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November 16, 2004

VIA OVERNIGHT DELIVERY

Ms. Annette M. Taylor
Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street N.E., Suite 215
Salem, OR 97308-2148

RE: **Docket No. UM 1121**
Opening Brief of Associated Oregon Industries

Dear Ms. Taylor:

Enclosed for filing in the above-referenced docket are the original and five copies of the Opening Brief of Associated Oregon Industries. A certificate of service is also attached.

Please call me with any questions. Thank you for your assistance.

Sincerely,

/s/ Mary Ann Hutton

Mary Ann Hutton

Enclosures

cc: UM 1121 Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Opening Brief of Associated Oregon Industries upon the parties, shown below, on the official service list for Docket No. UM 1121, by causing the same to be electronically served on November 17, 2004, upon all parties who have an email address on the official service list, and by U.S. Mail, postage-prepaid, deposited on November 16, 2004, to those parties who do not have an email address on the official service list.

Dated at Roseburg, Oregon, this 16th day of November, 2004.

/s/ Mary Ann Hutton
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of)	
)	
OREGON ELECTRIC UTILITY)	
COMPANY, LLC, <i>et al.</i> ,)	UM 1121
)	
Application for Authorization to Acquire)	
Portland General Electric Company)	
<hr/>)	

**OPENING BRIEF OF
ASSOCIATED OREGON INDUSTRIES**

November 17, 2004

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1 **I. SUMMARY**

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- In order to approve the proposed transaction, the Commission must find it provides a net benefit to customers. The Commission should exercise its broad discretion to closely scrutinize the unique complexities, risks, and uncertainties inherent in this transaction.

- Numerous serious concerns surround this transaction. It presents a high degree of risk and uncertainty for PGE customers. These concerns include:
 - Complex layers of ownership, control and responsibility
 - Lack of stability due to short-term ownership; unresolved future ownership
 - Short-term investment objectives
 - Costs and risks from a double leveraged debt structure

- The proposed transaction must provide a net benefit to customers compared to the underlying condition of PGE.
 - PGE is not a distressed company, financially or operationally
 - PGE will transition to new ownership under its current status
 - The value of indemnification for potential liabilities is not clear cut

- The application, as filed, does not serve PGE’s customers in the public interest. If the Commission decides to approve the application, it must impose more stringent conditions to mitigate risks, protect customers, and result in the required net benefit to customers. Conditions should assure:
 - Stringent and comprehensive financial protections
 - Transparency and access to information
 - Continuity of programs benefiting customers
 - Rate credits as necessary to provide a net benefit to customers

- The Commission must assure that PGE’s customers will be protected from harm and actually see a net benefit from this transaction. The Commission must keep its sole focus on what serves PGE’s customers in the public interest, as required by ORS 757.511.

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II. INTRODUCTION

Associated Oregon Industries (“AOI”) submits this Initial Brief pursuant to the Posthearing Report issued October 26, 2004 in the UM 1121 docket. The Public Utility Commission of Oregon (“OPUC” or “Commission”) granted AOI’s request for Case Certification and approved AOI’s proposed budget for an intervenor funding Issue Fund Grant, enabling AOI to represent the interests of a broad cross-section of commercial, retail, and service-industry customers in the UM 1121 proceeding.¹ To efficiently utilize limited intervenor funding resources and avoid duplicating efforts, and consistent with its statement of work, AOI did not submit testimony in this case but has relied upon the extensive testimony provided by other intervenors and the OPUC staff. AOI was an active participant throughout settlement discussions in the case.

AOI now submits this brief urging the Commission to carefully scrutinize the unique complexities, risks and uncertainties inherent in the proposed transaction, and any conditions the Commission considers in regard to the transaction, in reaching its determination of whether the application serves PGE’s customers in the public interest as required by ORS 757.511.

Collectively, 1.5 million Oregonians -- 44% of the state’s population -- must depend on PGE for a critical service.² Oregonians pay well over \$1.2 billion a year in revenue to PGE. Over 92,000 commercial customers alone pay over \$500 million in annual revenues to PGE, accounting for 12% of the customers and 39% of the utility’s

¹ Re: Oregon Electric, OPUC Docket No. UM 1121, Order No. 04-303 (May 27, 2004); and OPUC Order No. 04-352 (June 23, 2004).
² ICNU/806 at 62.

1 revenues.³ For the sake of all these customers, and the economic well-being of the
2 state as a whole, the Commission must get this right. As a regulated monopoly provider
3 of an essential public utility service, PGE's future is critical to all customers -- as
4 employers, employees and consumers -- and to the economy of our state.

5 AOI believes it is in the best interests of PGE customers to reduce risks and
6 uncertainty, achieve financial strength, and attain long-term ownership and
7 management stability. Unfortunately, the proposed transaction raises numerous serious
8 concerns that could move PGE in the opposite direction. These concerns arise from the
9 complex layers of ownership and control intended to side-step federal regulatory
10 protections, short-term ownership and investment objectives, the unresolved issues of
11 ultimate ownership, and the double leveraged debt structure, among others.

12 If the Commission ultimately decides to approve this transaction, the Commission
13 must impose more stringent conditions than are proposed by the applicants. These
14 conditions must assure stringent and comprehensive financial protection, transparency
15 and access to information, continuity of programs benefiting customers, and rate credits
16 necessary to result in a net benefit to customers. These conditions are absolutely
17 necessary to protect customers from harm, the Commission's underlying basic legal
18 obligation, let alone to meet the higher standard that the application serves those
19 customers by producing a "net benefit" as required by ORS 757.511.

20 In the end, such conditions can mitigate risk, but they cannot eliminate it. Not
21 every contingency or loophole can be anticipated. No amount of conditions can change
22 the underlying structure of this transaction that gives rise to many of the concerns. With

³ Id. at 64.

1 these conditions, however, at least customers would be better protected from those
2 risks should the Commission decide to approve the application.

3 Unlike previous mergers applications, the Commission does not have the benefit
4 of relying on stipulations among the applicants, OPUC Staff, and customer groups to
5 assist the Commission in reaching conclusions and crafting appropriate conditions. In
6 this case, the Commission must do the hard work to absolutely assure that the
7 proposed transaction, if approved, would not only protect PGE customers from harm but
8 also serve those customers by providing a net benefit. The Commission can carry out
9 its statutory duty in this case only by keeping its sole focus on what serves PGE's
10 customers.

11 **III. ARGUMENT**

12 **A. In order to approve the proposed transaction, the Commission must**
13 **find it provides net benefits to PGE customers. The Commission**
14 **should exercise its broad discretion to closely scrutinize the unique**
15 **complexities and risks inherent in this transaction.**

16 The proposed transaction “must serve the public utility’s customers in the public
17 interest” under ORS 757.511(3). The Commission extensively reviewed relevant
18 statutes and adopted the legal standard applicable to such transactions in OPUC
19 Docket No. UM 1011. The Commission determined the law requires that the application
20 be “more than neutral with respect to utility customers” and that “absence of customer
21 harm is not sufficient to satisfy the standard for approval.”⁴ The Commission concluded
22 that the plain language of the statute requires a “net benefit standard” for approval.⁵ In
23 ORS 757.511(3) the Legislature imposed a “higher affirmative duty” on the Commission

⁴ Re Legal Standard For Approval of Mergers, OPUC Docket No. UM 1011, Order No. 01-778 (Sept. 4, 2001) at 10.

⁵ Id.

1 than in the rest of the statutory scheme directing the Commission to protect customers
2 from harm, intending a “net benefit standard” for approval.⁶

3 In adopting the legal standard for approval under ORS 757.511, the Commission
4 rejected arguments from PGE that the OPUC identify in advance the types of regulatory
5 risks it would consider and identify a form of conditions that would meet the most
6 common risks. In rejecting this notion, the Commission declared it “cannot anticipate
7 what risks might emerge in the future and will not restrict our discretion in such a way.”⁷

8 The Commission concluded that:

9 We will consider the total set of concerns presented by each merger
10 application in determining how to assess a net benefit. This allows us to
11 retain flexibility in our decision making....

12 In ORS 757.511(3), the Legislature has given the Commission discretion
13 in assessing whether to approve mergers. We do not propose to
14 circumscribe that discretion.... We cannot say in advance what showing a
15 given utility must make to gain approval; such a determination would
16 restrict the discretion the Legislature has given us. We will assess each
17 merger on a case by case basis.⁸

18 Prior to clarifying its legal standard in UM 1011, the Commission ruled on
19 three major merger applications under ORS 757.511: The Enron acquisition of PGE in
20 1997; the Scottish Power acquisition of PacifiCorp in 1999; and the application of Sierra
21 Pacific Resources to acquire PGE in 2000. In each of those cases, one or more
22 stipulations had been reached among the applicant, the OPUC Staff, and certain other
23 parties, and submitted to the Commission for approval.⁹ The stipulations contained
24 extensive conditions. The Commission had the benefit of those stipulated conditions to

⁶ Id.

⁷ Id. at 4.

⁸ Id. at 11.

⁹ Re Enron Corp., OPUC Docket No. UM 814, Order No. 97-196 at 2 (June 4, 1997); Re Scottish Power, OPUC Docket No. UM 918, Order No. 99-616 at 2 (Oct. 6, 1999); Re Sierra Pacific Resources, OPUC Docket No. UM 967, Order No. 00-702 at 1 (Oct. 30, 2000).

1 consider and incorporate into its orders in each of those prior cases.¹⁰ With the
2 conditions crafted based on the facts of each individual transaction, the Commission
3 found that each of those applications would serve the utility's customers in the public
4 interest.

5 In examining the Oregon Electric Utility Co. ("OEUC" or "Oregon Electric")
6 application in this docket, the Commission should consider the many factors that
7 distinguish this application from those prior cases. As will be discussed below, this
8 application presents unique complexity, opacity, uncertainty and risks.

9 The Commission has rightly declared its intention to assess each such
10 transaction on a case-by-case basis. The Commission should exercise the broad
11 discretion the Legislature has given it to assess whether to approve or deny this
12 application based on the total set of concerns presented by this particular application.¹¹
13 If the Commission ultimately decides to approve this application, it should do so only
14 with extensive conditions that improve upon conditions imposed in past cases and
15 provide the highest possible level of customer protection, which is necessary to address
16 the unique risks and uncertainties of this application.

17 In making its determination, the Commission should consider the lessons learned
18 since the last PGE acquisition: that the best of intentions do not guarantee results and
19 the unthinkable may indeed become the reality.

¹⁰ See Appendices to each order above.

¹¹ Notwithstanding its broad discretion, if the Commission does not believe its statutory or procedural framework is adequate to meet the Commission's needs to thoroughly assess an application such as this, AOI stands ready to assist the Commission to make any needed changes in the 2005 Legislature, in advance of any future such applications.

1 **B. Numerous serious concerns surround the proposed transaction. It**
2 **presents a high degree of risk and uncertainty for PGE customers.**

3 Numerous, serious concerns surround this application. They were well
4 addressed throughout the testimony of Staff, Industrial Customers of Northwest Utilities
5 (ICNU), Citizens Utility Board (CUB), and others. They include: complex layers of
6 ownership, control, and responsibility designed to side-step federal regulations; short-
7 term ownership and investment objectives with unresolved ultimate ownership and
8 control; and the double leveraged debt structure.

9 The risk from some of these concerns can be mitigated with stringent conditions
10 designed to protect customers. However, no matter how carefully crafted, conditions
11 cannot protect against all risks and uncertainties. And there are no conditions that will
12 change the underlying nature of this proposed transaction. Yet it is the very nature of
13 this transaction that gives rise to so many of the concerns.

14 **1. The complex layers of ownership and control of this**
15 **transaction create regulatory complexity.**

16 If this transaction closes, who will control PGE? Who will the OPUC regulate?
17 The applicants propose a labyrinth of ownership and control layers.¹² PGE would have
18 a new Board of Directors.¹³ However, PGE would be owned by OEUC, the chief
19 applicant here. OEUC is a holding company newly created for purposes of this
20 transaction. It is comprised of three groups: the “Local Applicants”, which will be made
21 up of Managing Member LLC and its individual owners; the “TPG Applicants” which are
22 comprised of two investment funds managed by Texas Pacific Group (“TPG”), TPG
23 Partners III, L.P. and TPG Partners IV, L.P.; and the “Passive Investors” which include

¹² See OEUC Application Amendment, Revised OEUC/9.

¹³ OEUC Application at 19.

1 the Bill & Melinda Gates Foundation and OCM Opportunities Fund III, L.P.¹⁴ The Local
2 Applicants would own about 0.4% of the economic interest in OEUC. The TPG
3 Applicants would own 79.9% of the economic interest.¹⁵ TPG Applicants would
4 ostensibly hold 5% of the voting control.¹⁶

5 The explicit purpose of allocating the voting control to OEUC is to avoid having
6 TPG or TPG Applicants be treated as a holding company under the Public Utility
7 Holding Company Act (“PUHCA”).¹⁷ The entire purpose of this contorted ownership
8 structure is to legally side-step federal consumer protections administered by the
9 Securities and Exchange Commission (“SEC”).

10 While ostensibly giving up voting control to get around federal regulations,
11 however, TPG Applicants would in actuality retain control over decisions affecting PGE.
12 The Local Applicants’ voting control is subject to an extensive list of “consent rights”
13 held by the TPG Applicants.¹⁸ These consent rights give TPG Applicants veto power
14 over a broad range of corporate decisions. TPG Applicant’s consent right powers range
15 from major decisions such as the sale of assets, to management decisions involving the
16 employment and compensation of officers. They include adoption of PGE’s annual
17 operating budget, capital budget, and financial plans. They include any material filing in
18 connection with a PGE rate proceeding. They include changes in rates or other tariffs.¹⁹

19 In addition, at least two of TPG’s partners would serve on the PGE Board of
20 Directors.²⁰ At least one of those would serve on the OEUC Board.²¹ TPG will certainly

¹⁴ Id. at 6.

¹⁵ Id. at 7.

¹⁶ Id.

¹⁷ Id.; OEUC/3, Davis/9; OEUC/5, Schifter/5-6.

¹⁸ OEUC/7 at 1-3; OEUC/901, Schifter/1-2.

¹⁹ Id.

²⁰ OEUC Application at 20.

1 be able to signal its desires to the OEUC and PGE Boards to get its way. But in any
2 case, TPG Applicants would have the ultimate control over PGE -- not the OEUC Board,
3 not the Local Applicants, not the Managing Members, and not the PGE Board.

4 Regardless of commitments to local “representation” on the PGE Board, and with
5 all due respect to the well-regarded individuals tapped for the Board and their presumed
6 good intentions and efforts, the fact remains: The TPG Applicants would ultimately
7 exercise the control over decisions affecting PGE.

8 Furthermore, TPG can cause an initial public offering (“IPO”) or other sale of
9 PGE without the approval of the OEUC or PGE Boards.²² Regardless of any
10 commitments to consult with the other boards, the fact remains that TPG would
11 ultimately be able to unilaterally determine how and when to dispose of PGE.

12 Moreover, if PUHCA is repealed, TPG’s need for the contortions of the OEUC
13 holding company goes away. The voting rights of the Local Applicants and the TPG
14 Applicants in OEUC will be adjusted to reflect their respective equity holdings.²³ TPG
15 Applicants will drop the façade and have direct voting control.

16 Clearly, having put up the vast majority of the investment equity for this
17 transaction, TPG has every interest in retaining control over its investment.
18 Unfortunately, the applicant’s assertions that local “representation” on the PGE Board
19 will provide a benefit to customers is illusory. Even if PGE Board members’ interests
20 were aligned with customers, which they are not, TPG Applicant’s control over PGE
21 decisions trumps any mere representation on the Board.

²¹ OEUC Application Amendment at 2.

²² Hearing Transcript (“Tr.”) at 176-177 (Schifter).

²³ OEUC Application at 7; OEUC/3, Davis/9.

1 The complexity of this transaction may not be quite so worrisome if the
2 Commission could examine the applicants' track record in managing a utility.
3 Unfortunately, they don't have one. TPG and the applicants have absolutely no
4 experience in owning or managing a fully regulated, monopoly utility.²⁴ Even the
5 proposed members of the PGE Board, esteemed and respected as they are, have no
6 utility or energy industry experience except for current CEO Peggy Fowler and one
7 other proposed member who lives far away from Oregon.²⁵ The Managing Members
8 and others individuals serving on the Oregon Electric Board also do not have any utility
9 experience.²⁶

10 The Legislature obviously intended that an applicant's experience in operating
11 public utilities should be an important consideration for the Commission. ORS
12 757.511(2)(g) expressly requires the applicant to provide "detailed information"
13 regarding the applicant's experience operating public utilities. The applicants could not
14 provide any. If this were a job application, the applicants would have failed a basic
15 qualification.

16 In its initial application, the applicants cited one of the benefits of the proposed
17 transaction was that it is simple and straightforward.²⁷ The extensive testimony from all
18 parties in the record shows it is anything but.

19 What does this structure actually provide customers? Lack of clarity, over who
20 will have ultimate control over decisions large and small; lack of transparency, since the
21 TPG Applicants are private equity investment funds not subject to the same public

²⁴ OEUC Application, Appendix A at 2.

²⁵ OEUC Application, Exhibit No. 23.

²⁶ OEUC Application Amendment at 2.

²⁷ OEUC Application at 25.

1 reporting requirements or shareholder disclosures of publicly traded corporations;
2 regulatory complexity, given that the Commission will primarily regulate PGE operations
3 yet have to anticipate the risks and follow the dollars up a chain of ownerships through
4 the OEUC holding company and back to the true controlling entities; lack of meaningful
5 local control despite local “representation” on the Board; and lack of experience at the
6 controlling levels in operating a public utility.

7 As the Enron bankruptcy experience has shown, the Commission’s conditions
8 imposed on an acquisition are critical to protecting a regulated utility’s assets and the
9 utility’s customers. Crafting the conditions sufficient to protect customers in this
10 proposed transaction is made even more difficult by the types of entities and ownership
11 structures involved. The proposed transaction creates a degree of uncertainty and risk
12 that is extremely difficult to mitigate. These concerns are heightened when combined
13 with the fact that this is intended to be a short-term, transitional ownership.

14 **2. Short-term ownership does not bring needed stability to PGE**
15 **and does not benefit PGE customers.**

16 As the applicants correctly point out, “Electricity is a crucial service, and a stable,
17 successful utility is an attractive regional asset that will help draw businesses and jobs
18 to Oregon.”²⁸ Unfortunately, the proposed transaction does not result in stable
19 ownership for PGE.

20 There is no question that the proposed transaction would result in a short-term,
21 transitional ownership. TPG plans to sell PGE; the only questions are when and to
22 whom.²⁹ TPG can only hold investments for up to 12 years.³⁰ The actual ownership

²⁸ OEUC Application at 23.

²⁹ Tr. at 140 (Kohler).

³⁰ OEUC/3, Davis/12.

1 period may be much shorter, from five to seven years.³¹ The applicants have not
2 allowed any specific plans about PGE’s future to be made public in the record of this
3 proceeding, keeping their assumptions under confidential wrap.³² However, TPG’s
4 presumed ownership duration is considered a very brief period when compared to other
5 events in the electric utility industry.³³

6 The applicants’ plan to resell PGE means that, in the interim, PGE and its
7 customers will continue to operate with the “management distractions” and “uncertain
8 ownership outlook” cited by applicants.³⁴ The question remains, how do PGE customers
9 benefit from this transitional ownership, especially if the Commission, PGE, and
10 customers will all be back at this again in a few years, examining the application of the
11 new prospective owners? PGE needs stable ownership. Unfortunately, the proposed
12 transaction provides just the opposite.

13 **3. Short-term investment objectives do not align with long-term**
14 **customer interests.**

15 The transitional ownership proposed by the applicants raises further concerns in
16 that it creates short-term investment objectives that do not align with long-term
17 customer interests.

18 Traditional utility investors expect to earn an allowed rate of return over time.
19 They are in it for the long haul, attracted by the steady revenue stream from customers
20 of a monopoly.³⁵ This is quite different from TPG’s short-term investment objectives.
21 Again, the applicants do not want the public to know how much they hope to make off of

³¹ CUB/100, Jenks-Brown/8; COP/100, Anderson/10; ICNU/300, Schoenbeck/5.

³² See, e.g., ICNU/104, Schoenbeck/17-22 (Confidential)

³³ ICNU/100, Schoenbeck/7.

³⁴ OEUC Application at 23.

³⁵ CUB/100, Jenks-Brown/8.

1 their short-term ownership of PGE, keeping this information confidential. In testimony
2 with the details confidential, the OPUC staff recited the expected returns to investors --
3 savings in taxes due to the increased debt leverage at the consolidated level, savings in
4 operations and maintenance (O&M), savings in capital expenditures.³⁶ Staff illuminated
5 how much the applicants expected to make over five years even in their “downside
6 case”, as well as their expected returns if PUHCA is repealed.³⁷ Extensive testimony
7 from multiple parties described how the transitional ownership and leveraged capital
8 structure of the proposed transaction creates incentives to cut costs, reduce capital
9 expenditures, and maximize the re-sale value of PGE in the short-term, as well as how
10 the applicants themselves have factored these cost savings into their plans for the
11 return on their investment.³⁸

12 Clearly, TPG is relying upon achieving significant O&M savings in order to realize
13 its targeted returns on this short-term investment. Looking for every area to save costs
14 without hurting safety and reliability is certainly a worthy goal. However, one problem is
15 knowing how much can be trimmed without affecting safety and reliability.³⁹ Another is
16 getting those cost savings passed through to customers.

17 AOI certainly supports finding efficiencies and cutting unnecessary utility costs.
18 However, deferring needed maintenance or failing to make timely capital investments
19 does not serve customers, even with rate reductions, if service quality suffers to
20 unacceptable levels over the long-term. Unfortunately, service quality measurements
21 cannot be relied upon to indicate whether expenditures are at appropriate levels. The

³⁶ Staff/800, Conway/12; Staff/300, Durrenberger/3-6.

³⁷ Id.

³⁸ CUB/100, Jenks-Brown/8; CUB/200, Dittmer/29; COP/100, Anderson/11; ICNU/100, Schoenbeck 12-21.

³⁹ Staff/1000, Durrenberger/3.

1 decisions affecting quality of service may be made many years before any service
2 quality problems surface.⁴⁰ Under the applicants' business plan, these transitional
3 owners of PGE may be long gone before the new owners, and the customers, must
4 deal with the consequences in the form of deteriorated service or catch-up
5 expenditures.⁴¹ Customers must not bear the long-term downside risks that accompany
6 short-term investment incentives.

7 Furthermore, if there are savings to be realized at PGE, large or small, they must
8 be returned to ratepayers in the form of lower rates. Similarly, if value is built up in
9 PGE, customers should see the benefit of that value over the long-term. Unfortunately,
10 under our regulatory system of utility-initiated rate cases, assuring that these savings
11 are returned to customers between rate cases is extremely problematic.⁴²

12 Whether for five years, seven years or a maximum of twelve years, the
13 investment interests of a transitional owner within that time horizon are not aligned with
14 the long-term interests of captive utility customers. Unfortunately, conditions can only
15 be crafted to attempt to protect customers from the consequences of these interim
16 actions. Conditions cannot change the underlying financial incentives of this
17 transaction.

18

⁴⁰ CUB/300, Jenks-Brown/9-11.

⁴¹ CUB/200, Dittmer/30.

⁴² CUB/100, Jenks-Brown/7.

1 **4. The double leveraged debt structure of this transaction**
2 **creates potential costs and risks for PGE and its customers.**

3 Extensive testimony from the OPUC staff and intervenors addressed the high
4 level of debt at the parent company resulting from the proposed transaction, and the
5 potential costs and risks to PGE and its customers.⁴³

6 The applicants propose to use substantial amounts of debt at the holding
7 company level to finance the purchase of PGE's equity in this double leveraged
8 transaction. Consolidated equity capital would be leveraged once at the utility level with
9 PGE's existing debt, and a second time at the holding company with new debt required
10 for this acquisition. OEUC will need about \$1.47 billion to complete the transaction. It is
11 expected to be funded by \$525 million in equity capital from TPG, \$707 million of debt,
12 and \$240 from PGE's own cash on hand in the form of an immediate dividend.⁴⁴ PGE's
13 own debt level is currently about 48%. The applicants would buy PGE's 52% equity
14 capital with 25% equity and 75% debt, thereby double leveraging the equity capital.⁴⁵
15 Credit rating agencies incorporate these two levels of debt in their credit analysis.⁴⁶

16 This double leverage debt structure creates potential costs and risks for PGE and
17 its customers. Concerns include the ongoing costs of servicing the debt (the terms of
18 which are not known); the impact of measures TPG and the applicants may take to
19 extract cash from PGE to service and pay down this debt; impacts from lower credit
20 ratings affecting the cost of capital and operating costs; and the potential for bankruptcy
21 should the parent company not be able to meet its obligations. Customers must not

⁴³ See Staff/900, Morgan/9-16; ICNU/200, Antonuk-Vickroy/13-26.

⁴⁴ ICNU/200, Antonuk-Vickroy/16. It should be noted that PGE may need to borrow money to pay this full dividend amount. Tr: at 21:10-14 (Piro). Also, after payment of the dividend, PGE would acquire a new unsecured revolver (line of credit) of \$250 million for its working capital needs. PGE/400, Piro/5. This would decrease PGE's equity ratio to a range of 48-50%. Tr: at 23:17-18 (Piro).

⁴⁵ ICNU/200, Antonuk-Vickroy/21.

⁴⁶ Id. at 22.

1 face risks of higher rates, higher power costs, lower reliability, safety issues, or any
2 other consequences from this debt.

3 While the proposed transaction would remove PGE from the Enron bankruptcy,
4 the financial standing and credit rating of PGE may actually be worsened under this
5 transaction.⁴⁷ The Commission must look not only to direct impacts such as cost of
6 capital, but also to less obvious impacts such as less favorable terms for purchased
7 power.⁴⁸ Conditions crafted to address the former may not protect customers against
8 the latter. Such indirect impacts may be very difficult to identify and protect against.
9 Even if the cost causation can be identified, PGE may seek to shift risks onto customers
10 through mechanisms such as power cost adjustments and revenue decoupling
11 mechanisms.⁴⁹ It is often said in the utility regulatory maze that we cannot color code
12 the dollars. This maxim particularly holds true in this situation. As debt increases, so
13 does the holding company's need to ensure there is sufficient income to repay it.⁵⁰
14 Ratepayers are the source of that income.

15 The multiple layers of ownership and control involved in this transaction make it
16 more difficult for the Commission to craft conditions that assure that PGE and its
17 customers will not be harmed by this debt. Nevertheless, given that revenues from
18 captive PGE ratepayers are the paramount revenue stream relied upon to generate the
19 dividends to meet these debt obligations, PGE customers must be protected from any
20 and all potential harms resulting from this double leveraged deal.

⁴⁷ Id. at 18-19.

⁴⁸ Id. at 20.

⁴⁹ Staff/900, Morgan/9.

⁵⁰ Id., at 10.

1 The Commission should not allow the holding company of a regulated public
2 utility to risk harm to the utility and its customers by using a long-term leveraged
3 structure.⁵¹ If the Commission otherwise finds that the overall transaction provides a net
4 benefit to customers, the Commission must impose the most stringent and
5 comprehensive conditions, such as proposed by the OPUC staff and intervenors, to
6 assure that customers are protected from the clearly negative impacts and risks
7 presented by this double leveraged transaction. These conditions are addressed in
8 Section III.D. below and set out in Section V. As discussed in Section III.A., the
9 Commission needs to go beyond the conditions imposed in previous acquisition cases
10 in order to protect customers from the unique risks and potential costs posed by this
11 application.

12 **C. The proposed transaction must provide a net benefit to customers**
13 **compared to the underlying condition of PGE.**

14 When measuring whether the proposed transaction results in a net benefit for
15 PGE customers, the underlying question is, “Compared to what?” The applicants
16 propose a change in the status quo. The potential risks, detriments, and benefits of the
17 application must be compared to the status quo of PGE. The change must leave
18 customers better off than they would be without the transaction under the status quo.
19 This status quo includes all aspects of PGE’s current status: operational, financial, legal,
20 and structural. As discussed below, PGE is not a distressed company that needs to be
21 rescued, and the transition to new ownership will occur with or without this application.

22

⁵¹ Id.

1 **1. PGE is not a distressed company, financially or operationally.**

2 PGE is not a distressed company, financially or operationally. PGE is not in
3 bankruptcy.⁵² Enron owns 100% of the common stock of PGE, and Enron and certain
4 of its affiliates are in chapter 11 bankruptcy. The PGE shares are an asset of Enron's
5 bankruptcy estate, and will be disposed of under a Bankruptcy Plan.⁵³

6 PGE has operated normally during the Enron bankruptcy debacle, has continued
7 to maintain and invest in the system, and has retained investment-grade credit ratings
8 from Moody's and S&P.⁵⁴ Conditions that the Commission put in place when Enron
9 acquired PGE, and since, have provided significant protections to PGE and its
10 customers. PGE has had sufficient financial separation to prevent PGE from being
11 consolidated into the Enron bankruptcy.⁵⁵ The measures now in place have prevented
12 Enron from gaining undue access to PGE's equity capital, pledging PGE assets as
13 collateral, or selling PGE's assets to pay Enron's creditors. PGE has maintained its
14 investment grade credit rating, while Enron's credit ratings are "D", for default status.⁵⁶

15 Recently, PGE's equity capital level has been in the 52-55% range.⁵⁷ Even if a
16 dividend were paid that depleted PGE's current cash balance, with or without this
17 transaction, PGE's common equity ratio would be in the 48-50% range.⁵⁸ PGE
18 continues to serve its customers effectively and operate well. PGE has adequate
19 liquidity and stable operating cash flow.⁵⁹ Enron's bankruptcy has not impacted PGE's

⁵² Enron/1, Bingham/1-2.

⁵³ Id.

⁵⁴ PGE/100, Piro/13.

⁵⁵ ICNU/200, Antonuk-Vickroy/14.

⁵⁶ Id. at 14-15.

⁵⁷ ICNU/200, Antonuk-Vickroy/21; PGE/100, Piro/11.

⁵⁸ Tr. at 23 (Piro).

⁵⁹ Staff/200, Morgan/50 (PGE 10Q excerpt).

1 ability to access capital.⁶⁰ PGE would be expected to operate over the foreseeable
2 future without problems.⁶¹

3 If this transaction does not go forward for any reason, the conditions to protect
4 customers that the Commission put into place during Enron's purchase of PGE would
5 remain in place.⁶² The Commission would be able to review and approve the future
6 transfer of ownership out of the Bankruptcy Plan under ORS 757.511.⁶³

7 PGE also is not distressed operationally. In terms of day-to-day operations,
8 Peggy Fowler, CEO and President of PGE, says Enron has let PGE operate as a stand-
9 alone company.⁶⁴ Ms. Fowler is in control of the daily functions at PGE and Enron has
10 been hands-off when it comes to operations.⁶⁵ According to Fowler, Enron has "allowed
11 us to stay focused on providing safe, reliable and cost-efficient energy to our customers,
12 and the bankruptcy process has pretty much just gone on while we've continued to
13 operate."⁶⁶ PGE has been continuing to make long-term commitments.⁶⁷

14 Ms. Fowler explains that the role of Enron is similar to that of a regular board of
15 directors in terms of ensuring that the company has an ongoing successful operation,
16 that it meets customer needs, and that it receives a fair return for the shareholders.⁶⁸
17 Ms. Fowler reports to the Board and the Board meets in Portland.⁶⁹

⁶⁰ ICNU/906 at 6 (Fowler Deposition).

⁶¹ Staff/200, Morgan/56.

⁶² Id. at 55.

⁶³ Id.; Enron/1, Bingham/5.

⁶⁴ ICNU/906 at 5.

⁶⁵ Id. at 17-18.

⁶⁶ Id. at 5.

⁶⁷ Id. at 15.

⁶⁸ Id. at 18.

⁶⁹ Id. at 2, 20.

1 Certainly, the Enron bankruptcy and prospective sale of PGE have been
2 distractions and taken up people’s time at PGE.⁷⁰ However, amidst these distractions,
3 PGE has continued to function and serve its customers as a locally-managed company.
4 As part of its own due diligence, TPG found that “PGE is a fundamentally sound utility
5 with talented and dedicated employees, a high-quality service territory, well-maintained
6 generation assets, and a long track record of solid customer service.”⁷¹ Despite the
7 Enron distractions, the 2004 J.D. Powers Utility Customer Satisfaction Study showed
8 that, out of 12 western utilities, PGE ranks fourth on both the nonresidential and
9 residential cumulative customer service indexes.⁷²

10 In determining whether this transaction provides a net benefit to
11 customers, the Commission must measure the applicants’ proposal against the status
12 quo. The fact is, PGE is not a distressed company that needs to be rescued. It is
13 operating as a locally managed, financially healthy, stand-alone utility. PGE does need
14 to have its ultimate ownership status resolved to reduce outside distractions and
15 achieve long-term ownership stability. However, PGE’s ownership status will be
16 resolved with or without the transitional ownership proposed by the applicants.

17 **2. PGE will transition to new ownership under either its current**
18 **status or the proposed transaction.**

19 The applicants claim that a benefit of this transaction is an immediate end to
20 Enron’s ownership of PGE “ensuring stability and unified ownership”.⁷³ However,
21 Enron’s ownership will soon end with or without this transaction.

⁷⁰ *Id.* at 5.

⁷¹ OEUC Application at 14.

⁷² PGE/300, Hawke-Elliot/1.

⁷³ OEUC/500, Davis/37.

1 As discussed above, Enron is in Chapter 11 bankruptcy and Enron's shares in
2 PGE are an asset in Enron's bankruptcy estate. Disposition of Enron's shares in PGE
3 will be made in accordance with the approved Bankruptcy Plan.⁷⁴ If this transaction
4 does not go forward, unless another potential buyer steps forward in the interim,
5 Enron's entire interest in PGE will be removed from Enron in a single transaction.⁷⁵ The
6 current PGE shares owned by Enron will be cancelled. PGE will issue new PGE
7 shares, representing 100% of its common stock, to the holders of allowed claims. A
8 portion of the new PGE shares will be issued to a Disbursing Agent and held in reserve
9 to cover disputed claims from the Enron bankruptcy. The Disbursing Agent will
10 periodically release the new PGE shares to the holders of resolved claims until all of the
11 new PGE shares have been released to the creditors.⁷⁶ Once a sufficient amount of the
12 common stock is distributed to creditors, it is expected the shares would be publicly
13 traded.⁷⁷ The OPUC will have the opportunity to approve the issuance of the new PGE
14 shares, as well as the authority of the Disbursing Agent in voting the new PGE shares
15 held in the Disputed Claims Reserve.⁷⁸

16 Enron's Bankruptcy Plan requires that the distribution of PGE's stock begin as
17 soon as practicable after the effective date of the Plan. The Bankruptcy Court
18 confirmed the Plan in July of this year. It is now expected that the conditions preceding
19 distribution will likely be met during the last half of 2005.⁷⁹

⁷⁴ "Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code"; Enron/1, Bingham/1-2.

⁷⁵ Enron/1, Bingham/4-8; Staff/200, Morgan/55.

⁷⁶ Enron/1, Bingham/5.

⁷⁷ Staff/202, Morgan/11 (PGE's March 31, 2004 SEC 10-K Statement)

⁷⁸ Enron/1, Bingham/5.

⁷⁹ Enron/2, Bingham/5.

1 To recap, if the TPG/OEUC transaction does not move forward for any reason, it
2 is possible that another purchaser could step forward before the PGE stock is
3 cancelled. In that case, the Commission would exercise its authority to review that
4 transaction under ORS 757.511 to determine whether it serves PGE’s customers in the
5 public interest, just as in this docket. Otherwise, PGE’s stock will be reissued and
6 distributed into the hands of multiple owners, similar to the results of an Initial Public
7 Offering (IPO). Again, the OPUC will have authority over that transaction. Once
8 through the transitional phase to distribute all the stock, PGE would become a stand-
9 alone company with publicly-traded stock in the hands of multiple shareholders.

10 On the other hand, if the OPUC approves the proposed transaction, the
11 applicants still must clear other regulatory hurdles before the transaction closes,
12 including critical actions from the SEC that are far from certain.⁸⁰ Then, after a period of
13 transitional ownership, PGE (or controlling interests in the parent company) will be
14 resold. The sale may be to another investor or company, apparently applicants’ “most
15 likely exit alternative”. As a “backstop”, an Initial Public Offering or financial buyer may
16 be the exit route.⁸¹

17 An IPO is the preferred choice of Tom Walsh, one of the applicants and also a
18 Managing Member and prospective PGE Board member. He believes an IPO provides
19 the best long term “assurance that would bring PGE back to what it historically was,
20 which is a locally-controlled, investor-owned utility.”⁸² If an IPO is the ultimate end-point
21 following TPG’s transitional ownership, Mr. Walsh testified, “...at that point the whole

⁸⁰ OEUC Application, Appendix A at1; OEUC/5, Schifter/6; OEUC/900, Schifter/2-3; Tr.at 179-187 (Schifter)

⁸¹ Tr. at 160 (Walsh).

⁸² Id., at 153.

1 saga of the historically great PGE that went through the mud bath of Enron will be over
2 and we'll be back to where we all wished we'd stayed in the first place.”⁸³

3 Mr. Walsh's preference for an IPO may not be widely held nor shared by TPG.⁸⁴
4 We can draw inferences from the applicants' confidential information but, ultimately, as
5 Mr. Walsh points out, the marketplace may decide whether it is a sale to another
6 company or an IPO.⁸⁵ As previously discussed, despite local representation on the
7 PGE Board and the existence of Oregon Electric as the holding company, TPG can in
8 fact cause either an IPO or another sale of PGE.⁸⁶

9 So, to sum up, where are we without this transaction? If no other buyer steps up
10 in the interim, we will have a distribution of stock to multiple shareholders, resulting in a
11 stand-alone, publicly owned, locally-managed utility.

12 And where are we with this transaction? Assuming other regulatory hurdles are
13 cleared, we will have an unknown period of interim ownership, and then we will
14 eventually have a sale to another investor or company, or an IPO.

15 If the end result is the same, is there a benefit to customers to go through this
16 transitional ownership, particularly if it presents unresolved risks? In determining
17 whether this transaction provides a net benefit to customers, the Commission should
18 not assign value to the fact that the applicants are simply ABE (“Anyone But Enron”).
19 The Commission must dispassionately examine the potential outcomes of this
20 transaction.

⁸³ Id., at 154.

⁸⁴ Id. at 160.

⁸⁵ Id.; CUB/108, Jenks-Brown/1 (Confidential); CUB/109, Jenks-Brown/1 (Confidential).

⁸⁶ Tr. at 176-177 (Schifter).

1 **3. The value of indemnification for potential liabilities is not**
2 **clear-cut.**

3 The applicants claim that one of the primary benefits of this application is Enron's
4 agreement to indemnify Oregon Electric and/or PGE from certain categories of
5 liabilities, including those arising from Enron's ownership.⁸⁷ Four general categories of
6 liabilities have been identified, with varying caps on payments for each category.⁸⁸ The
7 applicants did not provide valuation data for some items, limiting the OPUC Staff's
8 analysis.⁸⁹ The extent of PGE's exposure is not certain, and there is no agreement to
9 shield PGE customers from certain portions of the liabilities.⁹⁰ If the Commission is to
10 rely on this indemnification as a benefit of this transaction, it must impose the conditions
11 proposed by Staff and intervenors that require that all indemnifications be directly
12 assigned to PGE. Even this would not provide complete recovery, however.⁹¹

13 How does the value of this indemnification compare to the liability of PGE and its
14 customers if this transaction does not move forward? That is a two-part question. First,
15 regarding PGE's liability, Enron would likely enter into an indemnification with PGE for
16 what are called the "control group" liabilities. Enron has entered into similar
17 indemnification agreements as part of its separation agreements with other
18 subsidiaries.⁹² As to the remaining liabilities, the valuation of PGE as an asset of the
19 bankruptcy includes consideration of outstanding liabilities. If this transaction does not
20 go forward, and the next steps of the Bankruptcy Plan are set in motion, these potential
21 liabilities will once again be a part of the net valuation of PGE -- any purchaser of PGE

⁸⁷ OEUC/500, Davis/36.

⁸⁸ OEUC/100, Davis/34-36.

⁸⁹ Staff/900, Morgan/6.

⁹⁰ Id.

⁹¹ Id.

⁹² Enron/2, Bingham/3-4; OEUC/100, Davis/36.

1 should expect that it would absorb the liabilities to which PGE might be exposed.⁹³ As
2 among Enron, the creditors, and the value of PGE, the treatment of liabilities becomes a
3 zero-sum game.⁹⁴ Obviously, parties may differ in their analysis over the present value
4 of the liabilities but no prudent business person on either side of a transaction is going
5 to accept liabilities unknowingly or without appropriate adjustments in the sale price or
6 valuation.⁹⁵

7 The second part of the question, concerning impact on PGE customers, is quite
8 different. The OPUC has full authority to keep any inappropriate costs that are not the
9 responsibility of customers from being included in customer rates, directly or indirectly.⁹⁶
10 Even without this transaction, either a new purchaser or the recipients of distributed new
11 PGE shares, will take ownership of PGE with all of its assets and liabilities as defined in
12 a sales agreement or Bankruptcy Plan. There is no requirement or expectation that
13 they should be borne by customers.⁹⁷

14 The questions surrounding Enron-era liabilities are complex to say the least.
15 Once again, the Commission must closely scrutinize the value of the proposed
16 transaction against the status quo, neither of which is as black or white as the
17 applicants imply. At a minimum, if the Commission decides to approve this application,
18 AOI urges the Commission to impose the most stringently worded conditions to assure
19 that the purported value of this indemnification agreement is indeed realized by having
20 the protections explicitly extend to PGE and its customers.

⁹³ Staff/200, Morgan/8.

⁹⁴ Enron/3, Bingham/2.

⁹⁵ Staff/200, Morgan/8.

⁹⁶ CUB/300, Jenks-Brown/23-24.

⁹⁷ Staff/200, Morgan 8-9.

1 **D. The application, as filed, does not serve PGE’s customers in the**
2 **public interest. If the Commission decides to approve the**
3 **application, it must impose more stringent conditions to mitigate**
4 **risks, protect customers, and result in a net benefit to customers.**

5 This application presents unique concerns not faced by the Commission in other
6 recent acquisition cases: the complex layers of ownership and control; the implications
7 of short-term ownership; the double leveraged debt structure; the fall-out from PGE’s
8 past ownership by Enron. The applicants have attempted to address some of these
9 concerns with proposed conditions that they would be willing to accept. However, those
10 conditions do not go far enough to protect customers from the potential harms that
11 could arise as a result of this transaction, let alone result in a net benefit as required by
12 ORS 757.511.

13 If the Commission ultimately decides to approve this transaction, the Commission
14 must impose more stringent conditions than are proposed by the applicants in order to
15 protect PGE customers and find that the application serves PGE customers in the public
16 interest. If the Commission decides to approve this application, AOI urges the
17 Commission to impose comprehensive conditions on the approval that will assure:

- 18 ▪ Stringent comprehensive and financial protections;
- 19 ▪ Transparency and access to information;
- 20 ▪ Continuity of programs benefiting customers; and
- 21 ▪ Rate credits necessary to assure a net benefit for customers.

22 Unlike in past acquisition cases, the Commission does not have the benefit of
23 comprehensive, agreed-upon conditions stipulated to by the applicants, OPUC staff,
24 and intervenors. If it chooses to approve this application, it will be up to the
25 Commission to do the hard work of closely analyzing the language of conditions

1 proposed by the applicants, Staff, and intervenors to select the conditions and wording
2 that serves PGE’s customers in the public interest. The Commission must assure that
3 essential protections cover not just OEUC and PGE, but extend to TPG and TPG
4 Applicants, and other affiliates as necessary, to assure that proper regulatory protection
5 and transparency is provided. Given the complexity of this transaction, the Commission
6 cannot afford to “just get close” on these conditions.

7 If the Commission ultimately approves this application, AOI recommends it do so
8 only with the conditions set out in Section V of this brief. Of course, the applicants have
9 the burden of proof to show their proposal meets the statutory standard.⁹⁸ It is not the
10 responsibility of other parties to help them make their case. Nonetheless, in an effort to
11 assist the Commission to protect customers, each of these conditions was contained in
12 parties’ testimony with an explanation of its importance.

13 These conditions are necessary to protect customers by providing necessary
14 financial protections, transparency and access to information, and continuity of
15 programs such as direct access. Such conditions are absolutely necessary to protect
16 customers from harm. They would be an essential element in a Commission finding
17 that the application, as a whole, serves PGE’s customers in the public interest as
18 required by law.

19 In addition to these protective conditions, the Commission must examine the
20 level and certainty of “rate credits” provided to customers in this transaction, in order to
21 determine whether it results in a net benefit to customers. Rate credits have been a
22 significant element in past acquisition cases in which the Commission concluded there
23 was a net benefit to customers. AOI urges the Commission to evaluate such rate

⁹⁸ ORS 757.511(3).

1 credits in context with all the unique circumstances of this transaction, including the
2 regulatory complexities and risks inherent in the proposed ownership structure, the
3 dynamics and incentives of short-term ownership, and the potential risks of the high
4 level of debt, as discussed in this brief.

5 In its last round of testimony, Oregon Electric ultimately offered a total of \$43
6 million in rate credits, with \$8.6 million applied to customer bills for five years starting in
7 2007.⁹⁹ Under the applicants' plan, the rate credits would be offset if savings were
8 identified in the next general rate case, in which case the rate credit amount would be
9 passed through to customers through the standard, base tariffs. If the savings were
10 equal to or greater than \$8.6 million, the rate credit amount would be adjusted to zero.
11 The rate credit provision would survive to a new owner if PGE changed hands before
12 2011. The applicants' proposed rate credit was based on what they believed to be an
13 achievable level of savings in the next general rate case.¹⁰⁰ If those savings are
14 realized, the savings would be passed along to customers in PGE's base rates, as they
15 normally would be. If the savings are not realized to the extent of the rate credit,
16 customers would then get the benefit of the rate credit.

17 The OPUC Staff made a case for a total of \$75 million in guaranteed rate credits,
18 \$15 million per year for the first five years after closing, with no rate case offsets. Staff
19 analyzed the rate credits involved in prior cases before the Commission, noting that in
20 each case the rate credits were deemed necessary to conclude that the transaction
21 provided net benefits to customers. Staff recommended the \$75 million in rate credits to
22 offset the net risks and harms present in this transaction and produce net benefits for

⁹⁹ OEUC/501, Davis/5-6.

¹⁰⁰ OEUC/500, Davis/23.

1 customers.¹⁰¹ Staff also compared its \$75 million of rate credits against the applicants’
2 projected savings and gains from their short-term ownership of PGE, which has been
3 kept confidential from the public in this case.¹⁰²

4 ICNU asserted that guaranteed rate credits totaling \$97 million were
5 appropriate for this transaction. ICNU cited the higher level of risk involved in this
6 transaction compared to prior cases, and also reviewed the levels of rate credits in
7 those prior cases.¹⁰³ Given the higher level of risk, ICNU concluded, the rate credit
8 should at least match the rate credit the Commission approved in the most recent case.
9 That was a \$97 million rate credit to be provided to customers over approximately six
10 years in the Sierra Pacific proceeding.¹⁰⁴

11 CUB also concluded that this transaction would create more risk than the Sierra
12 Pacific transaction. CUB asserted that the “starting place” for rate credits is greater
13 than the \$97 million approved in that case.¹⁰⁵

14 CUB astutely pointed out that the rate credit issue is a moving target: Without
15 knowing which risks are still outstanding, it is difficult to monetize those risks in an
16 attempt to compensate customers.¹⁰⁶ Unlike in previous acquisition cases, there is no
17 stipulation in this case containing a comprehensive list of conditions.¹⁰⁷ Given that AOI
18 cannot know what conditions the Commission would impose upon this application if it
19 were approved, we cannot evaluate the risks and detriments that will remain to be borne

¹⁰¹ Staff/800, Conway/12.

¹⁰² Id.

¹⁰³ ICNU/300, Schoenbeck/2.

¹⁰⁴ Id. at 5.

¹⁰⁵ CUB/300, Jenks-Brown/36.

¹⁰⁶ Id.

¹⁰⁷ Re Enron Corp., OPUC Docket No. UM 814, Order No. 97-196 at 2 (June 4, 1997); Re Scottish Power, OPUC Docket No. UM 918, Order No. 99-616 at 2 (Oct. 6, 1999); Re Sierra Pacific Resources, OPUC Docket No. UM 967, Order No. 00-702 at 1 (Oct. 30, 2000).

1 by customers. The Commission must make that determination based on the totality of
2 circumstances surrounding this transaction. Certainly, even with the conditions set out
3 in Section V, there are higher levels of risks and uncertainties present in this transaction
4 that would favor high-side comparisons to the past cases. Regarding the applicants'
5 theory to share in future cost savings, those savings should be passed back to
6 customers anyway. Also, the applicants' modest level of rate credits proposed for
7 customers should be compared to the applicants' projected returns on their short-term
8 investment in PGE.¹⁰⁸

9 When assessing the value of rate credits, the Commission should insist upon
10 explicit terms to guarantee the intended benefit to customers. The Commission should
11 ensure that the rate credits it relies on in determining net benefits are truly guaranteed,
12 start immediately, are not offset in future rate cases, survive beyond a potential short-
13 term ownership, and are distributed fairly among customer classes. We direct the
14 Commission's attention to the terms of ICNU's rate credit proposal, which contain the
15 needed protections in this regard.¹⁰⁹

16 In keeping with past findings of this Commission, meaningful rate credits are an
17 important part of the equation in the net benefits determination. If this application is to
18 be approved, the Commission must determine an appropriate level of truly guaranteed
19 rate credits sufficient to ensure that the transaction does indeed serve the utility's
20 customers in the public interest, as required by law.

¹⁰⁸ Staff/800, Conway/12.

¹⁰⁹ ICNU/301, Schoenbeck/1 (Conditions 1 and 2).

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IV. CONCLUSION

The Commission must do the hard work to closely scrutinize all the facts of this case -- adding up the risks, the detriments, and benefits. If the Commission decides it can approve this application, it should do so only with stringent conditions to protect customers from the unique risks and uncertainties presented by this transaction. There are no short cuts in making these determinations. Close is not close enough.

The concern is not that TPG is bad, or their business model is bad, or that they are wrong in attempting to maximize returns for their investors. Indeed, their business model may have rewarded them well in past investments. However, those other investments did not involve a regulated public utility that is a monopoly provider of an essential service to almost half of the state's population. The concern lies in whether the applicants' investment proposal results in a net benefit for PGE customers, or can be made to benefit those customers through appropriate conditions.

The Commission's decision will not just affect the investment plans of the applicants, or the future of PGE and its employees. The Commission's decision will affect the long-term economic well being of over 92,000 commercial customers and 255 industrial customers, and the jobs they provide in Oregon's economy, as well as over 658,000 residential customers.¹¹⁰ In deciding this case, the Commission must assure that these customers are not just protected from harm, and not just left no worse off, but that these customers will actually see a net benefit from this transaction.

¹¹⁰ ICNU/806 at 64.

1 **V. LIST OF CONDITIONS**

2 If the Commission approves this application, AOI recommends the following
3 conditions to help protect customers with stringent and comprehensive financial
4 protections, transparency and access to information, and continuity of programs
5 benefiting customers, such as direct access.¹¹¹

6

7 1. Staff1; OEUC1

8 PGE and Oregon Electric shall maintain separate books and records. All PGE and
9 Oregon Electric financial books and records shall be kept in Portland, Oregon.

10 *(Staff/801, #1; OEUC/501, #1)*

11

12 2. Staff2; OEUC2

13 Oregon Electric and PGE shall exclude from PGE's utility accounts all goodwill resulting
14 from this acquisition. *(Staff/801, #2; OEUC/501, #2)*

15

16 3. Staff3; OEUC3

17 Oregon Electric and PGE shall exclude all costs and fees of the acquisition, including,
18 but not limited to, all costs and fees associated with gaining regulatory approval before
19 the Oregon Public Utility Commission, Nuclear Regulatory Commission, Federal Energy
20 Regulatory Commission, Federal Trade Commission, Securities Exchange Commission,
21 costs and fees associated with forming Oregon Electric, and any banking or financial
22 institution fees associated with the creation of Oregon Electric and the financing and
23 closing of the Acquisition from PGE's utility accounts. Within 90 days following the
24 completion of the transaction, Oregon Electric will provide a preliminary accounting of
25 these costs. Oregon Electric and PGE agree to provide the Commission a final
26 accounting of these costs within 30 days following the completion of the final accounting
27 related to the transaction. *(Staff/801, #3; OEUC/501, #3)*

28

29 4. Staff4; OEUC4

30 Unless such a disclosure is unlawful, Oregon Electric shall notify the Commission of:

31 a. Its intention to transfer more than 5% of PGE's retained earnings to Oregon
32 Electric over a six-month period, at least 60 days before such a transfer begins.

¹¹¹ The numbering of proposed conditions has varied in different parties' testimony. The first number in this list is the number being used by AOI, which generally conforms to the numbering last used by Staff and OEUC, with the addition of items at the end of the list. For convenience of the reader, the source of the wording of this condition is also noted at the outset, and italicized at the end of the condition.

References for these conditions are to the following testimony and exhibits:

Staff Conditions:	Staff/801, Conway/1-13
ICNU Conditions:	ICNU/301, Schoenbeck/1-8
CUB Conditions:	CUB/325, Jenks-Brown/1-2
OEUC Conditions:	OEUC/501, Davis/1-9

1 b. Its intention to declare a special dividend from PGE, at least 30 days before
2 declaring each such dividend.

3 c. Its most recent quarterly common stock cash dividend payment from PGE
4 within 30 days after declaring each such dividend. (*Staff/801, #4; OEUC/501, #4*)
5

6 5. Staff5; OEUC5

7 Subsequent to its purchase by Oregon Electric, PGE shall continue to perform under
8 the Service Quality Measures (“SQM”), as set forth in Stipulations for PGE Service
9 Quality Measures UM 814/UM1121 dated July 13, 2004, for a period of ten full calendar
10 years after the date the current SQM is scheduled to retire. Nothing in any provision of
11 this Stipulation is intended to affect the Commission’s authority to directly administer the
12 stated terms of the SQM. Notwithstanding the provisions described in this paragraph,
13 the parties have agreed to replace the current R4 measurement with a CAIDI-related
14 measurement, and further that PGE will maintain records of outages longer than three
15 hours. In addition, PGE agrees to work with ICNU to evaluate and, if necessary,
16 develop additional service quality standards related to service to industrial customers.
17 (*Staff/801, #5; OEUC/501, #5*)
18

19 6. Staff6; OEUC6

20 PGE and Oregon Electric shall maintain separate debt ratings and, if more than \$5
21 million of preferred stock is outstanding, then PGE and Oregon Electric shall maintain
22 separate preferred stock ratings. (*Staff/801, #6; OEUC/501, #6*)
23

24 7. Staff7; OEUC7; ICNU31

25 The Commission or its agents may audit the accounts of Oregon Electric, its affiliates,
26 and any subsidiaries that are the bases for charges to PGE to determine the
27 reasonableness of allocation or direct charges. Oregon Electric agrees to cooperate
28 fully with such Commission audits. (*Staff/801, #7; OEUC/501, #7; ICNU/301, #31*)
29

30 8. Staff8; OEUC8; ICNU32

31 Oregon Electric and its affiliates shall not allocate to or directly charge to PGE expenses
32 not authorized by the Commission to be so allocated or directly charged. (*Staff/801, #8;*
33 *OEUC/501, #8; ICNU/301, #32*)
34

35 9. Staff9; OEUC9; ICNU33

36 PGE shall maintain its own accounting system. PGE and Oregon Electric shall maintain
37 separate books and records, both of which shall be kept in Portland, Oregon.
38 (*Staff/801, #9; OEUC/501, #9; ICNU/301, #33*)
39

40 10. Staff10; OEUC10; ICNU34

41 If the Commission believes that Oregon Electric and/or PGE have violated any of the
42 conditions set forth herein, any conditions contained in other stipulations signed by
43 Oregon Electric and PGE, or any conditions imposed by the Commission in its final
44 order approving the Application (collectively, the “Conditions”), then the Commission
45 shall give Oregon Electric and PGE written notice of the violation.

1 a. If the violation is for failure to file any notice or report required by the
2 Conditions, and if Oregon Electric and/or PGE provide the notice or report to the
3 Commission within ten business days of the receipt of the written notice, then the
4 Commission shall take no action. Oregon Electric or PGE may request, for cause,
5 permission for extension of the ten-day period. For any other violation of the
6 Conditions, the Commission must give Oregon Electric and PGE written notice of the
7 violation. If such failure is corrected within five business days of the written notice, then
8 the Commission shall take no action. Oregon Electric or PGE may request, for cause,
9 permission for extension of the five-day period.

10 b. If Oregon Electric and/or PGE fail to file a notice or written report within the
11 time permitted in subparagraph a. above, or if Oregon Electric and/or PGE fail to cure,
12 within the time permitted above, a violation that does not relate to the filing of a notice or
13 report, then the Commission may open an investigation, with an opportunity for Oregon
14 Electric and/or PGE to request a hearing, to determine the number and seriousness of
15 the violations. If the Commission determines after the investigation and hearing (if
16 requested) that Oregon Electric and/or PGE violated one or more of the Conditions,
17 then the Commission shall issue an Order stating the level of penalty it will seek.
18 Oregon Electric and/or PGE, as appropriate, may appeal such an order under ORS
19 756.580. If the Commission's order is upheld on appeal, and the order imposes
20 penalties under a statute that further requires the Commission to file a complaint in
21 court, then the Commission may file a complaint in the appropriate court seeking the
22 penalties specified in the order, and Oregon Electric and/or PGE shall file a responsive
23 pleading agreeing to pay the penalties. The Commission shall seek a penalty on only
24 one of Oregon Electric or PGE for the same violation.

25 c. The Commission shall not be bound by subsection (a) in the event the
26 Commission determines PGE and/or Oregon Electric has violated any of the material
27 conditions, contained herein, more than two times within a rolling 24-month period.

28 d. PGE and/or Oregon Electric shall have the opportunity to demonstrate to the
29 Commission that subsection (c) should not apply on a case-by-case basis. (*Staff/801,*
30 *#10; OEUC/501, #10; ICNU/301, #34*)

31 11. ICNU19

32 Oregon Electric and PGE shall maintain and provide the Commission unrestricted
33 access to a record of each instance in which TPG Applicants withhold their consent to a
34 decision of the PGE or OEUC Board of Directors. The record shall detail the basis for
35 the decision, including any governing report or document that memorizes the exercising
36 of the consent rights and shall identify the persons involved in making the TPG
37 Applicant Consent Rights decision. Oregon Electric shall provide the records to the
38 Commission on a quarterly basis and at any additional times upon request of the
39 Commission. Nothing in this condition shall be deemed to be a waiver of Oregon
40 Electric's or PGE's right to seek protection of information in such records. However, for
41 each exercise of a consent right described in a record that has been provided to the
42 Commission, the following information shall not be subject to protection and shall be
43 made available to the public from the Commission: the date of the action; the subject
44 matter; and the enumerated consent right authority (from *Oregon Electric/901, Schiffer*
45 *1-2*) under which the action was taken. (*ICNU/301, #19, with modifications in italics.*

1
2 12. OEUC12
3 Oregon Electric and PGE shall maintain and provide the Commission unrestricted
4 access to all books and records of Oregon Electric and PGE that are reasonably
5 calculated to lead to information relating to PGE, including but not limited to, Board of
6 Directors' Minutes, Board Subcommittee Minutes, and other Board Documents.
7 *(OEUC/501, #12; See also Staff/501, #12 and ICNU/301, #22.)*

8
9 And CUB11
10 TPG will maintain and the Commission shall have unrestricted access to all books and
11 records of TPG that are reasonably calculated to lead to information relating to PGE.
12 *(CUB/325, #11)*

13
14 13. ICNU15
15 PGE, Oregon Electric, and their affiliates shall notify the Commission within 30 days of
16 the formation of any subsidiary, affiliate, or partnership. Such notice shall include a
17 copy of the business plan and capitalization strategy. *(ICNU/301, #15)*

18
19 14. ICNU17
20 Oregon Electric and PGE shall provide the Commission access to all books of account,
21 as well as all documents, data and records of their affiliated interests, which pertain to
22 transactions between PGE and all its affiliated interests. *(ICNU/301, #17.)*

23
24 15. OEUC15
25 In the event of a dispute between the Commission or Commission Staff and Oregon
26 Electric or PGE regarding a request made pursuant to the Acquisition Conditions, the
27 parties agree that an Administrative Law Judge (ALJ) shall resolve the dispute as
28 follows: (1) within ten (10) business days Oregon Electric or PGE shall deliver to the
29 ALJ the books and records responsive to the request and shall indicate the basis for the
30 objection; (ii) Staff may respond in writing and Oregon Electric and/or PGE may reply to
31 Staff's response; (iii) the ALJ shall review the documents in private; and (iv) the ALJ
32 shall issue a ruling determining whether the documents (a) are reasonably calculated to
33 lead to the discovery of the relevant information, and, if so, (b) whether the documents
34 should receive the protection requested. The ALJ shall use this standard whether or not
35 the Commission or Commission Staff is making the request in connection with an open
36 docket. *(OEUC/501, #15)*

37
38 16. ICNU10
39 PGE must maintain the common equity portion of its capital structure at 48% or higher.
40 a. PGE's total capital structure is defined as common equity, preferred equity,
41 and long-term debt. Long-term debt is defined as outstanding debt with an initial term of
42 more than one year plus the sum of committed and drawn balances greater than \$150
43 million on any of PGE's unsecured revolving lines of credit (Unsecured Revolvers).
44 b. The sum of committed and drawn balances on PGE's secured revolving lines
45 of credit (Secured Revolvers) will be defined as long-term debt.

1 c. A committed balance is the sum of the commitments used to support any
2 borrowing capacity or other purposes, such as a commercial paper program.
3 d. A drawn balance is the sum of amounts drawn against the Revolvers.
4 e. Hybrid securities (e.g., convertible debt) will be assigned to equity and long-
5 term debt based on the characteristics of the hybrid security. The Commission, prior to
6 their issuance, will determine the assignment of the equity and debt characteristics.
7 (ICNU/301, #10)

8
9 17. OEUC17

10 Oregon Electric agrees that the customers of PGE shall be held harmless if PGE's
11 return on common equity and other costs of capital, viewed on a stand-alone basis, rise
12 as a result of Oregon Electric's ownership of PGE. These capital costs refer to the
13 costs of capital used for purposes of rate setting, avoided cost calculations, affiliated
14 interest transactions, least cost planning, and other regulatory purposes. (OEUC/501,
15 #17)

16
17 18. ICNU8

18 Oregon Electric guarantees that the customers of PGE shall be held harmless if, as a
19 result of Oregon Electric's ownership of PGE, PGE has a higher revenue requirement.
20 (ICNU/301, #8)

21
22 19. Staff19

23 Oregon Electric and PGE shall maintain and provide the Commission unrestricted
24 access to all written information provided to stock or bond rating analysts, which directly
25 or indirectly pertain to PGE or any affiliate that exercises influence or control over PGE.
26 Such information includes, but is not limited to, reports provided to, and presentations
27 made to, stock and bond rating analysts. For purposes of this condition, "written"
28 information includes, but is not limited to, any written and printed material, audio and
29 videotapes, computer disks, and electronically-stored information. Nothing in this
30 condition shall be deemed to be a waiver of Oregon Electric's or PGE's right to seek
31 protection of the information. (Staff/801, #19)

32
33 20. *Please see the discussion of rate credits in Section III.D.*

34
35 21. ICNU30

36 Oregon Electric agrees that PGE will receive the sole benefit of the Stock Purchase
37 indemnifications related to the following potential liabilities listed in the Stock Purchase
38 Agreement: 1) Shared Special Indemnity Matters; 2) Non-Shared Special Indemnity
39 Matters; and 3) Tax and Benefit Matters. For categories 1 and 2, this indemnification
40 will be in the amount of no less than \$94 million. For category 3, this indemnification is
41 in the amount of no less than \$1.25 billion (ICNU/301, #30)

42
43 And ICNU29

44 Oregon Electric agrees that PGE's ratepayers shall be held harmless for any liability
45 associated with Enron's ownership of PGE. (ICNU/301, #29)

1 22. Staff22

2 OEUC and PGE agree to submit a final “transition plan” to the Commission within one
3 year of closing. The plan shall detail the areas where efficiencies and/or cost-cutting
4 efforts could occur and will provide annual estimates of the expected savings.

5 *(Staff/801, #22)*
6

7 23. Staff23

8 PGE agrees to the following with respect to reporting on its operation and maintenance
9 (O&M) expenses and capital expenditures:

10 a. On or about May 1 of each year, PGE will file, as part of the Results of
11 Operations report, an O&M expense and capital expenditure update report (OMCE
12 Update) that details O&M and capital expenditures broken out by individual accounts
13 (FERC Account 101 through 119, 500 through 598 and 901 through 923). The update
14 will contain comparisons of PGE’s actual O&M and capital expenditures for the prior
15 calendar year with the average of the preceding three calendar years and, with respect
16 to O&M, to the last approved test year revenue requirement. The OMCE Update shall
17 also include a comparison of planned O&M and capital expenditures for the current year
18 compared to the actual data. The update shall include written narrative description of
19 major O&M and capital expenditures from the most recent year as well as details about
20 any major changes either planned or anticipated. Table with benchmark type
21 comparisons of PGE’s O&M and capital expenditures to those of representative NW
22 Investor Owned Utilities and the WECC shall also be included. If requested, PGE shall
23 present the major findings of the OMCE Update at a Commission meeting.

24 b. After completing and presenting its third OMCE update, the Company may
25 petition the Commission to terminate this condition. Interested members of the public
26 shall have an opportunity to comment on the petition in a manner to be determined by
27 the Commission after receipt of the petition. *(Staff/801, #23)*
28

29 24. ICNU23

30 PGE and Oregon Electric agree to hire, within twenty-four (24) months of the closing of
31 the transaction, an independent outside auditor, approved by the Commission, to
32 conduct an audit of PGE’s operations. The audit will be conducted at PGE
33 shareholders’ expense and will be funded by PGE in an amount not less than \$400,000.
34 This audit will include an examination that includes, but is not limited to, the following
35 areas:

- 36 ▪ Strategic and operational planning;
- 37 ▪ Budgeting;
- 38 ▪ Capital expenditures;
- 39 ▪ O&M expenditures;
- 40 ▪ Measures of work planned and performed;
- 41 ▪ Maintenance planning, performance, and backlogs;
- 42 ▪ Performance measurement; and
- 43 ▪ Comparative and trended expenditures and work performance. *(ICNU/301,*
44 *#23)*

45
46 And ICNU24

1 PGE will be subject to a process improvement and benchmarking review (“PIBR”),
2 including a management audit. The PIBR shall include detailed review and
3 benchmarking of PGE’s functions, systems, and processes. The PIBR shall be
4 performed by an independent third party (the “Auditor”) with significant expertise in
5 performing such audits. A customer advisory committee shall be established to assist in
6 the selection of the Auditor and to monitor progress of the audit. The Commission shall
7 select the Auditor with input from the customer advisory committee. PGE shareholders
8 shall pay the cost of the audit. (ICNU/301, #24)

9
10 25. ICNU11

11 Each PGE distribution to Oregon Electric will be used by Oregon Electric exclusively to
12 pay direct operating expenses¹¹² and debt service until all of the following conditions are
13 met:

14 a. The sum of the drawn balances of all PGE’s Unsecured Revolvers is less than
15 \$50 million;

16 b. The rolling three-month average sum of the drawn balances of all PGE’s
17 Unsecured Revolvers is less than \$50 million;

18 c. The sum of the drawn balances of all PGE’s Secured Revolvers is zero and
19 there has not been a balance for three months; and

20 d. The senior-secured Credit Rating for PGE is at least BBB+ at S&P and Baa1
21 at Moody’s; and

22 e. Oregon Electric’s consolidated capital structure¹¹³ contains more than 40%
23 common equity. (ICNU/301, #11)

24
25 26. Staff26; ICNU7

26 No company, entity, or person, other than PGE, shall use PGE’s regulated assets as
27 collateral for any loan, guarantee or other such use without prior expressed Commission
28 approval. (Staff/801, #26; ICNU/301, #7)

29
30 And ICNU5

31 PGE and Oregon Electric commit that the repayment of parent and affiliate
32 indebtedness will be made solely from the assets of the said parent and affiliate, and
33 not from any assets or pledge of assets of PGE. For the purpose of this condition, the
34 parents’ assets include dividends received by virtue of the parent’s equity interest in
35 PGE. (ICNU/301, #5)

36
37 27. Staff27; ICNU12

38 Oregon Electric shall not re-leverage, i.e., increase the amount of its outstanding long-
39 term debt once such debt has been liquidated, if the increased debt would, or could

¹¹² Direct operating expenses are expenses that were incurred from services, supplies or assets provided by Oregon Electric personnel directly and are not based on any type of allocation from an affiliate (parent or subsidiary.)

¹¹³ The consolidated capital structure includes long-term debt and equity as described in the Condition regarding PGE’s common equity floor and all debt (short- and long-term) and equity at Oregon Electric.

1 reasonably be expected to, bring the consolidated capital structure¹¹⁴ below 40%
2 common equity. (*Staff/801, #27; See also ICNU/301, #12*)

3
4 28. ICNU13

5 TPG Applicants¹¹⁵ will not allocate or direct bill Oregon Electric for any goods, services,
6 supplies or assets. (*ICNU/301, #13*)

7
8 And ICNU14

9 The Applicants will not allocate or direct bill PGE for any goods, services, supplies, or
10 assets except compensation to the Applicants for fulfillment of responsibilities as
11 members on PGE's Board of Directors as subject to condition no. 41 below. (*ICNU/301,*
12 *#14*) (*Note: Reference in italics changed for consistency.*)

13
14 29. OEUC29

15 PGE agrees to work in good faith with Staff and other interested parties to develop and
16 present to the Commission, within 270 days of the closing of the transaction, a billing
17 accuracy SQM consistent with Staff/702. At the time of the presentation to the
18 Commission, parties, including PGE, may present their views to the Commission on the
19 necessity for and content of the SQM. (*OEUC/501, #29*)

20
21 30. CUB3

22 With its annual Results of Operations, PGE will provide a copy of its current
23 organizational chart. (*CUB/325, #3*) (*Note: For condition regarding Consent Rights,*
24 *please see #11, above.*)

25
26 31. Staff31

27 The following actions shall be reported to the Commission within 10 business days after
28 their occurrence and the report shall provide details about the action taken:

29 a. TPG Applicants will notify the Commission if there is a change of control of
30 the General Partner of either of the TPG Applicants.

31 b. TPG Applicants will notify the Commission if there is any change in the
32 ownership interest in Oregon Electric, of PGE, or of any of the TPG funds investing in
33 Oregon Electric;

34 c. TPG Applicants will report any changes in any agreement that governs the
35 operation of the TPG funds investing in PGE and of Oregon Electric, including but not
36 limited to any changes to any partnership agreement, amendments or changes to the
37 Oregon Electric Operating Agreement, term sheets, Company make-up, assignment of
38 interests or other binding agreements.

39 d. TPG Applicants will report when any Member or Manager at Oregon Electric
40 is designated, appointed, elected, removed or replaced by a vote, approval or consent
41 of a majority of the members.

¹¹⁴ The capital structure calculations refer to the OPUC policy that does not include short-term debt capital. Staff/801, Conway/12.

¹¹⁵ TPG Applicants also includes Tarrant Partners.

1 e. TPG Applicants will report when they take any actions over matters of Oregon
2 Electric Utility Company, LLC included in ORS 63.130 (3)(c), (4)(c), (d), (e), (f), (g), (h),
3 (i), and (j).

4 f. PGE and Oregon Electric will notify the Commission, through OAR860-027-
5 0041, whenever an equity infusion (paid-in capital, purchase of stock or other
6 arrangement) occurs with a subsidiary or partnership. *(Staff/801, #31)*
7

8 32. Staff32

9 OEUC shall provide quarterly reports to the Commission that details its capital structure,
10 including each debt issuance, amounts outstanding, source of financing and other
11 pertinent terms and conditions. This shall be included in a detailed format and could be
12 included within the reports that the Applicants have agreed to, which will be designed to
13 emulate SEC filings. Oregon Electric shall also provide copies of Oregon Electric's and
14 PGE's stand alone and consolidated financial statements to the Commission. These
15 reports shall be made on the 15th day of March, June, September and December.
16 *(Staff/801, #32)*
17

18 33. Staff33

19 Until the total consolidated debt at OEUC is less than 60% of total capital, Oregon
20 Electric and PGE shall not, without the prior consent of the Commission, directly or
21 indirectly permit any subsidiaries to, acquire, incorporate or otherwise organize any
22 subsidiary, or enter into substantially new lines of business, which were not in existence
23 as of the January 1, 2005. *(Staff801, #33)*
24

25 34. Staff34; OEUC34

26 The Applicants will file a Master Services Agreement, which includes agreed-upon
27 terms and conditions, no later than 30 days after a final order in UM 1121 is issued
28 approving the transaction. *(Staff/801, #34; OEUC/501, #34)*
29

30 35. ICNU3

31 PGE will be operated as a corporate and legal entity separate from all of its affiliates as
32 defined by ORS 757.015. *(ICNU/301, #3)*
33

34 36. ICNU4

35 PGE and Oregon Electric commit to secure covenants that the lenders to the parent and
36 affiliates will commit to rely solely on the creditworthiness of the parent and affiliates,
37 based on the assets and equity interests owned by the parent and affiliates. *(ICNU/301,*
38 *#4)*
39

40 37. ICNU27 Direct Access Condition

41 a.i. PGE shall offer customers with aggregate load larger than 1aMW a three-
42 year and a five-year option to opt out of the cost of service rate with a fixed transition
43 amount under the same terms as current Schedule 483 (effective September 1, 2004).
44 The Schedule 483 offer shall be made each September for a 30-day period for so long
45 as PGE is required to offer direct access

1 ii. PGE shall develop and file, within six months of closing the transaction, a plan
2 to offer all customers eligible for direct access who do not qualify for Schedule 483 a
3 multi-year option to opt out of the cost of service rate with a fixed transition amount at
4 least one time each year. The plan shall include a mechanism for determining the costs
5 of administering such programs for various size loads and aggregated loads and the
6 appropriate allocation of costs. The plan shall include the opportunity for aggregation.

7 b. PGE shall offer all customers eligible for direct access an opportunity to elect
8 direct access for a period of seven calendar days (similar to the current November
9 offering) at least once each month. PGE shall make a filing within 90 days of closing of
10 the transaction to initiate a process for developing and obtaining regulatory approval for
11 the proposal.

12 c. PGE shall in consultation with customers eligible for direct access and energy
13 service suppliers develop a new methodology for calculating energy imbalance
14 penalties, which accounts for the benefits of the diversity of PGE's system. The goal of
15 the methodology shall be to provide imbalance service to direct access customers on
16 the same basis that PGE provides imbalance service to cost of service customers.
17 PGE shall make a filing with the Federal Energy Regulatory Commission within 90 days
18 of closing of the transaction requesting approval of such changes.

19 d. PGE in consultation with customers eligible for direct access and energy
20 service suppliers shall develop an option that allows direct access customers to
21 purchase flat blocks of energy from energy service suppliers, while having the option to
22 purchase load shaping and other necessary services from PGE. PGE shall make a
23 filing within 90 days of closing of the transaction to initiate a process for developing and
24 obtaining regulatory approval for the proposal. *(ICNU/301, #27)*

25 26 38. CUB2

27 OEUC and PGE will support the intent and direction of SB 1149, including the
28 investments in energy efficiency and renewables through the Energy Trust of Oregon.
29 OEUC and PGE commit to communicate, confer, and work in good faith with the SB
30 1149 stakeholders, including the Commission, CUB, ICNU, AOI, and the Fair and Clean
31 Energy Coalition to further implement and refine the energy policies reflected in SB
32 1149, including the investments in energy efficiency and renewables through the Energy
33 Trust of Oregon. *(CUB/325, #2)*

34 35 41. ICNU18

36 PGE's revenue requirement shall not include more than 50% of the total fees and costs
37 of PGE's Board of Directors. This does not preclude any party from advocating that
38 ratepayers pay less than the 50% of the total fees and costs of PGE's Board of
39 Directors. *(ICNU/301, #18)*

40 41 42. ICNU20

42 Oregon Electric and PGE commit that a representative from each customer group that
43 is precertified to receive intervenor funding pursuant to OAR 860-012-0100 may attend
44 no less than two (2) of the regular meetings of the PGE Board of Directors per year.
45 Attendance of customer groups of any more than two (2) of the regular meetings of the
46 PGE Board shall be allowed at the Board's discretion. At each PGE Board meeting in

