

Eugene Water & Electric Board

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July 14, 2004

Secretary Annette L. Vietti-Cook
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

Re: Comments of the Eugene Water & Electric Board on Portland General Electric's
Application For Consent To Indirect Transfer Of Facility Licenses

Dear Ms. Vietti-Cook:

The Eugene Water & Electric Board, a municipally owned utility of the State of Oregon ("EWEB"), submits the following preliminary comments to the Nuclear Regulatory Commission ("Commission") with respect to the Application for Consent to Indirect Transfer of Facility Licenses ("Application") submitted by Portland General Electric ("PGE") on June 14, 2004.¹ The application seeks Commission approval of the proposed transfer by PGE of the licenses for the Trojan Nuclear Power Plant ("Trojan") and the Trojan Independent Spent Fuel Storage Installation ("Trojan ISFSI") (the licenses for Trojan and the Trojan ISFSI are collectively referred to herein as the "Trojan License") to the Oregon Electric Utility Company, LLC ("OEUC"). EWEB takes no position either in favor of, or in opposition to, the proposed transfer. Rather, these comments address EWEB's concerns, as co-owner and co-licensee of Trojan,² about the ability of PGE or OEUC to meet both expected and unexpected financial obligations with respect to the Trojan License.

I. PGE'S LICENSE TRANSFER APPLICATION

On June 14, 2004, PGE applied to transfer the Trojan License to OEUC. The purpose for the Application is to allow the transfer of the PGE stock. The PGE stock will be sold by its current owner, Enron Corporation, to a new owner, OEUC ("Transaction"). Nearly 80% of the ownership of OEUC will be held, in turn, by entities affiliated with the Texas Pacific Group ("TPG Partners"). Although the TPG Partners will not have direct control over OEUC, they will hold certain "consent rights" with respect to OEUC's "Managing Member."

¹ The Commission has not yet published in the Federal Register any notice of its consideration of the Application. EWEB, however, submits these preliminary comments to ensure compliance with 10 C.F.R. § 2.1305. EWEB reserves the right to submit further comments in the event that the Commission publishes notice in the Federal Register and establishes a different deadline for comments.

² Under the relevant Trojan project agreements, PGE is the majority owner and lead operating entity of Trojan, holding a sixty seven and one half percent (67.5%) ownership interest in Trojan. EWEB is a thirty percent (30%) owner and co-licensee.

A. Technical and Oversight Matters

With respect to the technical qualifications of OEUC, PGE points out in the Application that “PGE’s current management team will continue to operate the utility on a day-to-day basis. PGE will continue to be an NRC licensee of TNP and the Trojan ISFSI and no direct transfer of the TNP possession-only license or the ISFSI license will result from the purchase.” Application, p. 4. PGE also reports that “[t]here will be no changes to the management or operation of TNP or the Trojan ISFSI as a result of the Transaction.” *Id.* at 10.

B. Financial Matters

With respect to the financial qualifications of OEUC, PGE relies in its Application on the financial analysis this Commission previously performed as well as the resources of the TPG Partners. First, PGE states that the Transaction will not alter the Commission Staff’s conclusion in 1995 that funding for the Trojan Decommissioning Plan met the applicable regulatory requirements. *See* Application, p. 12. Second, PGE notes that the “Transaction will also not change PGE’s status as an ‘electric utility,’ as defined in 10 CFR § 50.2.” *Id.* at 13. Finally, PGE states that the “acquisition of PGE’s stock by OEUC is expected to enhance the financial stability of PGE by removing PGE’s stock from Enron’s bankruptcy estate. In addition, the purchase will result in a return to stability through certainty of ownership by strong unified shareholders.” *Id.* at 4.

II. EWEB’S COMMENTS ON APPLICATION

PGE has at all times been a competent and adequate majority owner and operator of Trojan and the Trojan ISFSI. To the extent that the Application contains an accurate representation of PGE’s status after the Transaction, EWEB is confident that from a technical standpoint Trojan and the Trojan ISFSI will continue to be operated in a professional and competent manner.

The Commission, however, would benefit from further analysis and consideration of the financial aspects of the Transaction. The Oregon Public Utility Commission (“OPUC”) is now conducting an exhaustive examination of the proposed Transaction conditions in OPUC Docket No. UM 1121. A final OPUC decision regarding the Transaction is expected before the end of 2004. A number of entities have intervened in the ongoing OPUC proceeding and questioned whether the proposed acquisition terms will in fact decrease, rather than increase, the financial strength and stability of PGE. The OPUC will undoubtedly develop useful information regarding the Transaction that may bear on any final Commission decision on the License transfer Application. Accordingly, EWEB believes that any Commission decision on the Application is premature until such time as the OPUC proceeding is completed.

The financial questions raised in the OPUC proceeding are compounded by the fact that PGE has sought to reduce its obligation to maintain financial protection for Trojan and the Trojan ISFSI from \$100 Million to \$25 Million. On February 28, 2003, PGE sent a letter to this Commission requesting the Commission to reduce “the primary financial protection requirement currently applied to the Trojan Nuclear Plant from \$100 million to \$25 million.” *See* “Request for Further

Exemption from the Financial Protection Requirements of 10 CFR 140.11(a)(4) and Related Amendment to Indemnity Agreement No. B-78," p. 1. This reduction in financial protection may place an increased burden on PGE or its successors to be able to meet future Trojan expenditures either through cash reserves or from their ratepayers. EWEB may have viewed such an application favorably before the announced Transaction terms. EWEB believes, however, that lowering the available insurance levels deserves further scrutiny by the Commission under the present circumstances.

III. CONCLUSION

EWEB requests the Commission to hold in abeyance its review of the PGE Application until such time as the OPUC proceedings in UM 1121 are completed. EWEB further requests leave from the Commission to submit information developed in the OPUC proceedings that may be relevant to the Commission's review of the PGE Application.

EWEB believes that further Commission scrutiny of such information should be undertaken to best ensure that PGE will have the financial capability to pay its share of all expected and unexpected Trojan costs after the acquisition by OEUC. EWEB stands prepared to provide any information to the Commission that will be helpful in such an evaluation, including a full summary of the EWEB capability to meet its share of the Trojan expenses. EWEB does not seek absolute assurances of PGE's financial capabilities following the acquisition. EWEB feels compelled, however, to raise these issues and requests with the Commission given the very important public interest issues involved in all nuclear plant owners standing ready to meet their full share of all costs that may be incurred in the current environment.

Very truly yours,



Kenneth D. Beeson
Energy Resource Projects Manager
Eugene Water & Electric Board

C: Steven B. Nichols, General Manager, Trojan