

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 192

In the Matter of the Application for Approval of)
Conduit, Pole Attachment, and Optic Fiber) ORDER
Agreements between PORTLAND GENERAL)
ELECTRIC COMPANY and PORTLAND)
GENERAL DISTRIBUTION, LLC, an Affiliated)
Interest.)

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS
AND REPORTING REQUIREMENTS**

On October 9, 2001, Portland General Electric Company (PGE) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-027-0040 and 860-027-0041, requesting approval to enter into Conduit, Pole Attachment, and Optic Fiber Exchange of Rights Agreements with Portland General Distribution, LLC. (PGD), an Affiliated Interest.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on November 20, 2001, the Commission adopted Staff's recommendation memo with noted changes to the Proposed Commission Motion.¹ Staff's recommendation report is attached as Appendix A, and incorporated by reference.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" as anyone providing heat, light, water or power service to the public in Oregon. The Company is a public utility subject to the Commission's jurisdiction.

¹ Added language to Proposed Commission Motion on Page 2 *as typed in italic* to Staff's November 9, 2001 Public Meeting Memo, to read as follows:

Portland General Electric's UI 192 application to enter into an affiliated interest transaction with Portland General Distribution, LLC. *and the request for waiver is approved, including the ordering conditions stated in the Staff recommendation.*

Affiliation

An affiliated interest relationship exists under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, with certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Portland General Electric Company for authority to engage in Conduit, Pole Attachment, and Optic Fiber Exchange of Rights Agreements with Portland General Distribution, LLC., an Affiliated Interest, is granted, subject to the conditions and reporting requirements, as further stated in Appendix A.¹

Made, entered, and effective _____.

BY THE COMMISSION:

Rick Willis
Executive Director

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

¹ See fn. on page 1 of order.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: NOVEMBER 20, 2001**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____

DATE: November 9, 2001

TO: Phil Nyegaard through Marc Hellman and Mike Myers

FROM: Tom Riordan

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UI 192) Application to enter into Conduit, Pole Attachment, and Optic Fiber Exchange of Rights Agreements with Portland General Distribution, LLC. (PGD), an Affiliated Interest.

STAFF RECOMMENDATION:

The Commission should approve Portland General Electric (PGE) Application to Enter Into Conduit, Pole Attachment, and Optic Fiber Exchange of Rights Agreements between Portland General Electric and Portland General Distribution, LLC (PGD), an affiliated interest, and include the following conditions:

1. PGE shall provide the Commission access to all books of account, as well as documents, data, and records of PGE and PGD's affiliated interests that pertain to this transaction.
2. The Commission reserves the right to review for reasonableness all financial aspect of this transaction in any rate proceeding or alternative form of regulation.
3. PGE shall notify the Commission in advance of any substantive changes to the agreements, including any material change in price. Any such change shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. PGE shall file, as soon as available, copies of the final journal entries recording the transaction.

Also, the Commission should grant the request for waiver of the requirements of OAR 860-027-0040 and OAR 860-027-0041.

DISCUSSION:

PGE filed this application on October 9, 2001, pursuant to ORS 757.495 and OAR 860-027-0040 and OAR 860-027-0041 (for affiliated interest transactions). Additionally, the company requests a

waiver of the applications requirements of OAR 860-027-0040 and OAR 860-027-0041, inasmuch as the book value of the conduit and fibers, covered by the application, is less than \$60,000 which is less than 0.006 percent of PGE's calendar 2000 utility operating revenues. Also, since this is the third affiliate transaction between these parties (UI 191/UP 188, UP 189, and this docket), it is essential to aggregate these transactions to properly determine if the financial threshold for qualifying for a waiver of the application requirements noted above has been met. In this case, the company qualifies for the waiver because the three transactions total approximately \$258,700 which is substantially less than the maximum threshold of 0.1 percent of the prior calendar year operating revenue or \$1,082,500, in this instance.

The company seeks a Commission order approving an exchange of rights consisting of: 1) a property lease from PGE to PGD for space in 1,700 feet of conduit at \$4/ft , for an estimated annual cost of \$6,800; and 2) an indefeasible right of use (IRU) from PGD of 12 optic fibers from the World Trade Center (WTC) to PGE's Portland Service Center (PSC). These fibers will provide PGE with enhanced communications capabilities in support of its utility operations. Also, PGD will maintain PGE's 12 optic fibers at no cost to PGE.

PGE represents that it plans to create a fiber optic ring between its WTC, PSC, and the Tualatin Customer Center (TCC). This ring will provide PGE with an automated rerouting communications capability with significantly greater reliability plus voice and data transfer capability than it currently has. The ring will also enhance PGE's disaster recovery system, because of increased data transfer capabilities to backup sites.

With PGD'S participation and provision of \$39,800 in capital costs, PGE's total capital costs for the WTC to PSC segment will be \$99,700 which is \$20,000 lower than it would have been without PGD's participation. Therefore, PGE's s customers will benefit from this transaction because the company will have 12 optic fibers with an market rental value of \$87,900. However, since PGE will contribute 71.5 percent of the \$139,500 capital costs for the WTC to PSC loop segment, only \$25,100 or 28.5 percent is considered the pro rata share of PGC's fiber contribution to the exchange of rights.

Lastly, customers will benefit from PGD absorbing the \$10,000 annual maintenance of PGE's 12 fibers. Over the 20-year term of the IRU, this maintenance arrangement has a present value of \$117,800. Finally, with the completion of this project, PGE will avoid \$13,500 in annual telecommunications lease payments for the company's current voice and data transfer capabilities.

In summary then, PGE's customers will benefit by receiving \$25,100 of valuable fiber optic usage for free; save \$117,800 in maintenance expense over 10 years; and avoid annual telecommunications expense of \$13, 500, by entering into this arrangement with PGD, its affiliated interest.

I have investigated the application and conclude that: 1) the agreements contain no unusual or restrictive terms that would harm customers, 2) the Company has met the requirements of the Commission's transfer pricing policy for affiliate transactions, 3) customers are not harmed by this transaction because PGE is charging a fair and reasonable price for the asset being leased to PGD, 4) the Commission, with

the adoption of proposed ordering condition No. 1 will have the necessary records access to both parties books and records, and 5) PGE's application clearly demonstrates that due to the nominal dollars involved in this transaction, the letter and spirit of OAR 860-027-0043 have been met for the request for waiver of filing requirements. Therefore, the application appears fair and reasonable and not contrary to the public interest.

PROPOSED COMMISSION MOTION:

Portland General Electric's UI 192 application to enter into an affiliated interest transaction with Portland General Distribution, LLC is approved.

UI 192