

**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 )

RULING

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) )

**DISPOSITION: HEARING AND ORAL ARGUMENT CANCELED;  
REQUEST FOR OFFICIAL NOTICE GRANTED**

On September 29, 2005, a telephone conference was held during which the parties were asked whether there would be any cross-examination for hearing, or requests for oral argument. No party made a request for either at that time. On September 30, 2005, a memorandum was sent to all parties in the case stating that the deadline for a request for the hearing and oral argument was October 7, 2005. No request was received by that date, so the hearing and oral argument are both canceled. Parties that submitted testimony should submit supporting affidavits by October 17, 2005.

On August 10, 2005, Portland General Electric (“PGE”) and Stephen Forbes Cooper, LLC, as Disbursing Agent, on behalf of the Reserve for Disputed Claims (“SFC”), requested that the Commission take official notice in these dockets of the following documents:

Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated July 2, 2004, including the Plan Supplement and all schedules and exhibits thereto (“Plan”) (*In re: Enron Corp., et al.*, Bankr. S.D.N.Y., Case No. 01-16034). The Plan was confirmed by the United States Bankruptcy Court for the Southern District of New York on July 15, 2004.

On September 21, 2005, PGE and SFC submitted Points and Authorities in support of the Request for Official Notice of the Plan. In their request, PGE and SFC ask for official notice only of the existence of the Plan, not of the truth of statements made in the document.

OAR 860-014-0050(1)(a) allows the Commission or Administrative Law Judge to take official notice of “all matters of which the courts of the State of Oregon take judicial notice.” ORS 40.065, known as Oregon Evidence Code 201(b), governs judicial notice of adjudicative facts, and states:

A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

- (1) Generally known within the territorial jurisdiction of the trial court; or
- (2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Oregon courts routinely take judicial notice of the existence of public records. *Tiner v. Clements*, 173 Or App 168, 169 (2001); *US National Bank v. Heggemeier*, 106 Or App 693, 695 n2 (1991). In addition, Oregon courts have addressed the distinction between recognizing the existence of a court record and recognizing the veracity of the contents of that record:

[T]here is a distinction between judicially noticing the existence of a court record and noticing the truth of the contents of that record, . . . Even under the federal rules, *although it may be appropriate to judicially notice the former, it is inappropriate to notice the latter.*

*Arlington Ed. Assn. v. Arlington Sch. Dist. No. 3*, 177 Or App 658, 665 (2001), *rev den* 333 Or 399 (2002), *quoting Thompson v. Telephone & Date Systems, Inc.*, 130 Or App 302, *adhered to as mod on recons* 132 Or App 103 (1994) (emphasis in original).

The Plan is a public record, the existence of which can be easily and accurately determined by checking the records of the United States Bankruptcy Court for

the Southern District of New York. Further, in their request, PGE and SFC asked for official notice of the existence of the Plan, but not of the truth of the contents of the document. Under OAR 860-014-0050(1), this is the kind of document of which official notice may be taken. The request to take official notice of the existence of the Plan is granted.

With the inclusion of the Plan and after receipt of the supporting affidavits for submitted testimony, the record will be closed.

Dated at Salem, Oregon, this 13th day of October, 2005.

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Christina M. Smith  
Administrative Law Judge