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4 “Turlock”) filed a civil complaint against PGE in Multnomah County Circuit Court for breach of
5 contract, negligence, and gross negligence relating to two outages at PGE’s Boardman plant, one
6 of which underlies PGE’s application for deferred accounting in Docket No. UM 1234 and
7 PGE’s request amortize in this docket. In the complaint, Turlock Irrigation District alleges that
8 “PGE committed a series of clear, egregious error in its operation and maintenance of Boardman,
9 resulting in two foreseeable, extended outages between October 2005 and April of 2006.”¹ With
10 respect to the outage that underlies the proceedings in Docket No. UE 196, Turlock Irrigation
11 District alleges:

12

13 [T]he crack in the turbine generator shaft was caused by PGE’s failure to
14 properly operate and maintain Boardman in accordance with Prudent Utility
15 Practice. On information and belief, Turlock further alleges that the crack in the
turbine generator shaft was caused by PGE’s failure to ensure the adequate
staffing, engineering and operation of Boardman.²

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18 70,000 pages of discovery.³ Recently, Turlock asked PGE to provide information
19 regarding the availability for deposition of more than 30 employees of PGE, Siemens-
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22 Engineering (an independent consulting firm), RK Ltd. (an independent consulting firm),
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25 ¹ Attachment 1; *Complaint* at 2. One of the two outages at issue in the Turlock litigation is not at
issue in Docket No. UE 196.

26 ² Attachment 1; *Complaint* at 5.

³ Attachment 2: Affidavit of Stephanie S. Andrus

1 informed PGE that it intends to seek authority to issue out-of-state subpoenas to Siemens-
2 Westinghouse, Alstom, RK Ltd., Mechanical and Material Engineering, and Pilot
3 Advisors, Inc.⁴

4 The allegations in the Turlock complaint make clear that some of the issues
5 presented by that complaint are similar to those presented in this docket and are based in
6 part on the same facts – those giving rise to the first Boardman outage. Given the
7 extensive amount of information that Turlock is pursuing in connection with the
8 complaint in *Turlock Irrigation District v. Portland General Electric Company*, staff
9 moves the Commission to hold this matter in abeyance to give the Commission
10 opportunity to consider information that may be adduced during the Turlock litigation
11 that was not adduced in connection with this administrative proceeding.

12 To the extent that PGE will contend that holding this matter in abeyance is
13 inappropriate because staff and other parties have had adequate opportunity to conduct
14 discovery in this docket, staff believes that such a contention misses the point of staff's
15 motion. Staff agrees that it likely had adequate time to conduct discovery in this matter
16 that would be equivalent to the discovery that the Turlock Irrigation District is
17 undertaking. However, whether the Commission staff had the resources to undertake
18 such discovery is a different question.

19 Arguably, staff could have used a significant portion of its resources, both its
20 financial resources and its human capital, to (1) inspect the Boardman plant, (2) depose
21 key PGE personnel, (3) investigate documentary evidence that could have been made
22 available by PGE (if asked); (4) attempt to obtain documentary evidence from entities
23 that were not parties to this litigation, i.e., Siemens-Westinghouse Power Corporation,
24 Alstom, Mechanical and Material Engineering, and RK Ltd., but that may be in control of
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1 conduct an independent root cause analysis. However, the Commission’s resources are
2 finite, and staff’s decision to expend its resources in this manner would have come at the
3 expense of staff’s efforts in other dockets.

4 Furthermore, the purpose of staff’s motion to hold this matter in abeyance is not
5 to penalize PGE. Staff moves to hold this matter in abeyance to give the Commission
6 opportunity to obtain additional information regarding the prudence of PGE’s actions in
7 connection with the Boardman outage because this information may assist the
8 Commission in deciding the ratemaking treatment of the Boardman deferral amounts.

9 Importantly, staff does not believe PGE would be prejudiced from a ratemaking
10 perspective by the proposed delay because PGE proposes to recover the Boardman
11 deferral by offsetting it against an existing credit owed to customers.⁵ Both the
12 Boardman deferral and the credits with which PGE proposes to offset the Boardman
13 deferral will continue to earn interest if this matter is held in abeyance.

14 Finally, staff notes that it is conceivable that it would not be necessary for the
15 Commission to hold this matter in abeyance pending resolution of any trial on the
16 Turlock litigation if parties to this proceeding were to obtain access to the information
17 obtained by Turlock in preparation for the trial prior to the time of trial. However, staff
18 does not anticipate that this will be likely. For example, Turlock is not required to
19 provide to PGE, prior to trial, information that Turlock may obtain from expert
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⁶ *Stevens v. Czerniack*, 336 Or 392, 84 P.3d 140 (2004).

1 **CONCLUSION**

2 For the foregoing reasons, staff moves the Commission to hold Docket No. UE
3 196 in abeyance pending the outcome of *Turlock Irrigation District v. Portland General*
4 *Electric Company*; Multnomah Circuit Court Case No. 0710-12156.

5
6 DATED this 25th day of July 2008.

7 Respectfully submitted,

8 **HARDY MYERS**
9 Attorney General

10 s/Stephanie S. Andrus
11 Stephanie S. Andrus, #92512
12 Assistant Attorney General
13 Of Attorneys for Staff of the Public
14 Utility Commission of Oregon
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26

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 25, 2008

Public Utility Commission of Oregon
Filing Center
550 Capitol Street, NE
Suite 215
Salem, Oregon 97308

Re: Docket No. UE 196

To Whom It May Concern:

Enclosed for filing please find the Public Utility Commission of Oregon staff's Motion to Hold Matter in Abeyance.

Thank you for your attention.

Sincerely,

Stephanie S. Andrus
Assistant Attorney General
Regulated Utility & Business Section

Enc.

c. Service list
William Lehman, esq.

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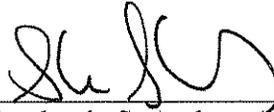
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14 Of Attorneys for Staff of the Public
15 Utility Commission of Oregon
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Staff/202
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MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH **12156**

TURLOCK IRRIGATION DISTRICT,

Plaintiff,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

Case No. **0710-12156**

**COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENCE AND
GROSS NEGLIGENCE**

(Claim Not Subject to Mandatory Arbitration)

Plaintiff Turlock Irrigation District ("Turlock") alleges as follows:

INTRODUCTION

1. Turlock is an irrigation district organized and existing under the constitution of the State of California and Division 11 of the California Water Code. Since 1923, Turlock has provided safe, low-cost and reliable electric service to a community that includes approximately 97,000 home, farm, business, industrial and municipal accounts.

2. Turlock purchases electric power and capacity from the Boardman Generating Plant ("Boardman"), among other sources. Boardman is a 600 megawatt coal-fired electric generating facility located in Morrow County in the State of Oregon.

3. Defendant Portland General Electric Company ("PGE"), Power Resources Cooperative ("PRC") and Idaho Power Company ("Idaho Power") each hold title to Boardman in the form of undivided interests as tenants in common. PRC has assigned Turlock certain of PRC's rights and obligations with respect to power generated at Boardman.

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///

1 4. Boardman is operated and maintained exclusively by PGE. PGE is an Oregon
2 corporation with its headquarters and principal place of business located in Multnomah County,
3 Oregon.

4 5. According to its own independent consultants, PGE committed a series of clear,
5 egregious errors in its operation and maintenance of Boardman, resulting in two foreseeable,
6 extended outages between October of 2005 and April of 2006 ("Outages"). The Outages also
7 caused significant increased operation and maintenance costs at Boardman.

8 6. As a direct result of the Outages, Turlock was forced to undertake costly measures
9 to locate and secure a replacement power supply. Turlock incurred approximately \$14,434,000
10 in additional expenses to obtain the replacement power. This lawsuit seeks to redress this and
11 other harm suffered by Turlock as a direct result of PGE's failure to properly operate, maintain,
12 and repair Boardman.

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14 **Turlock is Contractually Entitled to Schedule and Receive Energy from Boardman**

15 7. PGE, PRC and Idaho Power each are parties to an Agreement for Construction,
16 Ownership and Operation of the Number One Boardman Station on Carty Reservoir, dated
17 October 15, 1976, as amended ("Ownership Agreement"). At the time the Ownership
18 Agreement went into effect, PRC was organized as the Pacific Northwest Generating
19 Cooperative.

20 8. Pursuant to Section 2(a) of the Ownership Agreement, PRC and Idaho Power
21 each hold an Ownership Share in Boardman of ten percent (10%) and PGE owns the remaining
22 eighty percent (80%).

23 9. Pursuant to Section 12 of the Ownership Agreement, PRC has the right to
24 schedule and receive the net capacity and energy ("Output") of Boardman in an amount
25 equivalent to the percentage of its Ownership Share. "Scheduling" occurs when a party places
26 an order for a specific amount of energy or capacity to be made available at a certain place and

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1 time.

2 10. On or about November 10, 1992, pursuant to the terms of a Power Purchase
3 Agreement ("PPA"), PRC assigned to Turlock the right to schedule and receive its Ownership
4 Share of power generated at Boardman. Section 2(d) of the PPA provides:

5 The Parties acknowledge that [PRC] is assigning to Turlock those
6 [PRC] rights and privileges [PRC] holds pursuant to the
7 Ownership Agreement set forth in this Agreement, but that any of
8 [PRC's] rights and privileges regarding the Project not expressly
9 assigned to Turlock pursuant to this Agreement are retained by
10 [PRC].

11 Section 9(a) of the PPA provides that PRC, on Turlock's behalf, will "schedule power in
12 accordance with Turlock's instructions." Section 9(d) of the PPA states that "Turlock shall
13 schedule and take [PRC's] Ownership Share of any Project minimum generation or test
14 generation."

15 11. PGE never objected to PRC's partial assignment of rights under the Ownership
16 Agreement to Turlock. Since the effective date of the PPA in 1992, PGE has at all times
17 scheduled PRC's Ownership Share of Boardman Output as directed by Turlock.

18 12. In addition to being a partial assignee of PRC's right to schedule and receive the
19 Output under the Ownership Agreement, on or about August 21, 2007, PRC executed another
20 Agreement with Turlock by which PRC assigned whatever additional rights, claims or causes of
21 actions PRC may have against PGE arising out of the Outages ("Assignment Agreement").

22 Section 2 of the Assignment Agreement provides in relevant part:

23 PRC hereby assigns to TID all rights, claims, or causes of action,
24 choate or inchoate, that it now has under the Ownership
25 Agreement and/or under any applicable law to obtain a recovery of
26 damages against PGE for the damages that TID claims it has
suffered as described in TID's letter of January 9, 2007, and any
other rights, claims, or cause of action that PRC had, now has, or
may acquire in the future, known or unknown, against PGE or any
other person.

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The Ownership Agreement Requires PGE to Operate and Maintain Boardman According to the Prudent Utility Practice Standard and to Ensure Adequate Staffing and Engineering

13. PGE is the sole and exclusive operator of the Boardman plant. Section 8 of the Ownership Agreement requires PGE to operate and maintain Boardman according to "Prudent Utility Practice":

PGE shall carry out operation and maintenance of the Project so as to meet the requirements of government agencies having jurisdiction in the matter, in accordance with Prudent Utility Practice, giving due consideration to the recommendations of the Operating Committee and to the manufacturers' warranty requirements. Subject to the forgoing and to the provisions of Section 12, PGE shall operate and maintain the Project so as to produce the amounts of energy scheduled by the Parties within their respective Ownership Shares of the net capacity of the Generating Plant.

14. Section 1(m) of the Ownership Agreement defines the Prudent Utility Practice standard as follows:

"Prudent Utility Practice" means any of the practices methods and acts engaged in or approved by a significant proportion of the electrical utility industry prior to the time of the reference, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lower reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project but also to appropriate structures, landscaping, painting, signs, lighting and other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

15. In addition, Section 22 of the Ownership Agreement specifically obligates PGE to "carry out a familiarization and training program to maintain adequate staffing, engineering and operation of the [Boardman plant]."

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**PGE's Manifest Failures to Adhere to Prudent Utility Practice and
Ensure Adequate Staffing and Engineering Caused the Outages**

1
2 16. On or about October 23, 2005, the Outages began with the discovery of a crack in
3 Boardman's turbine generator shaft. PGE took the generator off-line in order to repair the shaft.

4 17. PGE commissioned an independent engineering consultant to perform an analysis
5 and prepare a report addressing why the turbine generator shaft cracked. PGE has refused to
6 provide the engineering consultant's report to Turlock. On information and belief, Turlock
7 alleges that the crack in the turbine generator shaft was caused by PGE's failure to properly
8 operate and maintain Boardman in accordance with Prudent Utility Practice. On information and
9 belief, Turlock further alleges that the crack in the turbine generator shaft was caused by PGE's
10 failure to ensure the adequate staffing, engineering and operation of Boardman

11 18. On February 5, 2006, in an effort to bring Boardman back on-line following
12 repairs to the turbine generator shaft, PGE caused a generator failure that further extended the
13 Outages.

14 19. PGE commissioned another independent engineering consultant, Pilot Advisors,
15 to investigate the cause of the second failure. Pilot Advisors detailed its findings in a document
16 known as the 2006 Generator Failure Independent Root Cause Investigation, dated July 25, 2006
17 ("Root Cause Investigation"). A copy of the Root Cause Investigation is attached and
18 incorporated by this reference, marked Exhibit 1.

19 20. According to the Root Cause Investigation, Torque Strain Relay units ("Relay
20 Units") were to be installed before the generator was brought on-line after the first Outage. The
21 Relay Units were intended and necessary to protect the turbine generator shaft from sustaining
22 future damage or cracks. PGE failed to install the Relay Units before initiating the start-up
23 process. The generator was started and brought on-line before PGE discovered the missing
24 Relay Units.

25 21. Once discovered, PGE recognized that the missing Relay Unit error had to be
26 remedied. However, in order to install the forgotten Relay Units, it was necessary for PGE to

1 take the generator back off-line and slow the turbine to a near-stop. This process is extremely
2 complicated and required careful attention by PGE. During the process, PGE's management
3 allowed the Control Operator, whom PGE knew had past performance problems and inadequate
4 training, to remain at the controls.

5 22. Twenty-two minutes after the generator was taken off-line, and for the next
6 several minutes, no less than three *different* alarms triggered. The first alarm was a generator
7 frequency alarm, which alerted PGE's Boardman operators to a significant abnormal condition.

8 23. The second and third alarms indicated specific problems with the exciter, a
9 critical component of the generator. Boardman procedures require the exciter to be manually
10 tripped in order to prevent it from supplying electric current (and resulting heat buildup) to the
11 generator in the event that the generator slows or stops. Boardman's controls previously
12 contained an automatic tripping mechanism for the exciter. This automatic tripping mechanism
13 was removed from Boardman's controls in 1997 when PGE upgraded the control systems. PGE
14 was well aware that the absence of any automatic mechanism required manual tripping of the
15 exciter. When the second and third alarms sounded, the generator had been intentionally slowed,
16 but PGE's operators had failed to manually trip the exciter. The alarms sounded because of this
17 error.

18 24. PGE's operators failed to investigate, analyze or otherwise respond to any of
19 these three alarms. Instead, PGE's operators continued the process of installing the missing
20 Relay Units. As the installation proceeded, the still-active exciter caused dangerous and
21 excessive heat to build up in the generator.

22 25. Boardman procedures also require Relay Units to be installed using a hazardous
23 energy control procedure. The purpose of the procedure is to protect plant personnel from injury
24 by removing all potential energy sources from the area, such as the energy being supplied by the
25 exciter. PGE's operators also failed to follow this procedure.

26 ///

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1 26. Because the exciter was still active and providing electric current to the work
2 area, PGE's workers installing the Relay Units reported electricity arcs and the dimming of plant
3 lights when they began installation work. The Control Operator also noticed the electricity arcs.
4 These observations should have been investigated as part of PGE's hazardous energy control
5 procedure. An investigation would have led to the discovery of the still-operating exciter.

6 27. Approximately one-and-a-half hours after Boardman was taken off-line, two more
7 alarms sounded within five minutes of each other. Both alarms warned of signified abnormal
8 heating in the generator. PGE's operators failed to investigate either of these two additional
9 alarms.

10 28. The exciter was not manually tripped until more than *9 hours after* Boardman
11 was taken off-line, following a shift-change of personnel—including a different Control
12 Operator. The time that lapsed before the exciter was finally tripped allowed dangerous and
13 excessive heat to build up in the generator, directly resulting in severe damage to the generator.

14 29. The factual investigation and conclusions set forth in the Root Cause
15 Investigation leave no doubt that PGE's numerous errors violated PGE's own policies and
16 procedures, and were a clear breach of the Prudent Utility Practice standard required by the
17 Ownership Agreement.

18 30. The conclusion set forth in the Executive Summary of the Root Cause
19 Investigation reads as follows:

20 The failure of the generator was the direct result of management
21 failing to ensure critical personnel remain qualified to properly
22 operate the assets. Contributing causes included but are not
23 limited to the [PGE] design engineers [sic] (1996-1997) failure to
ensure the exciter low speed trip logic was included in the change
over to the DCS system and below expectations performance in
other important activities.

24 31. According to the Root Cause Investigation, PGE management at Boardman also
25 did not address known performance problems in a timely manner, which allowed a Control
26 Operator with past performance problems to conduct critical plant operations, ultimately

Page 7 - COMPLAINT FOR BREACH OF CONTRACT, NEGLIGENCE AND GROSS NEGLIGENCE

1 resulting in the generator failure.

2 32. The Root Cause Investigation further states that review by PGE's engineers
3 during the design of Boardman's new controls failed to note the design change that omitted the
4 automatic tripping mechanism of the exciter field circuit. Following the design phase, PGE had
5 another chance to include an automatic tripping mechanism when PGE replaced the exciter in
6 2004, but failed to make that addition.

7 **PGE's Repeated Failures to Maintain and Operate Boardman Caused**
8 **Turlock Direct Monetary Damages**

9 33. Pursuant to the terms of the Ownership Agreement as partially assigned to
10 Turlock, Turlock is obligated to pay a portion of the repair costs necessitated by PGE's failure to
11 adequately maintain and operate Boardman. Turlock estimates those costs to be in excess of
12 \$800,000.

13 34. The Outages also forced Turlock to find and secure a source of replacement
14 power for the duration of the Outages. Turlock was forced to incur replacement power costs in
15 the amount of approximately \$14,434,000.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 (Breach of Contract)

19 35. Turlock re-alleges and incorporates by reference paragraphs 1 through 34 as if
20 fully set forth herein.

21 36. Turlock is a partial assignee of PRC's right to schedule and receive power under
22 the Ownership Agreement. Turlock is entitled to directly enforce those provisions of the
23 Ownership Agreement related to the scheduling and delivery of power—including Section 8 and
24 Section 22.

25 37. PGE is contractually required by Section 8 of the Ownership Agreement to
26 maintain and operate Boardman consistent with Prudent Utility Practice.

1 38. PGE breached Section 8 of the Ownership Agreement by failing to comply with
2 Prudent Utility Practice, including but not limited to:

- 3 A. Failing to install the Relay Units;
4 B. Failing to respond to the generator alarms;
5 C. Failing to respond to two different exciter alarms;
6 D. Failing to implement and follow an adequate hazardous energy control
7 procedure;
8 E. Failing to investigate electrical arcing during installation of the Relay
9 Units;
10 F. Failing to investigate two additional heat alarms; and
11 G. Failing to manually trip the exciter for more than 9 hours after the initial
12 alarms had sounded.

13 39. PGE is required by Section 22 of the Ownership Agreement to implement an
14 appropriate training program. PGE breached Section 22 of the Ownership Agreement by failing
15 to provide proper training to, and exercising appropriate control over, its operators.

16 40. PGE's breaches of the Ownership Agreement resulted in direct monetary damages
17 to Turlock in an amount to be proven at trial but not less than \$15,233,000.

18 41. Turlock and PRC have each performed all of their respective obligations under
19 the Ownership Agreement, including but not limited to remitting timely payment to PGE for the
20 operation and maintenance of Boardman.

21 SECOND CAUSE OF ACTION

(Negligence)

22 42. Turlock re-alleges and incorporates by reference paragraphs 1 through 41 as if
23 fully set forth herein.

24 43. PGE knew that Turlock was relying on PGE to operate and maintain Boardman in
25 a prudent and workmanlike manner. It was foreseeable to PGE that any failure to do so on its
26 part would cause direct harm to Turlock.

Page 9 - COMPLAINT FOR BREACH OF CONTRACT, NEGLIGENCE AND GROSS NEGLIGENCE

- 1 44. PGE was negligent in connection its operation and maintenance of Boardman.
2 45. PGE's negligent conduct could have been prevented through use of well-
3 established engineering and management practices, and through implementation of PGE's own
4 policies.
5 46. PGE's conduct directly resulted in damages to Turlock in the form of harm to
6 Turlock's property interests and increased costs in an amount to be proven at trial but not less
7 than \$15,233,000.

8 **THIRD CAUSE OF ACTION**

9 (Gross Negligence)

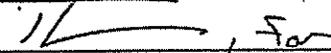
- 10 47. Turlock re-alleges and incorporates by reference paragraphs 1 through 46 as if
11 fully set forth herein.
12 48. PGE was reckless and otherwise grossly negligent in its operation and
13 maintenance of Boardman.
14 49. PGE's gross negligence directly resulted in damages to Turlock in the form of
15 harm to Turlock's property interests and increased costs in an amount to be proven at trial but
16 not less than \$15,233,000.

17 WHEREFORE, plaintiff Turlock prays for a judgment against defendant PGE as follows:

- 18 1. For an amount not less than \$15,233,000, plus Turlock's costs and disbursements
19 incurred herein; and
20 2. For such further relief as this Court may deem just and proper.

21 DATED this 19th day of October, 2007.

22 CABLE HUSTON BENEDICT HAAGENSEN &
23 LLOYD LLP

24 
25 G. KEVIN KIELY, OSB No. 83395
26 THOMAS M. GRIM, OSB No. 88218
Of Attorneys for Plaintiff Turlock Irrigation District

TRIAL ATTORNEY: G. Kevin Kiely



Portland General Electric Boardman Plant

FILE COPY

RCA Team Members

Management Sponsor: Steve Quennoz, Vice President
Team Leader: Andrew Bielat, Pilot Advisors
Principal Analyst: Don Kidder, Pilot Advisors
Root Cause Analyst: Fred Rippee, Pilot Advisors

Approved by:

Andrew Bielat
Pilot Advisors

Andrew Bielat

(Electronic Signature)

Date July 25, 2006

Received by:

Steve Quennoz
PGE

Stephen Quennoz Date 8/4/06

2006 Generator Failure Independent Root Cause Investigation Event Date: 2/5/2006

1 Westinghouse, Alstom, Mechanical and Material Engineering, RK Ltd, and Pilot Advisors, Inc.

2

3 Further the deponent sayeth not.

4

Stephanie S. Andrus
Stephanie S. Andrus

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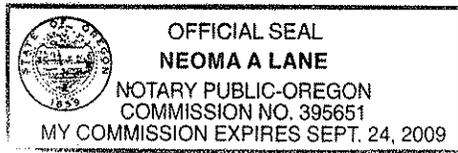
7 SUBSCRIBED AND SWORN to before me this 25th day of July 2008.

8

Neoma A. Lane

Notary Public for Oregon
My Commission expires: 09/24/09

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1 **CERTIFICATE OF SERVICE**

2
3 I certify that on July 25, 2008, I served the foregoing MOTION upon all parties of record
4 in this proceeding by delivering a copy by electronic mail and by mailing a copy by postage
5 prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper service.
6

7 **W**
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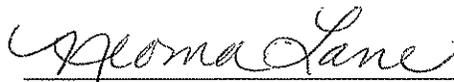
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22 Department of Justice
23 Regulated Utility & Business Section
24
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26