

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 13, 2006**

REGULAR X CONSENT EFFECTIVE DATE N/A

DATE: June 9, 2006

TO: Public Utility Commission

FROM: Bryan Conway *BAC*

THROUGH: Lee Sparling *MS* and Marc Hellman *MH*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: Request to open an investigation into Harbinger's ownership of more than five percent of PGE's common stock and for the Commission to issue an order requiring Harbinger to file an ORS 757.511 application by July 28, 2006.

STAFF RECOMMENDATION:

Staff moves the Commission to: (1) open an investigation under ORS 756.515, (2) accept the information contained in staff's public meeting memo as the results of the investigation, (3) close the investigation and (4) issue an order compelling Harbinger to submit a filing pursuant to ORS 757.511 no later than July 28, 2006. Such filing should be due by July 28, 2006. As further explained in this memorandum, Staff's recommendation is based upon the acquisition by Harbinger Capital Partners Master Fund I, Ltd. (Harbinger) of 7.4 percent of the voting securities of Portland General Electric Company stock requires an application under ORS 757.511.

DISCUSSION:

On April 13, 2006, Harbinger filed a form SC 13G¹ with the U.S. Securities and Exchange Commission (SEC) alerting the SEC that Harbinger had acquired greater than 5 percent of PGE's stock. The filing shows that Harbinger had acquired 4.575 million shares of PGE's stock. On May 4, 2006, Harbinger filed a form SC 13G/A which amended its prior filing. The May 4, 2006, filing stated that Harbinger had inadvertently not included a purchase of 50,000 shares of PGE stock on April 6, 2006. The total number of shares owned by Harbinger currently is 4.625 million, or 7.4% of the

¹ Other names reported in the filing include Harbinger Capital Partners Offshore Manager, L.L.C. (Delaware), HMC Investors, L.L.C. (Delaware), Harbert Management Corporation (Delaware), Philip Falcone (USA), Raymond J. Harbert (USA), and Michael D. Luce (USA). Harbinger is organized in the Cayman Islands and filings are sent c/o International Fund Services (Ireland) Limited. Joel B. Piassick signed for each named company.

outstanding shares. Besides the bankruptcy reserve, Harbinger represents the largest shareholder. Besides the Enron Disputed Claims Reserve (Reserve), Harbinger represents PGE's largest shareholder. Harbinger owns 16.6% of the shares that have been dispersed by the Reserve.

On April 14, 2006, Assistant Attorney General Paul Graham sent a letter to Harbinger stating, "Harbinger must file an application with the Commission because, as a result of the acquisition, it has become an affiliated interest of PGE under ORS 757.015. The latter statute makes Harbinger an affiliated interest because Harbinger owns more than 5 percent of the voting securities of the utility. And because Harbinger is now an affiliated interest, ORS 757.511 requires an application to the Commission." The letter is attached as attachment A.

On April 21, 2006, Mr. Ivan Gold, representing Harbinger, sent a letter to Mr. Graham stating that Harbinger did not believe that it had the power to exercise any substantial influence over PGE. The letter is attached as attachment B.

On May 4, 2006, Mr. Ivan Gold, representing Harbinger, met with OPUC Staff, ICNU, CUB, PGE, and Mr. Graham to further discuss the requirements of Oregon utility law as it may pertain to Harbinger.

On May 19, 2006, Harbinger sent Mr. Graham a letter and asserted that it is not subject to Commission jurisdiction and declined to file for a declaratory ruling under ORS 756.450. The letter is attached as attachment C.

On June 8, 2006, Mr. Graham responded to Harbinger's letter stating that Staff intends "to open an investigation, under ORS 756.515, into whether Harbinger's acquisition of 7.4% of the voting securities of Portland General Electric Company stock requires an application under ORS 757.511." The letter is attached as attachment D.

On June 8, 2006, the Citizens' Utility Board (CUB) filed with the Commission a complaint and request for show cause order or for investigation of Harbinger Capital Partner Funds (violation of ORS 757.511) under ORS 757.500.

In its filing CUB states, "[t]he statutory test is the power to exercise influence, as defined by 5% ownership, not the intent to exercise influence. Given its ownership of 7.4% of PGE voting securities, Harbinger has no choice but to file an application under ORS 757.511. If Harbinger wants to make a binding statement that it will not exercise influence, it may attempt to convince the Commission and the parties of that intent in its ORS 757.511 filing."

Staff interprets ORS 757.511 as a two-pronged test. The test requires both “the power to exercise substantial influence” and at least a 5% ownership. Since Harbinger represents the largest shareholder, besides the bankruptcy reserve, Staff believes there is good cause to open an investigation under ORS 756.515, as to whether Harbinger has violated ORS 757.511. This memo summarizes the information gathered by Staff as well as the activities occurring to date regarding Harbinger’s ownership of PGE stock.

The Department of Justice has advised that the Commission has several procedural options available under ORS 756.515. First, the Commission could decide that the information contained in Staff’s public meeting memo is not complete. Under this scenario, the Commission could open an investigation at today’s public meeting and request Staff to report back at a future public meeting. For convenience, this is referred to as the “First Option.”

Second, the Commission could conclude Staff’s public meeting memo is complete and does not require any further investigatory activities. Under this second scenario, the Commission could then conclude either (a) the public meeting memo does not indicate a violation of ORS 757.511 and terminate any further investigation, or (b) open an investigation at today’s public meeting, accept the information contained in Staff’s public meeting memo, and then close the investigation, again at today’s public meeting. For convenience, this is referred to as the “Second Option.”

Assuming the Commission proceeds with part (b) of the Second Option, there are additional procedural choices. The Commission may issue a statement to Harbinger setting the time and place for a hearing as provided in ORS 756.512. This process would require Harbinger to respond to the Commission’s statement and to present its case at a hearing. See generally ORS 756.515(2).

Or, again assuming the Commission proceeds with part (b) of the Second Option, the Commission may decide today to issue an Order based on Staff’s investigation. See ORS 756.515(4). This Order may contain any findings and requirements as the Commission deems justified by the results of the investigation.

Staff’s recommendation today is the Commission proceed with part (b) of the Second Option and issue an order compelling Harbinger to submit an application pursuant to ORS 757.511. The Order would further require Harbinger to submit its filing no later than July 28, 2006. As part of the filing, Harbinger could also request a waiver from ORS 757.511 based on a set of conditions including affidavits to not exercise control or influence similar to those filed in UM 1209.

In February 2006, Staff began a review of entities that possessed substantial ownership interests in the public utilities regulated by the Public Utility Commission. Staff sent requests for information on March 14, 2006, to three public utilities for which Staff believed the ownership by certain entities may have increased over the five percent threshold that could require a filing under ORS 757.511. Two institutions, Barclays Bank and American Century Investment Management Inc., were discovered to own greater than five percent of the outstanding common equity of Oregon regulated public utilities.

Staff has not completed its initial review of these companies and has an outstanding request for information to one company. Staff currently intends to bring recommendations regarding these companies to the Commission in the near future.

PROPOSED COMMISSION MOTION:

The Commission: (1) open an investigation, under ORS 756.515, (2) accept the information contained in staff's public meeting memo as the result of the investigation, (3) close the investigation and (4) issue an order compelling Harbinger to file an application pursuant to ORS 757.511 by July 28, 2006.

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 14, 2006

ATTACHMENT A
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Harbinger Capital Partners Master Fund I, Ltd. – Cayman Islands
c/o International Fund Services (Ireland) Limited
Third Floor - Bishop's Square
Redmond's Hill
Dublin 2, Ireland

Philip Falcone
555 Madison Avenue 16th Floor
New York, New York 10022

Harbinger Capital Partners Offshore Manager, LLC – Delaware
HMC Investors, LLC – Delaware
Harbert Management Corporation – Alabama
Raymond J. Harbert – USA
Michael D. Luce - USA
Corporate Headquarters – Legal Counsel
One Riverchase Parkway South
Birmingham, Alabama 35244

Re: Portland General Electric Stock Acquisition

Dear Legal Counsel,

By way of introduction, I am an Assistant Attorney General with the Oregon Department of Justice, where I serve as chief counsel to the Public Utility Commission of Oregon.

I am writing because, according to a Securities and Exchange Commission filing, Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Offshore Manager, LLC., HMC Investors, LLC, Harbert Management Corporation, Philip Falcone, Raymond J. Harbert, and Michael D. Luce (collectively Harbinger) have acquired 4.5 million shares of Portland General Electric (PGE). That number of shares makes up about 7.3 percent of the total of 62.5 million shares of the utility.

Under ORS 757.511, one of the statutes my client administers, Harbinger must file an application with the Commission because, as a result of the acquisition, it has become an affiliated interest of PGE under ORS 757.015. The latter statute makes Harbinger an affiliated interest because Harbinger owns more than 5 percent of the voting securities of the utility. And because Harbinger is now an affiliated interest, ORS 757.511 requires an application to the Commission. If Harbinger intends "to exercise any substantial influence over the policies and actions of a public utility" such as PGE, its application must set out the conditions for the exercise of that substantial influence. ORS 757.511. If it simply wishes to hold the stock as an investor and not take any action to exercise substantial influence, then its application must make a commitment to that effect. (I note that the SEC filing cites Rule 13 d-1 (c), so it appears Harbinger's intent is not to exercise substantial influence.)

In recent years, the Commission has decided a number of cases involving applications under ORS 757.511. Assuming that Harbinger does not wish to divest itself of enough shares to fall below the 5 percent benchmark set out in the law, then I will be happy to provide the orders from these cases to you, as well as to consult with you about the requirements for an application.

I look forward to hearing from you.

Sincerely,

Paul A. Graham
Attorney-in-Charge
Regulated Utility & Business Section

PAG:na/GENP8238

VIA CERTIFIED MAIL to Harbert Management Corporation, Headquarters, Alabama
Certified Mail #: 7000 0600 0028 4683 6914



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April 21, 2006

Paul A. Graham, Esq.
Attorney-in-Charge
Regulated Utility & Business Section
General Counsel Division
State of Oregon Department of Justice
1162 Court Street, N.E.
Salem, OR 97301-4096

Re: **Harbinger Portland General Electric Stock Acquisition**

Dear Mr. Graham, *Paul*

Thank you for meeting with us today. This letter confirms that we represent Harbinger Capital Partners Master Fund I, Ltd. (the "Fund"), Harbinger Capital Partners Offshore Fund I, Ltd. (the "Ltd. Fund"), and Harbinger Capital Partners Fund I, L.P. (the "LP Fund"). We refer to the Fund, the Ltd. Fund, and the LP Fund collectively as "Harbinger."

The Fund owns 4,750,000 shares of the common stock (the "Shares") of Portland General Electric Company ("PGE"). The Ltd. Fund and the LP Fund together own the Fund, and each owns more than 5 percent of the Fund.¹ The Fund received a letter from your office dated April 14, 2006, regarding its acquisition of the Shares.

The Fund's acquisition of the Shares took place over the course of several weeks in late March and early April. Upon its acquisition of more than 5% of PGE stock, the fund, as required by federal securities laws, filed a Schedule 13G reporting

¹ None of the other entities addressed in your letter owns 5 percent or more of the Fund.

Paul A. Graham, Esq.
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the acquisition with the Securities and Exchange Commission ("SEC"). We attach a copy of the Fund's April 13, 2006 SEC 13G filing in which the Fund stated, among other things:


"...[the Shares] were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of [PGE] and were not acquired and are not held in connection with or as a participant in any transaction having such purpose or effect."

At present, in light of the SEC filing, the controlling interest of PGE's 53 percent shareholder (which is not affiliated with Harbinger in any way), and PGE's corporate structure, Harbinger does not have the power to exercise any substantial influence over PGE's policies or actions. ORS 757.511 applies only to persons which acquire such power.

Harbinger will provide the Commission copies of any other filings required by SEC rules regarding its investment in PGE. Harbinger would notify the Commission if its holdings were to change in a manner to which ORS 757.511 refers. When and if - ORS 757.511 requires, Harbinger would file the required application.

If you have questions, or would like to discuss this matter further, please contact me or my partner, Larry Reichman.

Sincerely yours,


Ivan Gold

ILG:ilg

Encl.: Harbinger SEC 13G filing



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May 19, 2006

BY ELECTRONIC DELIVERY & U.S. MAIL

Paul A. Graham, Esq.
Attorney-in-Charge
Regulated Utility & Business Section,
General Counsel Division
State of Oregon Department of Justice
1162 Court Street, N.E.
Salem, OR 97301-4096

Re: Harbinger – Portland General Electric Stock Acquisition

Dear Mr. Graham,

I am writing in response to your May 9, 2006 letter. It suggested that our clients request a Declaratory Ruling under ORS 756.450 in which the Commission would determine whether Harbinger need apply under ORS 757.511 to avoid a proceeding under ORS 756.515. We think such an undertaking would duplicate the assurances provided you to date. Your letter suggests that a request for a declaratory ruling would give Harbinger an opportunity to "set out the facts;" however, we already have done so, and do so again here.

In Order No. 01-778, the Commission characterized ORS 757.511 as "the merger statute" which applies to "mergers" or "acquisitions" of utilities. Harbinger has no intent to merge with or acquire Portland General Electric (PGE), or to use its ownership of PGE shares to accomplish a merger or acquisition. Why does the Commission seek to investigate passive minority investors under Oregon's "merger statute"?

To our knowledge, there is no allegation that Harbinger has attempted to exercise, or could exercise, influence or control over PGE. Harbinger already has certified that it does not intend to merge with or acquire PGE. We do not understand why a passive investor's arm's-length acquisition of 7.4% of PGE's stock, fully disclosed to the PUC and the Securities and Exchange Commission, with disclaimer of any intent to change the control of PGE, even raises an issue under ORS 757.511.

In particular, we note that the Commission has not previously applied the statute when similar facts were present. The Commission has chosen to apply the statute only to persons

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who actually had power to exercise substantial influence over, or sought to acquire, a utility. In the past, the Commission has not instituted proceedings, nor required other investors to apply to the Commission solely because they acquired more than 5% of the stock of an Oregon public utility and filed a SEC Schedule 13G.

For example, Barclay's Global Investors, NA acquired more than 5% of Cascade Natural Gas Corporation, Avista Utilities Corporation and Northwest Natural Gas, thereby becoming an affiliated interest with three Oregon utilities. To our knowledge, the Commission never asked Barclay's to request a declaratory ruling, nor to make an application under the statute. Similarly, American Century Companies, Inc. acquired 8.4% of Idacorp, thereby becoming an affiliated interest of another Oregon utility. To our knowledge, the Commission never told American Century to make an application under the statute. We suggest the Commission should treat investors in similar positions the same, and that to do otherwise in this case raises significant Constitutional issues.

ORS 757.511 does not require an application or investigation of every affiliated interest with a public utility. An explicit statutory precondition is that the affiliated interest must have the "power to exercise any substantial influence over" the public utility. Based on PGE's articles of incorporation and bylaws read in conjunction with Oregon corporation law, Harbinger does not have that power.

Harbinger is not part of any group of shareholders of PGE. There are no shareholder actions that can be "forced" by a 7.4% holder, nor are there any actions that can be "blocked" by a 7.4% holder under these charter documents and laws. Furthermore, because a single stockholder (the Enron Disputed Claim Reserve Trust) owns and controls more than 50% of the outstanding shares of PGE, there is no reasonable way that Harbinger could exercise "any substantial influence" over PGE.

To be clear that no special power arises from Harbinger's ownership of such a small percentage of PGE's shares: Harbinger cannot cause the hiring or firing of any PGE officer or employee; elect or remove a PGE director; call a meeting of PGE shareholders; prevent or cause the taking of any action required to be approved by PGE shareholders; or veto any decision by PGE's management, its Board of Directors or its shareholders.

Although we do not think you have suggested this, we want to be clear that Harbinger does not disclaim the rights it has as a shareholder. As a PGE shareholder, Harbinger expects that PGE's management and board will act in accordance with law and their fiduciary obligations to every shareholder, irrespective of the number of shares held.

We understand the scope of the Commission's authority, jurisdiction and purpose. However, we respectfully suggest the language of the applicable statutes, the Commission's previous lack of inquiry in similar circumstances, and our clients' actions to date indicate they

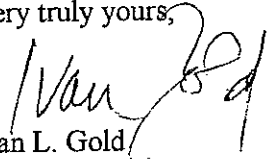
Paul A. Graham, Esq.
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are not required to petition the Commission for authority they do not seek. Nor should they be required to seek a Commission declaratory ruling to avoid investigation or complaint.

Our clients and we want to resolve this matter productively and amicably. If you think it would be useful, representatives of our client would come to Oregon to meet with you and members of the Commission staff.

As always I would be pleased to discuss this with you at your convenience.

Very truly yours,


Ivan L. Gold

ILG:mka

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

ATTACHMENT D
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June 8, 2006

Ivan Gold
PERKINS COIE LLP
1120 NW Couch St. – 10th Floor
Portland OR 97209-4128

Re: PGE Stock Acquisition - Harbinger

Dear Mr. Gold,

I am writing in response to your letter of May 19, 2006.

The Commission intends to hear a motion from its staff at the public meeting of Tuesday, July 11, 2006, to open an investigation, under ORS 756.515, into whether Harbinger's acquisition of 7.4% of the voting securities of Portland General Electric Company stock requires an application under ORS 757.511.

Typically, staff prepares its motions and puts them on the PUC's web site before close of business on the Thursday before a public meeting. Therefore, you will have time to see what staff is recommending. If staff completes its motion before posting time, it is willing, as a courtesy, to provide a copy sooner.

Your client may choose to make its own filing in advance of the public meeting. I assume that your filing would be a request for a declaration, under ORS 756.450, that Harbinger does not need to submit an ORS 757.511 application because it did not "acquire the power to exercise any substantial influence over the policies and actions of" Portland General.

Your letter points out that other companies may also have acquired 5% or more of the voting securities in an energy utility and not been treated in the same way as your client. I have shared your letter with staff, and it is determining whether there are any other companies that should either file an ORS 757.511 application or a request for a declaration that one is not necessary.

You may rest assured that the PUC will treat Harbinger the same as other companies that have acquired 5% or more of the voting securities in an energy utility.

Sincerely,

Paul A. Graham
Attorney-in-Charge
Regulated Utility & Business Section

cc: via electronic mail only

Ray Baum, PUC

Lee Beyer, PUC

John Savage, PUC

Lee Sparling, PUC

Marc Hellman, PUC

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Matthew Perkins, Davison Van Cleve