

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 220

In the Matter of)	
)	ORDER
PORTLAND GENERAL ELECTRIC)	
COMPANY)	
)	
Application for approval to contribute)	
property in Washington County to Earth)	
Advantage, Inc.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On February 25, 2005, the Public Utility Commission of Oregon (Commission) received an application from Portland General Electric Company (PGE), pursuant to ORS 757.480 and OAR 860-027-0025, requesting approval of property contributions to Earth Advantage, Inc. The property that PGE proposes to contribute includes trademark; intellectual property; builder, sponsor, and consulting contracts; and related tangible property.

OPINION

Under ORS 757.480, a public utility doing business in Oregon shall first obtain Commission approval for any transaction to sell, lease, assign or otherwise dispose of property. Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on May 3, 2005, the Commission adopted Staff's recommendation to approve the contribution of land by PGE to Earth Advantage, Inc. Staff's recommendation is attached as Appendix A and is incorporated by reference.

ORDER

IT IS ORDERED that the application of Portland General Electric Company is approved, subject to certain conditions, as further stated in Appendix A.

Made, entered, and effective MAY 06 2005

BY THE COMMISSION:



Becky L. Beier

Becky L. Beier
Commission Secretary

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.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 3, 2005

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ N/A

DATE: April 18, 2005

TO: Public Utility Commission

FROM: Michael Dougherty

THROUGH: Lee Sparling and Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UP 220) Application for Approval to Contribute Property in Washington County to Earth Advantage Inc.

STAFF RECOMMENDATION:

The Commission should approve Portland General Electric's (PGE) application for approval to contribute property in Washington County to Earth Advantage Incorporated, (Earth Advantage) subject to the following conditions:

1. PGE shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the contribution of the property to Earth Advantage.
2. A complete accounting shall be provided to Staff within 45 days after the consummation of the transaction. Such accounting will include full details on all transaction costs. All costs of the transaction (appraisal, accounting, legal, in-kind contributions, etc.) shall be recorded in non-utility accounts.
3. PGE has the right to market, outside of the Earth Advantage territory of Oregon and Southwest Washington, the Earth Advantage brand and receive royalty payments with no compensation to Earth Advantage. PGE will pay into an above-the-line interest-bearing deferred account, for later return to customers, a portion of its royalties received after May 1, 2005, for its licensing of the Earth Advantage brand outside of the Earth Advantage territory. The portion that PGE will record in the deferred account is as follows:
 - a. 50 percent of the first \$700,000 in royalties, if any;
 - b. 10 percent of royalties, if any, thereafter.

4. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
5. PGE shall notify the Commission in advance of any substantive changes to the transaction. Any material change shall be submitted in an application for a supplemental order in this docket.
6. PGE shall notify the Commission in advance of any changes to the organizational relationship between PGE and Earth Advantage, including the assignment of additional directors on the Earth Advantage board, or any other action that may result in a possible affiliated interest relation between PGE and Earth Advantage.

DISCUSSION:

PGE filed this application on February 25, 2005, pursuant to ORS 757.480 and OAR 860-027-0025. PGE requests Commission approval of property contributions to Earth Advantage.

The Earth Advantage program is currently an optional service that is funded using “below-the-line” (shareholder) accounts. PGE proposes to place the Earth Advantage program into a separate nonprofit entity, unrelated to PGE. By being an independent 501(c)(3), Earth Advantage will be eligible to access government grants, private foundation grants, and product sponsor support that is only available to nonprofit entities.

The property that PGE proposes to contribute include the trademark; intellectual property; builder, sponsor, and consulting contracts; and related tangible property. The contributed property was initially established by ratepayer contributions, but subsequently transferred to non-utility accounts when the Earth Advantage program was determined to be a non-utility service in October 2001.

As consideration for the contribution of the trademark, PGE will retain a non-exclusive, paid-up, perpetual license in the Earth Advantage program and trademark that will allow PGE to sublicense the program to other utilities outside Oregon and Southwest Washington. Specifically, the Earth Advantage territory is the entire State of Oregon and the State of Washington counties of Clark, Cowlitz, Skamania, Lewis, Klickitat, and Wahkiakum.

PGE anticipates that it will have continual involvement with Earth Advantage as:

1. A sponsor, by having the right to designate a single director on the Earth Advantage board; and
2. A Licensee that will sublicense the Earth Advantage program to other utilities outside Oregon and Southwest Washington.

Background

PGE established Earth Advantage in 2001 to enhance energy efficiency, indoor environmental quality, and environmental impact of Oregon's residential housing and commercial buildings. The Earth Advantage program provides green building standards, design and installation assistance, education and training, and home certification¹ to single and multi-family homebuilders, remodelers, and the manufactured homes industry on a fee-for-service basis.

The Earth Advantage program also provides outreach and education to builders and consumers at the Earth Advantage National Center Training and Display Facility, which is located in Tigard, Oregon. The Earth Advantage program serves over 120 builders and remodelers in Oregon and Southwest Washington.

Issues

Staff investigated the following issues:

1. Scope and Terms of the Contribution, Assignment, and Assumption Agreement; and Sublease Agreement
2. Affiliated Interest Considerations
3. Public Interest Compliance
4. Records Availability, Audit Provisions, and Reporting Requirements

Scope and Terms of Agreements

Staff examined both the Contribution, Assignment, and Assumption Agreement; and Sublease Agreement. Based on an independent appraisal, the market value of the contributed property is \$634,000. This amount includes:

1. \$265,000 for intangible assets (trademark and associated collateral contracts);
2. \$259,000 for tangible assets; and
3. \$110,000 for Energy Star consulting contracts.

¹ An Earth Advantage certification is a process that involves homeowners, builders, and PGE specialists to ensure that the highest standards of energy efficiency, indoor air quality, resource efficiency and environmental responsibility are being met.

The total appraised value of \$259,000² of the tangible assets was purchased prior to allocation to non-utility accounts in UE 115 (PGE's most recent rate case). Although these accounts were subsequently transferred to non-utility accounts during UE 115, this does not diminish the fact that these assets were initially recorded in regulated accounts.

Because this property was initially recorded in regulated accounts, and the property is being contributed to an entity independent of PGE, PGE agreed in a term sheet dated April 18, 2005, to pay into a deferred account a portion of its royalties received after May 1, 2005, for its licensing of the Earth Advantage brand outside of the Earth Advantage territory. The portion that PGE will pay is as follows:

1. 50 percent of the first \$700,000 in royalties, if any;
2. 10 percent of royalties, if any, thereafter.

The 50 percent of \$700,000 was determined based on the appraised value of the assets (\$259,000) plus an additional \$90,650, which is the value of the tax deduction for contributing property to a non-profit entity at a 35 percent tax rate.

The 50/50 sharing is intended to timely return the \$350,000 to customers while retaining incentives to PGE to market Earth Advantage. The longer term sharing of 10 percent of royalties, in Staff's view, recognizes that the agreement between Staff and the company does not include interest accruing on the unamortized balance of the \$350,000. The 50 percent of royalties recorded in the deferred account do accrue interest until the monies are dispersed to customers.

The costs involved in establishing the Earth Advantage trademark were funded through "below-the line" accounts. Since these costs were not recorded in regulated accounts, ratepayers did not contribute to the establishment of the trademark and should not receive compensation for PGE's contribution to the non-profit entity.

The value of the Energy Star consulting contracts was determined based on contracts that were established in 2004. Since these costs were not recorded in regulated accounts, ratepayers did not contribute to the value of the contracts and should not receive compensation for PGE's contribution to the non-profit entity.

As consideration for the contribution, PGE will retain a non-exclusive, paid-up, perpetual license in the Earth Advantage program and trademark. PGE's anticipated annual revenue for the sublicense is estimated at \$100,000 for 2005, increasing to \$150,000 in 2007. This revenue will

² Book value of these assets is \$230,174.

be booked in Account 417, *Revenues from Nonutility Operations*. Staff agrees with this recording into non-utility accounts as:

1. Ratepayers will receive consideration for the Earth Advantage assets since PGE agreed to pay 50 percent of the first \$700,00 in royalties and 10 percent of the royalties thereafter; and
2. Earth Advantage expenses and revenues have been recorded in non-utility accounts since October 2001.

Staff also examined the sublease agreement with Earth Advantage concerning office space currently being leased by PGE at the PacTrust Business Center. The lease is effective upon approval of the application by the Commission and will expire on January 14, 2006. PGE's Board has approved making an in-kind contribution for the lease cost of \$8,886 per month to Earth Advantage. The total contribution will be approximately \$75,531 for the duration of the lease. These costs will be recorded in non-utility accounts and be a shareholder cost.

During a transition period of approximately four months, PGE will provide hosting and technical services related to the Earth Advantage web-site for approximately four months. Costs of these services are estimated at \$55 per month. PGE's Board has approved making an in-kind contribution for these IT Services to Earth Advantage. PGE will record all costs (appraisal, accounting, legal, in-kind contributions, etc.) related to this transaction in non-utility accounts.

Affiliated Interest Considerations

Staff consulted with Counsel on the proposed organization of Earth Advantage, to determine if the new organization was subject to ORS 757.015, *Affiliated Interest, defined*. Both Staff and Counsel conclude that Earth Advantage, in its proposed structure, will not be an affiliated interest of PGE.

Public Interest Compliance

PGE's contribution of property is in the public interest because:

1. The new structure as a 501(c)(3) will allow Earth Advantage to access government grants, private foundation grants, and product sponsor support that is only now available to nonprofit entities. This additional funding may result in greater penetration of the program, enhancing energy efficiency and conservation.
2. PGE agreed to pay into a deferred account a portion of its royalties received after May 1, 2005, for its licensing of the Earth Advantage brand outside of the Earth Advantage territory.

Records Availability, Audit Provisions and Reporting Requirements

The proposed ordering conditions numbers 1 and 2 provide the necessary records access to PGE's relevant books and records.

After review of the filing, Staff concludes that the application, when including the six recommended conditions, is fair and reasonable and not contrary to the public interest.

PROPOSED COMMISSION MOTION:

PGE's UP 220 application for authority to contribute property to Earth Advantage, including the six recommended conditions, be approved.

UP 220 – Contribution to Earth Advantage