

ORDER NO.00-702

ENTERED OCT 30 2000

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 967

In the Matter of the Application of)
SIERRA PACIFIC RESOURCES to) ORDER
Acquire PORTLAND GENERAL)
ELECTRIC COMPANY.)

DISPOSITION: APPLICATION GRANTED

On January 1, 2000, Sierra Pacific Resources (Sierra Pacific or Sierra) filed an application to acquire Portland General Electric Company (PGE) from the Enron Corp. ORS 757.511 directs the Commission to investigate the application and act on it within 19 business days. Sierra waived the 19 day review requirement at the beginning of the case.

Prehearing conferences were held on January 26, 2000, July 6, 2000, and July 18, 2000, in Salem, Oregon. Public comment hearings were held in Portland, Oregon, on April 4, 2000, and Salem, Oregon, on April 11, 2000, to provide information to the public and receive comments. Transcripts of the hearings are part of the record in this case.

Approximately 20 parties intervened in this proceeding. The parties are set out in Appendix A to this order. Intervenors include representatives of PGE's residential and industrial customers, other electric and gas utilities in Oregon and the West, energy marketers, and representatives of various public interest groups. Extensive testimony was filed in this matter. The parties also conducted extensive discovery procedures. Settlement discussions were held on several occasions.

Prior to the scheduled hearing date of August 30, 2000, the parties notified the Administrative Law Judge that a settlement had been reached among the most active parties. The hearing was therefore cancelled.

On September 1, 2000, Sierra, PUC Staff, the Citizens' Utility Board (CUB) and the Industrial Customers of Northwest Utilities (ICNU), filed a Settlement Agreement resolving for those parties all the issues involved in the case. The Settlement

Agreement was served on all other parties, who were provided an opportunity to offer comments or objections. No comments or objections were received. On September 8, 2000, Sierra, PGE, and Staff filed joint testimony in support of the Settlement Agreement. In addition, Staff filed separate supporting testimony. The evidentiary record in the case was closed on September 28, 2000. The Settlement Agreement is made part of this order. It is attached to this order as Appendix B (excluding certain voluminous attachments). It is discussed in detail below.

On September 21, 2000, Sierra Pacific filed a Stipulation on behalf of itself and several other signatories setting out a voluntary settlement on certain public interest issues related to this docket. It also filed on that date an explanatory brief in support of the Stipulation and a request that the period for comment on the Stipulation be shortened from the 20 days set out in OAR 860-014-0085. The request was granted. No comments on the Stipulation were filed. The signatory parties ask that the Commission acknowledge the commitments made in the Stipulation. The Stipulation is attached to and made part of this order as Appendix C. It is discussed in detail below.

The Commission has examined the Settlement Agreement and the Stipulation and the entire record in this case. We conclude that no purpose will be served by further proceedings in this matter. For the reasons set out in this order, we conclude that the application should be granted.

Application

According to the application, Sierra is an experienced operator of regulated utilities providing electricity, gas and water services through its subsidiaries, Sierra Pacific Power Company (SPPC) and Nevada Power Company (NPC). Sierra serves about 1 million retail customers in two large metropolitan areas. Sierra also provides reliable electrical service to more than 50,000 square miles of largely rural land in Nevada and Northern California.

Sierra's application also sets out details regarding its plan for PGE and its commitments regarding its purchase of PGE, employee relations, safety, and other matters.

Opinion

Standard for Approval

ORS 757.511 requires that a transaction such as the one involved in this case be approved by the Commission. Under Subsection (3) of that statute, the Commission shall approve the application if it determines that approval will "serve the public utility's customers in the public interest,...". In this case, the parties to the

Settlement Agreement claim that the transaction will benefit the customers. They argue that the benefits and protections provided by the Settlement Agreement counterbalance the risks and potential harms identified by Staff and other parties earlier in the process. Therefore, they argue, the Settlement Agreement will ensure that the acquisition is in the public interest under ORS 757.511.

Position of the Settling Parties

The settling parties (SP) argue that the central provisions of the Settlement Agreement accomplish the following:

1. Give Sierra an incentive to achieve the maximum possible integration efficiencies and resulting savings while improving customer protections relating to service quality and safety; and
2. Provide customers with rate credits to help ensure that they obtain net benefits from the transaction.

Sierra's Incentive to Achieve Savings

Under the Settlement Agreement, PGE must file its upcoming SB 1149 rate case using the assumption that Enron continues as its owner. Therefore, the 2002 test year for that case will exclude both the savings related to Sierra's acquisition of PGE and any costs incurred to achieve such savings. Second, Paragraph 2.0 of the Settlement Agreement freezes the PGE revenue requirements for distribution and for transmission services that emerge from the SB 1149 rate case until October 1, 2007. PGE or any of the other parties may seek relief from this freeze for extraordinary events.

These provisions, according to the parties, give Sierra incentives to achieve savings and also provide the benefit of greater price certainty to customers. Paragraph 2.2 of the Settlement Agreement allows parties to ask the Commission to require PGE to file a rate case for any of the three major functions (distribution, transmission and generation) such that the new rates would take effect at the end of the freeze period or up to June 30, 2008.

Acquisition Credit to Customers

Paragraph 3.0 of the Settlement Agreement calls for Sierra to provide an annual "Sierra Acquisition Credit" for the benefit of PGE's distribution customers. The amounts of the credit are set forth in the Settlement Agreement. The credit will continue through September 30, 2007. PGE will deposit the dollars associated with the rate credit at the beginning of each year and use a balancing account mechanism for accruing and passing these credits through to its customers. Interest will be calculated "consistent with

current Commission practices.” Paragraph 3.3 ensures that customers will not have to pay for their credits by prohibiting inclusion of the credits in any Oregon revenue requirement presentation or in any reports of operations. Section 4 describes the distribution of the Monthly Rate Credit among the various classes of customers and the rate design to be applied. This provision gives the Commission flexibility in determining the level of the monthly credit so that a stable monthly rate credit can be provided.

SB 1149

The settling parties argue that the Settlement Agreement facilitates the implementation of SB 1149 in the following ways:

1. Paragraph 1.0 requires PGE to proceed with filing its SB 1149 rate case on October 1, 2000, as required by the Act.
2. Paragraphs 1.4 and 5.7 commit PGE to continue its support of certain key provisions of SB 1149.
3. Paragraph 2.2 allows the Commission to make revenue neutral rate spread and rate design changes during the freeze period, recognizing the evolution of SB 1149 may require this.
4. It takes into account that SB 1149’s major effect will be on PGE’s resources and power supply services by excluding generation and power supply from the revenue requirement freeze. It also allows for the development of a fuel and purchased power adjustment mechanism for PGE so that the company could avoid the risk of severe financial distress which would face it if these matters were contained in the temporary freeze.

Regional Transmission Organization

The Settlement Agreement anticipates RTO development in two ways:

1. Paragraph 2.3 allows for adjustment of PGE’s unbundled transmission rates pursuant to FERC-approved changes in such rates, including those related to RTO formation.
2. Paragraph 2.4 identifies a possible major reclassification of PGE’s assets between transmission and distribution as one of the possible extraordinary events justifying relief from the rate freeze.

Other Conditions

The Settlement Agreement contains additional conditions relating to the following:

1. Commission access to information.
2. Maintaining PGE's financial strength and regulating its financial transactions.
3. The regulatory treatment of Sierra's acquisition costs.
4. Maintaining or improving PGE's service quality.
5. Prevention of most co-mingling of PGE and Sierra assets.
6. Prevention of cross-subsidization and preferential treatment of affiliates.
7. Issues relating to registered holding companies.
8. Hold harmless assurances and certain prior ENRON conditions.
9. Specification of procedures for penalties in the event of non-compliance.

Additional Testimony by Staff Relating to Goodwill

Staff provided additional testimony relating to the treatment of goodwill in the Settlement Agreement. In keeping with past Commission practice, the Settlement Agreement does not allow recognition of goodwill for rate making purposes. It does, however, include a provision that will allow Sierra Pacific to request that goodwill be recognized for rate making purposes after the rate freeze period. Staff points out that its agreement to include that provision in the Settlement Agreement does not indicate a change in Staff's position on the issue: that goodwill associated with the transaction should not be recognized for rate making in the future.

Commission Disposition

The Commission has reviewed the Settlement Agreement, the accompanying testimony and the remainder of the record in this case. We find that the acquisition as conditioned by the Settlement Agreement will not harm PGE's customers,

will not result in the degradations of PGE's services, will not result in higher rates to PGE customers, will not weaken PGE's financial structure and will not diminish PGE's utility assets. We find that approval of the acquisition will provide benefits to PGE's customers and will serve PGE's customers in the public interest. We conclude that the acquisition of PGE by Sierra Pacific should be approved.

Stipulation

The following parties entered into a Stipulation: Sierra Pacific, PGE, CUB, Renewable Northwest Project, City of Portland, Natural Resources Defense Council, Oregon HEAT, Community Action Directors of Oregon, Oregon Energy Coordinators Association and Northwest Energy Coalition.

The Stipulation resolves issues in this docket relating to the effect of the acquisition on various public interest matters. The parties to the Stipulation agree to support, or not oppose, the September 1, 2000, Settlement Agreement among PGE, Sierra, Staff, ICNU and CUB. The Stipulation also provides a transition procedure as to certain matters covered by the Memorandum of Understanding (MOU) in Docket UM 814, acknowledged by the Commission in Order No. 97-196 (Enron purchase of PGE). The acknowledgement requested by Sierra is, according to the signatories, consistent with the Commission's treatment of the MOU in Docket UM 814. The stipulating parties ask the Commission to acknowledge in this order the commitments made in the Stipulation.

The agreement set out in the Stipulation may be summarized as follows:

Renewable Resources. The Stipulation obligates PGE and Sierra to continue to support renewable resource initiatives begun under the MOU. Pursuant to PGE's 1993 Integrated Resource Plan and the MOU, PGE has acquired two wind resources totaling about 12 MWa. One of these is known as Vansycle Ridge. The other is a yet to be constructed wind resource for which PGE has a 10 year contract from the Bonneville Power Administration to purchase the output. The parties agree that, so long as PGE meets its commitments under these contracts, these contracts will fulfill PGE's and Enron's obligations under the MOU for the acquisition of wind power. The parties agree to support PGE's request for recovery of the costs of the Vansycle Ridge contract.

The parties also agree that PGE's efforts relating to a geothermal resource project at the Newberry Crater in Oregon have fulfilled the responsibilities of PGE and Enron under the MOU and that decisions regarding geothermal development in Oregon to be funded by a Systems Benefit Charge (SBC) now rest solely with the Commission.

System Benefits Charge. In the MOU, PGE agreed to file and support an SBC at or above the funding levels and for the purposes outlined in the final report of the

Comprehensive Review. PGE made such a filing in 1998. In 1999, the Oregon Legislative Assembly passed, with PGE's support, SB 1149, which includes an SBC that substantially meets the criteria specified in the MOU. The parties agree that the implementation of SB 1149 substantially as adopted fulfills PGE's and Enron's obligations under the MOU. PGE and Sierra agree to continue to actively support the SBC throughout the implementation of SB 1149.

In the event SB 1149 is not implemented substantially as adopted, PGE will continue to invest in such demand-side measures and renewable resources as the Commission acknowledges in PGE's least cost plans. PGE will continue to support the major provisions of SB 1149, including direct access for non-residential customers and an SBC at least at the funding levels allocated for the purposes outlined in the final report of the Comprehensive Review, through a non-bypassable charge with self-direction for customers with large loads.

Evaluation of Marginal Cost. In the MOU, PGE and Enron made a commitment to sponsor or participate in a generic proceeding on marginal costs and to provide certain funding to public interest parties for purposes of their participation in such docket. The parties to the Stipulation agree that this portion of the MOU is fulfilled.

Separation of Generation and Distribution. The MOU obligated PGE and Enron to develop a legal and regulatory separation of the distribution business from PGE's fossil resources. The stipulating parties agree that SB 1149 has superceded this commitment.

Decoupling. The MOU obligated PGE to develop a distribution pricing structure that severs the link between retail electricity throughput and the recovery of fixed transmission and distribution costs. PGE and Sierra agree that, in the rate case required to be filed on or about October 1, 2000, to implement the provisions of SB 1149, PGE will file one or more rate making alternatives for distribution services under which the revenues and net income of PGE are not tied to or derived from kilowatt-hour sales. The Stipulation provides additional detail as to the commitment of PGE and Sierra on this matter.

Low Income. PGE will continue its current in-kind contributions to Oregon HEAT and match customer contributions to Oregon HEAT with shareholder funds up to \$100,000 per year for a period of five years after the close of the transaction. PGE also agrees to provide shareholder funds to increase the funding under PGE's low income weatherization program from 50% of eligible measures to 100% of eligible measures, subject to a cap of \$200,000 annually. PGE agrees to make the year 2000 allocation available upon the filing of the Stipulation.

PGE also agrees to support legislation to clarify that the low income funding provided under SB 1149 is an annual amount of \$10 million.

Fish and Wildlife Support in Hydroelectric Generation. The MOU committed PGE and Enron to a number of activities related to preserving and enhancing the role PGE has developed with respect to fish and wildlife issues in Oregon and maintaining its approach to the re-licensing of the hydroelectric projects. PGE and Sierra affirm their support for the fish and wildlife actions in the MOU.

City of Portland. PGE and Sierra commit to make all reasonable efforts to develop and obtain approval of a modern utility franchise with the City of Portland within two years following the completion of the merger.

CONCLUSIONS

The Commission concludes that:

1. Sierra Pacific resources, as a result of its acquisition of Portland General Electric, will exercise influence over Portland General Electric Company.
2. Portland General Electric Company is a public utility subject to the jurisdiction of the Oregon Public Utility Commission.
3. After completion of the acquisition, an affiliated interest relationship will exist between Portland General Electric and Sierra Pacific.
4. Approval of the acquisition will serve PGE's customers in the public interest.
5. Acknowledgement of the commitments contained in the Stipulation is in the public interest.

ORDER

IT IS ORDERED:

1. The Settlement Agreement dated September 1, 2000, is adopted by the Commission and incorporated by reference in this order.
2. Sierra Pacific's application to acquire the power to exercise influence over PGE is granted.

3. The Stipulation filed September 21, 2000, is incorporated by reference in this order.
4. The commitments contained in the Stipulation filed September 21, 2000, are acknowledged.

Made, entered, and effective_____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission with 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.