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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 28, 2006

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street, NE
Suite 215
PO Box 2148
Salem, Oregon 97308

Re: Docket Nos. UM 1206/UF 4218

Dear Filing Center:

Enclosed please find the staff Response to the Utility Reform Project's Application for Reconsideration of OPUC Order No. 05-1250.

Thank you for your attention.

Very truly yours,

Stephanie S. Andrus
Assistant Attorney General

Enc.

c. Service list

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UF 4218/UM 1206**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY Application for an Order
Authorizing the Issuance of 62,500,000 Shares
of New Common Stock Pursuant to ORS
757.410 et seq. (UF 4218)

and

In the Matter of STEPHEN FORBES
COOPER, LLC, as Disbursing Agent, on
behalf of the RESERVE FOR DISPUTED
CLAIMS Application for an Order Allowing
the Reserve for Disputed Claims to Acquire
the Power to Exercise Substantial Influence
over the Affairs and Policies of Portland
General Electric Company Pursuant to ORS
757.511. (UM 1206)

STAFF RESPONSE TO APPLICATION FOR
RECONSIDERATION OF OPUC ORDER NO.
05-1250 BY UTILITY REFORM PROJECT

The Utility Reform Project (“URP”) requests reconsideration of OPUC Order No. 05-1250 in which the Commission authorized a Disputed Claims Reserve (“DCR”) created under Enron Corp.’s (“Enron”) Bankruptcy Plan to hold more than five percent of PGE stock for the purpose of distributing the stock to Enron creditors.¹ URP argues that the Commission erred in finding that transferring ownership of PGE away from Enron to Enron’s creditors “is in the public interest and will serve the public utility’s customers in the public interest” because the transfer “will have the effect of stopping a \$93 million-per-year rate reduction that otherwise would go into effect, via the SB 408 automatic adjustment clause, as of January 1, 2006.” (URP Application for Reconsideration at 5.) Because this tax issue could have been raised prior to the

¹ The Commission addresses two requests in Order No. 05-1250. The Commission authorized PGE to issue new stock under ORS 757.410 *et seq.* and authorized the DCR to own more than five percent of the stock under ORS 757.511.

1 time the Commission issued Order No. 05-1250 but was not, the Commission should not allow
2 reconsideration.

3 The criteria for granting reconsideration are set forth at OAR 860-014-0095(3), which
4 provides,

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6 (3) The Commission may grant an application for rehearing or reconsideration if the
applicant shows that there is:

7 (a) New evidence which is essential to the decision and which was unavailable
8 and not reasonably discoverable before issuance of the order;

9 (b) A change in the law or agency policy since the date the order was issued,
relating to a matter essential to the decision;

10 (c) An error of law or fact in the order which is essential to the decision;

11 (d) Good cause for further examination of a matter essential to the decision.

12 URP asserts the order contains errors of fact of law and that there is good cause for
13 further examination and thus, that reconsideration is warranted under subsections (c) and (d) of
14 the rule. Specifically, URP argues that when implemented, Senate Bill 408, which was adopted
15 by the Oregon legislative assembly in 2005, would require the removal of charges for taxes from
16 PGE rates if PGE is still owned by Enron. URP argues that therefore, separating PGE from
17 Enron does not benefit PGE ratepayers, but instead costs them approximately \$93 million per
18 year for the foreseeable future. (Application 4-5.) URP goes on to assert that in light of the
19 potential tax benefit stemming from application of SB 408, “OPUC Order No. 05-1250 is
20 premised upon on an error of fact – that approval of the PGE and Cooper applications will be in
21 the public interest and will serve the public utility’s customers in the public interest, which this
22 Commission has interpreted as a requirement that the application show a benefit for ratepayers or
23 at least not cause them any harm.” (Application 5.)

24 Although URP relies on OAR 860-015-0095(3)(c) and (d) as authority for its
25 reconsideration request, the request is properly addressed under OAR 860-015-0095(3)(a) and
26 (b). URP is asking the Commission to examine an issue that could have been raised prior to

1 the time the Commission issued OPUC Order No. 05-1250, but was not. OAR 860-015-
2 0095(3)(a) and (b) place limits on such requests. Reconsideration is allowed to consider an issue
3 not raised prior to the issuance of an order only when a party reasonably could not have been
4 expected to raise the issue because evidence was not available or because the order pre-dated a
5 change in law or policy. These circumstances are not present in this case.

6 The governor signed SB 408 into law on September 2, 2005. On September 15, 2005, the
7 Commission promulgated temporary rules implementing SB 408. The record in this case
8 closed on October 27, 2005, more than one month after the Commission adopted the temporary
9 rules implementing SB 408. Further, the Commission did not issue a final order in this matter
10 until December 14, 2005, almost three months after adoption of the temporary rule and more
11 than three months after SB 408 became law. Because URP reasonably could have raised the SB
12 408 issue prior to the time the Commission issued Order No. 05-1250, reconsideration is not
13 appropriate under subsections (a) and (b) of OAR 860-014-0095.

14 URP does not attempt to reconcile the limitations found in OAR 860-014-0095(3)(a) and
15 (b) with its belated arguments regarding the tax implications of Order No. 05-1250. Instead,
16 URP stands the requirements of OAR 860-015-0095(3) on their head by arguing that the
17 Commission's order contains a factual error because it contains no reference to the tax issue,
18 notwithstanding the fact that no party raised it. However, URP cannot circumvent the limitations
19 on reconsideration found in subsections (a) and (b) of 860-014-0095(3) by arguing the
20 Commission's failure to consider the tax implications of its orders is an error of fact and of law.

21 Furthermore, URP's argument is predicated on the unsupported assumption that Enron
22 will continue to own PGE if the Commission rejects the applications at issue in Order No. 05-
23 1250. The record is clear that Enron is seeking to divest itself of PGE, either through a sale or
24 distribution of stock. The court-adopted bankruptcy plan does not provide Enron with the option
25 to retain control of PGE. There is no basis to assume that Enron will retain control of PGE into
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1 the indefinite future even if the Commission rejects the applications at issue in Order No. 05-
2 1250.

3 Similarly, even if the Commission allowed reconsideration to consider URP's arguments,
4 there is no evidence on the record regarding the tax issue. The Commission can not lawfully find
5 a net benefit to PGE customers of denying the application because of the tax effects discussed by
6 URP, because such a finding would not be supported by any, let alone substantial, evidence in
7 the record.

8 Finally, Although URP relies on OAR 860-014-0095(3)(d) in support of its motion, URP
9 offers no argument as to why there is good cause to allow reconsideration to further examine the
10 tax issue it belatedly raises. For the reasons discussed above, there is not good cause to allow
11 reconsideration.

12 **CONCLUSION**

13 URP's request for reconsideration should be denied.

14
15 DATED this 28th day of February 2006.

16 Respectfully submitted,

17 **HARDY MYERS**
18 Attorney General

19 /s/Stephanie S. Andrus
20 Stephanie S. Andrus, #92512
21 Assistant Attorney General
22 Of Attorneys for Staff of the Public
23 Utility Commission of Oregon
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1 **CERTIFICATE OF SERVICE**

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3 I certify that on February 28, 2006, I served the foregoing upon the parties hereto by
4 electronic mail and by sending a true, exact and full copy by regular mail, postage prepaid or by
5 shuttle mail to the parties accepting paper service.

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