

Review of Oregon PUC Staff's Report, March 2, 2006¹

City of Portland

March 13, 2006

Background

At a public hearing on March 2, Oregon Public Utility Commission Staff released a report critical of the City of Portland's concerns. As it was issued at the hearing, the report was issued too late for Portland officials to review and provide meaningful comment at the hearing. In preparing the report, staff made an initial inquiry with the City asking for the City to identify issues. It appears that PGE staff was consulted about the issues considered. However, the City of Portland was not contacted for follow-up regarding documentation or source materials. City Commissioners Sten and Leonard requested a brief review of the PUC Staff's report in preparation for the next public hearing on March 13.

Issues Considered by PUC Staff

Staff addressed these six questions:

- 1) Did PGE keep \$88 million collected from customers to pay income taxes?
- 2) Did the company change the allocation of income from certain wholesale transactions for the 2000 tax year in order to boost its Multnomah County Business Income Tax liability, knowing that any taxes collected would be sent to and kept by Enron?
- 3) Can the Commission require refunds of income taxes collected but not paid to taxing authorities?
- 4) Did PGE fail to collect \$246 million owed to customers by Enron?
- 5) Did customers benefit from the sale of the Coyote Springs 2 site?
- 6) Did PGE engage in improper trading activity during the energy crisis of 2000-01? Are PGE's rates high today because of trading activity and market conditions during the energy crisis?

The City's thoughts and comments on Staff's various issues are provided below:

1) **Did PGE keep \$88 million collected from customers to pay income taxes?**

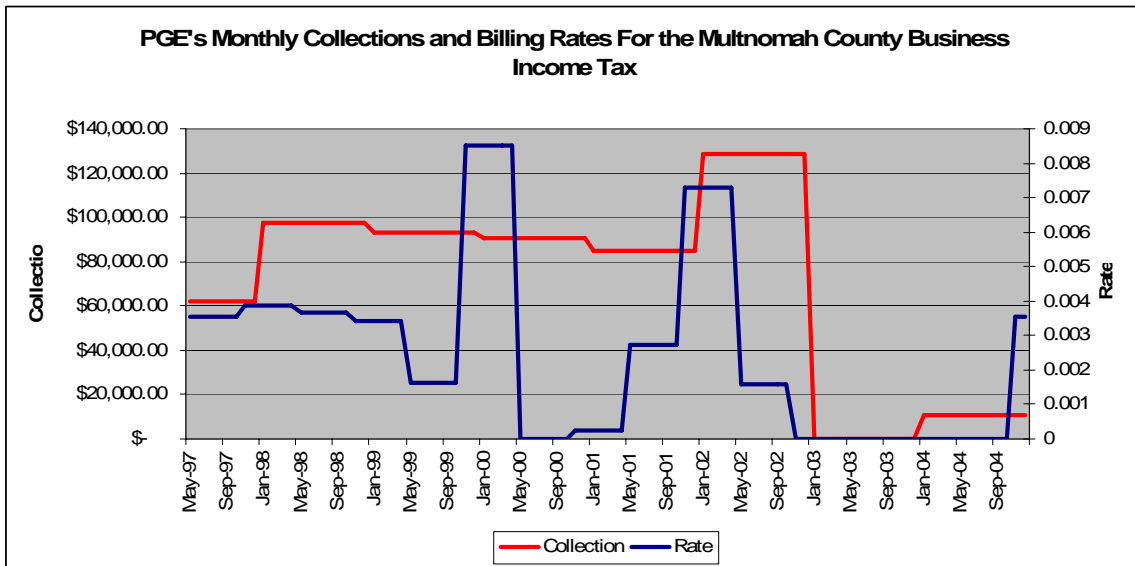
The City is continuing its examination and will review Staff's documentation before providing a final answer. It is important to note that the City's initial analysis was based

¹ PUC Staff Review of the Portland City Attorney's "Report on Documents received from Portland General Electric pursuant to Resolution No. 36337 (Substitute)" and Other Matters, March 2, 2006. (Attachment 1)

upon the incomplete materials provided by PGE. It is also worth noting that this is a side-issue. Staff’s focus has been upon PGE’s tax collections – the monies collected from ratepayers – and whether the utility “over collected” or “under collected”. From the City’s perspective, this focus misses the more important question – how did the revenues collected by PGE relate to actual taxes paid to state and local governments? In the end, the amount collected, whether at one end of the range or another, dwarfed any actual taxes paid.

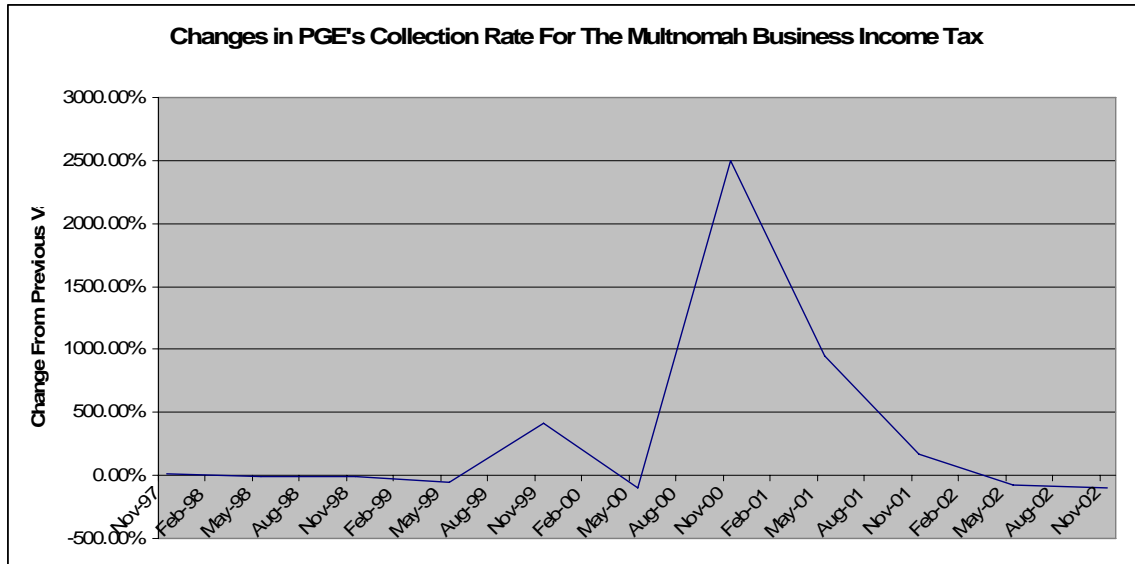
2) Did the company change the allocation of income from certain wholesale transactions for the 2000 tax year in order to boost its Multnomah County Business Income Tax liability, knowing that any taxes collected would be sent to and kept by Enron?

To the best of the City’s knowledge, this question is not under dispute. Staff prepared an excellent summary in Appendix C. The facts speak for themselves:



Starting in late 2000 and continuing until early 2002, PGE dramatically raised the rate used to collect revenues from its ratepayers. The table below shows that PGE’s collections varied as well.

As a matter of simple computation, the Multnomah County Business Income Tax collection rate would normally be a stable fraction over time. In the Staff’s table, the rate varies dramatically from .0001 to .0872. It is difficult to see why any simple calculation would have such extreme swings. If property taxes had similar variability, homeowners would face tax bills that could vary by as much 2,500% over the course of a year. Before the question of the appropriate level can be resolved, asking why this calculation reflects such an extensive range should be answered first.



The Staff's report is not entirely clear about why the logic behind such changes is supportable. The report says:

For the 2000 county tax filing, the new manager of the tax department asked the Risk Management department to provide wholesale sales information in electronic form. Risk Management provided a spreadsheet that separated physical deliveries (listed by hub) and bookouts (that had no hub listed), which prompted discussion about how to assign the bookouts. PGE concluded that the bookouts should be assigned to Multnomah County, reasoning that since power did not flow the transaction occurred in the county.

During 2001, PGE began to track all transactions, including those that were booked out, by hub. It did so because it expected to be subject to Public Utility Holding Company Act (PUHCA) reporting requirements that require all transactions to be assigned to hubs for purposes of distinguishing between interstate and intrastate activities. For the county tax filings beginning with the 2001 tax year, Risk Management provided the tax department with sales information by hub, without a separate bookout category, so the bookouts have been assigned to jurisdictions based on the hub location.²

The source for this argument is an "informal" data response provided by PGE.³ In it, a PGE rates manager, Patrick Hager, relates that the new Risk Manager sent an unusual response to the tax manager that did not include the location of sales that had been booked out.

Risk management is a trading function that attempts to allocate risk among traders to gain the highest return for the company at the lowest risk. A risk manager who did not keep data on the location of trades – whether settled by cash or delivery – would soon lose his or her job. As a matter of law, both FERC and the IRS require records to be kept for a designated period of years. A prudent utility neither deletes nor allows the erasure of the

² PUC Staff Review of the Portland City Attorney's "Report on Documents received from Portland General Electric pursuant to Resolution No. 36337 (Substitute)" and Other Matters", page 12. (Attachment 1)

³ Ibid., Appendix D: PGE Response to OPUC Informal Data Request Question 018, January 27, 2006. (Attachment 1)

computerized trading books developed for risk management. A prudent utility requires its traders to keep records of their transactions in the event that both the computerized records and the confirms are lost. Additionally, PGE trades (other than those with Enron) were subject to “confirms” – contractual notifications that memorialize trades.

The term “book out” is a concept that applies as much to utility operations as to everyday life. Anyone who has had the pleasure of visiting friends for Monday Night Football generally offers to leave a contribution at the end of the evening for the snacks consumed. A “physical settlement” would entail driving to the grocery store, buying the snacks, and then returning to the friend’s house. Common social practice is to offer a “book out” – in other words, ask if one can contribute to paying for a part of the festivities.

Book outs are common when there are a limited number of counterparties and energy products. When the situation is appropriate for a book out, the settlement staff calls the counterparty and proposes to simply pay the difference and avoid the cost of transmission. Typically, book outs are not of much interest to a risk manager.

FERC received a variety of documents from PGE during the PA02-2-000 investigation, Most, but not all, are available on FERC’s Web site. One such document, PGE’s Energy Trading Policies & Procedures (September 1999) makes no mention of book outs as an issue in risk management.⁴

Why did PGE increase the rate by 2500% in November 2000? Other than repeating the anecdote above that was provided by PGE, the Staff report is silent. It appears that the reason behind PGE’s decision was to increase the amount of money recovered as MCBIT. However, lacking information from PGE, the reason for the change can neither be confirmed nor denied. Additionally, a plausible explanation for a decision does not mean that the decision is reasonable as to the ratepayers.

3) Can the Commission require refunds of income taxes collected but not paid to taxing authorities?

The City concurs with Staff that it may not be appropriate for the rate making body, be it the City or the PUC, to refund or credit the amount of income taxes collected by PGE pursuant to its Commission authorized tariff, paid to Enron, and not paid to taxing authorities. The City has not suggested otherwise. The City is looking only at prospective rate making for PGE, and to what extent the circumstances surrounding the income tax payments to Enron should have an impact on future rate considerations. The City concurs with Staff’s discussion on what constitutes deferred taxes and how they are treated from a regulatory perspective. The City points out that Staff may have overlooked the fact that the City Attorney’s report was preliminary, based upon incomplete information provided solely by PGE. The report did not draw any final conclusions from that data. Instead, the City has asked for additional information from PGE so that the City could clarify and better understand PGE’s initial response. Chief among these requests was information that would clarify how PGE accounted for

⁴ Energy Trading Policies & Procedures, PGE, September 1999. (Attachment 4)

deferred taxes and that would verify that Enron and PGE accounting procedures were consistent. This information has not been forthcoming. If the City receives this information, it will be able to provide a definitive analysis of the deferred tax issues.

4) Did PGE fail to collect \$246 million owed to customers by Enron?

As discussed above, the City Attorney's report on this issue was preliminary and based solely on information provided by PGE in the bankruptcy proceedings. PGE verbally responded with additional assertions about extenuating circumstances regarding the monies owed from Enron to PGE. To verify the verbal assertions by PGE, the City submitted additional questions and requests for documents, none of which has been forthcoming from PGE. As in the discussion above, the City concurs with Staff that it may not be appropriate for the rate making body, be it the City or the Commission, to refund or credit the amount of Enron debts waived by PGE. The City Attorney's report does not suggest otherwise. Here, too, the City is looking only at prospective rate making for PGE, and to what extent the circumstances surrounding the waiver of Enron debts should have an impact on future rate considerations.

5) Did customers benefit from the sale of the Coyote Springs 2 site?

This issue arose during the Staff's review of the proposal to sell a fully sited power plant to Washington Water Power (Avista) in the spring of 2000. The staff's conclusion was that the sale of the plant benefited ratepayers and continues to do so as a result of the proceeds from the sale and a lower rate base which reduces PGE's revenue requirements. There is no question that the PUC's review in 1999 and 2000 was diligent and designed to protect Oregon's ratepayers. Unfortunately, evidence uncovered by the Oregonian in 2002; materials found in the records of Andrew Fastow's private investment vehicle, LJM II; and the guilty pleas of Christopher Calger and Andrew Fastow indicate that few of the representations made by Enron were truthful.⁵

The facts are as follows:

1. In the winter of 1999/2000, PGE and Enron approached the PUC with a proposal to sell the sited Coyote Springs II project.
2. After difficult negotiations, PUC staff proposed a profit sharing agreement which was adopted.⁶
3. In the spring of 2000, Washington Water Power (Avista) purchased the site and began development.

⁵ See 2/03/2002 Powers Report (Attachment 5a), LJM II Monthly Letter of July 2000 (7/21/2000) (Attachment 5b), and Chris Calger guilty pleas press release, July 14, 2005. (Attachment 5c) http://www.usdoj.gov/criminal/press_room/press_releases/2005_4138_conspNcooprtion071405.pdf. Materials pertaining to Enron's plans for Coyote Springs II in EL02-114 have been marked "protected".

⁶ Agreement of PGE to sell Coyote Springs with OPUC on sharing of benefits, February 24, 2000 (Attachment 6)

4. Subsequently, it was discovered that Enron had a much greater role in the plant than was understood at the time. Enron's construction subsidiary was retained to build the plant, Enron sold Washington Water Power the turbine, and Andrew Fastow had an agreement to buy half of the plant back from Washington Water Power.⁷ Other arrangements can also be found in Enron discovery in EL02-114.
5. On July 14, 2005, Chris Calger, Tim Belden's, co-equal at Enron, pleaded guilty to accounting irregularities concerning the turbine that resulted in a substantial payment directly to Andrew Fastow's LJM II.⁸

An obvious question is whether Enron's profits at LJM II and its construction subsidiary should have been credited to Oregon ratepayers. The payment to Andrew Fastow has the appearance of a kickback, rather than a legitimate payment for services, since he was paid for agreeing to accept an extremely valuable asset as part of the transaction. In other words, it was the equivalent of paying a friend of yours to accept a substantial gift.

PUC Staff has asked an additional question: Would retention of Coyote Springs II have lowered power costs in UE 115?

Intuitively, the answer would seem to be yes, since Coyote Springs II would have provided a hedge against high priced purchases during the crisis. As discussed below, PGE refuses to provide materials on UE 115 that would help us make this evaluation. Therefore, we cannot respond to this question at this time.

In sum, the individuals involved in Coyote Springs II, Timothy Belden, Chris Calger, and Andrew Fastow, are now convicted felons. It appears that the project may have functioned as a "revolving door" financial scheme like the Cuiaba plant in Venezuela or the purchase of barges off the coast of Nigeria.⁹ If this proves to be the case, payments to third parties and other Enron subsidiaries that sought to strip benefits away from Oregon ratepayers should be credited back to Oregon ratepayers.

Finally, the PUC staff's analysis of PGE's high rates in comparison to Pacificorp suggests that one of the explanations is the disparity between the two in terms of generation capacity; meaning that PGE relies much more heavily than Pacificorp on the open market for its power. Consequently, in addition to the potential loss of the above stated sums of money owed to Oregon ratepayers due to the sale of Coyote Springs II, the City of Portland is concerned that Oregon ratepayers may be suffering doubly from this

⁷ LJM II monthly letter (Attachment 5b), Andrew Fastow discovered a copy of a document called Global Galactic Agreement in his safety deposit box in 2004 (Attachment 7), a few months after he and his wife had pleaded guilty. It was a subject in the Lay/Skilling criminal trial on March 8-9, 2006. Coyote Springs II appears in this document.

⁸ Timothy Belden pleaded guilty to felony charges on 10/17/2002 (Attachment 8a), Andrew Fastow on 1/14/2004 (Attachment 8b), and Chris Calger on 7/14/2005 (Attachment 5c). Other West Desk personnel who entered guilty pleas include Jeff Richter on 2/4/2003 (Attachment 8c) and John Forney on 8/5/2004 (Attachment 8d).

⁹ See the Powers Report at pages 146, & 151. (Attachment 5a) See also Footnote 7 above.

transaction as a result of the opportunity cost of foregoing the generation capacity of Coyote Springs II and being subjected proportionately to the open market for Oregon's energy needs.

6) Did PGE engage in improper trading activity during the energy crisis of 2000-01? Are PGE's rates high today because of trading activity and market conditions during the energy crisis?

The first question has been addressed affirmatively in several FERC proceedings and by the Oregon PUC.¹⁰ Its 2003 Staff Report states:

We believe, however, there is a prima facie case that PGE mismanaged its trading activities with Enron, based on the following:

- PGE failed to properly post 65 percent of its transactions with EPMI in 1999-2001. This apparent violation of its FERC tariff jeopardized PGE's ability to sell excess power at market prices. Without its market-based rate authority, the company would be limited to charging a rate based on its costs, which could be less than prevailing market prices. Since wholesale sales margins are credited to customers, either on an expected basis in estimating base power costs or on an actual basis in a power cost adjustment, PGE's retail customers could have been harmed by the loss of market-based rate authority. The company failed to have management controls in place to ensure it was posting its trades with EPMI in accordance with the requirements of its FERC tariff or to catch any errors after the fact. (PGE discovered the errors when it started to review its transactions with affiliates after FERC opened its Fact-Finding Investigation in early 2002.)
- PGE should have questioned the "17 day" transactions.

The final recommendation of the 2003 Staff Report says:

Recommendation

While we believe there is a prima facie case that PGE mismanaged its trading activities with EPMI, we recommend the Commission pursue Option 3. Since the process for a misconduct or mismanagement case--a formal investigation and possibly a general rate case--would be complicated and time-consuming, we believe it would be more efficient for the Commission to hold off on any PGE investigation until FERC completes the Fact-Finding Investigation and PGE case (EL02-114-000). At that point, the Commission would have the full record of FERC's findings available in considering and undertaking a misconduct or mismanagement case. An investigation could more likely proceed without mid-course corrections to account for continuing developments at FERC. We propose to

¹⁰ Trading Activities by Portland General Electric, PacifiCorp, and Idaho Power Company during the Western Electricity Crisis of 2000-01: Did They Violate Any Oregon Statutes, Rules, or Orders? Oregon Public Utility Commission Staff, June 12, 2003, pages 36 through 38. (Attachment 10)

provide the Commission a status report on the FERC case at the end of the year, shortly after the initial decision in EL02-114-000 is scheduled for release.¹¹

The Oregon PUC Web Site addresses these issues by stating:

On June 12, 2003, the Commission decided to delay a decision on opening formal investigations into trading activity by Portland General Electric, PacifiCorp, and Idaho Power Company in 2000-01 until the Federal Energy Regulatory Commission (FERC) completes its review of the matter. The Commission also reaffirmed that it will hold customers harmless for any penalties imposed by FERC or any other authority related to trading activity during the western electricity crisis of 2000-01. The Commission acted on recommendations presented in a staff memo and final report on whether the trading activities of the three utilities in 2000-01 violated any Oregon statutes or Commission rules or orders.¹²

Subsequently, the FERC Commission closed its investigation as part of its participation in the partial settlement of EL02-114 described at the start of this review.

All in all, the 2003 Staff Report chose a wise course. FERC has still not completed its review of the issues raised in EL02-114. Various settlements with parties involved in EL03-137/180 now amount to the order of \$2,000,000,000.00 while the remaining parties are holding out for a possible return of \$1,800,000,000.00 of Enron's fraudulently received profits during the now increased scope of the case.¹³

As noted in the certification of the presiding judge in the EL02-114 settlement, only a few days of activity were reviewed during the abbreviated EL02-114 proceeding.

At the time Enron engaged in hiding substantial amounts of data and commentary. Over the past three years, much of this material has been uncovered by litigators working for the Snohomish Public Utility District No. 1 of Everett, Washington. As these documents have been made available to the public, they have become an important part of the public's understanding of Enron and its criminal activities.¹⁴

The general public is otherwise handicapped in this area by administrative confidentiality orders that restrict the dissemination of information produced and considered by the agency and industry participants.¹⁵ Thus far, the City has obtained information on PGE

¹¹ Ibid., page 45. (Attachment 10)

¹² http://egov.oregon.gov/PUC/electric_gas/invest/tradeact.shtml.

¹³ Enron has adopted a piecemeal settlement approach, so it is difficult to easily total their proposed payments. Most, but not all, of the settlements are in amounts subject to distributions at different priorities in the Enron bankruptcy proceeding, so the actual total is likely to fall short of the nominal settlement values.

¹⁴ For example, the Snohomish effort revealed the trader conversation regarding the molestation of "Aunt Millie" and the happy traders singing "burn baby, burn" as a fire threatens Path 15 in California have appeared on all of the major networks and newspapers.

¹⁵ FERC has reviewed PGE involvement with Enron trading schemes in several dockets. The most important are PA02-2-000, FERC's investigation into the 2000/2001 West Coast Crisis; EL02-114, a show cause proceeding into PGE's activities; and EL03-137/180, an Enron show cause proceeding. Unless contested, a party may claim protected status for documents submitted in these proceedings. Both Enron

and Enron activities directly from FERC’s public website.¹⁶ However, FERC’s website does not contain all of the materials requested by the agency and provided by PGE. As a result, there is no way to have a public discussion of this critical area of concern. Even though FERC criticized PGE in 2002 for refusing to make this data public, PGE continues to oppose the release of data about its involvement with Enron trading schemes.¹⁷ The only persons who seemingly don’t have access to this information are City of Portland commissioners, their consultants, the public and the media.

We note that in 2002 and 2003, little information was available to Staff. Staff used the word “potential” many times; for example on page 27, “Staff found evidence that PGE was involved in 17 days of potential Enron Death Star transactions.” Its 2006 Report appears to recap the early investigation and does not consider any of the evidence recently brought to light.

In 2002 and 2003, it was possible that these would not turn out to be Death Stars. Enron had been very careful not to hand over critical data for the period of these fraudulent activities. In 2004, an email string was discovered in which Enron’s lead litigator had directed his staff to copy the evidence to Enron’s headquarters in Houston. After a discovery fight in EL03-137/180, Enron finally handed over the secret accounting data that it had hidden since the winter of 2000.

Enron staff also found it difficult to follow the complex mechanics of their schemes. To avoid accounting problems, a separate accounting database known as the “Inc Sheets” was developed to help follow the specific schemes. For example, the April 15 Death Star was entered as:¹⁸

HR END	TIME	TOT.	DEL.	SUPPLY	MW	PER	TOT.	BUY	MARKET	SELL	CONG	EX-	Trans.	Empower	LINE	P/L
ZONE	HRS.		PT.		HOURLY			PRICE		PRICE	RELIEF	POST	Charge	Deal Numbers	LOSSES	
					0		0	\$ -		\$ -	\$ -	\$ -			\$ -	
he 12	pd	1	malin export		24		24						2.74		\$ -	630.24
he 12	pd	1	wdp buy/resale		24		24	\$ 17.00		\$ 16.00				#3235669,323570	\$ -	(24.00)
he 12	pd	1	PGE T jd/malin		24		24	\$ -		\$ -			1.50		\$ -	(38.00)
he 12	pd	1	LDWP T Malin/ Mead		24		24	\$ -		\$ -			0.61		\$ -	(14.64)
he 12	pd	1	mead import		24		24			\$ (24.41)					\$ -	(585.84)

We now know that trader John Forney, the inventor of the scheme, did not change its name from “Perpetual Loop” to “Death Star” until his negotiations with other Death Star counterparties:¹⁹

and PGE take frequent advantage of this option. On March 5, 2003, FERC declared that all materials provided in PA02-2-000 would be made public. The City of Portland has requested these publicly available materials from PGE, which has refused to make them available to date. PGE and Enron materials in EL02-114 and EL03-137/180 are still subject to protective orders in these proceedings.

¹⁶ FERC’s Web site is <http://www.ferc.gov/industries/electric/indus-act/wec/enron/info-release.asp>. Since the site may be difficult to navigate, referenced materials are available at <http://www.mresearch.com/PDX.html>.

¹⁷ See FERC Commission Staff’s Statement of Asserted Violations, November 14, 2002, pages 5 and 6. PGE’s violations of publicly posting transactions with Enron were a major issue in the EL02-2-000 proceeding. (Attachment 17)

¹⁸ AprilIII.xls, received as part of the response to SNO-120-1 on May 14, 2004. (Attachment 18)

¹⁹ MaySheet.xls, received as part of the response to SNO-120-1 on May 14, 2004. See text.

HR END	TIME	TOT.	DEL.	SUPPLY	MV PER	TOT.	CONG/ZONA	MARKET	PRICE	MV PER	Total	Trans	Enpower	TiePoint	LINE	P/L
ZONE	HRS.	PT.			HOUR	MV	PRICE			HOUR	MV's	Charge	Deal Numbers	MeterMult	LOSSES	
1	PDT	1	Malin/NP	Puget	50	50	\$ 25.00	Cal Imbal	\$ 14.37	50	50		#331296,331305,331306	\$ 0.96	\$ 0.50	\$ (566.72)
12--22	PDT	11	MALIN	deathstar	25	275	\$ 1.00	VVP		25	275		#332120			\$ (275.00)
12--22	PDT	11	Malin	deathstar	25	275		PGE Sys		25	275	0.30	#146517			\$ (247.50)
12--22	PDT	11	id	BPA(T)	25	275		big eddy	\$ -	25	275	2.52	#332122			\$ (633.00)
12--22	PDT	11	big eddy	BPA(T)	25	275		nob	\$ -	25	275	2.54	#332123,325995,332126			\$ (638.50)
12--22	PDT	11	LA T nob / mead		25	275		Voltage Control (\$.33 per mw)		25	275	0.33				\$ (90.75)
12--22	PDT	11	LA T nob / mead		25	275		Trans Sunk Cost (\$87.33 / MW's)		25	275	0.32	#292672			\$ (87.33)

This excerpt from the formerly “secret” Inc Sheet records shows the transition: “Tranny for project DEATHSTAR, formally known as “the loop””.²⁰

With the partial settlement of EL02-114, Enron had not turned over the following critical materials:

Enpower records for West Desk:²¹ SNO-96-1 Received on 12/8/2003

Enron trader tapes:²² Received from the U.S. DoJ on 2/27/2004²³

Reconciliation Reports:²⁴ SNO-118 received on 4/7/2004

2000 Inc Sheets:²⁵ SNO-120-1 received on 5/14/2004

2001 Inc Sheets: SNO-124-1 received on 12/1/2004

CDMS data base:²⁶ SNO-203-1 and SNO-203-2 received 11/1/2004 through 1/1/2005

CAPS data base:²⁷ SNO SNO-124(b)-1a, SNO-124(b)-1b, SNO-124(b)-1c, SNO-124(c)-1 received 9/14/2004

West Desk computer files:²⁸ SNO 156-1 received 12/23/2004 through 1/4/2005

²⁰ In spite of the extensive “masters of the universe” Enron public relations, Enron’s actual records show that individual traders were often poorly trained. In this case, the trader entered “formally” instead of “formerly” into the comment field.

²¹ Some materials from Enpower were available during EL02-114, but were severely restricted due to Enron’s demand that all queries be submitted to Enron. In November 2003, Snohomish discovered that a useful subset of data had been provided to Enron’s consultants so that they could make queries without going through Enron’s cumbersome process. The subset allowed Enpower data to be accessed in real time on a laptop.

²² The tapes have been useful for tracking schemes to specific telephone conversations.

²³ Enron had turned over some, but not all, of its trader tapes to the U.S. Department of Justice. Snohomish was only able to access these after a lengthy, complex negotiation. Additional tapes were discovered by Snohomish at Enron’s headquarters on October 1, 2004.

²⁴ Enron’s paper and pencil check on schemes conducted every evening to make sure that the complex schedules had not caused mistakes in its official accounting systems.

²⁵ Actual scheme level accounting materials showing transmission arrangements, counterparties, and profits.

²⁶ Computer database summarizing Enron’s document repository in Houston.

²⁷ Enron’s California trading data.

²⁸ Specific files on schemes including training programs on Get Shorty and other schemes.

At almost every turn, Enron has actively and aggressively resisted discovery. In the case of the Inc sheets, Enron continued to maintain that it could not find the files even though it had inadvertently provided the location on its own computer system in the email string directing them to be sent to Enron's own lawyers.³⁰

Without these materials, it was impossible to discover if PGE provided support for Enron's other schemes. Only today is it possible to check Enron schemes against PGE's Posting Violations data.³¹

Some media accounts reported that PGE stated that it was "cleared" during various FERC proceedings.³² The reality is different. PGE was implicated in Enron trading schemes in a memo written by Stephen Hall, a Stoel Rives attorney, and Christian Yoder.³³ Dissatisfaction with PGE's cooperation led FERC to open a "show cause" proceeding on June 4, 2002.³⁴ This proceeding, EL02-114, was partially settled on December 19, 2003, with a payment of \$8.5 million by PGE to several parties in the case.³⁵ As usual with such a settlement, the parties reserved their positions and there was no finding exonerating PGE. It is important to note that the remaining unsettled issues in EL02-114 have been included in Enron's show cause proceeding, EL03-137/180, and are still under litigation. In certifying the settlement, the presiding judge commented:

28. My only other comment to the Commission is more of an observation: the Settlement Agreement reached between the Parties is not the result of an exhaustive investigation of every month in the years 2000 and 2001. I am not criticizing or excusing the actions of any Parties in this proceeding by making this statement—I am simply observing a fact. Because I believe the Commission expected an exhaustive examination of transactional data for the period January 2000 forward, I believe this observation is a relevant fact for the Commission to be aware of when considering the merits of the Settlement Offer.³⁶

²⁹ Enron had forgotten to turn over a second large set of trader tapes. These were discovered in the headquarters on October 1, 2004.

³⁰ Email string from Dan Dietrich to Richard Sanders entitled Data Files Needed, June 6, 2001. (Attachment 30)

³¹ PGE asked for protected status on the specific transactions that they did not publicly post under FERC rules in EL02-114. While the logic of this request can be faulted – asking for protected treatment on materials that would have been public if they had followed FERC rules in the course of a proceeding where their failure to follow the posting requirement was a primary issue – the protected status precludes use of this data in this report.

³² See "PGE Files Action to Block State Trading Investigation," by Jeff Hill, The Oregonian, 11/27/2003. (Attachment 32)

³³ Trading Strategies, Christian Yoder and Stephen Hall, December 6, 2000, page 7. (Attachment 33)

³⁴ Letter from Peggy Fowler to Patrick Wood, June 6, 2002. (Attachment 34)

³⁵ Order Approving Uncontested Partial Settlement, FERC, December 18, 2003. The settlement itself was filed on September 30, 2003. (Attachment 35)

³⁶ Presiding Judge's Certification Of Uncontested Partial Settlement And Comments Concerning Commission Consideration, Presiding Judge Jessie Massey, November 10, 2003, page 9. (Attachment 36)

FERC still has not completed a detailed review of all PGE/Enron transactions. It is a major reason why the City of Portland itself has sought to review all of the data from 2000/2001.

The PUC Staff raises an issue in the 2006 Staff Report that the City of Portland has not addressed: whether Enron's activities raised forecasted power costs in UE 115. Staff Appendix H indicates that this case used an October 1, 2001 through December 2002 test period.³⁷

Evidence in the 2003 Final FERC Staff Report indicates that Enron's schemes would have had a significant impact on forward prices.³⁸ The City of Portland has requested materials from UE 115, which PGE has refused to provide.

At this point it appears that Oregon PUC staff, FERC, and the litigants in EL03-137/180 have not fully investigated these issues. The prices shown in Appendix H of the 2006 Staff Report appear so high that they would have reflected the manipulated prices characteristic of forward prices during the crisis. It is appropriate to review PGE's sources in its power cost testimony in UE 115 before rendering a judgment.³⁹

Consultants who contributed to this review include Phil Glidan, Robert McCullough, Ann Fisher, and David Jubb. If there are any questions, please contact Ms. Kathleen Gardipee at 503-823-3603 so that she can direct you to the appropriate consultant.

³⁷ Trading Activities by Portland General Electric, PacifiCorp, and Idaho Power Company during the Western Electricity Crisis of 2000-01: Did They Violate Any Oregon Statutes, Rules, or Orders? Oregon Public Utility Commission Staff, June 12, 2003, Exhibit H. (Attachment 10)

³⁸ See Chapter V of Final Report On Price Manipulation In Western Markets, Fact-Finding Investigation Of Potential Manipulation Of Electric And Natural Gas Prices, Docket No. PA02-2-000, March 2003. (Attachment 38)

³⁹ During the 2000/2001 crisis, forward prices tended to follow spot prices in a fashion known as "tail wagging." If UE 115 used data from this period, it would have reflected price manipulation in the spot markets. Substantial evidence has been presented in EL03-137/180 on this issue. PGE's own materials support this conclusion, although these have also been marked "protected" in EL02-114.