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October 21, 2004
Oregon Public Utility Commission
Administrative Hearings Division
550 Capitol Street, NE, Suite 215
PO Box 2148
Salem, Oregon 97308-2148

Re: UM 1121

Dear Administrative Hearings Clerk:

Enclosed please find an original and five copies of BOMA's Motion to Suspend Proceedings in this Docket and affidavit in Support. The parties were served by electronic distribution where electronic addresses were available, otherwise by mail.

Thank you for your courtesy.

Sincerely,

Ann Fisher
Attorney at Law

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) Case UM 1121
OREGON ELECTRIC UTILITY COMPANY, LLC, et) Motion to Suspend Proceedings or in the
al.) Alternative to Condition Approval
Application for Authorization to Acquire Portland)
General Electric Company.) CONSIDERARTION BY FULL COMMISSION
REQUESTED.

Portland Building Owners and Managers Association (“BOMA”) moves to suspend the proceedings herein pending completion of various investigative and regulatory proceedings regarding Texas Pacific Group (“TPG”) with respect to this acquisition. In the alternative, BOMA moves the Commission for an Order expressly retaining sufficient legal authority after approval of the proposed acquisition to revoke, amend, or condition the sale of Portland General Electric Company (“PGE”) to Oregon Electric Utility Company (“OEUC”), a wholly owned shell subsidiary of TPG and its investment entities. Because of the significance of this Motion, BOMA requests that it be considered and determined by the full Commission.

DISCUSSION

The Treasurer of the State of Oregon, Randall Edwards, has asked the Oregon Attorney General’s Office to investigate certain actions taken by the Oregon Investment Fund (“OIC”). The fund controls a portfolio of about \$56 million in public funds. The initial investigation was a result of the unusual coincidence and timing of OIC’s decision to invest in TPG’s acquisition of PGE and Neil Goldschmidt being asked to serve on the Board of the TPG shell corporation by which the acquisition would occur. The investigation has

been expanded to include public investment fraud and official misconduct. Affidavit of Ann L. Fisher, attached hereto.

The Commission may take Official Notice of the pending accusations and investigations. OAR 860-014-0050 covers Official Notice:

(1) The Commission or Administrative Law Judge (ALJ) may take official notice of the following matters:

(a) All matters of which the courts of the State of Oregon take judicial notice;

(b) Rules, regulations, administrative rulings and reports of the Commission and other governmental agencies;

This material is of the nature of matters of which the courts of the State of Oregon take Judicial Notice and is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. ORS 40.060 et seq.

Even if the information about the investigation is not capable of being officially noticed, the applicants themselves admitted to the fact of the investigation during cross examination of Peter Kohler on October 21, 2004. ICNU attempted to clarify Dr. Kohler's understanding of the nature and extent of the investigation. A ruling of the administrative law judge following objection by applicants prevented a full inquiry. Moreover, since the investigations are being requested and overseen by the State of Oregon, the Commission cannot realistically claim to be unaware of the investigation.

Additionally, another matter is currently "in the works" and should be considered as well. Applicants witness Shifter was cross examined on October 21, 2004 regarding efforts by TPG to gain a declaratory or other Order from the Securities and Exchange Commission ("SEC") determining that TPG is not a holding company that would be subject to PUHCA. During the course of his testimony, Mr. Schifter stated that failure to get such a determination would cause TPG to reconsider completing the acquisition. He stated that TPG had been working with SEC staff to properly structure the request and expected that the SEC would issue a ruling within a short period of time after receiving the request.

At the conclusion of the evidentiary portion of the proceeding, only a few facts are clear. TPG through its investment arm is providing the money for the acquisition of PGE and will receive the tax and other benefits while a shell limited liability company established by TPG with limited assets will “own” PGE. This corporate structure presents enormous advantages to TPG. The most important of these is that under current law, the Commission’s authority is limited to the named applicant (OEUC) and PGE. In other words, the Commission has no authority over TPG except and to the extent that the Commission requires it as a condition of approval of the acquisition. Said yet another way, while every news article and report references TPG as the buyer and discusses the Commission’s review of TPG’s purchase, the only review currently ongoing is of the applicant, OEUC. The Commission has authority to condition the terms approval of the acquisition if such conditions are in the public interest. ORS 757.511.

As a practical matter, this means that the Commission cannot require TPG to produce books and records, cannot penalize or censure TPG for wrongdoing, or disobeying a directive of the Commission, or require TPG to provide rate relief, forego tax benefits, or subject any sale by TPG of the memberships in the limited liability company to Commission review unless TPG accepts Commission authority as a condition of the sale. If facts come out later that TPG or its agents acted inappropriately, and the Commission has not conditioned the sale so as to sweep TPG under its authority, the Commission will not be able to right the wrong. The Commission would have failed in its charge to protect the Public and Oregonians will once again be owned by entities that do not reflect the strong values we hold in Oregon and who are willing to skim off benefits that more rightly should go to Oregonians.

Currently there are one or more investigations into activities of TPG that directly relate to the reasonableness of the proposed acquisition and the possible benefits to Oregonians of the acquisition. They include investigations into the unusual coincidence of Diana Goldschmidt’s and other friends of Neil Goldschmidt on the Investment Council voting within hours of Neil Goldschmidt being offered the position as director. However, these are not the not the only questions being raised. A review of the Minutes of an OIC meeting in which the decision to invest in the acquisition was made shows that the Council waived the usual limits on investments for this particular investment. Why the limit was raised and what

the individual members in supporting this investment considered must be investigated. The AG's Office has indicated that the investigation will be broader than just the question about Ms Goldschmidt's vote.

If the Commission fails to suspend the proceedings pending the outcome of the investigations and the outcome of the SEC decision, it will be placed in the unenviable position of having intentionally disregarded serious and troubling information and failing to take adequate steps to protect ratepayers. Approval of the acquisition of PGE by a shell limited liability company owned by a company or companies found to have committed wrongdoing in putting together the acquisition itself is not in the public interest. In addition, if a determination by the SEC could kill the deal, the Commission should wait until the SEC has ruled before proceeding further. Once the SEC has made its determination (and assuming the State has found no wrong doing), the Commission can take up the consideration of the application. Unless it waits, it is very likely that the application will need to be amended to reflect the direction of the SEC, additional hearings and testimony will be necessary, and there will be a serious duplication of efforts that could have been avoided.

BOMA requesting that the Commission suspend these proceedings to allow the investigations to be completed and the results known. By suspending the proceedings, the Commission is placed in the best position to show its commitment to protect the Public Interest. If the investigations show wrongdoing, the State and PGE's customers will have dodged a bullet. If the investigations disclose no wrongdoing, as applicants aver, then the Commission will then be in the best position to give reassurance to the Public that the acquisition of PGE by TPG is appropriate.

In the alternative, if the Commission feels compelled to move forward, despite the State's investigations and despite the considerable risk to customers, BOMA requests that the Commission require TPG to voluntarily accept Commission authority over TPG's activities to the extent they affect, impact or relate to the acquisition of PGE Oregon, including but not limited to OEUC's operation of PGE. In addition, the Commission must retain or acquire authority to later amend, modify, or revoke approval of the acquisition without cost or penalty and without assertions of claims by TPG, OEUC, or PGE that such actions were

discriminatory, ultra vires, illegal, or improper. Anything less will make Oregon the laughingstock of the investment community and open the door to similar investment scams.

In support of this motion, BOMA relies upon the affidavit of Ann L. Fisher filed herewith.

CONCLUSION

BOMA represents building owners, managers, and tenants who are directly served by PGE and as such are particularly affected by the outcome of the proceeding herein. The Commission should suspend the proceedings pending completion and disclosure of certain investigations into the investment decisions made by Oregon Investment Council, the selection of Neil Goldschmidt as Board member of and spokesman for OEUC, and other actions taken or not taken by persons connected with TPG or any of its entities, and further for a determination by the Securities and Exchange Commission of TPG's request for a declaration that TPG is not a holding company subject to the Public Utility Holding Company Act.

Alternatively the Commission should condition any approval of the proposed acquisition in a way to retain legal authority over TPG as well as the Applicant and PGE in the event that such investigation discloses any fraud or misrepresentation, wrongdoing, side dealing, or any illegal or unethical acts taken by any entity associated with PGE, TPG (or any of its entities), or OEUC.

Dated this 21st day of October, 2004

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) Case UM 1121
) Affidavit of Ann L. Fisher
OREGON ELECTRIC UTILITY COMPANY, LLC, et) In support of Motion to Suspend Proceedings or in
) the Alternative to Condition Approval
al.)

Application for Authorization to Acquire Portland

General Electric Company.

I, Ann L. fisher, being first duly sworn, depose and say:

1. I represent Portland Building Owners and Managers Association ("BOMA") in this proceeding. I make this motion in support of BOMA's Motion To Suspend the Proceedings herein pending completion of various investigative and regulatory proceedings regarding Texas Pacific Group ("TPG") with respect to this acquisition. In the alternative, BOMA is moving the Commission for an Order expressly retaining sufficient legal authority after approval of the proposed acquisition to revoke, amend, or condition the sale of Portland General Electric Company ("PGE") to Oregon Electric Utility Company ("OEUC"), a wholly owned shell subsidiary of TPG and its investment entities. Because of the significance of this Motion, BOMA has requested that the Motion be considered and determined by the full Commission.
2. I did a google search to find articles related to the acquisition of the PGE by TPG. I used the following search: "OIC + TPG." Attached are true copies of four articles related to investigations of TPG and the decision by the Oregon Investment Council. ("OIC") The articles disclose that he state of Oregon is conducting an investigation into possible investment frauds and other

wrongdoing at the request of the State's Treasurer, Randall Edwards. For the purposes of the interveners, the articles can be found at the following URLs:

http://news.statesmanjournal.com/article_print.cfm?l=87570.

<http://www.ventureeconomics.com/pew/protected/articles/weeklyheadlines/10930159195>.

<http://finance.lycos.com/qc/news/story.aspx?symbols=BWIRE:100&story=20040930020>.

<http://www.bizjournals.com/portland/stories/2004/08/23/daily6.html>. (Exhibits 1-4 to this affidavit.)

3. I note that the finance.lycos article referenced Texas Pacific Group as the source for the information.
4. The Minutes for the October 29, 2003 and the November 19, 2003 meeting of OIC are also available on the website maintained by the State: www.ost.state.or.us. Click on the link for investments. (Exhibits 5-6 of this affidavit.)
5. I attended the cross-examination hearing on October 21, 2004 and heard the testimony of Dr. Kohler and Applicant witness Shifter as described in the Motion.
6. For the purposes of the Record, the Commission has been asked to include the results of the investigation in the record by letter from Senator Vicki Walker.

Dated this 21st day of October, 2004

X

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Motion to Suspend Proceedings, on the official service list for Docket No. UM 1121, by causing the same to be electronically served on October 21, 2004, upon all parties who have an email address on the official service list, and by U.S. Mail on October 21, 2004, postage-prepaid, to those parties who do not have an email address on the official service list.

Dated at Portland, Oregon, this 21st day of October 2004.

By: _____

Ann L. Fisher

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