



Portland General Electric Company
Legal Department
121 SW Salmon Street • Portland, Oregon 97204
(503) 464-8926 • facsimile (503) 464-2200

Douglas C. Tingey
Assistant General Counsel

November 10, 2005

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
PO Box 2148
Salem OR 97308-2148

Re: UTILITY REFORM PROJECT and KEN LEWIS, Complainants, vs.
PORTLAND GENERAL ELECTRIC, Defendant
OPUC Docket No. UM 1226

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's Motion to Dismiss, Abate, or Make More Definite and Certain. This document is being filed by electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

/s/ DOUGLAS C. TINGEY

DCT:am

cc: UM 1226 Service List

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1226**

UTILITY REFORM PROJECT and
KEN LEWIS,

Complainants,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY'S MOTION TO DISMISS,
ABATE, OR MAKE MORE DEFINITE
AND CERTAIN**

Pursuant to OAR 860-013-0031 and ORCP 21(A) and (D)¹, Portland General Electric Company ("PGE") requests that the Public Utility Commission of Oregon ("Commission") or the Administrative Law Judge ("ALJ") enter an order or ruling:

1. Dismissing Utility Reform Project's ("URP") and Ken Lewis' (collectively, "Complainants") Complaint because it fails to state ultimate facts sufficient to constitute a claim;
2. Abating the Complaint pending the filing of PGE's next general rate case in early 2006; or
3. Ordering Complainants to make their allegations more definite and certain.²

¹ ORCP 15 extends the time for filing an answer pending the outcome of a motion to dismiss. Because the Commission rules generally adopt the ORCP where there is no governing Commission rule or order (OAR 860-011-0000(3)) and there is no applicable Commission rule or order, ORCP 15 should apply. If the Commission deems that ORCP 15 does not apply, PGE hereby denies all material allegations in the Complaint and will file an answer to that effect if the Commission requires one at this stage of the proceeding.

² Complainants have also filed an Application for Deferred Accounting, which we address in PGE's Comments on URP's Application for Deferred Accounting, filed separately.

I. INTRODUCTION

In their Complaint, Complainants appear to allege that PGE's rates are unjust and unreasonable as of September 2, 2005, the effective date of Senate Bill 408 ("SB 408"). We say "appears" because Complainants allege unjust and unreasonable rates only in an introductory paragraph to the Complaint, and they neither repeat nor elaborate on that claim in the body of the Complaint.

The substance of the allegation that PGE's rates are unjust and unreasonable seems to be that, in the past, PGE collected amounts in rates for federal and state income taxes and remitted those amounts to its parent company, Enron Corp. ("Enron"), which filed consolidated income tax returns. Complaint ¶ 5A. According to Complainants, SB 408 provides that a utility's rates should reflect only collections for taxes that the utility pays directly to a governmental entity or taxes the parent pays that are properly attributed to the utility. Because PGE's rates have in the past included a component for income taxes PGE paid to Enron, Complainants allege that PGE's rates will be unjust and unreasonable going forward.

This Complaint is untimely and unnecessary. First, the Complaint ignores the likelihood that in any reasonably representative test-year for new rates pursuant to the Complaint, PGE will be operating as a stand-alone entity, assuming approval of the distribution of PGE common stock to Enron creditors. That PGE remitted its tax charges to its parent company when it was a subsidiary establishes nothing about PGE's tax payments in the future as a stand-alone company.

Second, the Commission's enactment of administrative rules implementing SB 408, in particular the rules relating to the automatic adjustment clause, will render this Complaint superfluous. SB 408 provides no claim for a prospective income tax adjustment. The automatic adjustment clause, based upon prior year collections and tax payments, is the exclusive rate-making method under SB 408 for making income tax adjustments.

Last, PGE's next rate case, which it expects to file in early 2006, will address issues related to tax payments as part of the Commission's general inquiry into PGE's rates. If the Commission permits URP's rate complaint to proceed, the Commission and parties will have to address *all* of PGE's costs, revenues and other ratemaking components to establish just and reasonable rates. Anything less would constitute "single issue" ratemaking, which the Commission has consistently rejected under its general rate-making authority. But it is pointless for the parties and the Commission to engage in such a broad rate-making process in response to the Complaint when all these issues will be fully addressed in a general rate case in the near future. At a minimum, the Commission should abate this complaint proceeding pending PGE's general rate case filing.

II. DISCUSSION

A. IF THE COMPLAINT ALLEGES UNJUST AND UNREASONABLE RATES, THE COMMISSION SHOULD DISMISS IT

1. PGE WILL BE A STAND-ALONE ENTITY IN ANY REASONABLY REPRESENTATIVE TEST YEAR

Complainants' specific allegations about PGE's tax payments, Complaint ¶ 5A, are entirely the product of PGE's historic status as a subsidiary in a holding company structure. Assuming approval of the plan to distribute PGE's stock to Enron's creditors, PGE will operate as a stand-alone company, not as a subsidiary. *See* Ex. 1, UM 1206/UF 4218 Application at 27-28. PGE's status as a subsidiary of a parent company that filed consolidated tax returns is not evidence of what PGE will pay taxing authorities in the future, as a stand-alone company.

If the Commission permits URP to proceed with a rate case in response to this Complaint, that case will be for the purpose of determining whether to change PGE's rates prospectively.³ In such a rate case, the appropriate rate-making approach would treat PGE as a stand-alone entity in any representative test year. PGE's past status as a subsidiary in a holding company would provide no basis for a tax-related adjustment to PGE's rates. Rather, the Commission and parties would focus on PGE's forecasted tax payments going forward. The Complaint contains no allegations about PGE on a going-forward basis. Rather, the Complaint reduces to an allegation that, if PGE continues to function as an Enron subsidiary and to pass its tax payments through to Enron in the future, then its rates will be unjust and unreasonable.

Complainants do not, and cannot, allege the essential predicate of their complaint—that PGE will continue to pay income taxes consolidated with a holding company. Nor can they in good faith allege that it is likely to occur, given the pending distribution of PGE's common stock held by Enron. Accordingly, it appears that this Complaint is based not on a violation of SB 408 or any other statute or rule, but on Complainants' speculation that PGE's rates would be unjust and unreasonable in the future if PGE remained as an Enron subsidiary and Enron filed consolidated tax returns. This is unlikely, to say the least; moreover, it is speculation, and as such is not a basis for a complaint under ORS 756.500.

³ We do not understand the Complaint to be seeking a retroactive adjustment to PGE's rates for the period before the effective date of SB 408 to reflect PGE's remittance of tax-related charges to its parent Enron. If we are mistaken, and Complainants are seeking retroactive ratemaking here, then their Complaint should be dismissed because, among other reasons, the Commission has resolved that issue in the UCB 13 proceedings, in which the Commission dismissed URP's complaint concerning past collections. *See* UCB 13, Order No. 03-401 at 8 ("The consistent opinion is that the Commission cannot grant refunds for charges paid by customers based on rates specified in a utility's tariff without specific statutory authority allowing the refund").

2. SB 408 AND ITS ADMINISTRATIVE RULES WILL FULLY ADDRESS THIS ISSUE

The Commission should also dismiss the Complaint because SB 408, and the Commission's rules enacted under SB 408, will address the issue the Complaint raises. In Section 3(4) of SB 408, the Legislature provided for the establishment of an automatic adjustment clause for utilities. Because the threshold that triggers the automatic adjustment clause is so low, it is virtually certain that PGE will have an automatic adjustment clause. Thus, even if the circumstances alleged in the Complaint continue on a going-forward basis, the automatic adjustment clause under SB 408 will make any adjustments necessary to account for the difference. By the time the Commission and parties could conclude a contested case concerning the allegations in the Complaint (summer 2006 at the earliest), the Commission will have addressed the tax issue identified in the Complaint through implementation of SB 408.

Further, to the extent Complainants are seeking to establish new rates for PGE under SB 408, the Complaint is legally deficient. SB 408 does not provide a mechanism for prospectively establishing rates. Its rate-making tool is the automatic adjustment clause described above, which provides for a retrospective alignment of amounts collected to pay a utility's taxes with amounts the utility pays to taxing authorities. Nothing in SB 408 provides the remedy that Complainants appear to seek here, *i.e.*, a prospective adjustment of PGE's rates in anticipation of some hypothetical future discrepancy between collections and tax payments. To the extent Complainants rely on SB 408 as the source of their claim, this Complaint exceeds statutory authority.

3. THE ISSUE SHOULD BE ADDRESSED AS PART OF A GENERAL RATE CASE-TYPE PROCEEDING

The Complaint addresses a single cost item (tax expense) and alleges that PGE's rates will be unjust and unreasonable in the future because of the historic treatment of that cost item.

But it is inappropriate to consider only a single cost item in prospectively revising a utility's rates. *See, e.g.*, UE 76, Order No. 90-870 at 3 (June 1, 1990) (so stating): "The reason is that it cannot be presumed that all the costs have remained the same as in the previous case where there has been a significant passage of time." *Id.* URP is asking for the Commission to engage in ratemaking to establish new rates. When setting rates, the Commission must consider not only the cost item upon which URP centers its complaint (tax expenses), but all utility costs and revenues. URP's complaint ignores this fundamental precept of ratemaking, asking the Commission to engage in single-issue ratemaking. The Commission has consistently rejected such invitations:

To determine the total revenue requirement, the Commission is required to consider *all* aspects pertinent to the utility's operations.

[Doing otherwise] would constitute single-issue ratemaking which is prohibited.

UE 88, Order No. 04-597 at 6, Appendix A at 17 (emphasis in original).

Because of the likelihood that PGE will file a general rate case in early 2006, the Commission should dismiss this single-issue Complaint or, at a minimum, abate it. If, as we believe, the Complaint is alleging that PGE is charging unjust and unreasonable rates going forward, then the appropriate forum to address this allegation is in a general rate case, which would provide an adequate and timely opportunity to address these issues if necessary. It would be wasteful and improper to commence a rate proceeding based on this complaint that will run parallel to a general rate case covering the same issues regarding costs, revenues, taxes and other rate-making components.

B. IF THE COMPLAINT DOES NOT ALLEGE UNJUST AND UNREASONABLE RATES, THE COMMISSION SHOULD DISMISS IT

As noted, Complainants fail to allege in the body of the Complaint that PGE's rates are unjust and unreasonable going forward. Rather, the Complaint focuses on past collections and

tax payments. To the extent Complainants are arguing only about collections, payments and rates from *before* the filing of their Complaint, their Complaint is ill-founded. ORS 756.500 does not authorize retroactive ratemaking; further, the closed docket UCB 13 resolved any issues regarding historic tax collections. UCB 13, Order No. 03-629 at 2-3 (dismissing complaint); Order No. 03-401 at 8-9 (rejecting reconsideration of Order No. 03-629).⁴

Again, we believe that the Complainants intend to allege unjust and unreasonable rates going forward. If we are wrong, however, then the Complaint violates the rule against retroactive ratemaking.

We also note that the only specific relief requested in the Complaint is the establishment of a deferred accounting order. Complaint ¶ 6A. As a procedural matter, Complaints may make that request under ORS 757.259, not in a Complaint under ORS 756.500. As noted, Complainants have also filed a request for deferred accounting under ORS 757.259. That request places the issue of deferred accounting before the Commission and makes this Complaint superfluous, as well as procedurally improper. Even if Complainants *could* request deferred accounting in a Complaint, it is unnecessary given their parallel request under ORS 757.259.

C. IN THE ALTERNATIVE, THE COMMISSION SHOULD REQUIRE COMPLAINANTS TO MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN

In the alternative, the Commission should require Complainants to make their allegation more definite and certain. ORCP 21D. The current allegations are so uncertain that we cannot determine whether Complainants are alleging wrongdoing with respect to PGE's past tax payments or speculating about what those payments will be in the future. Nor are the allegations

⁴ The Marion County Circuit Court remanded Order No. 03-629 permitting URP to proceed with its claim that rates had been fraudulently set. Ultimately, URP withdrew its complaint that PGE's rates were based upon fraud (*see* Order No. 05-198) and Complainants make no fraud claims in the Complaint.

clear about whether Complainants are requesting deferred accounting alone or are also seeking a rate complaint proceeding. ORS 756.500.

The Commission's rules require the Complaint to "set forth the specific acts complained of in sufficient detail to advise the parties and the Commission of the acts constituting the grounds of the complaint." OAR 860-013-0015(2). This Complaint falls short of that standard. At a minimum, the Commission should require Complainants to specify whether they are complaining about PGE's historic tax payments as a subsidiary of Enron, or speculating about PGE's payments as a stand-alone entity going forward.

III. CONCLUSION

For the reasons stated, PGE respectfully requests that the Commission dismiss or abate the Complaint or, in the alternative, grant PGE's Motion to Make More Definite and Certain and require Complainants to make clear the basis of their claim under ORS 756.500.

DATED this 10th day of November, 2005.

/s/ DOUGLAS C. TINGEY
Douglas C. Tingey, OSB No. 04436
PORTLAND GENERAL ELECTRIC
COMPANY
121 SW Salmon, 1WTC1300
Portland, OR 97204
503-464-8926 (Telephone)
503-464-2200 (Facsimile)
Doug.Tingey@pgn.com

Of Attorneys for Portland General Electric
Company

/s/ DOUGLAS C. TINGEY FOR
David F. White, OSB No. 01138
TONKON TORP LLP
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204
503-802-2168 (Telephone)
503-972-3868 (Facsimile)
davidw@tonkon.com

Of Attorneys for Portland General Electric
Company

CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S MOTION TO DISMISS, ABATE, OR TO MAKE MORE DEFINITE AND CERTAIN** by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.

Linda K. Williams
Kafoury & McDougal
10266 S.W. Lancaster Road
Portland, OR 97219-6305

Daniel W. Meek
Suite 1000
10949 S.W. Fourth Avenue
Portland, OR 97219

DATED this 10th day of November, 2005.

/s/ DOUGLAS C. TINGEY
DOUGLAS C. TINGEY

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM _____

In the Matter of the Application of
PORTLAND GENERAL ELECTRIC
COMPANY for an Order Authorizing the
Issuance of 62,500,000 Shares of New
Common Stock Pursuant to ORS 757.410 et
seq.

and

In the Matter of the Application of
STEPHEN FORBES COOPER, LLC, as
Disbursing Agent, on behalf of the
RESERVE FOR DISPUTED CLAIMS, for
an Order Allowing the Reserve for Disputed
Claims to Acquire the Power to Exercise
Substantial Influence over the Affairs and
Policies of Portland General Electric
Company Pursuant to ORS 757.511

APPLICATION

June 17, 2005

EXHIBIT 1
PAGE 1

1 has no plans to market and sell energy in other retail markets, which was the basis for the merger
2 credit in Condition 20.³⁶ There is no need for enforcement provisions (Condition 21).
3 Condition 22, which required the filing of a customer choice (UE 102), has long since been
4 superseded by Oregon's direct access program.

5
6

**VII. THIS APPLICATION SERVES PUBLIC INTEREST
AND BENEFITS CUSTOMERS**

7 There are several reasons why this Application serves the public interest and benefits
8 customers. First, there are no risks to PGE or its customers as a result of the Plan for the New
9 PGE Common Stock. PGE will not be subject to any new debt or liability. Any one-time costs
10 associated with this Plan will not pass through to customers. There is no holding company
11 created and no acquisition debt that must be serviced by PGE dividends.

12 Second, PGE will become a publicly traded stand-alone electric utility headquartered in
13 Portland. The policy, direction and management decisions for PGE will be made by PGE's
14 board of directors and management with full knowledge that PGE has no other business or
15 purpose but to operate as a regulated public utility within the State of Oregon. As a publicly
16 traded company, PGE will have access to the public equity market, something it does not have
17 now.

³⁶ The merger credit in condition 20 was also "full payment for any entitlement PGE's customers may have to value that relates to: 1) use of PGE's name, reputation, business relationships, expertise, goodwill or other intangibles; 2) wholesale and non-franchise retail activities that PGE has undertaken that will not take place within PGE after the merger (this includes but is not limited to PGE's discontinued term wholesale trading and risk management activities), and wholesale and non-franchise retail activities that PGE might have undertaken had the merger with Enron not occurred; and 3) added value of the merged entity that is achievable because of the combination or because of the association with PGE. This payment obligation also shall constitute full payment to PGE's customers for any entitlement to the revenues, value or other benefits arising from the business activities of the merged entity, other than the regulated business activities conducted by PGE. The term 'regulated business activities' shall mean the assets and services of PGE which are subject to economic regulation under Oregon or federal law." The Commission should continue to recognize this full payment in any applicable circumstances.

1 Third, PGE will not be consolidated for tax purposes with any other entity (other than
2 with its wholly-owned subsidiaries) and will file and pay its taxes with and directly to all taxing
3 authorities.

4 The Reserve and the Plan Administrator are charged with resolving disputed claims and
5 distributing New PGE Common Stock to Holders of Allowed Claims as rapidly as possible. The
6 expected outcome of the Plan is that ultimately the New PGE Common Stock will be publicly
7 and widely held. Approval of this Application will allow Enron, PGE and the Commission to
8 carry out fully the Plan approved by the Bankruptcy Court pursuant to federal law for the
9 issuance of the New PGE Common Stock. Approval of this Application is the fastest way to
10 return PGE to its previous status as a publicly traded company, headquartered in Portland,
11 Oregon.

12 The Applicants respectfully request that the Commission grant the orders described in
13 this Application.

DATED this 17th day of June, 2005.

Portland General Electric Company



J. Jeffrey Dudley, OSB #89042
Associate General Counsel
Barbara W. Halle, OSB #88054
Assistant General Counsel
121 SW Salmon Street, 1WTC1300
Portland, OR 97204
503-464-8858 (telephone)
503-464-2200 (fax)
barbara.halle@pgn.com

Stephen Forbes Cooper, LLC,
Disbursing Agent



Michael M. Morgan OSB #72173
Tonkon Torp LLP
888 S.W. Fifth Avenue, #1600
Portland, OR 97204
503-802-2007 (telephone)
503-972-3707 (facsimile)
mike@tonkon.com

009697\00013\634741 V007

Page 28 – APPLICATION

Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204

EXHIBIT 1
PAGE 3