

SENATE COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

January 25, 2005
1:00 PM

Hearing Room B
Tapes 5 - 8

Corrected 10/18/05

MEMBERS PRESENT: Sen. Rick Metsger, Chair
Sen. Bruce Starr, Vice-Chair
Sen. Jason Atkinson
Sen. Ryan Deckert
Sen. Laurie Monnes Anderson

VISITING MEMBER: Sen. Vicki Walker

STAFF PRESENT: Theresa Van Winkle, Committee Administrator
James Goulding, Committee Assistant

ISSUES HEARD & WITNESSES: Portland General Electric sale - Invited Testimony
Peggy Fowler, CEO Portland General Electric
John Piro, CFO and Treasurer, PGE
Dr. Peter Kohler
Thad Miller
Bob Jenks
Jason Eisdorfer
Ken Canon
Julie Brandis
Erik Sten
Introduction of Committee Bill – Work Session
Portland General Electric sale, Public Comment
Bill Parish
Liz Trojan
Scott Forrester
Ann Fisher
Ernest Delmazzo

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.

| <u>TAPE/#</u> | <u>Speaker</u> | <u>Comments</u> |
|-------------------------|----------------|---|
| TAPE 5, A 003 | Chair Metsger | Calls the meeting to order at 1:02 PM. Begins initial comments on the nature of the previous meeting and the current meeting to determine the legislative role in the sale of Portland General Electric (PGE). Outlines possible changes or oversights to assist the Public Utilities Commission (PUC). |

PORTLAND GENERAL ELECTRIC SALE - INVITED TESTIMONY

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| 030 | Peggy Fowler | CEO and President, Portland General Electric. Introduces Barbara Halle, Associate General Counsel and Jim Piro, CFO, who are testifying with her. Presents written testimony (EXHIBIT A) and talking points (EXHIBIT B) to the committee. Begins presenting her testimony on the current role |
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| | | of PGE. Overview of status and power supply resource cost changes. States that their rates, adjusted for inflation, are lower than they were 20 years ago and competitive across the nation. |
| 100 | Fowler | Discusses the state of PGE's retirement and pension plans. Talks about the loss of value in relation to the problems with the Enron ownership. |
| 120 | Chair Metsger | Asks about issues from previous hearing, including collection of taxes and the issue of defining the public interest. Brings up the history of PGE's taxation and payments made. Details some historical contexts in regards to treasury information. Wonders if it there is any net benefit for the rate payer when they are being paid credits with there own dollars. |
| 176 | Fowler | Replies that Chair Beyer of the PUC explained this issue quite well. Feels it is a practice done in Oregon and in most other states. Notes the fluctuations in taking place and the complexity of the issue. Offers that Mr. Piro will answer the specifics of the question. |
| 190 | Jim Piro | CFO, PGE. Offers that their practices are in accordance with the law. Provides an overview of cost structure of utilities. Talks about fluctuations in tax rates. |
| 210 | Chair Metsger | Offers that those policies insulate ratepayers from losses but cause other problems. Feels the PUC could be given the power to oversee the regulation of the revenue. Wonders what the potential problems with that approach could be. |
| 230 | Piro | Replies in regards to the changes in the revenue flow in different situations. Points out that in a year where extra hydro power is generated more profit will be made and more taxes will be paid, but in low energy years they lose money and still pay taxes. Feels that a balance needs to be struck. |
| 250 | Chair Metsger | Offers that it is difficult to find a balance. Defers to committee members who have questions. |
| 255 | Sen. Walker | Points out LC 819 has become SB 408. Begins by asking Ms. Fowler for an example where a financial prospector has purchased a utility with positive results. |
| 260 | Fowler | Offers she can't think of a specific example at the moment. |
| 270 | Sen. Walker | Notes Arizona Public Utility Commission's rejected the sale of Tucson Electric Power. Wonders what their opinion is on that, and if there might be a lesson there for Oregon. |
| 285 | Fowler | Feels that they should allow the PUC to make a decision based on their legal standard. |
| 290 | Sen. Walker | Recounts statements by Texas Pacific that they found no inconsistency in the "Tahoe Documents". Asks if she disagrees with Texas Pacific's public statements. |
| 305 | Fowler | Responds she does not feel they are inconsistent, and that the documents were only for a due diligence evaluation for a possible purchase. Points out it was not a plan to operate the company, only to analyze it from a financial standpoint. |
| 320 | Sen. Walker | Brings up the findings of the report and her thoughts on them. |
| 325 | Fowler | Disagrees with the findings, and how the report was conducted. Felt the consultant who made the evaluation had only limited first hand involvement with PGE. |
| 330 | Sen. Walker | Notes an Oregonian article that describes an e-mail stating some unflattering comments sent by PGE employee Dean Funk. Feels it is inappropriate management behavior. |

360 Fowler States Mr. Funk is still on the job and that he wrote a formal apology. Notes the pressure and frustration PGE employees have been feeling. Points out the feeling that they are under attack from all sides.

380 Sen. Monnes Wonders if OPUC denies the approval of the sale, could PGE issue new common stock to holders of claims. Questions how consumers could become owners of PGE.

395 Piro Replies new stock would be issued to the creditors.

400 Sen. Monnes Inquires who the creditors would be.

405 Piro States they are the people who lent to Enron who are entitled to claims. Points out the stock, once issued, could be listed and then purchased by consumers.

TAPE 6, A

005 Sen. Monnes Desires the committee to be aware of this alternate option.

010 Chair Metsger States that it is an option but liabilities come along with the stock.

015 Sen. Monnes Wonders if there are other situations where this has happened to a company.

020 Piro Replies that he doesn't know of any, but the process of liquidation happens frequently.

025 Sen. Monnes Asks about potential risks.

030 Piro Points out the liabilities against the company would pose a risk.

035 Sen. Monnes Asks about indemnification for liabilities.

037 Piro States certain liabilities in the agreement could be indemnified.

040 Chair Metsger States the PUC can corral some of those liabilities, but not all.

045 Sen. Deckert Points out his shifting opinion of PGE based on their negative "Stop the Government Takeover" campaign. Felt it was effective in the short term, but damaging in the long run. Wonders what the rationale was behind the move.

050 Fowler Replies they listen to their campaign advisers and do what will give them the best chance to win.

055 Sen. Deckert Wonders about the type of utility Oregon would like to have. Points out his concern over the Texas Pacific Group (TPG) due diligence report.

080 Fowler Points out her desire to find the best option for the consumer. Outlines benefit and price range fluctuations. Mentions the makers of the due diligence report were not close to their operations and not able to properly assess them. Notes the inaccuracies in their evaluation of the Beaver Plant.

110 Sen. Deckert Offers that he understands the difficulties involved in her position. Feels the due diligence report did not meet expectation. Acknowledges that the investors need to seek the highest return possible, but fears it will come at the expense of local businesses and citizens.

125 Fowler Replies that the PUC has the authority to help prevent negative outcomes. Feels that if they can keep it from happening with Enron they can keep it from happening with anyone.

130 Chair Metsger Thanks Ms. Fowler for her testimony. Calls Dr. Peter Kohler to testify.

135 Peter Kohler Oregon Electric Utility Company, proposed chair. Presents

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| 300 | Thad Miller | written testimony (EXHIBIT C). Reads his testimony to the committee. Introduces Thad Miller. Oregon Electric, General Counsel. Presents written testimony (EXHIBIT D). Reads his testimony to the committee. Notes timeline attached to his testimony and that Enron has been attempting to sell PGE for a while. Introduces various parties involved in the process, notes a chart attached to his testimony. |
| TAPE 5, B | | |
| 005 | Miller | Continues presentation of his written testimony. |
| 135 | Miller | Concludes reading his written testimony. |
| 150 | Chair Metsger | Thanks him for his testimony. Asks Dr. Kohler about the strength of the board. Points out the board's desire to be transparent. Recognizes the actions of the board. Offers that the board does not have much utility experience but has strong political influence. |
| 175 | Kohler | Replies the board is made of people who make good corporate decisions. States there is some utility experience on the board, and submits the board is there to make the best business decisions possible for the company. |
| 190 | Chair Metsger | Brings up the taxation of customers and rate payers. Asks if it is responsible for any utility to build its bottom line on the basis of tax collection. |
| 210 | Kohler | Clarifies if Oregon Electric is successful, PGE will once again be an Oregon entity and will become a tax paying entity. |
| 220 | Chair Metsger | Points out PGE is the only business of Oregon Electric. |
| 225 | Kohler | Replies that if Oregon Electric is successful, PGE will again be an Oregon tax paying entity. |
| 230 | Chair Metsger | States the board has a lot of expertise. Brings up the documents in a recent <i>Oregonian</i> article. Relates his surprise that they have not heard anything from the board until now. Recommends that the leadership should have spoken out earlier. |
| 255 | Kohler | Replies it is a legitimate question on how vocal the board should be in the process. Offers that the board has not been silent. Discusses media coverage of the issue, and that perhaps they could have been more vocal. |
| 275 | Chair Metsger | Expresses his hopes for improved communication from the board to its members. |
| 280 | Kohler | Reiterates that he did spend time interviewing with several television reporters. |
| 285 | Sen. Deckert | Asks if they look forward six years and he is chair, what authority would he have to block the sale of the company in the future. |
| 300 | Kohler | Replies that they favor an IPO or a gradual release of stock. Offers that the strategy is to use the dividends to pay down the debt and build value of the company. Shares his belief that this is a very long term process. |
| 325 | Sen. Deckert | Wonders if the board could refuse a decision made by TPG. |
| 335 | Kohler | Feels the board has all the authority it needs, in referring information to the shareholders. Offers the shareholders would make any final decision. |
| 350 | Sen. Walker | Asks for clarification on Thad Miller's chart. Observes that it shows Oregon Electric Utility owns all of PGE. |
| 360 | Miller | States that is correct if the transaction is approved. |
| 365 | Sen. Walker | Wonders about Dr. Kohler's testimony on being responsible to |

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| | | their shareholders. Asks how they can balance their shareholder interests with the interests of the ratepayers. |
| 375 | Kohler | Replies that good rates will increase the value of the company. Feels they are dual responsibilities. Discusses role of rate increases. |
| 395 | Sen. Walker | Brings up a previous statement by Dr. Kohler stating that if the federal government repeals utility laws, Oregon Electric would not have a reason to exist. Wonders how Oregon Electric could then represent local control. |
| 410 | Kohler | Offers that if PUHCA (Public Utility Holding Company Act of 1935) is repealed, Oregon Electric would still exist. Describes that Oregon Electric's role will change only by TPG consent rights. |
| TAPE 6, B | | |
| 005 | Miller | Concurs with Dr. Kohler's assessment. Clarifies that it would be essential exchanging one type of right for another. |
| 010 | Sen. Walker | Relates a previous statement in which Dr. Kohler denied reading certain PGE documents. Asks how it is that he hasn't read the document. |
| 015 | Kohler | States he knew of the material but did not read the consultant's due diligence report. Outlines the origins of the material. Replies he has now read the documents. |
| 025 | Sen. Walker | Wonders if he has asked any of his OHSU attorneys to read the materials relating to utilities. |
| 030 | Kohler | Replies that a newspaper reported that. Clarifies that the attorneys only reviewed it to make sure it was not a conflict of interest for him. |
| 040 | Sen. Monnes Anderson | Wonders if TPG would have the same tax loopholes that Enron had. |
| 045 | Kohler | Replies that TPG is not a conglomerate, but an investment group. Offers that taxes will be paid to the state and federal government. Details the differences between TPG and Enron. |
| 060 | Sen. Monnes Anderson | Offers that TPG could also have losses impacting income taxes paid. |
| 065 | Miller | Clarifies that Enron had net operating losses that they used to offset taxes liability, which would not be the case with TPG. |
| 080 | Sen. Monnes Anderson | Asks for confirmation that losses that TPG incurs would not be consolidated with PGE to escape state taxes. |
| 090 | Miller | Concurs that is the case. |
| 095 | Sen. Deckert | Offers comment on the taxation issue burden resting with the legislature. |
| 100 | Chair Metsger | Thanks them for their testimony. Makes some additional comments regarding the taxation issue and potential legislative actions that could be taken. Discusses the introduction of LC 1179 as a committee measure (EXHIBIT E). Relates that introducing a bill does not indicate support or opposition for its content. |
| 130 | Sen. Walker | Clarifies to the audience that she is visiting and not a voting member of the committee. |
| | Chair Metsger | Closes the public hearing on Portland General Electric and opens a work session for the purpose of introduction of a committee bill. |

INTRODUCTION OF COMMITTEE BILL – WORK SESSION

135 Sen. Monnes MOTION: Moves LC 1179 BE INTRODUCED as a

140 **Anderson** **committee bill.**
VOTE: 3-0-2
Chair Metsger **EXCUSED: 2 - Atkinson, Starr**
Chair Metsger **Hearing no objection, declares the motion CARRIED.**
Closes the work session on introduction of a committee bill and opens the public hearing on Portland General Electric to take public testimony.

PORTLAND GENERAL ELECTRIC – PUBLIC TESTIMONY

145 Bob Jenks Executive Director, Citizens Utility Board (CUB). Begins discussion of intervenor funding and outside efforts to review the sale of PGE. Offers information on deduction rates. Talks about the tax issue in regard to the PUC.

Outlines merger application process and the commission’s limited authority. Feels the due diligence report provided some insight into TPG, and that they must act before the purchase instead of after.

300 Jason Eisdorfer Argues that the PUC doesn’t have the authority it needs and current legislation does not properly address sales of this nature. Legal Counsel, Citizens Utility Board. Begins clarifying comments made by Dr. Kohler, points out voting rights. Outlines ramifications of repealing PUHCA.

330 Sen. Monnes
Anderson Asks about PUHCA.

335 Eisdorfer Describes PUHCA ruling’s origins in 1930s. Mentions that there have been efforts to repeal it by those who feel it is outdated. Continues with presentation. Addresses three areas of interest, the first being defining net benefits. Details that the second area is the importance of the form of business enterprise.

TAPE 7, A

005 Eisdorfer Continues on to the third issue being confidentiality. Points out the release of confidential material is a blow to the process. Summarizes the importance of the three areas.

050 Chair Metsger States how the current law forces a potential seller to show a net benefit. Wonders what how much more protection would be needed.

060 Jenks States the commission would have authority over the resale of the company. Feels the operations of a company looking at short term ownership could be harmful to the ratepayer.

075 Chair Metsger Brings up the PUC’s actions during the previous US West issue. Wonders if this would be the similar situation.

085 Jenks Replies that is a good analogy. Relates the PUC didn’t have the authority to directly tell US West what to do, but could use the media and public hearings to influence them to make changes.

90 Chair Metsger Inquires if how specific they should be about defining ‘net benefit’ in statute if they wanted to maintain flexibility.

110 Eisdorfer Replies that putting it into statute would be a start, but it is a struggle on how narrow or broad the definition should be. Asserts that each case will be different.

125 Jenks Concurs that you could have a list of things to consider in the definition, but leave it open to a degree.

127 Chair Metsger Brings up the possibility of public ownership of a utility as large as PGE. Wonders if there should be oversight by the PUC of a public utility that large.

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| 140 | Jenks | Replies that the commission has some authority over public utilities. Concur the size of a utility would have to be addressed in regards to the amount of oversight. |
| 170 | Sen. Walker | Inquires about the distinctions on the rate of return. Makes sure she understands the details. |
| 175 | Jenks | Affirms that she is correct in her understanding. |
| 180 | Sen. Walker | Points out that the PUC can only decide whether an investment can be made or not, but not the details of the investment. |
| 185 | Jenks | Replies that the commission can prevent a utility from over investing on items deemed unneeded for their operations. |
| 205 | Eisdorfer | Makes analogy of owning a home for a long term investment as opposed to a short term. |
| 215 | Sen. Walker | Brings up the practice of preference power purchasing from Bonneville Power Administration. Asks about the scenario of another public utility and how it would affect others in the state as regards to preference power. |
| 235 | Eisdorfer | Offers that it is possible. States Bonneville is fully subscribed, so a large new load could diffuse the benefits of preference power. |
| 255 | Jenks | Points out that no assumptions should be made regarding preference power. |
| 275 | Chair Metsger | Thanks them for their testimony. |
| 310 | Ken Canon | Industrial Customers of Northwest Utilities, Executive Director. Offers testimony on the violation of the protective order. Presents the committee with a list of members of Industrial Customers of Northwest Utilities (EXHIBIT F). Feels the regulations do not cover all issues, offers some conditions that PUC could enforce if the TPG sale goes forward. Offers the PUC has the tools they need and should be allowed flexibility. Associated Oregon Industries. Outlines their concern over the sale of a publicly owned monopoly. Discusses the TPG purchase |
| 400 | Julie Brandis | |
| TAPE 8, A | | |
| 005 | Brandis | Continues her testimony. Feels shareholders are not the same as customers. Outlines further concerns over the purchase and consent rights. |
| 050 | Chair Metsger | Asks if the committee members have any questions. |
| 055 | Sen. Walker | Comments how Ms. Brandis' testimony hit on several points she made earlier. |
| 060 | Erik Sten | Commissioner, City of Portland. Presents the committee with proposal for a publicly owned Portland General Electric (EXHIBIT G). Offers details on the proposal. |
| 170 | Chair Metsger | Wonders about the revenue bonds and the authority of a debt loan. |
| 180 | Sten | Affirms they do have that ability. Brings up the details of the Enron liquidation process. |
| 200 | Chair Metsger | Wonders about their own due diligence report regarding the purchase from a public standpoint. |
| 205 | Sten | Replies the ultimate liability will end up with the ratepayer. Provides overview of spending issues. |
| 225 | Sen. Starr | Wonders about how much money was spent by the City of Portland pursuing this possibility. Desires to know exactly what the money was spent for. |
| 235 | Sten | Outlines the cost of its financial due diligence report, operational costs, legal negotiations, and public outreach. |
| 240 | Sen. Starr | Asks about the proposed makeup for the board of directors. |

250 Sten Replies that the idea is open to improvement depending on constituent concerns.

290 Sen. Starr Observes that the City of Portland already has high fees on what it already owns.

300 Sten Replies the City of Portland shouldn't run the utility, but have local control. Offers the City of Portland is the vehicle to make it happen.

330 Chair Metsger Apologizes that they are running out of time. Asks to move on to public testimony. Asks some questions of those testifying to determine which ones will speak first.

365 Sen. Walker Points out a statutory proposal being submitted for Ms. Fisher.

PORTLAND GENERAL ELECTRIC SALE - PUBLIC TESTIMONY

375 Bill Parish Portland Resident. Testified in opposition to TPG purchase. Wonders why Texas Pacific Group's David Bonderman hasn't been heard from on this issue. Voices his fears in regards to the business practices of TGP and other groups. Feels the deal is a financial fraud for ratepayers.

TAPE 7, B

005 Parish Continues and concludes.

010 Liz Trojan Member, Oregon Public Power Coalition. Reads her testimony, opposed to TPG purchase. Talks about losses of revenue. Outlines excessive spending by PGE.

035 Chair Metsger Asks her to conclude and submit her testimony for the record.

040 Trojan States she will submit her testimony (**EXHIBIT H**). Provides concluding comments.

045 Scott Forrester Friends of the Clackamas River. Discusses the hydroelectric plants and killing of salmon. Opposes TPG's takeover of PGE. Favors City of Portland's takeover.

065 Chair Metsger Apologizes for the limited time, urges him to conclude his testimony.

070 Forrester Discusses legislative possibilities for creating an elected public utility commission. Concludes his testimony.

080 Ann Fisher Presents her written testimony (**EXHIBIT I**).

125 Sen. Starr Asks if she is representing herself or the Building Owners and Managers (BOMA) of Portland, Oregon.

130 Fisher Replies she is testifying for herself and for BOMA.

135 Chair Metsger Welcomes Ernest Delmazzo, comments on his testimony.

140 Ernest Delmazzo Submits and comments on his written testimony (**EXHIBIT J**).

180 Chair Metsger Replies that they have run out of time. Thanks Mr. Delmazzo for his testimony. Makes comments on upcoming committee meetings. Adjourns the meeting at 4:07 PM.
The following material is submitted for the record without public testimony: Written testimony by Jim Hansen (**EXHIBIT K**).

EXHIBIT SUMMARY

- A. **Portland General Electric, prepared testimony, Peggy Fowler, 15 pp**
- B. **Portland General Electric, talking points, Peggy Fowler, 6 pp**
- C. **Portland General Electric, prepared testimony, Peter Kohler, 5 pp**
- D. **Portland General Electric, prepared testimony, Thad Miller, 9 pp**
- E. **Introductions, LC 1179, Sen. Vicki Walker, 4 pp**
- F. **Portland General Electric, list of industrial customers, Ken Canon, 1 p**

- G. Portland General Electric, ownership proposal, Erik Sten, 2 pp**
- H. Portland General Electric, Oregon Electric Rates -2002, Chart, Liz Trojan, 1 p**
- I. Portland General Electric, proposed amendments, Ann Fisher, 1 p**
- J. Portland General Electric, prepared testimony, Ernest Delmazzo, 1 p**
- K. Portland General Electric, press release, Jim Hansen, 1 p**