December 14, 2005, almost three months after adoption of the temporary rule and more
11 than three months after SB 408 became law. Because URP reasonably could have raised the SB
12 408 issue prior to the time the Commission issued Order No. 05-1250, reconsideration is not
13 appropriate under subsections (a) and (b) of OAR 860-014-0095.

14 URP does not attempt to reconcile the limitations found in OAR 860-014-0095(3)(a) and
15 (b) with its belated arguments regarding the tax implications of Order No. 05-1250. Instead,
16 URP stands the requirements of OAR 860-015-0095(3) on their head by arguing that the
17 Commission's order contains a factual error because it contains no reference to the tax issue,
18 notwithstanding the fact that no party raised it. However, URP cannot circumvent the limitations
19 on reconsideration found in subsections (a) and (b) of 860-014-0095(3) by arguing the
20 Commission's failure to consider the tax implications of its orders is an error of fact and of law.

21 Furthermore, URP's argument is predicated on the unsupported assumption that Enron
22 will continue to own PGE if the Commission rejects the applications at issue in Order No. 05-
23 1250. The record is clear that Enron is seeking to divest itself of PGE, either through a sale or
24 distribution of stock. The court-adopted bankruptcy plan does not provide Enron with the option
25 to retain control of PGE. There is no basis to assume that Enron will retain control of PGE into
26

1 the indefinite future even if the Commission rejects the applications at issue in Order No. 05-
2 1250.

3 Similarly, even if the Commission allowed reconsideration to consider URP's arguments,
4 there is no evidence on the record regarding the tax issue. The Commission can not lawfully find
5 a net benefit to PGE customers of denying the application because of the tax effects discussed by
6 URP, because such a finding would not be supported by any, let alone substantial, evidence in
7 the record.

8 Finally, Although URP relies on OAR 860-014-0095(3)(d) in support of its motion, URP
9 offers no argument as to why there is good cause to allow reconsideration to further examine the
10 tax issue it belatedly raises. For the reasons discussed above, there is not good cause to allow
11 reconsideration.

12 **CONCLUSION**

13 URP's request for reconsideration should be denied.

14
15 DATED this 28th day of February 2006.

16 Respectfully submitted,

17 **HARDY MYERS**
18 Attorney General

19 /s/Stephanie S. Andrus
20 Stephanie S. Andrus, #92512
21 Assistant Attorney General
22 Of Attorneys for Staff of the Public
23 Utility Commission of Oregon
24
25
26

1 **CERTIFICATE OF SERVICE**

2
3 I certify that on February 28, 2006, I served the foregoing upon the parties hereto by
4 electronic mail and by sending a true, exact and full copy by regular mail, postage prepaid or by
5 shuttle mail to the parties accepting paper service.

6

7 8 9 10 11	JIM ABRAHAMSON COMMUNITY ACTION DIRECTORS OF OREGON PO BOX 7964 SALEM OR 97303-0208 jim@cado-oregon.org	SUSAN ANDERSON CITY OF PORTLAND OFFICE / SUSTAINABLE DEV 721 NW 9TH AVE -- SUITE 350 PORTLAND OR 97209-3447 susananderson@ci.portland.or.us
12 13 14	JULIE BATES BONNEVILLE POWER ADMINISTRATION 905 NE 11TH AVE PORTLAND OR 97208 jabates@bpa.gov	KEN BEESON EUGENE WATER & ELECTRIC BOARD 500 EAST FOURTH AVENUE EUGENE OR 97440-2148 ken.beeson@eweb.eugene.or.us
15 16	LOWREY R BROWN -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org	J LAURENCE CABLE CABLE HUSTON BENEDICT ET AL 1001 SW 5TH AVE STE 2000 PORTLAND OR 97204-1136 lcable@chbh.com
17 18 19	BRYAN CONWAY PO BOX 2148 SALEM OR 97309-2148 bryan.conway@state.or.us	JOAN COTE OREGON ENERGY COORDINATORS ASSOC. 2585 STATE ST NE SALEM OR 97301 cotej@mwwcaa.org
20 21 22	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com	J JEFFREY DUDLEY -- CONFIDENTIAL PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC1300 PORTLAND OR 97204 jay.dudley@pgn.com
23 24 25	JASON EISDORFER -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	JAMES F FELL STOEL RIVES LLP 900 SW 5TH AVE STE 2600 PORTLAND OR 97204-1268 jffell@stoel.com
26	ANN L FISHER AF LEGAL & CONSULTING SERVICES 2005 SW 71ST AVE PORTLAND OR 97225-3705 energlaw@aol.com	ANDREA FOGUE LEAGUE OF OREGON CITIES PO BOX 928 1201 COURT ST NE STE 200 SALEM OR 97308 afogue@orcities.org

1	DAVID E HAMILTON NORRIS & STEVENS 621 SW MORRISON ST STE 800 PORTLAND OR 97205-3825 davidh@norrstev.com	CHRIS JORDAN CITY OF WEST LINN 22500 SALAMO ROAD WEST LINN OR 97068 cjordan@ci.west-linn.or.us
4	DAVID KOOGLER -- CONFIDENTIAL ENRON CORPORATION PO BOX 1188 HOUSTON TX 77251-1188 david.koogler@enron.com	GEOFFREY M KRONICK LC7 BONNEVILLE POWER ADMINISTRATION PO BOX 3621 PORTLAND OR 97208-3621 gmkronick@bpa.gov
7	GORDON MCDONALD PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 gordon.mcdonald@pacificcorp.com	DANIEL W MEEK DANIEL W MEEK ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net
9	CHRISTY MONSON LEAGUE OF OREGON CITIES 1201 COURT ST. NE STE. 200 SALEM OR 97301 cmonson@orcities.org	MICHAEL M MORGAN -- CONFIDENTIAL TONKON TORP LLP 888 SW 5TH AVE STE 1600 PORTLAND OR 97204-2099 mike@tonkon.com
12	PGE- OPUC FILINGS RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON STREET, 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	TIMOTHY V RAMIS RAMIS CREW CORRIGAN LLP 1727 NW HOYT STREET PORTLAND OR 97239 timr@rcclawyers.com
15	LAWRENCE REICHMAN PERKINS COIE LLP 1120 NW COUCH ST - 10 FL PORTLAND OR 97209-4128 lreichman@perkinscoie.com	CRAIG SMITH BONNEVILLE POWER ADMINISTRATION PO BOX 3621--L7 PORTLAND OR 97208-3621 cmsmith@bpa.gov
18	MITCHELL TAYLOR -- CONFIDENTIAL ENRON CORPORATION PO BOX 1188 HOUSTON TX 77251-1188 mitchell.taylor@enron.com	RANDALL C TOSH CITY OF SALEM 555 LIBERTY STREET SE, ROOM 205 SALEM OR 97301 rtosh@cityofsalem.net
21	BENJAMIN WALTERS -- CONFIDENTIAL CITY OF PORTLAND - OFFICE OF CITY ATTORNEY 1221 SW 4TH AVE - RM 430 PORTLAND OR 97204 bwalters@ci.portland.or.us	

23
24
25
26

Neoma A. Lane
Neoma A. Lane
Legal Secretary
Department of Justice
Regulated Utility & Business Section