

ANN L. FISHER
Attorney at Law
AF Legal & Consulting Svcs
1425 SW 20th St., Suite 202
Portland, Oregon 97201
Telephone - 503.721-0181
Facsimile - 503.223-2305

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of) Case UM 1121
OREGON ELECTRIC UTILITY COMPANY,) BOMA's Motion to Suspend
LLC, et al.) Supplemental Memorandum in Support
Application for Authorization to Acquire)
Portland General Electric Company.)

Portland Metropolitan Association of Building Owners and Managers (BOMA) has moved the Commission for an Order suspending consideration of the Proposed Acquisition of Portland General Electric Company (PGE) or in the alternative requiring TPG to accept the jurisdiction of the Commission as a condition of purchase. In considering the issues further, BOMA has identified another way to approach the situation that would also serve the interests of the Public and PGE's ratepayers. It submits this supplemental memorandum to bring this alternative to the Commission's notice.

THE SITUATION

The genesis of BOMA's motion is a recognition that while TPG is providing the money and retains control of the new entity, Oregon Electric Utility Company (OEUC) through negative covenants, it is not under the jurisdiction of the Commission. Said another way, the Commission cannot hold TPG accountable for actions taken that indirectly or directly impact the well being of PGE, its customers, and the Public. This is because the Commission's authority extends to PGE and to the Company seeking to acquire it. It is known that TPG is under investigation by a variety of regulatory bodies, including the State of Oregon, as part of an

investigation of the Oregon Investment Council's decision making, and the Securities and Exchange Commission (SEC), at the request of legislators questioning TPG's purchase of PGE since it appears to be a violation of the Public Utility Company Holding Act (PUHCA). TPG's representative, Richard Shifter testified that he was comfortable that the SEC would give TPG and OEUC an exemption from PUHCA, prompting a letter, now in the record, from the SEC indicating that it had made no such finding, that no application for an exemption had been filed, and that neither Staff nor the Commission had made any determination.

Where does this leave the Commission? If it approves the sale, under the terms and conditions that are currently in discussion, and the investigations turn up wrongdoing, the process and the Commission have failed the Public. If the Commission allows the sale without requiring TPG to accept jurisdiction of the Commission retaining the ability to later withdraw approval or amend the conditions, and wrongdoing is disclosed, the ratepayers, customers, and the State have been put at risk without any remedy. On the other hand, if the Commission conditions the sale upon TPG's acceptance of its authority or suspends the proceedings, the Public is properly protected and the Commission is above rebuke.

The decision is a difficult one of weighing the role of the Commission with the potential for political fallout resulting from it "taking too long" to consider the issues. Possibly the Commission believes that the sale of PGE to a new buyer – to get rid of the taint of Enron – has significant advantages. BOMA suggests, however, that it may be like removing the child from one abusive home situation to send it to a foster home that is also an abusive home situation. BOMA supports a full case investigation before transferring PGE to another entity. BOMA wants to see the right buyer – one who will not do as Enron did: manipulated PGE to serve Enron's purposes and not those of the customers. Hurrying a decision will not advance the interests of the customers and the Public. The interveners and the Commission need to know the outcome of the investigations before moving forward or have enough regulatory control to prevent another Enron situation.

IS THERE A WAY TO MOVE FORWARD NOW?

BOMA initially suggested that if the Commission does not suspend the proceeding, then it should condition approval upon TPG's acceptance of Commission authority. If TPG will not accept the jurisdiction of the Commission, then the Commission needs to consider what issues are the most important in considering approval or rejection of the purchase. Typically, the most important issues are independence of the utility and the financial strength of the purchaser. While much has been made of the financial strength of TPG, Oregon Electric Utility Company (OEUC) has no assets. If this were a stand-alone acquisition, OEUC would not meet the minimal criteria s a purchaser. If this were a stand-alone acquisition, OEUC and PGE would have independent Boards of Directors, and there would be no other entity exercising control.

If the Commission does not suspend the Proceedings or condition approval upon TPG's acceptance of PUC jurisdiction, then the Commission must require that TPG eliminate the negative covenants, which enable TPG to control OEUC. This requirement must be drafted in a way to make OEUC and PGE stand alone companies. In addition, the Commission may also want to consider if it needs to require that OEUC allow a representative of the PUC to participate on the Board for a four or more year period specifically representing the interests of the customers. Finally, the Commission must require that OEUC acquire and retain sufficient assets to meet the financial strength requirement inherent in any purchase of a utility. These must be new assets and not assets of PGE, and not PGE assets that are not yet in rate base, such as Port Westward.

SUMMARY

As currently proposed, OEUC has no assets and the controlling entity is not under the jurisdiction of the Commission. The actual purchaser and the entity in control is under investigation and is seeking an exemption from PUHCA, the statute specifically addressing multi-tiered purchase arrangements as has been proposed. If the Commission is unwilling to suspend the proceedings, it must require that TPG to accept jurisdiction of the Commission and

agree that the proposed acquisition may be cancelled if wrongdoing is discovered.

Alternatively, the Commission could require that the purchasing entity, OEUC, have no upstream arrangements that operate, as the negative covenants between TPG and OEUC now operate, to allow any other entity to control OEUC. In addition The Commission must require OEUC to obtain and retain sufficient new assets to meet the financial viability standard inherent in acquisition of a utility. Anything less means that the Commission has failed to do the job it is charged to do – protect the interests of the rate payers and the utility.

Dated this 1st day of November, 2004

X _____
Ann L. Fisher
1425 SW 20th Street, Suite
202
Portland, Oregon 97201
503-721-0181
503-223-2305 - facsimile