

November 4, 2004

ANNETTE TAYLOR
OREGON PUBLIC UTILITY COMMISSION
550 CAPITOL STREET, NE, SUITE 215
SALEM OR 97301

Re: In the Matter of Oregon Electric Utility Company, LLC, et al.,
Application for Authorization to Acquire Portland General Electric Company
Docket No. UM 1121

Dear Ms. Taylor:

Enclosed for filing are an original and five copies of the Request for Official Notice of the City of Portland, Oregon.

Thank you for your assistance.

Very truly yours,

/s/ Benjamin Walters

Benjamin Walters
Senior Deputy City Attorney

BEW:lw
Enclosures
cc: UM 1121 Service List

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1121

In the Matter of the Application of
OREGON ELECTRIC UTILITY
COMPANY, LLC, *et al*
Application for Authorization to Acquire
Portland General Electric Company

REQUEST FOR OFFICIAL NOTICE
OF THE CITY OF PORTLAND,
OREGON

Hon. Kathryn Logan, ALJ
Hon. Christina M. Smith, ALJ

The City of Portland, Oregon (“City”) requests the presiding Administrative Law Judge take Official Notice of Resolution No. 36265, adopted by the Portland City Council on October 20, 2004. A certified copy of the resolution is attached to this request as Attachment A.

As provided in OAR 860-014-0050(1)(a), official notice may be taken of all matters of which the courts of the State of Oregon take judicial notice. Judicial notice may be taken of ordinances or enactments of any incorporated city in Oregon. Oregon Evidence Code (OEC) 202(7) (ORS 40.090(7)). *See also*, ORCP 20 D(2) (in pleading an ordinance or enactment of an incorporated city, it is sufficient to refer to it by its title, or commonly accepted name or number, and the date of its passage or approval, “and the court shall thereafter take judicial notice thereof). Judicial notice may also be taken of ordinances and similar enactments issued by or under the authority of any state of the United States. OEC 202(4) (ORS 40.090(2)).

1 The Commission has previously taken official notice of a resolution enacted by an
2 incorporated Oregon city in *Willamette Water Co.*, WA 36, Order No. 02-573, 2002 WL
3 31744726, at *12 fn. 4 (August 21, 2002). In that proceeding, the Commission took official
4 notice of a city resolution adopting a water policy governing the operations of the Eugene Water
5 and Electric Board, citing OAR 860-014-0050(1)(a) and OEC Rule 202(4) and (7). *Compare,*
6 *City of La Grande v. Public Employees Retirement Bd.*, 281 Or 137, 150, 576 P2d 1204, *affirmed*
7 *on rehearing*, 284 Or 173, 586 P2d 765 (1978) (analysis of state preemption does not turn on
8 whether local law is embodied “in ordinances, resolutions, by-laws, or other forms of
9 enactment”); ORS 221.770(1)(1) (city may elect to participate in state revenue sharing “by
10 enactment of an ordinance or resolution expressing that election”); ORS 223.389 (local
11 improvement district boundaries may be created through “adoption or enactment of an ordinance
12 or resolution”), and ORS 288.520 (public body may authorize the issuance of bonds by
13 “enactment of [an] authorizing ordinance or resolution”).

14 The City of Portland respectfully requests that the Presiding Administrative Law Judge
15 issue an order indicating that Official Notice of Attachment A has been taken in this proceeding.
16 As provided in OAR 860-014-0050(2), the City of Portland asks that the parties be notified of
17 official notice, and that parties be given 15 days from the date of that notification to explain or
18 rebut the noticed fact.

19 Dated this 4th day of November, 2004.

20 Respectfully submitted,

21 /s/ Benjamin Walters

22 _____
23 Benjamin Walters, OSB #85354
24 Senior Deputy City Attorney
25 Of Attorneys for City of Portland
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused to be served the foregoing REQUEST FOR OFFICIAL
3 NOTICE OF THE CITY OF PORTLAND, OREGON, on behalf of the City of Portland, Oregon,
4 upon the parties shown below, on the official service list for Docket No. UM 1121, by causing
5 the same to be electronically served on all parties who have an email address on the official
6 service list, and by U.S. Mail, postage prepaid, to those parties who do not have an email address
7 on the official service list.

8 DATED this 4th day of November, 2004.

9
10 /s/ Benjamin Walters

11 _____
12 Benjamin Walters, OSB #85354
13 Senior Deputy City Attorney
14 City of Portland
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SERVICE LIST

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OFFICE OF
AUDITOR OF THE CITY OF PORTLAND
City Hall Room 140
1221 SW 4th Avenue
Portland, Oregon 97204

COPY CERTIFICATE

STATE OF OREGON }
COUNTY OF MULTNOMAH } ss
CITY OF PORTLAND }

I, **GARY BLACKMER**, Auditor of the City of Portland, do hereby certify that I have compared the following copy of Resolution No. 36265, passed by the Portland City Council on October 20, 2004, to oppose the application of Oregon Electric Utility Company, LLC to acquire Portland General Electric Company from Enron, with the original thereof and that the same is a full, true and correct copy of such original and of the whole thereof as the same appears on file and of record in my office and in my care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of Portland affixed this 3rd day of November, 2004.



GARY BLACKMER
Auditor of the City of Portland

By *[Signature]*
Deputy

RESOLUTION No. 36265

Oppose the application of Oregon Electric Utility Company, LLC to acquire Portland General Electric Company from Enron (Resolution)

WHEREAS, the Oregon Public Utility Commission is currently considering an application from Oregon Electric Utility Company, LLC together with various other individuals and investment units of Texas Pacific Group (the Applicants) for an order authorizing Oregon Electric to acquire Portland General Electric Company ("PGE"). *Application of Oregon Electric Utility Company et al for Authorization to Acquire Portland General Electric Company*, OPUC UM 1121, and,

WHEREAS, the City of Portland applied for and was granted intervenor status in the proceeding, together with representatives of industrial customers, residential customers, low-income customers, environmental advocates, advocates for renewable energy and others; and,

WHEREAS, the OPUC may only approve a sale of a utility after determining that it will result in a net benefit to the utility's customers, and that the sale will not impose a detriment on Oregon citizens as a whole. *In re Legal Standard for Approval of Mergers*, Oregon Public Utility Commission, UM 1011, 212 P.U.R.4th 449, 2001 WL 1285993, Order No. 01-778 (Sept 4, 2001); and;

WHEREAS, the City has participated in the UM 1121 proceeding by reviewing the Applicants' various filings, has considered the comments of other intervenors and the Commission's staff, and has actively advocated for the benefit of Portland citizens, and;

WHEREAS, the City Council held a work session in April, 2004, and expressed concerns regarding obtaining assurances on the following issues: 1) commitments to providing safe, reliable electrical service; 2) reasonable rates for electricity; 3) stability in ownership and operation of the utility; 4) responsiveness to local priorities; 5) protection of jobs for local employees; 6) commitment to the long-term economic well-being of Oregon; 7) commitment to long-term environmental protection; 8) protection from any residual Enron liabilities; and 9) enhancing bill-payment assistance programs for low-income households; and,

WHEREAS, on October 11, 2004, the Applicants submitted a final proposal to the Commission representing the terms and conditions that the Applicants assert meets the Commission's test of "net benefit" and "no detrimental impact"; and,

WHEREAS, Texas Pacific Group's business plan assumes a short-term ownership and shifts the focus of PGE ownership from an investment in a public utility to a commodity investment; and

WHEREAS, Texas Pacific Group's business plan creates incentives for Texas Pacific Group that are not compatible with the long-term interests of PGE customers, employees, and the community; and

WHEREAS, Texas Pacific Group's acquisition proposal includes only vague and non-verifiable commitments to increasing the use of renewable energy resources; and

WHEREAS, the final package does not commit Oregon Electric Utility Company and PGE to complete a modern franchise agreement with the City of Portland within a specified time period, as the City had requested; and,

WHEREAS, Texas Pacific Group has indicated that it will transfer PGE as an asset within an approximate time frame of five to twelve years, but the package does not adequately address the endgame concerns of the future sale of PGE as the City had requested; and,

WHEREAS, any promise of "local control" by the possible appointment of Oregonians to PGE's board of directors is significantly compromised by Texas Pacific Group's insistence upon a lengthy list of "consent rights" giving Texas Pacific Group veto authority over virtually all major business decisions of Oregon Electric as the sole, controlling owner of PGE; and,

WHEREAS, any promise of "local control" would evaporate completely if the Public Utility Holding Company Act ("PUHCA") is repealed, as Texas Pacific Group has unequivocally indicated its intent to assume direct control over PGE in that event; and,

WHEREAS, the Applicants' proposal only identifies the intention to retain senior management, and makes no commitments in respect to preserving local jobs at PGE as the City had requested; and,

WHEREAS, the Citizens' Utility Board has documented the past practices of Texas Pacific Group of reducing work force at other companies it has purchased; and,

WHEREAS, Texas Pacific Group's offer to increase funding for low-income bill-paying assistance by an amount equal to \$50,000 annually would provide approximately four cents per month of rate relief for each low-income household in PGE's service territory; and,

WHEREAS, Oregon Electric's relatively high debt burden, creating a double-leveraged capital structure, combined with its limited financial resources, will place significant pressures on PGE to pay dividends, including pressures to significantly reduce on-going costs such as system maintenance; and,

WHEREAS, the Applicants' final rate credit of \$8.6 million per year, beginning in 2007, represents a reduction of about 0.6% from PGE's current rates, and is significantly below the figures proposed by either Staff or customer advocates, as well as less than half of the rate credit considered by the Commission in the prior application by Sierra Pacific to acquire PGE; and,

WHEREAS, electrical rates have risen between 30% and 50% since Enron purchased PGE; and

WHEREAS, most of the conditions set forth in the Applicants' proposal embody attempts to provide assurances that Oregon citizens and PGE ratepayers will be protected from the significant risks posed by the proposed transaction; and,

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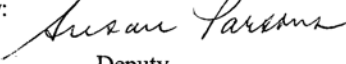
WHEREAS, the Applicants' proposal provides only a narrow range of circumscribed benefits to PGE's ratepayers. Some of these benefits are simply unquantifiable and the remainder are far short of what other parties have suggested are needed for this transaction to provide net benefits; and,

WHEREAS, if the transaction moves forward, modified only by the conditions set forth in the Applicants proposal, ratepayers will be worse off than under current or foreseeable circumstances.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Portland, that the City of Portland opposes the approval of the application of Oregon Electric Utility Company upon the terms and conditions submitted by the Applicants to the Oregon Public Utility Commission on October 11, 2004.

Commissioner Erik Sten
Susan Anderson/B. Walters
10/12/04

Adopted by the Council: OCT 20 2004

Gary Blackmer
Auditor of the City of Portland
By: 
Deputy