ANN L. FISHER

ATTORNEY AT LAW

AF LEGAL & CONSULTING SERVICES

KAMM HOUSE
1425 SW 20TH AVENUE, SUITE 202
PORTLAND, OREGON 97201
TELEPHONE: 503.721.0181
FACSIMILE: 503.223.2305
WWW.LAWYERS.COM/ANNFISHER
ENERG LAW@AOL.COM

December 3, 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 Reply Brief 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

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, LLC, et al.	)	BOMA's Response Brief
Application for Authorization to Acquire Portland General Electric Company.	)	ORAL ARGUMENT REQUESTED

This reply brief is presented by Building Owners & Managers Association (BOMA) of the greater Portland Metropolitan area. BOMA has participated in a number of dockets representing the interests of an important group of commercial customers. Often BOMA has been the only intervenor representing these customers who are the small and medium businesses, Mom and Pop operations, small groceries, offices, and others who collectively are the real backbone of Oregon's economy. These customers have a significant interest in maintaining fair and reasonable rates, reliable service, and receiving the benefits of a system paid for by PGE customers. Much has been said in the press and in the pleadings suggesting that the purchase of Portland General Electric (PGE) by Texas Pacific Group's (TPG) shell corporation is good for business. But because of the nature of the transaction, the only business this purchase benefits is TPG as it siphons money and benefits away from Oregon and Oregonians. BOMA has no quarrel with investment funds per se. However, BOMA's overriding belief is that PGE is an asset of the customers it serves. The benefits of the sale must not be allowed to flow to investors outside the regulatory reach of this Commission.

These investors are unquestionably outside of the regulatory reach of this Commission. It is *not* TPG, despite the media blitz and Applicants' efforts to recast Oregon Electric Utility Company (OEUC) as "TPG applicants", who is buying PGE. The actual applicant is simply a

shell corporation with no current assets. OEUC (under the direction of TPG) will move, maneuver, and transfer parts of PGE to itself, all the while saying that the transfer is in the best interests of the customers. Then those assets will move again, to new investor-owners of OEUC, or to TPG itself. TPG and the applicant are counting upon the media blitz and the gullibility of the public to relieve them of the statutory burden of proving that the proposed sale will be good for customers. TPG and the applicant think a media blitz saying that this is good for customers is good enough alleviating them from the statutory burden of proving that the proposed sale brings value. TPG and the applicant hope that the Commission won't notice that TPG is systematically dismantling PGE until only the distribution system remains, striped of generation assets like Coyote Springs and Port Westward, stripped of Transmission capacity including PGE's interest in the Third Intertie, and stripped of the wholesale trading activities. Then OEUC will make the empty gesture of turning over the distribution system to the City of Portland or a pubic utility district, under a power sale arrangement that assures that the value of the stolen assists remains high. PGE customers will be left shouldering the burden of volatile and unreasonable electric prices based upon market price in a dysfunctional and manipulated energy market.

One might argue that this is pure speculation on BOMA's part but wait! None of the briefs filed by any party, least of all the applicants, Enron, PGE, or Staff have come forward to show how by law how TPG can be required to stand behind the shell corporation, Oregon Electric Utility Company (OEUC), or how by law TPG will be subject to PUC jurisdiction, or how by law TPG will be limited in transferring assets. The migration has already begun with the handling of the trading operation. Soon there will be agreements between PGE and OEUC for purchase of the electrical output of Port Westward on the theory that until the project is used and useful, it cannot be in rates so it makes sense for OEUC to hold it as owner. If that happens, all that PGE customers will get are a "market prices" for electricity from of a resource they should own while OEUC (and ultimately TPG) will benefit from a highly attractive generation resource secured by a long term power sale agreement.

If the Commission is seriously considering approval of the sale, despite the significant opposition by Intervenors and Staff, BOMA believes that approval must be conditioned upon:

1, TPG voluntarily accepting PUC jurisdiction and oversight;

2. That no assets of PGE be transferred to OEUC without full consideration in a docket specifically opened to address the reasonableness of the transfer and impact on the customers;

3. That taxes may only be recovered in rates if there is a showing that they will actually be due and will actually be paid to taxing authorities without offset of losses from other TPG companies; and

4. That Staff's and ICNU's conditions are agreed to and accepted by TPG.

Only then will this transaction meet the test articulated in ORS 757.506 and 757.511.

Staff and Intervenors have done an admirable job of attempting to put together suitable conditions for this transaction, most of which have been soundly rejected by applicants. Staff and the intervener conditions, however, are built upon an incorrect assumption – that the conditions used in 1997 (with Enron), 1999 (with Scottish Power), and 2000 (with Sierra Pacific) will be enough as we move forward. Conditions from the past, like past analyses of "net benefits," are insufficient to protect PGE customers and the public in the future. The circumstances behind past proposals are not similar to the circumstances behind the transaction at hand.

In past transactions, the Commission had authority over the actual entity desiring to purchase the utility – an entity that would actually operate the utility once purchased. When the Commission considered the net benefits, it was without the concern that assets of PGE were going to be taken from the utility and placed in an unregulated entity. Never before has an applicant come in with what ICNU has properly called the "PUHCA pretzel." Never before has there been such effort to prevent anyone from attaching any asset of the de facto buyer, any regulatory control over the de facto buyer, or any information about the tactics and actions of the de facto buyer.

Finally, the energy world is remarkably different from 2000. The Enron manipulation of the energy market, the loss of marketers and non utility generators, and the nascent deregulation efforts all reflect a world significantly different from what the Commission has faced in addressing past purchase transactions. What worked before will not be enough going forward.

BOMA supports Staff and ICNU conditions although believes that they do not go far enough. The conditions raised by others – specifically EWEB's, CUB's, and Strategic's are reasonable *additiona*l conditions in *any* transaction related to the sale of PGE. However, they are not of such significance that they should be substituted for the conditions proposed by Staff. If these secondary conditions are substituted for the significant ones proposed by BOMA, Staff and ICNU, the Commission will have failed to protect the interests of the customers and the public.

THE FACTS

If the Application is approved:

1.) TPG will not be under PUC authority even though it will reap the benefits of PGE ownership and has ultimate control over Board decisions of PGE and OEUC (ORS 757.511(3)).

2.) The few conditions that the shell corporation so far has been willing to accept can only be enforced against PGE or OEUC through the Commission's rate making authority (i.e. lower the authorized return to investors) and through a modest penalty scheme designed to correct failure to trim trees and address safety issues, not protect billion dollar deals..

3.) The so called ring financing and PUHCA exemption obviate consumer protections. While the "spin" given is that it protects customers, it really allows TPG to act, as a practical matter, without oversight.

4.) TPG has a track record that belies benevolence and charity and instead confirms that, driven by its own bottom line goals, it is willing to cut workforce and services in order to increase profits – profits for themselves, not rate reductions for customers.

5.) TPG, not the customers or Oregon, will receive significant benefits by taking the monies collected in taxes and pocketing them. This legal larceny will increase the effective return to 20-25%, far more than the return the Commission would have allowed had NWNG or Sierra Pacific to purchase PGE. While decisions in those cases are hardly precedent since the market and circumstances are different, one wonders why the Commission would reject local or utility players on the basis of the deal not being good enough in preference for out-of- state, out - Region raiders.

No one has refuted, or even attempted to refute, these facts – no pointing to case law and no suggestion of any willingness to be subject to Commission jurisdiction. If BOMA is wrong, one would expect applicants and TPG to blast the allegations. Instead, TPG and Applicant ignore that the burden on the Applicant to come forth to show benefits. They ignore the criteria listed in ORS 757.511. Applicants and TPG ignore the allegations in hope that the Commission buys the hype *without reading the fine prin.* That fine print that says *BEWARE*.

CONCLUSION

BOMA opposes approval of the acquisition of PGE by OEUC. PGE deserves better. The customers deserve more. And we owe nothing to the Texas Raiders seeking to take *our* utility to line their pockets.

Dated this 3rd day of December, 2004

X

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