

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UF 4218/UM 1206**

In the Matter of the Application of
PORTLAND GENERAL ELECTRIC
COMPANY for an Order Authorizing the
Issuance of 62,500,000 Shares of New
Common Stock Pursuant to ORS 757.410
et seq. (UF 4218)

and

In the Matter of the Application of
STEPHEN FORBES COOPER, LLC, as
Disbursing Agent, on behalf of the
RESERVE FOR DISPUTED CLAIMS, for
an Order Allowing the Reserve for
Disputed Claims to Acquire the Power to
Exercise Substantial Influence over the
Affairs and Policies of Portland General
Electric Company Pursuant to
ORS 757.511 (UM 1206)

STAFF'S BRIEF

1. Introduction

Staff of the Public Utility Commission of Oregon (staff) submits its Post Hearing Brief in support of its request that the Commission issue an order approving the Application filed by Portland General Electric Company (PGE) and Stephen Forbes Cooper, LLC (collectively, Applicants) in this docket. Staff is a signatory to the Stipulation earlier filed in this proceeding and co-sponsored the supporting Joint Testimony. The City of Portland (City) is the only party who submitted testimony objecting to the Stipulation.

In that staff agreed to the Stipulation and co-sponsored Joint Testimony with PGE and others supporting it, staff has had an opportunity to review the Post-Hearing Brief (Brief) submitted this date by the Applicants. While staff does not necessarily ascribe to every statement in the Applicants' Brief, staff generally agrees with their description of the

1 Application, the reasons the Applicants present for approving the Application, and the
2 Applicants' refutation of the City's objections. As such, staff will keep its remarks short and will
3 instead address selected issues for the Commission's further consideration.

4 **2. Nature of ORS 757.511 Proceedings**

5 The Commission's decision to approve or deny the Application to is governed primarily
6 by ORS 757.511(3), which states in relevant part:

7 If the Commission determines that approval of the application will serve the public
8 utility's customers in the public interest, the commission shall issue an order
9 granting the application. The commission may condition an order authorizing the
10 acquisition upon the applicant's satisfactory performance or adherence to specific
11 requirements. The Commission shall otherwise issue an order denying the
12 application. The applicant shall bear the burden of showing that granting the
13 application is in the public interest.

14 The Commission most recently considered ORS 757.511(3) in its Order No. 05-114
15 (Order). There, the Commission provided guidelines for how it would apply the statute.

16 The Commission first determined that the Applicant has the burden of proving that its
17 final package, including any offered conditions, "serves the public utility's customers in the
18 public interest." Order at 16-17. In reviewing the meaning of the quoted language, which
19 appears in ORS 757.511(3), the Commission affirmed its earlier conclusion set forth in Order
20 No. 01-778 that an applicant under the statute must show its proposal would provide a "net
21 benefit" to the utility's customers. Order at 17. The Commission declared that providing net
22 benefits is a specific way to cure the general concern enunciated in ORS 757.506 that a
23 transaction could harm customers. Putting this together, the Commission concluded that a
24 successful applicant must show the proposed transaction would (1) provide a net benefit to the
25 utility's customers and (2) that it will not harm Oregon citizens as a whole. Order at 17-18.

26 In further considering the matter, the Commission concluded the net benefit standard
requires consideration of a "comparator." In other words, the Commission found that it should
weigh an approval of the application against the likely operation of the utility should it deny the

1 application. The Commission suggested that the usual comparator would be the utility “as it is
2 currently configured.” Order at 18.

3 Finally, the Commission reviewed its statutory authority to impose conditions under ORS
4 757.511(3). The Commission noted there was a possible ambiguity in the statute. Under one
5 reading, the Commission must first approve the application as presented, and only then impose
6 conditions. Under a second reading, the statute grants the Commission authority to place
7 conditions on the application so that it meets the public interest test. The Commission decided
8 not to resolve this possible ambiguity but declared it would not in any event issue a conditional
9 order for the case at hand. Order at Summary; Order at 19-20.

10 **3. The Application, as modified by the Stipulation, provides both a net benefit and**
11 **protection from actual or potential harm**

12 The Applicants, staff and numerous intervenors executed and submitted a Stipulation
13 which resolved all issues in the docket by means of 17 carefully worded Conditions.¹ Four of the
14 parties signing the Stipulation then submitted Joint Testimony that explained the purpose of the
15 Conditions and how each addressed a potential harm, or provided a benefit, or in some cases, did
16 both.² The Applicants’ Brief, as well as the Joint Testimony, explains in detail each of these
17 benefits, or how a potential harm is addressed by a Condition and staff will not repeat that
18 explanation here. In summary, staff is satisfied that the Stipulation, with its 17 detailed
19 Conditions, provides net benefits for PGE’s customers and protects the general public from
20 actual and potential harm related to the Application.

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25 ¹ The parties signing the Stipulation are: PGE, staff, Enron, CUB, ICNU and Community Action
26 Directors of Oregon and Oregon Energy Coordinators Association. The City of Salem later
submitted a statement saying it did not oppose the Stipulation.

² The parties who co-sponsored the supporting Joint Testimony are: PGE, staff, CUB and ICNU.

1 **4. The Commission should approve PGE’s request to issue stock**

2 ORS 757.415 allows a utility to issue stocks and bonds for certain purposes identified in
3 the statute. However, under ORS 757.412, the Commission may exempt a stock issuance from
4 the statute if to do so is in the public interest. Staff witness Bryan Conway explained why it is in
5 the public interest to not apply ORS 757.415 to the Application. Briefly stated, as an overall
6 observation, the proposed transaction is rare, if not unique. Here, the proposal is to change the
7 ownership of PGE from one controlling owner to a widely held company that is traded on a
8 public exchange. Further, the Application is filed consistent with a confirmed bankruptcy plan.
9 Moreover, as explained elsewhere, because approving the Application would provide net
10 benefits and cause no harm to the public, it is in the public interest both to approve the stock
11 issuance and to not apply ORS 757.415 to the necessary stock issuance. Finally, ORS 757.415 is
12 not appropriate here because the proposed stock issuance is simply replacing existing stock,
13 which will be canceled, and is not creating new proceeds. *See generally* Staff/100, Conway/9.

14 **5. The City of Portland’s concerns are without merit**

15 Staff generally stands by the Applicants’ Brief as its response to the City’s objections to
16 the Stipulation. Staff also points the Commission to the rebuttal testimony submitted separately
17 by staff witness Conway, PGE witness Piro and by Enron witness Taylor. *See generally*
18 Staff/100, Conway; PGE-SFC(RDC)/400, Piro; and PGE-SFC(RDC)/500, Taylor. The City’s
19 concerns, speculations and generally unsupported assertions, including the need for a rate credit,
20 are either without merit or are based upon a misunderstanding of the Stipulation and its
21 accompanying Conditions.

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1 **CERTIFICATE OF SERVICE**

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3 I certify that on October 27, 2005, I served the foregoing upon the parties hereto by
4 sending a true, exact and full copy by regular mail, postage prepaid or by shuttle mail and by
5 electronic mail to:

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