

## **ENRON CORRUPTION: THE SPECIAL OREGON CONNECTION**

The average person in Oregon will suffer more economic loss from Enron's corruption than anywhere else, largely because Enron in 1997 bought Oregon's largest electric utility, Portland General Electric Co. (PGE), which it still owns.

Oregonians like to think of Oregon as first in progressive causes. Oregon was first with a bottle recycling bill and first with public access to beaches. Oregon is definitely in first place when it comes to being swindled by Enron.

### **Oregon is # 1 per capita in:**

- 1. # 1 in Political campaign contributions by Enron and its executives since 1997 (mainly through, PGE).**

PGE has contributed money to a majority of the senators and representatives in the Oregon legislature. A list of legislators receiving Enron/PGE contributions reads like a roll call of the Legislature.

On federal level, Gordon Smith is in the top 7 Senators in getting Enron money. Earl Blumenaur is 11th nationwide in receiving Enron money).

- 2. # 1 in Dollars lost on Enron stock by the State employee pension fund (\$80 million).**

The Oregon Attorney General in April 2002 announced he would be investigating Enron on this matter. But this is likely to accomplish nothing except, at best, make the State of Oregon an unsecured creditor of Enron. Enron is bankrupt and will likely pay unsecured creditors nothing.

- 3. # 1 in Dollars lost by employees in their 401k pension plans (over \$100 million).**

Enron funded its 401k pension plan obligations by putting in Enron stock, which PGE employees were prohibited from selling until each reached age 50. Enron executives, including Jeff Skilling, urged employees to put all of their 401k money into Enron stock, while they were urgently selling off their shares. The result was that almost 60% of all Enron employee 401k accounts consisted of Enron stock.

PGE employees were also forbidden from selling their Enron stock in late October 2001 (as the stock was crashing), while Ken Lay and many other Enron executives were cashing out. Ken Lay sold massive quantities of Enron stock on virtually every day of this period when PGE employees were "locked out" of their 401k plans. I estimate the loss to the 3000 PGE employees alone at well over \$100 million.

- 4. # 1 in Electric rate increases imposed by Enron/PGE (over \$400 million per year).**

The OPUC allowed Enron/PGE to raise rates by 41% overall, 53% for business customers, in October 2001. This \$400 million annual increase is the largest electric rate increase in Oregon history. The result: Portland has lost over 27,000 jobs since the rate hike and has the highest jobless rate in Oregon (8.9%), which has the highest jobless rate in America (8.1% and no other state is even close) (data March 2002).

The reason accepted by the Commission, headed by a long-time paid consultant to PGE (Roy Hemmingway), was that PGE needed the money to pay for high-priced power contracts it signed during May 2000 - June 2001. This was the period when Enron and other suppliers were manipulating the entire West Coast energy market to inflate power prices.

Robert McCullough, former PGE financial analyst, testified to the U.S. Congress that Enron was a major player in West Coast energy markets, with a 30% market share in wholesale power transactions and an unquestioned "ability to affect prices." When Enron declared bankruptcy on December 3, 2001, the price of power in these markets fell by 30% in one day, despite "no other changes in operations, hydroelectric supply, or fossil fuel prices." McCullough concluded that "Enron may have been using its market dominance to set forward prices."

It turns out that the major private generating companies (including also Duke Power, Dynergy, Mirant, Reliant, and AES) were running about 12,000 megawatts of thermal power plants at only half of capacity in order to drive up the prices by a factor of 10 or more. When the Federal Energy Regulatory Commission (FERC) imposed price controls in July 2001, those plants returned to producing at over 90% of capacity, and the prices collapsed back to normal levels.

In May 2002, memoranda from the Stoel Rives law firm in Portland revealed that Enron had deliberately engaged in deceptive and probably illegal manipulation of West Coast energy markets. These schemes had names such as "Fat Boy", "Death Star", and "Ricochet".

The State of California in March 2002 filed complaints against Enron and the other companies in order to cancel the high-priced contracts that California entered into during the period of price manipulation. As of May 2002, every investor-owned utility in California, Oregon, and Washington--except one--had filed complaints against Enron and the other energy trading firms. The one exception is PGE, because it would mean filing a complaint against itself, Enron! Instead, PGE ratepayers get stuck with the massive rate increase resulting from Enron's manipulations.

And this could get worse. The U.S. Government has banned Enron from new federal contracts, including contracts with the Bonneville Power Administration

(BPA), which markets massive amounts of low-cost federal hydropower here in the Pacific Northwest. This ban applies to PGE and could lock PGE ratepayers out of hundreds of millions of dollars in benefits from BPA. This year alone, PGE ratepayers are receiving \$53 million from BPA (including 270 average megawatts of energy) from BPA as part of the residential exchange requirements in the Pacific Northwest Electric Power Planning and Conservation Act of 1980. The current residential exchange contract expires in 2006. If the ban on federal contracts persists, that means more hundreds of millions of dollars are lost for PGE ratepayers.

**5. # 1 in Money collected from ratepayers to pay PGE federal taxes (\$357 million over past 4 years) that was sent to Enron but never paid to IRS**

During 1997-2000, PGE charged its Oregon ratepayers \$357 million to pay federal income taxes on corporate profits. PGE says it sent that money to Enron, but Enron never paid it to the U.S. Government. Instead, Enron kept the money (virtually all of it) and claimed that it was sheltered by losses by some of Enron's 3,900 foreign subsidiaries. In a filing to the Securities and Exchange Commission (SEC) in February 2002, Northwest Natural Gas Co. (NWN) stated:

"As a subsidiary of Enron, PGE has relationships with Enron that could expose PGE to liability. PGE . . . was a member of Enron's consolidated tax group for U.S. federal income tax purposes. PGE . . . is liable for any taxes assessed against the Enron consolidated tax group for the periods it participated as a member of such group."

**6. # 1 in money in the hands of multi-millionaires due to cashing out of Enron stock.**

When Enron bought PGE in 1997, part of the deal was enormous bonuses for PGE executives in the form of Enron stock options. PGE's former CEO, Ken Harrison, cashed out his options in 2000 for a cool \$75 million! Former PGE treasurer, Joe Hirko, cashed his for a measly \$35 million.

Former and present Enron executives are now funnelling tens of millions of dollars into homes in Texas and Florida, the only states where the "homestead exemption" protects a person's residence, no matter what it costs, from being seized in bankruptcy.

## ENRON'S HISTORY OF CORRUPTION IN OREGON

The Texans from Enron swaggered into Oregon in 1996, with both money belts blazing. They used one belt to buy the Oregon Legislature and the other to buy off nearly all environmental and public interest groups.

Enron saw that all candidates for the Oregon Legislature in 1996 spent only \$3.4 million on their campaigns. Enron helped raise that to \$12.4 million in 1998 and \$16.4 million in 2000. On a per capita basis, Oregon politicians got more money from Enron than campaigns in any other state.

Enron needed the approval of the Oregon Public Utility Commission (OPUC) to buy PGE. I testified against it, in writing, for the Utility Reform Project (URP):

Lloyd K. Marbet, the Utility Reform Project, and the Don't Waste Oregon Council [hereinafter "we"] oppose approval of the proposed Enron purchase of PGE. The purchase would harm PGE ratepayers and impair the development of competitive markets in power supply and energy conservation. The conditions of the "Stipulation" (April 30, 1997) among some of the parties in this proceeding do not come close to adequately compensating PGE ratepayers for the harm this merger threatens. . . .

Protecting Oregon ratepayers from complicated shell games will be an entirely new and more difficult task for the PUC. Such transactions would simply become a subset of Enron's complex wholesale dealings throughout the West, requiring the Oregon PUC to keep detailed records on all Enron transactions throughout at least western North America. Enron now claims most company information is confidential.

The OPUC Staff itself has admitted its probable inability to effectively police Enron: "Staff is confident that it can effectively regulate PGE as a stand-alone company. It is not nearly as confident of its ability to regulate PGE as a part of Enron."

We question whether the mostly meaningless promises in the "Stipulation" are worth placing Oregon ratepayers in harm's way.

The takeover was also opposed by Larry Tuttle and Nancy Newell, who resigned from Northwest Environmental Advocates (which received a \$30,000 grant from Enron for its River Watch project).

But 14 public interest groups, led by the Natural Resources Defense Council (NRDC), in signed a "Memorandum of Understanding" (MOU) which urged the all " regulatory authorities to whom this MOU is submitted give their prompt approval to the Enron/PGE merger." In return, Enron would pay out money for the groups. The person leading the

charge for the MOU was Ralph Cavanagh of NRDC, who testified to the Oregon commissioners on February 14, 1997:

On stewardship issues and public benefit issues I've dealt with the company for a decade, often in the most contentious circumstances. **And the answer is, yes, you can trust Enron on those matters, often under the most difficult circumstances.**

The recipients of the Enron "grants" included:

- (1) Northwest Environmental Advocates (NWEA) received \$30,000 and testified "wholeheartedly" in support of the merger.
- (2) Nature Conservancy of Oregon received over \$100,000.
- (3) Native Fish Society received \$20,000.
- (4) Salmon Watch received \$15,000.
- (5) American Rivers received \$5,000.

It is not clear which groups received the rest of the \$500,000 or in what amounts, but the other signers of the MOU were:

Oregon Citizens Utility Board  
Renewable Northwest Project  
Northwest Conservation Act Coalition  
Oregon Trout  
Trout Unlimited  
Community Action Directors of Oregon  
Oregon Heat  
Oregon Energy Coordinators Association

After these groups signed the MOU, I testified to the OPUC in May 1997:

First new point is that the Memorandum of Understanding that you've heard about is largely meaningless and unenforceable. Obviously, none of the groups that I represent had a part in it. First of all, it's not worded in terms that impose enforceable commitments except to grant to the groups which are involved approximately \$500,000, except to commit PGE in some instances to file some papers that we don't know the content of and except to require PGE to establish a fund of \$10 million for basically fish and wildlife restoration over which PGE has complete control. I believe that sort of funding would become available in any event through the hydro relicensing processes in order to mitigate the effects of the hydroelectric facilities.

When the professional staff of the OPUC started raising questions about the merger, Enron sent its lobbyists across the street to the Oregon Legislature, armed with a bill to remove the authority of the OPUC to disapprove mergers! All reluctance at the OPUC disappeared.

URP was the only organization (along with Marbet and Tuttle, represented by URP counsel) to appeal the OPUC's approval of the Enron takeover to the Oregon courts, where we eventually lost in December 2000.

### **Enron Sees Oregon as Weak; Likes What It Sees**

Enron operated a vast international web of "businessmen," lawyers and accountants, probing governments and public institutions for signs of weakness. Enron preyed on weak governments. It was an international influence-buying syndicate.

By the middle of 1997, Enron saw the pitiful weakness of Oregon government in the face of corporate demands. Enron saw that Oregon was one of only 6 states with no limits on political contributions by corporations -- none! Enron could hardly believe its luck. Enron was incorporated in Delaware, a state notorious for bending over backwards for corporations. But Enron saw that Oregon was weaker than Delaware, so Enron dissolved itself as a Delaware corporation and reincorporated in Oregon. **Yes, Enron is an Oregon corporation!** Oregon helped to foist the Enron juggernaut on the world.

### **ENRON BUYS ITS WAY TO CHARGING RATEPAYERS ANOTHER \$300 MILLION FOR TROJAN PROFITS**

In 1978, Oregon voters adopted by a vote of 69 to 21% a ballot measure to prohibit utilities from charging ratepayers any cost of plants not currently providing utility service to customers. Lloyd Marbet and other activists worked on this measure.

In 1992, PGE spent over \$5 million to defeat a statewide ballot measure to close Trojan in what is still the most expensive ballot measure campaign in Oregon history. Then, within a week, the Trojan plant suffered yet another steam generator tube leak of radioactive water and shut down permanently.

We said that the 1978 ballot measure then required that PGE no longer charge ratepayers to earn a profit on Trojan or to get back its investment in Trojan. At that time the investment in Trojan was about \$250 million.

In 1995, the OPUC allowed PGE to continue to charge ratepayers both for return of the investment over the original expected 35-year life of Trojan and to charge ratepayers to receive a profit on Trojan of over 13% before taxes, for a total of \$251 million of Trojan investment and \$304 million for profit over the next 17 years. This is in addition to another \$300 million in Trojan decommissioning costs over the next 17 years as well, all of which are being paid by ratepayers.

The Utility Reform Project, Lloyd K. Marbet, and CUB appealed this decision to the courts. In June 1998, the Oregon Court of Appeals agreed that allowing the \$304 million in profit was a violation of Ballot Measure 9 of 1978. The utilities then substantially increased their contributions to candidates for the Oregon Legislature running in November 1998. As soon as the Legislature convened in January 1999, Enron/PGE had Rep. Jim Hill (R) of Hillsboro introduce a bill to overturn the decision of the Court of Appeals. [Note: This is not the Jim Hill who served as Treasurer of Oregon.] Jim Hill was quoted in the paper as saying that he was "carrying water for the utilities." After the Legislature passed the bill and Governor Kitzhaber signed it, we waited for the end of the 1999 session and then collected over 60,000 signatures within 90 days to place this bill on the November 2000 ballot as a referendum, Measure 90. We won by over 88% of the vote and received more votes than any side on any Ballot Measure in Oregon history, over 1.2 million.

**In the meantime, however, CUB entered into a Settlement Agreement with Enron/PGE, under which CUB withdrew from all of the lawsuits and supported a deal for PGE to collect from ratepayers either the same amount as before or even more than before. CUB got a payment from PGE of \$227,000 from PGE as part of the deal. The Utility Reform Project (URP) filed a complaint at the OPUC challenging this deal as illegal under Ballot Measure 9 of 1978 and the Court of Appeals opinion.**

Our expert witness concluded that, for ratepayers, the Settlement was worse than losing the lawsuits that we had been winning. PGE ratepayers have already paid to PGE more than the full investment of Trojan, plus \$186 million more, as of October 1, 2001. The Settlement took away all of that money and far more. It took away:

- > **\$161.9 million in credits owed to ratepayers when PGE sold itself to Enron in 1996 and sold long-term power contracts to California**
- > **\$15.4 million in NEIL (nuclear industry insurance) distributions**

**It also imposed upon ratepayers an additional cost of \$36.7 million (present value) cost in the form of a "new Regulatory Asset." "Offsetting" this admitted \$214 million (present value) cost to ratepayers is a "Customer Credit" of \$2.5 million, leaving ratepayers with a net cost of \$211.5 million (present value) from the "CUB Stipulation". This is on top of everything ratepayers had already paid. So it gives up \$400 million (present value) that would otherwise have been credited to ratepayers over the next 10 years.**

PGE and the OPUC staff admitted, under oath, that the Settlement actually increased PGE's rates by \$25.7 million as of October 1, 2001, of this year and will further increase PGE's rates by \$15.7 million as each of the next two Octobers roll around.

The OPUC again approved this deal in April 2002, and URP will again appeal to the courts.

This episode again shows that Enron's approach of buying off politicians and public interest groups has cost Oregon ratepayers huge dollars, over and over and over.

## **LATEST ENRON SCHEME TO BILK OREGONIANS: THE NORTHWEST NATURAL GAS BUYOUT**

In October 2001, before its meltdown, Enron agreed to sell all PGE stock to Northwest Natural Gas Co. (NWNG), Oregon's largest gas utility, for \$2.8 billion. That transaction awaits approval from the OPUC, which is scheduled to make a decision in July 2002.

On December 2, 2001, however, Enron filed for Chapter 11 bankruptcy, which means that it cannot complete its contract to sell the PGE stock without approval of the federal bankruptcy court. Under federal law, the court is supposed to watch out for the interests of Enron's creditors. The major creditors are the major banks and investment houses that helped structure the "off balance sheet" partnerships and other manipulations that drove Enron into bankruptcy.

These creditors, including Merrill Lynch and Credit Suisse First Boston, also designed the sale of PGE to NWNG! It is a typical Enron-type transaction, with layers of complications. The bottom line, however, is that NWNG has to borrow over \$1.4 billion, which will admittedly reduce its credit rating to "junk bond" status. Then, we ratepayers get to pay high rates for 10 years in order to pay off the junk bonds. At the end of the day, the largest single shareholder in both PGE and NWNG will be . . . Enron!

The deal would perpetuate high rates and the prospect for more financial maneuvers:

1. **NWNG has agreed to pay \$820 million above book value for PGE.**
2. **Of the \$2.8 billion purchase price, NWNG borrows \$1.4 billion and also assumes \$1 billion of existing PGE debt.** NWNG admits that doing the deal will result in a "junk" rating for its bonds, which will carry high interest rates.
3. **The deal requires PGE ratepayers to pay rates above the cost of service in order to repay the new debt.** The proposal is to "freeze" rates at high levels and also to have "deferred accounting" to include even more costs in rates after the end of the freeze.
4. **The deal includes giving Enron a 5% ownership share in both PGE and NWNG and two members on the board of directors of the holding company that will own both of them.**
5. **The deal requires PGE ratepayers to pay another \$188 million in phantom taxes over the next 6 years, according to the experts of PGE's largest industrial customers.**
6. **If all this is not bad enough, other "details of the deal, including its impact on customers and the size of the executives' bonuses, are unknown because Enron sealed most of the documents it filed with the utility commission." NEW YORK TIMES, February 2, 2002.** It has since come out that part of the deal is untold millions of dollars in more bonuses for PGE executives. The last time, PGE's CEO got options cashed out for \$75 million!

NWNG claims it is a "local Oregon corporation," but 92% of its stock is not owned by Oregonians.

### **ENRON SAYS, "WE ARE KEEPING PGE" AS A CASH COW**

In May 2002, Enron called off the sale of PGE to NWN and announced that PGE would become a significant part of the "new Enron," to be temporarily named "OpCo."

The most valuable assets of PGE are its share of the Pacific Intertie power transmission system and its hydropower facilities. Because they were built in the 1950s and 1960s, Oregon ratepayers have already paid nearly all of the investment in these facilities. Under regulation which allows a utility to charge customers depreciation and a return on ratebase, the cost of these facilities to Oregon ratepayers is very low. The hydropower costs ratepayers less than 1 cent per kilowatt-hour (kWh). The Pacific Intertie transmission lines earn PGE hundreds of millions of dollars per year, because they enable the company to buy power at low cost in the Pacific Northwest and resell it to California. A share of these revenues are credited to Oregon ratepayers, since those ratepayers have largely paid for the transmission lines.

Enron's major creditors (banks and investment houses) may be able to use the federal bankruptcy proceeding to strip PGE of these valuable hydroelectric and transmission assets, built in the 1950s and 1960s, and put them on the auction block to be sold to the highest bidder. If this happens, we would lose control of assets worth over \$2 billion. Instead of collecting 1 cent/kWh for hydropower from Oregon ratepayers, a company owning the hydropower facilities could sell the energy in the open market for 5 cents/kWh or even far more. During the phony California energy crisis in 2000-01, wholesale power sold at times for over 50 cents/kWh! If the transmission lines are sold separately, the owner could earn hundreds of millions of dollars per year for transferring power south to California in the summer and north to Oregon and Washington in the winter, with none of the revenues being credited to Oregon ratepayers.

This is not a new idea. Pacific Gas & Electric Co. (PG&E) in California filed for bankruptcy almost a year ago. Its plan of reorganization included transferring all of its hydropower and transmission assets to a company that would not be subject to regulation by the California PUC (PG&E's own corporate parent). On February 8, 2002, the U.S. Bankruptcy Court in San Francisco issued a decision on this issue:

The powerful inference, therefore, is that under appropriate circumstances the state statute could be preempted with a proper showing of what is necessary to make the reorganization possible.

Enron's creditors are not likely to be ignorant of this strategy and are likely to demand that Enron take the same course in selling the assets of PGE in Oregon. The result would be additional large rate increases in Oregon, because PGE customers would no longer be entitled to receive energy from PGE hydropower facilities at 1 cent/kWh or to receive any of the revenues earned from PGE's share of the Pacific Intertie transmission system.

## TIME FOR PUBLIC POWER IN OREGON

Instead of transferring PGE to another private company and suffering more rounds of financial manipulations, the Utility Reform Project (URP) and Pacific Green Party (PGP) are calling for transferring PGE assets to a public power entity. This course of action is endorsed by Ralph Nader, who said in Portland that over 2000 cities and towns across America already own and operate their own electricity systems.

**1. Activation by the Oregon Legislature of the State Power Authority that Oregon voters created and put into the Oregon Constitution in 1932, which is authorized to own and operate electric utility properties.**

The Oregon Legislature in the next special session can immediately protect Oregon ratepayers valuable assets by activating the State Power Authority, created and placed into the State Constitution (Article XI-D) by Oregon voters in 1932. The Authority is empowered to "acquire, construct, maintain and/or operate hydroelectric power plants, transmission and distribution lines." While the Legislature has never passed the legislation implementing the State Power Authority, it now has very good reasons for doing so.

**2. Enforcement of the terms in the existing Oregon hydropower licenses issued to PGE, which transfer ownership of the hydroelectric facilities to the State of Oregon.**

The State of Oregon rightfully owns many of PGE's hydroelectric plants. When PGE first obtained state licenses to build and operate these hydroelectric dams, it agreed, under state law in effect at that time, to transfer ownership of these facilities to the state, free and clear, after operating them for the equivalent of 50 years at a 6% return on investment. PGE has long since earned this return, but Governors and the Attorneys General have not enforced the terms of these state licenses.

The State Power Authority could receive ownership of PGE's dams (under the terms of the state licenses obtained by PGE) and it could obtain all PGE utility assets by eminent domain, without U.S. Bankruptcy Court approval, at a price determined by an Oregon jury in an Oregon court. Bankruptcy Court approval is not required for transactions involving only the property of a non-bankrupt wholly-owned subsidiary of the bankrupt corporation, provided that the subsidiary is not merely a sham entity. See 2 Collier on Bankruptcy (15th ed.) 362.04. The proposed Enron sale of PGE stock to Northwest Natural Gas Co. (NWNG), however, does require Bankruptcy Court approval, because it involves the sale of an Enron asset (the PGE stock). The Court is charged with protecting the interests of the creditors of the bankrupt corporation.

**3. Creation of a People's Utility District (PUD) to own and operate the assets.**

Voters in the PGE service area can collect signatures and place on the ballot the creation of a People's Utility District (PUD) to acquire PGE's assets and operate as the electric utility. One need look no further than McMinnville or Forest Grove to see that publicly-owned utilities have rates far below PGE's. A study by a consultant to

the City of Portland in 1999 concluded that public ownership and operation of PGE would reduce electricity costs by about 20%.

The proponents of PUD creation set the boundaries of the PUD, which could include the entire PGE service area. Getting a PUD on the ballot requires the collection of less than 20,000 signatures (probably) and could be scheduled for an election by the end of 2002.

The formation of a region-wide PUD also fits in with Portland City Commissioner Eric Sten's proposal to create a region-wide entity for the purpose of taking over ownership and operation of the Bull Run water system. Clean drinking water proponents claim that Bull Run can produce enough water for the entire region, so building filtration plants on the Willamette River is not needed. But suburban cities and districts are already proceeding with plans for filtration plants, claiming they cannot afford to be at the mercy of the City of Portland's control of the Bull Run water. So Sten is proposing to form a region-wide entity and cede control of Bull Run to the region-wide entity. A PUD would fit this purpose very well.

The City of Portland, Multnomah and surrounding counties, and various other public bodies had a series of meetings in the summer and fall of 2001 to discuss public acquisition of PGE by means of an ORS Chapter 190 entity. We favor a PUD, however, because PUD commissioners are directly elected by the voters and are thus directly responsible on energy issues.

Another alternative have the City of Portland form a municipal electric utility and acquire PGE's assets by eminent domain, including those outside of Portland. This also appears inferior to a PUD. While such a municipal utility would be responsible to the elected city commissioners, people served by the utility outside of Portland's city limits would have no vote.

## **WE NEED TO GET ENRON OUT OF OREGON**

Ratepayers and consumers up and down the Pacific coast have been severely harmed by the manipulation of wholesale electric power markets by Enron and a few other companies during 2000 and 2001. Recent studies have placed the unjustified cost to ratepayers at over \$40 billion. Respected utility analysts, such as Robert McCullough in Portland, concluded as early as January 2001 that the massive price spikes had nothing to do with any actual shortage of energy and everything to do with market manipulation. The only utilities that did not suffer were those owned by the public, including the Los Angeles Department of Water and Power.

Nearly 80% of all homes and businesses in the State of Washington are served by public power, at lower rates than PGE. Why should we be stuck with a subsidiary of a corrupt, influence-peddling corporation, Enron?