

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

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

DISPOSITION: MOTION TO ADMIT ICNU EXHIBIT 906
GRANTED; MOTION TO SUSPEND
PROCEEDINGS DENIED; MOTIONS TO TAKE
OFFICIAL NOTICE DENIED.

This ruling addresses several issues that have arisen since the hearing concluded. We address each matter in turn.

Request for Certification/ICNU Exhibit 906

During the course of the proceedings, the Industrial Customers of Northwest Utilities (ICNU) offered into evidence a deposition transcript Portland General Electric Company's (PGE's) President Peggy Fowler. PGE objected, and we determined that the deposition should not be received as evidence. See Ruling dated October 20, 2004.

Subsequent to our ruling, PGE and ICNU reached agreement regarding the admission of specific pages of the deposition. On November 1, 2004, ICNU filed a motion asking for those specific pages to be admitted as a late-filed exhibit. ICNU indicated that it had contacted Enron, Oregon Electric Utility Company, Citizens' Utility Board of Oregon, City of Portland, and Commission Staff to determine if any of these parties objected to the document. None of the contacted parties objected. On November 3, 2004, Associated Oregon Industries filed a response supporting ICNU's motion.

Usually, when major parties in a docket agree on the resolution of an evidentiary matter, an Administrative Law Judge (ALJ) will ratify the agreement reached by the parties. This case concerns us, however, because Ms. Fowler never filed testimony in the case, and because the deposition should have been introduced as evidence much earlier in the proceeding. In this instance, due to the agreement of the major parties, we grant the motion to admit the specific pages of the Fowler deposition,

identified as ICNU 906. However, we want to be clear that this ruling does not set a precedent for any current or future cases. If parties intend to submit a deposition of a non-witness into the record, the procedural schedule for submission of evidence must be followed.

Based upon our decision to admit portions of the Fowler deposition into evidence, ICNU's motion to certify the ALJs' October 20, 2004, ruling denying admission of the deposition is moot.

Request to Suspend the Proceedings

On October 25, 2004, the Portland Metropolitan Association of Building Owners and Managers (BOMA) filed a motion asking that these proceedings be suspended, or in the alternative, that the Commission retain express legal authority in its final order to revoke, amend or condition the sale of PGE. Specifically, BOMA asked that the proceedings be suspended until the following are completed: 1) an investigation by the Oregon Department of Justice (DOJ) regarding actions taken by the Oregon Investment Council, and 2) a review of the transaction by the Securities and Exchange Commission (SEC). If the Commission decides to proceed, BOMA asks that any Commission order approving the transaction retain authority to later amend, modify or revoke approval of the transaction. Finally, BOMA asked that the full Commission consider the motion. On November 3, 2004, BOMA filed a supplement to its motion.

On November 1, 2004, Oregon Electric Utility Company, et al. (Applicants) filed a response to the motion, asserting that there is no pending investigation of Texas Pacific Group (TPG). Applicants urge the ALJs to deny the motion on one or more of the following grounds: 1) untimely filing of motion, 2) motion lacks basis in fact, and 3) SEC review is not cause for delay.

On November 1, 2004, PGE and Enron filed responses opposing BOMA's motion. On November 3, 2004, BOMA filed a reply to Applicants' Response.

We first address the issue of suspending the proceedings. BOMA is asking that the proceedings be suspended pending the outcome of the DOJ investigation and the SEC review. While not explicitly stated, BOMA apparently would request that the record be reopened if the DOJ found wrongdoing on the part of TPG, or if the SEC denied TPG's application. In BOMA's view, such reopening would necessitate additional testimony and hearings. BOMA asserts that a duplication of efforts could be avoided if the procedural schedule was suspended.

Under the current procedural schedule, oral arguments are set for December 13, 2004. This date is approximately five weeks away, giving the DOJ or SEC time in which either agency could complete its task. Proceeding with the current procedural schedule also allows the case to be ready for decision. We do not see that a duplication of efforts would be avoided by suspending the proceeding at this time. We also do not see any harm to BOMA and its position by proceeding with the schedule.

BOMA's request to suspend the schedule is denied. BOMA may renew its request after oral argument, or upon the issuance of the reports by the DOJ or the SEC, whichever comes first.

BOMA's next request was for the Commission, in the alternative, to retain authority to later amend, modify or revoke approval of the transaction. We do not answer the question of whether the Commission has legal authority to grant BOMA's motion as we find BOMA's request to be premature, and based on a fact which has not occurred – the granting of the application. BOMA's alternative motion will be addressed by the Commission in its final order.

Finally, BOMA asks that the Commission, rather than the ALJs, rule on its motion. This request is denied.

Requests for Official Notice

On November 4, 2004, Bonneville Power Administration (BPA) and the Eugene Water & Electric Board (EWEB) filed a joint request asking for official notice to be taken of four documents: a complaint filed on January 6, 2004 with the United States Court of Federal Claims, a General Accounting Office report entitled *Nuclear Regulation* dated December 2001, a U.S. Department of Energy Acceptance Priority Ranking & Annual Capacity Report dated July 2004, and PGE's Decommissioning Plan of the Trojan Nuclear Plant dated, January 26, 1995.

On November 5, 2004, the City of Portland filed a request asking for official notice to be taken of Portland City Council Resolution No. 36265, which was adopted on October 20, 2004.

While the parties in both requests assert that the ALJs have the authority to take official notice of the various documents, the parties do not explain why these documents are relevant evidence that should be included in the record. We further note that all of these documents were available prior to the closing of the record. We deny both requests for official notice.

Dated at Salem, Oregon, this 8th day of November, 2004.

Kathryn A. Logan
Administrative Law Judge

Christina M. Smith
Administrative Law Judge