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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.<sup>1</sup> 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

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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