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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 234

| | | |
|---|---|-------|
| In the Matter of |) | |
| |) | ORDER |
| PORTLAND GENERAL ELECTRIC |) | |
| |) | |
| Application for approval of a conduit |) | |
| occupancy license agreement with Portland |) | |
| General Distribution, LLC. |) | |

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On July 7, 2004, Portland General Electric Company (PGE or Company) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-027-0025, requesting approval of an extension of the inner-duct conduit leasing option with Portland General Distribution, LLC (PGD), an affiliated interest. PGE also requested a waiver under OAR 860-027-0043, because the net value of the exchange in the agreement is less than .01 percent of the previous calendar year's Oregon utility operating revenue. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

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 August 17, 2004, the Commission adopted Staff's recommendation and this written order memorializes the Commission's formal decision.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility," and the Company is a public utility subject to the Commission's jurisdiction.

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 approved, with certain conditions.

ORDER

IT IS ORDERED that

1. The application of Portland General Electric Company to enter into an affiliated interest transaction with Portland General Distribution, LLC is approved, subject to certain conditions as stated in Appendix A.
2. The waiver under the terms of OAR 860-027-0043 is approved.

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.

ITEM NO. CA8

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: AUGUST 17, 2004**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** May 14, 2004

DATE: August 4, 2004

TO: Lee Sparling through Marc Hellman and Rebecca Trujillo

FROM: Marion Anderson

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UI 234) Application for approval of a conduit occupancy license agreement with Portland General Distribution, LLC.

STAFF RECOMMENDATION:

The Commission should approve Portland General Electric's (PGE) application for a licensing agreement with Portland General Distribution (PGD), an affiliated interest, with the following conditions:

1. PGE shall provide the Commission access to all books of account, as well as all documents, data and records of PGE and PGD that pertain to transactions between the two.
2. The Commission reserves the right to review for reasonableness all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. PGE shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.

DISCUSSION:

PGE filed this application on July 7, 2004, pursuant to ORS 757.495 and OAR 860-027-0025. PGE and PGD, as wholly owned subsidiaries of Enron Corporation, are affiliates pursuant to ORS 757.015. In addition, PGE seeks a

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waiver under the terms of OAR 860-027-0043, since the transaction does not exceed .01% of the previous calendar year's Oregon utility operating revenue.

PGE installs conduit for both telecommunication and electrical cable to minimize the incremental cost of all underground infrastructure. Inner-ducts and fiber-optic cable are laid within the conduit for PGE's own data and communication networks. The communication conduit installation was made along the route PGD wants to place fiber-optic cable. PGE is not currently using the conduit and had not installed any inner-duct in the section PGD wants to lease. PGD paid PGE for all costs incurred, at PGE standard market rates, for the installation of four inner-ducts in the conduit, leaving ownership with PGE. PGE is leasing one inner-duct to PGD. PGE granted the leasing option in consideration for the PGD payment. Further, this arrangement is identical to that approved by the Commission in Docket UI 226, Order No. 04-207.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions and Reporting Requirements

Scope of the Agreement: The inner-duct lease transaction is an informational reverse service filing that Staff takes no issue with. PGE states that the lease rate is equal to that charged to a non-affiliated customer (MCI) and charged to PGD at another location approved in Docket UI 226. The option granted to PGD for the inner-duct construction reimbursement constitutes a forward transaction requiring Commission review and approval.

Transfer Pricing and Determination of Public Interest Compliance: The consideration given by PGD for the lease option is reasonable in my opinion. It consisted of payment by PGD for the construction of four inner-ducts with PGE maintaining ownership.

Records Availability, Audit Provisions and Reporting Requirements: Condition No. 1 provides necessary access to records.

Based on the review of this application, Staff concludes the following:

1. Transfer pricing is acceptable.
2. Customers are not harmed by these transactions.
3. Necessary records are available.

The transactions are not contrary to the public interest with the recommended conditions.

PROPOSED COMMISSION MOTION:

Portland General Electric's extension of the inner-duct conduit leasing option to Portland General Distribution, LLC be approved, subject to the aforementioned conditions, effective May 14, 2004.

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