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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UF 4192

In the Matter of the Application of)	
)	
PORTLAND GENERAL ELECTRIC)	
)	
Application seeking authority to issue and sell)	ORDER
one share of \$1.00 par value junior preferred)	
stock.)	

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

Procedural History

On August 27, 2002, Portland General Electric Company (PGE) filed an application (Application) for authority to issue a single share of \$1.00 par value Junior Preferred Stock (Share). The Share is designed to further insulate PGE from the effects of the Enron Corporation bankruptcy and increase the stability of PGE’s credit ratings. The terms and conditions of the Share confer limited authority on the owner of the Share to accomplish this result. Except in limited circumstances, PGE cannot file a voluntary petition in bankruptcy without the written consent or affirmative vote of the owner of the Share. This is intended to assure credit rating agencies and potential lenders that the interests of creditors will be considered before PGE files a voluntary petition in bankruptcy. These assurances will help to stabilize PGE’s credit ratings and enable continued access to capital markets in a manner necessary to offer reliable service at a reasonable cost.

PGE and the Staff (Staff) of the Public Utility Commission of Oregon (Commission) entered into extensive discussions regarding the Application. At Staff’s request, PGE provided supplemental information concerning the details of the proposed transaction.

On September 12, 2002, Staff filed its Report (Staff Report) recommending that the Commission approve PGE’s application upon the conditions that PGE submit certain information regarding finalization of the issuance and seek Commission approval prior to any future sales, trades or transfers of the Share. The Staff Report concludes that “the

filing is in the Company's and ratepayers' interests in that approval will help the Company maintain its financial integrity and access to the capital markets." The Staff Report was posted on the Commission's web site on September 12, 2002. Both the Staff Report and the Commission's public meeting agenda indicated that the Commission would consider the Application at the September 17, 2002, public meeting.

On September 16, 2002, the day before the public meeting, the Utility Reform Project and Linda K. Williams (collectively referred to as URP) filed a petition to intervene and protest (Petition). URP also filed a statement entitled "Golden Share or Golden Shaft" in which it detailed its objections to the Application. The Petition observes that the Application would be considered by the Commission at the September 17, 2002 public meeting.

At the September 17, 2002, public meeting, the Commission acknowledged receipt of URP's Petition and Statement. In accordance with standard procedure, the Application was placed on the Regular Agenda for discussion. URP did not enter an appearance at the public meeting. The Commission reviewed the Application and posed numerous questions to Staff and PGE representatives regarding the Share and concerns raised by URP. The Commission thereafter adopted Staff's recommendation to approve the Application. On September 30, 2002, the Commission entered Order No. 02-674, approving the Application subject to the conditions in the Staff Report.

On December 2, 2002, URP filed an application for reconsideration of Order No. 02-674. URP reasserts the allegations set forth in its Petition, namely that: (a) the Commission lacks authority to approve the Application under ORS 757.415; (b) the Application is a *de facto* application to exercise influence over a utility under ORS 757.511; (c) the Application is a "moving target" and "otherwise violates substantive and procedural provisions of statutes and the OPUC's rules and precedents" and; (d) the Commission did not devote sufficient time and resources to evaluating the reasons and consequences of granting the Application. URP repeats its request that the Commission deny or defer action on the Application pending further investigation, discovery and evidentiary hearing.

For the reasons set forth below, the Commission finds that the application for reconsideration should be denied:

I. The Commission has Statutory Authority to Approve the Application.

ORS 757.415 provides, in relevant part, that:

- (1) A public utility may issue stocks and bonds, notes, and other evidences of indebtedness . . . for the following purposes and no others . . .:
 - (a) The acquisition of property, or the construction, completion, extension or improvement of its facilities;

(b) The improvement or maintenance of its service

The purpose of the Application is to provide a mechanism to prevent PGE or its parent company, Enron Corporation, from voluntarily entering into bankruptcy proceedings. The decision to issue the Share was made at the urging of credit rating agencies who seek assurances against the prospect of voluntary bankruptcy.

During the public meeting, Staff and PGE representatives affirmed that PGE's credit rating is likely to suffer unless the application is approved. Lower credit ratings translate into reduced access to capital markets, increased borrowing costs, and ultimately, higher rates for utility service. Issuing the Share will enable PGE to protect and maintain its ability to access capital markets, and in so doing, secure sufficient generating, transmission, and distribution capacity to serve its customers reliably and at reasonable cost. The Application falls within the scope of ORS 757.415(1)(a) and (b) because PGE's ability to keep capital costs low directly affects its ability to acquire utility property and facilities and to improve and maintain its service.

II. ORS 757.511 is Inapplicable.

Contrary to URP's claim, the Application is not subject to ORS 757.511. That statute provides:

No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become an affiliated interest with such public utility as defined in ORS 757.015(1), (2) or (3).

ORS 757.511 does not apply to the Application because the purchaser of the Share will not become an affiliate of PGE under ORS 757.015. The applicable sections of that statute define an affiliate as:

- (1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility;
- (2) Every corporation and person in any chain of successive ownership of five percent or more of the voting securities of such public utility;
- (3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of the voting securities of such public utility.

The purchaser of the Share will not become an affiliated interest for purposes of ORS 757.511 because the requirements in ORS 757.015(1), (2) and (3) are not met. Each of these subsections require that a person or corporation own at least 5 percent of PGE's voting securities before becoming an affiliate. Assuming the Share is treated as a share of voting common stock,¹ the purchaser will hold far less than 5 percent of PGE's voting securities as a result of the transaction.

III. The Commission Did Not Commit Procedural or Substantive Error.

URP broadly asserts that the Application “violates substantive and procedural provisions of the statutes applicable to the [Commission] and to the [Commission’s] rules and precedents.” URP does not, however, identify any statutes other than those discussed above.² OAR 860-014-0095(3) requires an application for reconsideration to identify the errors of law and fact essential to the decision complained of. To the extent URP contends that other statutes have also been violated, it has not met the requirements of the rule.

In its petition to intervene, URP alleged that the Commission did not devote sufficient time and resources to evaluating the reasons for, and the consequences of, granting the Application. It further claimed that the Application is a “moving target” because PGE supplied additional documentation to Staff shortly before the September 17, 2002, public meeting. These arguments are repeated in URP’s application for reconsideration. We find no basis for either claim. The Commission’s decision was made after a careful analysis of the Staff Report and an in-depth discussion of the issues with representatives of PGE, Staff, and the Attorney General’s office. The inquiry extended to issues raised in URP’s petition to intervene and statement. Since URP did not attend the public meeting, it is not in a position to argue that the Commission’s evaluation of the Application was inadequate. Furthermore, OAR 860-014-095(2) requires URP to specify why the challenged order is erroneous or incomplete. URP did not comply with that requirement.

URP also appears to find error in the Commission’s decision not to grant its petition to intervene. As PGE observes, URP’s lack of intervenor status did not prejudice its opportunity to participate or have any impact upon the outcome of this matter. URP reviewed the Application and filed its objections with the Commission. It had access to the Staff Report on the Commission’s web site and was aware that the matter would be considered at the September 17, 2002, public meeting. URP also had the opportunity to attend the public meeting and be heard, but failed to appear. Notwithstanding URP’s absence, the Commission discussed the assertions set forth in

¹ PGE argues that ORS 757.015 does not apply because the Share is not a “voting security.” *PGE Response to Application for Reconsideration* at 5. It is unnecessary to address this argument because the five percent ownership requirement in the statute clearly has not been met.

² URP does make reference to ORS 757.009(7), but that statute does not exist.

URP's filings. Under the circumstances, URP cannot reasonably contend that it was prejudiced because the Application was approved without further review.

Along the same lines, URP appears to argue that the Commission committed legal error by deciding not to hold an evidentiary hearing to consider the Application. That argument is also without merit. The governing statutes in this case -- ORS 757.410 and 757.415 -- do not obligate the Commission to hold an evidentiary hearing on the Application. Indeed, a primary purpose of our public meetings is to determine if the items on the agenda involve matters which warrant an evidentiary hearing. As noted above, URP had an opportunity to appear at the public meeting and argue in favor of its position. It simply did not do so.

For the reasons set forth, the Commission finds that the application for reconsideration is without merit and should be denied.

ORDER

IT IS ORDERED that the application for reconsideration filed by the Utility Reform Project and Linda K. Williams is denied.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to applicable law.