BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 211

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Application requesting approval for entries on Portland General Electric's books of an intercompany receivable from Portland General Distribution Company.	)))))))))	ORDER

DISPOSITION: APPLICATION DENIED

On January 22, 2003, Portland General Electric Company (PGE) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to Commission Order No. 02-824, ORS 757.495(5), OAR 860-027-0030 and OAR 860-027-0040. Commission Order No. 02-824 required PGE to file for approval for the creation of certain intercompany receivables on PGE's books due to affiliated transactions. In response, PGE identified the sale of conduit to Portland General Distribution Company that has a remaining $1.1 million receivable to PGE. This is a transaction in which PGE gave credit on its books in 2001 and did not submit a filing to the Commission.

Based on a review of PGE's application, the Commission finds that the application involves an affiliated interest transaction that is not fair and reasonable in all its terms, and is contrary to the public interest. At its Public Meeting on March 31, 2003, the Commission adopted Staff's recommendation memorandum. Staff's recommendation report is attached as Appendix A, and incorporated by reference.

ORDER

IT IS ORDERED that:

1) The application of Portland General Electric to enter into an affiliated transaction with Portland General Distribution Company is denied.

2) Portland General Electric shall establish a reserve account for the value of the conduit receivable and interest accrued on the conduit receivable until

payment is received by Portland General Distribution Company. If payment is not received by Portland General Distribution Company within six months of the Commission Order, Portland General Electric shall remove the receivable from its books as a non-operating loss.

3) Portland General Electric shall report to the Commission no later than October 1, 2003, when the remaining balance of the receivable is removed.

4) Portland General Electric shall offset service payments to Portland General Distribution Company and Portland General Broadband Wireless as outlined in Condition No. 6 of Commission Order No. 03-093.

5) Portland General Electric shall provide the Commission access to all books of account, as well as documents, data, and records of Portland General Electric and Portland General Distribution Company's affiliated interests that pertain to this transaction.

Made, entered, and effective ________________________.

BY THE COMMISSION:

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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.

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 31, 2003

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** ________________________

DATE: March 13, 2003

TO: John Savage through Marc Hellman and Rebecca Hathhorn

FROM: Michael Dougherty

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UI 211) Application for Approval for the Entries on Portland General Electric's Books of an Intercompany Receivable from Portland General Distribution Company.

STAFF RECOMMENDATION:

The Commission should not approve Portland General Electric's (PGE) application to enter on PGE's books an intercompany receivable that occurred in 2001 with Portland General Distribution Company (PGD), an affiliated interest. As part of the disapproval (to prevent an immediate write-off of the intercompany receivable):

1. PGE shall establish a reserve account for the value of the conduit receivable and interest accrued on the conduit receivable until payment is received by PGD. If payment is not received by PGD within six months of the Commission Order, PGE shall remove the receivable from its books as a non-operating loss.

2. PGE shall report to the Commission no later than October 1, 2003, when the remaining balance of the receivable is removed.

3. PGE shall offset service payments to PGD and Portland General Broadband Wireless (PGBW) as outlined in Condition No. 6 of Commission Order No. 03-093.

4. PGE shall provide the Commission access to all books of account, as well as documents, data, and records of PGE's and PGD's affiliated interests that pertain to this transaction.

DISCUSSION:

Background
Commission Order No. 02-824 required PGE to prepare filings for approval under ORS 757.495(5) for the creation of certain intercompany receivables on PGE's books due to affiliated transactions. In response, PGE identified the sale of conduit to PGD that has a remaining $1.1 million receivable to PGE. This is a transaction in which PGE gave credit on its books in 2001 and did not submit a filing to the Commission.

PGE filed this application on January 22, 2003, pursuant to ORS 757.495(5), OAR 860-027-0030 and OAR 860-027-0040. Although PGE is complying with the Commission order, PGE maintains that an application for approval is not required under Oregon law and does not waive its right to challenge whether statutory authority exists to require PGE to file this application.

In addition to this filing, PGE has agreed to submit a separate filing that addresses the remaining credits on PGE books by April 30, 2003. PGE and PGD are both wholly owned subsidiaries of Enron Corporation (Enron), and are affiliated interests under ORS 757.015.

History of the PGD Conduit Sale
PGD was registered as a Competitive Local Exchange Carrier (CLEC) in the State of Oregon on August 31, 2000 (Commission Order No. 00-486). As part of PGD's telecommunication initiative, PGD planned to provide local exchange and long distance toll telecommunication service and dedicated transmission service to cities in the Portland Metropolitan area.

PGD prepared a comprehensive business case in December 2000. Per the business case, PGD would leverage PGE's brand strength and distribution infrastructure to become a competitive overbuilder delivering video, data and telephony services.

In order to facilitate this telecommunications initiative, PGE initially incurred the costs ($2 million total) of the conduit beginning May 2000. Details of the purchase, installation and payment for the conduit were outlined in an Agreement between PGE and PGD (Agreement). PGE represented that it was PGE's intent to have PGD ultimately own the conduit as PGE never planned to own nor operate the telecommunications business on an ongoing basis. PGE's involvement was requested by PGD for timing reasons as:

1. PGD did not have current telecommunications franchise agreements in the various cities PGD wanted to install conduit and therefore could not have its assets in the public right of way;[1] and,

2. PGD wanted to take advantage of open trenches and PGE's Unity[2] system by installing telecommunications conduit in conjunction with other utilities in the trench, resulting in lowering overall costs of the network and minimizing disruption of the public-rights of way. PGD did not install conduit independent of others.

PGE paid for the conduit and began installation work in 2000 with the understanding that it would sell these assets to PGD as soon as PGD obtained franchises in the cities that the conduit was located. PGD paid PGE $875,865 in May 2001, for conduit that was installed in 2000. In 2001, PGD altered its business plan and did not pursue franchise agreements with eight cities. In these cases, PGE retained sole ownership and exclusive rights to the conduit.

In 2001, PGE billed PGD for the costs of the assets installed in 2001. PGE's accounts receivable for the conduit sold to PGD was recorded in June and August 2001 and totaled $1.1 million. The $1.1 million receivable was based on the fully allocated, installed cost of the conduit at the time of the transfer in 2001. Interest on the amount, at the intercompany rate of 9.5%, began to accrue immediately after entry of the intercompany receivable. Costs for the conduit transfer were recorded in PGE's non-utility accounts and were not included in retail rates.

<u>Issues</u>
Staff investigated the following issues:

1. Terms and Conditions of the Agreement between PGE and PGD
2. Public Interest Compliance
3. Records Availability, Audit Provisions and Reporting Requirements

<u>Terms and Conditions of the Agreement between PGE and PGD</u>
PGE did not draft a written agreement with PGD for the sale and transfer of the conduit at the time of the transaction. The Agreement that eventually was produced by PGE (to memorialize the terms of the transfer) and provided to Staff states, "Payments shall be

[1] PGE did have existing franchise agreements which permitted it to install conduit in the cities' right of ways.
[2] The Unity Program is a PGE program that along with Northwest Natural and residential homebuilders / developers uses electric and gas company personnel to install electric, gas, telephone and TV cable services for builders during one scheduled appointment.

made in the ordinary course of business." An ordinary course of business is usually defined as activities within a one-year business cycle. Since PGE gave credit on its books to PGD, PGE should have filed an application within 90 days of the transaction pursuant to ORS 757.495.

The Agreement also states that PGD will grant PGE a security interest in all conduit for which ownership is transferred until such time that the conduit is completely paid for. As a result of this condition, PGE maintains a security interest in the conduit that is included as part of the receivable.

Public Interest Compliance

Staff reviewed PGE's accounting treatment of the conduit and confirmed that the conduit purchase costs were not booked into operating accounts and were not included in customer rates. In addition, PGE's equity ratio and credit ratings were not affected by the transaction since the transaction was an exchange of one asset (conduit) for another asset (the conduit receivable).

However, Staff believes that the transaction was not fair and reasonable in all its terms and may be considered contrary to the public interest for the following reasons:

a. Lack of net income by PGD, its subsidiary Portland General Broadband Wireless (PGBW) and PGD's parent entity, Portland General Holdings II (PGH II) for both 2000 and 2001[3]. PGD and PGH II had reported income losses for both 2000 and 2001. PGBW reported negative income for 2001[4]. Without a steady stream of income, PGD would not have available funds to fulfill the payable to PGE in the ordinary course of business as required by the initial accounting treatment.

b. Per the business case provided to Staff, PGD was unable to obtain the total capital requirements for the system build-out and additional financing that would allow the project to generate revenue and limit financial risks.

c. PGD has not received revenue from the conduit since fiber-optic cable was not installed in the conduit and the conduit is currently vacant.

d. In 2000, PGD did not maintain any assets other than the conduit that would have or could have likely produced revenue to ensure payment of the PGE payable. PGE and PGD are currently exploring ways to provide funds to pay-off a portion of the receivable.

[3] PGBW was not registered as a business entity by the Secretary of State until March 28, 2001; therefore only 2001 and 2002 financial statements are available.

[4] Although PGBW reported minimal net income as of September 30, 2002, both PGD and PGH II reported losses on September 30, 2002 Income Statements.

e. Although the conduit receivable only represents 0.03% of PGE's assets, the cumulative effect of affiliate receivables owed to PGE coupled with recent write-offs that reduced both current and retained earnings has the potential to minimally affect PGE's net income and cash flow.

Records Availability, Audit Provisions and Reporting Requirements
The proposed disapproval mechanisms No. 2 & 4 provides the necessary records access to PGE's relevant books and records. As an alternative to disapproval mechanism #1, PGD could transfer the conduit back to PGE since PGE has a security interest in the conduit and already owns conduit in eight of the originally proposed franchise cities.

Based on Staff's review, the application involves an affiliated interest transaction that is not fair and reasonable in all its terms and contrary to the public interest.

PROPOSED COMMISSION MOTION:

PGE's application to enter into an affiliated transaction with PGD be disapproved and that PGE adheres to the five issues surrounding the disapproval.

Potential Alternative to the Proposed Commission Motion
The Commission approves Staff's recommendation, but amends disapproval mechanism #1 to state:

1. PGE shall establish a reserve account for the value of the conduit receivable and interest accrued on the conduit receivable until payment is received from PGD. If payment is not received from PGD within six months of the Commission Order, PGE shall remove the receivable from its books as a non-operating loss. Alternatively, if within six months of the Commission Order PGD transfers ownership of the conduit that is included in the receivable back to PGE at current book value, PGE shall, subsequent to the transfer, remove any remaining value of the conduit receivable from its books in accordance with generally accepted accounting principles.