



**HYDROPOWER
REFORM
COALITION**
Protecting water, wildlife,
and low-head dams.



American Rivers

July 21, 2004

Attn: Kathryn Logan
Administrative Law Judge
Administrative Hearings Division
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148

**Re: In the Matter of Oregon Electric Utility, Company, LLC, et al.
Application for Authorization to Acquire Portland General Electric Company
UM 1121 – Testimony**

Dear Ms. Logan:

Enclosed for filing is an original and five copies of the Hydropower Reform Coalition and American Rivers' Testimony in the above-referenced proceeding. Copies of this filing have been served to all parties listed for this proceeding.

If you have any questions or need additional information, please do not hesitate to call.

Sincerely,

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1121

<p>In the Matter of</p> <p>OREGON ELECTRIC UTILITY, COMPANY, LLC, et al.</p> <p>Application for Authorization to Acquire Portland General Electric Company.</p>	<p>TESTIMONY OF THE</p> <p>HYDROPOWER REFORM COALITION AND AMERICAN RIVERS</p>
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1 My name is Rebecca Sherman. This testimony is jointly filed by Brett Swift at American Rivers. Our
2 qualifications are attached as Exhibit 101.

3

4 The Hydropower Reform Coalition and American Rivers (hereafter, "Coalition") believes that in order for
5 any acquisition of Portland General Electric (PGE) to be in the public interest, the Oregon Public Utility
6 Commission (Commission) must ensure adequate protection of the stability, programmatic oversight, and
7 environmental mitigation activities of PGE's hydropower facilities. In tune with this belief, the Coalition
8 is concerned that without legally enforceable protections, the acquisition will allow the integrity of PGE's
9 hydropower licensing program to disintegrate through new management that does not embrace its
10 environmental stewardship responsibility. This testimony is dedicated to the value of the hydropower
11 program, the environmental assets the program controls, and how the Commission should act in the
12 public interest to protect them.

13

14 **I. An effective and environmentally sound hydropower program serves the public interest.**

15

16 The hydropower program at PGE oversees federal licenses, issued and administered by the Federal
17 Energy Regulatory Commission (FERC), that govern the operation of five hydroelectric projects. These

1 projects are Willamette Falls (Willamette River), Pelton-Round Butte (Deschutes River), Bull Run
2 (Sandy and Little Sandy rivers), Oak Grove and North Fork (Clackamas River). Collectively these
3 projects have the authorized nameplate capacity of nearly 590 MW of power.

4
5 As the Commission is well aware, the value of hydropower to a utility's energy mix is principally its
6 operational flexibility – that the power plant can be turned on and off to satisfy variant demands for
7 power, and that it is a relatively low-cost source of power. However, PGE ratepayers as well as Oregon
8 citizens and resources affected by the hydropower system have a greater stake in the system than simply
9 power production.

10

11 The PGE hydropower program is one of the most environmentally progressive programs in the country,
12 politically and practically. Due in large part to the strong environmental ethic of its constituency, the
13 PGE hydropower program has raised the standards for producing quality science and consideration of
14 environmental benefits in their hydropower project management decisions. The credentials of the
15 program include leadership by a former National Hydropower Association president; strong respect and
16 collegial relationships from local, regional, and national conservation organizations; and the resolution or
17 pending resolution of all renewed licensing proceedings with collaborative settlements.

18

19 At this moment, the program is effective and reflects the environmental commitments of its customer
20 base. It also reasonably satisfies the demands of those constituencies who live by rivers affected by
21 PGE's hydropower projects and who depend on the resources of these rivers, either recreationally or
22 economically. However, should PGE be acquired by Oregon Electric Utility Company LLC and its
23 partners (hereafter, Applicants), and should these new owners dissolve the program's integrity – either by
24 financial reduction or by dissolution of its initiatives – the program will fail to meet the same level of
25 service and commitment to its ratepayers and other affected Oregon citizens and resources.

26

1 **II. Without a legally enforceable commitment by the Applicants or explicit action by the**
2 **Commission, the hydropower program cannot be assured protection.**

3

4 To meet its public interest standard, the Commission must ensure that the hydropower program and the
5 assets it controls are adequately protected, either by explicit condition or by approval of a commitment
6 from the Applicants to take necessary precautionary measures. Without these safeguards, there is no
7 guarantee that this program and the public interest it serves so well will be maintained. In fact, there is
8 considerable reason to fear otherwise.

9

10 Applicants have stated in the record that they cannot own PGE for a period to extend beyond twelve years
11 (Application, Exhibit 3, p.4). This restrictive timeframe contemplates ownership of much shorter
12 duration; and in fact, Applicants have informally indicated that they expect to own PGE for a shorter time
13 period. This expectation is weighty evidence that the Applicants' principal motivation in this acquisition
14 is short-term profit. Profit is a principle of business; there is no error in simple profit interests. But when
15 these interests eclipse local, environmental, community and public relations interests, the Oregon public
16 and PGE ratepayers suffer. In the Coalition's expertise, we see short-term ownership and profit-gearred
17 management as having detrimental effects on the hydropower program, system and affected publics.

18

19 **A. Existing legal commitments made under collaborative settlements are not yet secure.**

20

21 To provide recent history: of PGE's five projects, four are still within the licensing process. Two project
22 processes reached collaborative, multi-party settlements in the past year: Willamette Falls in November
23 2003; and Pelton-Round Butte just days ago in July 2004. Although these settlements have been
24 achieved, neither has been approved by FERC. Settlements only go into effect once FERC issues a new
25 license, leaving a great deal of uncertainty exists about the final terms of the license. It is not only
26 possible, but also fairly common for FERC to rearrange the settlement terms – sometimes with the

1 objection and direct opposition of the licensee. Should this happen, it will be absolutely crucial that PGE
2 take immediate action to protect the terms and conditions of its settlements and work with all the parties
3 to the agreement to resolve any inconsistencies.

4
5 The Coalition is concerned that the new ownership of PGE may be less inclined to take strong decisive
6 action against any dilution of the original compromise.

7
8 **B. The hydropower licensing process can be costly and takes time.**

9
10 As PGE well knows, the licensing process for any one license begins with a five-year schedule that is
11 commonly extended. Two projects, Oak Grove and North Fork, are presently in the renewal process with
12 the goal of consolidating under a single license at the end of 2006. To renew the license for these five
13 dams on the Clackamas River, PGE has elected again to use the alternative licensing process, or ALP,
14 which requires extensive collaboration with stakeholders and presumes a settlement outcome.

15
16 A final application for a new license for the Clackamas projects is due this August 2004; however, the
17 proposed schedule PGE submitted to FERC commits to achieving settlement in one year. Tribes, state
18 and federal agencies, local governments, affected businesses, and conservation organizations are all
19 actively participating in settlement negotiations. All stakeholders carry reasonable expectations about
20 good faith participation and the continuation of negotiations at the level at which they had been held.

21
22 Settlement discussions and all of the legal, scientific, and otherwise technical efforts that go into making
23 those discussions successful take a significant commitment by PGE including time, energy, and money.

24 The Coalition is concerned that the integrity of the settlement process will not be upheld under
25 management that may be focused on profit to the point of excluding environmental and local values.

26

1 **C. The terms of a new license often require costly mitigation measures.**

2
3 There are other significant disincentives for a solely profit-minded management to maintain the
4 hydropower program efficiency and excellence at its current levels. One of these problems is that any
5 final settlement will be a recommitment of resources almost always far and above existing commitments.
6 The FERC licensing process itself contains significant incentives for a licensee to delay completion of the
7 licensing process, most namely that a licensee can delay without penalty; and that it is almost always
8 cheaper for a licensee to pay processing fees and to generate power under its old, usually non-
9 environmental terms and conditions than it is for a licensee to skip through the process quickly and obtain
10 a new license.

11
12 Avoidance of new license terms is one bad possible outcome; certainly a lower quality license is another.
13 When negotiating, a utility representative must know how much money the utility can afford to spend on
14 programs and trust funds; he or she must have assurances and support from upper management on these
15 negotiations and potential commitments; and he or she crucially must value the interests of every other
16 stakeholder at the table. If the Applicants provide less total funding, little assurance, indifference to
17 meeting other interests, and a management directive that presses for a cheap bottom line, the ability for a
18 representative to negotiate is compromised, as is the settlement process.

19
20 It is imperative to the affected Oregon community that any recommitment of resources – which in the
21 case of a FERC license is for the next 30 to 50 years – properly reflect the environmental standards to
22 which the community has come to expect. Consider the time frames at stake: absent commitments by the
23 Applicants, their ownership may come and go within the first decade of what could be 30 to 50 years of
24 inadequate protection, mitigation, and enhancement measures. The Coalition is concerned that during
25 any new ownership's brief tenure, the damage will be done, and the resultant hydropower licenses will

1 only contain poor commitments to take responsibility for the damage the dams have caused to the
2 ecosystem and those that depend on it.

3

4 **III. In order to protect the hydropower program and the public interest, the Commission**
5 **should ensure that certain specific issues are met before approving this acquisition.**

6

7 The Coalition offers the following areas of specific concern and improvised remedy. In order to agree to
8 PGE's acquisition, the Coalition must have commitments from the Applicants on these areas. We wish to
9 be clear that fulfillment of our principal issues stated here does not necessarily guarantee the Coalition's
10 approval. A second avenue to addressing our concerns is the Commission's placement of explicit
11 conditions on the sale. In the event that the Commission is prepared to approve the sale and no settlement
12 to address these issues has been reached, we urge the Commission to condition the sale directly in order
13 to protect PGE's hydropower program and the value of the program to the public interest.

14

15 A. Clackamas Process: Applicants must make a comprehensive commitment to the
16 Clackamas relicensing process, including a commitment to maintain settlement
17 discussions and facilitators, license application development and application progress at
18 FERC, and continuing study obligations.

19 B. Technical Advisors: PGE has hired independent technical advisors to assist stakeholders
20 in understanding the scientific aspects of a license application. Applicants must make a
21 commitment to a technical advisor for the ongoing Clackamas licensing process and other
22 license implementations.

23 C. Programmatic Protection: The Coalition is concerned that financial thinning – by
24 eliminating small programs or auxiliary supports – will compromise the excellence of the
25 hydropower program. Applicants must commit to maintaining the hydropower program
26 at the budget and breadth it requires.

- 1 D. Settlement Advocacy before FERC: The Coalition and its members have worked with
2 PGE for years to arrive at the two settlements presently pending before FERC.
3 Applicants must commit to strong advocacy before FERC should any substantive,
4 unexpected change from the settlement terms appear in the final license conditions.
- 5 E. Low Impact Hydropower Institute-Certified Hydropower: PGE contains a portfolio of
6 green power options, only one of which includes hydropower generation, and all of this
7 hydropower generation is certified as “low impact” by the Low Impact Hydropower
8 Institute (LIHI). LIHI certification is a market-based incentive for hydropower dam
9 owners to operate their dams in a more environmentally benign manner in exchange for
10 inclusion in green power portfolios. PGE’s incorporation of LIHI certification into its
11 green power portfolio is immensely valuable to the Coalition, especially since PGE owns
12 a great deal of hydropower, none of which is certified. Applicants must commit to
13 continue to provide only LIHI-certified hydropower within its green power options; to
14 seek LIHI certification for its hydropower facilities where reasonably prospectively
15 successful; and specifically to exclude PGE’s own hydropower generation from use in its
16 green power portfolios unless it is certified by LIHI, as PGE does now.
- 17 F. Other Commitments to Address Uncertainties: Applicants must also make adequate
18 funding commitments to counterbalance additional management uncertainties at risk
19 under this acquisition. The Coalition suggests an environmental mitigation trust fund to
20 benefit the public and to protect hydropower-affected natural resources against future
21 management concerns.

22
23 As this proceeding continues and more details become clear, the Coalition may discover more issues of
24 relevance that would otherwise be present in our foregoing areas of concern. We reserve the right to add
25 substance and clarifying definition to the concerns presented within this testimony, and to append this list
26 with additional concerns.

1 **EXHIBIT 101: Qualifications**

2

3 **Rebecca Sherman, Northwest Coordinator, Hydropower Reform Coalition**

4 Rebecca has worked for the Hydropower Reform Coalition or its chair and fiscal agent,
5 American Rivers, since June 2000. Over the last four years, Rebecca has played various roles in
6 the management of the Coalition and American Rivers' hydropower program. She most recently
7 served as the Coalition's National Coordinator in Washington, D.C., before moving to Portland,
8 Oregon, to serve as the Coalition's regional Northwest Coordinator in November 2003.

9 Among Rebecca's most recent accomplishments:

- 10 • In July 2003, Rebecca negotiated on behalf of the Coalition in the development of the
11 Federal Energy Regulatory Commission's new "Integrated Licensing Process" (ILP) for
12 the relicensing of hydropower dams.
- 13 • In January 2004, Rebecca provided testimony to the Committee of the Washington state
14 legislature on hydropower licensing and state regulation.
- 15 • In February 2004, Rebecca published an opinion-editorial in the Oregonian highlighting
16 the value of hydropower dam relicensing to river restoration goals.

17 Rebecca has filed numerous and various comments, interventions, and appeals before FERC,
18 and has assisted many other conservation and recreation organizations in doing the same. She has
19 given presentations on hydropower licensing to diverse audiences of the public, NGOs, and
20 agencies.

21 Rebecca's academic background includes a B.A. from Rice University in Houston, Texas,
22 and advanced independent research in South Africa.

23

1 **Brett Swift, Associate Director, Northwest Hydropower Program, American Rivers**

2 Brett has worked for American Rivers since July 1999. During the last five years, Brett's
3 work has focused primarily on hydropower relicensing issues, including both individual
4 relicensings and national legislative policy issues. Brett has participated on behalf of American
5 Rivers in several multi-party negotiations for the relicensing or removal of hydropower projects
6 in the Northwest, including several involving Portland General Electric Projects (Bull Run,
7 Willamette Falls, Pelton Round Butte, Clackamas). In addition, she has developed comments on
8 various federal hydropower relicensing legislative proposals and participated on an Oregon state
9 task force addressing hydropower issues.

10 Among Brett's most recent accomplishments:

- 11 • In March 2003, Brett provided testimony to the Federal Energy Regulatory Commission
12 at a public hearing on its proposed relicensing rulemaking.
- 13 • In July 2003, Brett negotiated on behalf of American Rivers in the development of the
14 Federal Energy Regulatory Commission's new "Integrated Licensing Process" (ILP) for
15 the relicensing of hydropower dams.
- 16 • In July 2004, Brett published an opinion-editorial in the Oregonian discussing House
17 legislation (H.R. 4513) that would adversely affect hydropower licensing.

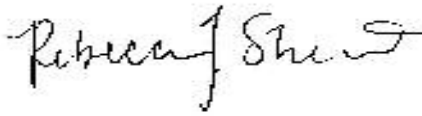
18 Brett has filed numerous and various comments, interventions, and appeals before FERC.
19 She has given presentations on hydropower licensing at continuing legal education events,
20 hydropower industry sponsored conferences, and at environmental conferences.

21 Brett's academic background includes a J.D. from the University of Colorado School of Law
22 in Boulder, Colorado and a B.A. from Trinity College in Hartford, Connecticut.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2004, I served the foregoing UM 1121 Testimony of American Rivers and the Hydropower Reform Coalition upon the following service list compiled by the Commission in this proceeding, either by electronic mail where provided or by mailing a copy in a sealed envelope, postage prepaid, and depositing the envelope at the United States Post Office in Portland, Oregon.

Respectfully submitted,



Rebecca Sherman
Hydropower Reform Coalition

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