

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP 220(1)

In the Matter of	)	
	)	ORDER
PORTLAND GENERAL ELECTRIC	)	
COMPANY	)	
	)	
Application for a supplemental order in regard	)	
to the contribution of property to Earth	)	
Advantage, Inc.	)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS**

On August 25, 2006, the Public Utility Commission of Oregon (Commission) received a supplemental application from Portland General Electric Company (PGE), pursuant to ORS 757.480 and OAR 860-027-0025, requesting a supplemental order concerning property contributions to Earth Advantage that were approved by Order No. 05-230. Condition 3 of Order No. 05-230 required PGE to pay a portion of any royalties it received for its licensing of the Earth Advantage brand to other utilities outside Oregon and Southwest Washington into an interest-bearing deferred account for later sharing to customers. PGE’s filing requests Condition 3 of Order No. 05-230 be eliminated.

About a year after the Order was issued, PGE was notified that the Internal Revenue Service (IRS) would consider Earth Advantage’s application for tax-exemption deficient, unless PGE gave up its exclusive right to market the Earth Advantage brand outside of Earth Advantage’s specified territory (the entire State of Oregon and the State of Washington counties of Clark, Cowlitz, Skamania, Lewis, Klickitat, and Wahkiakum).

As a result of the tax implications for Earth Advantage, PGE gave up its exclusive right to market the Earth Advantage brand outside of Earth Advantage’s specified territory, and has terminated the license agreement with Earth Advantage. As of the date of the application, PGE states that it has made no sales and predicts no future sales pursuant to the license agreement. The IRS has since granted Earth Advantage tax-exempt status as a 501(c)(3) “public charity”.

**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 October 24, 2006, the Commission adopted Staff's recommendation to approve PGE's application, with conditions. Staff's recommendation is attached as Appendix A and is incorporated by reference.

**ORDER**

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

Made, entered, and effective OCT 26 2006.

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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.



PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 24, 2006

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: October 12, 2006

TO: Public Utility Commission

FROM: Michael Dougherty 

THROUGH:  Lee Sparling and  Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UP 220(1)) Application for a Supplemental Order in regard to the contribution of property to Earth Advantage Inc.

**STAFF RECOMMENDATION:**

The Public Utility Commission (Commission) should approve Portland General Electric's (PGE) application for a supplemental order in regard to the contribution of property 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. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
3. 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.
4. PGE shall place the value of the contribution for tangible assets, \$89,333, in PGE's Property Sales Balancing Account for subsequent refund to customers with accrued interest calculated using the applicable Commission approved rate of return from the date of the contribution.

Docket No. UP 220(1)  
October 12, 2006  
Page 2

## DISCUSSION:

PGE filed this application on August 25, 2006, pursuant to ORS 757.480 and OAR 860-027-0025. PGE requests that the Commission issue a supplemental order concerning property contributions to Earth Advantage that were approved by Commission Order 05-230 (UP 220), dated May 6, 2005.

### Background

Condition 3 of Commission Order No. 05-230, required PGE to pay a portion of any royalties it received for its licensing of the Earth Advantage brand to other utilities outside Oregon and Southwest Washington into an interest-bearing deferred account for later sharing to customers. Specifically, the portion that PGE would have recorded 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.

About a year after the Order was issued, PGE was notified that the Internal Revenue Service (IRS) would consider Earth Advantage's application for tax-exemption deficient, unless PGE gave up its exclusive right to market the Earth Advantage brand outside of Earth Advantage's specified territory (the entire State of Oregon and the State of Washington counties of Clark, Cowlitz, Skamania, Lewis, Klickitat, and Wahkiakum).

As a result of the tax implications for Earth Advantage, PGE gave up its exclusive right to market the Earth Advantage brand outside of Earth Advantage's specified territory, and has terminated the license agreement with Earth Advantage. As of the date of the application, PGE states that it has made no sales and predicts no future sales pursuant to the license agreement. The IRS has since granted Earth Advantage tax-exempt status as a 501(c)(3) "public charity".

### Issues

Staff investigated the following issues:

1. PGE's Contribution Claimed for Taxes
2. Public Interest Compliance
3. Records Availability, Audit Provisions, and Reporting Requirements

### PGE's Contribution Claimed for Taxes

Staff examined PGE's contribution claimed for taxes. The amount that PGE was able to claim on its 2005 taxes includes \$89,333 for tangible assets; and \$253,651 for contracts contributed to Earth Advantage.

Docket No. UP 220(1)  
October 12, 2006  
Page 3

The total value of the contribution is \$342,651. This amount differs from the amounts listed in Staff's UP 220 memo. These differences are mainly attributed to:

- a. Net tax value for tangible assets being different than net book value;
- b. Intangible assets have no book value and cannot be used for tax purposes; and
- c. Contract revenue is based on tax guidance that allows a deduction of a declining percent of the income of contributed contracts.

Staff recommends that PGE place the value of the tangible assets portion of the contribution, \$89,333, in PGE's Property Sales Balancing Account for subsequent refund to customers with accrued interest calculated using the applicable Commission approved rate of return from the date of the contribution.

#### Public Interest Compliance

As a result of PGE terminating the license agreement with Earth Advantage, the allocation of gain to customers stated in UP 220, Condition No. 3, has now been rendered moot. Under Staff's recommended disposition of the tax benefit, customers will receive the full tax benefit, resulting from the asset contribution to Earth Advantage and not have to rely on PGE's ability to market the Earth Advantage brand to receive a benefit of the contribution. Staff's position is that because these assets were placed in regulated accounts, they are regulated assets and were included in rates.

Additionally, Earth Advantage will now be able to access grant money and product sponsor support for its products due to its status as a "public charity". This additional funding may result in greater penetration of the program, enhancing energy efficiency, and conservation.

PGE has reviewed and does not oppose Staff's recommendation.

#### Records Availability, Audit Provisions, and Reporting Requirements

The proposed ordering condition number 1 provides the necessary records access to PGE's relevant books and records.

#### **PROPOSED COMMISSION MOTION:**

PGE's UP 220(1) application for a supplemental order, concerning contributed property to Earth Advantage including the four recommended conditions, be approved.