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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) UM 1121
) Motion to Reopen the Record
OREGON ELECTRIC UTILITY COMPANY, LLC, et)
) CONSIDERARTION BY FULL COMMISSION
al.) REQUESTED.

Application for Authorization to Acquire Portland

General Electric Company.

Portland Building Owners and Managers Association (BOMA) submits the following Motion.

BOMA moves the Commission to reopen the for inclusion of new material resulting from Texas Pacific Group's (TPG) and Applicants' ongoing public statements to news media, in advertisements, submittals to filing agencies, and in other public forums regarding its intentions and plans for ownership of Portland General Electric (PGE.)

When the record was closed, financing arrangements regarding ownership of Oregon Electric Utility Company (OEUC) and the TPG, including the terms and conditions of the investments, had not been finalized and were not submitted to the Commission and Interveners. Interveners, the Commission and the Public each have a significant interest in the financing arrangements, including ownership, ability to sell membership shares or transfer interests in the various entities, and the withdrawal rights of the investors.

When the record was closed, TPG had not disclosed the nature of its U1 filing at the Securities and Exchange Commission (SEC). Interveners have had no ability to make inquiry about the information contained in those documents.

Shortly before the record was closed, Applicants ran various advertisements in various publications asserting that TPG was the best alternative, that the intention was to hold PGE for an lengthy period of time, that the headquarters of PGE would remain in Portland, and that OEUC was committed to maintaining the same service and quality standards as PGE has in the past. Interveners have had no opportunity to inquire into the truth and veracity of these statements.

When the record was closed, there had been no ruling by the SEC regarding whether it would issue TPG an exemption from PUHCA, even though Applicants witness testified that failing to get a PUHCA exemption or PUCA repealed would be a deal breaker for TPG. Formerly confidential documents make it clear that if the request for an exemption is denied, TPG will be forced to substantially modify its application in order to get the same benefits.

When the record was closed, the state Attorney General's Office had not completed its inquiry into the facts surrounding the decision to raise the limit on single investments and the involvement in or benefit to members of the Oregon Investment Council (OIC) in sponsoring, supporting, or voting to invest in TPG's acquisition of PGE. OIC has an independent obligation to fully investigate each investment it makes in conformity with its fiduciary duty to the Public and to the State. Neither TPG nor the Applicants placed any of the documents and analyses provided to OIC into the record.

Applicants and TPG have now agreed to release certain identified documents from the confines of a protective order allowed in this proceeding. It is unclear whether these are, in fact, all of the secret documents protected by the order, particularly since the documents have been identified not by OEUC bates stamped numbers but as specific exhibits to prefiled testimony.

Interveners and the Public they represent must be allowed to fully inquire into the truth and veracity of the public statements made by TPG and the Applicants, including in the news media and to filing agencies, to examine and analyze the documents submitted to OIC and other quasi and governmental entities, and to supplement the record with materials that cast needed light into the intentions and plans of TPG and the Applicants.

BOMA moves the Commission to reopen the record herein to provide for additional inquiry into 1.) the final investment arrangements; 2) statements made to the SEC regarding this transaction; 3) disclosure of the findings of the Attorney General's Office with respect to the manner in which the investment by OIC was made; 4) representations made to the OIC to induce OIC to invest in TPG's acquisition of PGE; and to allow briefing of these issues prior to any decision being made.

Final investment arrangements are critical for a fully reasoned decision on whether to allow the transaction to go forward. There is little in writing to disclose the real buyers and investors. Public statements about the negative consent rights are inconsistent with internal documents. TPG is not a formal applicant in these proceedings. The Commission has no jurisdiction over TPG (the parent) even though TPG will be able to exercise significant and far reaching control over the operations of PGE.

OEUC filed what is known as a U1 filing with the SEC on December 8, 2004. It was not mentioned during oral argument a week later. Interveners should be able to examine the filing to determine whether the statements made there are consistent with statements made here.

The Attorney General's Office is conducting an investigation of the OIC investment in TPG's acquisition of PGE. That investigation is not important for what it might show about activities of a former member of TPG. The investigation is important for the representations made to OIC to assure that OIC made the investment. Something exciting must have been said – OIC increased the maximum amount it invested in any one investment to be able to make a bigger piece of the pie. Whether the information comes as a result of the Attorney General's Office findings or as a result of discovery and/or FOIA requests by Interveners, the exact relationship between OIC and TPG must be better understood.

BOMA previously asked that the Protective Order be withdrawn. There are no further arguments to be made that any document is protected in light of the expansive nature of the statements, representations, and information contained in the documents now released by Applicants and TPG. To the extent that there are additional documents that bear on the issues that the Commission must consider – issues affecting public interest - they should also be disclosed. BOMA reiterates its prior motion to make these issues clear.

Intervenors must be able to fully identify and fully analyze where TPG and the Applicants' public statements are inconsistent with its internal documents. It is insufficient to allow TPG to fight a battle in the press dismissing the value of the internal analyses without giving Intervenors an opportunity to react. Statements made in oral argument, the ongoing press releases and interviews of TPG representatives, and the advertisements which paint a rosy homegrown future for PGE have not been briefed or examined. While public statements paint a rosy future, the internal documents look like a buy out company coming in to cannibalize the assets from PGE and then selling the shell for a profit. Rather than a 10-12 year investment, it may only be a three year investment – just long enough for the value to be stripped off through poor service quality, tax strategies, and the like – before selling to another investor looking to make a quick buck.

If the Commission is determined to approve the transaction, it must do so with appropriate conditions sufficient to protect the customers and the public. It cannot do so without all the information on the record and all pertinent information fully disclosed. All of the public statements, the new filings, and the significant inconsistencies must be examined. BOMA asks the Commission to reopen the record for the inclusion of additional materials and consideration of the impact of this information upon any conditions being considered. The motion can only be reasonably denied if the Commission has recognized that there are serious problems with this transaction and has decided to deny the Application.

Dated this 10th day of January 2005.

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