

November 2, 2004

VIA E-MAIL AND UPS OVERNIGHT

Ms. Annette M. Taylor
Legal Secretary
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
PO Box 2148
Salem, OR 97308-2148

Re: UM 1121: Errata to Applicants' Response to Motion to Suspend Proceedings or,
in the Alternative, to Condition Approval

Dear Ms. Taylor:

Enclosed are the original and 5 copies of the corrected page 5 to Applicants' Response to Motion to Suspend Proceedings or, in the Alternative, to Condition Approval, filed by Portland Building Owners and Managers Association ("BOMA") on October 22, 2004. It has come to our attention that, on line 17, the "Outside Date" by which the Proposed Transaction must close improperly was identified as April 18, 2004. The correct Outside Date is May 18, 2004. Please remove page 5 and replace it with the new page. Thank you for your assistance in this matter.

Very truly yours,



Lisa F. Rackner

Enclosures

cc: UM 1121 Service List

1 it could have moved for a continuance. See OAR 860-014-0010 (permitting ALJ to continue a
2 hearing “to receive additional evidence or argument”). Instead, BOMA remained silent. The
3 ALJ should not permit BOMA to engage in improper post-hearing motion practice designed to
4 circumvent the rules and influence the Commission with new, un rebutted argument and
5 evidence.

6 Failure to shield the Commission from BOMA’s improper Motion will prejudice
7 Applicants. See *Smith v. Veterinary Medical Examining Board*, 175 Or. App. 319, 327 (2001)
8 (an agency’s “observance of procedural and evidentiary standards plays an important role in
9 ensuring a fair consideration of contested fact issues”). The Court of Appeals repeatedly has
10 instructed agencies not to contaminate the record after it has closed:

11 Exclusiveness of the record is at the core of the right to a fair hearing. Without
12 that principle the hearing itself can be a sham. . . . Only if the agency is limited to
13 the record of the hearing can the private party have assurance that he not only has
14 a full opportunity to present his case but, more important, opportunity to confront
15 and rebut the entire case against him. Without the exclusiveness principle the
16 right to be heard is a right only to present one side of the case. The hearing itself
17 becomes only an administrative town meeting rather than the adversary
18 proceeding required by due process. *Rolfe v. Psychiatric Security Review Board*,
19 53 Or. App. 941, 951 (1981) (quoting B. Schwartz, *Administrative Law* 358
20 (1976)); see also *Smith*, 175 Or. App. at 327 (quoting same).

21 Moreover, May 18, 2005 is the “Outside Date” by which the transaction must close, after
22 which either party would have the right to terminate the Proposed Transaction.³ See *Oregon*
23 *Electric/Exhibit 6, Stock Purchase Agreement Between Oregon Electric Utility Company, LLC,*
24 *and Enron Corp.* ¶3.2 (Nov. 18, 2003). If the Commission grants BOMA’s motion, it will

25 ODOJ’s review also was reported widely in the local press as early as August 2004. See *Affidavit of Ann L. Fisher*
26 *in Support of Motion to Suspend Proceedings or, in the Alternative, to Condition Approval* ¶ 2. Applicants notified
all parties about the SEC’s PUHCA review in its initial application on March 8, 2004. See *Oregon Electric/5,*
Schifter/3.

³ The “Outside Date” is defined on page 84 of the Stock Purchase Agreement as the “one year anniversary of
the date of execution of [the] Agreement” plus a six-month extension, “if the Closing shall not have occurred
because of any delay in obtaining, or due to the failure to obtain, any approval of one or more Governmental
Authorities that is necessary to satisfy the conditions [of the Agreement].”

**CERTIFICATE OF SERVICE
UM 1121**

I hereby certify that a true and correct copy of **ERRATA TO APPLICANTS' RESPONSE TO MOTION TO SUSPEND PROCEEDINGS OR, IN THE ALTERNATIVE, TO CONDITION APPROVAL** was served via U.S. Mail on the following parties on November 2, 2004:

Mr. Jim Abrahamson
Community Action Directors of Oregon
Suite 110
4035 12th Street Cutoff SE
Salem OR 97302

Susan Ackerman
NIPPC
PO Box 10207
Portland OR 97296-0207

Mr. Grieg Anderson
5919 W Miles Street
Portland OR 97219

Mr. Ken Beeson
Eugene Water & Electric Board
500 East 4th Avenue
Eugene OR 97440-2148

Julie Brandis
Associated Oregon Industries
1149 Court Street NE
Salem OR 97301

Kim Burt
West Linn Paper Company
4800 Mill Street
West Linn OR 97068

Larry Cable Esq.
Cable Huston Benedict Haagensen &
Lloyd LLP
1001 SW Fifth Avenue, Suite 2000
Portland OR 97204

Mr. Michael Caruso
176 SW Hemlock
Dundee OR 97115

Jennifer Chamberlin
Strategic Energy LLC
2633 Wellington Court
Clyde CA 94520

William H. Chen
Constellation Newenergy, Inc.
Suite 300
2175 N California Blvd
Walnut Creek CA 94596

Ms. Joan Cote
Oregon Energy Coordinators Association
2585 State Street NE
Salem OR 97301

Christopher Crean
Multnomah County, Oregon
501 SE Hawthorne, Suite 500
Portland OR 97214

Melinda J. Davison
Davison Van Cleve PC
Suite 2460
1000 SW Broadway
Portland OR 97205

James Dittmer
Utilitech, Inc.
740 NW Blue Parkway, Suite 204
Lee's Summit MO 64086

Gary Duell - VIA E-MAIL ONLY
11301 SE Charview Court
Clackamas OR 97015

James F. Fell
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland OR 97204-1268

Andrea Fogue
League of Oregon Cities
PO Box 928
Salem OR 97308

Ms. Katherine Futornick
14800 NE Bluebird Hill Lane
Dayton OR 97114

Leonard Girard
2169 SW Kings Court
Portland OR 97205

Jim Deason
Cable Huston Benedict Haagensen &
Lloyd LLP
1001 SW Fifth Avenue, Suite 2000
Portland OR 97204

Mr. J. J. Dudley
Portland General Electric
121 SW Salmon Street
Portland OR 97204

Jason Eisdorfer
Citizens' Utility Board of Oregon
Suite 308
610 SW Broadway
Portland OR 97205

Ann L. Fisher
AF Legal & Consulting Services
Kamm House
1425 SW 20th, Suite 202
Portland OR 97201

Mr. Scott Forrester
Friends of the Clackamas River
2030 NW 7th Place
Gresham OR 97030

Mrs. Lora Garland
Bonneville Power Administration
Routing L-7
PO Box 3621
Portland OR 97208-3621

Ann E. Gravatt
Renewable Northwest Project
Suite 303
917 SW Oak
Portland OR 97205

Patrick G. Hager
Portland General Electric
1 WTC0702
121 SW Salmon Street
Portland OR 97204

Mr. Roy Henderson
895 NW Dale Avenue
Portland OR 97229

Ms. Mary Ann Hutton
Canon And Hutton
1141 NW Kring Street
Roseburg OR 97470

Mr. Joe Janssens
24495 Butteville Road NE
Aurora OR 97002

Jason W. Jones
Oregon Department of Justice
1162 Court Street NE
Salem OR 97301

Ms. Valarie Koss
Columbia River PUD
PO Box 1193
St. Helens OR 97051-8193

Mr. Geoffrey M. Kronick
Bonneville Power Administration
LC7
PO Box 3621
Portland OR 97208-3621

Michael L. Kurtz
Boehm, Kurtz & Lowry
Suite 2110
36 E 7th Street
Cincinnati OH 45202

Ms. Rochelle Lessner
Lane Powell Spears Lubersky LLP
Suite 2100
601 SW Second Avenue
Portland OR 97204-3158

Mr. Ken Lewis
2880 NW Ariel Terrace
Portland OR 97210

Steven G. Lins
City of Glendale
613 E Broadway, Suite 220
Glendale CA 91206-4394

James Manion
Warm Springs Power Enterprises
PO Box 960
Warm Springs OR 97761

Lloyd K. Marbet
Don't Waste Oregon
19142 S Bakers Ferry Road
Boring OR 97009

Gordon McDonald
PacifiCorp
Suite 300
825 NE Multnomah
Portland OR 97232

Daniel W. Meek
10949 SW 4th Avenue
Portland OR 97219

Thad Miller
Oregon Electric Utility Company
61 Edge of the Woods Road
Southampton NY 11968

William Miller
IBEW
17200 NE Sacramento
Portland OR 97230

Christy Monson
League of Oregon Cities
1201 Court Street NE, Suite 200
Salem OR 97301

Michael Morgan
Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland OR 97204

Mr. Frank Nelson
543 Willamette Court NW
McMinnville OR 97128

Ms. Nancy Newell
3917 NE Skidmore Street
Portland OR 97211

James Noteboom
Karnopp, Petersen, Noteboom, Hansen,
Arnett & Sayeg, LLP
1201 NW Wall Street, Suite 300
Bend OR 97701-1957

Mr. Donald W. Schoenbeck
Regulatory & Cogeneration Services, Inc.
900 Washington Street, Suite 780
Vancouver Wa 98660-3455

Ms. Rebecca Sherman
Hydropower Reform Coalition
320 SW Stark Street, Suite 429
Portland OR 97204

John W. Stephens
Esler, Stephens & Buckley
888 SW Fifth Avenue, Suite 700
Portland OR 97204-2021

Mr. Brett Swift
American Rivers Association
320 SW Stark Street, Suite 418
Portland OR 97204

Mitchell Taylor
Enron Corp.
1221 Lamar, Suite 1600
PO Box 1188
Houston TX 77251-1188

Laurence Tuttle
Center for Environmental Equity
610 SW Alder #1021
Portland OR 97205

S. B. Van Cleve
Davison Van Cleve PC
Suite 2460
1000 SW Broadway
Portland OR 97205

Mr. Benjamin Walters
City of Portland, Oregon
Suite 430
Room 120
1221 SW Fourth Avenue
Portland OR 97204

Michael T. Weirich
Oregon Department of Justice
General Counsel Division
100 Justice Building
1162 Court Street NE
Salem OR 97301

Steven Weiss
Northwest Energy Coalition
4422 Oregon Trail Court NE
Salem OR 97305

Robin White
Portland BOMA
Suite 2722-Mezzanine
1211 SW 5th Avenue
Portland OR 97201

Lorne Whittles
EPCOR MERCHANT AND CAPITAL
(US) Inc.
1161 W River Street, Suite 250
Boise ID 83702

Linda K. Williams
Kafoury & McDougal
10266 SW Lancaster Road
Portland OR 97219-6305

ATER WYNNE LLP


Christine Wilhelm