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PGE files action to block state trading investigation

The utility contends power trading falls under federal, and not state, supervision

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Portland General Electric has gone to federal court in an attempt to block the Oregon attorney general's office from launching another investigation into the Portland utility's controversial power-trading practices.

PGE officials thought they had put the trading controversy behind them in September when the utility settled a case brought by the Federal Energy Regulatory Commission. The utility agreed to pay \$8.5 million, including \$1.3 million to Oregon, to settle the case. The energy commission regulates wholesale electricity trading.

On Nov. 6, PGE received notice that the attorney general's office was proceeding with its own inquiry. In an investigative subpoena, state lawyers informed PGE that they had "reason to believe" PGE may have violated the Oregon unlawful trade practices act as well as state antiracketeering laws.

In response, PGE filed a complaint in U.S. District Court on Wednesday against Oregon Attorney General Hardy Myers. It seeks a ruling that Myers' office lacks jurisdiction to investigate the questionable trades.

The Federal Power Act gives the federal energy agency "exclusive authority" to regulate the transmission and sale of wholesale power, according to PGE's complaint. FERC's authority "preempts state regulation," the complaint said.

"We're asking the court to stop the state's investigation," said Doug Nichols, PGE's general counsel. "We feel the FERC has completely reviewed this matter. The state's investigation covers all the same ground. It's really redundant."

An office spokesman said the state investigation would continue.

For more than a year, FERC had investigated allegations that PGE traders participated in fraudulent trades with Enron, PGE's parent company. The PGE inquiry was part of a sweeping national inquiry into phony electricity trades that contributed to power shortages and generally worsened the power crisis of 2000-2001.

PGE denied any wrongdoing at the time it settled the FERC case. The \$8.5 million was divided up by several parties: \$6.1 million for the California Department of Water Resources, which procures electricity for that state; \$1.1 million to the city of Tacoma, which operates a municipal utility and, along with California, played a lead role in the PGE case; and \$1.3 million to Oregon industrial and residential customers.

Myers' deputies never signed onto the FERC settlement, said Kevin Neely, a spokesman in Myers' office.

"We had discussions with PGE and weren't able to come to a mutually agreeable position," Neely said.

Myers' deputies were not aware of the PGE filing until contacted by The Oregonian late Wednesday. Neely declined comment on its contents, but he said Myers' investigation would continue.

"It's no secret," Neely said. "We've had an ongoing investigation of the wholesale energy market since early 2000. That investigation continues today. Until we're either convinced there was no wrongdoing or we've reached an agreement, we're going to continue to pursue those claims."

Last week, Texas Pacific Group announced that it had reached a tentative agreement to buy PGE in a deal valued at \$2.35 billion.

Brent Hunsberger of The Oregonian contributed to this report