



**Portland General Electric Company**

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**J. Jeffrey Dudley**

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November 17, 2004

***Via Facsimile and U.S. Mail***

Annette Taylor  
Oregon Public Utility Commission  
PO Box 2148  
Salem OR 97308-2148

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:

Attached please find an original and five copies of PGE's Opening Brief for filing in the above-captioned docket.

Please stamp the extra copy of this letter and return it in the self-addressed envelope provided.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Dudley", with a long horizontal flourish extending to the right.

JJD:am



BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1121

In the Matter of the Application of	)	
	)	<b>OPENING BRIEF OF PORTLAND</b>
OREGON ELECTRIC UTILITY	)	<b>GENERAL ELECTRIC COMPANY</b>
COMPANY, LLC, et al.,	)	
	)	
For Authorization to Acquire Portland	)	
General Electric Company	)	

Portland General Electric Company ("PGE") submits this Opening Brief in support of the Oregon Electric Utility Company, LLC ("Oregon Electric") Application to acquire all of the PGE common stock..

PGE urges the Commission to approve Oregon Electric's acquisition of PGE's common stock. Oregon Electric's ownership will benefit both PGE and our customers. As a company, we look forward to interacting with a Board populated with Oregonians of diverse backgrounds and deep experience, and to the planning process the new Board will undertake. We believe that the Board's strength and attention will strengthen PGE and improve our ability to meet our goals of providing customers the best service possible over time. Oregon Electric has supplemented this long-term benefit with a rate credit and extended service quality program that also provide benefits to our customers. The positive outcomes from Oregon Electric ownership exceed the risk of the speculative negative outcomes other parties allege in this docket. The Commission should find that this transaction meets the statutory standards and approve it, ending the uncertainty that exists around PGE's ownership.

**I. Introduction**

The remainder of this Opening Brief will address concerns expressed by other parties. PGE has a unique perspective to offer. We have first-hand knowledge and experience in these

areas. Some have questioned whether the Oregon Electric acquisition might harm customers by increasing PGE's cost of borrowing. We know PGE's borrowing needs and have more experience accessing capital markets to fund utility operations than any other party in this docket. We are confident that the hold harmless condition Oregon Electric offers will protect customers against the possibility that PGE's borrowing costs may increase because of the proposed transaction.

Other parties have expressed concerns about the adequacy of financial conditions Oregon Electric offers. The proposed conditions are broader and stronger than those adopted in Commission docket UM 814 - the proceeding in which the Commission approved Enron's acquisition of PGE. We have direct experience operating a utility under the UM 814 merger conditions, which have served their purposes well throughout the Enron bankruptcy. The expanded conditions proposed by Oregon Electric provide adequate protection for the future.

Others are concerned about the possibility of an Oregon Electric bankruptcy and what that speculative possibility might mean for PGE and our customers. These concerns are unfounded. Even if PGE substantially underperformed for a 5 year period of time, Oregon Electric could service its debt under this "highly improbable" worst-case scenario. Moreover, over the past three years, we have provided safe, reliable electricity at reasonable rates while our current parent company has been in bankruptcy.

PGE's evidence in this case is presented by its employees and, on financial matters, its Chief Financial Officer, Jim Piro. Mr. Piro has significant qualifications and a unique perspective with respect to Oregon electric utilities operating under Commission-approved merger conditions. Mr. Piro has been with PGE for 24 years, holding positions in Generation Engineering, Economic Regulation, Financial Analysis and Forecasting, Power Contracts,

Economic Analysis and Planning Support, Analysis and Forecasting. PGE/100, Piro/32. As CFO, Mr. Piro guided PGE through the financial challenges of Enron's bankruptcy. No other witness presenting evidence in this record matches Mr. Piro's experience.

We have organized the remainder of our brief as follows: (II.) Oregon Electric's capital structure will not harm PGE customers; (III.) The Oregon Electric proposed financial conditions will protect PGE and its customers; and (IV.) The Staff minimum equity condition is unjustified and unworkable.

## **II. Oregon Electric's capital structure will not harm PGE customers.**

Some parties claim that Oregon Electric's financing and capital structure could harm PGE customers. *See* CUB/100, Jenks-Brown/11-12; CUB/200, Dittmer/25-30; Staff/900, Morgan/16. We understand these concerns, but we and Oregon Electric have rebutted them in the record. Moreover, even if there are any adverse impacts on PGE, Oregon Electric has agreed to a hold harmless condition that will fully protects customers.

### **A. Oregon Electric's Capital Structure will not harm PGE's customers by increasing PGE's borrowing costs.**

Some parties believe Oregon Electric's capital structure might increase PGE's cost of debt and that this could harm PGE's customers. *See* Staff/100, Conway/24; Staff/200, Morgan/29, 50-51; Staff/900, Morgan/12, 14; ICNU/200, Antonuk-Vickroy/16-18; CUB/200, Dittmer/12-13. However, PGE's customers will be held harmless against any increase in PGE's debt costs that occurs because of Oregon Electric's ownership. Oregon Electric has agreed that PGE's customers will not pay higher rates because of an increase in PGE's cost of capital that is attributable to Oregon Electric's ownership. This is a stronger version of the hold harmless condition contained in the UM 814 final order.

Even if there was no hold harmless condition, this record contains only speculation that potential changes in PGE's cost of debt may negatively affect customers. PGE has both long-term and short-term debt. With respect to long-term debt, PGE plans to meet its foreseeable needs (i.e. long-term debt retiring before 2010) with secured instruments. No one disputes that this transaction will not affect PGE's secured debt rating and the interest rates PGE pays for long-term secured debt. PGE/400, Piro/10; Staff/900, Morgan/12. Any conclusions regarding PGE's additional long-term borrowing needs beyond 2010, PGE's credit rating for secured long-term debt at that time, and the positive or negative impacts of Oregon Electric's ownership on PGE's credit rating more than five years in the future, are purely speculative. In short, all the evidence in the record indicates that PGE's borrowing costs for long-term debt will not increase as a result of Oregon Electric's proposed acquisition.

Drawing any conclusions that short-term debt issued at a particular time will affect PGE's revenue requirement, positively or negatively, is also speculation for several reasons. First, short-term, as opposed to long-term debt, does not have a direct effect on rates. PGE 100/Piro at 21 ("This debt [short-term debt], however, does not affect PGE's revenue requirement"). The Commission sets a utility's allowed cost of capital based on its cost of equity and its cost of long-term debt. Short-term debt costs do not affect PGE's allowed rate of return.

Second, the only way short-term borrowing rates may indirectly affect rates is through the interest rate that applies to the "AFUDC" (Allowance for Funds Used During Construction) account. The AFUDC rate is based upon PGE's weighted cost of capital (equity and long-term debt). To the extent PGE uses short-term debt to fund the AFUDC account, it will reduce the AFUDC rate for the lower interest cost of the short-term debt. In other words, the use of short-term debt to fund construction costs such as Port Westward can only serve to benefit customers by

lowering the applicable interest rate for the AFUDC account. As Mr. Piro explained, "if [PGE does] not draw against our revolver [short-term debt] then the calculation of AFUDC is based upon on your weighted average cost of capital, which is significantly higher than your short-term cost capital." Hearing Transcript at 28. To the extent PGE uses short-term debt to finance Port Westward or other capital investment, PGE customers will benefit because the AFUDC rate will be lower. As Mr. Piro concluded, the contention that customers will be harmed by higher borrowing costs for short-term debt is "speculative" at best. Hearing Transcript at 27-28.

Third, Mr. Piro believes that PGE will maintain its investment grade ratings with S&P and Moody's when this proposed transaction closes. PGE/100, Piro/19.<sup>1</sup> The effect on borrowing costs of changes in credit ratings that remain above investment grade requires the consideration of many factors. PGE/400, Piro/9.

These concerns about short-term debt provide no basis upon which the Commission may impose rate credits. Any downgrade for short-term debt is expected to keep PGE at investment grade. Such a downgrade might not affect PGE's short-term rate at all. Even if PGE's short-term rates are affected, there will be no direct effect on rates. The only possible impact would be through the AFUDC rate. And short-term borrowing rates might not affect the AFUDC rate at all. And there is no evidence concerning the likelihood that PGE will use short-term debt to fund Port Westward. Even if this series of "what ifs" comes true (a credit down grade occurs, the downgrade affects short-term borrowing rates, and PGE uses short-term borrowing to fund Port

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<sup>1</sup> "Q: (by Mr. Jones) So to follow-up on that, Mr. Piro, would the same be true in regards to unsecured debt at Moody's and S&P?  
A: (by Mr. Piro) Moody's and S&P both have our unsecured at investment-grade.  
Q: (by Mr. Jones) Do you expect that that will continue under Oregon Electric ownership - -  
A: (by Mr. Piro) Yes I do.  
Q: (by Mr. Jones) - - for unsecured debt?  
Q: (sic should be A:) (by Mr. Piro) Yes, I do."

Hearing Transcript pages 56-57.

Westward or other capital projects), it will only serve to lower the cost to customers by reducing the AFUDC rate. The parties expressing these concerns have not attempted to work through this series of "what ifs" to quantify the alleged harm to customers.

Finally, Oregon Electric has agreed to a hold harmless condition that fully protects customers from any increase in borrowing costs attributable to Oregon Electric's ownership. Customer credits cannot lawfully be imposed under these circumstances in which there is no evidence that PGE will in fact pay higher borrowing costs, no evidence concerning the amount of the alleged higher borrowing costs, and a condition that fully protects customers from paying higher rates if PGE's cost of capital increases due to Oregon Electric's ownership.

B. Oregon Electric's debt service obligations do not present a unique risk to PGE customers.

Some parties have suggested that Oregon Electric's capital structure and debt servicing needs will place undue pressure on PGE's utility operations. *See* CUB/100, Jenks-Brown/11-12; CUB/200, Dittmer/25-30; Staff/900, Morgan/16. PGE disagrees. PGE has reviewed Oregon Electric's financial modeling. Even if PGE earned a net income of only between \$50 million and \$65 million a year, a return of common equity of between 5% and 6.5%, every year for 5 years, Oregon Electric could meet its debt service requirements. PGE/100, Piro/4-5. Mr. Piro testified that this worst-case scenario is "highly improbable." *Id.*

On top of being "highly improbable," such a stressed financial condition would be the result of conditions at PGE, not Oregon Electric's capital structure. If the conditions producing these results were within the company's control, PGE management would take all prudent steps to correct them. If the conditions were beyond PGE's immediate control, PGE management would certainly recommend to its board that it seek assistance from the Commission to allow PGE an opportunity to earn its authorized rate of return. PGE/100, Piro/5. In either event, the

pressure on PGE's financial performance would come from PGE's utility operations, not from Oregon Electric's debt financing or the identity of PGE's owner.

C. PGE rates will not be based on Oregon Electric's capital structure.

Some parties have suggested that after the acquisition the Commission will set PGE rates to reflect the cost of Oregon Electric debt. CUB/400, Dittmer/5. This is not how ratemaking works in Oregon. As stated by Mr. Piro,

Q. Is PGE responsible for the debt at Oregon Electric?

A. No. PGE is responsible for the debt it alone issues - no more, no less. That PGE's earnings will be paid to our shareholder as dividends to enable that shareholder to pay interest and retire principal does not make this PGE's debt. The best illustration of this is the methodology by which the Commission sets rates for Oregon utilities. The OPUC considers many costs, including the utility's own debt, in setting fair and reasonable rates. One thing it does not consider is the debt payment needs of the utility's owner.

PGE/400, Piro/15.

D. Oregon Electric's capital structure will not affect the price PGE pays for wholesale power.

Some parties have questioned whether the acquisition by Oregon Electric will affect the price PGE pays for power. Staff/900, Morgan/12, lines 7-9. Mr. Piro answered this unsupported concern: "The price at which a utility buys or sells power and fuel does not change as a result of that utility's credit rating." PGE/400 Piro/13.

### **III. The Oregon Electric proposed financial conditions will protect PGE and its customers.**

The financial conditions Oregon Electric offers provide important and broad protections for PGE's customers. Concerns expressed about these proposed conditions are misplaced for at least two reasons. First, the ring fencing provisions Oregon Electric offers are broader and

stronger than those adopted in UM 814. They, therefore, provide a greater level of customer protection than exists today or would exist if Oregon Electric does not acquire PGE.

Second, the more limited UM 814 financial conditions have adequately protected PGE throughout the Enron bankruptcy. It follows as a matter of simple logic that expanded and strengthened financial conditions will similarly serve to protect customers.

Any concerns about the adequacy of the UM 814 ring fencing conditions are based upon conjecture, not facts. Under the UM 814 ring fencing conditions, PGE has continued to provide safe, reliable energy and access capital markets to fund its ongoing business throughout Enron's bankruptcy, as Mr. Piro explained in his testimony: "Notwithstanding the size and complexity of Enron's bankruptcy, PGE operated normally during this period, continued to maintain and invest in the system, and retained investment-grade credit rating from Moody's and S&P." PGE/100, Piro/13. PGE's president and CEO, Ms. Peggy Fowler, at her deposition agreed with Mr. Piro.

Q: (by Ms. Davison) In UM 814, that was the Enron acquisition of PGE.

A: (by Ms. Fowler) Right.

Q: (by Ms. Davison) Enron agreed to a number of conditions to ensure that Enron did not weaken PGE's financial condition and these conditions are called "ring fencing provision."

A: (by Ms. Fowler) Right.

Q: (by Ms. Davison) Do you believe that the ring fencing provisions provided adequate protection to PGE?

A: (by Ms. Fowler) . . . looking at how PGE was able to maintain its investment-grade rating through the process, I believe that the ring fencing did provided very adequate protection for PGE.

Q: (by Ms. Davison) Do you believe that the ring fencing provisions was sufficient to insulate PGE from Enron bankruptcy?

A: (by Ms. Fowler) . . . from my prospective as CEO, the fact that we were able to maintain our investment-grade rating I think shows we were adequately protected.

ICNU 906 pages 3-5.

The record confirms Ms. Fowler's and Mr. Piro's conclusion. Even after PGE weathered the brunt of Enron's bankruptcy, the financial troubles at PGE's parent had no material effect on PGE. No party has presented evidence to the contrary. In the end, the Enron merger conditions worked.

Even Staff's witness Morgan admits that PGE customers have not paid higher rates because of the Enron bankruptcy. Mr. Morgan in one short paragraph opines that the Enron bankruptcy caused an increase in PGE's debt expense (about \$7 million per year in alleged excess borrowing costs). Staff/900, Morgan/24. PGE disagrees with Mr. Morgan's assessment. PGE/400, Piro/9 lines 1-2. Most important, Mr. Morgan agreed that none of this alleged increase in borrowing cost is in PGE's rates.

Q: (By Mr. Mike Morgan) Is it accurate to say that PGE's rates do not currently include any of that five to seven million dollars or any number that relates to your testimony here?

A: (By Mr. Thomas Morgan) I think that's — that's correct.

Hearing Transcript at 73. After the most complex bankruptcy in U.S. history, customers have not paid higher rates because of the Enron bankruptcy.

#### **IV. The Staff minimum equity condition is unjustified and unworkable.**

In its surrebuttal testimony, Staff proposes two changes in the application of the minimum equity ratio. Condition No. 16, Staff/801, Conway/9. These proposed changes lack merit. The Commission should reject the proposed changes in favor of conditions that are consistent with the Commission's past practice and Oregon Electric's proposal.

First, the Commission Staff proposes a new test for determining whether a dividend distribution causes PGE's equity ratio to fall below 48%. The standard the Commission has applied in every other ORS 757.511 order is whether the dividend distribution "would cause" the equity ratio to fall below the prescribed level or "will reduce" the equity ratio below the minimum. *In the Matter of the Application of Enron*, UM 814, Order 97-196, Appendix A, at 2 (Staff 102/, Conway 6); *In the Matter of the Application of Sierra Pacific*, UM 967, Order No. 00-702, Appendix B, at 9 (Staff 102/, Conway 35); *In the Matter of the Application of Scottish Power*, UM 918, Order No. 99-616, Appendix Stipulation 5, at 6 (Staff 102/, Conway 16). Now Staff proposes a new subjective test. Dividend distributions must not be made if the distribution "could reasonably be expected" to cause PGE's equity ratio to fall below 48%.

There is no reason for the Commission to change the standard here. A new standard will create confusion and uncertainty. As Mr. Piro testified:

Q. Why do you object to Staff's proposal to trigger a restriction on dividends to Oregon Electric that could "reasonably be expected to" cause PGE capital structure to fall below 48% common equity?

A. Again, the inclusion of this phrase is new to this proceeding. PGE has been operating under the Enron condition which does not have this phrase, since 1997 without any problems. My primary concern is that the phrase is subjective and has no standards or interpretations to guide its application.

PGE/400, Piro/7.

PGE needs certainty whenever it makes a dividend distribution. It needs certainty that the distribution is final and cannot be later questioned. Once the dividend is distributed, it is impossible to "unscramble the egg" and recall the distribution. Utilities are able to issue dividends with confidence under the GAAP standard. "GAAP" stands for Generally Accepted Accounting Principles, which are commonly understood in the accounting industry. As Mr. Piro

testifies, "businesses can access a wealth of prior examples and seek advice from accounting professionals for assistance in applying GAAP." PGE/400, Piro/8. There are no standards available for deciding whether a dividend passes Staff's new test. Might a reasonable person conclude that the dividend could cause the equity ratio to go below 48%? Nobody knows and there is no precedent or guidance to follow.

Second, Staff proposed Condition 16 seeks to change the definition of long term debt used to calculate PGE's required equity ratio. Staff defines "long-term debt" to include short-term revolver draws over \$150 million. Staff/801, Conway/9. Condition 16(b). None of the previous merger and acquisition orders have defined the equity ratio in this way. Oregon Electric proposes that revolver draws over \$250 million be defined as "long-term debt" for the purpose of the minimum equity condition. Oregon Electric/501, Davis/4, Condition 16 (b).

PGE's revolvers have ranged from \$150 million to \$425 million, with an average around \$250 million. PGE/400, Piro/4. Mr. Piro confirms that PGE expects to increase its revolver capacity to \$250 million shortly after the acquisition.

We currently anticipate that after payment of the Enron catch up dividend and the closing of this transaction, PGE will acquire a new 3-year, \$250 million, unsecured revolver support our short-term capital needs. This will be consistent with PGE's average revolver capacity over the last 10 years.

PGE/400, Piro/5.

The effect of Staff's redefinition of long-term debt is to *de facto* increase the PGE's minimum equity level by about 2% (adding about \$100 million of long-term debt to PGE's balance sheet for purposes of calculating its equity ratio). See attached Exhibit 1 for illustration. Staff provides no evidence why this change is necessary or prudent. PGE/400, Piro/5. The UM 814 ring fencing conditions have been more than sufficient to protect PGE from the dangers

of the Enron bankruptcy. There is no evidence that Oregon Electric's circumstances require greater protections or that PGE requires a higher equity ratio.

Nor is there any evidence that this would be a wise policy change. Mr. Piro provides the only record evidence. He concluded that no change in the equity ratio is appropriate: "In my judgment, there is no reason why PGE should now have more equity than the 48% settled upon in the Enron merger docket." PGE/400, Piro/6. An increase in the equity ratio will place PGE's minimum equity ratio even further out of line with PacifiCorp's minimum required equity ratio of 39%. *PacifiCorp*, UM 918, Order No. 99-616, Appendix-Stipulation 5 at page 6 (Staff 102/, Conway 16). Staff provides no reason for the disparate treatment of similar utilities, nor is there any explanation for *increasing* the unequal treatment.

Both of Staff's proposed changes in the application of the minimum equity ratio should be rejected.

## **VI. Conclusion**

For the reasons set forth above and in the Opening Briefs of Oregon Electric and Enron Corp., the Commission should approve Oregon Electric's Application.

DATED this 17<sup>th</sup> day of November, 2004.

PORTLAND GENERAL ELECTRIC COMPANY

By



J. Jeffrey Dudley, OSB # 89042

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**Exhibit 1**

**Table 1. Equity percentages under UM 814 definitions**

	Dollar Amount	Percentage Amount
Equity Amount	1,070 Million	50.0%
Long-Term Debt Amount	1,070 Million	50.0%
Total	2,140 Million <sup>†</sup>	100.0%

Assuming the above is PGE's equity ratio calculated by the UM 814 standards, the impact of the new Staff definition of long-term debt is shown below. Staff would require \$100 million more to be added to long-term debt, if revolver draws reached \$250 million ( $250 - 150 = 100$ ). With the new staff definition, the new long-term debt amount is \$1,170 million ( $1,070 + 100 = 1,170$ ) and the new total capitalization is \$2,240 million ( $1,070$  equity +  $1,170$  long-term debt =  $2,240$ ). The resulting equity percentage falls to 47.8% as shown below.

**Table 2. Equity percentages under new Staff long-term debt definition.**

	Dollar Amount	Percentage Amount
Equity Amount	1,070 Million	47.8%
Long-Term Debt Amount	1,170 Million	52.2%
Total	2,240 Million	100.0%

From this example, demonstrates that a PGE equity ratio of 50% under the UM 814 conditions falls below the 48% minimum under the new staff long-term debt definition.

<sup>†</sup> \$2,140 million is PGE's approximate total capital on a regulated basis as of December 31, 2003. PGE/202, Tinker-Hager-Murray/27.

CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing Opening Brief of Portland General Electric Company in OPUC Docket No. UM 1121 by First Class U.S. Mail, postage prepaid and properly addressed for mailing, to the persons on the attached list, and by electronic mail to those persons on the electronic service list maintained by the OPUC.

Dated this 17<sup>th</sup> day of November, 2004.

PORTLAND GENERAL ELECTRIC COMPANY

By:



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