

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

2  
3 **UM 1226**  
4

5 **UTILITY REFORM PROJECT and**  
6 **KEN LEWIS,**  
7  
8 **Complainants/Applicants,**

**COMPLAINANTS' RESPONSE**  
**TO PGE MOTION TO DISMISS,**  
**ABATE, OR MAKE MORE**  
**DEFINITE AND CERTAIN**

9  
10 **v.**

11  
12 **PORTLAND GENERAL ELECTRIC CO.,**  
13  
14 **Defendant.**  
15

16  
17 The PGE Motion to Dismiss, Abate, or Make More Definite and Certain  
18 [hereinafter "PGE Motion" or just PGE and a page reference], p. 2, claims that it  
19 cannot understand the Complaint, because the Complaint states that PGE's rates  
20 are unjust and unreasonable, as of September 5, 2005, only once. Brevity is the  
21 hallmark of clarity.

22 PGE claims it, at some unknown time in the future, will probably be "operating  
23 as a stand-alone entity, assuming approval of the distribution of PGE common stock  
24 to Enron creditors." PGE's future corporate ownership or structure is irrelevant to  
25 the Complaint, which alleges that PGE's rates are right now unjust and  
26 unreasonable and have been since the effective date of SB 408. If and when any  
27 entity actually pays to units of government the "income taxes" PGE is charging to

1 ratepayers, the situation will indeed be different than it is now. But that has not  
2 happened.

3 PGE then refers to the administrative rules to implement the automatic  
4 adjustment clause portion of SB 408. That is also irrelevant, because the  
5 Commission has already determined that a different part of SB 408 took effect on  
6 September 5, 2005, which requires that "rates must reflect the taxes paid to units of  
7 government in order to be fair, just and reasonable." OPUC Order No. 05-1050, p.  
8 18. This section of SB 408 is in addition to the parts requiring the adoption of  
9 automatic adjustment clauses. PGE (p. 2) claims:

10 The automatic adjustment clause, based upon prior year collections and  
11 tax payments, is the exclusive ratemaking method under SB 408 for  
12 making income tax adjustments.  
13

14 Obviously, PGE's statement completely contradicts the conclusion of the  
15 Commission in OPUC Order No. 05-1050.

16 PGE then refers to its next general rate case. Again, that is irrelevant to the  
17 Complaint, which refers to the unlawful status of PGE's rates now and since  
18 September 5, 2005.

19 PGE's discussion (pp. 3-8) merely repeats its introduction but with more  
20 words. PGE (p. 4) appears to believe that a Complaint initiates a rate case, but it  
21 need not and the Complaint does not request a rate case. The Complaint has no  
22 concern about PGE's corporate structure; it concerns only the lack of correlation  
23 between PGE's tax charges to ratepayers and the tax payments by PGE or on

1 behalf of PGE to government entities. The Complaint most certainly does allege  
2 that PGE is charging ratepayers for income taxes that are not being paid, contrary  
3 to PGE's flatly wrong assertion. If PGE needs clarification, then Complainants refer  
4 PGE to Complaint, p. 1.

5 PGE (p. 5) asserts "SB 408 does not provide a mechanism for prospectively  
6 establishing rates." As the Commission found in OPUC Order No. 05-1050, SB 408  
7 as of September 5, 2005, established by law that rates are not just or unreasonable  
8 if they do not reflect the actual taxes paid to units of government. The Complaint  
9 alleges that PGE's rates do not reflect the taxes paid to units of government. SB  
10 408 need not provide a separate "mechanism," as PP&L learned in the UE 170  
11 docket.

12 PGE (p. 5) refers to a "hypothetical future discrepancy between collections  
13 and tax payments." The Complaint refers to nothing of the sort but instead refers to  
14 the existing and continuing actual discrepancy.

15 PGE (pp. 5-6) wishes to defer the issues raised in the Complaint until its next  
16 general rate case, which has no schedule. Complainants would not object to  
17 abatement of this Complaint and its processing by the Commission parallel with the  
18 next general rate case, provided that the Commission establishes the deferred  
19 revenue account sought by the Complaint and by the Request for Deferred Account  
20 filed by URP and Lewis at the same time. This would fully address PGE's

1 contentions about "single issue rate cases," although those comments have no  
2 legal basis in any event.

3 State commissions, including the OPUC, often conduct such cases when large  
4 new capital investments go into operation or when other significant events occur  
5 and limit the issues to the cost and prudence of the new resource. Further, the  
6 statement means that the Commission does not conduct rate cases, unless all  
7 potential issues are always on the table. Otherwise, the alleged prohibition on  
8 single-issue rate cases makes no sense. Is PGE saying that a single-issue rate  
9 case is prohibited but a 2-issue rate case is not? What possible rationale could  
10 support such a distinction?

11 Thus, claiming that the Commission prohibits single-issue rate cases is akin to  
12 saying that the Commission never limits the scope of issues or costs that can be  
13 addressed in a rate case. This is, of course, not true. The Commission often limits  
14 the scope of issues or costs to be addressed in a rate case. For example, when  
15 URP in the rate case next following UE 88 sought to raise the issue of the  
16 continued charges to ratepayers for unlawful Trojan investment "costs," the  
17 Commission (at the urging of PGE), refused to consider the issue.<sup>1</sup>

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18 1. In the PGE rate case after the UE 88 rate case, for example, URP intervened and made  
19 the same claims that it had made in the docket (UE 88): that charging Trojan costs and  
20 profits to ratepayers was illegal. The OPUC in a preliminary order refused to even  
21 consider the issue. Then, in OPUC Order No. 95-1216, the Commission refused to  
22 consider the issue of Trojan costs and profits in rates, because "URP's claim relating to  
23 Trojan was presented in UE 88." PUC Order No. 95-1216, p. 12. This outcome had been  
24 (continued...)

1 PGE (pp. 6-7) again seeks to misstate the Complaint, which quite clearly  
2 alleges that PGE's rates, since September 5, 2005, have been unjust and  
3 unreasonable and are so on a continuing basis.

4 PGE's references to UCB 13 are misplaced. The orders cited by PGE were  
5 reversed by the Marion County Circuit Court. The case was later, on remand,  
6 resolved by a voluntary withdrawal of the complaint, which did not resolve any  
7 issues.

8 PGE (p. 8) states that the Complaint does not "set forth the specific acts  
9 complained of in sufficient detail to advise the parties and the Commission of the  
10 acts constituting the grounds of the complaint." How could it be more clear? The  
11 Complaint alleges that PGE is charging ratepayers more for income taxes that it is  
12 actually paying to units of government and that this practice makes PGE's rates  
13 unjust and unreasonable, as of September 5, 2005, the effective date of SB 408,  
14 and continuing until the Commission orders PGE to halt this practice, if and when

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15 1.(...continued)  
16 urged by PGE:

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18 PGE responds by noting that it is not seeking recovery of **additional**  
19 costs associated with Trojan in this proceeding and by pointing out that  
20 issues relating to Trojan were resolved in UE 88.

21  
22 PUC Order No. 95-1216, p. 12 (emphasis added). This restriction on issues and/or costs  
23 to be considered in a rate case is not consistent with PGE's assertion of that issues in  
24 rate cases cannot be limited.

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that occurs.

Dated: December 5, 2005

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I filed served for foregoing COMPLAINANTS' RESPONSE TO PGE MOTION TO DISMISS, ABATE, OR MAKE MORE DEFINITE AND CERTAIN by email to the list below and by depositing a true copy in the U.S. Mail, first class postage prepaid, a true and correct copy upon the addresses below.

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Douglas Tingey  
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Dated: December 5, 2005

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Daniel W. Meek