ORDER NO. 05-114

ENTERED 03/10/05

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1121

In the Matter of	)	
	)	
OREGON ELECTRIC UTILITY	)	
COMPANY, LLC, *et al*.,	)	ORDER
	)	
Application for Authorization to Acquire	)	
Portland General Electric Company.	)	

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DISPOSITION: APPLICATION DENIED

SUMMARY

In this order, the Public Utility Commission of Oregon (Commission) denies an application filed by Oregon Electric Utility Company, LLC, *et al*. (collectively referred to as Applicants) to acquire Portland General Electric Company (PGE). We cannot conclude that customers would be better served under this acquisition than they would be if PGE remained as a separate and distinct entity. The Applicants presented a detailed proposal designed to benefit and protect ratepayers. In response to concerns raised by the staff of the Public Utility Commission of Oregon (Staff) and other parties to this proceeding, Applicants supplemented their proposal to include numerous conditions to offset alleged harms. While these conditions have mitigated or eliminated certain harms arising from this transaction, we find that sources of harms remain that pose a risk to the utility and its customers. Together, these potential harms outweigh the potential benefits of the acquisition, which, for reasons we explain, are minimal. Based on these findings, we conclude that the application fails to serve the customers of PGE in the public interest.

We decline to modify the application by crafting additional conditions to offset these harms. While the extent of our authority to issue conditional orders is unclear, the harms presented, and the conditions necessary to mitigate them, are so intertwined that we cannot propose them without substantially rewriting the basic terms of the agreement. Moreover, in many instances, there are multiple sets of conditions that could be used to address these harms. If we were to undertake a redrafting of the agreement, we lack the necessary basis to determine which conditions, and in what combinations, are most appropriate.

INTRODUCTION

We begin by describing in detail the long procedural background of this docket and addressing outstanding legal motions. We next discuss the context of this proceeding. Then, we examine the legal standard governing this proceeding, followed by our findings of fact supported by the extensive record. Finally, we set forth our conclusions by applying the legal standard to those findings of fact.

I. PROCEDURAL BACKGROUND

On March 8, 2004, Oregon Electric Utility Company, LLC (Oregon Electric), TPG Partners III and IV, L.P. (known collectively as "TPG"), Managing Member LLC (Managing Member), Neil Goldschmidt,[1] Gerald Grinstein and Tom Walsh (known collectively as "Local Applicants")[2] filed an application under ORS 757.511, asking the Commission to authorize the purchase of PGE from Enron Corporation (Enron). The subsequent proceeding lasted approximately one year and involved dozens of parties and thousands of documents. We describe the procedural background according to the following areas: parties, public comment process, evidentiary matters, and formally scheduled events. We also resolve outstanding motions and address the violation of the protective order.

A. Parties

On March 16, 2004, Kathryn Logan and Christina Smith, Administrative Law Judges (ALJs), held a prehearing conference on this matter in Salem, Oregon. At the conference, the ALJs acknowledged the Citizens' Utility Board of Oregon's (CUB) notice of intervention, and granted petitions to intervene filed by the following parties: PGE; Enron; Industrial Customers of Northwest Utilities (ICNU); Laurence Tuttle; Northwest Independent Power Producers Coalition (NIPPC); Fred Meyer Stores and Quality Food Centers; PacifiCorp, dba Pacific Power and Light Company (PacifiCorp); IBEW Local 125; Gary Duell; Kafoury Brothers LLC and Commercial Customers Group; Tualatin Valley Water District; Portland Metropolitan Association of Building Owners and Managers (BOMA); Oregon Energy Partnership; Community Action Directors of Oregon (CADO); Oregon Energy Coordinators Association (OECA);[3] Utility Reform Project (URP); Lloyd Marbet; League of Oregon Cities; Leonard Girard; Grieg Anderson; City of Glendale, California; Renewable Northwest Project (RNP); West Linn Paper Company; and Eugene Water and Electric Board (EWEB).[4]

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[1] On May 6, 2004, Neil Goldschmidt's name was withdrawn from the application. Peter Kohler, Duane McDougall, and Robert Miller were added as applicants on July 13, 2004.

[2] Throughout this order, the entire group of applicants is referred to as "Applicants." We will name the specific applicant when referring to less than the entire group.

[3] CADO and OECA were represented by the same counsel and often submitted joint filings, which we will indicate as submitted by CADO/OECA.

[4] BPA and EWEB often submitted joint filings, which we will indicate as submitted by BPA/EWEB.

The ALJs subsequently granted party status to the following intervenors: City of Portland; Strategic Energy LLC (Strategic Energy); Confederated Tribes of the Warm Springs Reservation of Oregon; Constellation NewEnergy, Inc.; Bonneville Power Administration (BPA); EPCOR Merchant and Capital Inc; Multnomah County; NW Energy Coalition; Columbia River PUD; Associated Oregon Industries (AOI); PGE Pension Enhancement Committee; Hydropower Reform Coalition and American Rivers (Hydropower Reform/American Rivers); Oregon Department of Housing and Community Services (OHCS); Friends of the Clackamas River; Daniel Meek; Ken Lewis; Katherine Futornick; Michael Caruso; Frank Nelson; and Nancy Newell.[5]

In addition, CUB, ICNU, and AOI sought and obtained issue fund grants for intervenor funding pursuant to OAR 860-012-0100. In various orders, the Commission approved proposed budgets, requested intervenor funding grant reports, and granted requests for payment from these three parties. *See* Order Nos. 04-303, 04-352, 05-003 and 05-026.

B. Public Comment Process

To provide information and obtain comment from PGE ratepayers and members of the public about the proposed acquisition, the Commission held two styles of public comment meetings: informal open house gatherings and formal town hall comment meetings. The Commission held five open house gatherings throughout PGE's service territory as follows: Tualatin on April 8; Portland on April 12; Salem on April 13; Gresham on April 14; and Hillsboro on April 19. The Commission conducted formal town hall meetings in Salem on April 27 and in Portland on April 28. All of the meetings were held in the evening to maximize public participation. The Commission also received public comment by letter, electronic mail, and telephone.[6]

C. Evidentiary Matters

With its application, Oregon Electric filed a motion for a general protective order to govern the disclosure of confidential and proprietary information subject to discovery in this case. ALJ Smith granted the request in Order No. 04-139, which established a process through which parties resolve discovery disputes concerning sensitive information. A total of 18 parties signed the protective order, agreeing to be bound by its terms in exchange for access to the confidential information.

Oregon Electric subsequently filed a motion for additional protection under the protective order in response to certain data requests made by ICNU and CUB.

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[5] We refer to the intervening parties, with the exception of PGE and Enron, as "Intervenors" throughout this order, even though many of these parties did not actively participate in the docket. Where necessary, we will name specific intervenors when referring to less than the entire group.

[6] The Commission's Consumer Services Division received phone calls, which were reduced to writing and placed in the public comment file.

ICNU, CUB, and the City of Portland opposed the request. After a reply from Applicants, ALJ Smith denied the motion and ordered the parties to collaborate on a method of disclosure. *See* ALJ ruling (May 28, 2004). Applicants subsequently moved for certification of the ruling for Commission consideration, a request opposed by ICNU and URP. After negotiations with the parties, Applicants withdrew their motion.

On May 21, 2004, PGE filed a motion for a protective order related to ICNU's request to depose Peggy Fowler. After further comment and argument from the parties, ALJ Logan issued a ruling allowing the deposition to be held, with guidance as to what issues were considered relevant to the proceeding. *See* ALJ ruling (June 25, 2004). Shortly thereafter, ICNU and PGE submitted a stipulation allowing an *in camera* review to resolve their disputes regarding whether Peggy Fowler's electronic mail messages were subject to discovery by ICNU in preparation for her deposition. Following argument from ICNU, City of Portland, PGE, Enron, and Applicants, the ALJs issued interim and final rulings addressing the documents to be disclosed. *See* ALJ ruling (Sept 3, 2004).

On July 19, 2004, Staff moved to compel the production of certain material from Applicants, but later withdrew its motion.

On October 18, 2004, ICNU filed a motion to admit transcripts of Peggy Fowler and Kelvin Davis. That same day, PGE filed a response opposing admission of the Fowler transcript. On October 20, 2004, the ALJs admitted the Davis transcript but denied admission of the Fowler transcript. ICNU later moved to certify the ruling to the Commission, and submitted a copy of the Fowler transcript as ICNU exhibit 906, in which irrelevant material was redacted. ICNU indicated that PGE agreed to admission of the redacted Fowler transcript. ICNU exhibit 906 was admitted. *See* ALJ ruling (Nov 8, 2004).

On November 4, 2004, BPA/EWEB asked for official notice to be taken of four exhibits. The City of Portland filed a request for official notice of another document on November 5, 2004. The ALJs denied the motion in the November 8, 2005 ruling. BPA/EWEB requested reconsideration of the denial, or in the alternative, certification to the Commission. In a November 19, 2004 ruling, the ALJs reconsidered the motion, and denied both the initial request for official notice and the request for certification to the Commission.

On December 6, 2004, Staff moved to submit a late-filed exhibit. The ALJs denied the motion that day.

D. Formally Scheduled Events

Applicants amended their application at several points throughout the process. As previously noted, Neil Goldschmidt withdrew as a participant in the application process and from any further participation in the management of PGE. On

May 27, 2004, Applicants supplemented the initial application with testimony by Kelvin Davis. On July 13, Applicants submitted an application amendment that added seven names to the new proposed PGE Board of Directors, added three names to Managing Member, and increased the total amount to be invested by Managing Member.

On July 21, 2004, opening testimony was submitted by Staff and Intervenors Multnomah County, ICNU, City of Portland, BOMA, EWEB, URP, CUB, League of Oregon Cities, RNP, Hydropower Reform/American Rivers, and CADO/OECA. Joint testimony was also submitted by a group calling itself the Public Interest Parties, comprised of representatives from CUB, RNP, City of Portland, CADO/OECA, Multnomah County, NW Energy Coalition, and Hydropower Reform/American Rivers.

Oregon Electric, PGE, and Enron submitted rebuttal testimony on August 16, 2004. On September 22, 2004, Staff, ICNU, CUB, CADO/OECA, OHCS, BPA/EWEB, City of Portland, and BOMA submitted surrebuttal testimony. Applicants, PGE, and Enron submitted sursurrebuttal testimony on October 11, 2004.

On October 12, 2004, ICNU filed a motion to strike sursurrebuttal testimony of Daniel J. Bussel filed by Oregon Electric. An expedited schedule was established for consideration of the motion, and Oregon Electric filed a response on October 14, 2004. On October 18, 2004, ALJ Logan denied the motion.

The Commission held evidentiary hearings on October 20 and 21, 2004. On October 26, 2004, the ALJs issued a post hearing report, setting out the briefing schedule and admitted exhibits.

Opening briefs were filed on November 17, 2004, by the following parties: CUB, AOI, PacifiCorp, Applicants, Staff, BPA/EWEB, Enron, City of Portland, PGE, ICNU, RNP, URP, Strategic Energy, and BOMA. Reply briefs were filed on December 3, 2004 by AOI, BPA/EWEB, City of Portland, Oregon Electric, Staff, Strategic Energy, CUB, ICNU, Enron, URP, PGE, BOMA, RNP, and Hydropower Reform/American Rivers.

On November 19, 2004, ICNU moved to strike a portion of Applicants' brief, claiming that an attachment caused the brief to exceed the page limitation. The ALJs granted the motion on November 22, 2004.

On December 2, 2004, Applicants moved to allow Thad Miller to appear *pro hac vice*. On December 6, the motion was conditionally granted, subject to a show cause response by the parties. As no one filed a show cause response by the December 8 deadline, the *pro hac vice* motion was granted.

The Commission held oral argument on December 13 and 14, 2004. The following parties presented argument: Oregon Electric, Enron, PGE, ICNU, AOI, CUB, City of Portland, URP, BOMA, RNP, PacifiCorp, BPA/EWEB, Strategic Energy, and Staff.

E. Outstanding Motions

Subsequent to oral argument, BOMA filed three motions, asking the Commission suspend the proceedings, reopen the record, and rescind the protective order. Because an ALJ ruling on the motions would have been issued shortly before the issuance of this order, we decided it was more expeditious to rule on the motions as part of this order. We address each motion in turn.[7]

1. Renewed Motion to Suspend Proceedings

On December 21, 2004, BOMA renewed a motion, previously denied by the ALJs on November 8, 2004, seeking to suspend these proceedings. First, BOMA moves to suspend the proceedings pending completion of the Oregon Department of Justice (DOJ) investigation into potential misconduct at the Oregon Investment Council relating to TPG. Second, BOMA requests the Commission suspend the case until the Securities and Exchange Commission (SEC) resolves whether Oregon Electric or TPG would be considered a holding company of PGE under the Public Utilities Holding Company Act (PUHCA). We address each issue separately.

DOJ Investigation. The DOJ issued its report on January 21, 2005 and found no misconduct. An ALJ reviewed the report and have determined it is not relevant to this proceeding. We adopt that determination, and therefore, need not include it as part the evidentiary record.

SEC Review. The SEC's review of whether PUHCA will apply to either Oregon Electric or TPG involves a question of federal law, the resolution of which is not necessary for our evaluation under ORS 757.511. Applicants have stated that, if the SEC determines that Oregon Electric does not qualify for an exemption, Oregon Electric would operate PGE in compliance with PUHCA. *See* Hearing Tr at 186-87 (testimony of Schifter). Moreover, Applicants stated from the beginning of this proceeding that the SEC must conclude that TPG is not a holding company under PUHCA as a condition to close this transaction. While such a decision would therefore be dispositive of this matter, we will not suspend the proceedings to await the SEC's determination. As Applicants point out, the SEC traditionally defers consideration until completion of the

[7] BOMA continued to file supplements to its motions throughout January and February. There is no provision under our rules for such supplemental filings to be made. In addition, these filings do not add arguments that we need to address in this order. Therefore, we decline to address these filings further.

related proceeding. *See* Applicants' response at 2 (Jan 5, 2005) (*citing Madison Gas and Electric Co. v. SEC*, 168 F 3d 1337, 1341 (DC Cir 1999).

Having reviewed the motion, we find that none of BOMA's arguments convince us that the proceedings should be stayed. The motion is denied.

2. Motion to Reopen the Record

On January 10, 2005, BOMA filed a motion to reopen the record. Specifically, BOMA asks that new material from TPG's and Applicants' public statements to news media, advertisements, submittals to filing agencies, and comments in other public forums "regarding its intentions and plans for ownership of PGE" should be included in the record. *See* BOMA Motion at 1 (Jan 10, 2005). BOMA also asks for the record to be reopened to allow for additional inquiry and briefing into the final investment arrangements, statements made to the SEC about the transaction, disclosure of the Oregon DOJ's findings about the investment in TPG Fund III by the Oregon Investment Council (OIC) and representations made to OIC that "induced" it to invest in TPG's acquisition of PGE.

On January 25, 2005, Oregon Electric filed its response. Oregon Electric asserts that the "new" material claimed by BOMA was already reviewed in the course of the proceedings. BOMA's lack of familiarity with the record, argues Oregon Electric, causes BOMA to believe that new material was presented after the record was closed.

Nothing raised by BOMA or Oregon Electric causes us to believe that reopening the record would provide any relevant evidence to assist our decision-making process. The record is extensive, created by several rounds of testimony. All parties have had an opportunity to review the record and comment to the Commission. The motion is denied.

3. Motion to Lift Protective Order

On December 27, 2004, BOMA filed a motion to lift the protective order issued in Order No. 04-139. On January 18, 2005, Oregon Electric and PGE filed separate responses opposing BOMA's request. BOMA filed a reply on January 19, 2005.

BOMA contends the protective order should be rescinded for three reasons. First, it argues that the order was not properly issued. Relying on *Citizens' Utility Board v Public Utility Commission,* 128 Or App 650, *rev den*, 320 Or 272 (1994) (hereinafter *CUB v. PUC*), BOMA contends that the requirements of ORCP 36(C)(7) must be met before an order can be issued. Specifically, BOMA claims the Applicants did not establish that: (1) the information is a trade secret; and (2) disclosure will cause serious injury.

BOMA misconstrues the purpose of the Commission protective order and, consequently, seeks to apply the two-prong test of ORCP 36(C) (7) prematurely. The challenged order, which can be described as a general or umbrella protective order, shields no specific documents and makes no judgment as to whether any particular document is a trade secret or contains commercially-sensitive information. The general protective order simply adopts a process through which parties resolve discovery disputes concerning sensitive information. That process allows any party to designate any item to be disclosed as confidential, and authorizes any party to challenge any such confidential designation. The ORCP 36(C) (7) requirements are not triggered until a party challenges the confidential designation of a particular document. As explained by the protective order, once a party challenges a designation, the designating party bears the "burden of showing that the challenged information falls within ORCP 36(C) (7)." Order No. 04-139, Appendix A at 4.

The court's decision in *CUB v. PUC* is consistent with this analysis. Although the Commission in that case similarly issued an umbrella protective order to establish a process to resolve discovery issues, that order was not appealed to the court. Rather, the court reviewed a *second* protective order entered by the Commission following a party's challenge to the confidential designation of a specific document. As to this specific determination of confidentiality, the court concluded that the Commission properly applied the two-pronged test of ORCP 36(C) (7) and upheld the finding that the document was a trade secret, the disclosure of which would cause a clearly defined and serious injury to the utility.

Accordingly, because Order No. 04-139 neither addressed nor prejudged the question of the confidentiality of any particular document, the requirements of ORCP 36(C) (7) did not apply. Instead, such a protective order may be issued upon a showing of good cause. *See* OAR 860-012-0035(k). An ALJ found that Applicants had met that standard, and BOMA does not dispute that conclusion.

Second, BOMA contends that the Commission, in entering a protective order, failed to balance the public's interest in disclosure against the potential harm. BOMA cites no authority to support its argument, and we are unable to find any. Under the Public Records Law, ORS 192.410-192.505, public bodies must conduct such a balancing to determine whether the conditional exemptions set forth in ORS 192.501 apply when responding to a request for disclosure. *See Turner v. Reed*, 22 Or App 177 (1975). The court in *CUB v. PUC*, however, clarified that while this balancing test may apply to a request under the Public Records Law, it does not apply to the issuance of a protective order:

> We reject CUB's contention that there is a third prong to the test for determining whether to issue a protective order, which would require a balancing of the public's interest in disclosure against the potential harm to [the disclosing party]. Although that may be a relevant factor in determining whether material

> that has become a part of a judicial record should remain subject to a protective order, it has no bearing on the determination as to whether materials that are sought to be discovered should be subject to a protective order.

CUB v. PUC, 128 Or App at 660 (internal citations omitted).

Finally, BOMA contends that the protective order should be lifted to allow members of the general public to judge "the truth and veracity" of Applicants' public statements relating to their plans for PGE. *See* BOMA Motion at 2 (Dec 27, 2004). BOMA initially asked that the protective order should at least be lifted as to CUB's testimony and exhibits that dispute TPG's public claims. After Applicants voluntarily declassified these and other confidential documents following their improper disclosure to the media, BOMA questions why Applicants have not declassified all confidential documents and argues that the protective order must be lifted to give the public access to all protected information. BOMA claims that the Applicants are using the protective order "not to protect legitimate trade secrets, but as a shield to prevent proper inquiry into what the Applicants are going to do." BOMA reply at 3 (Jan 19, 2005).

Contrary to BOMA's assertions, the protective order has not prevented a full and proper inquiry of Applicants' proposed purchase of PGE. A total of 18 parties and over 130 qualified persons have had full access to the protected documents. Many of these parties, including the Commission Staff and groups representing industrial, commercial and residential customers, raised numerous arguments raising concerns about information contained in the confidential documents. Some included hundreds of pages of the protected material in testimony and briefs opposing Applicants' purchase. Thus, contrary to BOMA's assertion, the parties have thoroughly analyzed, and the Commission has fully reviewed, public and protected evidence as to Applicants' intentions for PGE. Moreover, while a portion of this evidentiary record contains information not available to the general public, the public's interest is statutorily protected by the Commission. Additionally, intervening parties, specifically ICNU, AOI, and CUB, have received ratepayer funding to represent various classes of customers in this proceeding.

Neither the law nor the facts support the rationale asserted by BOMA in its motion. The motion to rescind the protective order is denied.

F. Violation of Protective Order

We wish to address the failure of one or more parties to comply with the requirements of the protective order. As discussed above, the protective order issued in this case set forth a procedure for parties to use if they believed that information being designated as "confidential" did not meet the requirements of ORCP 36(C). Rather than follow that procedure, one or more parties decided to provide material identified as

"confidential" to *Willamette Week*, a weekly newspaper in Portland, Oregon, which was then broadcast by television and radio stations and disclosed in other print media.

We are disturbed by this disclosure. The use and application of protective orders is essential to the orderly functioning of the Commission. Any party could have signed the protective order, and the numerous parties who did sign the protective order had access to the confidential information. Moreover, the procedure set forth in the protective order allowed the parties to successfully challenge the confidential designation of certain documents, resulting in their public disclosure. *See* discussion *supra* at 4.

We are displeased that someone chose to violate our order rather than follow the proper procedure outlined therein. We expect to see ramifications of this unlawful action in future cases, as utilities may be reluctant to provide essential information to intervening parties for fear of leaks that will harm their competitive standing. We intend to investigate and determine how the protected documents were disclosed, and to take appropriate action.

II. CONTEXT OF PROCEEDING

Applicants seek a Commission order approving Oregon Electric's acquisition of the common stock of PGE from PGE's parent company, Enron. If the Commission were to approve the transaction with Enron, Applicants would exercise substantial influence over the policies and actions of PGE within the meaning of ORS 757.511.

Applicants contend that the proposed acquisition meets the required legal standard and should be approved. They contend that the transaction provides numerous benefits to PGE ratepayers and that Oregon Electric's ownership of PGE is in the public interest. Staff and Intervenors recommend the Commission reject the application as presented. These parties dismiss Applicants' alleged benefits, identify numerous sources of harms to PGE and its customers, and suggest numerous conditions to address the harms.

We begin our discussion with a review of uncontested facts relating to PGE, the Enron bankruptcy, and Applicants' proposed acquisition.

A. PGE

PGE is a public utility providing electric service to over 750,000 customers in Portland, Salem, and neighboring communities. In December 2001, PGE's parent company, Enron, filed a petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code. This petition is being administered by the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court), as discussed below. *See* Enron/1, Bingham/1.

PGE is not in bankruptcy and continues to operate in a manner that effectively serves its customers. In terms of daily operations, Enron has let PGE operate as a stand-alone company. *See* ICNU/906. As explained by Peggy Fowler, PGE's CEO and President, Enron has "allowed us to stay focused on providing safe, reliable and cost-efficient energy to our customers, and the bankruptcy process has pretty much just gone on while we've continued to operate." *Id.* at 5. PGE has also maintained and invested in its system and made long-term commitments. *Id.* at 15.

Financially, PGE has retained investment-grade credit ratings from Moody's and from Standard & Poor's. *See* PGE/100, Piro/13. It has adequate liquidity and stable operating cash flow. *See* Staff/200, Morgan/50. Enron's bankruptcy has not impacted PGE's ability to access capital and the utility is expected to operate over the foreseeable future without problems. *See* ICNU/906 at 6; Staff/200, Morgan/56.

B. Enron Bankruptcy

PGE's stock is an asset of Enron's bankruptcy estate and must be disposed of in the manner approved by the Bankruptcy Court. *See* Enron/1, Bingham/1-2. The Bankruptcy Court has approved a plan that provides for the sale of the PGE shares or, in the alternative, the distribution of shares to creditors.

The Bankruptcy Court has approved Enron's agreement to sell the shares to Oregon Electric. Subject to the satisfaction or waiver of the closing conditions contained in the purchase and sale agreement, including approval by applicable regulatory agencies, the PGE stock will be sold to Oregon Electric. If that occurs, the PGE shares will cease to be assets of Enron's bankruptcy estate and will be replaced by cash received from Oregon Electric. The cash received will be distributed to Enron's creditors, and Oregon Electric will become the new owner of PGE's stock. *See* Enron/1, Bingham/3.

In the event this transaction does not occur, and Enron does not enter into an alternative sale agreement, PGE would temporarily remain under Enron ownership. A distribution of Enron's entire interest in PGE would occur in a single transaction after: (1) PGE and Enron have received the required consents; and (2) the Bankruptcy Court has allowed general unsecured claims in an amount that results in the distribution of 30 percent of PGE common stock. *See* Enron/1, Bingham/4. The PGE shares owned by Enron would be canceled at this distribution, and PGE would issue new shares. Part of those new PGE shares would be issued to creditors. A disbursing agent would hold the remaining shares in a disputed claims reserve and release the shares to holders of allowed claims.[8] Once shares are distributed, the stock could be traded on a public exchange such as the New York Stock Exchange. *Id.* A final distribution of the new PGE shares could take approximately two years.

[8] One percent of the shares will be held in the disputed claims reserve until a final distribution of all of Enron's assets.

The plan allows a sale of the PGE shares to a third party if these shares are not sold to Oregon Electric. With the approval of the Bankruptcy Court, Enron may enter into another agreement to sell the PGE shares prior to the so-called "Effective Date." This date follows the satisfaction of conditions, including a confirmation that all other actions and documents necessary to implement the approved plan have been executed and that certain consent rights have been obtained. *See* Enron/1, Bingham/4, 6. After the Effective Date and the distribution of new shares to holders of allowed claims and the disbursing agent, a decision to sell the new shares would be made by the creditors holding new shares and the overseers of the remaining shares held in the disputed claim reserve. *See* Enron/1, Bingham/6.

C. Applicants' Proposed Transaction

Applicants' proposed transaction is composed of several key components addressed as follows: management structure, financing, and conditions.

1. Management Structure

Oregon Electric, a public utility holding company, has agreed to purchase all of PGE's common stock from Enron for approximately $1.4 billion.[9] The sole purpose of Oregon Electric will be to hold and own PGE's common stock, which results in PGE being wholly owned by Oregon Electric.

At closing, Oregon Electric would be comprised of three groups: Managing Member, TPG, and Passive Investors. Managing Member is the vehicle through which Peter Kohler, Gerald Grinstein, Duane McDougall, Robert Miller, and Tom Walsh, also known as Local Applicants, will invest in PGE. Managing Member will own approximately .067 percent of the economic interest in Oregon Electric, and hold 95 percent of the voting control, subject to TPG's consent rights. TPG is comprised of two investment funds (TPG Partners III, L.P and TPG Partners IV, L.P.) both of which are managed by the Texas Pacific Group, a private equity management firm. TPG will own 79.9 percent of the economic interest in Oregon Electric, and hold 5 percent of the voting control. Passive Investors, which is comprised of the Bill & Melinda Gates Foundation and the OCM Opportunities Fund III, L.P., will own approximately 19.43 percent of the economic interest and have no voting control.

The PGE Board of Directors will always have at least five Oregonians as members. Peter Kohler will be the PGE Board Chairman, while the following will be PGE Board members: Gerald Grinstein, Tom Walsh, David Bonderman, Kelvin Davis, Peggy Fowler, Kirby Dyess, Maria Eitel, Jerry Jackson, Duane McDougall, Robert Miller, and M. Lee Pelton.

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[9] The purchase price is $1.25 billion plus an adjustment equal to the change in retained earnings from January 1, 2003 to the closing date of the transaction, which is estimated at approximately $150 million.

2. Financing

The purchase price, fees and expenses of the transaction are roughly $1.471 billion. Managing Member, TPG, and Passive Investors will invest approximately $525 million to purchase PGE. The equity investment by group is as follows:

Managing Member – $3.5 million
TPG – up to $420 million
Passive Investors – at least $100 million.

Oregon Electric will borrow approximately $707 million, consisting of $582 million in senior secured loan facilities (known as "Term Loans") with maturities ranging from four to nine years, and $125 million in senior unsecured notes (known as "Notes") with a 10-year term. This debt financing will be obtained from both public and private financial institutions. Additionally, Oregon Electric will establish a $100 million in revolving credit facility (known as the "Oregon Electric revolver"). No assets of PGE will be pledged to secure any Oregon Electric loans.

The purchase price includes the value of unpaid dividends to Enron, which have been unpaid since 2001. At closing, approximately $240 million of PGE's retained earnings will be given as dividends to Oregon Electric to help fund the purchase price. This will leave PGE with a cash balance of approximately $10 million. The current $150 million revolving credit facility will be refinanced with a new unsecured $250 million revolving credit facility (known as the "PGE revolver"), which is expected to be undrawn at closing. PGE will remain above the 48 percent common equity ratio, an amount previously required by Order No. 97-196.

Payment of Oregon Electric Debt. Oregon Electric will pay its acquisition debt from PGE dividends. Applicants forecast that PGE will be able to pay approximately $80 to $100 million of annual dividends to Oregon Electric. As a result, Oregon Electric will be able to pay down its debt principal by more than $250 million from 2005 through 2009. No dividends will be paid to Oregon Electric if payment of those dividends would reduce PGE's common equity ratio to or below 48 percent. Oregon Electric's revolver will be available to make debt payments in the event PGE cannot pay dividends or there is a timing difference between receipt of PGE dividends and payment of Oregon Electric's debt.

Capitalization. Immediately after closing, Oregon Electric's capitalization on a stand-alone basis will be approximately $1.2 billion ($525 million equity and $707 million debt). PGE's capitalization will be unchanged, and remain approximately $2.1 billion ($1.040 billion of equity and $1.066 billion in debt and preferred stock). PGE's common equity ratio will be 48 percent or higher.

3. Conditions

During the course of this proceeding, Oregon Electric, PGE, Enron, ICNU, CUB, City of Portland and Staff agreed to conditions to be incorporated in this order. On September 22, 2004, a partial stipulation incorporating six mutually agreeable conditions was filed as part of Staff's surrebuttal testimony. *See* Staff/801, Conway/1-6 (attached as Appendix A and incorporated herein).[10] Applicants also agreed to other conditions to be placed on the transaction. We consider those conditions to be amendments to, and part of, the application. A list of all conditions agreed to by Applicants, including the six stipulated conditions, is attached as Appendix C and incorporated herein.

III. LEGAL STANDARD

Before we address the parties' arguments and make findings about the benefits and harms presented by the application, we must first address our authority and role in reviewing an application to acquire a utility under Oregon law.

A. Applicable Law

Our charge is to make findings of fact and conclusions of law based on the evidentiary record before us. *See* ORS 756.558(2). In our order, we must disclose a rational relationship between those findings of fact and our legal conclusions. *See Chase Gardens Inc. v. Public Utility Commission*, 131 Or App 602, 605 (1994); *Market Transport v. Lobdell*, 74 Or App 375, 377 (1985), *aff'd sub nom Market Transport v. Maudlin*, 301 Or 727 (1986). Finally, our order must state whether Applicants have established by a preponderance of evidence that the statutory requirements have been satisfied.[11]

B. ORS 767.506 and ORS 757.511

We begin with the grant of authority provided by the legislature. In 1985, the Legislative Assembly passed Senate Bill 433 to ensure the Commission has regulatory

[10] The conditions included the Stipulated Service Quality Measures (SQM), which are attached as Appendix B and incorporated herein.

[11] There was some confusion during oral argument regarding the evidentiary standards. As long as the Commission's facts are supported by substantial evidence, a reviewing court cannot substitute its judgment for ours. ORS 756.598(1). The reviewing court need not agree with our inferences or reasoning, as long as the order contains "findings and conclusions sufficient to allow us to determine whether the reasoning is rational and to test the agency's actions against its grant of power." *Market Transport,* 74 Or App at 377; *American Can v. Lobdell,* 55 Or App 451, 461, *rev den,* 293 Or 190 (1982).

authority to review all proposed purchases of Oregon utilities. The legislature's findings and declarations are codified in ORS 757.506, which states:

> (1) The Legislative Assembly finds and declares that:
> (a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental statewide concern;
> (b) Existing legislation requires the Public Utility Commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and
> (c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.
> (2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511 in order to prevent unnecessary and unwarranted harm to such utilities' customers.

The legislative grant of authority to the Commission to review such transactions, as well as the legal requirements thereof, is codified in ORS 757.511. ORS 757.511(3), which is the primary focus of our proceeding, provides in part:

> The commission promptly shall examine and investigate each application received pursuant to this section and shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

This case is one of first impression. Although the Commission has previously applied ORS 757.511(3) in prior acquisition cases, those cases involved the review of stipulated settlements. *See Sierra Pacific Resources*, UM 967, Order No. 00-702; *ScottishPower*, UM 918, Order No. 99-616; and *Enron Corp*, UM 814, Order No. 97-196. In each of these cases, the applicant, Staff and most parties submitted a jointly negotiated settlement for Commission approval. While not all parties in each proceeding agreed with all aspects of the stipulation, the Commission was presented one stipulated proposal to review.

In contrast, Applicants and parties here reached no such settlement. Consequently, the Commission is presented a proposed transaction contested by numerous parties. Moreover, many of these parties proposed numerous alternative terms and conditions that modify Applicants' proposal.

In analyzing ORS 757.511(3), we must discern the intent of the legislature first by examining the text and context of the plain language of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11 (1993). If the intent of the legislature is not clear from the text and context inquiry, we then examine legislative history. If that too fails, we then turn to general maxims of statutory construction. *See id.* at 612.

The plain text of ORS 757.511(3) establishes a straightforward process for the Commission to follow in reviewing proposed acquisitions. At the outset, the Commission shall review the application "promptly" and issue a decision within 19 business days, a time limit that Applicants waived. In this review, the Commission must first determine whether the application will "serve the public utility's customers in the public interest;" if so, the application shall be approved. The statute then provides that the Commission may condition an approval on "the applicant's satisfactory performance or adherence to specific requirements." Finally, if all else fails, the Commission shall deny the application. We address each of these three provisions which provide the framework for Commission review.

1. Approval Order

The statutory scheme first directs our attention to a determination of whether the application "serves the public utility's customers in the public interest." Reading the statute in context, we first "examine and investigate" the application to determine whether it is in the public interest. *See PGE*, 317 Or at 611 (requiring contextual consideration of other provisions of the same statute). The statute does not provide for consideration of counter-offers or competing proposals. *See* ORS 174.010 (requiring the decision-maker to simply "declare what is" and "not to insert what has been omitted, or to omit what has been inserted"). The initial determination must be made on the merits of the application itself – the final package submitted by Applicants, including the amended application and any conditions agreed to by the Applicants. The Applicants

have the burden of proving that their final package serves the public interest as required by ORS 757.511(3).[12]

Net Benefit. The meaning of “serve the public utility's customers in the public interest” was the subject of a Commission investigation in docket UM 1011. Utilities, consumer groups, and Staff provided input on the applicable standard under the statute. The Commission resolved the docket by issuing Order No. 01-778, which adopted a two-pronged legal standard under ORS 757.511(3). After reviewing the text and context of the statute, the Commission “read the verb ‘serve’ to indicate a net benefit standard for merger approval.” *See* Order No. 01-778 at 10. The Commission went on to state that providing net benefits is a specific way to cure the general concern enunciated in ORS 757.506 that a transaction could harm customers. The order then set out a second requirement: “in addition to finding a net benefit to the utility’s customers, we must also find that the proposed transaction will not impose a detriment on Oregon citizens as a whole.” *See* Order No. 01-778 at 11.

Enron revisits the “net benefit” holding and argues that similar statutes require only a showing of “no harm.” *See* Enron opening brief at 7-8.[13] Enron’s argument fails because the Commission expressly contrasted the “not contrary to the public interest” wording in these other statutes, which indicates a “no harm” standard, with the legislative directive to find the acquisition to “serve the public utility’s customers in the public interest” in ORS 757.511. *See* Order No. 01-778 at 10. Enron next argues that ORS 757.511 was first applied in Order No. 86-106 to find a “no harm” standard. However, that decision was issued prior to the Supreme Court’s pronouncement of the proper method of statutory interpretation in *PGE*, 317 Or at 610-11, and this Commission’s analysis in Order No. 01-778.

BOMA asserts that the standard under ORS 757.511 requires a higher showing than “net benefits.” It contends that the proposed transaction must “quantifiably improve the services provided and the strength of the utility – by better service, stronger

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[12] Applicants are initially responsible for both the burden of persuasion and the burden of production. The burden of production shifts to other parties to present evidence that rebuts what Applicants presented. However, the burden of persuasion always rests with the Applicants. ICNU contends that Applicants must meet this burden with “compelling” evidence. *See* ICNU reply brief at 6. ICNU’s assertion is based on language from our decision in PGE’s last general rate case. In Order No. 01-777, we reaffirmed that a utility bears the burden to establish that a proposed rate change is just and reasonable, and stated, "If [PGE] fails to meet that burden, either because the opposing party presented compelling evidence in opposition to the proposal, or because PGE failed to present compelling information in the first place, then PGE does not prevail." Order No. 01-777 at 6. That use of the word “compelling” was intended to clarify that a utility cannot meet its burden with respect to any proposed rate change merely by presenting unrebutted evidence. Rather, that evidence must be compelling, that is, persuasive. We did not adopt a new standard of proof and reject any implied assertion to the contrary.

[13] Oregon Electric notes that it agrees with Enron’s analysis of ORS 757.511 as requiring only a “no harm” standard, but argues throughout its brief that its application meets the “net benefits” standard as set forth in Commission Order No. 01-778.

financial structure, and an increase in utility assets." *See* BOMA opening brief at 2. To support its argument, BOMA cites ORS 757.506, in which the legislature identified potential harms that could be posed by a utility acquisition. Interestingly, some parties in UM 1011 cited the legislative findings in ORS 757.506 to support a "no harm" standard. The Commission rejected those arguments, findings that the more specific provision of ORS 757.511(3) controls the legislature's determining in ORS 757.506. We find no language in either statute to sustain BOMA's assertion for a higher showing. Accordingly, we adhere to the "net benefits" standard established in Order No. 01-778.

Comparator. One issue not addressed in Order No. 01-778 was how the Commission should make an assessment of the "net benefit" standard. Applicants contend the Commission should weigh the benefits and harms of the application against each other, without consideration of a comparator. If the benefits outweigh the harms, then the application would be approved. ICNU, URP, and Staff recommend a second approach that compares the application against PGE as a separate and distinct entity.[14]

ORS 757.506(1)(c) delineates some harms against which customers should be protected, including degradation of utility service, higher rates, weakened financial structure and diminution of utility assets. The wording of the statute presumes a review of the utility's current status to see if a proposed transaction would cause harm. ORS 757.506(2) further provides that regulation is to prevent "unnecessary and unwarranted harm to such utilities' customers." Reading this statute in concert with ORS 757.511, we reject Applicants' approach and conclude that we must compare the potential benefits and harms of the transaction against the PGE as it is currently configured.

However, this transaction is unique, because PGE is in a transitional state. It is owned by Enron, which is in bankruptcy and is being liquidated. There is little to suggest that PGE would operate very differently after the stock distribution plan than it does now. With Enron's current hands-off approach, PGE is, essentially, currently acting as a stand-alone utility. Therefore, to take into account the current transitional nature of PGE's ownership, we will compare Applicants' proposal to PGE as a separate and distinct entity, which would function as PGE operates today.

[14] URP adds a third alternative that would also consider the purchase of PGE by the City of Portland or another public entity. We reject URP's recommendation for two reasons. First, no such proposal was presented in this proceeding. Second, and more importantly, we reiterate that our review under ORS 757.511 does not provide for consideration of competing proposals. *See* discussion *supra* at 16.

2. Conditional Order

The Commission has not previously examined the next provision of ORS 757.511(3), which gives the Commission discretion to "condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements." This is due in large part to the fact, as noted above, that prior acquisition dockets have involved stipulated agreements.

In context of the statute, the language may be a continuation of the preceding provision: first, the Commission makes a public interest finding and approves the application; then the Commission may condition the approving order on the satisfaction of certain requirements. However, the legislature gave no guidance in the statute as to what "satisfactory performance or adherence to specific requirements" could entail. Another plausible reading of the statute is that the legislature gave the Commission authority to broadly condition the application so that it could be found in the public interest. Some parties have argued for the latter construction of the statute. *See, e.g.,* RNP Oral Arg Tr at 146:24-25 ("Taken with other benefits of this transaction this [condition] could warrant granting the Application.") Both interpretations of the provision are awkward. The first reading appears to diminish the prominent words regarding satisfactory performance or requirements. The second reading does not comport with the apparent step-by-step process set out in the statute and conflicts with the express requirement that an applicant bears the burden of establishing that the proposed acquisition is in the public interest.[15]

We need not resolve this ambiguity here. Whatever authority has been provided by the legislature, the choice to exercise such authority is a matter of Commission discretion. As noted above, the "commission may condition an order authorizing an application[.]" ORS 757.511(3). For reasons that are discussed below, the harms presented, and the conditions necessary to remedy them, are so intertwined that we cannot propose them in piecemeal fashion. Because many of these harms are linked, directly and indirectly, to each other, we cannot propose conditions to address them without rewriting the basic terms of the application. Moreover, in many instances, there are multiple sets of conditions that could be used to address these harms. If we were to

[15] Legislative history reveals that the disputed provision was not part of ORS 757.511(3) as originally proposed in SB 433. The Committee Chairman, however, directed that an amendment be included to ensure the Public Utility Commissioner had authority to issue conditional orders, stating, "When I read the language, I can see a curmudgeon of a judge saying, 'They said he could grant the application or they said he could deny the application. They didn't say there was anything in between.' And so why don't we say in between." Tape recording, Senate Committee on Utility Rate Relief (Special Committee), SB 433, April 23, 1985, tape 40, side B (Sen. Edward Fadeley). The subsequent amendment inserted a sentence giving the Commission authority to conditional approval on "satisfactory performance or adherence to specific requirements." Unfortunately, the legislative history provides no resolution whether this conditional authority applies only after an application is found to serve the customers in the public interest, or whether it is extensive enough to broadly condition an otherwise deficient application so that it could meet the legal standard required for approval.

undertake a redrafting of the agreement, we lack the necessary basis to determine which conditions, and what combinations of conditions, are most appropriate. For this reason, we decline to exercise any authority to issue a conditional order in this case.

3. Denial Order

The final provision of ORS 757.511(3) is not in dispute. If an application does not serve the utility's customers in the public interest, the final outcome is to deny the application.

IV. FINDINGS OF FACT

In setting forth our findings of fact, we first evaluate the facts related to Staff and Intervenors' alleged harms presented by the application. Second, we find facts related to Applicants' alleged benefits of the proposed acquisition.

A. Potential Harms

We acknowledge the difficulty in establishing firm facts about what may occur in the future. While some facts can be found, many of the assertions made by Intervenors arise from inferences. CUB urges us to not discount such assertions:

> By definition, parties cannot provide TPG's fingerprints on a utility that the Commission has not yet given them. The parties have done the next best and *legally adequate* thing. Parties have provided documents showing what TPG is actually thinking, and have provided expert testimony based on years of experience to explain how TPG's business and economic models create actual situations and incentives that increase the risk to ratepayers. The parties then showed that what TPG is thinking is consistent with the expert testimony of those who understand regulation in general and this Commission in particular.

CUB reply brief at 10 (emphasis in original).

Enron submits that the Commission can consider "only harms that are not remote and that are demonstrably more likely to occur under Oregon Electric's ownership than under ownership by Enron and Enron's successors." *See* Enron opening brief at 17. According to Enron, harms found by the Commission must be supported by evidence, and "must pass the realm of conjecture, speculation or opinion not founded on facts." *See* Enron reply brief at 5-6 (citing *Douglas Const Corp v. Mazama Timber Products*, 256 Or 107, 114 (1970) (internal quotation marks omitted) (stating that a claim for lost profits must be quantifiable). Each of the parties is partially correct: using the evidence

in the record, we are permitted to draw rational inferences of possible or actual harms that could affect PGE and its customers.

The parties have identified several sources of harms to PGE and its customers that arise from this transaction. Of the arguments raised by the parties, the allegations that we find worth discussing include the debt service requirements to finance this acquisition, TPG's short-term ownership of PGE, lack of final financing terms, and lack of transparency.[16] We analyze those claimed harms to determine if the record supports them.

1. Harms Related to Oregon Electric's Debt

Staff and Intervenors argue that Oregon Electric has created a number of potential harms by proposing to finance the purchase of PGE with an excessive amount of debt. They note that at the time of closing, the percentage of total debt and preferred stock in PGE's capital structure will be 51 percent (with a preferred stock balance of only $22 million and a total debt balance of $1.044 billion). *See* Application, Ex 20, at 1. This percentage compares to an expected consolidated debt and preferred stock percentage with Oregon Electric of 77 percent at closing. *See* Staff/202, Morgan/408.

Staff and Intervenors contend that the large amount of debt held by Oregon Electric would result in the following potential harms: lower credit ratings for PGE, undue pressure on PGE to make dividend payments to Oregon Electric, and the risk of bankruptcy to Oregon Electric and PGE. Staff and ICNU also raise concerns about the amount of variable rate debt Oregon Electric expects to use.

We find these potential harms point to the possibility that PGE will not be able to raise capital as cheaply as it would as a stand-alone company, resulting in a weakened financial structure. Imprudent cost cutting and reduced capital expenditures could also occur. Therefore, the possibility of higher customer rates or reduced reliability arises from these potential harms.

PGE's Credit Rating. Staff and Intervenors point to reports from three major credit rating agencies, Standard & Poor's, Moody's, and Fitch ratings. These reports allude to the possibility of lower debt ratings for PGE based upon concerns about the amount of debt Oregon Electric plans to incur. *See, e.g.*, CUB/200, Dittmer/30-33. Staff and Intervenors see these reports as strong support for their concerns. In support of its argument, ICNU also points to a special study performed by Standard & Poor's at TPG's request. *See* ICNU/200, Antonuk-Vickroy/17-18.

[16] Other alleged harms we do not address include SEC approval, investor profit, taxes, restrictions on the sale of PGE by TPG, and Trojan decommissioning. The tax issue is being addressed in other pending dockets.

Applicants and PGE respond to these concerns with several arguments. First, they do not expect PGE's ratings to drop below investment grade. *See* PGE/100, Piro/19-20. Second, they expect any impact on PGE's debt costs to be limited to unsecured debt, which constitutes 20 percent of PGE's debt. Furthermore, they argue an unsecured debt downgrading could not harm customers until 2010. *See* OE/200, Wheeler/15. Third, Applicants and PGE argue the complexity of setting credit ratings makes it difficult to draw clear conclusions about future ratings. *See* PGE/100, Piro/17-19, 21-22. Finally, they argue that customers would be protected by the "hold harmless," "cash sweep," and "re-leverage" conditions Applicants have proposed. *See* OE opening brief at 28, 33-34.

We find the possible drop in PGE's credit ratings due to Oregon Electric's debt represents a potential harm to PGE customers, even though we do not believe that Oregon Electric's debt would cause PGE's ratings to drop below investment grade. The credit rating reports and the study performed by Standard & Poor's at the request of TPG suggest to us that PGE would have a stronger bond rating as a stand-alone company than it would as an affiliate of Oregon Electric. *See* CUB/208, Dittmer/2; CUB/209, Dittmer/1; CUB/210, Dittmer/1; ICNU/202, Antonuk-Vickroy/10, 15. The much higher debt percentage in the consolidated capital structure drives this conclusion. In fact, PGE's credit rating as a stand-alone company could conceivably increase, because the end of Enron's ownership would be viewed favorably by credit rating agencies. The potential impact of Oregon Electric's debt on PGE's debt costs and customer rates may be small, but would not exist in the absence of the proposed acquisition.

We believe the "cash sweep" and "re-leverage" conditions are beneficial to customers, and commend Applicants for agreeing to them. However, those conditions do not guarantee that PGE would avoid lower credit ratings immediately after the deal is closed. We also agree that the "hold harmless" conditions provide a measure of customer protection. However, their usefulness is clearly limited. For example, the complexity of setting credit ratings discussed above shows a clear limitation on the effectiveness of the cost of capital "hold harmless" condition. This complexity ensures that any assertion by Staff and Intervenors that the acquisition would lead to a higher PGE debt cost would likely be met with a response that such an assertion is overly simplistic. Also, establishing a precise increase in debt cost, as implementation of the "hold harmless" condition requires, would be a difficult and contentious task with uncertain results.

Undue Pressure. Staff and Intervenors assert the large amount of debt incurred by Oregon Electric will result in a large debt service requirement, which, in turn, will pressure PGE to engage in imprudent cost cutting and reduce capital investments to produce sufficient cash to service Oregon Electric's debt. *See* CUB/200, Dittmer/25-30; Staff/900, Morgan/16; City of Portland/101, Anderson/9-10.

Applicants and PGE respond to this assertion by citing the results of an extensive series of financial model runs. *See* OE/200, Wheeler/3-10; PGE/100, Piro/4-5.

These results, Applicants and PGE contend, show that it is unlikely PGE will need to engage in imprudent cost cutting to provide dividends needed to service Oregon Electric's debt.

The record demonstrates that the quality of TPG's model runs is high. *See* Staff/200, Morgan/34-35. It is unclear, however, whether the model runs thoroughly examined all scenarios. CUB witness Dittmer notes the following:

> To summarize on the results of TPG's financial modeling efforts, clearly Applicants have not taken a strictly Pollyanna view of PGE's and Oregon Electric's probable plight. Indeed as investors with expectations of return of capital as well as returns on invested capital, it is only prudent that they consider and handicap pessimistic as well as optimistic events. That said, I do not believe that TPG has necessarily modeled 'worse case' scenarios.

See CUB/200, Dittmer/38.

The fact that TPG's model runs are not as complete as possible heightens our concern that Oregon Electric's debt will be less than investment grade. *See* ICNU/203, Antonuk-Vickroy/8, 9, 12. The testimony of witnesses Wheeler and Piro suggest it is highly likely that PGE will be able to comfortably provide the dividends needed to service the Oregon Electric debt. If Wheeler and Piro are correct, an investment grade credit rating should not be difficult for Oregon Electric to secure. The possibility of below-investment-grade credit ratings for Oregon Electric presents a similar risk to customers as the same situation for PGE. In both cases, PGE customers are the only source of funds for servicing the debt. If Oregon Electric could assure us that its credit ratings would be investment grade, then we would view the risk of undue pressure to cut PGE costs as minute. As it is, we think there is a significant risk to PGE customers. We believe investment grade credit ratings could be attained if Oregon Electric reduced the planned amount of its borrowings. We also believe less Oregon Electric debt would have a salutary effect on PGE's post-acquisition debt ratings.

Our discussion about the limitations of the "cash sweep," "re-leverage," and "hold harmless" conditions apply to the undue cost cutting pressure argument, as well.

Bankruptcy. Staff and Intervenors believe that the amount of Oregon Electric debt increases the risk of a PGE bankruptcy. *See* ICNU/200, Antonuk-Vickroy/24-25. Applicants counter that there is no reason to anticipate an Oregon Electric bankruptcy, and that even if one were to occur, there is no material risk that PGE would be pulled into the bankruptcy. *See* OE opening brief at 27-28. While the amount of debt to be incurred by Oregon Electric presents a potential harm, we find that

the risk of an Oregon Electric bankruptcy is extremely small and would not likely lead to a PGE bankruptcy. We have confidence that the ring fencing conditions included in the application would protect PGE customers. That said, an investment grade credit rating for Oregon Electric would further reduce whatever bankruptcy risk exists.

Variable Rate Debt. ICNU and Staff note that Oregon Electric intends to rely heavily on variable rate debt, and that this reliance could lead to a serious debt service problem in the event that interest rates rise in the future. *See* ICNU/200, Antonuk-Vickroy/22-24. Applicants confirm that they intend to rely heavily on variable rate debt, but offer assurances that they could, and would, convert variable rate debt to fixed rate debt if necessary. *See* OE/200, Wheeler/19-20.

There are two views of the use of variable rate debt by Oregon Electric. On the one hand, variable rate debt is normally cheaper at a given point in time, as it is now. Thus, Oregon Electric's extensive reliance on variable rate debt could reduce the debt service requirement on PGE. On the other hand, if we were to approve this application, we would have no ability to require that Applicants convert the debt from variable rate to fixed rate in the event of a rise in interest rates. That ability would rest solely with Applicants. We have no reason to doubt Applicants' integrity concerning this issue, but remain concerned about the lack of certainty in this area. We agree with ICNU that a commitment by Applicants to maintain investment grade bond ratings would eliminate this concern because the amount of variable rate debt would be taken into account by the rating agencies. *See* ICNU/400, Antonuk-Vickroy/6.

2. Short-Term Ownership

Intervenors argue that TPG's stated intention to sell its investment in PGE within 12 years creates incentives for TPG to act in ways that are not consistent with the interests of customers. According to their arguments, TPG would have an incentive to cut costs in order to boost short-term earnings and demonstrate good results to potential buyers. *See* CUB/100, Jenks-Brown/8-9; CUB/200, Dittmer/29; ICNU/200, Antonuk-Vickroy/36. Its short-term focus would affect its decisions about investments in utility resources, as well as its interest in and position on long-term policy issues, such as the role of the BPA, transmission planning and funding, and global climate change initiatives. *See* CUB opening brief at 19-27; CUB/100, Jenks-Brown/12. Intervenors also allege that the prospect of another sale on the horizon could paralyze decision-making by PGE management. CUB specifically argues that since Enron put PGE up for sale, the company's primary focus has seemed to be "to enhance its value by shifting risks onto customers through [power cost adjustment mechanisms], deferrals, and annual power cost rate cases." *See* CUB/100, Jenks-Brown/20. While customers would benefit if PGE is run more efficiently and rates are cut, they would be harmed by cost cutting that degrades service quality, poor decision-making that affects resource development, and other actions with long-term consequences. Those harms might not be detected before TPG sells PGE. *See* CUB/100, Jenks-Brown/11.

Applicants respond that imprudent cost cutting and deferred investment decisions would be contrary to their financial incentive to increase the value of PGE. *See* OE/100, Davis/7; OE opening brief at 40. They describe the possible harm from cost cutting as speculative and argue that harm has not occurred while Enron has been shopping PGE. *See* OE opening brief at 40 (citing PGE/100, Piro/8, 24).

Intervenors' arguments about the effects of short-term ownership have focused on four issues: TPG's plans for PGE, TPG management of its other businesses, whether due diligence by the next buyer of PGE will deter imprudent cost cutting and investment decisions by TPG, and whether the Commission can ensure good outcomes for customers. We discuss these in turn.

TPG's plans. TPG states that it intends to hold PGE longer than most of the other companies in which it invests (5-7 years), but for no more than 12 years. *See* OE/3, Davis/12. However, some Intervenors believe that TPG plans to sell PGE in 5-6 years because many of the model runs TPG performed for its due diligence on PGE assume a sale at that time. Intervenors also point to the due diligence reports as evidence that TPG plans to make significant cuts in operations and maintenance (O&M) expense and capital expenditures. *See* CUB/300, Jenks-Brown/3. The reports identified potential reductions in plant maintenance and turbine overhauls at the Boardman power plant, in staffing and maintenance at the Beaver power facility, and in information technology services and customer service. *See* ICNU opening brief at 30-31. Many of the model runs assumed cuts of $10-30 million a year in O&M expense. *See* ICNU/100, Schoenbeck/16. ICNU argues that cost savings are needed to meet TPG's targeted return on investment and notes that cuts were assumed in TPG's presentations to Standard & Poor's. *See* ICNU/100, Schoenbeck/12, 20.

Applicants state that they do not have any definite plan for cutting costs or changing the way PGE operates. Applicants characterize due diligence as an investigation undertaken to assess a target company but that is not intended to result in an operational plan. A due diligence review suggests areas to examine further for possible savings but is not sufficient for planning cost reductions. The potential cuts identified in TPG's due diligence were not vetted by PGE. *See* OE/100, Davis/16. After this transaction closes, Applicants explain that the new PGE Board and PGE management will review the company's operations to identify and implement efficiency improvements. *See* OE/22, Davis/5. Applicants deny that their targeted financial results are dependent on the cuts suggested in the due diligence process. *See* OE/100, Davis/17; OE/200, Wheeler/10.

TPG and Intervenors also draw different conclusions about TPG's plans from its decision on Port Westward. TPG initially questioned whether market purchases would be more economic than building Port Westward, but after conducting its own analysis and reviewing the matter with PGE, it decided to support the commitment to the plant. TPG views this as illustrative of its careful, reasoned analysis of resource decisions

and its resolve to make necessary long-term investments in PGE. *See* OE/100, Davis/11. Intervenors, however, consider TPG's initial reservations and tepid support for Port Westward indicative of a willingness to put off long-term investments. *See* ICNU opening brief at 26-28. CUB believes TPG had no choice but to go along with Port Westward while the cost cutting issue was being debated in this proceeding. *See* CUB opening brief at 22.

TPG's Other Businesses. CUB cites TPG's record of making deep cuts in jobs and capital expenditures after acquiring other businesses as evidence that its concern about strategic cuts at PGE is well-founded. *See* CUB/300, Jenks-Brown/3-4. But TPG demonstrated that in most cases it actually increased employment and capital expenditures after restructuring operations, a pattern consistent with its investment philosophy. *See* OE/500, Davis/12-17. We do not believe that these examples support CUB's argument that TPG would make drastic cuts at PGE. Because PGE has an obligation to serve all customers in its allocated service territory, the utility presents a different business model than TPG has encountered with its other businesses. TPG would not be able to cut unprofitable products and services as it did in its other businesses.

Due Diligence by Future Purchaser. Applicants claim that they would not be able to profit from cost cutting or investment decisions that reduce the value of PGE because a potential buyer would detect such actions through due diligence efforts and, once detected, reduce its offer for PGE accordingly. *See* OE/100, Davis/10. Intervenors point out that the effects of some actions, such as deferring generating plant maintenance, may not surface until after TPG sells PGE. *See* AOI opening brief at 15-16. More importantly, Applicants' argument is undercut by their own statements about the inherent limitations of due diligence, *e.g.*, that it is conducted from an external vantage point with limited information. *See* OE/100, Davis/15-16.

Commission Authority. Applicants argue that the Commission has ample authority to identify and protect PGE customers from imprudent cost cutting, through its general investigatory powers, ratemaking authority, integrated resource planning process, and service quality measures. *See* OE opening brief at 44-45. CUB disagrees, stating that the Commission is better able to deny recovery of imprudent expenditures than to require more spending when appropriate. *See* CUB/300, Jenks-Brown/2. CUB questions Oregon Electric's claim that the Commission can order a utility to "rectify any deficiencies" in investment. *See* CUB/300, Jenks-Brown/17-18. CUB notes that despite the Commission's oversight, Qwest Corporation, formerly US West Communications, Inc., failed to invest in its network for many years and then failed to deploy enough resources to handle the resulting service problems. *See* CUB/300, Jenks-Brown/8-9.

Regarding the possible harms that arise from short-term ownership by TPG, we make the following findings. TPG may sell PGE at any time within the next 12 years. Its analysis may have shown that investment in PGE will provide a reasonable

return after 5 years, but we expect that TPG would always be assessing when to sell PGE. TPG expects to profit from the sale of PGE, and its best strategy may be to sell PGE as soon as possible. *See* Staff/200, Morgan/7.

In any event, TPG, at some point would decide it is time to try to sell PGE. In making decisions with long term consequences, we find TPG's actions relating to operating and investing in PGE could be affected by how much longer it expects to hold the company.

Like any other business, TPG has an incentive to reduce costs to the extent that it can retain the benefits, either through short-term earnings or eventual gain from the sale of the business. Since TPG plans to sell PGE, it has an interest in improving earnings in the short term to make PGE more attractive to potential buyers. The issue here is whether TPG's intention to sell PGE affects its ability to profit from cost cutting and investment decisions that might eventually degrade customer service or lead to higher costs. We find it does because due diligence by the next buyer and oversight by the Commission cannot catch all instances of TPG's spending and investment decisions that may have harmful effects after it sells PGE. We expect the effect to be more pronounced once TPG decides that it is time to sell PGE.

TPG itself noted the limitations of due diligence. The Commission has broad regulatory authority, but the utility will always have better information about its system and operations. TPG's failure to increase O&M spending where necessary presents a greater risk than a decision to cut O&M from current levels. Cuts in O&M are easier to identify and then investigate, while needed increases in current spending are harder to detect. The same is true for investment in PGE. Some investment needs, such as resource needs identified in the planning process, are obvious candidates for regulatory oversight. But the Commission may not be able to identify and require more discretionary investments that could benefit customers, and TPG would make those investments only if it could recover full value for them from the next purchaser.

The additional reporting on actual and budgeted O&M costs and capital expenditures offered by Applicants would increase the likelihood that harmful cost cutting would be detected through Commission oversight or due diligence efforts by potential buyers. This potential for harm arising from short-term ownership, however, could be further reduced with frequent, regular rate cases in two ways. First, rate cases provide the best forum for a comprehensive examination of a utility's costs by the Commission and interested parties. Second, more frequent rate cases would reduce the benefit of any overzealous cost cutting, although it may also reduce the incentive for beneficial cuts. In the end, we find that PGE's customers may be harmed by the proposed acquisition, in that short-term ownership makes it somewhat more likely that they will be exposed to the effects of poor spending and investment decisions. Such risks could cause the degradation of utility service and the diminution of utility assets.

3. Transaction Terms not Final

Several Intervenors point out that the financing for the transaction has not yet been finalized, and the details of the final transaction may affect how much pressure will be placed on PGE to repay debt. *See* ICNU opening brief at 22; City of Portland reply brief at 13. They also suggest that the ORS 757.511(2) requirement that the application to purchase a utility identify, among other things, "[t]he applicant's identity and financial ability," and "[t]he source and amounts of funds or other consideration to be used in the acquisition" has not been met. BOMA argues that the Commission should conduct an in-depth review of TPG's finances, including its investors, to determine the source of its revenues and to whether they will be able to support PGE in case liabilities arise. *See* BOMA opening brief at 5.

We share the concern that financing has not been finalized. While Applicants have secured a letter of credit from Credit Suisse First Boston LLC as proof of their ability to finance the transaction, *see* Application, Ex 19, we do not know whether the financing at the time of closing will be within the parameters of the information presented in this proceeding. Although unlikely, a sharp rise in interest rates before financing has been finalized would further increase Oregon Electric's debt and compound the associated harms previously identified. While this potential harm is minimal, it cannot be dismissed.

4. Lack of Transparency

A key criticism of many Intervenors is the lack of transparency of TPG. While the lack of transparency is not itself a harm, Intervenors contend that it could lead to some of the dangers associated with TPG's short-term ownership and incentives for cost cutting and diminished quality of service. URP argues that TPG's lack of transparency renders its application incomplete because ORS 757.511(2)(c) requires disclosure of a utility purchaser's source of funds.[17]

Intervenors' concerns are heightened by the strong influence TPG will have over the PGE Board of Directors. The City of Portland notes that access to relevant TPG records will become even more important if PUHCA is repealed and TPG restructures its ownership to hold 95 percent of the voting shares in PGE. *See* City of Portland opening brief at 19. "Any inability to obtain potentially relevant documents interferes with the Commission's oversight role and that harms customers." *See* CUB opening brief at 18.

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[17] According to URP, TPG has refused to disclose investors in its funds that are being used to purchase PGE or the investors in Oaktree Capital Management. *See* URP opening brief at 5. We note that Applicants in fact disclosed its investors to Intervenors after seeking extra protection from the Commission. *See* ALJ ruling (May 28, 2004).

These concerns are based on the belief that the Commission lacks regulatory authority to obtain information from TPG. Consequently, some Intervenors have proposed additional conditions requiring that Applicants allow the Commission to obtain TPG records that "are reasonably calculated to lead to information relating to PGE." *See* CUB opening brief at 34; AOI reply brief at 8. Others introduced proposals for access to documents related to TPG's exercise of negative consent rights. *See* AOI reply brief at 7; City of Portland opening brief at 13.

Contrary to the Intervenors' belief, the Commission has the authority to obtain information from TPG. First, under ORS 756.040, the Commission "shall make use of the jurisdiction and powers of the office to protect…customers…from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates." If we had reason to believe that TPG was exercising its influence over PGE in any way that may have an effect on PGE's rates and services, then we would have authority to require TPG to provide information about the exercise of that influence. While we do not read ORS 756.040 to give us authority to conduct an unlimited inquiry into TPG's books and records, the statute allows us to obtain information from TPG regarding its control of PGE.

Second, in filing its application under ORS 757.511, TPG acknowledged its status as an affiliate with PGE under ORS 757.511 if this application were approved. The Commission has broad regulatory authority over affiliates of a utility. If TPG were to engage in any transactions that fall under the Commission's affiliated interest statutes, we would be able to obtain information regarding those transactions.

Accordingly, while we share the Intervenors' concerns about TPG's short-term ownership of PGE and our ability to detect all imprudent actions, such concerns are not related to the Intervenors' allegations of transparency as presented here.

B. Potential Benefits

Applicants assert there are seven benefits to the proposed transaction. We address each separately.

1. Rate Credit

Applicants offer a rate credit totaling $43 million, with $8.6 million applied to customer bills for five years starting in 2007. Applicants contend that this is a pure benefit, and is not intended to compensate for any particular risk or harm. Intervenors assert that Applicants' rate credit is illusory.

As presented, the $43 million rate credit appears to provide benefits to customers. Applicants, however, have greatly obscured this benefit by requiring it to be offset with any cost savings found in future rate cases. Any cost saving—regardless of

cause—would offset the rate credit. Thus, for example, if PGE's costs decline by $43 million or more for any reason over the next several years, Applicants would be able to offset the entire rate credit with no need to show that the savings were related to Oregon Electric's ownership of PGE.

By failing to identify the basis for the $43 million rate credit, Applicants have also frustrated any attempt to determine whether a causal link exists between future cost savings and this application. In previous acquisition cases, applicants identified synergies that resulted in specified savings to customers. *See* Order No. 97-196 at 5-6. In such cases, the subsequently identified savings could be readily linked to the new ownership. In contrast, Applicants here have indicated only that the rate credit represents "an achievable level of savings in the next general rate case." OE/500, Davis/23. They have declined, however, to identify the possible source of these savings, and provide no analysis to support their claim.

In addition to this causal uncertainty, it may be difficult to even substantiate that savings used to offset the rate credit actually occurred. Applicants claim that they could achieve cost savings by arguing that PGE's costs had not increased as much as they would have absent their ownership. *See* ICNU/502. As ICNU notes, demonstrating such cost differences would be, in large part, a matter of speculation.

For these reasons, we agree with Intervenors that the rate credit, as proposed, presents only a minimal benefit to customers. The required offset and no identified basis make it difficult to determine whether customers will receive anything of value as a result of this transition. If the rate credit were presented without the offset, we would know that the customers are truly receiving $43 million in credits.

2. Indemnification Provisions

Applicants claim that PGE customers will benefit from two categories of indemnification provisions included in the proposed acquisition. These two groups are the Shared and Non-Shared Special Indemnity Matters, which relate to potential liabilities affecting only PGE, and the Tax and Benefit Matters, which relate to potential liabilities that exist due to Enron's ownership of PGE. We address each category in turn.

Shared Special and Non-Shared Special Indemnity Matters. The "Shared" and "Non-Shared Special Indemnity Matters" are liabilities for which PGE is solely liable, and not due to Enron ownership. *See* OE/102, Davis/1-4 (chart). As part of its agreement with Enron, Oregon Electric negotiated contractual indemnifications protecting PGE and Oregon Electric from these potential liabilities. Enron has agreed to indemnify PGE up to $94 million. To fund this obligation, $94 million will be set aside in an escrow account at closing from proceeds that otherwise would be paid to Enron. *See* OE/500, Davis/21. Enron does not intend to indemnify PGE for these liabilities if the sale to Applicants is not completed. *See* Enron/2, Bingham/4; Enron/3, Bingham/2.

The value to PGE customers of this indemnification depends on three issues: (1) the likelihood that a loss is assigned to PGE; (2) whether the loss would be charged directly to customers; and (3) whether there would be an indirect effect on customers if the loss instead is borne by PGE's shareholder, Oregon Electric. The record is silent on the first. Applicants did not provide any data on the value of the liabilities. *See* Staff/900, Morgan/6. As to the second, PGE states that it would seek to recover losses from customers, such as those losses arising from its provision of customer service. *See* PGE/100, Piro/27-29. CUB, however, disagrees with this assertion because the loss might be the result of PGE's failure to comply with the law. *See* CUB/300, Jenks-Brown/23-24. Applicants respond that even if the loss is not charged to customers, they would benefit to the extent the indemnification protects PGE's financial health, as suggested by the third issue above. *See* OE reply brief at 24. But CUB notes that the effect of any harm to the company, such as a higher cost of capital, should not be passed through to customers. *See* CUB/300, Jenks-Brown/24.

We find that indemnification for the Shared and Non-Shared Indemnity Matters is a benefit for PGE's customers, akin to an insurance policy which may never be used. However, given the lack of evidence about the magnitude of the risk PGE faces, and the uncertainty as to whether such obligations would be borne by customers, we cannot, and do not, assign much value to those potential benefits.

Tax and Benefit Matters. Enron will also indemnify PGE for up to $1.25 billion in after-tax losses related to the Tax and Benefit Matters, also known as the "control group" liabilities. These liabilities exist because of Enron's ownership of PGE. Enron has provided indemnification for the control group liabilities as part of its separation agreements for other subsidiaries and would consider indemnifying PGE if the sale to Oregon Electric does not occur. *See* Enron/2, Bingham/3-4. Although not guaranteed, PGE's customers will likely have this protection even if we do not approve the sale to Oregon Electric. Therefore, we find that indemnification for the control group liabilities under Oregon Electric's application provides minimal benefit.[18]

3. Service Quality Measures

Oregon Electric agrees to continue the current service quality measures (SQMs) established under the Enron order, which are due to expire at the end of 2006, for another ten years. Oregon Electric will also develop and implement a new billing accuracy SQM, subject to Commission approval.

The SQM provides guaranteed rate reductions if PGE fails to meet the standards. Once the SQM agreement expires, customers will no longer have the protections the SQM provides. Extending these reductions is a benefit of the transaction,

[18] We also presume that the Bankruptcy Court would dispose of claims related to Enron prior to the final distribution of shares to creditors.

although it does not have great value. We agree with ICNU witness Schoenbeck that these types of service quality assurances are activities that a "prudent, well-managed utility would already be providing to its customers." *See* ICNU/100, Schoenbeck/2.

4. Local Focus

Applicants claim that they will restore the local focus of PGE with a commitment to maintain at least five Oregonians on the PGE Board of Directors. An Oregonian will also serve as chair of the Board. Oregon Electric contends that this strong local presence will bring greater sensitivity to local issues, along with providing PGE with a higher degree of accountability to customers.

We find no benefit from this commitment. PGE currently has a local focus. Moreover, a local presence on the board of directors is common in the energy industry, especially here in the Pacific Northwest. As ICNU notes, Northwest Natural Gas Company, Avista Corporation, Puget Sound Energy, and PacifiCorp all have strong local representation on their board of directors. *See* ICNU/100, Schoenbeck/5.

5. TPG Assistance

TPG claims that its role in the ownership of PGE will benefit customers, due to its experience and expertise in helping companies through periods of transition. TPG claims it will be able to assist and guide the PGE Board regarding long-term strategy, capital investment decisions, and operational issues.

We are not persuaded by TPG's assertion for two reasons. First, TPG has no experience in the utility industry. Second, its argument presumes that this assistance cannot be obtained elsewhere. As stated by witnesses Antonuk and Vickroy, "These 'benefits' really do little more than restate what are fundamental, baseline obligations of utilities." *See* ICNU/200, Antonuk-Vickroy/12.

6. Commitment to Low-Income Customers

Oregon Electric will extend for 10 years PGE's in-kind donations to Oregon HEAT, along with increasing its shareholders' annual cash donation from $50,000 to $100,000. Additionally, Oregon Electric agrees to participate in a group led by PGE to work on additional programs for low-income customers.

This is a tangible benefit to customers of this transaction. However, the benefit is limited to a particular group of customers, and is an extremely small amount, approximately .01 percent, of PGE's retail revenue. *See* ICNU/100, Schoenbeck/12.

7. End of Enron Ownership.

Applicants contend that this transaction will immediately end Enron ownership, resulting in stable and known ownership by Oregon Electric. According to Applicants, this certainty will benefit PGE as it can focus on providing excellent service rather than facing ongoing distractions caused by continued Enron ownership.

The end of Enron's ownership will occur without this transaction. The question is whether the *immediate* end of Enron's ownership is a customer benefit. PGE is not a distressed company, either financially or operationally. The utility has continued normal operations throughout the bankruptcy, and has continued to maintain and invest in its system. Because of the current stability of PGE, and the certainty of an eventual end of Enron ownership, we do not find the benefit asserted by Applicants.

V. CONCLUSIONS OF LAW

A. Net Benefits

As previously stated, the Commission must review the application, with the amendments and conditions agreed to by Applicants, to determine the harms and benefits of the transaction. If the benefits outweigh the harms, then the net benefit standard has been met and the application must be granted. The Commission has discretion to issue a conditional order approving the acquisition if certain requirements are met. If those hurdles cannot be overcome, then the application must be denied.

To take into account the transitional nature of PGE's ownership, we perform this analysis by comparing the benefits and harms of Applicants' proposal against a backdrop of PGE as a separate and distinct entity. In this analysis, we assume that PGE will function as it is currently, essentially as a stand-alone entity.

As discussed above, there are few benefits to Applicants' proposal. Of the seven benefits advocated by Applicants, three provide no value to PGE's ratepayers. On this record, we cannot conclude that Applicants' commitment to local focus, TPG's expertise, and the end of Enron ownership provide ratepayers any benefit they would not receive if PGE continues to operate as a stand-alone entity. The remaining four claimed benefits provide minimal value. At first glance, the $43 million rate credit and the indemnifications appear significant. Our examination above, however, casts doubt on whether these provisions would provide any value to ratepayers. Similarly, the extension of the SQM agreement and commitment to assist low-income customers provides little value to customers they would not have received without this transaction.

We identified several sources of harm in this application. The primary source stems from Applicants' proposal to finance the purchase of PGE with an excessive amount of debt. As discussed above, the high debt percentage in the consolidated capital

structure would likely result in lower credit ratings for PGE than it would in absence of this transaction. This large debt service requirement also presents the possibility that Oregon Electric's debt will be less than investment grade, which increases the likelihood that PGE may engage in imprudent cost cutting and reduced capital investments if earnings drop. Moreover, this debt increases the risks associated with the lack of final financing terms. We are also concerned about imprudent cost cutting and reduced capital investment due to the short term ownership of PGE.

These sources of harm do not stand in isolation. Rather, they represent a package of potential harms that, combined, could result in the degradation of service, increased customer rates, a weakened financial structure for PGE, and diminution of utility assets as compared to PGE as a stand-alone utility. We conclude that the collective risk these harms represent outweigh the potential benefits of the acquisition, which we have shown are minimal. Applicants have failed to establish that customers would be better served under this acquisition than they would be if PGE remained as a separate and distinct entity. Accordingly, the application, as presented, does not provide a net benefit to PGE's customers.[19]

B. Conditional Order

We decline to issue a conditional order authorizing the acquisition if certain requirements are met. Staff and Intervenors presented numerous conditions for our consideration to mitigate alleged harms. Some proposed conditions addressed narrow issues, such as the filing of future rate cases or added requirements of a cash-sweep provision. Other conditions went to the core of the application itself.

We previously questioned the limits of our authority to impose conditions under ORS 757.511(3). This issue arose when reviewing substantive conditions proposed above. While the statute may provide the authority to add conditions to modify a transaction so that it "serves the public utility's customers in the public interest," we cannot offset the potential harms presented in piecemeal fashion. Many of these harms are intertwined and linked—directly and indirectly—with each other. An attempt to eliminate one source may do little to mitigate the overall risk. More importantly, a condition crafted to address one potential harm may require the modification of other conditions, or possibly create other risks not previously considered. Consequently, any attempt to remedy this application would lead to an extended exercise that would likely result in the Commission drafting a new application. Such an approach turns ORS 757.511(3) on its head and contradicts the statute's directive that the applicant bears the burden to demonstrate that its proposal serves the utility's customers in the public interest.

[19] Due to our determination that the application does not provide a net benefit, we need not decide whether it is in the public interest, *i.e.,* that it does not impose a detriment on Oregon citizens as a whole.

Furthermore, in many instances, there are multiple sets of conditions that could be imposed to address the identified harms. If we were to undertake a redrafting of the agreement, we lack the necessary basis to determine which set is most appropriate. In other words, we cannot choose the best package of conditions for the Applicants. For these reasons, we decline to issue a conditional order in this case.

C. Other Issues

As discussed above, Staff and Intervenors present numerous conditions to impose on this application. We take this opportunity to address a number of these conditions that are not related to either the harms of the transaction, or the transaction itself. Most of these proposals are tendered as a factor to be weighed in determining whether the application is "in the public interest." For example, ICNU and Strategic Energy advocate for a condition requiring PGE to develop and file proposals promoting direct access, a condition that would begin a process, but not obligate PGE to spend significant resources on direct access at this time. The City of Portland, CUB, and RNP urge the Commission to press Applicants to increase and solidify their commitment to renewable energy sources during the time Applicants own PGE. The City of Portland and CUB also point to testimony filed by CADO/OECA as a reason to require Applicants to increase their contribution to Oregon HEAT. *See* City of Portland opening brief at 33; CUB opening brief at 43.[20] These conditions may have been part of stipulated agreements in the past, and may have even been agreed to in part by Applicants in this case. However, Intervenors have failed to provide any statutory basis to authorize our adoption of those conditions under ORS 757.511.

We agree with Intervenors that promotion of direct access, renewable energy sources, and low-income assistance are important goals, and we will pursue them as we have in the past. We can also understand that Intervenors were able to secure favorable conditions in stipulations in past dockets and so pursued their causes in this docket. However, an applicant submits the benefits of its application. Once the applicant determines that it is not amending its application with the addition of such provisions, we question the parties' ability to pursue conditions unrelated to harms posed by the transaction. While we have authority to place some conditions on an order approving an application, we do not believe we have the authority to add conditions for the sole purpose of adding benefits.

[20] The City of Portland also wants TPG to negotiate a modern franchise agreement. *See* City of Portland opening brief at 35. The City also appears to recognize that we do not have jurisdiction over that issue and that it is not directly tied to this transaction. *Id.*

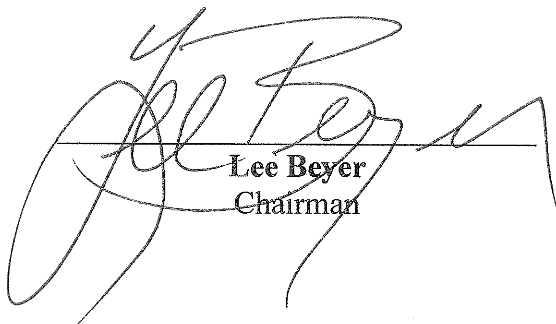
CONCLUSION

Applicants have failed to establish that Oregon Electric's acquisition of the common stock of PGE from PGE's parent company, Enron, serves the utility's customers in the public interest. The application should be denied.

ORDER

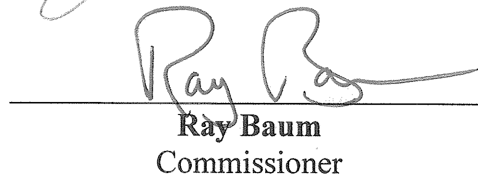
IT IS ORDERED that the application filed by Oregon Electric Utility Company, LLC, TPG Partners III and IV, L.P., Managing Member LLC, Peter Kohler, Gerald Grinstein, Duane McDougall, Robert Miller, and Tom Walsh is denied.

Made, entered, and effective MAR 10 2005.



Lee Beyer
Chairman

John Savage
Commissioner



Ray Baum
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.

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **UM 1121**
4
In the Matter of
5
OREGON ELECTRIC UTILITY COMPANY, LLC, et al.,
6
7
Application for Authorization to Acquire Portland General Electric Company
8
9
10

PARTIAL STIPULATION

11 On March 8, 2004, Oregon Electric Utility Company, LLC ("Oregon Electric"), TPG
12 Partners III, L.P., TPG Partners IV, L.P., Managing Member LLC, Gerald Grinstein, and Tom
13 Walsh (collectively, "Applicants") filed an Application for an Order Authorizing Oregon Electric
14 Utility Company, LLC to Acquire Portland General Electric Company ("Application"). The
15 parties held a settlement conference regarding the Application on June 8, 2004. Staff of the
16 Public Utility Commission ("Staff"), Applicants, the Citizens Utility Board of Oregon ("CUB"),
17 the Industrial Customers of Northwest Utilities ("ICNU"), and Portland General Electric
18 Company ("PGE") (collectively the "Parties" to the Partial Stipulation) agree that in the event
19 the Public Utility Commission of Oregon ("Commission") approves the Application, the
20 following conditions (the "Partial Stipulation") shall be incorporated in the final Commission
21 order approving the Application. This Partial Stipulation will be made available to other parties
22 in this Docket who may become Parties to the Partial Stipulation by signing and filing a copy of
23 it.
24
25
26

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STIPULATED CONDITIONS

The Parties agree that the following conditions shall be incorporated in any final Commission order approving the Application:

1. PGE and Oregon Electric shall maintain separate books and records. All PGE and Oregon Electric financial books and records shall be kept in Portland, Oregon.

2. Oregon Electric and PGE shall exclude from PGE's utility accounts all goodwill resulting from this acquisition.

3. Oregon Electric and PGE shall exclude all costs and fees of the acquisition, including, but not limited to, all costs and fees associated with gaining regulatory approval before the Oregon Public Utility Commission, Nuclear Regulatory Commission, Federal Energy Regulatory Commission, Federal Trade Commission, Securities Exchange Commission, costs and fess associated with forming Oregon Electric, and any banking or financial institution fees associated with the creation of Oregon Electric and the financing and closing of the Acquisition from PGE's utility accounts. Within 90 days following the completion of the transaction, Oregon Electric will provide a preliminary accounting of these costs. Oregon Electric and PGE agree to provide the Commission a final accounting of these costs within 30 days following the completion of the final accounting related to the transaction.

4. Unless such a disclosure is unlawful, Oregon Electric shall notify the Commission of:

   a. Its intention to transfer more than 5 % of PGE's retained earnings to Oregon Electric over a six-month period, at least 60 days before such a transfer begins.

   b. Its intention to declare a special dividend from PGE, at least 30 days before declaring each such dividend.

   c. Its most recent quarterly common stock cash dividend payment from PGE within 30 days after declaring each such dividend.

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5. Subsequent to its purchase by Oregon Electric, PGE shall continue to perform under the Service Quality Measures ("SQM"), as set forth in Stipulations for PGE Service Quality Measures UM 814/UM 1121 dated July 13, 2004, for a period of ten full calendar years after the date the current SQM is scheduled to retire. Nothing in any provision of this Stipulation is intended to affect the Commission's authority to directly administer the stated terms of the SQM. Notwithstanding the provisions described in this paragraph, the parties have agreed to replace the current R4 measurement with a CAIDI-related measurement, and further that PGE will maintain records of outages longer than three hours. In addition, PGE agrees to work with ICNU to evaluate and, if necessary, develop additional service quality standards related to service to industrial customers.

6. PGE and Oregon Electric shall maintain separate debt ratings and, if more than $5 million of preferred stock is outstanding, then PGE and Oregon Electric shall maintain separate preferred stock ratings.

GENERAL TERMS AND CONDITIONS

1. The Parties agree that this Partial Stipulation represents a compromise in the position of the Parties. The Parties further agree that this Partial Stipulation represents an agreement to resolve the issues contained herein, but not all of the issues to be considered in docket UM 1121. Accordingly, the Parties reserve their rights to contest other issues, or recommend additional conditions not specifically addressed by this Partial Stipulation, for example whether the proposed acquisition would provide net benefits for PGE's customers. The Parties further reserve their rights, notwithstanding this Partial Stipulation, to provide a recommendation as to the ultimate resolution of the remaining issues submitted to the Commission.

2. The Parties agree that with respect to the issues covered herein, this Partial Stipulation is in the public interest and all of its terms and conditions are fair, just, and reasonable.

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1 3. This Partial Stipulation will be entered into the record as evidence pursuant to
2 OAR § 860-014-0085. The Parties shall cooperate in this submission and shall support adoption
3 of the Partial Stipulation in testimony and argument submitted in this proceeding and any appeal,
4 provided the Parties are able to reach resolution of all outstanding issues in this proceeding.
5 4. Execution of this Partial Stipulation shall not constitute an acknowledgment by
6 any Party of the validity or invalidity of any particular method, theory, or principle of regulation,
7 and no Party shall be deemed to have agreed that any method, theory, or principle of regulation
8 employed in arriving at this Partial Stipulation is appropriate for resolving any issue in any other
9 proceeding. No findings of fact or conclusions of law other than those stated herein shall be
10 deemed to be implicit in this Partial Stipulation.
11 5. The Parties recommend that the Commission adopt this Partial Stipulation in its
12 entirety.
13 6. The Parties have negotiated this Partial Stipulation as an integrated document. If
14 the Commission rejects all or any part of this Partial Stipulation or imposes additional material
15 conditions in approving the Application, any Party disadvantaged by such action shall have the
16 right, upon written notice to the Commission and all Parties to the proceeding within 15 business
17 days of the Commission's Order, to withdraw from this Partial Stipulation. If any Party
18 withdraws from this Partial Stipulation on this basis, any other Party may withdraw by giving
19 written notice to the Commission and all Parties within 5 business days of the first Party's notice
20 of withdrawal. No withdrawing Party shall be bound by the terms of this Partial Stipulation and
21 each withdrawing Party shall be entitled to seek reconsideration of the Commission Order, file
22 any testimony it chooses, cross-examine witnesses, and in general to put on such case as it deems
23 appropriate.
24 7. This Partial Stipulation may be executed in counterparts and each signed
25 counterpart shall constitute an original document.
26

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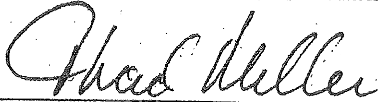
1 8. The obligations of Applicants and PGE under the previous section, "Stipulated
2 Conditions," are subject to the Commission's approval of the Application and the closing of the
3 transaction.

4 DATED July ___, 2004.

5 OREGON ELECTRIC UTILITY COMPANY, LLC

6 

7 By: Thad Miller

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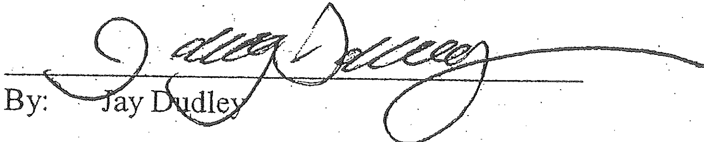
9 PORTLAND GENERAL ELECTRIC COMPANY

10 

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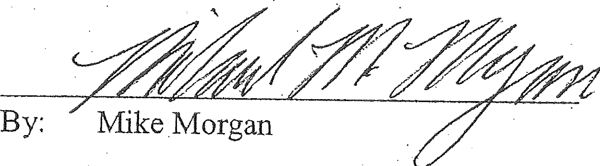
14 

15 By: Mike Morgan

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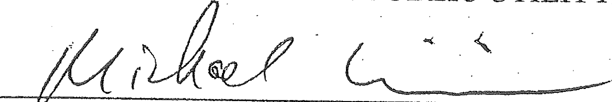
17 STAFF OF THE OREGON PUBLIC UTILITY COMMISSION

18 

19 By: Michael Weirich

20 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

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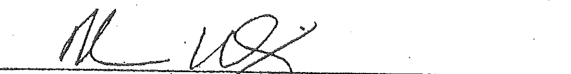
22 

By: Melinda Davison

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24 CITIZEN'S UTILITY BOARD

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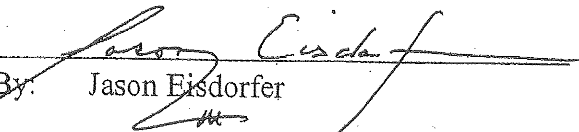
26 

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UM 814 / UM 1121
STIPULATIONS FOR PGE SERVICE QUALITY MEASURES

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Summary of Service Quality Performance Measures -- Table I

Code	Description	Measure Value Calculation	OBJECTIVE *(See note 2)*	Revenue Requirement Reduction *(see note 1)*
C1	At Fault Customer Complaints	C1= "At Fault" Complaints/ total number of company customers /1000	____complaints	Please see note #4
R1	Average Interruption Duration	R1 = 3-year weighted average of the SAIDI indices for the three most recent years	_____hours	Please see note #4
R2	Average Interruption Frequency	R2 = 3-year weighted average of the SAIFI indices for the three most recent years	______ occurrences	Please see note #4
R3	Average Momentary Interruption Frequency	R3 = 3-year weighted average of the MAIFI indices for the three most recent years	____events	Please see note #4
R4	Annual Service Restoration Index	R4 = Annual CAIDI, excluding Major Events	_____hours	Please see note #4
S1	Major Safety Violations	S1 = No. of Major Safety Violations	0.0 violations	$100,000 or $500,000 for each major safety violation cited by the Commission. (See page 12 to determine amount.)

Service Quality Performance Measures Summary -- Table I (cont.)				
X1	Annual Review Vegetation Management and Service Personnel Count	-Annual report from Co. -Staff evaluations -Submittal to Commrs.	Co. Goals	No specific revenue requirement reduction provisions, possible comm. orders. Inadequate safety in S-1
X2	Annual Review Basic I & M programs	-Annual report from Co. -Staff evaluations -Submittal to Commrs.	Co. Goals	No specific revenue requirement reduction provisions. Possible comm. orders. Inadequate safety in S-1.
X3	Annual Review Special Programs	-Annual report from Co. -Staff evaluations -Submittal to Commrs.	Co. Goals	Advisory only. Proactive preventative programs to enhance safety and reliability, research / trials.

Notes:

1. The company would incur no revenue requirement reductions with proper system operation and maintenance (O&M). Revenue requirement reductions would be incurred, however, in the various areas shown above based upon the level of non-compliance with service/safety standards.

2. Any shortfalls in actual versus allowed expenditures for pertinent accounts during the term of the plan could be subject to customer refunds, if the Commission deems that the company had not engaged in adequate operating practices to maintain safety and reasonable service quality. (See General Stipulations, paragraph F.3.)

3. Any measure exceeding the revenue requirement reduction Line 2 could involve financial revenue requirement reductions and a formal Commission investigation into probable violations of ORS 757.020.

4. For performance at or above ___ and below ___, the PUC may determine a revenue requirement reduction amount of up to $100,000 per year and/or order reasonable corrective actions and/or order a return of unspent O & M funds to customers.
   For performance at or above ___, the PUC may determine a revenue requirement reduction of up to $1,000,000 per year and/or order a return of unspent O & M funds to customers and/or make a determination that inadequate service is being provided in violation of ORS 757.020 (see Note #3 above).

Summary of Service Quality Performance Measure – Table 2				
Ranges	Normal Operating Range		Unacceptable Operating Range	
			Revenue Requirement Reduction Range 1	Revenue Requirement Reduction Range 2
Financial Revenue Requirement Reductions	None	None	to $100,000.00 per year for each designated category	to $1,000,000.00 per year for each designated category
			possible return to customers of unspent O & M funds for related programs	possible return to customers of unspent O & M funds for related programs
Additional Commission Order Options	None	None	possible orders to perform corrective actions	possible orders to perform corrective actions
				other orders related to inadequate service as required by ORS 757.020
Performance lines	0.0	Objective Line (Performance Goal)	Revenue Requirement Reduction Line 1	Revenue Requirement Reduction Line 2

Note: Specific values are set for the performance lines for measures CI, RI, R2, R3, R4 and S1. The S1 revenue requirement reduction design is different than Table 2.

SERVICE QUALITY MEASURE STIPULATIONS

GENERAL STIPULATIONS

A. DEFINITIONS:

1. The word "Company" or "Co." shall mean Portland General Electric Company and this company after it's purchase by Oregon Electric Utility Company, LLC (OEUC).

2. The word "Commission" or term "PUC" shall mean Public Utility Commission of Oregon. "Staff" shall mean PUC staff.

3. The term "Service Quality" or "SQ" means those aspects of energy delivery and customer service including, but not limited to, safety, reliability, operations, tariff compliance and customer relations.

4. Performance below the revenue requirement reduction line 1 is the maximum measure value that is considered acceptable.

5. "OAR" shall mean Oregon Administrative Rule.

6. Abbreviations used herein are defined as follows:

ANSI......American National Standards Institute
IEEE......Institute of Electrical and Electronic Engineers
NESC....National Electrical Safety Code
O&M......Operations and Maintenance
T&D.......Transmission and Distribution
I & M......Inspection and maintenance

B. PURPOSE:

The purpose of these performance measures was to provide a mechanism to ensure service quality was maintained at current or improved levels subsequent to PUC approval of the merger of PGC and Enron (UM814). The SQM were modified and the term extended to achieve the same purpose in UM 1121 when ownership was transferred to Oregon Electric Utility Company.

C. PERFORMANCE MEASURES: The nine (9) performance measures for evaluating service quality on an annual basis are as follows:

1. C1....At Fault Customer Complaint Frequency
2. R1....Average Customer Interruption Duration
3. R2....Average Customer Interruption Frequency
4. R3....Average Momentary Interruption Frequency
5. R4 Annual Service Restoration Index
6. S1....Major PUC Safety Violation Frequency
7. X1....Vegetation Management Programs & Service Personnel Count
8. X2 Basic I & M Program
9. X3 Special Programs

These performance measures shall be based on Oregon customers only. See specific measure description for calculations and criteria associated with each measure.

D. COMPLIANCE:

For any specific circumstance, the attached measures should not be used for determining company noncompliance with PUC regulations. These measures and associated agreements do not relieve the company of its legal responsibilities to comply with PUC regulations or orders. Moreover, revenue requirement reduction actions associated with these measures do not preclude the Commission from pursuing compliance actions or civil revenue requirement reductions as allowed by ORS chapters 756 and 757.

E. RECORDS AND REPORTS:

1. The Company and Staff shall meet on or before November 15 of each year to determine reasonable levels for setting the Objective Line, Revenue Requirement Reduction Line 1 and Revenue Requirement Reduction Line 2 for measures C1, R1, R2 R3 and R4 for the following year. If an agreement is reached, a joint report shall go to the Commission recommending these levels. If the Company and Staff do not agree, separate reports with recommended levels will go to the commission for their determination of levels for the coming year. The report(s) shall be submitted to the Commission on or before December 15.

2. The Company shall submit a report annually which documents each measure value and revenue requirement reduction, if any, for the previous calendar year. The annual report shall be completed on forms and computerized spreadsheets prepared by the company and approved by Staff. The report, along with supporting data and calculations on computer disks, shall be submitted to Staff annually on or before May 1 of each year for the preceding calendar year. Each annual report shall explain historical and anticipated trends and events that have affected or will affect the measure in the future.

3. The annual report shall address any company procedural changes that affected the results of the measures or revenue requirement reductions during the preceding year.

4. The Company shall maintain the data, district reports, and field records that document customer interruptions for a minimum of ten years.

5. The data and calculations to develop these measures shall be audited to assure accuracy and compliance with OAR 860-023-0080 through 0160 by the Company's designated reliability engineer.

6. The company shall also provide a separate report for each major event that significantly impacts any of these measures. Upon occurrence of a major event, the company shall submit a written report to PUC Staff within 20 days (see requirements under OAR 860-28-005 and 860-023-0080 through 0160). These reports shall state whether or not the Company intends to request exclusion by the Commission and shall provide the information necessary to determine if the major event meets the PUC data exclusion requirements. The exclusion can be for the entire service area in Oregon or can be limited to one or more specified operational areas (divisions/districts). At minimum, an excluded disaster should satisfy all of the following criteria (similar to IEEE Standard 859-1987):

a: The design limits of the facilities were exceeded;
b. Mechanical damage to lines and facilities was extensive; and,
c. More than 10 percent of the customers were out for over 24 hours.

F. REVENUE REQUIREMENT REDUCTIONS:

1. Unless otherwise specified herein, the company may incur a revenue requirement reduction for substandard performance associated with each measure. The revenue requirement reduction shall be determined using the criteria specified for each performance measure. The company shall pay such revenue requirement reductions through rate reductions or other methods as deemed appropriate by the Commission.

2. Where there are extenuating circumstances that are clearly beyond the company's control, the revenue requirement reductions may be capped or adjusted at the Commission's discretion. Special allowances may be considered by the Commission provided that the company is not found to be in violation of relevant PUC statutes and/or acceptable utility practice.

3. Utility operating and maintenance expenditures in certain key areas have been identified and will be submitted by the company for PUC review annually (see X measures). Any shortfalls in actual versus historical levels of expenditures at a time of unsatisfactory program performance during the term of the plan would be subject to refund with interest at the company's authorized rate of return, if the Commission deemed that the company had not engaged in adequate operating practices to maintain safety and reasonable service quality. This provision is limited to key areas related to the respective service quality measure involved and would apply only if any revenue requirement reduction threshold level (C1, R1, R2, R3,or R4) is exceeded, or if in the Commission's judgment, too many S1 safety violations occur during the term of the plan.

The key expenditure areas related to each performance measure and subject to this provision are as follows:

Measure	Expenditure Area
C1	Customer Service
R1, R2, R3, R4 and S1	Specific program areas related to T&D operations, maintenance and safety, including: • Vegetation Management; • System inspections, maintenance, and repairs; • Pole/structural inspections, replacement and reinforcement; and, • Annual Maintenance Programs in Measure X2

4. For safety violations, the Commission may also pursue actions under ORS 756.990.

5. Disposition of any revenue requirement reduction assessments under agreement shall be at the Commission's discretion and may include, but not be limited to, customer refunds or rate reductions and expenditures on beneficial programs.

G. SPECIAL PROVISIONS:

1. The Commission may direct staff, the utility or a qualified consultant, to conduct special investigations including inspections, testing, audits, and other checks that the Commission deems necessary to assure that the measures and supporting data accurately reflect customer experiences and trends. The cost for such investigations and audits will be borne by the Company. In the event that such investigations reveal noncompliance with the provisions of this document, the company shall make payment for the revenue requirement reduction variances found by the investigations plus interest at the company's authorized rate of return.

2. The Commission, after an opportunity for Company, Staff and public comment, may modify any service quality measure included herein. Modifications could involve, but are not limited to, objective lines, revenue requirement reduction lines, revenue requirement reductions, calculation methods, reporting requirements, or other matters included within this stipulation.

H. TERM:

The original term of this agreement was 10 years, beginning with 1997 (through 2006). This term was extended as modified in UM 1121 through (and including) 2016.

I. SPECIFIC MEASURE STIPULATIONS

1. The specific stipulations for the C1, R1, R2, R3, R4, S1 X1, X2 and X3 are described as follows:

Measure C1 -- Customer "At Fault" Complaint Frequency

1. Description: The C1 measure is the annual total number of "at fault" complaints per 1,000 customers received by the PUC related to company tariffs, policies, standards, and practices involving customer service issues.

2. Definition: An "at fault" complaint is a complaint designated a "COMPLAINT, COMPANY AT FAULT" consistent with current PUC Consumer Service Division practices. "At fault" complaints are identified as follows:

Code	Customer Service Violation Description
"R"	A **rule violation** involves a violation of an Oregon Statute (ORS) or an Oregon Administrative Rule (OAR).
"T"	A **tariff violation** involves a violation of the company's approved tariffs and operating rules as filed with and approved by the PUC.
"C"	A **customer service violation** involves inappropriate and unacceptable customer treatment exemplified by, but not limited to, the following:

- Missed service/repair commitments without prior consumer notification;
- Unreasonable service or repair delays;
- Unreasonable facility installation delays;
- Incorrect, incomplete or misinformation provided to consumers, resulting in customer inconvenience or loss;

- Unreasonable inaccessibility of the company to customers;
- Unreasonable delay in response to consumer inquiry.

Differences and disagreements of "at fault" designations for specific complaints will be submitted for informal supervisory review and if unresolved, may be appealed through existing formal processes for determination by the Commission.

3. Data Source: PUC Consumer Services Division records and reports.

4. Measure Calculation: The C1 measure is equal to the total number of company "at fault" complaints handled by the PUC during the year, divided by the total average number of company Oregon customers divided by 1,000. The number of customers shall be based on a year-end total of the company's Oregon customers.

5. Objective: A performance goal cooperatively set annually by Co. and PUC staff.

6. Revenue Requirement Reduction Line 1: A specific number of "at fault" complaints per 1,000 customers set annually.

7. Revenue Requirement Reduction Line 2: A specific number of "at fault complaints per 1,000 customers set annually.

8. Revenue Requirement Reductions: Revenue requirement reductions shall be assessed for any year that the measure is above the set number of "at fault" complaints per 1,000 customers. The Revenue requirement reductions shall be determined by the Commission based on circumstances and Revenue requirement reduction range options. (See Summary Table 2).

9. PUC Staff Responsibilities: PUC Staff shall make available the annual measure value mentioned in the data source (item 3 above) by May 1 of the following year.

Measure R1 -- Average Customer Interruption Duration

1. Description: The R1 measure is the weighted average of the last three years' system average interruption duration indices (SAIDI). The SAIDI is the outage time, in hours, that an average customer experiences during the year.

2. Data Source: Company's reliability records, data, and certified reports.

3. Measure Calculation: The R1 measure is a three-year weighted average of the SAIDI reliability indices experienced by the company's Oregon customers. The weighted average is calculated by adding together the target calendar year at a 50 percent weighting factor, the preceding year at a 30 percent factor and the second preceding year at a 20 percent factor. The SAIDI is defined and calculated per IEEE and EEI standards (see IEEE draft standard P1366, dated October 18, 1995). This measure is subject to the requirements of OAR 860-023-0080 through 0160.

4. Objective Line: A goal cooperatively set annually by the Co. and PUC staff.

5. Revenue Requirement Reduction Line 1: A specific number of hours of outage for the averaged customer set annually.

6. Revenue Requirement Reduction Line 2: A specific number of hours of outage for the averaged customer set annually.

7. Revenue Requirement Reductions: Revenue Requirement Reductions shall be assessed for any year that the measure is above the Revenue Requirement Reduction lines. The Revenue Requirement Reductions shall be determined by the Commission based on circumstances and Revenue Requirement Reduction range options (see Summary Table 2).

8. Company Responsibilities: Company shall furnish an annual R1 measure value mentioned in data source (item 2 above) by May 1 of the following year.

Measure R2 -- Average Customer Interruption Frequency

1. Description: The R2 measure is the weighted average of the last three years' system average interruption frequency indices (SAIFI). The SAIFI index is the number of extended outages that an averaged customer experiences during the year. Extended outages are greater than 5 minutes in length. This measure excludes momentary interruptions caused by automatic substation and line breaker operations.

2. Data Source: Company records, data, and certified reports.

3. Measure Calculation: The R2 measure is a three-year weighted average of the SAIFI reliability indices experienced by the company's Oregon customers. The weighted is calculated by adding together the target calendar year at a 50 percent weighting factor, the preceding year at a 30 percent factor and the second preceding year at a 20 percent factor. The SAIFI is defined and calculated per IEEE and EEI standards. (See IEEE draft standard P1366, dated October 18, 1995.) This measure is subject to the requirements of OAR 860-023-0080 through 0160.

4. Objective Line: A goal cooperatively set annually by the company and PUC staff.

5. Revenue Requirement Reduction Line 1: A specific number of interruptions for the average Oregon customer set annually.

6. Revenue Requirement Reduction Line 2: A specific number of hours for the averaged customer set annually.

7. Revenue Requirement Reductions: Revenue requirement reductions shall be assessed for any year that the measure is above the set number of interruptions. The revenue requirement reductions shall be determined by the Commission based on circumstances and revenue requirement reduction range options (see Summary Table 2).

8. Company Responsibilities: Company shall furnish annual R2 measure mentioned in data source (item 2 above) by May 1 of the following year.

Measure R3 -- Average Customer Momentary Interruption Frequency

1. Description: The R3 measure is the weighted average of the last three years momentary interruption frequency indices ($MAIFI_E$). The $MAIFI_E$ index is the number of momentary interruptions that an averaged customer experiences during the year.

2. Data Source: Company records, data, and certified reports

3. Measure Calculation: The R3 measure is a three-year weighted average of the $MAIFI_E$ reliability indices experienced by the company's Oregon customers. This average is calculated by adding together the target year at a 50 percent weighting factor, the preceding year at a 30 percent factor, and the second preceding year at a 20 percent factor. The $MAIFI_E$ is defined and calculated per IEEE draft standard P1366, dated October 18, 1995. This index excludes interruptions that are greater than 5 minutes in length, and excludes momentary interruptions that are included in a single relay sequence that results in breaker lockout (extended outage). This measure is subject to the requirements of OAR 860-023-0080 through 0160.

4. Objective Line: A goal cooperatively set annually by the company and PUC staff.

5. Revenue Requirement Reduction Line 1: A specific number of interruptions for the averaged customer set annually.

6. Revenue Requirement Reduction Line 2: A specific number of interruptions for the average Oregon customer set annually.

7. Revenue Requirement Reductions: Revenue requirement reductions shall be assessed for any year that the measure is above the revenue requirement reduction line 1. The revenue requirement reductions shall be determined by the Commission based on circumstances and revenue requirement reduction range options. (See Summary Table 2).

8.Company Responsibilities: Company shall furnish annual R3 measure value, as detailed in 2 and 3 above, by May 1 of the following year.

MEASURE R4—ANNUAL SERVICE RESTORATION INDEX

1. Description: The R4 measure is the average time (hours) required to restore service to the average customer per sustained interruption, exclusive of Major Events. This is essentially Customer Average Interruption Duration Index (CAIDI). This measure shall be fully implemented for the first full year, following Commission approval, utilizing historical data as a basis for setting performance lines.

2, Data Source: Company's reliability records, data, and certified reports.

3. Measure Calculation: The R4 measure is calculated each calendar year. R4 equals Annual SAIDI divided by Annual SAIFI. Major Events may be excluded. This measure is subject to the requirements of OAR 860-023-0080 through 0160.

4. Objective Line: A goal cooperatively set by the Company and PUC Staff.

5. **Revenue Requirement Reduction Line 1 (RRR 1):** A specific duration in hours for all Oregon customer sustained interruptions, on average, on an annual basis.

6. **Revenue Requirement Reduction Line 2 (RRR 2):** A specific duration in hours for all Oregon customer sustained interruptions, on average, on an annual basis.

7. **Revenue Requirement Reductions:** Revenue requirement reductions shall be assessed for any year that the measure amount is a lower percentage number than the set Revenue Requirement Reduction line. The revenue requirement reductions shall be determined by the Commission based on circumstances and revenue requirement reduction range options (see Summary Table 2).

8. **Company Responsibilities:** Company shall furnish an annual R4 measure value mentioned in data source (item 2 above) by May 1 of the following year.

Measure S1 -- Major PUC Safety Violation Performance Measure

1. **Description:** The S1 measure indicates the number of major safety violations cited by the Commission that were in effect during the year. The revenue requirement reductions associated with this measure are to acknowledge the fact that customers have paid for adequate maintenance in their rates and that a major safety violation is a reflection that the company should recompense customers in some manner for the safety situation cited.

2. **Definition**: A "major safety violation" involves a pattern of serious unsafe conditions or circumstances that put the public, customers, or lineworkers at serious risk of injury, and involves noncompliance with the National Electrical Safety Code (NESC) rules numbers 121, 214, or 313. The three rules address the company's responsibilities to inspect, test, and maintain their powerline facilities so that they are kept in a safe condition. Also, a "major safety violation" could involve any failure by the company to comply with OAR 860-24-0050 in reporting personal injury incidents.

Should Commission Staff determine that the company has committed a major safety violation, Staff will present its recommendation to the Commission. Should the Commission authorize issuance of a citation alleging a major safety violation, the company will be afforded an opportunity to present evidence at hearing under the provisions of ORS 756.515 contesting the alleged violation or violations and evidence of any mitigating factors that the company contends should be considered by the Commission in determining whether to assess the full revenue requirement reduction assessment or a lower amount. A major safety violation must be determined to have occurred by Commission order.

3. **Data Source:** Commission records.

4. **Revenue Requirement Reduction Line:** 0.0 major safety violations.

5. **Revenue Requirement Reduction Calculation:** For each major safety violation cited by the Commission the following will apply:

a. If the company can demonstrate, to the Commission's satisfaction, that the major safety violation cited was corrected within 14 days of receipt of the proposed citation by PUC Staff, and if the Commission deems that a major safety violation has occurred, the company shall set aside $0.1 million in revenues it has received from its customers for disposition by the Commission.

b. If the company cannot demonstrate, to the Commission's satisfaction, that the major safety violation cited was corrected within 14 days of receipt of the proposed citation by PUC Staff, and if the Commission deems that a major safety violation has occurred, the company shall set aside $0.5 million in revenues it has received from its customers for disposition by the Commission.

c. The maximum assessment for any one major safety violation is $0.5 million.

d. This measure does not have a maximum revenue requirement reduction amount.

Reporting of X1, X2, and X3 Programs

A yearly Maintenance Program Review Meeting will be held by May 1. Applicable information on each program's accomplishments for the year and plans for the next year will be presented to and discussed with OPUC Staff. A written report, both paper copy and on compatible electronic format, will be presented to OPUC Staff at the meeting. This report will summarize all information presented at the yearly meeting. Quarterly updates are provided for the X1 measure.

Measure X1 -- Vegetation Management Program and Service Personnel Count (Oregon)

1. Description: The Vegetation Management Program is a Basic Maintenance Program that is set apart from the other I&M programs due to the crucial effect trees can have on system safety and reliability. Trees and other vegetation are trimmed or removed to provide line clearance and prevent system damage. The service personnel count is a valuable early warning indicator to alert staff of the Company's ability to adequately maintain it's system.

2. Required Interval:

Trimming is accomplished on both a 2 year cycle and a 3 year cycle. Cycle length is determined by the average rate of growth in a given area. Aproximately 50% of the overhead powerline miles are trimmed on a 2 year cycle, 50% on a 3 year cycle. The areas trimmed on a 2 year cycle roughly correspond to metro and suburban areas. Areas trimmed on a 3 year cycle are generally rural. Designation of areas requiring a 2 year cycle or a 3 year cycle are reviewed annually and adjusted as needed to assure compliance with NESC and OPUC's Tree Clearance Policy. Feeders with either 2 years of growth or 3 years of growth, depending on cycle length, that will not be trimmed prior to

the onset of winter storm season (approximately November 1) are patrolled in September. Individual trees which may cause problems during storms are then identified with appropriate trimming or removal taking place by October 15.

3. PGE Quality Control:

Not less than 10% of recently completed tree trimming is inspected on a continuous basis to ensure compliance to the Program Plan and achievement of adequate clearance.

4. Program Expenditures:

Annual budget with actual versus planned expenditures. Information will include total budget and the following elements: Maintenance Cycle Trimming, Customer Assistance Trimming, Line Construction Trimming, and PGE supervision and Administration.

5. Personnel Information (Count in each category):

-PGE Forester FTEs
-Average number of Contract Tree Crews
-Service Representatives (Credit Phones, Credit Paperwork, Billing Paperwork, General Support (Administration), Community Offices, Business Products & Services Team, and Consumer Assistance Phones)
-Engineering Services (Electrical Engineer I, II, III, and IV, Civil Engineer IV, Mechanical Engineer IV, Service and Design Consultants II, III, and IV)
-Field Services (Line Crew: Assistant Derrick Truck Operator, Derrick Truck Operator, Backhoe Operator, Line Truck Driver B, Construction Working Foreman, Line Working Foreman, Pole Yard Foreman, Groundmen, Apprentice Lineman, Journeyman Lineman, Leadman Lineman, Equipment Operator B and C, Heavy Equipment Operator, Leadman Repairman, Underground Working Foreman, Underground Construction Foreman, Cable Splicer, Cable Splicer Assistant, Underground Helpers, Special Tester, Senior Special Tester, and Utility Worker)
-Substation (Battery Man, Wireman Working Foreman, Substation Inspector, Crane Operator, Meter and Relay Technician, Senior Meter and Relay Technician, Apprentice Wireman, Wireman, Wireman Helper, Construction Wireman, Wireman Foreman, and Wireman Leadman)
-Meter Area (Meter Shop Working Foreman, Meterman Working Foreman, Journeyman Meterman, and Meterman Apprentice)

6. Data Source: Company records, data and reports. Staff data review and field review.

7. Measure Calculation: There is no individual measure calculation. An annual report with staff comments and recommendations will be submitted to the commission each spring (May 1) for their review and any action deemed appropriate. Program problems will normally result in NESC violations being cited by PUC staff with extensive problems resulting in a major PUC Safety Violation (Measure S1).

Measure X2 -- Basic Inspection and Maintenance Programs

I. Inspection and Repairs

A. Pole and Overhead Facilities Inspection and Repair include the inspection and treatment of all PGE-owned distribution and transmission poles and overhead distribution facilities. All PGE-owned poles are tested for strength and treated with wood preservative. Distribution equipment attached to any pole is inspected, repaired, or replaced to ensure the electrical system remains in good working order and meets the National Electric Safety Code (NESC). The first cycle was completed in 1996 (transmission poles by July 1, 1997). The current cycle began January 1997.

Required Interval:

10-year cycle, 10% annually with no individual year falling below 8.5%. Repairs or replacement completed within 120 days of discovery.

PGE Quality Control:

Monthly inspection by appropriate random sample to ensure accuracy of inspection. Minimum 5% of repair or replacement work is inspected as needed to ensure NESC compliance.

Program Expenditures:

Annual budget figures to include:

- Pole and Overhead Facilities Inspection and Pole Treatment
- Repair and Replacement of Facilities

B. Safety Survey is a drive-by survey of the Distribution system. The survey is designed to spot incidental damage to the system (such as damage from stormy weather) that neither caused an outage nor was reported.

Required Interval:

2-year cycle with 50% of the system driven yearly.

PGE Quality Control:

Random sample by supervisory personnel or their designees to ensure uniform results and adherence to the plan and accuracy of survey.

Program Expenditures:

Planned and actual annual budget.

C. Underground Inspection Program includes a thorough visual inspection of underground vaults, pad-mount transformers, switches, and an infrared inspection of all accessible terminals and splices. The first cycle started in 1996 and the current one in January 2004.

Required Interval:

4-year cycle, 25% of the system annually with no individual year falling below 20% of the system.

PGE Quality Control:

Monthly inspection by appropriate random sample to ensure accuracy of inspection.

Program Expenditures:

Annual budget figures to include:

- Facilities Inspection
- Repair and Replacement of Facilities

D. Substation Safety is an inspection of each substation on the Transmission and Distribution system. The survey is designed to spot vulnerability of intrusion of the enclosure fences, NESC compliance, incidental damage to substation equipment, and the integrity of the operational system.

Required Interval:

1-month cycle for all substations.

PGE Quality Control:

Random sample by supervisory personnel to ensure accuracy of survey. A review of a monthly computer report that describes results by assigned inspector in an assigned area.

E. Marina Inspection Program is a PGE facilities inspection at every marina in our service area. Marinas are inspected during the winter at high-water conditions and in the summer at low-water.

Required Interval:

Twice yearly; once during high-water and once during low-water.

PGE Quality Control:

A random sample is reinspected by the supervisor or designee to ensure accuracy of inspection and NESC code compliance.

F. Major Equipment Maintenance

1. Line Equipment:

a. Pole Top Reclosers and Sectionalizer Program include the inspection and maintenance of oil filled reclosers, vacuum reclosers and sectionalizers. Periodically or by operations count, this equipment is removed from service, maintained, and reinstalled.

Required Interval:

The equipment is inspected annually. Oil reclosers are maintained on a 5 year cycle or 50 operations, whichever occurs first. Vacuum reclosers are maintained on

a 10 year cycle or 100 operations, whichever occurs first. Sectionalizers are maintained on a 10 year or 50 operations, whichever occurs first.

PGE Quality Control:

The program is controlled by a program manager who ensures implementation and coordination. Individual engineers are assigned geographic areas and monitor the program in the field.

b. Pole Top Voltage Regulators Program includes the inspection and maintenance of these devices.

Required Interval:

Voltage regulators are inspected annually and are maintained on a 10 year cycle or 200,000 operations, whichever occurs first.

PGE Quality Control:

The program is controlled by a program manager who ensures implementation and coordination. Individual engineers are assigned geographic areas and monitor the program in the field.

c. Switch Maintenance Program includes inspecting operating, adjusting, repairing, or replacing all PGE owned pole mounted distribution switches.

Required Interval:

Five year cycle with the first cycle having been started in 1995.

PGE Quality Control:

The program is controlled by a program manager who ensures implementation and coordination. Individual engineers are assigned geographic areas and monitor the program in the field.

2.Substation Equipment

Substation Program Expenditures:

Program expenditures are not broken down by equipment. Total program expenditures are reported annually for all Substation Maintenance Activities. Additional detail will be provided upon staff request.

Substation Quality Control (for 2b through 2h):

Random sampling of field personnel activities and post completion management reviews of 10% of testing results by technical personnel to assure adherance to PGE approved manitenance proceedures.

a. Batteries:

Purpose:

Batteries supply a reliable, independent source of power. This ensures the proper operation of breakers, protective relays and motor operators during adverse weather conditions and emergencies, to assure safety and system reliability.

Maintenance:

>Operating condition assessment monthly
>Individual cell assessment semi-annually
>Testing at 5 year planned intervals to verify battery capacity
>Battery replacement occurs when tests are failed

Quality Control:

Post completion reviews of testing results by technical personnel to assure adherence to PGE battery maintenance proceedures.

b. Capacitor Banks:

Purpose:

Capacitors operate to provide reactive power support and reduce system losses.

Maintenance:

- Operating condition assessment monthly
- Non-intrusive diagnostic tests semi-annually
- Capacitor replacement as indicated by tests or upon unit failure

c. Breakers:

Purpose:

Breakers must operate automatically and upon demand to protect system components and equipment in emergencies or during fault conditions which assures safety, system reliability, and efficient operation of the system.

Maintenance:

- Operating condition assessment monthly

- Non-intrusive diagnostics annually
- Minor service at 2-5 year planned intervals based on equipment type and it's impact on safety and reliability.
- Major service or equipment replacement as determined by diagnostic data and assessment.

d. Disconnect Switches & Connectors

Purpose:

Disconnect switches and connectors operate to provide low resistance electrical connections that can be opened when necessary to provide isolation points for emergency and routine work.

Maintenance:

- Operating condition assessment monthly
- Non-intrusive diagnostics annually
- Equipment repair or replacement as determined by diagnostic data and assessment.

e. Load Tap Changers(LTCs)

Purpose:

Maintain system voltage within a desired operating band to assure consistent reliable service and customer equipment performance.

Maintenance:

> Operating condition assessment monthly

> Non-intrusive diagnostics annually

> Major service or equipment replacement as determined by diagnostic data and field assessment.

f. Regulators:

Purpose:

Maintain system voltage within a desired operating band to assure consistent reliable service and customer equipment performance.

Maintenance:

- Operating condition assessment monthly
- Non-intrusive diagnostics annually
- Major service or equipment replacement as determined by diagnostic data and field inspection.

g. Transformers:

Purpose:

Transformers raise or lower voltage to provide the means to efficiently move electrical energy from source to point of use. They are the most capital intensive of substation equipment are maintained to assure that their life is maximized and to enhance reliability.

Maintenance:

- Operating condition assessment monthly
- Non-intrusive diagnostics annually
- Non-intrusive electrical diagnostics testing when diagnostics indicate
- Major service or replacement as determined by diagnostic data.

h. Protective Relaying:

Purpose:

Relays are maintained to assure adequate protective actions occur to trip faulted equipment and lines to protect system components and assure safety.

Maintenance:

> Electro-mechanical protective relays are tested and calibrated at a 6 year planned interval (except transmission line).

- Electro-mechanical transmission line protective relays are tested and calibrated at a 3 year interval.
- Electronic (IED) relays are inspected (calibration not required) on the same interval as the Electro-mechanical relays.

3. Metering Program

a. Meter System Accuracy Program:

Meter test program tests for accuracy of installed electric meters, a general inspection and verification of the associated equipment including all instrument transformers and associated wiring. The program places meters into one of two groups; self contained, non-demand meters or demand/ instrument transformer rated meters.

A sample test program is used for self contained, non-demand meters. The meters are grouped by manufacturer, model and age. A random sample is selected from each group or lot and tested. Any group that falls outside set standards is replaced.

A periodic program includes the testing, inspection and verification for all demand or instrumental transformer rated meters. The meters are grouped by manufacturer, equipment type, and last test date. Meter systems falling outside set standards are corrected, recalibrated or replaced.

The Company shall provide an annual certification report and presentation to PUC Staff by May 1 detailing the previous years metering program. The report shall include information for each meter group concerning metering

system accuracy and inspections for proper installation, safety, and security. Additionally, the certification report shall include, for each meter group, the number of Oregon meter tests, inspections, and retirements planned for the current year. Further, the report shall contain summary information on metering program accomplishments, issues, trends, failed meter types and installations, meter repairs, retirements, program modifications, and new applied technologies.

Required Interval:

Sample test program is run yearly. Periodic test program test interval varies by meter type. All primary service customers with TOD or TOU metering are tested and verified yearly. All solid state electric meters and all other primary service customers that don't fall into the one year group are tested and verified on a five year schedule. Induction or induction / solid state hybrid style meters including all instrument transformer rated demand meters and all self contained demand meters are tested and verified on a 12 year schedule. Finally, all induction style, instrument rated, non-demand meters are tested and verified on a 16-year schedule.

PGE Quality Control:

Random sample by supervisory personnel or their designer to ensure uniform results and adherence to the plan and accuracy of data.

II. STANDARDS AND STANDARD PRACTICES

Company Standards including standard practices are necessary to ensure compliance with NESC, NEC, PGE tariffs, PUC laws and good engineering practice. Annual reviews and quality control of the below standards are necessary to ensure that they remain current and are being uniformly implemented in the field:

Electric Service Requirements

Joint-Use Standards

Construction Standards

Design Standards

Operation and Maintenance Standard Practices

Quality Control Program

Required Interval:

Annual and other needed reviews of the above standards by PGE Standards department to resolve standards issues associated with customer complaints, joint-use conflicts, PUC enforcement actions, code and regulation changes, etc.

PGE Quality Control:

Annual review by Company Standards engineer to ensure that the above standards are updated. Random sample by standards personnel to ensure uniform results and adherence with the standards in the field.

Measure X3 -- Special Programs

Special Programs address specific issues which may effect T&D operation, maintenance or safety. They normally operate for a specific period of time, accomplish their intended purpose, and are terminated upon completion. Information discovered in the program may result in the establishment of specific, routine, ongoing programs.

These special programs will be reviewed annually and reported on to OPUC staff. The list of special programs is expected to change annually.

ACQUISITION CONDITIONS

Stipulated Conditions

1. PGE and Oregon Electric shall maintain separate books and records. All PGE and Oregon Electric financial books and records shall be kept in Portland, Oregon.

2. Oregon Electric and PGE shall exclude from PGE's utility accounts all goodwill resulting from this acquisition.

3. Oregon Electric and PGE shall exclude all costs and fees of the acquisition, including, but not limited to, all costs and fees associated with gaining regulatory approval before the Oregon Public Utility Commission, Nuclear Regulatory Commission, Federal Energy Regulatory Commission, Federal Trade Commission, Securities Exchange Commission, costs and fees associated with forming Oregon Electric, and any banking or financial institution fees associated with the creation of Oregon Electric and the financing and closing of the Acquisition from PGE's utility accounts. Within 90 days following the completion of the transaction, Oregon Electric will provide a preliminary accounting of these costs. Oregon Electric and PGE agree to provide the Commission a final accounting of these costs within 30 days following the completion of the final accounting related to the transaction.

4. Unless such a disclosure is unlawful, Oregon Electric shall notify the Commission of:

   a. Its intention to transfer more than 5% of PGE's retained earnings to Oregon Electric over a six-month period, at least 60 days before such a transfer begins.

   b. Its intention to declare a special dividend from PGE, at least 30 days before declaring each such dividend.

   c. Its most recent quarterly common stock cash dividend payment from PGE within 30 days after declaring each such dividend.

5. Subsequent to its purchase by Oregon Electric, PGE shall continue to perform under the Service Quality Measures ("SQM"), as set forth in Stipulations for PGE Service Quality Measures UM 814/UM 1121 dated July 13, 2004, for a period of ten full calendar years after the date the current SQM is scheduled to retire. Nothing in any provision of this Stipulation is intended to affect the Commission's authority to directly administer the stated terms of the SQM.

Notwithstanding the provisions described in this paragraph, the parties have agreed to replace the current R4 measurement with a CAIDI-related measurement, and further that PGE will maintain records of outages longer than three hours. In addition, PGE agrees to work with ICNU to evaluate and, if necessary, develop additional service quality standards related to service to industrial customers.

6. PGE and Oregon Electric shall maintain separate debt ratings and, if more than $5 million of preferred stock is outstanding, then PGE and Oregon Electric shall maintain separate preferred stock ratings.

Conditions Not Yet Stipulated

7. The Commission or its agents may audit the accounts of Oregon Electric, its affiliates, and any subsidiaries that are the bases for charges to PGE to determine the reasonableness of allocation factors used by Oregon Electric to assign costs to PGE and amounts subject to allocation or direct charges. Oregon Electric agrees to cooperate fully with such Commission audits.

8. Oregon Electric and its affiliates shall not allocate to or directly charge to PGE expenses not authorized by the Commission to be so allocated or directly charged.

9. PGE shall maintain its own accounting system. PGE and Oregon Electric shall maintain separate books and records, both of which shall be kept in Portland, Oregon.

10. If the Commission believes that Oregon Electric and/or PGE have violated any of the conditions set forth herein, any conditions contained in other stipulations signed by Oregon Electric and PGE, or any conditions imposed by the Commission in its final order approving the Application (collectively, the "Conditions"), then the Commission shall give Oregon Electric and PGE written notice of the violation.

    a. If the violation is for failure to file any notice or report required by the Conditions, and if Oregon Electric and/or PGE provide the notice or report to the Commission within ten business days of the receipt of the written notice, then the Commission shall take no action. Oregon Electric or PGE may request, for cause, permission for extension of the ten-day period. For any other violation of the Conditions, the Commission must give Oregon Electric and PGE written notice of the violation. If such failure is

corrected within five business days of the written notice, then the Commission shall take no action. Oregon Electric or PGE may request, for cause, permission for extension of the five-day period.

b. If Oregon Electric and/or PGE fail to file a notice or written report within the time permitted in subparagraph (a) above, or if Oregon Electric and/or PGE fail to cure, within the time permitted above, a violation that does not relate to the filing of a notice or report, then the Commission may open an investigation, with an opportunity for Oregon Electric and/or PGE to request a hearing, to determine the number and seriousness of the violations. If the Commission determines after the investigation and hearing (if requested) that Oregon Electric and/or PGE violated one or more of the Conditions, then the Commission shall issue an Order stating the level of penalty it will seek. Oregon Electric and/or PGE, as appropriate, may appeal such an order under ORS 756.580. If the Commission's order is upheld on appeal, and the order imposes penalties under a statute that further requires the Commission to file a complaint in court, then the Commission may file a complaint in the appropriate court seeking the penalties specified in the order, and Oregon Electric and/or PGE shall file a responsive pleading agreeing to pay the penalties. The Commission shall seek a penalty on only one of Oregon Electric or PGE for the same violation.

c. The Commission shall not be bound by subsection (a) in the event the Commission determines PGE and/or Oregon Electric has violated any of the material conditions, contained herein, more than two times within a rolling 24-month period.

d. PGE and/or Oregon Electric shall have the opportunity to demonstrate to the Commission that subsection (c) should not apply on a case-by-case basis.

11. Oregon Electric shall maintain and provide the Commission unrestricted access to a record of each instance in which TPG Applicants withhold their consent to a decision of the PGE Board of Directors. The record shall detail the basis for the decision, including any governing report or document that memorializes the exercising of the consent rights and shall identify the persons involved in making the TPG Applicant Consent Rights decision. Oregon Electric shall provide the records to the Commission upon request. Nothing in this paragraph shall prevent the Commission from disclosing to the public the number of times the TPG Applicants exercised their consent rights within a certain period of time.

12. Oregon Electric and PGE shall maintain and provide the Commission unrestricted access to all books and records of Oregon Electric and PGE that are reasonably calculated to lead to information relating to PGE, including but not limited to, Board of Directors' Minutes, Board Subcommittee Minutes, and other Board Documents.

13. PGE and Oregon Electric shall notify the Commission within 30 days of the formation of any subsidiary. Such notice shall include a copy of the business plan and capitalization strategy, as well as any planned or anticipated transactions of the subsidiary with PGE or Oregon Electric as applicable.

14. Oregon Electric and PGE shall provide the Commission access to all books of account, as well as all documents, data and records of their affiliated interests, which pertain to transactions between PGE and all its affiliated interests, unless such transactions are exempt under applicable law or the Master Services Agreement.

15. In the event of a dispute between the Commission or Commission Staff and Oregon Electric or PGE regarding a request made pursuant to the Acquisition Conditions, the parties agree that an Administrative Law Judge (ALJ) shall resolve the dispute as follows: (i) within ten (10) business days Oregon Electric or PGE shall deliver to the ALJ the books and records responsive to the request and shall indicate the basis for the objection; (ii) Staff may respond in writing and Oregon Electric and/or PGE may reply to Staff's response; (iii) the ALJ shall review the documents in private; and (iv) the ALJ shall issue a ruling determining whether the documents (a) are reasonably calculated to lead to the discovery of relevant information, and, if so, (b) whether the documents should receive the protection requested. The ALJ shall use this standard whether or not the Commission or Commission Staff is making the request in connection with an open docket.

16. PGE will not make any distributions to Oregon Electric that would, as determined in accordance with Generally Accepted Accounting Principles ("GAAP"), cause the common equity portion of PGE's total capital structure to fall below 48 percent without Commission approval.

    a. "Total capital structure" is defined as PGE's common equity, preferred equity, and long-term debt.

    b. "Long-term debt" is defined as PGE's outstanding debt with a term of more than one year, excluding revolving lines of credit except to the extent the amount of the rolling 12-month average of committed and

drawn balances under PGE's unsecured revolving lines of credit (Unsecured Revolvers) less any balances related to collateral or security provided to counterparties for power supply and related agreements, is greater than $250 million.

c. A "committed balance" is the sum of the commitments used to support any borrowing capacity or other purposes, such as a commercial paper program or letters of credit.

d. A "drawn balance" is sum of amounts drawn against the Unsecured Revolvers.

e. Hybrid securities (*e.g.*, convertible debt) will be assigned to equity and long-term debt based on the characteristics of the hybrid security. The Commission, prior to their issuance, will determine the assignment of the equity and debt characteristics.

17. Oregon Electric agrees that the customers of PGE shall be held harmless if PGE's return on common equity and other costs of capital, viewed on a stand-alone basis, rise as a result of Oregon Electric's ownership of PGE. These capital costs refer to the costs of capital used for purposes of rate setting, avoided cost calculations, affiliated interest transactions, least cost planning, and other regulatory purposes.

18. Oregon Electric agrees that the customers of PGE shall be held harmless if PGE's revenue requirement, viewed on a stand-alone basis, is higher due to Oregon Electric's ownership of PGE.

19. Oregon Electric and PGE shall maintain (for a rolling five-year period) and provide the Commission unrestricted access to all written information provided to stock or bond rating analysts, which directly or indirectly pertains to PGE or any affiliate that exercises influence or control over PGE. Such information includes, but is not limited to, reports provided and presentations made to stock and bond rating analysts. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and videotapes, computer disks and electronically-stored information.

20. Oregon Electric agrees that PGE will provide a guaranteed rate credit in the amount of $43 million to PGE's customers. The rate credit will be applied to customer bills in the amount of $8.6 million annually for five years beginning January 2007. PGE's tariffs will reflect this guaranteed savings in two ways:

First, PGE will design a supplemental tariff rider to go into effect January 1, 2007 through December 31, 2011 to credit customers with an annual guaranteed rate credit amount of $8.6 million or, upon the effective date of the tariffs approved in the next PGE general rate case (currently anticipated for 2007), the "adjusted annual guaranteed rate credit amount," as defined below. For purposes of the guaranteed rate credit that will flow through this rider, PGE will establish a balancing account and credit that account in the appropriate amount on January 1, 2007, and on each subsequent January 1 through 2011. The balancing account will accrue interest on the unamortized balance, consistent with Commission policy, which is currently at PGE's authorized rate of return. PGE shall roll any balances (positive or negative) remaining on December 31 of each year the rider remains in effect into the balancing account for the following year. The bill credit shall be distributed pro rata based on distribution load (in kWh).

The rider shall provide that in the event of a change of control of PGE before January 1, 2011, the annual amounts not yet credited to the balancing account shall be accelerated and credited to customers in a manner determined by the Commission at the time of closing of the transaction involving the change of control.

Second, to the extent that Oregon Electric and PGE demonstrate to the Commission's satisfaction that the test year revenue requirement for PGE's next general rate case includes savings (including savings in the various categories of O&M and A&G expenses), PGE will pass that part of the guaranteed rate credit amount to customers through its standard, base tariffs. To the extent the savings passed through to customers through the standard, base tariffs are less than $8.6 million, such difference shall be the "adjusted annual guaranteed rate credit amount." If the savings are equal to or greater than $8.6 million, the "adjusted annual guaranteed rate credit amount" shall be zero.

21. To the extent that PGE incurs or suffers a loss that is subject to indemnification under the Stock Purchase Agreement, Oregon Electric will direct Enron to pay the benefit of such indemnity directly to PGE.

22. Oregon Electric and PGE agree to submit a final "transition plan" to the Commission within one year of closing.

23. PGE agrees to the following with respect to its non-fuel operation and maintenance (O&M) expenses and capital expenditures:

    a. PGE shall file with its Results of Operations report an O&M expense and capital expenditure update report (OMCE Update). Using individual

FERC accounts for O&M (*i.e.*, FERC Accounts 500 through 598 and 901 through 923), and Construction Work-in-Progress (CWIP) costs by functional area, the OMCE Update will compare the actual O&M and capital expenditures for the most recent past year with (a) the current year's budgeted O&M and capital expenditures, and (b) the average of the preceding three calendar years' actual O&M and capital expenditures. The OMCE Update will also compare actual O&M costs by functional area for the most recent past year to the last approved test year revenue requirement. The OMCE Update will include a written narrative description of the reasons for major variances between the compared accounts, including accounting changes and the most recent organization chart for PGE. If requested, PGE shall present the major findings of the OMCE Update at a Commission meeting.

b. After completing and presenting its third OMCE Update, PGE may petition the Commission to terminate this condition. The Commission shall provide PGE and other interested parties an opportunity to be heard with respect to the termination.

24. Within the first seven years after closing, but no sooner than 2007, PGE agrees, if directed by the Commission, to conduct an audit, using an independent auditor approved by the Commission, to review the company's O&M and/or capital construction plans and expenditures. The shareholders will bear the expense of the audit up to $400,000. The audit will occur before 2007 if a rate case is not initiated by early 2006.

25. After closing, each PGE distribution to Oregon Electric will be used by Oregon Electric exclusively to pay operating expenses and debt service until all of the following conditions are met:

   a. The rolling 12-month average of the committed and drawn balances of all PGE's Unsecured Revolvers is less than $250 million; and

   b. Oregon Electric has paid down at least $250 million of its outstanding debt as compared to the level of outstanding debt at closing (no portion of the proposed "catch-up dividend" that will be paid at closing will be considered to have paid down debt).

26. [Not used.]

27. Oregon Electric shall not re-leverage, *i.e.*, increase the amount of its outstanding long-term debt once such debt has been liquidated, if the increased debt would, as

determined in accordance with GAAP, bring the consolidated capital structure (excluding short-term debt) below 35% equity.

28. After closing, the TPG entities will not allocate or direct bill Oregon Electric for any goods, services, supplies or assets in excess of $5 million per year.

29. PGE agrees to work in good faith with Staff and other interested parties to develop and present to the Commission, within 270 days of the closing of the transaction, a billing accuracy SQM consistent with Staff/702. At the time of the presentation to the Commission, parties, including PGE, may present their views to the Commission on the necessity for and content of the SQM.

30. [Not used.]

31. The following actions shall be reported to the Commission by TPG Applicants or Oregon Electric, as appropriate, within 30 business days after their occurrence:

    a. Any change of control of the General Partner of either of the TPG Applicants.

    b. Any change in the ownership interest in Oregon Electric or any of the TPG funds investing in Oregon Electric.

    c. Any amendment to the terms and conditions of Oregon Electric's Operating Agreement.

    d. Any amendment to the terms and conditions of the Limited Partnership Agreement of either of the TPG Applicants.

    e. Any designation, appointment, election, removal or replacement of any Member or Manager at Oregon Electric by a vote, approval or consent of a majority of the Members.

    f. Any use of TPG consent rights regarding a decision made by the PGE Board of Directors.

32. Beginning twelve months following closing, Oregon Electric will prepare and make available to the Commission and the public, on a quarterly and annual basis, financial and operating disclosure reports that are equivalent in scope to that of Form 10-Q and Form 10-K reports filed with the U.S. Securities and Exchange Commission.

33. Until the total long-term debt at Oregon Electric is less than 70% of total capital, Oregon Electric, PGE, and any of their respective subsidiaries shall not, without the prior notice to the Commission, directly or indirectly acquire, incorporate, or otherwise organize any subsidiary, or enter into substantially new lines of business, which were not in existence as of January 1, 2005.

34. The Applicants will file a Master Services Agreement, which includes agreed-upon terms and conditions, no later than 30 days after a final order in UM 1121 is issued approving the transaction.

General Provisions

A. Nothing in the settlement affects any party's rights under law or Commission rules, unless expressly stated. For example, the right to seek protection of information or documents is subject to the usual Commission rules unless expressly waived herein.

B. Conditions 25, 27, 31, 32 become inapplicable after an Initial Public Offering of Oregon Electric or PGE.

C. Nothing in this settlement shall be construed to result in disallowance of costs from PGE's revenue requirement unless expressly stated.