

**ANN L. FISHER**  
ATTORNEY AT LAW  
**AF LEGAL & CONSULTING SERVICES**

KAMM HOUSE  
1425 SW 20<sup>TH</sup> AVENUE, SUITE 202  
PORTLAND, OREGON 97201  
TELEPHONE: 503.721.0181  
FACSIMILE: 503.223.2305  
WWW.LAWYERS.COM/ANNFISHER  
ENERG LAW@AOL.COM

January 19, 2005.  
Oregon Public Utility Commission  
Administrative Hearings Division  
550 Capitol Street, NE, Suite 215  
PO Box 2148  
Salem, Oregon 97308-2148

Re: UM 1121

Dear Administrative Hearings Clerk:

Enclosed please find an original and five copies of BOMA's Reply to Applicants Response to Motion to Lift Protective Order. The parties were served by electronic distribution where electronic addresses were available, otherwise by mail.

Thank you for your courtesy.

Sincerely,

Ann Fisher  
Attorney at Law

ANN L. FISHER  
Attorney at Law  
AF Legal & Consulting Svcs  
1425 SW 20<sup>th</sup> St., Suite 202  
Portland, Oregon 97201  
Telephone - 503.721-0181  
Facsimile - 503.223-2305

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of ) Case UM 1121  
OREGON ELECTRIC UTILITY COMPANY, LLC, et ) )  
al. ) )  
Application for Authorization to Acquire Portland )  
General Electric Company. )  
MOTION TO LIFT PROTECTIVE ORDER  
CONSIDERATION BY FULL COMMISSION  
REQUESTED.

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Portland Building Owners and Managers Association (“BOMA”) submits the following Reply to Applicants’ and Texas Pacific Group’s (“TPG”) Response to BOMA’s motion to revoke the Protective Order entered in this matter.

Once again Applicants’ response aims to confuse and mislead the Public, Interveners, and the Commission. They do so by misstating BOMA’s motion and its underlying basis. They have been quick to say In the press (and apparently in staged discussions with influential Oregonians) (1) that the due diligence documents mean nothing (despite the hefty price tag of \$7 million), (2) that TPG “has no plans” for PGE but will develop some if the transaction is approved, and (3) that TPG’s investment is reasonable and will cause no harm to PGE customers, Oregonians, and the State. TPG puts its own credibility at issue in this docket.

TPG did so *not* put the issues of truth and credibility at issue when the protective order was requested (although they did not make the showing required by *Citizens Utility Board of Oregon v. OPUC*, 128 Or

App 650, 877 P2d 116 (1994)), nor did TPG do so during the evidentiary phase of the proceedings. Not until it appeared that the Commission wasn't going to look any further did TPG clearly and unequivocally put the credibility of TPG and the reasonableness of this transaction at issue. It is TPG that drives the timing of the motion and the need to lift the protective order. It is the Public that will be harmed if the protective order is not withdrawn.

Nothing that Applicants argue in support of retaining the protective order is important or relevant in this matter<sup>1</sup>. What is important is what TPG is trying to keep secret, and why. Applicants have released some but not all of the secret documents in this matter. Why haven't they released them all? There are three possible scenarios – none of them good - and each one demands that the protective order be lifted.

#### Scenario No. 1 –

The documents under the protective order refute TPG's public statements that the Due Diligence performed was just initial analyses and have no bearing upon the current situation. If that is true, the additional documents being held from the Public show that TPG representatives have been less than truthful and straightforward in their comments, particularly since no one knows what those plans might be.

#### Scenario No. 2 –

The retained documents show that the current plans are as stated in recent news articles (such as in the January 14, 2005 edition of The Business Journal (Portland)): "Texas pacific has no operating plan for PGE, but will develop a 100-day plan working with management if the deal gains approval." In other words, TPG wants this Commission to approve a transaction without knowing any of the salient information necessary to make a reasoned decision. And why would TPG want that? One can only surmise but it is obviously not to benefit the PGE ratepayers or the Public.

#### Scenario No. 3 –

The retained documents, including those reflecting presentations made to the credit rating companies such as Standard and Poor's and Morgan Stanly, show that TPG will make a cool billion dollars on this deal and its interest in benefiting the public is only as deep as the ink on the page.

In each scenario the Protective Order is being used, not to protect legitimate trade secrets, but as a shield to prevent proper inquiry into what the Applicants are going to do. They ask the Commission to naively accept ambiguous and unenforceable promises to 'do the right thing'. But whether "the right thing" is for the Public or TPG remains to be seen. Even now, after claiming to the world that it has released "all" of the documents, TPG continues to demand that a protective order remain in place to shield public scrutiny of other documents. Those documents include *(as illustration, not intended to limit, since all of the secret documents are relevant)* such things as ICNU 200-205, and ICNU 806, the latter, a significant document related to current evaluation of PGE<sup>ii</sup>, which was not admitted into the record based on TPG's objection.

Applicants have attempted to make this motion about BOMA or worse, BOMA's counsel. This isn't about BOMA. It isn't about BOMA's counsel. It isn't even about the men and women involved in this transaction. What it is about is how the Customers' Public interest be affected by this transaction. Will this transaction harm ratepayers? The Public? The Oregon economy? Only by a full and open discussion of what really will happen, what TPG will take from this, and what the Customers can expect – the risks, liabilities, and the potential harm – will a reasonable approach be fashioned to make this something special, a true win for Oregon. If the applicants are unwilling to sign on the dotted line, to share the risks, and to accept that they have an obligation to the utility and its ratepayers, then this is no deal that Oregonians can accept.

BOMA has asked that the full Commission consider its motion. In the final analysis, it is the full Commission who will wear the flowers or the tar if the wrong decision is made. It is the full Commission who will have to explain why some documents were held back and that important information was not considered.

Willamette Week obtained documents which have shown, without rebuttal that this is a bad deal for Oregonians. Applicants then provided, some but not all, of its secret documents to the Oregonian but claim a right to continued secrecy over the remainder. There has been no argument advanced to support any need for protection for trade secrets and confidential information or legitimate harm if the information comes out. Instead Applicants want to redirect inquiry to a time early in the proceedings to say that BOMA should have opposed the protective order then. *Then* BOMA was willing to believe that protection was for a legitimate purpose, not to shield plans and schemes against the customers' interests. *Now*, TPG put its credibility at issue by its inconsistent public remarks giving rise to the need to revoke the protective order. TPG's actions, no one else's, drives this motion. The motion should be granted.

Dated this 19<sup>th</sup> day of January 2005.

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Ann L. Fisher  
1425 SW 20<sup>th</sup> Street, Suite 202  
Portland, Oregon 97201  
503-721-0181  
503-223-2305 - facsimile

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<sup>i</sup> They also misstate the significance of *Zenith Radio Corporation v. Matsushita Electronic Industrial Company*, 529 F. Supp 866 (Ed Pa 1981) since the case clearly recognizes a third factor in determining whether material that has become a part of a judicial record should remain subject to a protective order, which is to require a balancing of the public's interest in disclosure against the potential harm to the entity seeking protection. See, *CUB v PUC*, at page 660

<sup>ii</sup> It appears that while some of the documents contained information about PGE, it is, like the due diligence documents, information that TPG has provided to rating agencies and others and as such reflects TPG's evaluation of this transaction. They differ from the documents previously released by TPG since they were prepared or presented during 2004.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served BOMA’s Reply to Applicants Response to Motion to Lift Protective Order on the official service list for Docket No. UM 1121, by causing the same to be electronically served on January 19, , 2004, upon all parties who have an email address on the official service list, and by U.S. Mail on January 19 2005, postage-prepaid, to those parties who do not have an email address on the official service list.

Dated at Portland, Oregon, this 19<sup>th</sup> day of January, 2005.

By: \_\_\_\_\_

Ann L. Fisher

JIM ABRAHAMSON COMMUNITY ACTION DIRECTORS OF OREGON 4035 12TH ST CUTOFF SE STE 110 SALEM OR 97302 jim@cado-oregon.org	SUSAN K ACKERMAN NIPPC PO BOX 10207 PORTLAND OR 97296-0207 susan.k.ackerman@comcast.net
GRIEG ANDERSON 5919 W MILES ST. PORTLAND OR 97219	JEANNE L ARANA OREGON HOUSING AND COMMUNITY SERVICES DEPT PO BOX 14508 SALEM OR 97301 jeanne.arana@hcs.state.or.us
KEN BEESON EUGENE WATER & ELECTRIC BOARD 500 EAST FOURTH AVENUE EUGENE OR 97440-2148 ken.beeson@eweb.eugene.or.us	JULIE BRANDIS ASSOCIATED OREGON INDUSTRIES 1149 COURT ST NE SALEM OR 97301-4030 jbrandis@aoi.org
KIM BURT WEST LINN PAPER COMPANY 4800 MILL ST WEST LINN OR 97068 kburt@wlinpco.com	J LAURENCE CABLE CABLE HUSTON BENEDICT ET AL 1001 SW 5TH AVE STE 2000 PORTLAND OR 97204-1136 lcable@chbh.com
K DEE CARLSON DEPT OF JUSTICE - GENERAL COUNSEL DIVISION 1162 COURT ST NE SALEM OR 97301-4096 d.carlson@doj.state.or.us	MICHAEL CARUSO 176 SW HEMLOCK DUNDEE OR 97115 carusodad@hotmail.com

JENNIFER CHAMBERLIN STRATEGIC ENERGY LLC 2633 WELLINGTON COURT CLYDE CA 94520 jchamberlin@sel.com	WILLIAM H CHEN CONSTELLATION NEWENERGY INC 2175 N CALIFORNIA BLVD STE 300 WALNUT CREEK CA 94596 bill.chen@constellation.com
JOAN COTE OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwvcaa.org	CHRIS CREAN MULTNOMAH COUNTY 501 SE HAWTHORNE, SUITE 500 PORTLAND OR 97214 christopher.d.crean@co.multnomah.or.us
MELINDA J DAVISON DAVISON VAN CLEVE PC 1000 SW BROADWAY STE 2460 PORTLAND OR 97205 mail@dvclaw.com	JIM DEASON CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW FIFTH AVE STE 2000 PORTLAND OR 97204-1136 jdeason@chbh.com
JAMES DITTMER UTILITECH INC 740 NW BLUE PKWY STE 204 LEE'S SUMMIT MO 64086 jdittmer@utilitech.net	J JEFFREY DUDLEY PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC1301 PORTLAND OR 97204 jay_dudley@pgn.com
GARY DUELL 11301 SE CHARVIEW COURT CLACKAMAS, OR OR 97015 gduell@bigplanet.com	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
JAMES F FELL STOEL RIVES LLP 900 SW 5TH AVE STE 2600 PORTLAND OR 97204-1268 jffell@stoel.com	ANN L FISHER AF LEGAL & CONSULTING SERVICES 1425 SW 20TH STE 202 PORTLAND OR 97201 energylaw@aol.com
ANDREA FOGUE LEAGUE OF OREGON CITIES PO BOX 928 1201 COURT ST NE STE 200 SALEM OR 97308 afogue@orcities.org	SCOTT FORRESTER FRIENDS OF THE CLACKAMAS RIVER 2030 NW 7TH PL GRESHAM OR 97030 clackamas9@aol.com
KATHERINE FUTORNICK 14800 NE BLUEBIRD HILL LANE DAYTON OR 97114 futork@onlinemac.com	LORA GARLAND L-7 BONNEVILLE POWER ADMINISTRATION P.O. BOX 3621 PORTLAND OR 97208-3621 lmgarland@bpa.gov
LEONARD GIRARD 2169 SW KINGS COURT PORTLAND OR 97205 lgirard@teleport.com	ANN ENGLISH GRAVATT RENEWABLE NORTHWEST PROJECT 917 SW OAK - STE 303 PORTLAND OR 97205 ann@rnp.org

<p>PATRICK G HAGER  PORTLAND GENERAL ELECTRIC  121 SW SALMON ST 1WTC0702  PORTLAND OR 97204  patrick_hager@pgn.com</p>	<p>ROY HENDERSON  PENSION ENHANCEMENT COMMITTEE  895 NW DALE AVENUE  PORTLAND OR 97229  royhensn@msn.com</p>
<p>MARY ANN HUTTON  CANON AND HUTTON  SOUTHERN OREGON OFFICE  1141 NW KRING ST  ROSEBURG OR 97470  mah@canonandhutton.com</p>	<p>JOE JANSSENS  PGE PENSION ENHANCEMENT COMMITTEE  24495 BUTTEVILLE RD NE  AURORA OR 97002  osprey64@juno.com</p>
<p>VALARIE KOSS  COLUMBIA RIVER PUD  PO BOX 1193  SAINT HELENS OR 97051  vkoss@crpud.org</p>	<p>GEOFFREY M KRONICK LC7  BONNEVILLE POWER ADMINISTRATION  PO BOX 3621  PORTLAND OR 97208-3621  gmkronick@bpa.gov</p>
<p>MICHAEL L KURTZ  BOEHM, KURTZ &amp; LOWRY  36 E 7TH ST STE 2110  CINCINNATI OH 45202  mkurtzlaw@aol.com</p>	<p>ROCHELLE LESSNER  LANE, POWELL, SPEARS, LUBERSKY LLP  601 SW 2ND AVE. STE. 2100  PORTLAND OR 97204  lessnerr@lanepowell.com</p>
<p>KEN LEWIS  2880 NW ARIEL TERRACE  PORTLAND OR 97210  kl04@mailstation.com</p>	<p>STEVEN G LINS  GLENDALE, CITY OF  613 E BROADWAY STE 220  GLENDALE CA 91206-4394  slins@ci.glendale.ca.us</p>
<p>JAMES MANION  WARM SPRINGS POWER ENTERPRISES  PO BOX 960  WARM SPRINGS OR 97761  j_manion@wspower.com</p>	<p>LLOYD K MARBET  DON'T WASTE OREGON  19142 S BAKERS FERRY RD  BORING OR 97009  marbet@mail.com</p>
<p>GORDON MCDONALD  PACIFIC POWER &amp; LIGHT  825 NE MULTNOMAH STE 800  PORTLAND OR 97232  gordon.mcdonald@pacificcorp.com</p>	<p>DANIEL W MEEK  DANIEL W MEEK ATTORNEY AT LAW  10949 SW 4TH AVE  PORTLAND OR 97219  dan@meek.net</p>
<p>THAD MILLER  OREGON ELECTRIC UTILITY COMPANY  222 SW COLUMBIA STREET, SUITE 1850  PORTLAND OR 97201-6618  tmiller6@optonline.com</p>	<p>WILLIAM MILLER  IBEW  17200 NE SACRAMENTO  PORTLAND OR 97230  bill@ibew125.com</p>
<p>CHRISTY MONSON  LEAGUE OF OREGON CITIES  1201 COURT ST. NE STE. 200  SALEM OR 97301  cmonson@orcities.org</p>	<p>MICHAEL MORGAN  TONKON TORP LLP  888 SW 5TH AVE STE 1600  PORTLAND OR 97204-2099  mike@tonkon.com</p>
<p>FRANK NELSON  543 WILLAMETTE CT  MCMINNVILLE OR 97128  fnelson@viclink.com</p>	<p>NANCY NEWELL  3917 NE SKIDMORE  PORTLAND OR 97211  ogec2@hotmail.com</p>



<p>JAMES NOTEBOOM KARNOPP PETERSEN NOTEBOOM ET AL 1201 NW WALL ST STE 300 BEND OR 97701 jdn@karnopp.com</p>	<p>LISA F RACKNER ATER WYNNE LLP 222 SW COLUMBIA ST STE 1800 PORTLAND OR 97201-6618 lfr@aterwynne.com</p>
<p>DONALD W SCHOENBECK REGULATORY &amp; COGENERATION SERVICES INC 900 WASHINGTON ST STE 780 VANCOUVER WA 98660-3455 dws@r-c-s-inc.com</p>	<p>REBECCA SHERMAN HYDROPOWER REFORM COALITION 320 SW STARK STREET, SUITE 429 PORTLAND OR 97204 northwest@hydroreform.org</p>
<p>JOHN W STEPHENS ESLER STEPHENS &amp; BUCKLEY 888 SW FIFTH AVE STE 700 PORTLAND OR 97204-2021 stephens@eslerstephens.com</p>	<p>BRETT SWIFT AMERICAN RIVERS 320 SW STARK ST, SUITE 418 PORTLAND OR 97204 bswift@amrivers.org</p>
<p>MITCHELL TAYLOR ENRON CORPORATION PO BOX 1188 1221 LAMAR - STE 1600 HOUSTON TX 77251-1188 mitchell.taylor@enron.com</p>	<p>LAURENCE TUTTLE CENTER FOR ENVIRONMENTAL EQUITY 610 SW ALDER #1021 PORTLAND OR 97205 nevermined@earthlink.net</p>
<p>S BRADLEY VAN CLEVE DAVISON VAN CLEVE PC 1000 SW BROADWAY STE 2460 PORTLAND OR 97205 mail@dvclaw.com</p>	<p>BENJAMIN WALTERS CITY OF PORTAND - OFFICE OF CITY ATTORNEY 1221 SW 4TH AVE - RM 430 PORTLAND OR 97204 bwalters@ci.portland.or.us</p>
<p>MICHAEL T WEIRICH DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@state.or.us</p>	<p>STEVEN WEISS NORTHWEST ENERGY COALITION 4422 OREGON TRAIL CT NE SALEM OR 97305 steve@nwenergy.org</p>
<p>ROBIN WHITE PORTLAND BOMA 1211 SW 5TH AVE STE 2722-MEZZANINE PORTLAND OR 97201 rwhite@bigplanet.com</p>	<p>LORNE WHITTLES EPCOR MERCHANT &amp; CAPITAL (US) INC 1161 W RIVER ST STE 250 BOISE ID 83702 lwhittles@epcor.ca</p>
<p>LINDA K WILLIAMS KAFOURY &amp; MCDUGAL 10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net</p>	