

HOUSE COMMITTEE ON ELECTION AND RULES

June 01, 2005 Hearing Room D

1:00 P.M. Tapes 57 - 58

MEMBERS PRESENT: Rep. Derrick Kitts, Chair

Rep. Paul Holvey, Vice-Chair

Rep. Kim Thatcher, Vice-Chair

Rep. Billy Dalto

Rep. Debi Farr

Rep. Mitch Greenlick

Rep. Steve March

STAFF PRESENT: Cletus Moore, Committee Administrator

Annetta Mullins, Committee Assistant

MEASURES/ISSUES HEARD:

SCR 8 – Work Session

HB 3485 – Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 57, A

003 Chair Kitts Calls the meeting to order at 1:11 p.m. and opens a work session on SCR 8 A.

SCR 8 A – WORK SESSION

009 Cletus Moore Committee Administrator. Reads summary of SCR 8 A.

015 Rep. March **MOTION: Moves SCR 8A be sent to the floor with a BE ADOPTED recommendation.**

018 **VOTE: 6-0-1**

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Rep. Dalto

Chair Kitts The motion CARRIES.

REP. KITTS will lead discussion on the floor.

030 Chair Kitts Closes the work session on SCR 8 A and opens a public hearing on HB 3485.

HB 3485 – PUBLIC HEARING

033 Cletus Moore Committee Administrator. Reads summary of HB 3485.

045 Larry Campbell Oregon Mutual Utility Development, Inc. (OMU). Introduces Dave Barrows, also representative for OMU.

Campbell Tells story about “Debbs” Potts and his vigilance to make sure the House passed the budget for the Rogue River Coordinating Council.

065 Campbell Oregon Mutual Utility Development, Inc. (OMU). Submits an Explanation and Background on HB 3485 and presents a prepared statement proposing five alternatives in the separation of Portland General Electric (PGE) from Enron, and combining HB 3485 with SB 1008A (**EXHIBIT A**). States that HB 3485 only asks for two things from the legislature: the authority of the PUC to provide continued

oversight of PGE; give PUC the ability on an on-going basis to provide securitized bonds.

- 191 Dave Barrows OMU. Testifies that some people will oppose this legislation because it does not contain how the board would function, how the members would be nominated to run for the board--the governance issues. States there is a chapter in ORS on how non-profits function. It is a conscious decision by their client to not spell out the details of governance in the legislation. They think when they make application, if they are successful in dealing with Enron, they will take their governance proposal to the Public Utility Commission (PUC) and ask them to review it. Explains that the PUC has a net benefits test that they have to get over. Everyone, including the public, would have an opportunity to testify before the PUC about it. They believe that is a more open process and that is why they left the governance issues out of the bill.
- 231 Campbell States they will go through the same process before the PUC that Texas Pacific did.
- Chair Kitts Comments that Texas Pacific had their option on the table and Enron chose Texas Pacific over the City of Portland. Asks what the reasons were for that, and if the City of Portland's current proposal is different than the last proposal.
- 244 John Stageberg Chief Financial Officer, OMU. States he is not sure what the decision-making process in Enron was at that time. States he would have to assume that the decision was that Texas Pacific could affect and complete the acquisition better, quicker than the City of Portland.
- 261 Chair Kitts Asks what the duration of the bonds would be.
- Stageberg Responds their request is that securitization bonds for the acquisition would be a period up to 30 years. It would be negotiated at the time they prepare to finance the acquisition. The issue will be a balance of how quickly customers could acquire PGE and be unencumbered by the debt versus having a net benefit of a rate reduction at the time. The shorter the amortization period, it is less likely the customers would have a rate reduction. If there should be an extended amortization out to 20 years, based on their models, the customers would have a rate reduction but it extends the amount of time before all the debt is paid off and the customers own PGE free and clear of any debt.
- 288 Chair Kitts

States that HB 3485 and SB 1008 A, in his opinion, have issues with the governance structure. Comments on the proposal being incomplete without the governance provisions.

Campbell

Explains there are a number of things that they would have to have agreement to by the PUC. States they have two sets of hoops after the legislature. The process will be very strict. They are only asking for two things from the legislature and that is to give them an opportunity to be viable so they can make a proposal. States the board of directors will be elected by the owners of the business who will also be the customers. States the details will have to be developed.

321

Chair Kitts

Comments that OMU is asking the legislature to provide a viable option in the financing mechanism in allowing the PUC to authorize them to do what they want to do. At the same time, OMU is not coming in saying how.

Barrows

Explains that the difference between this bill and the other two Oregon proposals, the City of Portland's and SB 1008A is they have no PUC involvement. That is not a criticism of them; it is just how they differ. The 12 advisers to the City of Portland are going through the governance issues. SB 1008A spells out exactly who the directors shall be, how many, and what their authority is, etc. There would be no one else to do it except the legislature. Under HB 3485, there is somebody to do it—it is the PUC which gives the customers/owners the ability to talk to the PUC about how to have their entity governed. It is a full open process.

363

Campbell

States they are not asking the legislature to provide any type of agreement to fund this. They are asking the legislature to give the PUC authority to continue the revenue stream. The PUC has the authority to establish it today, but they cannot commit future PUCs. In essence, we are giving them the authority to continue a securitization funding in the future.

386

Chair Kitts

Comments he appreciates the comprehensiveness and thoroughness of HB 3485. States the mission of the PUC is to make sure the rate payers are not getting gouged. Asks who the PUC would be protecting.

Stageberg

Responds that one issue is who pays if someone in PGE makes a bad decision and blows a bunch of money. Explains details of financing. Also governance is an issue. Explains that investor-owned utilities are controlled by the investors who make financial decisions. Explains leverage of the ratepayers in controlling management or replacing the board.

TAPE 58, A

024	Chair Kitts	Comments that under the proposal, the customers are the owners and the board is liable to the ratepayers, owners. States he does not understand the ability for one entity to monitor another.
	Stageberg	Responds that he has not addressed cost allocation among customer classes. Explains that under the mutual utility model they are proposing, for governance purposes, there would be one vote for one meter. There are more residential customers than industrial or commercial customers. Without having the PUC or some independent arbiter to make decisions on cost allocation among classes, it would impose conditions on the commercial and business. The residential classes can overwhelm the other two classes for governance issues. Not having the PUC or some independent arbiter to provide guidance on decision on how costs get allocated among customer classes would pose a big risk for the industrial and commercial classes of customers. That is why they feel they need to have PUC oversight.
	Campbell	Adds that they did determine there would be a board of nine members. They haven't completed all the details but of the nine members, five would be required to be PGE customers. In the original group they are looking at that would be appointed, one is from Pendleton, one from Bend, one from Lake Oswego, and another from Portland. They are looking at a geographical regional approach.
062	Barrows	Adds that people have expressed concern that most of the generation capacity of PGE lies outside the PGE footprint. Asks who would speak for those assets and that is one of the reason they went to Mike Thorne, a former member of this body and former Director, Port of Portland, and a gentlemen from Bend because they are not in the PGE territory but are people who would be concerned about the assets outside the footprint.
	Chair Kitts	Quotes from a news article saying PGE is worth between \$2.2 billion and \$3 billion. Asks what the worth of PGE is.
	Stageberg	Responds that based on the parameters of valuing utility assets, they think that is a reasonable range the price would fall within.
	Chair Kitts	Asks if the securitized bonds would cover the entire acquisition costs.

	Stageberg	States that the purchase price would be acquiring the stock of PGE from Enron. Embedded in that, the mutual utility would assume the existing corporate indebtedness of PGE, which is around \$900 million to \$1 billion currently. That is part of the \$2.2 to \$3 billion.
	Chair Kitts	Asks if the \$2.2 to \$3 billion plus the debt is the cost.
	Stageberg	Responds that the existing debt would be extracted. If there is \$1 billion of existing debt, the cash requirement would be \$1.2 to \$2 billion. PGE has not been paying dividends for a while. They, like Texas Pacific, would propose to use some of those dividends to pay for the acquisition price. In the Texas Pacific proposal, that dividend was around \$225 million. That would be subtracted from the \$1.2 or \$2 billion that is left over. The remaining is the amount of cash they would have to raise through the securitization to acquire PGE stock from Enron. States they are only there to facilitate the negotiation of the issuance of securitization bonds and the acquisition price of PGE. Once the acquisition bonds are issued, OMU ceases to have involvement in PGE and PGE runs itself. States they view PGE as being a very well run company and they don't think anything needs to be changed with it.
118	Chair Kitts	Asks if they would have a fee for their services to be approved by the PUC. Asks what they estimate their fee to be.
	Stageberg	Responds that they are working with their financial adviser. They are trying to structure something that is fair and reasonable and reflective of the value that they bring to PGE's customers but not to encourage them to get as high a price as they can; it won't be a percentage of the purchase price. It would be a percentage of the net benefits to the customers that would be negotiated with the PUC. States he has not received the results of that analysis yet and cannot say what it might be because he does not know.
124	Barrows	Comments that he has talked to Commission Chairman Lee Beyer. States that the OMU people don't get anything of value such as stock or stock options. States there is no stock; it is a mutual. They don't get any paper or value or anything else. Beyer has said that the 16 individuals are entitled to some reasonable return on the time and effort and to a lesser extent the money they have invested in this effort. The PUC will make the call on what reasonable is, but it won't be absorbent or massive. They won't retire off the money. Then they are gone.
155	Chair Kitts	Comments that who the stakeholders are and what they get out of it is relevant to the committee.

154	Stageberg	Responds that a number that has been thrown out is \$10 million.
	Chair Kitts	Comments they have said they are using a percentage because they do not want that to be a perceived motive to drive up costs and thinks that is fair. Whether it is a percent of something, the higher price goes, the larger the amount becomes.
178	Campbell	Explains that is one of the questions they asked at the beginning. They made it clear that the PUC would make the determination. States these people have been working on this for 10 months investing their own money and have taken nothing out of it. If this is not successful, they will not get anything back. States he would guess that the PUC will take that into consideration and he would be amazed if the number tossed out would be anywhere what will actually be granted.
	Chair Kitts	Asks if it would be fair to say that they will have a proposal for what would be fair compensation.
	Stageberg	States the higher the price paid for PGE, the lower the benefits will be. States their success fee will be based on the benefits not off the price. That encourages them to have a low price to maximize the benefits. It would be less than one percent of the net benefits.
226	Chair Kitts	Asks if the net benefits would be the savings to ratepayers.
	Stageberg	Responds that they have to prove to PUC there is a net benefit. That would be the basis for their determining their success fee and if they cannot show enough net benefits, the PUC has the right to say no.
	Barrows	Adds all the conversation about what is reasonable in the commissioners' minds in terms of compensation for these folks for their efforts on behalf of the ratepayers only comes into play if this bill passes, if they can cut a deal with Enron and if the PUC approves the deal. If that does not happen, they get nothing.
256	Rep. March	Asks if the exemption from federal taxation, according to Pendergraft's statement (EXHIBIT A, page 30), Subchapter T deals mostly with farmer cooperatives. States it appears we are looking to legislative intent to hang the federal taxation issue on. Asks if a tax attorney has looked at this.
	Stageberg	

Responds they have been using the resources of local counsel and are on the precipice of engaging a major accounting firm. Both have expertise in the area of cooperative tax law.

Rep. March Asks where HB 3485 deals with preference power. States he has been told that OMU would not be eligible for preference power.

261 Campbell States he understands they are working on an amendment to SB 1008A that will deal with preference power. States they have made it very clear that they have no intent to try to access preference power. They would make no change to PGE's present status. The coops are working on an amendment to SB 1008A and they have no objection to that amendment.

297 Rep. March Asks if OMU will be paying the public purpose fees.

Stageberg Responds that other than the federal income tax payments, which they believe under the mutual structure would be exempt, all other fees and taxes regularly paid by PGE would continue to be paid in one form or another.

289 Rep. Holvey Asks what makes this not a public utility or cooperative.

Campbell Explains they will continue to operate it as a private utility, not a public utility which is different than a coop, and would be under the oversight of the PUC; coops are not. States this was done with intent because while they have discussed the reason for being under the PUC, they feel strongly there is a benefit and a protection in that oversight for the customers who would become the owners.

314 Rep. Holvey Asks how this can be a private mutual if the public owns it.

Barrows Explains this is an unusual model in the electric world. It is not an unheard of model in the life insurance world. Many life insurance companies are a mutual. That means it is owned by the policy holders. At the end of the year when the company is done paying its expenses and taxes and putting money in the reserves, if they have money left over, they write checks to all their policy holders. Adds that Brady Adams, a former member of the legislature and president of the Senate in 1997 runs one of the two savings and loans in Oregon that are mutuals. He is owned by his depositors and borrowers. There are no stockholders. The depositors and borrowers elect the board of directors. At the end of the year, he pays his taxes and expenses and puts some money in reserve that the federal government

tells him to do and he sends those people a check. That would happen in this model. Because there are no stockholders to pay off, no Wall Street expectations or anything else, the utility would tell the customers not to pay their utility bill or send them a check in January and say this is how well they did this year. Unlike a cooperative, there is no preference power. They generate or buy their power.

392 Rep. Holvey Comments that owners and ratepayers would be one and the same and they will be selling bonds to finance the acquisition of PGE. Those bonds would be paid for by the ratepayers in their rates. States it seems like the new bonds would demand that rates would go up. Asks if the witnesses can convince him that rates will go down and not up.

411 Stageberg Responds that PGE has two components that customers will benefit by owning the company. One is the net profits that PGE will generate over a period of time and the other is the benefit of not having to pay federal income taxes. Cites example in Campbell's testimony that they estimate a savings of \$100 million a year to customer-owners (**EXHIBIT A, page 2**). States that PGE had \$92 million of net income in 2004 and approximately \$50 million of federal taxes paid during that period. That is all eligible to be returned under the model to customer-owners. That is \$142 million. Explains that in their example they used a 20 year bond which is paid off semi-annually. Makes analogy to a home mortgage of 15 years versus 30 years. The payment on the 15 year mortgage will be higher. States the same thing happens under this structure. The longer it is amortized, the lower the payments are over time but it takes longer to buy the company outright—get rid of all the debt. With a 20 year amortization period and based on current market rates, the indication on pricing is that it would be about five percent. If \$1 billion of acquisition debt is issued, it works out to be about \$64 million a year of charges customers have to pay. If that is compared to the \$142 million in savings, that shows that \$78 million can potentially be available to customer-owners. If it were a five year acquisition, on \$1 billion, it would be \$200 million a year and there is not that savings. That is where some of the negotiations with the PUC and other parties will be on how quickly they want the debt paid off and how much benefit they want brought back to customers. That will decide the length of the structure of the debt.

508 Chair Kitts Asks if they would ask for 30 years.

Stageberg Responds they would ask for up to 30 years.

034	Chair Kitts	Asks if it is correct that their fee is paid on the life of the securitization bonds because their compensation is based on the net benefit to the ratepayers.
	Stageberg	Responds it is how one defines the benefit and is it the annual cost or savings that a customer has while the bonds are outstanding, or is there a benefit by paying off the debt quicker so the customers own PGE unencumbered quicker. States there is a balancing act that will have to be negotiated—what is the right answer.
037	Chair Kitts	Asks if there are any safeguards put in HB 3485, or if it is possible to sell the utility. Asks if Warren Buffet could still buy it if the board decides they want to sell it.
043	Stageberg	Explains that the members could vote to de-mutualize. They have seen that happen with Standard Insurance and other companies. It would be a part of the charter and by-laws. If someone were to come in with an offer to enrich the customers, they could sell but it is not as simple as a traditional investor-owned utility stock type ownership structure. The customers have control on the process.
051	Julie Brandis	Associated Oregon Industries (AOI). Introduces Brad VanCleve, attorney for Industrial Customers of Northwest Utilities (ICNU) and Jason Eisendorf, Citizens Utility Board (CUB). States they are here as major customer groups and business groups opposed to HB 3485. States they have not been convinced this is a customer purchase of PGE. States that the bill and the concept were developed without noticeable input from the major customer groups. There are approximately 92,000 commercial customers in PGE's territory representing about 12 percent of the customers and 39 percent of the utility's revenues. Many of these commercial customers are AOI members. They believe HB 3485 would present a risky option for commercial, industrial and residential customers. The bill allows for securitization but does not provide the necessary framework needed for their support. For AOI to support a mutual concept, they need legislation that includes a governing board, a board structure, a rate-making structure and clarification about applicability to certain laws, such as SB 1149. Having these elements in legislation alone would not guarantee their support. States they would have to support each element as drafted. The bill is vague and confusing and that leads to regulatory uncertainty, which is very concerning to their members.
091	Brandis	Comments that the PUC process is an open process but is a quasi-judicial process. Comments on their involvement in the Texas Pacific case. States that the PUC process is relatively expensive and organizations such as AOI can rarely get involved in the process.

Explains that they did get intervener grants in the Texas Pacific case but she does not know if grants would be available in the OMU case.

They feel allowing for securitization without any parameters feels somewhat like writing a blank check. Any entity can utilize the securitization to purchase PGE and that is again why they feel there needs to be some kind of structure. States that the PUC has no background in regulating publicly owned utilities.

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| 122 | Brandis | States that AOI, ICNU and CUB have been very involved with the options available for PGE. They all sit on the regional advisory council that is looking at the acquisition by the City of Portland. They participated in drafting SB 1008 A. Both options will include a rate structure, a governance structure, a board structure and clarification to certain laws and they will be tied either to legislation, as in SB 1008 A, or to bond covenants in the City of Portland acquisition. |
| 133 | Brandis | States that the business community has heard a lot about the savings in each of the proposals. AOI's executive committee has looked at a Performa on the City of Portland acquisition. States she believes they need to be careful about how one advertises savings because she does not believe all the information is available to guarantee any type of savings, not in the City of Portland's acquisition, not in the state's acquisition, nor in the mutual acquisition. States they are pretty comfortable in saying where their exemptions from state and federal taxes are in the state and city acquisitions. It is different with the mutual. States they do not have any background on what a mutual utility is. Only a few were developed when electricity came to the west coast, but there are none to make a comparison to today. That is why the customer groups are so concerned. |
| 141 | Chair Kitts | Asks if the ratemaking structure would be up to the PUC. |
| | Brandis | Responds that she thinks her colleagues will do a better job of answering the questions. States that the PUC does a prudence review in setting rates and they balance the needs of customers and shareholders. When they decide something is imprudent, the shareholders pick up the costs. If the customers are both the owners and shareholders, she is not sure how the current rate making structure would apply to the mutual. |
| 173 | Chair Kitts | Comments that Brandis said they are not convinced that HB 3485 brings a savings. The news article was talking about a city acquisition and the driving force was that they could cut rates by 10 percent. The savings could be there. States he thinks there would have to be some |

savings, net benefit to the customers, otherwise why would they propose HB 3485.

	Brandis	Responds that they participated in drafting the news articles. They were responding with their Performa. States that they need to have proof the savings is there and they have not seen a Performa on the mutual proposal.
199	Chair Kitts	Asks if Commissioner Beyer could answer the question on the availability of intervener funding.
	Brandis	Responds that she supposes someone could answer the question.
203	Brad VanCleve	Industrial Customers of the Northwest Utilities (ICNU). Testifies in opposition to HB 3485. States that ICNU represents some of PGE's largest customers including Blue Heron Paper Company, Boise Cascade, Intel, Oregon Steel, and West Linn Paper. States they are opposed to HB 3485 for three primary reasons: the potential for higher rates; the risk associated with an untested form of utility ownership; and the uncertainty created by applying PUC regulations to a consumer-owned utility.
	VanCleve	States that the OMU proposal makes sense on the surface, but when you look at it more closely, it is not what it seems. States they see the potential for a higher purchase price for PGE and higher transaction costs. The proponents would have everyone believe all this does is create another option to put on the table. States that is not what the bill does; it creates a financing gimmick. It is a gimmick that allows PGE to issue more debt without otherwise impacting its credit rating, and to use that debt to finance acquisition costs. It doesn't have to be used by OMU. It could be used by someone else. They think this will spark more interest in the purchase of PGE and drive up the price.
234	VanCleve	States the second issue is transaction costs. States he was extremely troubled by the costs that OMU wants. A representative of OMU stated their proposed costs and fee would be in the range of \$5 million and they wanted a 50 percent return on that, and that they were also going to seek a fee in the amount of three-fourths of the financing amount, which they have said is about \$1.5 billion. They are looking for a fee in the range of \$16 to \$17 million. They said the total cost of doing the transaction would be \$40 to \$50 million. States the answer the committee was given did not seem entirely honest.
250	VanCleve	

States in addition to the possibility of increased costs, this form of ownership has not been tested. The investor-owned utility model is used throughout the country and most of the major utilities are investor-owned utilities. They see no reason to distinguish PGE from PacificCorp or Puget Power or any other investor-owned utility. If what they are saying is correct that you can issue debt and buy all the equity and securitize that debt, why would it not work for any utility. When they were asked that question, they said it was because this is a rare opportunity to purchase PGE at a discount. States they see no evidence from the Enron creditors that they intend to sell PGE at a discount. They think the increase in the competition between OMU, the City of Portland, and others will lead to a higher purchase price, maybe so high they will abandon the idea of distributing the stock and we will be faced with high price options.

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VanCleve

States their third point is this is an uncertain regulatory scheme. The fundamental role of the PUC is to balance the interests of investors and customers who are taking separate sets of risk and when they are the same, they do not think that PUC regulation really works. Asks if it does work, why don't we also make coops subject to PUC regulations.

VanCleve

States that several years ago he was involved in passage of SB 1149 which created direct access. A number of PGE customers have taken advantage of that bill. They have gone to the market and buy their power from someone other than PGE. It is unclear whether those customers are also going to be subject to these non-bypassable acquisition charges which are being used to buy PGE's assets, including its generation, yet they get no benefit from that. The bill does not appear to give customers the right to a hearing or the ability to participate in this proceeding where the acquisition bonds are approved. The whole idea of customer ownership of the stock of PGE appears to be just an idea. It is not fleshed out how the stock would be owned, how it would be held and distributed and transferred. The bill creates a mechanism to finance PGE with 100 percent debt and shifts the risk of utility ownership to PGE customers. States he looks at it as the customers being forced to buy utility stock. Asks why not let the distribution happen and if they want to own utility stock, they can buy PGE stock on the open market. It appears that the primary motive of the promoters of HB 3485 is to make their fees and structuring the transactions. The whole proposal and the whole participation of OMU is designed to end at the time the transaction closes, which they think will be less than a year. Compared to Texas Pacific whose proposal was rejected because they were going to be a short-term owner, six or seven years, this group wants to structure a deal and be out in a year or less.

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VanCleve

States this proposal is not supported by the customers, which is the people who will pay for it. It is supported by the investment bankers and those types that will benefit from this through fees. States that they commend OMU for creative thinking in bringing this proposal forward but they do not believe it is in the public interest.

- 325 Jason Eisendorf Citizens' Utility Board (CUB). Testifies in opposition to HB 3485. Expresses his frustrations with conflicting information presented at different times. States that from his understanding of the PUC regulations, it is not true to say that this bill creates traditional PUC regulation that he believes everyone understands when they talk about investor-owned utilities. It is fundamentally different in a couple of ways. The bill would have the PUC undertake a process that it has never undertaken and does not know how to undertake. That is to oversee and approve the acquisition costs that OMU would incur in buying PGE. The PUC does not look at acquisition costs. When Texas Pacific or anyone else comes to town to buy PGE, the PUC does not look at how much those shareholders or risk takers are willing to pay for the utility. In this case, that risk will be borne by customers. The primary element of HB 3485 would be to thrust on the PUC a new process and oversight that the PUC has no experience doing. In order for the PUC to do a good job to make sure the OMU folks did not over pay for PGE, and there is going to be a net benefit, the due diligence would cost either the PUC or the customer group a couple of million dollars.
- Eisendorf States that the thing that PUC does know how to do would never apply to a mutual utility. The PUC does prudence reviews, sort of a balancing of the shareholder versus customer. Gives analogy of a \$500 million investment. States there is no risk taker other than the customer. If the OMU board pays twice as much, \$1 billion, the PUC cannot do anything about that. There is no one else to pass the cost off to so the customer has to eat it all. That is true whether the overpayment is negligence or criminal activity at the board level. There is not PUC regulation that he is aware of short of telling OMU to default on loans, which this bill would securitize. All the costs are passed on to the ratepayers.
- 436 Eisendorf States the cost allocation among customer groups is largely a non-issue. It used to be an issue and the three groups here would go and argue in front of the commission what the appropriate cost allocation was. Cost allocation for both major investor-owned utilities is largely settled and is rarely an issue in any rate case.
- 449 Eisendorf The last thing that the OMU folks say the PUC could regulate would be the governance model itself. States he thinks the argument is that the PUC could come in and completely restructure whatever proposal

the OMU has on their governance. States that he does know that is true, and they are not willing to wait. States that they set the governance model out in SB 1008 A. The OMU model has no governance model and if the decision was a conscious one not to create the governance model, that was an enormous tactical mistake for two reasons. Explains they sat down with Enron a couple of times and will again in a week and he will bet \$1 that Enron is not very interested in negotiating something with an entity that no one understands and that will be debated and fought out six months from now with no clear end in sight. Does not think Enron will waste their time in negotiations with that kind of circumstance. States from his point of view, the bigger tactical mistake is that customers should not, will not, advance an idea until they know what the decision making process is going to be. The decisions they care about the most will be made by this board and they have no idea what it looks like. They don't know if they can elect it, or remove members, or know how the process will be developed, and yet the crucial decision making will be made there because whatever is sent to the commission will come back.

TAPE 58, B

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| 030 | Eisendorf | States that he does not know what a mutual utility is and believes there are a lot of people who do not know. Given the fact that the customers take all the risk and that there is no blueprint for how decisions are made, he can only describe this as a public power option without the public. States they are not interested in this proposal. |
| 044 | Chair Kitts | Comments that of the five options, HB 3485 is the only one that included the entirety of ratepayers, and believes the ratepayers qualify as the public. |
| 048 | Eisendorf | Responds that he would say that the proposal in SB 1008 A would be owned by the people, as would the City of Portland proposal, even though it may be a different set of people. |
| 060 | Chair Kitts | Reads language in Section 4 on page 3 of HB 3485 and ask if the language says if folks have a proposal, dealing with everything from acquisition costs to their fees, they need to apply to the PUC for approval. |
| | VanCleve | Responds he would agree with Rep. Kitts. |
| 090 | Chair Kitts | Comments that he does not care what their fees are. The issue for the committee upfront is to know what they stand to gain by it. States he |

does not think some outrageous number is going to get through the PUC.

- 099 Eisendorf States they believe this will drive up the cost of all the options. If the purchase price and the cost of the acquisition drive up the purchase price because there is a mechanism to finance them when there was none previously, then even though it is subject to approval of the PUC, they may be faced with choosing one of the higher priced options.
- Chair Kitts Asks what the option is of putting this proposal out there.
- 114 Eisendorf Responds that SB 1008 A is self-contained. If that bill passes both houses and the governor signs it and nothing ever happens, nothing ever happens. This bill is different. It fundamentally changes existing law. If the OMU proposal never happens, there is still the ability to securitize elements of the PGE system that anybody can use. States that those who practice in front of the PUC know that ORS 756.040 is a general powers statute for the commission. This would amend 756.040. There are a number of contrasts with SB 1008 A. They read HB 3485 as changing the statute whether or not OMU happens.
- 135 Chair Kitts Asks if their concern is that if HB 3485 is passed, it changes the way we do business.
- Eisendorf Responds affirmatively.
- 148 Chair Kitts Asks if their objection could be overcome if a clause were put in HB 3485 that says something like 'upon not accepting this' or 'Enron not accepting this option', that it reverts back to current law.
- 152 Eisendorf Responds that he is not familiar with that statutory framework, but in theory, he supposes their objections could be overcome.
- Chair Kitts Asks if including language such as 'relating to a county of 600,000 residents' and that 'the language would not go into effect', would alleviate his concern.
- Eisendorf Responds that it would, in theory.
- 164 Brandis

Comments on process before the PUC and states because it is quasi judicial, only the interveners have the ability to move forward with the case. Therefore, it does limit public participation.

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| 192 | Brandis | Urges the committee to look at the final decision in the Texas Pacific case. One of the things the commission said was they are not in the business of rewriting an applicant's application. Although there is a public process, the process is somewhat limited, especially if the parties do not reach agreements in settlement conferences. |
| 207 | Chair Kitts | Asks if the proponents of HB 3485 would have to have a governance structure in place before application to the PUC. |
| 233 | Eisendorf | Responds that the fact they don't have the governance in front of them says volumes. States one of the first things they would do when they sit down to talk about governances would be to say they must fire the board that they picked because it was picked by the people whose motives are different from the customers' motives. States that they have described the mutual utility board as a corporate board in the sense that the ratepayers get to vote on it, but they do not know what the voting mechanism is. If the voting mechanism is by meter, it is enormously disbursed. The questions are so enormous and so important. States that when the OMU visited with them over the last four or five month they didn't come to solicit ideas and information; they came to sell them on the idea. |
| | Eisendorf | States they do not want HB 3485 to move forward until they know what it is, and by whom and how the decisions are going to be made. |
| 287 | Chair Kitts | Comments that he thinks the witnesses' concerns are fair. Announces that the House will return to Floor session at 3:00 p.m., and that the committee will continue the hearing on HB 3485 tomorrow, and will postpone the hearing on SB 1008 A until Friday. |
| 314 | Chair Kitts | Adjourns the meeting at 3:00 p.m. |

EXHIBIT SUMMARY

- A. **HB 3485**, Explanation and Background on HB 3485 and prepared statement, Larry Campbell, 34 pp