



CITY OF
PORTLAND, OREGON
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July 14, 2005

BY E-MAIL AND FIRST CLASS MAIL

PUBLIC UTILITY COMMISSION OF OREGON
ATTN: FILING CENTER
550 CAPITOL ST NE, SUITE 215
PO BOX 2148
SALEM OR 97308-2148

Re: In the Matter of Portland General Electric Company Petition for a
Declaratory Ruling Regarding the Application of OAR 860-022-0045
Docket No. DR 32; Opening Brief of the City of Portland, Oregon

Enclosed for filing is the original and five copies of the Opening Brief of the City of
Portland, Oregon in the above-referenced matter.

Very truly yours,

Benjamin Walters
Senior Deputy City Attorney

BEW:lw
Enclosures
cc: Service List



1 BEFORE THE PUBLIC UTILITY COMMISSION

2 OF OREGON

3 DR 32

4
5 In the Matter of PORTLAND GENERAL
6 ELECTRIC COMPANY Petition for a
7 Declaratory Ruling Regarding the Application
8 of OAR 860-022-0045

9 OPENING BRIEF OF THE CITY OF
10 PORTLAND, OREGON

11 SUMMARY

12 Portland General Electric has asked the Commission to declare that the utility must
13 collect funds from customers within Multnomah County equal to what PGE would have to pay in
14 local income taxes if the company were operating on a stand-alone basis, regardless of the
15 amounts actually paid to the County in taxes. Simply stated, the issue presented in this
16 proceeding is: May PGE collect funds from county rate payers in excess of its actual liabilities
17 for Multnomah County taxes?

18 The Commission's administrative rule was developed to allow utilities to recover the cost
19 of county imposed taxes from the rate payers within those counties. The administrative rule was
20 never intended to allow utilities to enhance revenues by collecting more money from rate payers
21 than actually needed for paying tax obligations.

22 ARGUMENT

23 **1. PGE's practices have unjustly harmed rate payers within Multnomah County,**
24 **including the City of Portland.**

25 PGE argues that county rate payers should be responsible for tax liabilities **potentially**
26 associated with its corporate net income within Multnomah County without regard to the **actual**
taxes paid to the County. This contradicts the original intent underlying the administrative rule.
PGE is not applying the rule to capture its cost of providing services, relative to the benefits
flowing to taxpayers within Multnomah County. PGE is inflating its revenues within Multnomah

1 County, while also boosting the amounts paid over to its parent corporation, Enron.

2 “Between 1997 and 2004, PGE charged county ratepayers \$6.7 million using a separate
3 line item on monthly bills that specified a charge for county taxes [while] Enron paid less than
4 \$4,000 of that money to the county.” Nigel Jaquiss, “Enron’s Tax Holiday: The county taxes you
5 paid to PGE went to Texas”, *Willamette Week*, (January 19, 2005).¹ PGE’s practices continue
6 unabated. The practical benefits of this practice to PGE are readily apparent:

7 Charging these phony income taxes to ratepayers is a profit center
8 for the utilities and has the effect of increasing their financial
9 returns on investment to absurd levels. The income taxes retained
10 by PGE and Enron added about 9 percentage points to PGE's
11 authorized return on equity, nearly doubling it from 10.5 percent to
12 19.5 percent.

13 Sen. Rick Metsger and Sen. Vicki Walker, “Stop the giveaway of ratepayers' utility taxes”, *The*
14 *Oregonian*, p. C7, col. 1 (July 7, 2005).²

15 PGE’s practice has harmed the city in two ways. First, Portland pays these excess
16 charges as a rate payer. See, 40 Op Atty Gen Or 59, 1979 Or AG LEXIS 242, *3 (August 22,
17 1979) (state agencies must pay county taxes itemized on utility billings, as utility has legal
18 burden of paying tax). Portland’s combined electricity service accounts, including street lighting,
19 water pumping, sewer treatment, major office buildings and other facilities, makes it one of
20 PGE’s largest customers. Portland’s payments to PGE in excess of the utility’s actual tax
21 obligation leaves the city with fewer funds to pay for critical public services, such as fire, police
22 and emergency communications. It also causes rates for city provided services to be marginally
23 higher, relative to the excess payments to PGE. The city is separately harmed as a governmental
24 entity which has to labor under the false impression given to taxpayers by PGE that monies
25 itemized on utility billings as “taxes” are actually received by Multnomah County. See, letter

26 ¹ <http://www.wweek.com/story.php?story=5939> (website visited July 2, 2005. A copy of the editorial is attached as Attachment A.)

² <http://www.oregonlive.com/commentary/oregonian/index.ssf?/base/editorial/1120750856124941.xml&coll=7> (website visited July 7, 2005. A copy of the editorial is attached as Attachment B.)

1 from Portland City Council to Oregon Public Utility Commission, p.2 (March 4, 2005) (a copy of
2 the letter is attached as Attachment C).

3 **2. PGE's practices contradict the plain meaning of the administrative rule.**

4 The text of the Commission's administrative regulation allows PGE to recover the
5 amount of taxes actually paid to Multnomah County. The rule does not allow PGE to collect
6 amounts in excess of its tax obligations, increasing the company's overall revenues.

7 In determining the meaning of an administrative regulation the first level of examination
8 is to its text and context. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 612 n 4, 859 P2d
9 1143 (1993) (noting that the template for statutory construction applies also to the interpretation
10 of regulations"). *See also, Columbia Steel Castings Co. v. City of Portland*, 314 Or 424, 430,
11 840 P2d 71 (1992) (principles of statutory construction apply to "discrete sets of administrative
12 rules that deal with a particular topic"). The next level of examination is to legislative history.
13 *PGE v. BOLI, supra*, 317 Or at 611.

14 The common, plain meaning of terms is provided by reference to the dictionary. *Beaver*
15 *Creek Coop. Tel. Co. v. PUC*, 182 Or App 576, 583, 50 P3d 1240 (2002) (referring to dictionary
16 for the common usage meaning of the noun "service") (citation omitted).; *State v. Moore*, 174 Or
17 App 94, 98 25 P3d 398 (2001) ("dictionary definitions . . . provide the range of possible
18 meanings of words in their common usage") (citation omitted).

19 The text of the administrative rule states: "the utility shall collect from its customers
20 within the county imposing such taxes or fees the amount of the taxes or fees." OAR
21 860-022-0045(1). "The amount collected from each utility customer . . . shall be separately
22 stated and identified in all customer billings". OAR 860-022-045(2).

23 The dictionary defines "collect" as "to receive, gather or exact from a number of persons
24 or other sources." *Webster's Third New Int'l Dictionary*, 444 (unabridged ed 1993). "Impose" is
25 defined as meaning "to cause to be burdened: to make, frame or apply (as a charge, tax,
26 obligation, rule, penalty) as compulsory, obligatory or enforceable". *Webster's Third New Int'l*

1 *Dictionary*, 1136 (unabridged ed 1993). The definition of “amount” provided by the dictionary is
2 “the total number or quantity: sum, number”. *Webster’s Third New Int’l Dictionary*, 72
3 (unabridged ed 1993). The plain meaning of “tax” provided by the dictionary is “to assess, fix or
4 determine”, “to make subject to the payment of a tax, levy or charge on; esp. to exact money
5 from for the support of government”, “a forced contribution of wealth to meet the public needs of
6 government.” *Webster’s Third New Int’l Dictionary*, 2345 (unabridged ed 1993).

7 The amounts that PGE has computed are merely potential tax liabilities – not the amounts
8 actually imposed by Multnomah County upon the utility. The utility does not collect these funds
9 from Multnomah rate payers in support of government efforts to meet the needs of the general
10 public. Instead, PGE sends these funds to its corporate parent. PGE does not argue that
11 Multnomah County has received payments from PGE equal to the amounts collected as “taxes”
12 in billings to rate payers. What PGE has done can not be reasonably described as recovering its
13 costs of taxes imposed upon the utility by Multnomah County. These sums have been a forced
14 contribution by rate payers to PGE, boosting the utility’s bottom line. The plain meaning of the
15 text does not allow PGE to impose charges upon county rate payers in excess of the amounts of
16 its actual taxes.

17 The context of the administrative rule includes its subsections. Subsection (4) of the rule
18 allows for the Commission to revisit the application of the rule in any instance where it is unjust
19 or unreasonable. As discussed below, this language reflects the statutory mandate for the
20 Commission to protect utility customers from “unjust and unreasonable exactions and practices”.
21 ORS 756.040(1). The plain meaning of “unjust” as provided by the dictionary is “characterized
22 by injustice; deficient in justice and fairness; wrongful”. *Webster’s Third New Int’l*
23 *Dictionary*, 2502 (unabridged ed 1993). PGE’s practice of routinely collecting revenues from
24 Multnomah County rate payers in excess of its known or ascertainable costs is clearly unjust, as
25 that term is used in both the administrative rule and the statute.

26 PGE suggests that the context of the administrative rules require PGE to calculate its

1 income taxes on a stand-alone basis. *Petition for Declaratory Ruling of PGE*, pages 3-5. PGE
2 confuses the process of recovering a county imposed tax through a separately itemized charge
3 with the process of ratemaking, in which the overall tax burden of the utility is calculated into
4 prospective rates. As noted below on pages 9-10, these are two different processes and should
5 not be commingled.

6 Separately, PGE's calculation of taxes is different from the recovery of its taxes imposed
7 by Multnomah County. PGE's actual tax liabilities in Multnomah County are a known,
8 quantifiable number. PGE engages in a continuous process of reviewing and updating its
9 projections and reviewing its historical calculations and charges to determine the amounts
10 collected from rate payers for Multnomah County taxes. Declaration of James Murray in Support
11 of Portland General Electric's Reply of Motions to Dismiss, ¶ 4, Multnomah County Circuit
12 Court Case No. No. 0501-00627. To the extent that PGE is engaging in this process, it should
13 adjust the amounts collected on the basis of what is actually sent to the County. PGE blurs the
14 difference between calculating its potential tax burden and collecting revenues from its
15 customers through a separately stated line item intended to recover the company's actual costs
16 relative to the benefits enjoyed by the county taxpayers.

17
18 **3. Collection of revenues in excess of PGE's actual tax liabilities contradicts the
original purposes of the administrative rule.**

19 The rationale behind the administrative rule has been discussed in several different
20 settings:

21 The purpose of OAR 860-22-045 is to prevent taxes designed to
22 benefit a small segment of ratepayers from being spread to all
23 ratepayers. The rule meets this purpose by requiring county taxes to
24 be passed back to utility customers in the county imposing the tax.
By contrast, federal and state taxes are borne by all customers on a
utility's system.

25 *Letter from Donald C. Arnold to Mike Kane*, 1993 Or AG LEXIS 14, *4, n. 2 (June 28, 1993)
26 (discussing application of the administrative rule to a tax adopted to fund the county's library

1 system). “The effect of the rule [was] that utility expenses resulting from payment of the
2 county’s net business income tax [were] passed on to county ratepayers only”. *Multnomah*
3 *County v. Davis*, 35 Or App 521, 523-24, 581 P2d 968 (1978).

4 Itemizing local government taxes is intended to apportion the tax burden more fairly by
5 having the tax “paid by those benefiting directly from the tax.” *In re Amendment of OAR*
6 *860-022-0040*, AR 329, Order No. 98-125, 1998 Or PUC LEXIS 107, *4 (April 7, 1998). The
7 rule seeks to make local government taxpayers “more aware of the amounts of and changes to
8 [county] assessments.” *Order No. 98-125*, at *6.³

9 As Commission staff has previously noted, the administrative rules “require utilities to
10 . . . charge the county customers 100 percent of county assessments.” *Order No. 01-728*,
11 Appendix H. “Assessment” commonly means “a valuation of property usu. for the purposes of
12 taxation; a valuation and adjudging of the sum to be levied on property; a specific charge or tax
13 determined by assessing: amount assessed”. *Webster’s Third New Int’l Dictionary*, 131
14 (unabridged ed 1993). “Assessment” does not encompass calculation of a hypothetical financial
15 burden not actually incurred by the utility as a tax liability. If PGE had failed to render payments
16 to Enron in the subject years, Multnomah County would not have assessed the company for tax
17 deficits.

18 In the Commission’s most recent review of the administrative rule authorizing utilities to
19 itemize taxes paid to cities, the Commission discussed the nature of what costs could be
20 itemized:

21 [The parties] They further agreed that the original proposal's term
22 "costs" was overly broad. It could be construed to include indirect
23 costs that a utility incurs that are not owed to a city or its residents.
24 For instance, a utility could incur increased (or decreased)
25 operating expenses such as personnel costs due to changes in a
city's requirements. Allowing such costs to be includable under
OAR 860-022-0040 would change **the scope and intent of the**
rule, which is limited to direct charges imposed by cities.

26 ³ See also, *In Re Triennial Review of Chapter 860*, AR 395, Order No. 01-728 (Aug. 17, 2001) (discussing the Commission’s standardized treatment of city taxes and county assessments through multiple prior proceedings).

1 *In Re Amendment of 860-022-0040*, AR 421, Order No. 02-366, 2002 Or PUC LEXIS 223, *3-*4
2 (June 5, 2002) (emphasis added). *See also*, 36 Or Atty Gen Op 131, 136-37, 1972 Or AG LEXIS
3 63 (October 20, 1972) (concluding OPUC could require regulated utilities to directly pass county
4 excise taxes through to consumers within the county.)

5 As the Commission noted in almost every prior instance, the intent of itemization was to
6 allow utilities to recover their direct costs of county taxes by passing those costs through to
7 county rate payers. PGE's practice has strayed far from the original intent of the administrative
8 rule, transforming itemization into a revenue enhancement mechanism. PGE's application of the
9 administrative rule does not serve to achieve "perfect symmetry between payment and benefit".
10 *Order No. 98-125*, at *10. Instead, it results in an absolute disconnect. *Id.*, at *11, (discussing
11 how "taxes that affect utilities and their customers should be explicit."). Indeed, in hindsight the
12 Commission's stated purposes of linking the utility's tax "burden" and the taxpayers' "benefit",
13 while allowing for greater taxpayer awareness, seem quaintly naïve.

14 PGE has collected millions of dollars under the guise of "taxes", but has not paid those
15 funds over to taxing jurisdictions. Multnomah County did not receive tax payments at levels
16 corresponding to what PGE collected. Nor did county taxpayers receive benefits flowing out of
17 their payments to PGE. The monies were forwarded to PGE's parent, which pocketed the
18 money. Rather than making the tax burden more "explicit", PGE's practice has served to wildly
19 exaggerate the tax burden. Taxpayers, in their capacity as rate payers, have been given the false
20 impression that taxes are being collected for the county. Multnomah County rate payers have
21 been routinely misled by PGE's statements regarding its tax burdens within the county.⁴

22

23 ⁴ The Oregon courts have previously questioned the applicability of the doctrine of primary jurisdiction in cases of
24 utility overcharging:

25 There is no necessity of resorting first to the commission in those instances in which the only
26 question involved is an overcharge, i.e., a charge in excess of that called for by established rates,
whether such rates have been fixed by determination of the commissioner or by the filing of a
published tariff.

Oregon-Washington R.R. & Navigation Co. v. McColloch, 153 Or 32, 49, 55 P2d 1133 (1936).

1 PGE should have calculated the itemized amounts on the basis of its tax obligations, not
2 based upon assumptions of what its tax obligations could be under some other potential
3 circumstances. The only proper tax expense which PGE should be passing directly through to its
4 customers is its proportionate share, after the consolidated return is filed and the actual tax is
5 paid. *Compare, Barasch v. Pennsylvania Public Utility Com'n*, 120 Pa Commw 292, 548 A2d
6 1310 (1988) (holding that benefits accruing to parent corporation in filing consolidated tax return
7 may not be withheld discriminatorily from participating regulated utility).⁵ The Commission
8 should not allow PGE to impose phantom taxes upon rate payers.⁶

9
10 **4. The Commission is responsible for protecting rate payers from unjust and unreasonable exactions.**

11 The commission is a creature of the legislature: “its power arises from and cannot go
12 beyond that expressly conferred upon it” by the legislature. *Pacific NW Bell v. Sabin*, 21 Or App
13 200, 213, 534 P2d 984 (1975). The legislature has authorized the Commission to “adopt and
14 amend reasonable and proper rules and regulations relative to all statutes it administers.” ORS
15 756.060.

16 In establishing utility rates, the Commission’s statutory responsibilities are not limited to
17 determining what is “fair and reasonable”. *Cf., Multnomah County v. Davis, supra*, 35 Or App at
18 526. The Commission is mandated to “represent the customers” of public utilities to protect
19 them from “unjust and unreasonable exactions and practices”. ORS 756.040(1). Protection of
20 the rate payer is a “primary responsibility” of the Commission. *Oregon Tel. Corp. v. Public*
21 *Utility Comm’r*, 5 Or App 231, 236, 483 P2d 822 (1971).

22
23 ⁵ [T]he purpose of filing consolidated tax returns is to accomplish a form of subsidization of some
24 members of the group by other members by means of the shifting of losses to offset unrelated gains . . .
25 [P]ublic utilities, because of the guaranteed rate of return assured to them pursuant to regulation, reliably
26 generate positive income . . . Because of consolidation, this positive income is available to the group for
offsetting of losses of other utilities.

Barasch, 120 Pa Commw at 303, 548 A2d at 1315.

⁶ *See., BP West Coast Products, LLC v. F.E.R.C.*, 374 F3d 1263, 1291 (D.C. Cir 2004), *cert den*, ---US ---, 125 S
Ct 2245, 161 LEd 2d 1079, 2005 US LEXIS 4126 (2005)

1 PGE's practices have been against the public welfare, and have imposed a substantial
2 injustice upon the utility's customers. ORS 756.062(2). By acting in this fashion, PGE has
3 collected greater compensation from rate payers in Multnomah County than that needed to
4 recover the amount of taxes imposed by Multnomah County upon the utility. Cf. ORS 757.225.

5 The Commission was mindful of these other statutory responsibilities in promulgating the
6 administrative rule by allowing for relief "in any instance [which is] unjust or unreasonable."
7 OAR 860-022-0045(4). OAR 860-022-0045(1) provides that if Multnomah County taxes PGE,
8 "the utility shall collect from its customers within the county imposing such taxes or fees the
9 amount of the taxes or fees". When PGE collects more money than needed for payment of its
10 actual tax obligations, it can not be reasonably described as collecting "the amount of the taxes or
11 fees" imposed by the county.

12 PGE has inflated its actual tax costs. In doing so, it has collected revenues far in excess
13 of its tax liabilities from county rate payers. Now it asks the Commission to bless this practice.
14 If the administrative rule is interpreted as PGE advocates, then how can the Commission say that
15 customer interests have been protected from unreasonable charges?

16 The issues presented in this proceeding do not require balancing the interests of the utility
17 investor and the consumer to establish fair and reasonable rates. The administrative rule is not an
18 exercise in prospective ratemaking based on future assumptions, where the anticipated costs of
19 the utility's taxes are estimated and then included prospectively into general rates. Compare,
20 Joan Smith, "Beware risky quick fixes on utility taxes", *The Oregonian* (Friday, July 1, 2005).⁷
21 The administrative rule is a special cost recovery mechanism.⁸ It does not involve the projection

22
23 ⁷ <http://www.oregonlive.com/commentary/oregonian/index.ssf?/base/editorial/1120126247278311.xml&coll=7>
(website visited July 1, 2005. A copy of the editorial is attached as Attachment D.)

24 ⁸ The requirement for itemizing local government taxes is contained in several of the Commission's administrative
25 rules. See, e.g., OAR 860-022-0040, Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric,
26 Gas, and Steam Utilities; OAR 860-022-0042 Relating to City Privilege Taxes, Fees, and Other Assessments
Imposed Upon a Large Telecommunications Utility; 860-022-0045, Relating to Local Government Fees, Taxes, and
Other Assessments Imposed Upon an Energy or Large Telecommunications Utility.

1 of future utility income streams based upon authorized rates of return, and then anticipating what
2 additional amounts of revenue may be needed to keep the utility whole in light of its tax burden.
3 Rather, the Commission must determine if PGE is only recapturing a cost imposed by
4 Multnomah County, or if the utility is collecting revenues in excess of its actual tax liabilities.
5 Arguments addressing rate normalization for consolidated entities are not relevant in this context.

6 PGE's practice is manifestly unjust. If it identifies too closely with the concerns of the
7 utility and ignores the utility's unreasonable treatment of rate payers within Multnomah County,
8 the Commission will fall into a trap of acting as a captive regulator.

9 CONCLUSION

10 When PGE collects monies from rate payers through a mechanism of separately itemized
11 billings described as Multnomah County taxes, taxpayers rightly view the monies paid to PGE as
12 a tax payment. PGE knowingly billed rate payers for "taxes", when the utility knew or should
13 reasonably have known that this was a false characterization of the amounts actually collected.⁹
14 The Portland City Council has separately noted its concerns regarding the practice of allowing
15 regulated utilities to collect more funds from rate payers than is necessary to pay for the actual
16 costs of tax liabilities. See, letter from Portland City Council to Oregon Public Utility
17 Commission (March 4, 2005) (copy attached as Attachment C).

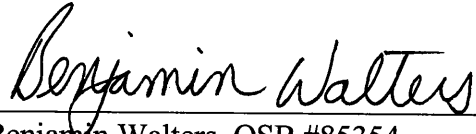
18 The effect of this practice is that PGE receives more money than it would if it were only
19 collecting the actual, direct cost of taxes imposed by Multnomah County. This was not the
20 Commission's original intention when the administrative rule was promulgated. The revenues
21 that PGE has collected have borne no relationship to the utility's actual tax liabilities. This is
22 both unjust and unreasonable. The Commission should protect ratepayers within Multnomah
23 County from this continuing mistreatment. Anything less by the Commission would constitute a
24

25 ⁹ Compare, ORS 646.608(1)(k) (unlawful trade practice for making false or misleading statements regarding nature
26 of transaction or obligation); ORS 646.608(1)(s) (unlawful trade practice for making false or misleading statements
concerning the cost of service).

1 failure to carry out its legislative mandate. PGE should not be allowed to directly bill county rate
2 payers for "county taxes" that the utility does not pay. The Commission should order the
3 immediate cessation of PGE's practice of collecting revenues as "taxes" which are in excess of
4 the utility's actual tax burden. The Commission should order PGE to repay the funds collected in
5 excess of its actual tax obligations.

6 Dated this 14th day of July, 2005.

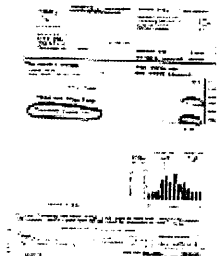
7 Respectfully submitted,

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10 Benjamin Walters, OSB #85354
11 Deputy City Attorney
12 Of Attorneys for City of Portland
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news



NEWS STORY

Enron's Tax Holiday

The county taxes you paid to PGE went to Texas.

BY NIGEL JAQUISS

Over the past seven years, Portland General Electric has collected nearly \$7 million in local taxes from Multnomah County customers-and put the money right into Enron's pockets rather than county coffers.

While PGE is in the news these days because of its proposed sale to an out-of-state buyout firm, it's still owned by Enron, the bankrupt Texas energy giant.

The information about PGE's tax collections recently surfaced in a battle between the Utility Reform Project, a consumer advocacy group, and PGE.

The Reform Project previously documented that PGE collected more than \$700 million from Oregon ratepayers to pay state and federal income taxes since being acquired by Enron in 1997. Enron kept virtually all of that money.

New documents PGE recently turned over to Dan Meek, the Reform Project's attorney, show Enron also stiffed Multnomah County.

Power companies are allowed to pass their tax bills on to ratepayers. (In this case, PGE's tax to the county is 1.45 percent of net income.) Many residential ratepayers probably never noticed they were paying a tax on their electric bill, as the average monthly cost is less than a buck a month. But those charges add up.

Between 1997 and 2004, PGE charged county ratepayers \$6.7 million-using a separate line item on monthly bills that specified a charge for county taxes. The documents Meek obtained show Enron paid less than \$4,000 of that money to the county.

"Since PGE must have known that Enron was not paying the Multnomah County tax, PGE should have stopped collecting it in 1997," Meek says. "And should have repaid with interest all such charges that did not go to Multnomah County."

City Commissioner Randy Leonard, who until recently oversaw the city bureau that collects business income taxes for both the city and Multnomah County, was unaware that local taxes were going into Enron's pocket. "That's outrageous," Leonard says. "I can think of no justification beyond some illegal intent on Enron's part for them not to pay the taxes they owe."

PGE spokesman Kregg Arntson says PGE did collect the local taxes and paid them to Enron. Arntson explains that Enron and PGE filed a consolidated tax return and that Enron's taxable losses and other tax credits more than offset PGE's profits. He insists that PGE has complied with all state regulations and done nothing wrong.

Ed Busch oversees electric utilities for the Oregon Public Utility Commission, which regulates power companies. He says PGE is treated as if it were a stand-alone entity rather than part of Enron. Since the utility itself is profitable, he explains, regulators allow it to collect the county tax. What happens after that, Busch says, is out of the PUC's hands.

Meek argues that is exactly the problem and why Oregonians should be nervous about seeing Enron sell the state's largest utility to a financial speculator, the Texas Pacific Group, whose bid for PGE is pending before the Public Utility Commission (see page 7). "The PUC can barely keep track of the basics and is not capable of effectively regulating PGE as part of an energy giant, such as Enron, or a financial conglomerate such as Texas Pacific," says Meek.

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The Oregonian

IN MY OPINION Rick Metsger

Thursday, July 07, 2005

The Oregonian**IN MY OPINION Vicki Walker**

Stop the giveaway of ratepayers' utility taxes

The electricity and gas utilities regulated by the Oregon Public Utility Commission have for years been charging Oregon ratepayers hundreds of millions of dollars for state income taxes and federal income taxes that have not been paid to any government. The best estimate of these charges for phony taxes is \$150 million a year.

The PUC simply allows the utilities to charge ratepayers wildly inflated "estimates" of state and federal income taxes. These estimates are not based on any review of a utility's actual tax payments or past tax returns. Instead, the PUC simply applies the statutory income tax rate to the utility's estimated net income. For example, if the rates are designed to earn PGE \$200 million in net income a year, then the amount included in rates to pay PGE's federal income taxes is \$70 million because that is \$200 million times the nominal federal income tax rate of 35 percent.

But these estimates are wrong. We know that PGE has charged Oregon ratepayers, since being acquired by Enron in 1997, more than \$750 million for state and federal income taxes that in fact neither PGE nor Enron has paid or ever will pay to any government.

PacifiCorp charged Oregon ratepayers more than \$88 million for state and federal income taxes in 2002 but paid the state only \$10 in state income taxes, which strongly implies that PacifiCorp also paid little or nothing in federal income taxes that year.

The utilities' tax returns are confidential. It is fair to say, however, that Oregon ratepayers during the past eight years have almost certainly paid these utilities more than \$1 billion for federal and state income taxes not paid to any government.

The Oregon Department of Revenue reported that, during the years 2000-03, the six largest regulated energy utilities paid in the aggregate only \$1.5 million to

Attachment B
Page 1 of 2

\$5 million a year in state income taxes. But these utilities charged Oregon ratepayers nearly \$30 million for state income taxes in each of those four years. So about 90 percent of this \$30 million a year is charged to ratepayers but never actually paid to a government. The same is likely true for their federal income taxes charged to ratepayers.

Charging these phony income taxes to ratepayers is a profit center for the utilities and has the effect of increasing their financial returns on investment to absurd levels. The income taxes retained by PGE and Enron added about 9 percentage points to PGE's authorized return on equity, nearly doubling it from 10.5 percent to 19.5 percent.

Senate Bill 408 will end this scam in Oregon. It requires each regulated utility (except water utilities) to file an annual tax report with the PUC, stating the amount of income taxes actually paid to government by the utility or by its consolidated group and properly attributed to the utility. It requires the PUC to create automatic adjustment clauses in the utilities' rates, so that the charges to ratepayers for income taxes are no more and no less than the income taxes actually paid to governments.

In 19 other states that we know of, the legislature or PUC has taken actions to stop utilities from charging ratepayers for income taxes that the utilities actually do not pay, and all of their actions have been upheld against challenges in court.

Oregon needs to do the same.

Rick Metsger represents Welches and Vicki Walker represents Eugene in the Oregon Senate. Both are Democrats.

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CITY OF
PORTLAND, OREGON

1221 SW Fourth Avenue Portland, Oregon 97204
www.portlandonline.com

Tom Potter, Mayor
Sam Adams, Commissioner
Randy Leonard, Commissioner
Dan Saltzman, Commissioner
Erik Sten, Commissioner

March 4, 2005

VIA EMAIL TO: puc.taxwhitepaper@state.or.us

Oregon Public Utility Commission
P.O. Box 2148
Salem, OR 97308-2148

Re: Comments on Department of Justice Memo
Recognizing Tax Liabilities in Setting Utility Rates.

Dear Commissioners:

The City of Portland, Oregon appreciates the opportunity to provide comments to the Public Utility Commission on the regulatory treatment of taxes in setting utility rates.

The Department of Justice has advised you that the Commission has the discretion to decide how to address this issue. We are writing to you to urge that you use that discretion and stop allowing utilities to collect monies from Oregon businesses and residents under the guise of collecting taxes while the utilities pocket the monies.

This sleight of hand is simply indefensible on a policy basis. If nothing else, the utilities characterization of these collections as "taxes" is deceptive, and should be stopped.

As reported in the *Oregonian*, for Portland General Electric alone, the current regulatory scheme may have cost ratepayers as much as \$720 million since 1997.¹ As reported in *Willamette Week*, Multnomah County has already lost about \$7 million as a result of this scheme². As far as can be ascertained, these amounts represent funds that do not go to the taxing jurisdictions but instead go to Enron, the current owner of PGE. This is at a time when state and local governments are under significant pressure to cut budgets and important public services are in jeopardy.

Taxpayers view the monies given to the utilities for payment of taxes as taxes. This is understandable because that is how the monies are characterized on their bills and in the Commission's rate regulations. We would expect that the community would be as shocked as we were to learn that these monies never end up in state or local coffers but are deposited in corporate accounts—with the Commission's blessing.

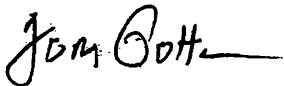
¹ Steve Duin, "The Cost of Unregulated Madness", *The Oregonian* (February 27, 2005)
http://www.oregonlive.com/news/oregonian/steve_duin/index.ssf?/base/news/1109423869115390.xml

² Nigel Jaquiss, "Enron's Tax Holiday: The county taxes you paid to PGE went to Texas", *Willamette Week* (January 19, 2005).

Currently, the Legislature is struggling with how to adequately fund schools and much-needed social services. The Portland City Council is struggling with how to balance its budget over the next biennium how to avoid closing fire stations, how to keep parks open, and how to keep adequate police protection on the streets to respond to an epidemic of methamphetamine abuse. In time such as these, to have utilities collecting monies from Oregon ratepayers under the guise of paying "taxes" that are never proffered to the government should cause you significant concern, as it does us.

The City has no quarrel with balancing ratepayer interests and ability of utilities to make a reasonable profit. However, balance seems to have been lost in a setting where the Commission defends the diversion of significant tax dollars away from our local community into the hands of out of state entities. We urge you to modify this practice immediately.

Very truly yours,



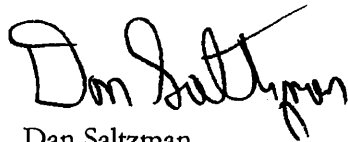
Tom Potter
Mayor



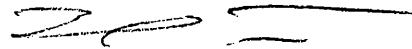
Sam Adams
Commissioner



Randy Leonard
Commissioner



Dan Saltzman
Commissioner



Erik Sten
Commissioner

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Everything Oregon

The Oregonian

IN MY OPINION Joan Smith

Friday, July 01, 2005

The Oregonian

Beware risky quick fixes on utility taxes

As a former member of the Oregon Public Utility Commission, it concerns me to see state lawmakers considering quick fixes to long-standing utility tax agreements likely to create far more problems than they're designed to solve. This is the dilemma facing Oregon House lawmakers this week as they debate Senate Bill 408, which would change the way power companies collect and pay taxes.

As strange as it may seem, the current rate-making structure, while not perfect, protects customers from serious financial pitfalls -- pitfalls that Senate Bill 408 could actually foster. Unfortunately, this downside of the Senate bill has received little attention.

My advice to legislators: Take a deep breath and carefully consider the long-term and potential unintended consequences for consumers that this legislation would impose. While there is understandable concern about utilities' collection of taxes that are not always passed on to government, efforts to reform this practice may not be nearly as consumer-friendly as proponents of SB408 would have you believe.

With this in mind, there are a couple of things consumers and elected officials should remember about electricity rates.

First, rates are set prospectively -- based on future assumptions. This means that rather than looking back at past performance, the Public Utility Commission looks at what a utility's costs are expected to be for the next year or years and adjusts rates accordingly. If, on the one hand, taxes or other costs are higher than expected, the utility is forced to absorb them. By the same token, if costs turn out to be lower than expected, the utilities that have shouldered the risk may retain those revenues.

However -- and here's an important caveat -- if there is a serious imbalance between a utility's costs and rates, then regulators will adjust the company's rates to ensure that consumers don't pay too much. This is a major consumer protection built into rate regulation in Oregon and many other states.

Attachment D
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But if rates were based on past performance, as envisioned under SB408, in most years customers would get the short end of the stick. Why? Because Oregon's utilities rarely earn their full rate of return established by the PUC, and rates therefore could be raised every year to make up for the previous year's shortfall. And under such a scenario, there would be little incentive for utilities to operate as efficiently as possible, because they could bank on a steady stream of future revenues to cover rising costs.

Second, the PUC regulates utilities on a "stand-alone" basis, regardless of how their parent companies or nonregulated affiliates perform. Because of this, the PUC allows regulated utilities to pay their stand-alone tax liability to their parent companies. The unfortunate downside is that in certain years when parent companies perform poorly, they pay no taxes.

Certainly, this may seem unfair in years when a company's poor financial performance exempts it from any tax liability. But what about those years in which the local regulated utility performs poorly and owes no taxes, but its parent company does very well and is faced with a massive tax bill? Should the local utility -- and its customers -- then be held liable for the shortfall as would most often be the case? This clearly isn't fair.

Believe me, many regulators have tried to find a remedy for this taxes-collected/taxes-paid discrepancy. But it's tricky to do without violating the consumer protections afforded by prospective rates and the long-standing agreements between utilities and those who regulate them, which protect utilities and consumers alike.

Finally, there's no question that utility rates should be set with the public's interest in mind. But while there's always room for improvement, radically altering established rate-making principles in the closing weeks of the legislative session is likely to do Oregon's electricity customers more harm than good, however well-intended lawmakers' efforts.

Joan Smith served on the Oregon Public Utility Commission from 1990-2003 and served as chairwoman of the commission from 1995-1997.

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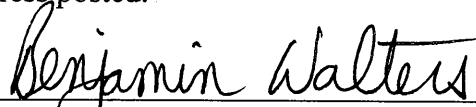
1 CERTIFICATE OF SERVICE

2 I hereby certify that I sent a copy of the foregoing OPENING BRIEF OF THE CITY OF
3 PORTLAND, OREGON to:

4 PUBLIC UTILITY COMMISSION OF OREGON
5 ATTN: FILING CENTER
6 550 CAPITOL STREET NE – SUITE 215
7 PO BOX 2148
8 SALEM OREGON 9708-2148
9 E-mail: PUC.FilingCenter@state.or.us

10 on the 14th day of July, 2005, via e-mail as shown above and by mailing the original and five
11 copies of said document, contained in a sealed envelope with postage paid, and deposited in the
12 post office at Portland, Oregon on said day.

13 I further certify that on July 14, 2005, the foregoing document was electronically mailed
14 to all Persons on the attached Service List which is maintained by the Public Utility Commission
15 for the DR 32 proceeding who have an e-mail address posted.

16 

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18 Deputy City Attorney
19 Of Attorneys for City of Portland
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