7. End of Enron Ownership.

Applicants contend that this transaction will immediately end Enron ownership, resulting in stable and known ownership by Oregon Electric. According to Applicants, this certainty will benefit PGE as it can focus on providing excellent service rather than facing ongoing distractions caused by continued Enron ownership.

The end of Enron's ownership will occur without this transaction. The question is whether the *immediate* end of Enron's ownership is a customer benefit. PGE is not a distressed company, either financially or operationally. The utility has continued normal operations throughout the bankruptcy, and has continued to maintain and invest in its system. Because of the current stability of PGE, and the certainty of an eventual end of Enron ownership, we do not find the benefit asserted by Applicants.

V. CONCLUSIONS OF LAW

A. Net Benefits

As previously stated, the Commission must review the application, with the amendments and conditions agreed to by Applicants, to determine the harms and benefits of the transaction. If the benefits outweigh the harms, then the net benefit standard has been met and the application must be granted. The Commission has discretion to issue a conditional order approving the acquisition if certain requirements are met. If those hurdles cannot be overcome, then the application must be denied.

To take into account the transitional nature of PGE's ownership, we perform this analysis by comparing the benefits and harms of Applicants' proposal against a backdrop of PGE as a separate and distinct entity. In this analysis, we assume that PGE will function as it is currently, essentially as a stand-alone entity.

As discussed above, there are few benefits to Applicants' proposal. Of the seven benefits advocated by Applicants, three provide no value to PGE's ratepayers. On this record, we cannot conclude that Applicants' commitment to local focus, TPG's expertise, and the end of Enron ownership provide ratepayers any benefit they would not receive if PGE continues to operate as a stand-alone entity. The remaining four claimed benefits provide minimal value. At first glance, the $43 million rate credit and the indemnifications appear significant. Our examination above, however, casts doubt on whether these provisions would provide any value to ratepayers. Similarly, the extension of the SQM agreement and commitment to assist low-income customers provides little value to customers they would not have received without this transaction.

We identified several sources of harm in this application. The primary source stems from Applicants' proposal to finance the purchase of PGE with an excessive amount of debt. As discussed above, the high debt percentage in the consolidated capital

structure would likely result in lower credit ratings for PGE than it would in absence of this transaction. This large debt service requirement also presents the possibility that Oregon Electric's debt will be less than investment grade, which increases the likelihood that PGE may engage in imprudent cost cutting and reduced capital investments if earnings drop. Moreover, this debt increases the risks associated with the lack of final financing terms. We are also concerned about imprudent cost cutting and reduced capital investment due to the short term ownership of PGE.

These sources of harm do not stand in isolation. Rather, they represent a package of potential harms that, combined, could result in the degradation of service, increased customer rates, a weakened financial structure for PGE, and diminution of utility assets as compared to PGE as a stand-alone utility. We conclude that the collective risk these harms represent outweigh the potential benefits of the acquisition, which we have shown are minimal. Applicants have failed to establish that customers would be better served under this acquisition than they would be if PGE remained as a separate and distinct entity. Accordingly, the application, as presented, does not provide a net benefit to PGE's customers.[19]

B. Conditional Order

We decline to issue a conditional order authorizing the acquisition if certain requirements are met. Staff and Intervenors presented numerous conditions for our consideration to mitigate alleged harms. Some proposed conditions addressed narrow issues, such as the filing of future rate cases or added requirements of a cash-sweep provision. Other conditions went to the core of the application itself.

We previously questioned the limits of our authority to impose conditions under ORS 757.511(3). This issue arose when reviewing substantive conditions proposed above. While the statute may provide the authority to add conditions to modify a transaction so that it "serves the public utility's customers in the public interest," we cannot offset the potential harms presented in piecemeal fashion. Many of these harms are intertwined and linked—directly and indirectly—with each other. An attempt to eliminate one source may do little to mitigate the overall risk. More importantly, a condition crafted to address one potential harm may require the modification of other conditions, or possibly create other risks not previously considered. Consequently, any attempt to remedy this application would lead to an extended exercise that would likely result in the Commission drafting a new application. Such an approach turns ORS 757.511(3) on its head and contradicts the statute's directive that the applicant bears the burden to demonstrate that its proposal serves the utility's customers in the public interest.

[19] Due to our determination that the application does not provide a net benefit, we need not decide whether it is in the public interest, *i.e.,* that it does not impose a detriment on Oregon citizens as a whole.

Furthermore, in many instances, there are multiple sets of conditions that could be imposed to address the identified harms. If we were to undertake a redrafting of the agreement, we lack the necessary basis to determine which set is most appropriate. In other words, we cannot choose the best package of conditions for the Applicants. For these reasons, we decline to issue a conditional order in this case.

C. Other Issues

As discussed above, Staff and Intervenors present numerous conditions to impose on this application. We take this opportunity to address a number of these conditions that are not related to either the harms of the transaction, or the transaction itself. Most of these proposals are tendered as a factor to be weighed in determining whether the application is "in the public interest." For example, ICNU and Strategic Energy advocate for a condition requiring PGE to develop and file proposals promoting direct access, a condition that would begin a process, but not obligate PGE to spend significant resources on direct access at this time. The City of Portland, CUB, and RNP urge the Commission to press Applicants to increase and solidify their commitment to renewable energy sources during the time Applicants own PGE. The City of Portland and CUB also point to testimony filed by CADO/OECA as a reason to require Applicants to increase their contribution to Oregon HEAT. *See* City of Portland opening brief at 33; CUB opening brief at 43.[20] These conditions may have been part of stipulated agreements in the past, and may have even been agreed to in part by Applicants in this case. However, Intervenors have failed to provide any statutory basis to authorize our adoption of those conditions under ORS 757.511.

We agree with Intervenors that promotion of direct access, renewable energy sources, and low-income assistance are important goals, and we will pursue them as we have in the past. We can also understand that Intervenors were able to secure favorable conditions in stipulations in past dockets and so pursued their causes in this docket. However, an applicant submits the benefits of its application. Once the applicant determines that it is not amending its application with the addition of such provisions, we question the parties' ability to pursue conditions unrelated to harms posed by the transaction. While we have authority to place some conditions on an order approving an application, we do not believe we have the authority to add conditions for the sole purpose of adding benefits.

[20] The City of Portland also wants TPG to negotiate a modern franchise agreement. *See* City of Portland opening brief at 35. The City also appears to recognize that we do not have jurisdiction over that issue and that it is not directly tied to this transaction. *Id.*

CONCLUSION

Applicants have failed to establish that Oregon Electric's acquisition of the common stock of PGE from PGE's parent company, Enron, serves the utility's customers in the public interest. The application should be denied.

ORDER

IT IS ORDERED that the application filed by Oregon Electric Utility Company, LLC, TPG Partners III and IV, L.P., Managing Member LLC, Peter Kohler, Gerald Grinstein, Duane McDougall, Robert Miller, and Tom Walsh is denied.

Made, entered, and effective I4AI

Lee Beyer
Chairman

John Savage
Commissioner

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 within 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.