

January 5, 2005

VIA FACSIMILE AND OVERNIGHT DELIVERY

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


Re: UM 1121 – Applicants’ Response to Renewed Motion to Suspend Proceedings

Dear Ms. Taylor:

Enclosed for filing in the above-referenced docket please find the original and five copies of Applicants’ Response to Renewed Motion to Suspend Proceedings.

Please contact me with any questions.

Sincerely,



Lisa F. Rackner

Enclosure

cc: UM 1121 Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **UM 1121**
4

5 In the Matter of

6 OREGON ELECTRIC UTILITY COMPANY, LLC,
7 et al.,

8 Application for Authorization to Acquire Portland
9 General Electric Company

**APPLICANTS' RESPONSE TO
RENEWED MOTION TO
SUSPEND PROCEEDINGS**

10 Oregon Electric Utility Company, LLC, et al. ("Applicants") respectfully submit this
11 response to the "Renewed Motion to Suspend Proceedings" (the "Renewed Motion") filed by
12 Portland Building Owners and Managers Association ("BOMA") on December 20, 2004.

13 **INTRODUCTION**

14 The Administrative Law Judge ("ALJ") denied BOMA's initial October 21, 2004 motion
15 to suspend proceedings in this docket (the "Initial Motion"). *See Ruling*, UM 1121 (Nov. 8
16 2004). BOMA renews its motion, but offers nothing new to justify suspension of these
17 proceedings. Instead, BOMA continues to misstate the same "facts" and make the same
18 meritless arguments contained in its Initial Motion.

19 First, BOMA argues that the Commission must suspend proceedings until the Securities
20 and Exchange Commission ("SEC") resolves whether the Public Utility Holding Company Act
21 ("PUHCA") will apply to either Oregon Electric Utility Company, LLC ("Oregon Electric") or
22 TPG Partners III, L.P., and TPG Partners IV, L.P. (the "TPG Applicants"). However, resolution
23 of issues related to PUHCA simply is not necessary to allow the Commission to evaluate
24 Applicants' proposal under ORS 757.511. Indeed, the SEC is entitled to await the Commission's
25 resolution of this docket before it conducts its own review under PUHCA.
26

1 Second, BOMA argues that the Commission must suspend proceedings until the Oregon
2 Department of Justice (“ODOJ”) completes an investigation of “potential wrong doing [sic].”
3 BOMA submits no evidence of the details of this ODOJ investigation and makes no attempt to
4 correct the false assertion in its Initial Motion that there is a pending ODOJ investigation of the
5 Texas Pacific Group (“TPG”). Accordingly, BOMA has not demonstrated that there is a basis
6 for delay.

7 ARGUMENT

8 Once again, BOMA requests that the ALJ certify its Renewed Motion for consideration
9 “by the full Commission.” *Renewed Motion at 1*. The ALJ should deny this request, as it did the
10 first time BOMA attempted to delay these proceedings. *See Ruling*, UM 1121 (Nov. 8, 2004);
11 OAR 860-012-0035(g) (ALJ has authority to decide procedural matters).

12 As grounds for denying BOMA’s Renewed Motion, Applicants incorporate their
13 November 1, 2004 response to BOMA’s Initial Motion, along with the Declaration of James M.
14 Barrett and exhibits filed in support thereof. Applicants reiterate and expand upon portions of
15 that response below to rebut specific allegations in BOMA’s Renewed Motion.

16 I. THE SEC’S REVIEW OF APPLICANTS’ PUHCA APPLICATIONS IS 17 NOT GROUNDS TO SUSPEND PROCEEDINGS

18 The Commission should not suspend proceedings to await the SEC’s determination of
19 issues under PUHCA; indeed, it is the SEC that traditionally defers consideration until
20 completion of the state proceeding. *Madison Gas and Electric Co. v. SEC*, 168 F.3d 1337, 1341
21 (D.C. Cir. 1999) (When the SEC and another regulatory agency both have jurisdiction over a
22 particular transaction, the SEC may “watchfully defer” to the proceedings held before – and the
23 result reached by – that other agency.). None of BOMA’s arguments warrants a departure from
24 the normal course.

25 //

1 **II. ORS 757.511 DOES NOT PROVIDE GROUNDS TO SUSPEND**
2 **PROCEEDINGS**

3 BOMA asserts that subsections (2)(d) and (2)(e) of ORS 757.511 require the Commission
4 to suspend proceedings until the SEC resolves whether PUHCA will apply to the TPG
5 Applicants or Oregon Electric. BOMA is wrong.

6 **A. ORS 757.511(2)(d)**

7 Subsection 2(d) of ORS 757.511 provides that an application to exercise substantial
8 authority over a public utility must set forth detailed information regarding an applicant’s
9 “compliance with federal law in carrying out the transaction.” BOMA suggests that Applicants
10 have not satisfied this provision because “there has been nothing placed into the record
11 indicating how Applicants will operate PGE if no [PUHCA] exemption is allowed,” potentially
12 necessitating “an amendment to the application.” *Renewed Motion at 2*. BOMA further suggests
13 that failing to suspend proceedings is a “waste of resources” if an unfavorable decision by the
14 SEC is a “deal breaker.” *Id.* Neither argument has merit.

15 First, if the SEC determines that Oregon Electric does not qualify for an exemption from
16 PUHCA, no amendment to the Application would be required to show “how Applicants will
17 operate PGE.” The record evidence, ignored by BOMA, is that Oregon Electric would operate
18 PGE in compliance with PUHCA. *See* Hearing Tr. at 186-87 (testimony of Rick Schifter);
19 Oregon Electric/5, Schifter/3-6.¹

20 Second, Applicants have been clear from their very first filing with the Commission that
21 the SEC must conclude TPG Applicants are not “holding companies” under PUHCA as a
22 condition to close. *See* Oregon Electric/5, Schifter/6.² After nine months of exhaustive

23 ¹ Rick Schifter testified that, “[b]ecause the SEC has ruled that PGE is not an intrastate utility, Oregon Electric will
24 have to register under PUHCA – unless it qualifies for an exemption.” Oregon Electric/5, Schifter/3. He further
25 explained that, under PUHCA, Oregon Electric would be subject to comprehensive regulations that “include not
26 only reporting requirements, but also the need to obtain SEC approvals of financing and asset acquisition or
disposal, as well as restrictions on capital structure.” Oregon Electric/5, Schifter/4.

² “A condition of the transaction with Enron is that the SEC staff issue a no-action letter indicating that it would not
recommend that the SEC institute an enforcement action against the TPG Applicants to deem them or their affiliates
as a ‘holding company’ under PUHCA.” Oregon Electric/5, Schifter/6.

1 testimony and discovery, it is ridiculous for BOMA to claim that that this fact has been given
2 “little consideration” and that further deliberation by the Commission is a “waste of resources.”
3 *Renewed Motion at 2.* Moreover, as a legal matter, it certainly does not prevent the Commission
4 from completing its review under ORS 757.511. The SEC’s review of whether the TPG
5 Applicants should be considered “holding companies” under PUHCA involves a question of pure
6 federal law, and it is independent from and unrelated to the Commission’s inquiry under ORS
7 757.511. Subsection 2(d) of ORS 757.511 is not to the contrary.

8 **B. ORS 757.511(2)(e)**

9 Subsection 2(e) of ORS 757.511 provides that an application to exercise substantial
10 authority over a public utility must set forth detailed information regarding whether the
11 applicants or key personnel associated with applicants “have violated any state or federal statutes
12 regulating the activities of public utilities.”

13 BOMA does not identify any law, much less one directed at “regulating the activities of
14 public utilities,” that any of the Applicants have been accused of violating. Instead, BOMA
15 attaches a copy of a September 29, 2004 letter from Peter Shepard to the Oregon State Treasurer
16 regarding an investigation related to Neil Goldschmidt’s wife’s activities on the Oregon
17 Investment Council (the “Shepard Letter”).³ *Renewed Motion at 2-3.* According to BOMA, that
18 investigation is “ongoing,” and the Commission should suspend proceedings to allow a
19 determination of whether “some or all of the Applicants’ personnel or the personnel of the
20 unregulated TPG have committed wrongdoing.” *Renewed Motion at 3.*

21 The Shepard Letter does not accuse any Applicant of “wrongdoing” and cannot provide
22 the basis for suspending this proceeding under ORS 757.511(2)(e). Indeed, BOMA itself
23 conceded that the Shepard Letter “is not at issue” and that there is no available evidence on
24 which to base such a suspension. *See BOMA’s Reply to TPG Response at 2-3 (Nov. 2, 2004).*

25 _____
26 ³ See Applicants’ Response to BOMA’s initial motion to suspend proceedings for an explanation of the facts surrounding this letter.

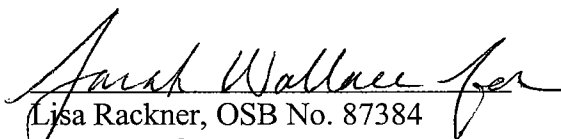
1 "The burden of presenting evidence to support a fact or position in a contested case rests
2 on the proponent of the fact or position." ORS 183.450(2). BOMA has done nothing to support
3 its wild suggestions that, among other things, TPG is a "corrupt" third party. In short, BOMA
4 has presented no evidence that would warrant the drastic remedy it seeks.

5 **CONCLUSION**

6 For the foregoing reasons, Applicants respectfully request that the ALJ deny BOMA's
7 Renewed Motion without certifying it to the Commission for consideration.

8 Respectfully submitted this 5th day of January, 2005.

9 ATER WYNNE LLP

10
11 By: 
12 Lisa Rackner, OSB No. 87384
13 E-mail: lfr@aterwynne.com
14 Jim Barrett, OSB No. 01199
15 E-mail: jmb@aterwynne.com
16 Of Attorneys for Applicants

17 OREGON ELECTRIC UTILITY COMPANY, LLC

18 By: Thad Miller
19 General Counsel
20 222 SW Columbia Street, Suite 1850
21 Portland, OR 97201-6618
22 Telephone: (503) 226-8622
23 Facsimile: (877) 892-1953
24 E-mail: tmiller6@optonline.net
25 Of Attorneys for Applicants
26

**CERTIFICATE OF SERVICE
UM 1121**

I hereby certify that a true and correct copy of **APPLICANTS' RESPONSE TO RENEWED MOTION TO SUSPEND PROCEEDINGS** was served via U.S. Mail on the following parties on January 05, 2005:

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. Julie Coletti
Strategic Energy LLC
9th Floor
Two Gateway Center
Pittsburgh PA 15222

Mr. Bryan Conway
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
PO Box 2148
Salem OR 97308-2148

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

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

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

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

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

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

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

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

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

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

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

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

Leonard Girard
2169 SW Kings Court
Portland OR 97205

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
64001 Columbia River Highway
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

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

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



Jessica A. Centeno