PUBLIC UTILITY COMMISSION
OF OREGON

UF 4218/UM 1206

STAFF REBUTTAL TESTIMONY OF

Bryan Conway

In the Matters 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.

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

September 28, 2005

CASE: UF 4218/UM 1206
WITNESS: Bryan Conway

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 100

REBUTTAL TESTIMONY

September 28, 2005

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Bryan Conway. My business address is 550 Capitol Street NE, Suite 215, Salem, Oregon 97301-2551. I am employed by the Public Utility Commission of Oregon (OPUC or Commission) as the Program Manager of the Economic and Policy Analysis Section in the Economic Research and Financial Analysis Division.

Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.

A. My Witness Qualifications Statement is found on Exhibit Staff/101, Conway/1.

Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

A. I rebut the testimony of the City of Portland (“the City”) witness Richard Cuthbert and respond to the City’s opposition to the Portland General Electric Company’s (PGE), Stephen Forbes Cooper, LLC’s, ENRON Corp's, CUB's, Staff's, ICNU's, and CADO/OECA's Stipulation filed on September 1, 2005 (the Stipulation).

Q. HAVE YOU PREPARED ANY EXHIBITS?

A. Yes. I prepared Staff/101, consisting of one page.

The Appropriate Comparator

Q. WHAT DOES MR. CUTHBERT RECOMMEND AS THE COMPARATOR FOR THE STOCK SPIN-OFF?

A. It is not clear. Mr. Cuthbert does not specify the comparator the Commission should use to determine whether the proposed transaction satisfies the net benefit standard of ORS 757.511. However, Mr. Cuthbert does testify that he "believe[s] it would be appropriate for the Commission to use the municipal operation of PGE as a valid comparator in this proceeding[]" to establish a rate credit level. COP/100, Cuthbert/25, lines 1-3. Presumably, Mr. Cuthbert believes the same comparator should be used to determine whether the proposed transaction satisfies the criteria of ORS 757.511.

Q. DO YOU AGREE WITH MR. CUTHBERT'S CHOICE FOR A COMPARATOR?

A. No. Mr. Cuthbert's comparator assumes a hypothetical sale with uncertain terms and conditions. Further, the sale of PGE to the City has been rejected by Enron and is not before the Commission.

Q. HAS THE COMMISSION ADDRESSED THE SALE OF PGE TO THE CITY OF PORTLAND AS THE COMPARATOR IN A PREVIOUS ORDER?

A. Yes, in Order 05-114, when discussing the appropriate comparator, the Commission stated, "URP adds a third alternative that would also consider the purchase of PGE by the City of Portland or another public entity. We reject URP's recommendation for two reasons. First, no such proposal was presented in this proceeding. Second, and more importantly, we reiterate that our review under ORS 757.511 does not provide for consideration of competing proposals." OPUC Order No. 05-114 at 18 n 14.

Q. IS THERE ANY OTHER REASON THE COMMISSION SHOULD CONTINUE TO REJECT A HYPOTHETICAL SALE TO THE CITY OF PORTLAND AS THE COMPARATOR?

A. Yes. According to news reports, negotiations have ended between the City of Portland and Enron regarding the sale of PGE.

Q. WHAT DO YOU RECOMMEND AS THE COMPARATOR FOR THE STOCK SPIN-OFF?

A. I recommend the comparator as stated in the joint testimony in support of the Stipulation.

Rate Credit

Q. WHAT DOES MR. CUTHBERT RECOMMEND WITH RESPECT TO RATE CREDITS?

A. Mr. Cuthbert recommends an immediate rate credit of $100 million as part of the establishment of the new PGE stock issuance plan. COP/100, Cuthbert/6, lines 22-25. Mr. Cuthbert asserts that a "significant rate credit" is necessary for “there to be a measurable public benefit from the stock distribution.” COP/100, Cuthbert/24, lines 11-12.

Q. DO YOU AGREE WITH MR. CUTHBERT’S RECOMMENDED RATE CREDIT?

A. No. I do not believe a rate credit is necessary in this case.

Q. WHY IS A RATE CREDIT NOT NECESSARY IN THIS CASE?

A. A rate credit is not necessary in this case because the stipulated conditions, taken as a whole, provide a net benefit to customers.

Q. HAS THE COMMISSION ALWAYS REQUIRED A RATE CREDIT IN THE CONTEXT OF ORS 757.511 FILINGS?

A. No. In UM 1021 the Commission determined a rate credit was not necessary. UM 1021 was an application requesting approval for PacifiCorp Holdings, Inc. to exercise substantial influence over PacifiCorp. The application was approved in Order No. 01-573. Furthermore, whether the Commission has required rate credits in previous ORS 757.511 proceedings should not control whether the Commission requires one in this docket. Each application is unique and reviewed on its own circumstances.

Q. DO YOU AGREE WITH THE JUSTIFICATION PROVIDED BY MR. CUTHBERT FOR THE $100 MILLION RATE CREDIT?

A. No. I will address each claim provided by Mr. Cuthbert in his testimony.

Mr. Cuthbert states that the rate credits would set a “new baseline” upon which PGE’s future rate reviews could be based. COP/100, Cuthbert/25, lines 8-9. This statement is puzzling given Mr. Cuthbert's reliance on previous acquisitions as support for his rate credit proposal. In the previous acquisitions, the rate credits did not set a new baseline because the rate credit was excluded from the utility's results of operations and other reporting requirements to ensure customers do not end up paying for their own rate credit. Additionally, since Mr. Cuthbert's rate credits are not related to cost, it has no bearing on establishing a benchmark or baseline for PGE rate levels.

Mr. Cuthbert further claims that, as a result of his rate credit, "PGE would need to independently demonstrate in its upcoming rate case the merits of rate increases to cover legitimate liabilities and higher costs." COP/100, Cuthbert/25, lines 9-11. Again, the rate credit would not be recognized as an expense and rates would be set independent of any rate credit amounts. Therefore, for ratemaking purposes, the level and size of the rate credit is irrelevant and PGE would be required to justify its rate levels based on known and expected costs of providing service.

Next, Mr. Cuthbert claims that "[t]he burden of proof related to any rate increase would shift to PGE to show the Commission that future rate increases are necessary." COP/100, Cuthbert/25, lines 11-12. The rate credit has no bearing on burden of proof. PGE has the burden of proof whenever it files for a change in rates.

Finally, Mr. Cuthbert claims that as a result of the $100 million rate credit:

> "…the Commission's declaration that no Enron-related costs will be borne by PGE ratepayers in future rate proceedings will assign the liability for these costs to Enron creditors where it rightfully belongs. This liability would be factored into and discounted appropriately in PGE's stock price. This would potentially reduce any possibility of an over-valuation of the stock price that does not address these liabilities. As the liabilities are resolved, the PGE stock price will adjust to reflect this information while at the same time PGE ratepayers will benefit from the protections they were promised in the Enron acquisition of PGE." COP/100, Cuthbert/25, lines 13-21.

I'm uncertain how a rate credit achieves these goals especially in light of the Stipulation. The Stipulation Condition 6a already states that PGE will not seek to recover higher costs of capital due to not only "Enron's ownership" but also to higher costs of capital caused by "the ownership by the Reserve of 25% or more of PGE's issued and outstanding common stock." Further, Stipulation Condition 6b states that "PGE agrees not to seek recovery of increases in PGE's revenue requirement that result from Enron's ownership of PGE."

Given Conditions 6a and 6b, I find it difficult to believe that, absent a $100 million rate credit in this case, shareholders would believe customers will pay for Enron-related liabilities and therefore overvalue PGE's stock.

Q. WHAT DO YOU CONCLUDE ABOUT MR. CUTHBERT'S ASSERTED BENEFITS OF THE $100 MILLION RATE CREDIT?

A. I agree that a $100 million rate credit would benefit customers, all else being equal. However, for the reasons stated in the Joint Testimony and discussed further in this testimony, monetary benefits are not necessary in this case in order for the Commission to find that the proposed Stipulation provides net benefits to customers.

Local Control

Q. WHAT ARE MR. CUTHBERT'S PRIMARY CONCERNS REGARDING LOCAL CONTROL?

A. Mr. Cuthbert is concerned that the "Stipulation does not provide any assurance that PGE headquarters will remain Portland." COP/100, Cuthbert/14, lines 15-16. Mr. Cuthbert's concerns are heightened due to PUHCA repeal, which makes it easier for utilities and non-utility businesses to acquire utility assets across state lines.

Mr. Cuthbert is also concerned that the Reserve will take actions that are not in the long-term interest of PGE and its customers. COP/100, Cuthbert/16, lines 21-23. Mr. Cuthbert concludes that the conditions contained in the Stipulation do not "adequately account for the loss of local control of PGE in the short term."

Finally, Mr. Cuthbert is concerned that even in the event that PGE is publicly traded, that there will not be any true "local control." COP/100, Cuthbert/17, lines 3-8.

Q. HOW DO YOU RESPOND TO MR. CUTHBERT'S CONCERNS?

A. The proposed stock distribution does not increase the risk that PGE's headquarters will move from Portland. Should a third party seek to acquire PGE in the future, unless otherwise exempt from ORS 757.511, the applicant would need Commission approval and the issue of headquarters location would be taken up at that time.

The possibility of the Reserve taking actions that are inconsistent with the long-term interests of PGE and its customers is mitigated by ring fencing embodied in the Stipulation. The minimum equity requirements are initially strengthened as compared to the status quo, and then are slowly reduced as the Reserve's ownership is diminished. Further, the conditions provide for access to information at both the Reserve and PGE. Finally, the Stipulation provides access to the board and senior management for customer groups, so that their concerns can be heard. This provides local constituents direct access to the PGE board.

In conclusion, the increased access to the board and ring fencing provided in the stipulation, at a minimum, ensure no degradation of local control while adding increased access to PGE's board and Senior Management for customer groups.

<u>Stock Issuance Issues</u>

Q. DOES THE CITY OF PORTLAND RAISE ANY ISSUES REGARDING THE ISSUANCE OF NEW SHARES OF PGE STOCK?

A. Yes. The City claims that PGE has failed to demonstrate that the requirements of ORS 757.410 *et seq.* have been met. See City's Objections to Approval of Application with Stipulated Conditions, page 3, lines 8-17 (City Objections).

Q. DO YOU AGREE?

A. No. ORS 757.415 specifies lawful "use of proceeds" for new issuances of stocks. As noted in the Application, the Commission may exempt the re-issuance of PGE stock from application of ORS 757.415 if it finds that application of that statute is not required by the public interest. PGE's Application at 2 n 5. Here, the public interest does not require application of ORS 757.415 for at least two reasons.

First, there are no "new" proceeds from the stock issuance because it is simply replacing the existing stock. *See* PGE's Application at 2. Because the stock issuance is not creating new proceeds, ORS 757.415 is not a good fit for the proposed transaction.

Second, notwithstanding the fact that there are no "new proceeds," the proposed transaction is so unique that the Commission's review of it should not be confined by a statute that governs use of stock issued in the ordinary course of utility business. In other words, the public interest requires that the Commission judge the stock re-issuance on its merits, not by determining whether it fits within one of six specific purposes for the use of proceeds. The Legislature created 757.412 to apply in these circumstances.

Q. WHAT IS THE BENEFIT OF REPLACING THE OLD STOCK WITH NEW PGE STOCK?

A. Enron benefits because the new PGE stock is exempt from section 5 of the Securities Act of 1933. In other words, Enron does not need to make additional filings with the SEC and may avoid taking new liabilities.

Q. WILL CUSTOMERS BE HARMED BY THE ISSUANCE OF NEW PGE STOCK?

A. No. The issuance of new PGE stock allows this transaction to move forward with the protections and benefits embodied in the Stipulation. Even if the issuance of the new PGE stock caused an increased cost or liability for PGE, customers would be protected by Conditions 4 and 6 from the Stipulation. Condition 4 ensures customers will not pay for any costs associated with the new stock issuance and Condition 6 ensures that PGE's customers will not bear any costs associated with either Enron's ownership or the Reserve holding 25 percent or more of the issued and outstanding stock.

Q. WILL SHAREHOLDERS BE HARMED BY THE ISSUANCE OF NEW PGE STOCK?

A. No. The current creditors of Enron are the same creditors who will initially become shareholders. Choosing the number of shares to replace the current shares basically provides the creditors with 20 shares of $15 stock rather than 15 shares of $20 stock. In the end, it is the same amount of value. Further, any shares that are sold into the market will be sold at a market price, which presumably will appropriately reflect the value of the stock.

<u>Dividend-Related Issues</u>

Q. DOES THE CITY OF PORTLAND RAISE ANY ISSUES RELATED TO DIVIDENDS PGE MAY ISSUE AFTER THE INITIAL DISTRIBUTION OF NEW STOCK HAS BEEN MADE?

A. Yes. First, the City claims that Stipulation Condition 8 has no value. Specifically, the City claims that the Condition does not protect against short-term financial gaming. See City's Objections, page 12, line 24 through page 13, line 2. As a remedy, the City proposes that the "Commission [] have authorization over dividend and other cash distributions for the immediate future. Commission approval of proposed dividend payments prior to their being declared by the PGE Board would provide protection and benefit to ratepayers." COB/100, Cuthbert/23, lines 1-4.

Q. DO YOU AGREE WITH THE CITY'S ASSESSMENT OF CONDITION 8 AND THE CITY'S REMEDY?

A. No. Condition 8 helps ensure that the Commission is made aware of the dividends being paid in a timely manner. The protections against short-term financial gaming come in the form of ring fencing provisions and restrictions on dividends embodied in the Stipulation. For instance, PGE cannot make a dividend to Enron if it would reasonably be expected to reduce PGE's credit rating below BBB+.

Q. ARE THERE OTHER DIVIDEND-RELATED ISSUES RAISED BY THE CITY THAT YOU WISH TO RESPOND TO?

A. Yes. The City concludes that Enron failed to pay PGE $73 million. *See* City's Objections, page 15, lines 4-6.

Q. WHY IS THIS A DIVIDEND-RELATED ISSUE?

A. This is a dividend-related issue because, under the current conditions imposed in Order 97-196, Enron could have "paid" PGE $73 million and simultaneously required PGE to dividend $73 million to Enron. In other words, this would be a wash transaction.

Q. DOES THAT MEAN THAT THE REQUIREMENT THAT ENRON PAY PGE HAD NO VALUE?

A. No. In the event PGE had insufficient equity to meet the 48 percent requirement, Enron would not have been able to perform the "wash transaction" I just discussed.

Q. SHOULD THE COMMISSION REQUIRE ENRON TO PAY $73 MILLION AS A CONDITION OF THIS TRANSACTION?

A. No. Given PGE's current capital structure, Enron would be able to simply require PGE to give Enron back, through a dividend, the money that Enron paid (owes) to PGE. To require this transaction would not provide any benefits or protections to PGE's customers and is unnecessary. Further, customers have already received the full benefit of the Enron rate credit through the UM 989 settlement.

Q. ARE THERE OTHER DIVIDEND-RELATED ISSUES RAISED BY THE CITY THAT YOU WISH TO RESPOND TO?

A. Yes. The City claims the $40 million set aside agreed to by Enron may not be sufficient to cover potential liabilities. See City Objections, page 16, lines 5-6.

Q. HOW DO YOU RESPOND?

A. It is true that the exact dollar amount of the liabilities PGE faces is unknown. However, the $40 million is intended to be an “extra” cushion and augments Stipulation Conditions 5 and 11. In the event PGE faced liabilities that forced it below 48 percent common equity, it would not be able to declare dividends until it was above the 48 percent floor. In other words, there would be a dividend freeze until PGE’s capital structure met the requirements of Condition 5. Further, in concert with Conditions 6 and 9, customers will be insulated from any impacts of Enron-related liabilities.

Conclusion

Q. WHAT CONCLUSIONS HAVE YOU REACHED AFTER REVIEWING MR. CUTHBERT’S TESTIMONY AND THE CITY’S OBJECTIONS?

A. The Stipulation provides net benefits even in light of the City’s Objections and Mr. Cuthbert’s concerns. Further, Mr. Cuthbert’s rate credit proposal is not necessary to conclude the application provides a net benefit to customers.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

CASE: UF 4218/UM 1206
WITNESS: Bryan Conway

PUBLIC UTILITY COMMISSION OF OREGON

STAFF EXHIBIT 101

Witness Qualifications Statement

September 28, 2005

WITNESS QUALIFICATION STATEMENT

NAME:	Bryan A. Conway
EMPLOYER:	Public Utility Commission of Oregon
TITLE:	Program Manager, Economic & Policy Analysis Section
ADDRESS:	550 Capitol Street NE Suite 215, Salem, Oregon 97310.
EDUCATION:	B.S. University of Oregon, Eugene, Oregon Major: Economics; 1991 M.S. Oregon State University, Corvallis, Oregon Major: Economics; 1994 In addition, I have completed all of the required and elective coursework for a Ph.D. in economics from Oregon State University. My fields of study were Industrial Organization and Applied Econometrics.
EXPERIENCE:	Starting in October 1998, I have been employed by the Public Utility Commission of Oregon. I am currently the Program Manager of the Economic & Policy Analysis Section. My responsibilities include leading research and providing technical support on a wide range of policy issues for electric, telecommunications, and gas utilities. I have testified before the Commission on policy and technical issues in UG 132, UE 115, UE 116, UE 165, UE 88 and have been the Summary Staff Witness in UP 158, UP 168, UP 165/170, UX 27, UX 28, UM 967, UM 1041, UM 1045, and UM 1121. From December 1994 to October 1998, I worked for the Oregon Employment Department as a Research Analyst in their Research Section. Duties included leading research projects on various policy issues involving labor economics and information systems.
OTHER EXPERIENCE:	I am currently a faculty member of the University of Phoenix teaching graduate and undergraduate economics courses. From January 1998 through September 2000, I was a part time instructor at Linn-Benton Community College teaching principles of economics. From July 1992 through June 1994, I was a graduate teaching assistant at Oregon State University teaching introductory principles of economics.

CERTIFICATE OF SERVICE

I certify that on September 28, 2005, I served the foregoing upon the parties hereto by sending a true, exact and full copy by regular mail, postage prepaid or by shuttle mail and by electronic mail to:

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