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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 209

In the Matter of)
)
 PORTLAND GENERAL ELECTRIC)
)
 Staff Request for Portland General Electric to)
 File for Commission Approval to Transfer)
 Corporate-Owned Life Insurance Asset (COLI))
 to Portland General Holdings Pursuant to)
 ORS 757.495)

ORDER

DISPOSITION: STAFF RECOMMENDATION ADOPTED

In a letter dated September 18, 2002, the Industrial Customers of Northwest Utilities (ICNU) requested that the Public Utility Commission of Oregon (Commission) either open an investigation in this matter or alternatively require Portland General Electric (PGE) to file for approval of the 1999 transfer of Corporate-Owned Life Insurance (COLI) asset to Portland General Holdings (PGH) pursuant to ORS 757.495 or ORS 757.480.

On October 17, 2002, the Commission Staff published its public meeting memorandum recommending approval of the request. Staff recommended the Commission order PGE to file, within 30 days of the public meeting, an application for approval of the transfer of COLI policies to PGH. Staff also recommended that the Commission order PGE to provide Staff, within 45 days of the public meeting, with complete details of any other accounts that created credits on its books and to prepare filings commensurate with the appropriate statutes. Staff's memo describing the history of and rationale for the recommendation is attached as Appendix A.

DISCUSSION

At the public meeting on November 5, 2002, the Commission adopted Staff's recommendation. Staff's recommendation is attached as Appendix A, and incorporated by reference. Based on a review of ICNU's request, Staff's memorandum, and the Commission's records, the Commission directs PGE to file the application and submit the information set forth in the Staff recommendation.

ORDER

IT IS ORDERED that:

1. Portland General Electric shall file for approval concerning the 1999 transfer of Corporate-Owned Life Insurance (COLI) policies to PGH by December 5, 2002.
2. Portland General Electric shall provide Staff with complete details, by December 20, 2002, of any other accounts that created credits on its books and shall prepare filings commensurate with the appropriate statutes.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

accumulating immediately subsequent to the transfer¹. PGE did not file with the Commission regarding the transaction and the Company concludes that a filing pursuant to ORS 757.480(1)(a) or ORS 757.495(5) was not necessary.²

Staff and ICNU first became aware of the details concerning the COLI asset during Staff's research surrounding PGE's application for approval of a secured loan to Portland Energy Solutions, LLC., (UI 195). As a condition placed on Commission Order No. 02-280 (UI 195), PGE was required to provide the Commission a detailed explanation and a complete accounting history of a \$28 million Accounts Receivable balance on the accounting records of PGE, owing from PGH II. PGE's response raised additional questions with Staff including whether the transfer of the COLI asset met the statutory requirements of either ORS 757.495 (5) or ORS 757.480.

During Staff's review, PGE management made the decision to clear the account from its books by declaring a special non-cash dividend to Enron. The (PGE) Board-approved dividend transferred the predominant balance in the COLI account directly to Enron. A relatively immaterial balance continues.³

Analysis of the COLI Asset

In the Company's analysis, PGE states that disposition of non-utility property to an affiliate, or otherwise, does not require Commission approval. PGE forwarded a summary of accounts that indicated the COLI expenses incurred in 1986 were not part of the 1986 general rate case UE 47/48 nor the 1991 rate case (UE 79).

In the Company's review of ORS 757.495(5), PGE states that the plain language of the statute appears to cover loan agreements or the extension of credit to an affiliate and does not apply to a sale. PGE indicated that the COLI asset transaction and corresponding accounting treatment were similar to a variety of routine property transfers provided to affiliates in which the receivable is usually paid in the ordinary course of business. It is worth noting that the COLI transfer was not a type of service listed in PGE's Master Service Agreement for Affiliated Interest Transactions.

PGE also states the payable and receivable balances originating from the COLI asset sale have remained on the books due to circumstances revolving around the proposed acquisitions of PGE by Sierra Pacific and NWN. PGE also points out that the COLI asset sale and the amount receivable was properly disclosed in the affiliated interest report for the second half of 1999, and in the 1999 SEC Form 10-K.

¹ One of Staff's concerns is that no written sale agreement exists that reflects the positions of the parties. Another concern is that there was no clear understanding of any specific financing terms.

² PGE provided its legal explanation in a memo (attached) from David White to Jay Dudley.

³ PGE represents that they entered into a credit agreement prior to the dividend transfer that required an advance estimate. They approximated a \$27 million figure that was just shy of the amount required to fully clear the account by 156,964.

After discussions with legal counsel, Staff disagrees with PGE's conclusion that the transfer did not require a filing with the Commission. Although PGE classifies the transfer as a sale, cash payment was not made by PGH and considerable accumulated interest (\$5,294,795 at the time of the dividend transfer) from the credit was owed to PGE.

The duration that the credit was maintained on the books and the interest generated demonstrates that this transaction was not similar to a variety of routine property transfers and services provided to affiliates. Additionally, the COLI transfer was not a type of service listed in PGE's Master Service Agreement for Affiliated Interest Transactions.

Staff reviewed Generally Accepted Accounting Principles (GAAP). According to GAAP, a current liability is an obligation whose liquidation is reasonably expected to require the use of existing resources or the creation of current obligations⁴. In general terms, the use of current accounts is for amounts expected to be liquidated within one year.

Although the COLI assets were transferred to PGH II in January, 2000, PGH II's Balance Sheet eleven months later, at the end of 2000, did not reflect sufficient assets to cover the payable. As such, the payable likely should have been reclassified as a noncurrent liability at that time. Staff concludes that the transfer created a credit on PGE's accounting records, therefore requiring a filing with the Commission pursuant to ORS 757.495(5) and OAR 860-027-0040.

Staff and legal counsel interpret ORS 757.495(5) to require utilities to file an application and receive an order from the Commission when any credit, including accounts receivable, is accounted on a company's books due to any affiliated interest transaction of services not listed in the Master Service Agreement for Affiliated Transactions.

ICNU agrees that PGE required Commission approval of the initial transaction and is the general view of the September 18, 2002 correspondence to the Commission.

⁴ Accounting Research Bulletin, Working Capital – Current Assets and Current Liabilities, Chapter 3A

Potential Alternatives

Staff recognizes other alternatives to requiring PGE to file for an application for retroactive approval to transfer the COLI asset. These include:

1. Opening an investigation pursuant to ORS 756.040 and 756.515 to ensure that the COLI expenses were recorded "below the line" and not included in rates. Opening an investigation will allow Staff to examine all books of accounts, documents, data and other records concerning the COLI asset purchase / transfer and subsequent rate cases.
2. Requiring PGE to present to the Commission, pursuant to ORS 756.105, the reasons PGE believes support its contention that a filing was not required for the COLI transaction. This alternative would also allow PGE the opportunity to present to the Commission information concerning other transactions that may have created a credit on PGE's books. This alternative would also allow the Commission to provide clear and specific guidance for the treatment of future transactions.
3. Taking no further action since the initial transaction was disclosed in the 1999 Affiliated Interest Report and the predominant balance of the COLI receivable has been removed from PGE's Balance Sheet. PGE's declaration of the non-cash dividend conveyed the debt to Enron, removing all but an insignificant amount of the debt from the respective financial records. This alternative should require PGE to provide a specific plan to remove the remaining balance from the account within the ensuing year.

PROPOSED COMMISSION MOTION:

Portland General Electric shall file for approval concerning the 1999 transfer of Corporate-Owned Life Insurance (COLI) policies to PGH within 30 days.

PGE shall also provide Staff with complete details, within 45 days, of any other accounts that created credits on its books and should prepare filings commensurate with the appropriate statutes.