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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) Case UM 1121
OREGON ELECTRIC UTILITY COMPANY,) BOMA's Reply to TPG Response
LLC, et al.)
Application for Authorization to Acquire)
Portland General Electric Company.)

Texas Pacific Group (TPG) has filed a Response to the Motion to Suspend brought by Building Owners and Manager Association of Portland (BOMA). This Reply is to address to the arguments made.¹

INTRODUCTION

TPG argues procedure. It does not argue facts and the facts are that the Commission has no ability to hold TPG accountable for any aspect of the acquisition unless it requires it as a condition of approval, that despite all of the hoopla surrounding its acquisition and its claim that this will be a good result for Oregonians, TPG has no skin in the game, will not put skin in the game, and will not be accountable. No rational businessperson would take the word of a third party or distant affiliate that the entity will help the business grow and meet its obligations. The distant affiliate would be required to guarantee the transaction or sign on as a direct obligor.

¹ The Reply focuses on TPG's Response since the Responses from Enron and PGE are minimal in comparison..

The Commission should have as much protection in place for its constituents as the rational businessman would in his transaction.

The Commission should suspend the proceedings pending the conclusion of investigations and a ruling by the Securities and Exchange Commission (SEC) respecting an exemption from PUHCA requirements for either TPG or OEUC.

TPG's ARGUMENT

TPG MAKES THREE ARGUMENTS:

1. The Motion is untimely;
2. The Motion lacks basis in fact;
3. PUCHA Review is not cause for delay.

BOMA will address each in turn.

1. The motion is not "untimely". TPG misunderstands the nature of the motion. It is not a motion to add evidence that was available at the conclusion of Testimony on October 21, 2004. In fact it is a motion to suspend proceedings until the conclusion of pending investigations. While a motion for a continuance and/or to leave the record open may be another acceptable procedural approach, such a motion has by its nature a defined term. Since no one can predict the outcome or the timing of the investigations, such an approach is not as appropriate as the Motion to Suspend. By suspending the proceedings and then re-opening them when the facts are known, the parties will have an opportunity to comment upon the evidence or confront witnesses if appropriate.

TPG references a preliminary report prepared by Pete Shepard of the Attorney General's office. That report, dated September 29, 2004 is not at issue. On September 30, 2004, Kevin Neely, as a spokesman for the Oregon Department of Justice, was quoted in the *Statesman Journal* that an additional investigation "would soon begin" and that "The investigation of the Investment Council could go well beyond Goldschmidt's activities." Neely's

comments came as part of an announcement of further investigations (requested by Oregon State Treasurer, Randal Edwards) into the OIC and TPG after the initial review found no wrongdoing on the part of Diana Goldschmidt. The article was attached to the original Motion and the URL provided to the parties electronically.² The evidence to be considered is not yet available and will not be available until the completion of investigation.

The Motion is timely. The Commission has not yet ruled and should not make final decisions until the additional information is available.

Moreover, it is important to recognize what is being asked. The Motion is more than a simple request to suspend the proceedings. It also gives TPG options if TPG feels the need to keep the proceedings moving forward. One option is to agree to PUC authority including the authority to hold TPG accountable for problems when and if they arise. TPG has rejected that option.

Another option is for TPG to eliminate the charade and make the applicant, Oregon Electric Utility Company (OEUC) a stand-alone company with sufficient assets to carry the purchase. While TPG has not responded to that option, it is doubtful that TPG would do so since it has resisted any and all conditions that would in any way make this transaction similar to what this state has seen in the past. If TPG wants to limit PUC authority only to the OEUC, then the OEUC should be the one that is reviewed and considered. That would mean that TPG would not be able to exercise negative covenants and that OEUC would need to have sufficient assets to conclude the sale and to protect PGE ratepayers.

2. The basis for BOMA's Motion is that no one outside of TPG and those working with it know what the real facts are. The Motion does not prejudge the facts. TPG acknowledges that a broader investigation is occurring (Response, page 2, line 17). That investigation may turn up nothing – in which case the Commission can only look good for being cautious in its review of

² (See, http://news.statesmanjournal.com/article_print.cfm?=87570.)

this highly unusual acquisition. On the other hand, the investigation could turn up wrongdoing -- in which case the Commission would be applauded for keeping out the wrongdoers. But if the Commission denies the request and does not condition the approval upon TPG becoming the equivalent to an obligor or guarantor of this transaction, and the investigation turns up wrongdoing, Oregonians suffer, PGE suffers, and the Commission will have failed in its obligations.

3. PUHCA review is something of a conundrum. If the PUC waits, the SEC will make its own decision as appropriate and if it denies the request for an exemption, TPG will either register or (according to Shifter on cross examination October 21,2004) pull out of the transaction. If the PUC rules first, the SEC will likely go along with it, reasoning that if the state doesn't care, why should the SEC? We should not allow TPG to leverage SEC approval by pushing ahead with these proceedings. If there is a chance that TPG will pull out of the sale unless it is exempted from PUHCA's protections, then we should allow that to happen. If TPG pulls out, the state and the interveners will not have spent time and money considering something that can't happen. If TPG does take the position (as Mr. Shifter did) that this is a deal breaker, we should be particularly careful since it implies that TPG wants to avoid the oversight and protections that PUHCA brings.

THE FACTS

While TPG focuses upon procedure, it ignores the facts. The fact is that while every news article talks about TPG as a buyer for PGE, TPG is not the buyer. An empty shell company will acquire PGE. The fact is that TPG is not now under the authority of the Commission. TPG is providing the finance structure for the acquisition in exchange for which it gets financial advantages. The fact is that OEUC has no assets. The fact is that although TPG is expected to exercise its negative covenant rights to make sure that the OEUC Board makes no decision that is not in the best interest of TPG, it refuses to put itself under PUC authority.

Compare this proposal to offers made by other utilities in similar situations - Northwest Natural Gas – a local and well respected utility – or Sierra Resources – another well respected utility with officers who were sincerely interested in merging with PGE – and one has to wonder why the Commission would even question the reasonableness of suspending the proceedings since the transaction is full of unanswered questions and multi-tiers of protections *for TPG*.

SUMMARY

While TPG uses obfuscation to hide the real issues – the only real issue is whether the Commission will put TPG to the test and really look into the facts as they become known or if, in the words of the Public, the fix is in. BOMA does not know what the investigations will disclose. However, the risk of moving forward with the potential of having wrongdoers taking control of PGE is too great to ignore. BOMA urges the Commission to grant the Motion and to suspend the proceedings, or in the alternative, to require TPG to accept the authority of the Commission or to make OEUC a stand alone and independent company with sufficient assets to meet its financial obligations.

Dated this 2nd day of November, 2004

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