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August 16, 2004

**VIA FACSIMILE, ELECTRONIC
AND FIRST CLASS MAIL**

Ms. Cheryl Walker
Oregon Public Utility Commission
550 Capitol St. NE, Suite 215
P.O. Box 2148
Salem, OR 97308-2148

Re: UM 1121

Dear Ms. Walker:

Enclosed for filing in the above referenced docket are the original and five copies of Rebuttal Testimony of Robert S. Bingham on behalf of Enron Corp., marked as Enron's Exhibit 2 in this matter. Also enclosed is a disk containing Mr. Bingham's testimony, in conformance with OPUC guidelines.

Please contact me if you have any questions or concerns.

Yours truly,



Caroline Harris Crowne

CHC/pcs
Enclosures
cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1121

In the Matter of

OREGON ELECTRIC UTILITY COMPANY,
LLC, *et al.*,

Application for Authorization to Acquire
Portland General Electric Company.

EXHIBIT 2

REBUTTAL TESTIMONY
OF
ROBERT S. BINGHAM
ON BEHALF OF ENRON CORP.

1 **Q: Please state your name and occupation.**

2 A: Robert S. Bingham, Consultant. I am a CPA (NJ) and a Certified Insolvency and
3 Restructuring Advisor.

4 **Q: What are your current responsibilities?**

5 A: I am a Director of Kroll Zolfo Cooper LLC, assigned as Associate Director of
6 Restructuring for Enron Corp. ("Enron") and its Debtor affiliates. My responsibilities include
7 working with Debtors and their outside professionals, the official committee of unsecured
8 creditors and the Enron North America Examiner and their respective outside professionals in
9 developing, confirming, and implementing a bankruptcy plan for Enron and its Debtor affiliates.
10 I have been a member of the Portland General Electric Company ("PGE") board of directors
11 since early 2003. I also serve as chairman of the audit committee of the board of directors of
12 PGE and as a member of the PGE compensation committee.

13 **Q: Have you provided any prior testimony in this proceeding?**

14 A: Yes, I provided Direct Testimony on behalf of Enron on May 27, 2004.

15 **Q: What is the purpose of your rebuttal testimony?**

16 A: My testimony describes certain of Enron's plans and expectations in the event that the
17 proposed sale of PGE to Oregon Electric Utility Company, LLC ("Oregon Electric") is not
18 completed. I offer this testimony to assist the Public Utility Commission and the parties in
19 evaluating Oregon Electric's proposed acquisition.

20 **Q: In the Direct Testimony of Kelvin Davis on behalf of the Applicants, Mr. Davis**
21 **states that Oregon Electric will cause PGE to pay a dividend of approximately \$240 million**
22 **upon closing, and this money will be applied toward the purchase price that Oregon**

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1 **Electric pays to Enron. If for some reason PGE is not sold to Oregon Electric, will Enron**
2 **cause PGE to pay a dividend?**

3 A: Yes. In the event that the Stock Purchase Agreement with Oregon Electric is terminated
4 and Enron does not enter into an agreement with another prospective purchaser, Enron plans to
5 cause PGE to pay a dividend after receiving approval from the Enron and PGE boards of
6 directors.

7 **Q: What dividend would PGE pay to Enron?**

8 A: As explained in the Direct Testimony of Kelvin Davis, PGE has accumulated a
9 substantial cash position, in part because it has not paid a cash dividend to Enron since 2001.
10 Enron has not yet determined the amount of the dividend that PGE should pay to Enron in the
11 event that the sale to Oregon Electric is not completed. However, generally speaking, Enron
12 plans to consider PGE's financial condition and cash flow requirements, including its
13 commitments for Port Westward, and will determine an appropriately-sized distribution such that
14 the distribution would cause PGE's equity ratio to fall between 48%-52% after reflecting the
15 anticipated borrowings to complete Port Westward. Enron disclosed its expectation that PGE
16 would pay such a dividend in Appendix H to Enron's Disclosure Statement, filed in Enron's
17 bankruptcy proceeding on January 9, 2004. Based on PGE's financial projections, Enron expects
18 that PGE will likely be in a financial position to pay a dividend to Enron of roughly the same
19 amount as the dividend forecasted by Oregon Electric.

20 **Q: When would Enron cause PGE to pay a dividend?**

21 A: Enron has not decided precisely when it would cause PGE to pay a dividend, but it would
22 likely do so prior to the distribution of PGE's stock to Enron's creditors.

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1 **Q: How does Enron's plan to cause PGE to pay a dividend in the event that the sale to**
2 **Oregon Electric does not close relate to the issues in this proceeding?**

3 A: Staff and Intervenors have submitted testimony expressing concerns about the amount of
4 cash that will be available to PGE to make necessary and prudent expenditures under Oregon
5 Electric's ownership. Furthermore, Staff's witness Thomas D. Morgan testified that if PGE
6 remains under Enron's ownership, "more than \$300 million would remain on PGE's balance
7 sheet" that would otherwise have been paid out as a dividend to Oregon Electric.

8 (Staff/200/Morgan/56.)

9 When comparing PGE's financial condition under the ownership of Oregon Electric to
10 PGE's financial condition under the ownership of Enron, parties should assume that PGE will
11 pay a substantial dividend in either scenario, which is appropriate given that PGE has not paid a
12 dividend to its shareholder for three years. It would be wrong to assume that PGE would never
13 pay a "catch-up" dividend to Enron, and there is no basis for assuming that PGE would pay a
14 smaller dividend to Enron than it will pay to Oregon Electric.

15 **Q: Enron agreed to indemnify Oregon Electric and PGE from certain liabilities in**
16 **Sections 9.2, 10.8, and 10.9 of the Stock Purchase Agreement between Enron and Oregon**
17 **Electric. If for some reason PGE is not sold to Oregon Electric, will Enron still agree to**
18 **indemnify PGE for any liabilities?**

19 A: Enron does not have an indemnification agreement with PGE and does not currently have
20 any obligation to indemnify PGE for any liabilities. However, Enron would contemplate
21 entering into an indemnification agreement with PGE for certain liabilities commonly referred to
22 as "control group" liabilities. Enron has entered into indemnification agreements of this type as
23 part of its separation agreements with its subsidiaries Crosscountry Energy Corp. and Prisma

1 Energy International, Inc. Enron does not expect that it would offer to indemnify PGE for any
2 other types of liabilities.

3 **Q: Are there any Enron-related liabilities that are not included within the "control**
4 **group liabilities"?**

5 A: Various parties have loosely used the phrase "Enron-related liabilities" without any
6 definition. The only liabilities for which PGE should have any reason to expect indemnification
7 from Enron are the control group liabilities. The control group liabilities include: 1) certain
8 income tax liabilities pertaining to the period during which PGE and Enron's taxes were filed on
9 a consolidated basis, and 2) certain employee benefits liabilities arising out of plans sponsored
10 by Enron, including pension plan liabilities, liabilities resulting from PGE's participation in
11 Enron's Savings Plan, and COBRA liabilities. A more specific description of these two
12 categories of control-group liabilities (tax and employee benefits) is provided in Sections 10.8
13 and 10.9 of the Stock Purchase Agreement between Oregon Electric and Enron.

14 **Q: How does the fact that Enron has no indemnification agreement with PGE**
15 **independent of the transaction with Oregon Electric relate to the issues in this proceeding?**

16 A: As referenced above, Enron has agreed to indemnify Oregon Electric and PGE as part of
17 the Stock Purchase Agreement between Enron and Oregon Electric. Except with respect to
18 "control group" liabilities as described above, these indemnification rights will not exist if
19 Oregon Electric does not purchase PGE unless they are included in a subsequent purchase
20 agreement with a new potential buyer of PGE.

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1 **Q: Do you have any further comments regarding Enron's plans for PGE in the event**
2 **that the sale of PGE to Oregon Electric is not completed?**

3 A: Yes. In the testimony of Mr. Morgan on behalf of Staff, Mr. Morgan states that "the
4 conditions that were put into place during Enron's purchase of PGE would remain in place" if
5 Enron continues as the owner of PGE. (Staff/200/Morgan/56.) It should be kept in mind that
6 Enron will continue as the owner of PGE only for a short term, and Enron soon will have no
7 assets. As I explained in my initial testimony, Enron's bankruptcy Plan requires that the
8 distribution of all of Enron's assets, including PGE's stock, will begin on or as soon as
9 practicable after the effective date of the Plan. As I also explained in my initial testimony,
10 distribution of the shares of PGE will take place once Enron and PGE have received the required
11 consents and the Bankruptcy Court has allowed general unsecured claims in an amount which
12 would result in the distribution of 30% of the issued and outstanding shares of PGE common
13 stock. The Bankruptcy Court confirmed Enron's Plan on July 15, 2004. I expect that the
14 conditions for distribution to occur will likely be met during the last half of 2005.

15 **Q: Is there anything further that you wish to clarify?**

16 A: Yes. In Mr. Morgan's testimony on behalf of Staff, Mr. Morgan states that Enron agreed
17 that Oregon Electric must obtain an exemption from PUHCA as a condition of closing.
18 (Staff/200/Morgan/41.) There is no such condition in the Stock Purchase Agreement between
19 Oregon Electric and Enron. There is, however, a condition that Oregon Electric must obtain an
20 SEC No-Action letter with respect to its investors and affiliates, as detailed in Section 7.2(g) of
21 the Stock Purchase Agreement.

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1 **Q: Does this conclude your testimony?**

2 **A: Yes.**

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **REBUTTAL TESTIMONY OF ROBERT S. BINGHAM ON BEHALF OF ENRON CORP.** by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.

DATED: Aug. 16, 2004.



Caroline Harris Crowne

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