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March 13, 2006

VIA E-FILING & FIRST CLASS MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol St. NE, Suite 215
P. O. Box 2148
Salem, Oregon 97308-2148

Re: *UF 4218 / UM 1206*

Attention Filing Center:

Enclosed for filing in the above-referenced docket are the original and five copies of Applicants' and Enron's Reply in Opposition to Reconsideration of Order No. 05-1250. This document is being filed electronically per the Commission's eFiling policy to the electronic address PUC.FilingCenter@state.or.us, with copies being served on all parties on the service list via U.S. Mail. A photocopy of the PUC tracking information will be forwarded with the hard copy filing.

Very truly yours,

A handwritten signature in black ink that reads "David F. White". The signature is written in a cursive, flowing style.

David F. White

DFW/ldh
Enclosures
cc: Service List
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UF 4218 / UM 1206

In the Matter of the Application of PORTLAND
GENERAL ELECTRIC COMPANY 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 the Application of STEPHEN
FORBES COOPER, LLC, as Disbursing Agent,
on behalf of the RESERVE FOR DISPUTED
CLAIMS, 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

**APPLICANTS' AND ENRON'S
REPLY IN OPPOSITION TO
RECONSIDERATION OF ORDER
NO. 05-1250**

I. INTRODUCTION

This Reply to the City of Portland's ("City") Response to the Utility Reform Project's ("URP") Application for Reconsideration of Order No. 05-1250 (the "Order") is filed on behalf of Portland General Electric Company ("PGE"), Stephen Forbes Cooper, LLC ("SFC"), Disbursing Agent, on behalf of the Reserve for Disputed Claims ("Reserve") (collectively "Applicants"), and Enron Corp. ("Enron").

II. THE CITY'S RESPONSE SHOULD BE STRICKEN

The City labeled its filing a "Response" to URP's Application for Reconsideration, but that caption is misleading. The City stated in one sentence its support for URP's request and then argued over the remaining nine pages of its brief that "additional reasons * * * require the Commission's reconsideration of Order No. 05-1205 [sic]." City Rsp. at 2.

The City's additional reasons for reconsideration should be stricken. There is no statutory or regulatory basis that would allow the Commission to consider the City's "additional reasons for reconsideration." ORS 756.561—the statute governing requests for reconsideration or rehearing—requires the filing of an application for reconsideration or rehearing within 60 days "from the date of service of such order." ORS 756.561(1). The City filed its "additional reasons for reconsideration" 76 days after service of the Order, well outside the time allowed for such submissions.

Nor does the City's filing comport with Commission rules. OAR 860-014-0095 permits the filing of an application for reconsideration within 60 days of the order and provides that "any party may file a reply setting forth its position on the application." It does not permit a party to bootstrap new arguments for reconsideration after the 60-day window has expired.

In response to the ALJ's Ruling (Feb. 28, 2006) asking for replies to the merits of the City's filing, the remainder of this Reply addresses the substance of the City's response.

III. THE COMMISSION DID NOT COMMIT AN ERROR OF LAW OR FACT

A. THE COMMISSION PROPERLY GRANTED AN EXEMPTION UNDER ORS 757.412

The City claims that the Commission used the wrong legal standard in approving the issuance of new PGE common stock ("New PGE Common Stock"). City Rsp. at 2. This is wrong. The Commission quoted from and applied the public interest test in ORS 757.412, which exempts an issuance of securities from the application of ORS 757.400 to ORS 757.480 if the Commission "finds that application of the law is not required by the public interest." Order at 11.

Next, the City argues that the Commission "conflated" the legal standards under ORS 757.412 and ORS 757.511. City Rsp. at 2. The City jumps to this conclusion because the "Commission's determination that 'ratepayers will not be harmed by the issuance

of new securities' is borrowed whole cloth from the test developed for ORS 757.511." *Id*
This is also wrong.

It is not surprising that certain factors, such as the impact of a transaction on customers, may be relevant to the Commission's review under both ORS 757.412 and ORS 757.511. Both statutes provide for a public interest test. ORS 757.412 authorizes an exemption if the public interest does not require the application of certain laws. ORS 757.511 provides for approval of an application to exercise substantial influence over the policies and actions of a utility if the transaction will serve "public utility customers in the public interest." ORS 757.511(3).

Moreover, the Application concerns one unitary transaction. The transaction involves the cancellation of PGE's common stock and the issuance of New PGE Common Stock to the Reserve and creditors of Enron. The issuance of new securities (ORS 757.400 *et seq.*) and the Reserve's acquisition of the power to exercise substantial influence over the policies and actions of PGE (ORS 757.511) describe two aspects of a single transaction. The Commission's consideration of the absence of harm to customers under both ORS 757.412 and ORS 757.511 is no indication that the Commission applied the wrong legal standard. In fact, the Commission would have committed legal error if it failed to consider the impact of the transaction on customers.

The City also objects to the Commission's application of the ORS 757.412 exemption in this case. The City claims that the Commission committed legal error by concluding that "access to markets" satisfies the exemption available under ORS 757.412. City Rsp. at 3-5. The City's objection mischaracterizes the Commission's order. The Commission did not conclude that "access to markets" satisfies the public interest exemption. The Commission considered three factors under ORS 757.412: (1) the absence of harm to customers; (2) the lack of harm to shareholders; and (3) the fact that the issuance of New PGE Common Stock would ease the transition to a publicly traded company. Order at 12.

The Commission concluded that the transition of PGE to a publicly-traded independent utility, with no shareholder having a substantial stake, provides a benefit to customers. Order at 19. The Commission's determination that these three factors together justified an exemption under ORS 757.412 is well within the discretion that the Legislature delegated to the Commission.

The City expends considerable effort arguing that the issuance of New PGE Common Stock results in proceeds to Enron or PGE. City Rsp. at 5-7. The City's efforts are misplaced. The Commission reached no conclusion on this issue. Rather, the Commission stated that it did not need to resolve whether or not the issuance results in proceeds because the issuance is exempt under ORS 757.412. Order at 11 ("we reserve judgment on whether an application must be made under ORS 757.410 if there are no new proceeds").¹

B. THE CITY MISUNDERSTANDS ORS 756.160

The City's claim that the Order violates ORS 756.160 does not withstand scrutiny. First, the City has not properly invoked ORS 756.160. That statute authorizes the Commission to "inquire" into alleged violations of state law or city ordinance by public utilities. ORS 756.160. The City has filed no formal request to open a Commission investigation under ORS 756.160. Nor did the City make such a request in this docket. The City's Brief in this docket made no mention of ORS 756.160, and no mention of alleged violations of City ordinances. Even in its most recent submission, the City identifies no specific violation of a city ordinance.

Second, ORS 756.160 is irrelevant to the Commission's Order. The City argues that ORS 756.160 imposes an obligation on the Commission to investigate and that the Commission has failed to investigate. City Rsp. at 7-8. But the City fails to explain how ORS 756.160 has anything to do with the Application in this docket to issue stock and to

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exercise influence and control over PGE. ORS 756.160 provides for Commission inquiries. If the Commission concludes that a public utility has violated state law or a city ordinance, the Commission reports it to the Attorney General's office. ORS 756.160(1). The statute does not authorize the Commission to impose a franchise agreement on a utility in connection with an application under ORS 757.511, as the City requested. It does not make municipal franchise issues relevant to Commission determinations regarding the ownership and control of public utilities.

IV. THE CITY'S REQUEST FOR AN INVESTIGATION IS IRRELEVANT AND UNFOUNDED

The City claims that the substitution of BDHLR, LLC ("BDHLR"), as Disbursing Agent effective April 30, 2006, provides new evidence that justifies reopening this proceeding. City Rsp. at 8-10. In the alternative, the City asks for an investigation regarding the substitution of BDHLR as Disbursing Agent. City Rsp. at 10. The City's position is unfounded.

The City misunderstands the nature of the application, which the Commission approved. The City claims that "the Commission approved the exercise of substantial influence by Stephen Forbes Cooper, LLC as Disbursing Agent, under ORS 757.511." City Rsp. at 8. This is untrue. The Applicants are PGE, as the issuer of new securities, and the Reserve, as the entity that would "acquire the power to exercise any substantial influence over the policies and actions" of PGE. ORS 757.511. Application at 1. SFC was not an applicant. Rather, SFC filed the Application as the Disbursing Agent on behalf of the Reserve.

Under ORS 757.511, the Commission approved the Application, which allowed the "Reserve to hold more than five percent of the New PGE Common Stock for eventual distribution to Enron creditors." Order at 1. The identity and nature of the Reserve is not changing. Its purpose remains to hold the New PGE Common Stock for distribution to

Enron creditors as more disputed claims are resolved. The City's "new evidence" suggests no change in the Reserve. The City makes no claims that the Applicant under ORS 757.511—the Reserve—is changing at all.

The entity that holds the position of Disbursing Agent—whether it be SFC or BDHLR—is not required to file an application on its own behalf under ORS 757.511. As the City acknowledges, a person or company must seek Commission approval under ORS 757.511 before acquiring "the power to exercise any substantial influence over the policies and actions" of a public utility. If a person or company does not acquire substantial influence over a public utility, then ORS 757.511 requires no filing.

The Disbursing Agent does not, and cannot under Enron's Chapter 11 Plan, exercise substantial influence over PGE. The Disbursing Agent is not permitted to hold an economic or beneficial interest in the New PGE Common Stock or other assets in the Reserve. Application at 21. The Disbursing Agent may not hold an economic interest in, and exercise authority over, the operation or valuation of the Reserve. *Id.* The Disputed Claims Reserve Guidelines and Enron's Chapter 11 Plan control the operation of the Reserve and the Disbursing Agent. *Id.* at 20. The Disbursing Agent has no authority to determine how to vote or whether to sell New PGE Common Stock. *Id.* at 21-22. The Disbursing Agent must vote the New PGE Common Stock held in the Reserve at the direction of the DCR Overseers. *Id.* at 21. The DCR Overseers determine whether and on what terms to sell the New PGE Common Stock held in the Reserve. *Id.* at 22. As set forth in testimony, "the Disbursing Agent has no 'effective voting control' or 'plenary' control because the DCR Overseers are responsible for directing the Disbursing Agent how to vote PGE stock." PGE-SFC(RDC)/500, Taylor/4. Accordingly, there is no new evidence to justify rehearing or reconsideration and no need for the Commission to undertake the investigation the City requests.

V. CONCLUSION

For the reasons stated above and in Applicants' and Enron's Opposition, the Commission should deny URP's application for reconsideration and either (a) strike the relevant portions of the City of Portland's Response or, in the alternative, (b) reject the City of Portland's request for reconsideration or reopening of the proceeding to consider new evidence, and deny the City's request to open a new proceeding to investigate the substitution of a new Disbursing Agent.

DATED this 13th day of March, 2006.

**PORTLAND GENERAL ELECTRIC
COMPANY**

**STEPHEN FORBES COOPER, LLC,
DISBURSING AGENT, ON BEHALF OF
THE RESERVE FOR DISPUTED
CLAIMS, AND ENRON CORP.**

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **APPLICANTS' AND ENRON'S REPLY IN OPPOSITION TO RECONSIDERATION OF ORDER NO. 05-1250** by electronic mail where available to each party listed below, and by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.:

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DATED this 13th day of March, 2006.

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BEFORE THE PUBLIC UTILITY COMMISSION

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UF 4218 / UM 1206

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UF 4218

and

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V. CONCLUSION

For the reasons stated above and in Applicants' and Enron's Opposition, the Commission should deny URP's application for reconsideration and either (a) strike the relevant portions of the City of Portland's Response or, in the alternative, (b) reject the City of Portland's request for reconsideration or reopening of the proceeding to consider new evidence, and deny the City's request to open a new proceeding to investigate the substitution of a new Disbursing Agent.

DATED this 13th day of March, 2006.

**PORTLAND GENERAL ELECTRIC
COMPANY**

**STEPHEN FORBES COOPER, LLC,
DISBURSING AGENT, ON BEHALF OF
THE RESERVE FOR DISPUTED
CLAIMS, AND ENRON CORP.**

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **APPLICANTS' AND ENRON'S REPLY IN OPPOSITION TO RECONSIDERATION OF ORDER NO. 05-1250** by electronic mail where available to each party listed below, and by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.:

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