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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 195

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	ORDER
COMPANY)	
)	
Application for Approval of a Secured Loan to)	
PORTLAND ENERGY SOLUTIONS)	
COMPANY, LLC.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On January 30, 2002, 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, requesting approval of a secured loan to Portland Energy Solution Company, LLC (PES). On February 27, 2002, the Industrial Customers of Northwest Utilities filed a petition to intervene, which was granted. On March 11, 2002, PGE filed a revised Loan Agreement with the Commission. All parties involved signed a stipulation in order to resolve PGE's application.

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 April 1, 2002, the Commission adopted Staff's recommendation with conditions. Staff's recommendation report, including the stipulation, is attached as Appendix A¹, and is incorporated by reference.

OPINION

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

OAR 860-027-0040 specifies information regarding applications for approval of transactions between affiliated interests.

¹ To correct two (2) typographical errors referenced in Staff's April 1, 2002 Public Meeting Memo as follows:
 On page 2, first paragraph, change January 29, 2002 to *January 30, 2002*
 On page 2, first paragraph, change March 12, 2001 to *March 12, 2002*

Under OAR 860-014-0085 any party may file written objections to a stipulation within 20 days. Since all parties involved signed the stipulation, the time period was modified as allowed under OAR 860-014-0085.

ORDER

IT IS ORDERED that the application of Portland General Electric Company, to enter into an affiliated interest transaction with Portland Energy Solutions Company, LLC, is granted, subject to the stipulation, conditions and reporting requirements, as further stated in Appendix A.

Made, entered, and effective _____.

BY THE COMMISSION:

Becky L. Beier
Commission Secretary

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.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: APRIL 1, 2002**

REGULAR CONSENT EFFECTIVE DATE _____

DATE: March 26, 2002

TO: John Savage through Marc Hellman and Bryan Conway

FROM: Tom Riordan and Thomas D. Morgan

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UI 195) Application for approval of a secured loan to Portland Energy Solutions, LLC.

STAFF RECOMMENDATION:

The Commission should approve Portland General Electric's (PGE or Company) application to make a secured loan to Portland Energy Solutions Company, LLC (PES), a subsidiary of Portland General Holdings II (PGH II) and adopt the stipulation (Stipulation) entered into by ICNU, PGE, and Staff (the Parties). The Stipulation sets out the terms and conditions necessary to meet the Commission's standards for affiliated interest transactions. Specifically, the Stipulation sets forth the conditions under which the Commission can determine the transaction is not contrary to the public interest. The conditions are as follows:

1. The interest rate to be charged by PGE to PES is 16%.
2. The loan is limited to \$2 million with a term of one (1) year. If PGE is requested to loan additional funds to PES, PGE will file a new affiliated interest application with the Commission.
3. PGE agrees to hold customers harmless and remove the effects of any costs associated with the loan to PES from rates or any regulatory reporting requirement. PGE shall provide the Commission complete, open access to the full books, documents, data, and records of PGH, PGH II and PES, regarding this transaction. Lastly, PGE will place in a deferred account for later dispersal to customers the amount in excess of the principal and interest at PGE's authorized rate of return as of April 1, 2002, paid by PES to PGE, on the loan.
4. PGE shall provide the Commission, on or before May 1, 2002, with a detailed explanation and a complete accounting history of the \$28 million current liability owed to PGE on the books of PGH II.

DISCUSSION:

PGE filed this application on January 29, 2002, pursuant to ORS 757.495, OAR 860-027-0040 and OAR 860-027-0041 (for affiliated interest transactions). Additionally, the Company revised the application on March 12, 2001. The Company seeks a Commission order approving a loan, with a term of one year, secured by capital equipment and service contracts.

PGE represents that it is seeking to provide financing assistance to PES, a subsidiary of PGH II, all of which are owned by Enron. The financing is primarily to provide funds for the completion of the initial phase of a district cooling system (DC System) in the Brewery Blocks¹ project (The Project) located in northwest Portland, Oregon. Gerding/Edlen Construction, an independent, incorporated commercial contracting firm is The Project developer. Gerding/Edlen is also leasing back capacity on the DC System from PES via the formation of another limited liability company, Brewery Blocks Investors, LLC. Currently PGE estimates that the initial phase of the DC System is 90% complete. A substantial portion of the loaned funds will be used to complete PES's construction of phase one of the DC System, with the remaining funds used for PES operating expenses.

In its application, PGE states that there is potential for PES to request that PGE loan additional funds for construction of other phases of the DC System if any of the following occur: 1) the final reorganization of Enron, due to its bankruptcy, is not complete within the year; 2) the general erosion in the capacity of Enron to access capital markets does not improve; and, 3) Northwest Natural Gas' purchase of PGE is not consummated. PGE has agreed to file a new application if it seeks to loan additional funds to PES or change any terms of the proposed loan agreement.

Enron's bankruptcy proceeding has complicated the financing of the DC System. PES had planned to use Enron as a counter party for the financing requirements. Without the approval of this application, PES would likely be unable to complete the initial phase of the DC System in the Project and would likely face insolvency. PGE and PES assert that PES has been unable to obtain third party financing for the DC system construction.

¹ The Brewery Blocks, located at the former site of the Blitz-Weinhard Brewery, is a five-block project in the SW section of Portland's vibrant post-industrial neighborhood known as the Pearl District. The Brewery Blocks will provide a transition between the Central Business District and the River District by introducing approximately 1.7 million sq. ft. of urban retail, creative Class A office space, and residential housing in addition to parking. *The total value is expected to be roughly \$200 million. See <http://www.breweryblocks.com/>*

ANALYSIS

The two primary issues facing the Commission are determining the proper risk-adjusted interest rate to apply to the loan and minimizing the potential harm to PGE's customers. The Stipulation provides a hold-harmless provision and sets the interest rate that PGE will charge PES at 16%. Staff informally surveyed the lending market to determine a fair and reasonable market rate of interest for this loan and determined that an interest rate between 15% and 18% is a reasonable surrogate market interest rate. The stipulated interest rate, which includes nearly a 7% interest premium payable to PGE customers, is well above PGE's 9.083% cost of capital. The interest premium is intended to offset the risk a commercial lending entity might attribute to PES as a stand-alone entity in its current financial condition. Also, the interest premium component is included to offset other indeterminable risks associated with this transaction. Lastly, the interest premium may provide a benefit to PGE customers when risks are fully mitigated. Therefore, Staff concludes that the combination of these two conditions protects customers from harm in this transaction.

Based on the Stipulation, Staff concludes the following:

- 1) The loan agreement contains no unusual or restrictive terms that would harm customers;
- 2) PGE has met the requirements of the Commission's transfer pricing policy for affiliate transactions;
- 3) Customers are likely not harmed by this transaction, because PGE is charging a fair and reasonable interest rate;
- 4) The Commission, with the adoption of the Stipulation will have the necessary records access to the parties books and records; and,

Therefore, the application appears fair and reasonable and not contrary to the public interest.

PROPOSED COMMISSION MOTION:

Portland General Electric's UI 195 application to enter into an affiliated interest transaction with Portland Energy Solutions LLC, and the attached Stipulation that includes the four recommended conditions, are approved.

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 195

**In the Matter of the Application of)
PORTLAND GENERAL ELECTRIC)
COMPANY for an Order to Loan to an) STIPULATION
Entity having an Affiliated Interest)
Relation to the Utility.)**

I. INTRODUCTION

This Stipulation is entered into for the purpose of resolving Portland General Electric’s (“PGE”) application to loan funds to Portland Energy Solutions Company, LLC. In January 2001, Portland Energy Solutions Company, LLC (“PES”) began the first phase of a district cooling system located in the “Brewery Blocks” of northwest Portland. The five blocks are located on the site of the former Blitz-Weinhard brewery and are bounded by Burnside, Davis, 13th, and 10th streets. Phase 1 involves the installation of a district cooling plant on one of the buildings plus underground distribution pipes to carry chilled water to the other four blocks in the complex. The district cooling plant consists of a chilled water production plant (three water chillers, two cooling towers, two condenser water pumps, and two chilled water distribution pumps). The chilled and distributed water is then run through coils; fans blow air over the coils to cool the air, which is then circulated throughout the buildings. PES has incurred approximately \$5.5 million of the projected \$6.5 million in construction costs for Phase 1.

On January 29, 2002, PGE filed an application in this docket requesting authorization to loan up to \$2.0 million to PES so it could complete the district cooling project in the Brewery

Blocks of downtown Portland. The loan became necessary because additional funds are unavailable from Enron, PES's parent, due to Enron's bankruptcy proceeding. On February 20, 2002, the Commission issued a modified protective order in the docket. On February 28, 2002, the Industrial Customers of Northwest Utilities' (ICNU) filed a petition to intervene. On March 7, 2002 ICNU's Petition to Intervene was granted.

The parties have had several conference calls during the last month and a half and PGE has answered several Staff inquiries. The parties have reached agreement as to the appropriate conditions for the transaction. The parties submit this Stipulation to the Commission and request that the Commission approve the settlement as presented.

II. BASIC TERMS OF STIPULATION

1. The parties agree that the interest rate for the loan will be 16.0%. This is greater than PGE's 9.083% authorized cost of capital, and takes into account the risk a commercial lending entity might anticipate for PES as a stand-alone company in its current financial situation.
2. The parties agree that the loan to PES will not exceed \$2.0 million and will have a one-year term from approval. If PGE is asked to loan more funds and/or extend the term, PGE will file a new application with the Commission.
3. PGE commits to hold customers harmless from this transaction. PGE will not include any costs in retail rates from its loan to PES, even if the loan is not repaid. PGE further agrees to not incorporate any aspects of this transaction in its regulatory reporting, including earnings tests. PGE agrees to allow Staff to audit its books and records regarding transactions associated with the loan to PES. PGE will place in a deferred account for later dispersal to customers the amount paid by PES to PGE, on account of the loan, which is in excess of the principal and

interest at PGE's authorized rate of return as of April 1, 2002. PGE will make commercially reasonable efforts to collect all funds owed in a timely fashion.

4. PGE shall explain by May 1, 2002 the account of \$28 million titled "Portland General Electric" under the Current Liabilities section of PGH II's Consolidated Balance Sheet dated December 2001 (the "Account"). As part of the explanation, PGE will provide copies to Staff and ICNU of all information, including but not limited to the accounting records and entries, that supports and explains the Account and will also provide a written explanation of how and why (the purpose) the payables were created and how they ended up in their current form and location.

III. OTHER TERMS OF STIPULATION

1. The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements, and documents disclosed in the negotiations of this Stipulation shall not be admissible as evidence in this or any other proceeding.

2. This Stipulation will be offered into the record of this proceeding as evidence pursuant to OAR 860-014-0085. The Parties agree to support this Stipulation throughout this proceeding and in any appeal and recommend that the Commission issue an order adopting its terms.

3. If this Stipulation is challenged by any other party to this proceeding, or if any other party seeks regulatory treatment or a revenue requirement for PGE that departs from the terms of this Stipulation, the Parties to this Stipulation reserve the right to cross-examine witnesses and introduce evidence to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlements embodied in this Stipulation. Notwithstanding this

reservation of rights, the Parties to this Stipulation agree that they will continue to support the Commission's adoption of the terms of this Stipulation.

4. The Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any material portion of this Stipulation or imposes additional material conditions in approving this Stipulation, any Party disadvantaged by that action shall have the rights provided in OAR 860-014-0085 and shall be entitled to seek reconsideration or appeal of the Commission's order.

5. By entering into the Stipulation, no Party will be considered to have approved, admitted or consented to the facts, principles, methods or theories employed by any other party in arriving at the terms of this Stipulation. Parties agree not to use the settlement in this proceeding as a basis for securing or denying approval of any future affiliated interest application. No Party will be considered to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.

6. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

This Stipulation is entered into by each Party on the date entered below.

Dated this _____ day of March, 2002.

PORTLAND GENERAL ELECTRIC COMPANY

By: _____

STAFF OF THE PUBLIC UTILITY COMMISSION OF OREGON

By: _____

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

By: _____

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