

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**In re PORTLAND GENERAL ELECTRIC
SECURITIES LITIGATION**

Case No. 3:20-cv-1583-SI

**ORDER PRELIMINARILY
APPROVING PROPOSED
SETTLEMENT, PROVIDING FOR
NOTICE, AND SCHEDULING
SETTLEMENT HEARING**

Michael H. Simon, District Judge.

Between September 3, 2020 and October 16, 2020, three shareholders of Portland General Electric Company (PGE) each filed a putative securities fraud class action lawsuit against PGE, its President and Chief Executive Officer Maria Pope (Pope), and its Chief Financial Officer James F. Lobdell (Lobdell). One Plaintiff filed a voluntary dismissal with prejudice, and the Court consolidated the other two lawsuits in the above-captioned action (Action). The Court appointed Plaintiff Public Employees Retirement System of Mississippi as Lead Plaintiff. Lead Plaintiff filed a Consolidated Amended Complaint.

The Consolidated Amended Complaint asserts two claims for relief under the Securities Exchange Act of 1934 (Act). As Claim One, Lead Plaintiff alleges against all Defendants a violation of Section 10(b) of the Act and Rule 10b-5 promulgated thereunder. As Claim Two,

Lead Plaintiff alleges against Defendants Pope and Lobdell a violation of Section 20(a) of the Act. Defendants filed a motion to dismiss, but before the Parties finished briefing that motion, they reached a Stipulation of Settlement dated July 10, 2021 (Settlement Agreement).¹ ECF 45-1. Now before the Court is Lead Plaintiff's Unopposed Motion for Preliminary Approval of Settlement. ECF 45. Lead Plaintiff moves the Court to: (1) preliminarily approve the Settlement Agreement as fair, reasonable, and adequate; (2) provisionally certify the Settlement Class; (3) preliminarily approve the Plan of Allocation; (4) approve the retention of the Claims Administrator, Epiq Class Actions and Claims Solutions, Inc. (Epiq); (5) approve the form and method for providing notice to the Settlement Class; and (6) schedule a hearing to consider final approval of the Settlement Agreement, certification of the Settlement Class, class counsel's request for attorney's fees and expenses, and any other pending matters.

The proposed Settlement Agreement provides that PGE or its insurance carriers will pay, on behalf of all Defendants, \$6.75 million into an Escrow Account for the benefit of the Settlement Class. From this Settlement Fund, attorney's fees and litigation expenses as approved by the Court and any fees associated with notifying the class and administering the Settlement will be deducted, leaving the Net Settlement Fund. The Net Settlement Fund will be distributed among the Settling Class Members in accordance with the Plan of Allocation set forth in the Notice. To receive a distribution, Settling Class Members must submit a timely and valid Proof of Claim and Release Form. The Plan of Allocation was developed by Frank Torchia, an expert retained by Lead Plaintiff with 30 years of experience assisting with securities damage calculations and the development of plans of allocation.

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in § II.1 of the Stipulation of Settlement, ECF 45-1.

The Court has read and considered the documents submitted by Lead Plaintiff. After a preliminary review, the Settlement Agreement and the Plan of Allocation falls within the range of possible approval as fair, reasonable, and adequate.² The Settlement Agreement appears to have resulted from arms-length negotiations assisted by an experienced mediator and may be submitted to the Settlement Class for consideration. The Parties agree that the amount paid to the Settlement Fund was negotiated and agreed without discussion of Lead Counsel’s attorney’s fees and expenses. The Court finds that substantial and sufficient grounds exist for entering this Preliminary Approval Order.

ACCORDINGLY, IT IS HEREBY ORDERED:

A. Settlement Class and Settlement Fund

1. Under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and only for purposes of settlement, this case is preliminarily certified as a class action on behalf of all persons or entities who, directly or through an intermediary, purchased or otherwise acquired common stock of PGE at any time during the period of February 13, 2020 through August 24, 2020, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii) the present or former executive officers or members of the Board of Directors of PGE and their immediate family members (as defined in 17 C.F.R. § 229.404 (Instructions to Item 404(a) (1)(a)(iii), substituting “PGE” for “the registrant”)) of any excluded person; (iii) any entity in which any Defendant has, or had during the Class Period, a controlling interest; and (iv) any affiliate of

² The Court finds, however, that some of the deadlines proposed by the parties do not allow for sufficient time, including the time proposed for objections by Settling Class Members (nine days) and for the Court to prepare for the final settlement hearing (five days). Thus, the Court sets a longer schedule than proposed by the Parties. The Court also requires several some nonmaterial changes to the Notice and Summary Notice, as described in this Order.

PGE. Also excluded from the Settlement Class are any persons and entities who exclude themselves by submitting a request for exclusion that is accepted by the Court.

2. All members of the Settlement Class (except Persons who request exclusion under the procedures provided below) shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release form or any similar document, any distribution from the Net Settlement Fund.

3. The Court finds, preliminarily and only for purposes of settlement, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied because: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of Lead Plaintiff in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Under Rule 23 of the Federal Rules of Civil Procedure, preliminarily and only for the purposes of settlement, the Court certifies Lead Plaintiff Public Employees Retirement System of Mississippi as the Class Representative on behalf of the Settlement Class and appoints Lead Counsel Grant & Eisenhofer, P.A., as Class Counsel for the Settlement Class.

5. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such

time as such funds shall be distributed pursuant to the Settlement Agreement or further order of the Court or, in the event that the Settlement is not approved or is terminated, canceled, or fails to become effective, pursuant to ¶ 7.4 of the Settlement Agreement.

6. The Escrow Agent is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund and to otherwise perform all obligations with respect to Taxes and any reporting or filings or payment in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

7. The Settlement Agreement currently provides for an iterative process wherein any balance remaining in the Net Settlement Fund after the initial distribution is re-distributed to Authorized Claimants who would receive at least \$10.00, repeatedly, until the remaining balance in the Net Settlement Fund is *de minimis*. At that time, the remaining balance will be donated to a 501(c)(3) non-profit organization *cy pres* recipient. The Settlement Agreement also provides that the Court will approve the *cy pres* recipient. A *cy pres* recipient must “bear a substantial nexus to the interests of the class members . . . [and] account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the interests of the silent class members.” *See Lane v. Facebook*, 696 F.3d 811, 821 (9th Cir. 2012). The Parties shall submit their proposed *cy pres* recipient to the Court for consideration and approval no later than December 17, 2021, twenty-eight days before Class Counsel files the motion for final approval of the Settlement, so that the *cy pres* recipient can be considered and, if appropriate, approved by the Court, and Class Counsel can identify it in the final motion.

B. Notice

8. Within fourteen (14) days of this Order, Defendants shall file with the Court a statement of compliance with the notice provision of 28 U.S.C. § 1715(b).

9. The Court approves the Notice of Pendency and Proposed Settlement of Class Action (Notice) (ECF 45-1, Exhibit A-1), the Summary Notice (ECF 45-1, Exhibit A-2) and Proof of Claim and Release Form (ECF 45-1, Exhibit A-3) as to form, substance, and content, substantially in the form attached to Plaintiff's filing, with three amendments. First, the Notice section 16 on page 12 shall be amended to read "To comment or object, you must send a signed letter saying that you wish to comment on or object to the proposed Settlement in the *PGE Settlement, No. 3:20-cv-1583-SI*" (bold text to be added to the existing text of the Notice). Second, objections need only be mailed to the Court or filed with the Court in CM/ECF. The Court will file and docket in CM/ECF any objections that are received by the Court in the mail. The Court's CM/ECF system will provide the necessary copies to Class Counsel and Defendants' counsel. Thus, both the Notice and the Summary Notice must be modified and updated to reflect that objections need only be mailed to or electronically filed with the Clerk of the Court. To require additional copies to be mailed to all Class Counsel and Defendants' counsel is unnecessarily and unreasonably burdensome and may be confusing, particularly to lay persons seeking to object. *See, e.g. Hadley v. Kellogg Sales Co.*, 2020 WL 836673, at *6 (N.D. Cal. Feb. 20, 2020) ("More generally, the Court notes that requiring objectors to file their objections and to serve their objections on all counsel imposes an unnecessary burden on class members who wish to object."); *In re Galena BioPharma, Inc. Sec. Litig.*, Case No. 3:14-cv-367-SI, ECF No. 168, Order dated February 8, 2016 (denying motion for preliminary certification of settlement agreement because, among other reasons, the parties required objections be sent to the Court, the plaintiffs' counsel, and the defendants' counsel, and noting that only requiring notice be mailed to the Court or filed in CM/ECF would provide sufficient notice to counsel). Third, the Parties also shall correct the Notice to provide the following address for mailing objections to the

Court: Clerk of the Court, United States District Court, District of Oregon, 1000 SW Third Ave., Portland, OR 97204.³

10. Any omitted details, including deadlines for submission of a claim, exclusion, and objections, will be placed on the Notice, Summary Notice, and Proof of Claim and Release Form, as needed and in accordance with this Order.

11. The Court appoints Epiq to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

a. No later than August 24, 2021 (the “Notice Date”), Epiq shall commence mailing of the Notice and Proof of Claim and Release by electronic mail or First-Class Mail to all Settlement Class Members who can be identified with reasonable effort and shall also cause the Notice, Proof of Claim and Release, and Settlement Agreement to be posted on the Settlement website at www.portlandgeneralelectricsettlement.com;

b. No later than September 3, 2021, Epiq shall cause the Summary Notice to be published in *Investor’s Business Weekly* and *PR Newswire*.

c. No later than February 25, 2022, Class Counsel shall serve on Defendants’ counsel and file with the Court proof, by affidavit or declaration, of such mailing and posting.

12. All fees, costs, and expenses incurred in identifying and notifying members of the Settlement Class shall be paid from the Settlement Fund and in no event shall any of the Released Parties bear any responsibility for such fees, costs, or expenses. If the Court does not approve the Settlement, or if the Settlement otherwise fails to become effective, neither Lead Plaintiff nor any of its counsel shall have any obligation to repay amounts actually and properly

³ There is a scrivener’s error in the Notice. The address listed for the Court appears to be the address for the U.S. District Court for the Southern District of New York, rather than the U.S. District Court for the District of Oregon in Portland, Oregon.

incurred or disbursed for costs of notice or administration of the Settlement, pursuant to ¶ 2.8 of the Settlement Agreement.

C. Proofs of Claim and Release

13. Settlement Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release form in accordance with the instructions contained therein. Each Proof of Claim and Release submitted must be signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release.

14. All Proofs of Claim and Release must be postmarked or submitted electronically no later than December 21, 2021. Any Settlement Class Member who does not submit a Proof of Claim and Release within the time provided shall, unless the Court orders otherwise, be barred from sharing in the distribution of the proceeds of the Net Settlement Fund but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the obligation) to accept late-submitted Claims for processing by Epiq so long as distribution of the Net Settlement Fund is not materially delayed thereby, but will incur no liability for exercising or refusing to exercise such discretion.

D. Exclusion

15. Any Person falling within the definition of the Settlement Class may, upon request, be excluded or “opt out” from the Settlement Class. Any such Person must submit to Epiq a request for exclusion (Request for Exclusion), postmarked no later than February 11, 2022. A Request for Exclusion must be signed and state (a) the name, address, and telephone number of the Person requesting exclusion; (b) the Person’s purchases, acquisitions and sales of PGE common stock between the dates of February 13, 2020 and August 24, 2020, inclusive, including the dates and the amount of PGE shares purchased, acquired, or sold, and price paid or received for each such purchase, acquisition, or sale; and (c) that the Person wishes to be

excluded from the Settlement Class in *In Re Portland General Electric Securities Litigation* No. 3:20-cv-1583-SI. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement or any Final Judgment.

16. Class Counsel shall cause to be provided to Defendants' counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, within the later of two (2) business days of Class Counsel's receipt or February 25, 2022.

17. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Settlement Agreement and Settlement and all proceedings, determinations, orders, and judgments in the Action, including, but not limited to, any judgment and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, instituting, prosecuting, or continuing to prosecute any of the Released Claims (including Unknown Claims) against any of the Released Defendants, their Related Parties, and their respective counsel as more fully described in the Settlement Agreement and Notice.

E. Objections

18. Any member of the Settlement Class may object if he, she, or it believes there is any reason why the proposed Settlement of the Action should not be approved as fair, reasonable and adequate; why a judgment should not be entered thereon; why the Plan of Allocation should not be approved; why attorney's fees and expenses should not be awarded to Class Counsel for

its service to the Settlement Class; or why costs and expenses should not be awarded to Lead Plaintiff. No Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any attorney's fees and expenses to be awarded to Class Counsel, unless the Settlement Class Member submits written objections and copies of any papers and briefs as set forth below.

19. A Settlement Class Member who wishes to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any attorney's fees and expenses to be awarded to Class Counsel or Lead Plaintiff must submit a written objection in the manner described below. Written objections and copies of any papers and briefs in support of the objection must be sent on or before February 11, 2022 to: Clerk of the Court, United States District Court, District of Oregon, 1000 SW Third Ave., Portland, OR 97204, or may be filed with the Court through its CM/ECF electronic filing system.

20. The objection must:

- a. state the name, address, and telephone number of the person or entity objecting and be signed by the objector or counsel for the objector;
- b. state whether the objector is represented by counsel and, if so, state the name, address, and telephone number of the objector's counsel;
- c. contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention;

d. state whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;

e. include documents sufficient to prove membership in the Settlement Class, consisting of documents showing the number of shares of PGE common stock that the objector purchased/acquired or sold during the Settlement Class Period (*i.e.*, between February 13, 2020 and August 24, 2020, inclusive), as well as the dates, number of shares and prices for each such purchase/acquisition and sale (such documentation usually consists of copies of confirmation slips or monthly account statements); and

f. identify cases in which the objector or his/her/its counsel has filed an objection to a settlement in the last five years;

21. Objectors who desire to enter an appearance and to present evidence at the Settlement Hearing in support of their objection must state this intention in their objection and must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

22. Any member of the Settlement Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, to the Plan of Allocation, and to the award of attorney's fees and expenses to Class Counsel and to any award of costs and expenses to Lead Plaintiff, unless otherwise ordered by the Court.

F. Final Settlement Hearing

23. All papers in support of the Settlement and Plan of Allocation, and any application by Class Counsel for attorney's fees and expenses and for costs and expenses for

Lead Plaintiff, shall be filed and served no later than January 14, 2022, and any reply papers shall be filed and served no later than February 25, 2022.

24. A hearing (the “Settlement Hearing”) shall be held before this Court on **Friday, March 11, 2022, at 10:00 a.m.**, at the United States District Court for the District of Oregon, 1000 Southwest Third Avenue, Portland, OR 97204, Room 1527, to determine the following:

a. whether the Court should give final approval to the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement and find that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class;

b. whether, for purposes of the proposed Settlement only, the Court should finally certify the Action as a class action on behalf of the Settlement Class and finally appoint Public Employees Retirement System of Mississippi as Class Representative for the Settlement Class and Lead Counsel as Class Counsel for the Settlement Class;

c. whether the Court should enter Judgment as provided in ¶ 1.16 of the Settlement Agreement;

d. whether the Court should finally approve the proposed Plan of Allocation;

e. any amount of attorney’s fees and expenses that the Court should award to Class Counsel for their service to the Settlement Class;

f. any amount of reasonable costs and expenses (including lost wages) directly relating to representation of the Settlement Class that the Court should award to Lead Plaintiff pursuant to 15 U.S.C. §77z-1(a)(4) and/or 15 U.S.C. §78u-4(a)(4). *See Azar v. Blount Int’l, Inc.*, 2019 WL 7372658, at *13-15 (D. Or. Dec. 31, 2019) (denying the lead plaintiff’s requests for an incentive payment and for compensation for time spent on securities class action

case because incentive payments are not permitted under the PSLRA and plaintiff provided insufficient proof that his request reflected lost wages);

g. the merit of any objections by Settlement Class Members to the Settlement Agreement or Plan of Allocation or to any award of attorney's fees and expenses to Class Counsel and any award of costs and expenses to the Lead Plaintiff; and

h. any other matters as the Court may deem appropriate.

25. Any member of the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of the Settlement Class Member's own choice. If a Settlement Class Member does not enter an appearance, he, she, or it will be represented by Class Counsel

26. The Court may adjourn the Settlement Hearing or decide to hold the Settlement Hearing telephonically without further notice to the Settlement Class, provided that the time or the date of the Settlement Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 24 above. The Court may approve the proposed Settlement as is or, with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

G. Effect of Preliminary Approval and Settlement Agreement

27. All proceedings in the Action are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, neither the Lead Plaintiff nor any Settlement Class Member, either directly, representatively, or in any other capacity shall commence or prosecute against any of the Released Defendant Parties any action or proceeding in any court or tribunal asserting any of the Released Claims.

28. In the event that the Settlement is not approved by the Court or the Settlement Agreement is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Action as of June 14, 2021. In such event, the terms and provisions of the Settlement Agreement shall be null and void, shall have no further force and effect, and shall not be used in the Action or in any other proceeding for any purpose. Any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated and shall not be used in the Action or in any other proceeding for any purpose.

29. The Released Defendant Parties shall have no responsibility or liability with respect to the Plan of Allocation or any application for attorney's fees or expenses submitted by Class Counsel, and the Court shall consider those matters separately from the fairness, reasonableness, and adequacy of the Settlement.

30. Neither this Order or the Settlement Agreement and Exhibits thereto, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by any of the Released Parties of the truth or merits of any of the allegations in the Action or defenses thereto, or of any liability, fault, or wrongdoing of any kind.

31. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

DATED this 10th day of August, 2021.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge