Case UE 180
COP/100
Witness: David R. Jubb

BEFORE THE PUBLIC UTILITY COMMISSION

OF THE STATE OF OREGON

CITY OF PORTLAND

Direct Testimony of David R. Jubb

Practical and Prudent Tax Planning
Deemed PGE LLC Conversion
Ratepayer Credit of January 1, 2006 Deferred Tax Balances
Ratepayer Credits of Improper Cash Transfers to Enron.

August 9, 2006

1 **Q. PLEASE STATE YOUR NAME, PROFESSIONAL QUALIFICATIONS AND**
2 **REASON FOR TESTIFYING.**
3 A. My name is David R. Jubb. I am professionally qualified as an attorney and a certified
4 public accountant by the State of Oregon. I am in private practice as a tax lawyer and business
5 consultant. My business address is Jubb & Company LLC, 14195 NW Harvest Lane, Portland,
6 Oregon 97229. I am testifying as a witness at the request of the City of Portland.
7 **Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE**
8 **IN THE AREA OF TAXATION.**
9 A. I am a 1971 graduate of Linfield College with Bachelors of Arts degrees in economics
10 and accounting. After graduation, I was employed by the firm of Lybrand, Ross & Montgomery
11 that subsequently became Coopers and Lybrand and is now known as PriceWaterhouseCoopers.
12 I received my certified public accountant designation in 1973. I am also a 1976 graduate of the
13 Northwestern School of Law of Lewis and Clark College with a Juris Doctor degree and became
14 a member of the Oregon State Bar in 1976.
15 I was with the PriceWaterhouseCoopers firm from June 21, 1971 until October 1, 1996. I
16 was a tax partner in the Portland office with Coopers and Lybrand from October 1, 1978 until
17 October 1, 1996. Since October 1, 1996, I have been a tax lawyer in private practice.
18 Over the course of my career as a tax professional, I have provided tax advice to a large
19 number of public and private corporations. My clients covered various industries including,
20 steel mills, aluminum smelters, passenger and freight airlines, helicopter companies, electric
21 utility, coal, steel pipe manufacture, undersea cable, satellite telephone, construction, banking,
22 insurance, wholesaling, food manufacture, real estate development, national food and drug chain
23 stores, leasing, time share and wood products.
24 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**
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1 My purpose is to testify on four specific areas that may have an effect on the ultimate
2 determination of PGE's rates in this proceeding:
3 1. Practical and Prudent Tax Planning.
4 2. Deemed PGE LLC Conversion.
5 3. Ratepayer Credit of 1 January 2006 Deferred Tax Balances.
6 4. Ratepayer Credits of Improper Cash Transfers to Enron.
7 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**
8 A. In summary, my testimony addresses the following points:
9 1. PGE should provide an annual report of all practical and prudent tax planning methods
10 it has employed to minimize the currently payable income tax burden imposed on ratepayers
11 under SB 408. This will allow the Commission to monitor the efficacy of the SB 408 automatic
12 adjustment of taxes included in rates to actual taxes paid governments.
13 2. In calculating PGE's taxable income and income tax rates includable within PGE's
14 rates for electricity, the Commission should deem that an LLC conversion of PGE had occurred
15 prior to its stock distribution to Enron creditors. This conversion would have been a reasonable
16 and prudent business decision with significant benefits for ratepayers. The effect of this
17 conversion would have been to significantly reduce PGE's tax burden over the next twenty
18 years. The Commission should use this deemed conversion as a comparator in setting PGE's
19 rates.
20 3. Income taxes previously included in PGE rates and reflected as deferred taxes on the
21 PGE balance sheet as of January 1, 2006 should be refunded as billing credits to ratepayers in
22 order to avoid double charging ratepayers for those taxes when the temporary differences that
23 created the deferred tax liabilities reverse and become currently payable income tax liabilities.
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4. Cash payments made by PGE to Enron under the PGE/Enron oral and written Tax Allocation Agreements, and not otherwise explicitly authorized by the Commission from 1997 through 2006, should be refunded to ratepayers through billing credits.

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I. PRUDENT TAX PLANNING.

Q. PLEASE EXPLAIN WHY THE COMMISSION SHOULD REQUIRE PGE TO ENGAGE IN PRACTICAL AND PRUDENT TAX PLANNING.

A. On July 17, 2006 the Commission issued an Interim Order under ORS 757.268 explaining the process for "truing up" a utility's cost for taxes.

The Commission proposed a straightforward and practical method to determine those taxes paid that are "properly attributable" to the utility based on a three factor formula that has long been accepted for state income tax apportionment purposes.

SB 408 was not a typical ratemaking law. "Truing up" of taxes paid to those included in rates at the effective tax rate used in the ratemaking process has the potential of creating an incentive for PGE to "game the system" by creating more taxable income at the utility in one year, through tax planning, in order to avoid a potential refund to ratepayers, while rolling the corresponding deduction into a subsequent year. Before, the utility had reduced incentives to avoid income taxes, as those would be borne by the ratepayers; the regulatory paradigm has shifted under SB 408. Any taxes it could avoid paying resulted in additional income to PGE, up to the amount established in its electricity rates approved by the Commission. Now, PGE doesn't gain the use of any taxes that it avoids. The tax savings are merely a pass-through to customers.

PGE has otherwise testified that it is employing reasonable business practices in attempting to control its costs. See, e.g., PGE /100/Piro-Lesh/13. In furtherance of these efforts,

PGE should also engage in routine, on-going tax planning in order to avoid incurring business costs. The Commission should require PGE to provide regular reports on these efforts, so the Commission may be informed of PGE's progress in this area, and provide reasonable regulatory oversight.

In order to avoid harsh results for ratepayers in "truing up" for taxes, PGE needs to be required to report as part of the true up those "prudent and practical" tax-planning techniques it has employed to reasonably avoid paying income taxes. Receiving regular and routine reports on PGE's tax planning will help to avoid erratic swings.

II. DEEMED LLC CONVERSION.

Q. WOULD YOU PROVIDE AN EXAMPLE OF A REASONABLE AND PRUDENT TAX PLANNING MEASURE THAT PGE MIGHT HAVE UNDERTAKEN, PROVIDING TAX BENEFITS TO BOTH ITS BUSINESS OPERATIONS AND TO RATEPAYERS?

A. In March 2006, I made an oral presentation to the Commission regarding the reasonableness and prudence of converting PGE from an Oregon corporation formed under ORS Chapter 60 to a limited liability company (LLC) formed under ORS Chapter 63.[1] Subsequently, I provided copies of written materials to Commission staff. Copies of these written materials are attached as COP/101, COP/102 and COP/103, respectively.

If PGE had filed articles of conversion, prior to its stock distribution to Enron creditors, to become a limited liability company it would have become a disregarded entity for federal tax purposes joining the many other disregarded limited liability company entities in the Enron group.[2] Under the Treasury Department's entity classification regulations as a domestic entity, PGE LLC with a single owner, Enron (having first redeemed the preferred shares), would have been disregarded as an entity separate from Enron for federal income tax purposes unless PGE had elected to be treated as an association taxable as a corporation under Treas. Reg. Secs. 301.7701-3(b)(1)(ii)[3] and 301.7701-2(c)(2)[4].

1 As a disregarded entity, PGE would have been treated as a branch or division of Enron
2 for Federal income tax purposes.[5] Subsequent to the distribution of PGE membership shares as a
3 limited liability corporation to Enron creditors, PGE LLC would have again been treated as a
4 corporation for federal tax purposes if it was subsequently registered and traded on an exchange
5 with taxes paid at the PGE LLC level and at the regular corporate income tax rate under IRC
6 Section 7704.[6]

7 For federal income tax purposes, the conversion from a corporation form of organization
8 into a limited liability company form of organization of a wholly owned subsidiary member of a
9 parent corporations affiliated group is treated as tax-free as a IRC sections 332 and 337
10 liquidation.[7] No gain or loss would have been recognized on the receipt by Enron of property
11 distributed in complete liquidation of PGE and Enron would have been treated as the sole owner
12 of PGE's assets as if held directly. An example of this treatment of a corporation being treated
13 as the sole owner of LLC subsidiaries assets was provided by the Treasury Department in
14 Revenue Ruling 2004-77.[8]

15 A recent example of the conversion of a corporate subsidiary to an LLC in anticipation of
16 a sale or exchange transaction and as part of that transaction's pre-closing conditions is the
17 pending sale of GMAC by General Motors Corporation.[9]

18 The tax-free and non-gain recognition reorganization provisions of the IRC 368(a)(1),
19 including (G), only apply to corporations and not to limited liability companies that are treated as
20 disregarded entities. A transfer by a corporation of all or part of its assets to another corporation
21 in a title 11 or similar case qualifies as a reorganization under IRC Section 368(a)(1)(G); but
22 only if, in pursuance of the plan, stock or securities of the corporation to which the assets are
23 transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

24 Distributions of disregarded entities are treated as distributions of "other property", not as
25 stock or securities of a corporation. Accordingly, the distribution of membership shares in PGE
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1 LLC as a limited liability company, by Enron to Enron's creditors would not have qualified as a
2 tax-free reorganization. Just as in the case of General Motors Corporation, any gain would have
3 been recognized by Enron on the distribution of the PGE LLC for the excess of the fair market
4 value of PGE's assets over those assets tax adjusted basis. The basis of PGE's assets (just as in
5 the case of GMAC) would have then been "stepped up" to fair market value for tax purposes.[10]

6 Once more, as with General Motors Corporation, Enron had net operating loss carry
7 forwards in excess of any gain it would have realized and recognized on the distribution of PGE
8 LLC to Enron's creditors:

9 Enron reported net operating losses (before net operating loss carryovers) for
10 each of its taxable years 1996 through 1999. Enron did not seek to carry back those net operating losses to receive a refund of income taxes paid in earlier
11 years. Instead, Enron carried forward these net operating losses ($3.1 billion) into 2000. The net operating losses for 1996 through 1999 prevented Enron from
12 obtaining closure for Federal income tax audit purposes with respect to those years. As a result, Enron adopted a strategy to pay tax for 2000 to close out the
13 audit for 1996 through 1999. Late in 2000, Enron entered into a number of transactions intended to generate taxable income in 2000 that would absorb the
14 entire $3.1 billion net operating loss carryover to that year. In its 2000 Federal income tax return, Enron reported $3.1 billion of taxable income (before its net
15 operating loss deduction), which Enron offset with its reported net operating loss
16 carryover from 1999 to 2000 of approximately the same amount. The following year, 2001, Enron recognized losses from closing out the transactions that had
17 generated taxable income in 2000. This resulted in a net operating loss of $4.6 billion on Enron's 2001 Federal income tax return.[11]
18
19 The net operating loss of $4.6 billion on Enron's 2001 Federal income tax return would
20 have been carried forward under IRC 172(b) and deductible in subsequent years.[12] Accordingly,
21 Enron would have had carry-forward losses in 2006 sufficient to offset any gain on the
22 distribution of PGE providing the "step-up" in PGE asset basis.[13]
23
24 The Tax Allocation Agreement between PGE and Enron accounted for the operations of PGE on a "stand alone" basis. As discussed above, the conversion of PGE from a corporation
25 form to a limited liability form would have been tax free to PGE and Enron. Accordingly, no tax
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liabilities would have been created on a "stand alone" basis for PGE for which there would have been an obligation to reimburse Enron under the PGE/Enron Tax Allocation Agreement. COP/104.[14]

The tax benefit to PGE and its ratepayers over time of the increase or "step up" in the tax basis of PGE's assets attendant to the LLC conversion and subsequent distribution would have been the amount of the "step up" multiplied by the PGE effective combined federal and state corporate tax rate of 39% multiplied by the "gross-up factor used in rate setting of approximately 1.63. [15]

Q. WHAT IS THE BASIS FOR THIS CONCLUSION?

A. The PGE and ratepayers tax benefit would have arisen from the increased depreciation or amortization available annually for federal and state income tax reporting purposes on the "step up" in PGE's assets "tax basis" over their "book basis" in the amount of the gain realized and recognized by Enron on the distribution of PGE LLC to its creditors trust. The amount of the step up to PGE assets tax basis would have been approximately $1.7 billion dollars. That is because PGE had a fair market value of $1.7 billion at the time PGE was distributed to Enron's creditors in satisfaction of Enron debts. [16] The fair market value of the assets distributed to the Enron creditors becomes the tax basis of the PGE property for computing subsequent depreciation and amortization for income tax purposes. The difference between PGE's tax basis book value of approximately zero and its fair market value book value of $1.7 billion is the step up in tax basis.

These readily available future tax benefits for PGE would have been important to Oregon ratepayers because the ratepayers pay PGE's taxes in their rates either currently or when the rates are "trued up" to those actually paid to government units as proscribed by SB 408 and Commission Draft Rule AR 499. A long-term reduction in the PGE income taxes currently paid governments would have represented a reduction in utility rates for those taxes multiplied by the

1 "gross up" factor of approximately 1.63. These benefits would have cost Enron and its creditors
2 nothing as Enron's net operating losses will disappear and be of no value when it Enron is
3 liquidated at the close of its bankruptcy.

4 Rate reductions of approximately $1 billion spread over approximately a 20-year period[17]
5 would have resulted in lower rates for ratepayers under the normal rate setting calculation made
6 for the provision for PGE income taxes under FASB 109; as the difference between the book
7 basis and tax basis of the PGE assets would have been a permanent difference not creating a
8 deferred tax liability. The normalization rules of IRC section 168 would not have been violated
9 because the tax benefit that was passed to ratepayers would not have arisen from a temporary
10 difference in asset basis (e.g. accelerated depreciation) but rather a permanent asset basis
11 difference.

12 The increase in PGE's asset tax basis would not have affected the book value of the
13 assets in the PGE regulatory asset base, as the Commission has routinely protected ratepayers
14 from any increase in the rate base traceable to "acquisition premiums".[18]

15 The LLC conversion transaction would have been practical, prudent, and feasible from a
16 business prospective and has been done by regulated utilities as well as other businesses, such as
17 General Motors.[19] Practical, prudent, and feasible is the standard of management judgment the
18 OPUC should expect from PGE in business and tax matters and is the standard for tax strategies
19 under generally accepted accounting principals.[20] The simple "check the box" technique that
20 could have been used for the conversion of PGE is supported by the Treasury Regulations and
21 the courts. A separate "business purpose" has never been required for the application of IRC 332
22 in any tax case and clearly not to follow the Treasury administrative procedures.[21]

23 PGE/Enron management should have vigorously pursued the LLC conversion transaction
24 by requesting a private letter ruling from the Treasury or completing the transaction on a covered
25 tax opinion without a Treasury ruling. However, PGE chose not to provide the ratepayers with
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approximately $1 billion in rate benefits that would have flowed from the LLC conversion. Accordingly, it would be fair and reasonable that PGE and not the ratepayers bear the consequences corporate management's choice by a providing a rate reduction in the form of ratepayer billing credits of $50 million per year for the years 2006 through 2025. Alternately, the Commission should consider an appropriate adjustment to the allowed effective tax rate. After all, the effective tax rate if PGE had undertaken the reasonable and prudent tax avoidance mechanism of a limited liability company conversion would have been zero.

III. CREDITS FOR DEFERRED TAX BALANCE.

Q. PLEASE EXPLAIN WHY THE COMMISSION SHOULD ADJUST PGE'S DEFERRED TAX BALANCES ON A GOING-FORWARD BASIS IN LIGHT OF CHANGES IN OREGON LAW.

A. SB 408 (codified at ORS 757.267 through ORS 757.268) requires an annual "truing up" of taxes collected in rates and taxes actually paid to governments by PGE by an "automatic adjustment". The "automatic adjustment clause" in the new law accounts for the actual annual difference between the expected tax rate of 39% requested by PGE in this rate filing,[22] and the actual taxes paid by PGE. This statutory change effectively puts accounting for PGE income taxes on a "cash basis" method of accounting for ratemaking. Formerly, utility ratemaking employed a deferred tax method of accounting for income taxes; collecting income taxes in rates in earlier years and theoretically paying those taxes to governments (or in PGE's case Enron) in later years as temporary differences reversed.

Following the statutory amendment, the Commission should require a change in the tax accounting method used in PGE's ratemaking calculation. Otherwise, ratepayers will be double charged for the deferred income taxes (approximately $280 million) on PGE's financial statements as of January 1, 2006. To avoid this result, the deferred income taxes should be

refunded to ratepayers over the reversal period of the specific temporary differences that created the deferred taxes.

As the temporary differences creating the $280 million in deferred taxes reverse, the deferred taxes become currently payable and are then included in taxes paid to governments under the true up process causing an increase in rates. This event would cause a "double whammy" for ratepayers who have already paid PGE the $280 million in their rates (plus the gross up calculation) years ago and now would have to pay the $ 280 million again, plus the gross up calculation for taxes.

ORS 757.268(8)(b) which adjusts for "[t]ax requirements and benefits that are required to be included in order to ensure compliance with the normalization requirements of federal tax law" does not mitigate the "Double Whammy" because the federal normalization rules do not provide a prohibition on overcharging ratepayers for taxes but on passing the benefits of accelerated depreciation immediately to ratepayers. The Interim Order on AR 499 dated July 14, 2006 did not cure the "double whammy" problem because under OAR 860-022-0041 (n) (C) "[t]axes paid while being adjusted for 'deferred taxes'" is not adjusted for deferred tax credits related to the operations of the utility.

A fair and effective way to account for these pre-SB 408 deferred taxes and avoid double charging ratepayers is to refund the approximately $280 million in deferred tax credits to ratepayers (plus the gross up factor at 1.63) over the reversal period of the specific temporary differences that created the deferred taxes.

IV. CREDITS FOR IMROPER CASH TRANSFERS.

Q. PLEASE EXPLAIN WHY THE COMMISSION SHOULD PROVIDE CREDITS FOR RATEPAYERS FOR PGE'S IMPROPER CASH TRANSFERS TO ENRON.

A. Under ORS 757.495, within 90 days of executing a contract for making payments to an affiliated interest, regulated Oregon public utilities must file the for review and approval by the Commission.

PGE made tax payments to Enron from 1997 through April 2006 totaling approximately $717 million. During the period from 1997 until 2003, PGE made payments totaling approximately $480 million to Enron under an oral agreement. Following reconsolidation with Enron for federal income tax purposes, PGE made payments to Enron totaling approximately $195 million from 2003 through September 2005.[23] These payments were made under a written Tax Allocation Agreement between PGE and Enron. On December, 23, 2002, PGE sent a letter to the Commission staff describing and attaching the Tax Allocation Agreement, seeking regulatory review.[24] COP/105. Since September 2005, PGE has made additional payments totaling $42 million to Enron.[25] Thus, since 1997 PGE has transferred funds totaling over $715 million to Enron.

After executing the Tax Allocation Agreement with Enron in December 2002, PGE transmitted a copy of the agreement to the Commission together with a cover letter describing the agreement. However, no public proceeding was initiated to examine the implications of the Tax Allocation Agreement. No public determination was ever made approving either of these PGE/Enron agreements (either the oral arrangement or the written agreement). The Commission never approved the payment of $717 million by PGE to Enron, as contemplated by the statutes.

Given the "unusual" circumstances surrounding Enron's taxes and the use of Enron's net operating losses, if the Commission had conducted a public review of the Tax Allocation Agreement, it may or may not have approved the contract as "fair and reasonable and not contrary to the public interest". At a minimum, such a public process would have provided ratepayers with an opportunity to weigh in on whether either of these PGE/Enron agreements was reasonable under ORS 757.495. In addition, if the ratepayers had disagreed with the

Commission's determination, then there would have been an opportunity for judicial review. For there to have been no public inquiry regarding the payment of $717 million by PGE to Enron is simply inexplicable.

The sources of the cash paid to Enron were funds collected in PGE rates from customers. These funds were not segregated in rates as contributions from ratepayers for PGE's tax burden. Rather, the monies were commingled with all other funds paid in by ratepayers. ORS 757.495 makes no distinction as between the various purposes for which revenues flow between regulated utilities and affiliated entities, except as by statutory exemptions that are inapplicable to this situation.

Under ORS 756.040, the Commission can reduce rates prospectively to compensate ratepayers for the effects of past misconduct or mismanagement by PGE in not having these contracts approved. The Commission should exercise its authority under this statute to redress the harms imposed upon the ratepayers. The appropriate compensation for ratepayers is the sum of the unauthorized tax payments made to Enron from 1997 to 2006, $717 million plus an adequate interest charge.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY? [3]

A. Yes.

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[1] Audio copies of my presentation to the OPUC are available through the Commission's own website: < http://apps.puc.state.or.us/agenda/audio/2006/031306/default.htm > (site accessed August 8, 2006).

[2] "Enron North America Corp. (a subsidiary of Enron Corp.) alone reported in excess of 100 such entities." Staff of the Senate Committee on Finance, Joint Committee on Taxation, *Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations*, S. Rep. JCS-3-03, Vol. I, p. 88, fn. 146, 108th Congress, 1st Session (February 2003) < http://www.gpo.gov/congress/joint/jcs-3-03/vol1/index.html > (site visited August 1, 2006). The report is alternately available at

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2 < http://www.house.gov/jct/s-3-03-vol1.pdf > (site visited August 1, 2006) ("Enron Report"). Excerpts
3 from the *Enron Report* are attached as COP/106.

4 [3] 26 CFR § 301.7701–3 "Classification of certain business entities".

5 [4] 26 CFR § 301.7701–2 "Business entities; definitions".

6 [5] "Under the Treasury Department's "check-the-box" entity classification regulations issued in
7 December 1996, a domestic entity (other than a corporation and certain other ineligible entities) with a single owner is disregarded as an entity separate from its owner for Federal income tax
8 purposes unless such entity elects to be treated as an association taxable as a corporation. Treas. Reg. secs. 301.7701-3(b)(1)(ii) and 301.7701-2(c)(2). Such a disregarded entity is treated as a
9 branch or division of its sole owner for Federal income tax purposes." *Enron Report*, supra, p. 88, fn. 146.

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11 [6] The Treasury regulations under Section 7704 at 1.7704-1 similarly provide:
Publicly traded partnerships.
12 (a) In general—(1) Publicly traded partnership. A domestic or foreign partnership is a publicly traded partnership for purposes of section 7704(b) and this section if—
13 (i) Interests in the partnership are traded on an established securities market; or
(ii) Interests in the partnership are readily tradable on a secondary market or the
14 substantial equivalent thereof.

15 [7] See, e.g., IRS Private Letter Ruling 9822037, 1998 WL 273486 (May 29, 1998)

16 [8] IRS Revenue Ruling Rule 2004-77 provides in part:
17 Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not
18 depend on whether the organization is recognized as an entity under local law.
Section 301.7701-2(a) provides that a business entity is any entity recognized for
19 federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified
20 as a trust under § 301.7701-4 or otherwise subject to special treatment under the
21 Code. A business entity with two or more owners is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is
22 classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the
23 owner.
Section 301.7701-2(c)(2)(i) provides, in general, that a business entity that has a
24 single owner and is not a corporation under § 301.7701-2(b) is disregarded as an entity separate from its owner.

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2 Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two owners can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.
6 Section 301.7701-3(b)(1) provides generally that in the absence of an election otherwise, a domestic eligible entity is (a) a partnership if it has at least two members, or (b) disregarded as an entity separate from its owner if it has a single owner.
8 Situation 1. Under § 301.7701-2(c)(2), L is disregarded as an entity separate from its owner, X, and its activities are treated in the same manner as a branch or division of X. Because L is disregarded as an entity separate from X, X is treated as owning all of the interests in P. P is a domestic entity, with only one owner for federal tax purposes, that has not made an election to be classified as an association taxable as a corporation. Because P has only one owner for federal tax purposes, P cannot be classified as a partnership under § 7701(a)(2).For federal tax purposes, P is disregarded as an entity separate from its owner.
12 Situation 2. Under § 301.7701-3(c), L is disregarded as an entity separate from its owner, X, and its activities are treated in the same manner as a branch or division of X. Because L is disregarded as an entity separate from X, X is treated as owning all of the interests in P. Because P has only one owner for federal tax purposes, P cannot be classified as a partnership under § 7701(a)(2). For federal tax purposes, P is either disregarded as an entity separate from its owner or an association taxable as a corporation.
16 < http://www.irs.gov/irb/2004-31_IRB/ar15.html > (Site visited August 3, 2006). A copy of IRS Revenue Ruling 2004-77 is attached as COP/107.

18 [9] See, Purchase And Sale Agreement by and among General Motors Corporation, General Motors Acceptance Corporation, Gm Finance Co. Holdings Inc. and Fim Holdings LLC, p. 20, §2.3 *Pre-Closing transactions* (April 2, 2006):
20 2.3 Pre-Closing Transactions. Prior to the Closing Date, Seller, Holdco and the Company, as appropriate, shall use their respective reasonable best efforts to consummate the following transactions (the "Pre-Closing Transactions"):
21 (a) Substantially all (measured by book value) of the entities set forth on Schedule 2.3(a) (which Schedule shall indicate, with respect to each such entity, whether such entity will be treated as a partnership or disregarded entity) shall have been converted to limited liability company form (whether by statutory conversion or merger) and shall have elected to change its classification to be treated as a partnership or disregarded entity, as applicable, for Tax purposes on or prior to the Closing Date and to file any related forms with any Governmental Entity including, but not limited to, Form 8832 (the "Conversion"); provided, however, that any such
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2 conversion and election that could give rise to a material tax income liability if
3 completed after the Closing Date shall have been completed prior to the Closing Date;

4 < http://www.sec.gov/Archives/edgar/data/40730/000095012406001679/k03998exv2w1.txt > (Site visited July 20, 2006). Excerpts from the Purchase and Sale Agreement are attached as COP/108.

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[10] Revenue Ruling 63-228, provides in part:

6 Where property having a fair market value is received in satisfaction of a debt,
7 such fair market value is the unadjusted basis of the property for the purpose of computing gain or loss upon the subsequent sale or other disposition of the
8 property.
See Lawrence S. Vadner et ux. v. Commissioner , Tax Court Memorandum
9 Opinion filed July 29, 1955, and Mary Kavanaugh Feathers v. Commissioner , 8 T.C. 376 (1947).

10 < http://www.taxlinks.com/rulings/1963/revrul63-228.htm > (Site visited August 3, 2006). A copy of IRS Revenue Ruling 63-228 is attached as COP/109.

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12 [11] COP/106, *Enron Report*, supra, p. 98 (footnotes omitted).

[12] IRC Section 172 Provides:

13 **a)** Deduction allowed

14 There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net
15 operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

16 **(b)** Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

17 **(A)** General rule

18 Except as otherwise provided in this paragraph, a net operating loss for any taxable year -

19 **(i)** shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

20 **(ii)** shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

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22 [13] *Enron Report*, supra, p. 98 (stating that Enron had a "net operating loss of $4.6 billion [as reported] on Enron's 2001 Federal income tax return". Under IRC 172, this net operating loss
23 may be carried forward into subsequent tax years, and would have been available in this tax year.

24 [14] In response to City of Portland DR 28, PGE produced DR 028 Attachment A, a copy of the 2002 Tax Allocation Agreement. COP/104.

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[15] The "gross up" factor is calculated by dividing 1 by (1 - 0.39), which equals a factor of 1.63. The 39% figure is derived from the number identified by PGE as its current effective, cumulative tax rate, as unchanged from that applied in UE 115. See, UE 180/PGE/200/Tinker-Tooman/13-14.

[16] PGE had 62,500,000 issued and outstanding shares of common stock at the time of its distribution to Enron's creditors trust. The closing day market value of a PGE share was approximately $28 giving a $1.7 billion valuation.

[17] Approximate weighted average useful life of PGE depreciable assets. Book value, at cost, of PGE assets divided by annual the depreciation provision.

[18] See, e.g., In re Scottish Power plc, UM 918, Order No. 99-616, 196 PUR4th 349, 1999 WL 1080199 (October 6, 1999); In re Enron Corp., UM 814, Order No. 97-196, 177 PUR4th 587, 1997 WL 406191 (June 4, 1997)

[19] The number of regulatory examples of limited liability conversions is numerous:

> [FERC concludes that it should] permit an income tax allowance for all entities or individuals owning public utility assets, provided that an entity or individual has an actual or potential income tax liability to be paid on that income from those assets. Thus a taxpaying corporation, a partnership, a limited liability corporation, or other pass-through entity would be permitted an income tax allowance on the income imputed to the corporation, or to the partners or the members of pass-through entities, provided that the corporation or the partners or the members, have an actual or potential income tax liability on that public utility income. Given this important qualification, any pass through entity seeking an income tax allowance in a specific rate proceeding must establish that its partners or members have an actual or potential income tax obligation on the entity's public utility income. To the extent that any of the partners or members do not have such an actual or potential income tax obligation, the amount of any income tax allowance will be reduced accordingly to reflect the weighted income tax liability of the entity's partners or members.

In re Income Tax Allowances, 111 FERC ¶61,139, 2005 WL 1031406, Docket No. PL05-5-000, ¶ 32 (May 4, 2005); In re SFPP, L.P., 113 FERC ¶61,277, 2005 WL 3669839 (December 16, 2005) (discussing availability of income tax allowance for owner of petroleum pipeline facility); Trans-Elect NTD Path 15, LLC, 111 FERC ¶61,140, 2005 WL 1031405, Docket No. ER05-17-001 (May 4, 2005) (discussing availability of income tax allowances for owner of California electricity transmission facility); In re Consumers Energy Company et al, 98 FERC ¶61,142, 2002 WL 226174 (February 13, 2002) (approving limited liability company conversion to facilitate creation of "stand-alone transmission company from a vertically integrated utility"). See, also, In re Magellan Pipeline Co., LLC, 2004 WL 1923054 (Ill.C.C. May 26, 2004) (noting conversion of pipeline company to qualify tax-free spin off of subsidiary for federal income tax purposes); In re WICOR, Inc., 2004 WL 1535860 (Wis.P.S.C. June 30, 2004) (noting that the

Wisconsin Commission had statutory authority to review and approve the reorganization of a public utility into a limited liability company); In re Application for Approval of Transfer of Control of Alaska Pipeline Company, 2004 WL 3317379 (RCA June 4, 2004) (noting that conversion of pipeline company to limited liability company would result in avoidance of federal income taxes); In re Application of Missouri Gas Company for Authorization to Convert to a Limited Liability Company, Case No. GN-2003-0016 (December 3, 2002) < http://www.psc.mo.gov/orders/2002/1203316.htm > (site visited August 8, 2006) (approving reorganization of gas company into a limited liability company.)

[20] "Prudent and feasible" is a test promulgated under FASB 109 for accounting principles generally accepted in the United States of America (commonly referred to as "GAAP").

[21] PGE may argue that there would be no "separate business purpose" for the IRC 332 liquidation of PGE as proposed by the City. For example, PGE might argue that the "sole purpose" for the change in the existing plan (a distribution of PGE common stock to creditors) to the new plan effecting a IRC 332(b) liquation of PGE (the LLC conversion of PGE corporation) and subsequent distribution of PGE's assets, causing a "step up" the basis of PGE's assets. However, unlike other sections of the Internal Revenue Code (e.g. IRC 351), IRC 332 has not been held to require a business purpose. See, e.g., IRS Revenue Ruling 2003-125, I.R.B. 2003-52 (deemed section 332 liquidation to obtain worthless stock deduction). < http://www.irs.gov/irb/2003-52_IRB/ar07.html > (Site visited August 4, 2006); IRS Revenue Ruling 75-521, 1975-2 C.B. 120. < http://www.taxlinks.com/rulings/1975/revrul75-521.htm > (permitting purchase of stock to achieve requisite ownership percentage to engage in section 332 liquidation) (Site visited August 4, 2006). See, also, Granite Trust Co. v. United States, 238 F.2d 670 (1st Cir. 1956) (permitting sale of stock to avoid section 332 treatment). Furthermore, the Tax Court has implied that a business purpose is never needed to make a check-the-box election. Dover Corp. v. Commissioner, 122 T.C. 324, 351, n.19 (2004) (stating that "[n]or do the check-the-box regulations require that the taxpayer have a business purpose for such an election or, indeed, for any election under those regulations. Such elections are specifically authorized 'for federal tax purposes'"). Note that Dover involved a deemed section 332 liquidation like the City proposed for PGE. Given this long line of precedential rulings, an objection on the basis of "no business purpose" is inapplicable.

[22] See, UE 180/PGE/200/Tinker-Tooman/13-14.

[23] The total of $717 million is drawn from work papers prepared by Commission staff, relying upon information provided by PGE. OPUC Staff Work Papers, attached to letter from Lee Sparling to Ben Walters, pages 91-92 (March 7, 2006) Excerpts of these materials are attached as COP/110.

[24] In response to City of Portland DR 28, PGE produced DR 028 Attachment B, a copy of the December 23, 2002 letter. COP/105.

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[25] The remaining $42 million tax payment was reported by PGE in its most recent quarterly report to the SEC. See, Portland General Electric Co., Securities and Exchange Commission Form 10-Q Quarterly Report for the period ended June 30, 2006, p. 17 (August 3, 2006):

> As PGE was included in Enron's consolidated income tax return prior to April 3, 2006, the Company made payments to Enron for PGE's income tax liabilities. The $25 million income taxes payable to Enron at December 31, 2005 represents a net current income taxes payable for the fourth quarter of 2005 that was paid to Enron in January 2006. In April 2006, PGE paid Enron $17 million for net current income taxes payable for the first quarter of 2006.

< http://www.sec.gov/Archives/edgar/data/784977/000078497706000078/frm10q2q.pdf > (site visited August 7,m 2006). Excerpts from PGE's June 30th quarterly report are attached as COP/111.

To:	Commissioner Leonard
From:	David R. Jubb
Date:	Date 14 March 2006
RE:	City's Response to PGE's 13 March 2006 Tax Opinion from SASM&F

My reference to "mere cant" in responding to a question from PUC Commission yesterday was a quote from a famous judge.

"Over and over again Courts have said there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich and poor, and all do right, for nobody owes any public duty to pay more than the law demands. Taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant."
Honorable Learned Hand, US Appeals Court Justice

The Skadden,Arps, Slate, Meager & Flom (SASM&F)Memo to Portland General Electric Company dated March 13, 2006 was provided to the City at the PUC hearing yesterday in Salem. It seems apparent from the second paragraph of the Memo that PGE'S instruction to SASM&F was to dispose of City's PGE LLC conversion idea, not explore it. You asked me to comment on the SASM&F Memo.

The SASM&F memo identifies three issues:

The Preferred Stock:

Presently[1] PGE currently has about 19 million dollars (189,727 shares x $100 par value) worth of preferred stock outstanding.

The small value of the preferred stock, combined with the advise the City received from Goldman Sachs regarding the methods by which the preferred stock could be retired prior to its mandatory 2007 retirement date, and refinanced with other long term debt, caused me to consider

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[1] As of December 31, 2004, Portland General had 219,727 shares of its preferred 7.75% Series Cumulative Preferred Stock (no par value) outstanding. The preferred stock is mandatorily redeemable and is classified as long-term debt in accordance with SFAS No. 150. The preferred stock is redeemable by operation of a sinking fund that requires the annual redemption of 15,000 shares at $100 per share beginning in 2002, with all remaining shares to be redeemed by sinking fund in 2007. At its option, Portland General may redeem, through the sinking fund, an additional 15,000 shares each year. Open market share purchases can be applied towards the annual redemption requirement. During 2004, Portland General redeemed 30,000 shares, consisting of 15,000 shares for the annual sinking fund requirement and 15,000 additional shares acquired at its option. During the first nine months of 2005, PGE retired another 30,000 shares ($3 million) of this preferred stock

the preferred stock to be a housekeeping detail(the "golden share "being another) in order to facilitate the conversion transaction and accordingly I did not address it the City's Memo describing the proposed conversion transaction.

The preferred stock is not a problem simply because it will be retired before the LLC conversion. The facts assumed in the SASM&F Memo were that the preferred stock would still be outstanding. In hind site, I should have put this housekeeping matter in a footnote to the City's Memo.

IRC Section 7704:

IRC Section 7704 was discussed in my March 7, 2006 meeting with the PUC staff as well as in the footnotes to the City Memo describing the proposed LLC transaction.

The tax law here is clear:

IRC Section 7704:
"(a) General rule
For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

(b) Publicly traded partnership

For purposes of this section, the term "publicly traded partnership" means any partnership **if**—

(1) interests in such partnership **are traded** on an established securities market, or
(2) interests in such partnership **are readily tradable** on a secondary market (or the substantial equivalent thereof).

The Treasury regulations under Section 7704 at 1.7704-1 similarly provide:

Publicly traded partnerships.

(a) In general—(1) Publicly traded partnership. A domestic or foreign partnership is a publicly traded partnership for purposes of section 7704(b) and this section **if**—
  (i) Interests in the partnership **are traded** on an established securities market; or
  (ii) Interests in the partnership **are readily tradable** on a secondary market or the substantial equivalent thereof.

PGE's common stock is not publicly traded; it sits in a desk drawer somewhere in Houston. The contemplated new issue of 62,500,000 PGE shares has not occurred yet. Anecdotally, I understand is possible PGE can still be sold, and its shares never distributed. The City's proposed conversion transaction for PGE Corporation and PGE LLC's subsequent distribution to the PGE Trust , does not suggest registering the PGE LLC equity with the Securities Exchange Commission prior to the distribution to the PGE Trust , as SASM&F assumed in its March 13 Memo to PGE. Furthermore, if SASM&F knew about the existence of the PGE Trust as distributee of the PGE equity it was not mentioned in its Memo .IRC section simply 7704 does not apply to PGE LLC until and unless the equity of PGE LLC is registered and traded and that would occur, if at all, after the equity distribution and the resultant step

up in the basis of PGE's assets under the City's PGE LLC conversion plan.

Court Holding Co 324 U.S. 331,334 (1945):

In a landmark decision, *C.I.R. v. Court Holding Co., 324 US 331 (1945)*, the Supreme Court held that the substance of a transaction (i.e., a sale contemplated, negotiated and virtually closed by a corporation's officers) would control, and the taxable gain on the sale by the shareholders of the assets of the corporation would be imputed back to the corporation. Court Holding is famous for its step transaction and conduit implications. *Court Holding* was also important because of another landmark decision in *General Utilities & Operating Co. v. Helvering,* 296 US 200 (1935),(the court's conclusion reached the level of a tax doctrine, the General Utilities doctrine) that a distribution by a corporation of appreciated property to its shareholders would not cause a corporate level tax. Prior to repeal of *General Utilities* in 1986 a corporation recognized no gain on a distribution of appreciated property to its shareholders. The distributee shareholders realized proceeds and recognized gain based on the fair market value of the distributed property (generally as a capital gain if the corporation were making a distribution in complete liquidation) less their basis in the corporation's shares and then would have a basis for the appreciated property distributed equal to the properties fair market value. If the shareholder subsequently sold the property at that same fair market value, no additional gain would be realized or recognized. Accordingly, a distribution of appreciated property in complete liquidation of a corporation followed by the shareholder's sale resulted in only level of tax on the appreciation inherent in the property distributed. If a corporation intended to sell its assets to another corporation tax practitioners in those days (before 1986) usually recommended completely liquidating the selling corporation and having its shareholder then negotiate the sale of its assets.

Conversely, if for some business reason (e.g. transfer liability to shareholder on corporate liabilities) the corporation itself had to sell the appreciated property and then distribute the proceeds to its shareholders; the corporation was taxed on the gain and the shareholders were again taxed on receipt of the sale proceeds, included in the liquidation distribution, resulting in two levels (corporate and shareholder) of tax on the appreciation in the property owned by the corporation.

Court Holding Co. operated to "attribute" the subsequent individual shareholder sale back to the corporation if enough facts existed (a binding asset sale contract at the time of property distribution etc.) to connect the sale by the shareholder back to the corporation.

Court Holding Co. doctrine is well known but, under our facts misapplied. Enron and PGE file a consolidated federal return. Appreciated property PGE distributes to Enron in IRC 332 liquidation (the LLC conversion) has a carryover basis not the stepped up basis. Even if *Court Holding Co.* step transaction doctrine were to apply and attribute the distribution of PGE's assets to Enron's creditors back to PGE the resultant gain would be recognized to PGE rather than Enron. The attribution to PGE would not a negative tax consequence however due to the tax consolidation of PGE and Enron. There is only one level of tax in a consolidated return context (unlike a corporation and its

individual shareholder as in *Court Holding Co.*) and accordingly the "abuse" *Court Holding Co.* rectified with its land mark establishment of the step-transaction doctrine doesn't exist in the City's plan.

The City's plan for PGE simply doesn't rest on a basis that requires only a straightforward application of the precept of *Gregory v. Helvering*, 293 U.S. 465, 469 (1935), that "[t]he legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." The well-established step-transaction doctrine simply isn't applicable to the City's proposal and the reliance on *Court Holding Co.* by SASM&F as a means to debunk the City's plan demonstrates (giving them the benefit of the doubt)a misunderstanding of the transaction. There is no step in the City's plan that does not have independent legal and economic significance apart for the tax aspects attendant thereto and any of the steps in the plan may be collapsed with out affecting the overall result of the transaction: The assets of PGE are in fact distributed to the Enron creditors.
If Enron changes its plans and as in *Cumberland Public Service Co*[2] and distributes PGE assets and not PGE stock it is not just a mere legal formality or step that can be disregarded. Few organizational matters could be more organic to PGE Corporation as an entity than to change its very nature from that of a corporation to that of a limited liability company and operate in that form.
The City's plan does not disregard the holding of the Supreme Court that the true nature of a transaction may not "be disguised by mere formalisms, which exist solely to alter tax liabilities." Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945)[3].The City's plan relies on a on a realistic view of the entire transaction, which is a distribution of PGE assets rather than PGE common stock to Enron's creditors.[4]

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[2] In another land mark decision the Supreme Court in *United States v. Cumberland Public Service Co.*, 338 US 451 (1950), refused to tax a corporation in a transaction where the shareholders first attempted to sell their stock and then offered to liquidate the corporation and sell the assets to the buyer. Although reaching contrary results in similar structures, the Supreme Court distinguished *Court Holding Co.* based upon those particular facts. The PGE fact situation under the City's plan is like *Cumberland*. Enron intended to distribute PGE common stock to its creditors to satisfy their debt and then it decided base don the City's plan which provide a higher basis in the PGE assets to liquidate PGE (the IRC section 332 liquation caused by the corporation to LLC conversion) and distribute PGE's assets to its creditors instead.

[3] See also Minnesota Tea Co. v. Helvering, 302 U.S. 609, 613 (1938) ("[a] given result at the end of a straight path is not made a different Result because reached by following a devious path")

[4] Under the step-transaction doctrine federal tax liability is based "on a realistic view of the entire transaction" rather than on artificial devices employed by a taxpayer merely for the purpose of avoiding taxation. Commissioner v. Clark, 489 U.S. 726, 738 (1989)

To: Commissioner Leonard

From: David R. Jubb

Date: 14 March 2006

RE: PGE Memo from SASM&F- Response

This memo is supplied as a supplement to my previous communication.

The SASM&F Memo states that the "sole purpose" for the change in the existing plan (a distribution of PGE common stock to creditors) to the new plan effecting a IRC 332(b) liquation of PGE (the LLC conversion of PGE corporation) and subsequent distribution of PGE's assets is to step up the basis of PGE's assets. In other words, there is no "business purpose" for the 332 liquidation of PGE proposed by the City.

Unlike other sections of the code (e.g. section 351) section 332 has not been held to require a business purpose.[1]

Furthermore, the Tax Court has implied that a business purpose is never needed to make a check-the-box election.[2]

The relevant cases and rulings cited in the footnotes to this memorandum were simply not addressed by SASM&F.

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[1] See, e.g., Rev. Rul. 2003-125, I.R.B. 2003-52 (deemed section 332 liquidation to obtain worthless stock deduction); Rev. Rul. 75-521, 1975-2 C.B. 120 (permitting purchase of stock to achieve requisite ownership percentage to engage in section 332 liquidation); see also Granite Trust Co. v. United States, 238 F.2d 670 (1st Cir. 1956) (permitting sale of stock to avoid section 332 treatment)

[2] *Dover Corp. v. Commissioner*, 122 T.C. 324, 351, n.19 (2004) (stating that "[n]or do the check-the-box regulations require that the taxpayer have a business purpose for such an election or, indeed, for any election under those regulations. Such elections are specifically authorized 'for federal tax purposes'"). Note that *Dover* involved a deemed section 332 liquidation like the City proposes for PGE.

To:	Commissioner Leonard
From:	David R. Jubb
Date:	March 18, 2006
Re:	The PUC Characterization of the City PGE LLC Conversion Plan.

During the public hearing held on 23 March 2006 the City's plan was described, as "Enron-esque" .This description is unfair. The City's LLC conversion plan for PGE is neither a novel idea nor a sophisticated approach to the ratepayers problem under SB 408. The City is not blazing a new trail for PGE, with the proposed LLC conversion transaction, it is merely suggesting the use of a popular business tax planning technique strictly in accordance with the Treasury Regulations[1].The concept of using practical and prudent planning idea's to benefit ratepayers is novel. No group championing ratepayers has had the technical tax and financial expertise necessary to suggest the use of the ordinary tax planning tools, businesses commonly use, to benefit ratepayers, until the City presented its idea.

The City's idea does not blaze a new path. The trail the City suggests PGE follow is so well trod is has a common business name: "Check-and-sell".

Ordinarily, there would be a simple way for Enron to accomplish the result the City desires by combining the legal convenience of a stock distribution with the tax advantages of an asset distribution. In a domestic context, the way would normally have been obvious: a deemed asset sale by means of an IRC § 338(h)(10) election[2]. However, §338(h)(10) is not applicable to PGE because of the character of the Enron's creditor PGE Trust distributee. To achieve the same result, Enron can employ the "check-and-sell" technique[3] the City proposes.

Many of the large law and accounting firms, including Orrick, Steptoe, PwC etc., have commented on and written articles about the effective use of "Check-and-sell"; the City's proposed structure for PGE.

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[1] Treas. Reg. 301.7701-1(a) "Organizations for federal tax purposes—(1) In general. The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law."

[2] No business purpose is required (like the deemed IRC 332 liquidation prescribed under 301.7701-3, in the case of the City's plan for PGE) for a IRC 338(h)(10) election, as by its very nature the tax election has no commercial law implications whatsoever but rather is solely a tax fiction. A stock sale for all other commercial and legal purposes is " deemed" to be an asset sale for federal tax purposes under IRC 338(h)(10)

[3] The election to be disregarded (or in the case of PGE the default classification) results in a deemed liquidation under §§ 332 and 337. Regs. § 301.7701-3(g)(2)(ii).

The IRS has acknowledged acceptance of the technique the City proposes in the *Dover* case[4] as discussed in previous communications[5] as well as in the Treasury regulations[6] as the mandated default classification[7] in

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[4] IRS agreed with the taxpayer in that case that the check-the-box election resulted in a deemed section 332 liquidation and a deemed sale of the taxpayer's assets;

[5]Dover Corporation and Subsidiaries v. Commissioner 122 T.C. No. 19,39 (which states:
" C. Analysis and Application of Authorities;
Respondent specifically acknowledges that, for tax purposes, H&C's disregarded entity election constituted a deemed section 332 liquidation of H&C into Dover UK, whereby H&C became a branch or division of Dover UK. Respondent refers to the disregarded entity election as a "check-the-box liquidation" and states that there is no difference between it and an actual section 332 liquidation."

[6] Treas. Reg. 301.7701-3(g)(2)(ii) *Adoption of plan of liquidation*. For purposes of satisfying the requirement of adoption of a plan of liquidation under section 332, unless a formal plan of liquidation that contemplates the election to be classified as a partnership or to be disregarded as an entity separate from its owner is adopted on an earlier date, the making, by an association, of an election under paragraph (c)(1)(i) of this section to be classified as a partnership or to be disregarded as an entity separate from its owner is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation described in paragraph (g)(1)(ii) or (iii) of this section. This paragraph (g)(2)(ii) applies to elections filed on or after December 17, 2001. Taxpayers may apply this paragraph (g)(2)(ii) retroactively to elections filed before December 17, 2001, if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the federal tax consequences of the election.

[7]Treas. Reg. 301.7701-3(a) "In general. A business entity that is not classified as a corporation under §301.7701-2(b) (1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under §301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides special rules for foreign eligible entities. Paragraph

the case of a state law conversion of a business entity from a corporation form to a single owner limited liability company form.

The City is simply suggesting that PGE follow the Treasury Regulations and use them to benefit ratepayers.

(e) of this section provides special rules for classifying entities resulting from partnership terminations and divisions under section 708(b). Paragraph (f) of this section sets forth the effective date of this section and a special rule relating to prior periods.

(b) Classification of eligible entities that do not file an election—
(1) Domestic eligible entities. Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) **Disregarded as an entity separate from its owner if it has a single owner."**

Boldness supplied.

TAX ALLOCATION AGREEMENT

BETWEEN

ENRON CORP. AND PORTLAND GENERAL ELECTRIC COMPANY AND ITS SUBSIDIARIES

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TAX ALLOCATION AGREEMENT BETWEEN ENRON CORP. AND PORTLAND GENERAL ELECTRIC COMPANY

THIS TAX ALLOCATION AGREEMENT ("Agreement") is made and entered into effective as set forth in Section 6.1, between Enron Corp., ("Enron"), Portland General Electric Company, ("PGE"), Portland General Transport Corp. ("PGT"), 121 S.W. Salmon St. Corp. ("SWS"), World Trade Center Northwest Corp. ("WTC"), Salmon Springs Hospitality Group, Inc. ("SSH"), Efficiency Services Group, Inc. ("ESG") and Portland General Resource Development, Inc. ("PGRD"). Enron, PGE, PGT, SWS, WTC, SSH, ESG and PGRD may be collectively referred to hereinafter as the "Parties" and individually as a "Party."

PREAMBLE

WHEREAS, one hundred percent (100%) of the outstanding common stock of PGE is owned by Enron; and

WHEREAS, one hundred percent (100%) of the outstanding common stock of PGT, SWS, SSH, ESG and PGRD is owned by PGE; and

WHEREAS, one hundred percent (100%) of the outstanding common stock of WTC is owned by SWS; and

WHEREAS, as of the effective date of this Agreement, Enron is the "common parent" corporation of an "affiliated group" of corporations (as such terms are used in § 1504(a) of the Internal Revenue Code of 1986, as amended—hereinafter "Code"), and such affiliated group includes PGE, PGT, SWS, WTC, SSH, ESG and PGRD; and

WHEREAS, Enron and PGE recognize the importance under the "normalization" provisions of Code § 168(i)(9) for federal tax purposes and those comparable provisions for state and local tax purposes to have the tax consequences of each of their respective operations accounted for as if each Party filed federal income tax returns on a "stand-alone" basis; and

WHEREAS, so long as it continues to be permissible under the federal income tax laws and the applicable state and local tax laws to file consolidated income tax returns, the Parties to this Agreement believe that it will be in their best interests to file (and continue to file) such consolidated income tax returns; and

WHEREAS, the Parties have always accounted for their respective operations as if each Party filed income tax returns on a "stand-alone" basis, and continue to believe that the apportionment and allocation of federal income and other tax liabilities among and between the Parties to this Agreement are also deemed desirable; and

WHEREAS, the Parties to this Agreement wish to confirm in writing their understanding as to certain matters and procedures pertaining to their federal income tax, Other Taxes, and Unitary Tax as previously followed and accounted for; and

WHEREAS, under custom and practice of the Consolidated Group the definitional and operational provisions of this Agreement are applicable to all of those entities (*i.e.*, "Members") included in the Consolidated Group, the purpose of this Agreement is to more particularly articulate in writing such provisions as they may apply to PGE, PGT, SWS, WTC, SSH, ESG and PGRD as Members of the Consolidated Group vis-à-vis their relationship to Enron.

NOW, THEREFORE, the Parties to this Agreement, for good and valuable consideration, agree as follows:

ARTICLE I

DEFINITIONS

In addition to any defined terms which may have their meanings ascribed to them elsewhere in this Agreement, the following defined terms shall have the following meanings:

"Agreement" means this Tax Allocation Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws. Reference to the Code also includes any applicable and corresponding provisions of the Treasury Regulations.

"Consolidated Alternative Minimum Tax Liability" means, for any tax year, the amount of the Consolidated Group's consolidated alternative minimum tax liability computed in accordance with Code Sections 55, 1502, and 1503, and shown on a Consolidated Return.

"Consolidated Group" means the "affiliated group" of corporations of which Enron is the "common parent corporation" and PGE, PGT, SWS, WTC, SSH, ESG and PGRD are "includible corporations," as such terms are defined in Code Section 1504(a)(1).

"Consolidated Minimum Tax Credit" means, for any tax year, the amount of the Consolidated Group's consolidated minimum tax *credit* computed in accordance with Code Sections 53, 1502, and 1503, and shown on a Consolidated Return.

"Consolidated Return(s)" ("CR") means the consolidated federal income tax return of the Consolidated Group for each taxable year as filed or to be filed by Enron on behalf of the Consolidated Group, including PGE, PGT, SWS, WTC, SSH, ESG and PGRD.

"Consolidated Tax Liability" means, except as provided below, for any tax year, the consolidated federal income tax liability computed in accordance with Section 1.1502-2 of the Treasury Regulations and shown on a Consolidated Return, taking into account all credits to which the Consolidated Group is entitled under the Code (including foreign tax credits), but not taking into account any Consolidated Alternative Minimum Tax Liability or any Consolidated Minimum Tax Credit.

"Credit Member" means a Member whose losses and/or credits have resulted in a Tax Difference for one or more Members.

"CR Tax" means, for any tax year, the amount of Consolidated Tax Liability allocated to a Member pursuant to Article III, Section 3.2 of this Agreement.

"Future Subsidiary" and "Future Subsidiaries" mean a Subsidiary or those Subsidiaries, respectively, which are not currently a party to this Agreement in the capacity as a Present Subsidiary or Present Subsidiaries.

"IRS" means the Internal Revenue Service.

"Member" means Enron, a Present Subsidiary or Future Subsidiary. "Members" mean Enron, the Present Subsidiaries, and any Future Subsidiaries. Unless otherwise noted, particular reference to a "Member" in this Agreement shall refer to a Present Subsidiary.

"Other Taxes" means any taxes (including any penalties and interest) other than federal income taxes and the federal environmental tax under Code Section 59A, and Unitary Tax. Other Taxes shall include, but shall not be limited to, state and local income taxes, franchise taxes, severance taxes, gross receipts taxes, ad valorem taxes, foreign income taxes, transfer taxes, and excise taxes.

"Present Subsidiary" means any Subsidiary which is a party to this Agreement. At the date of original execution of this Agreement, the Present Subsidiaries (for purposes of this Agreement) are PGE, PGT, SWS, WTC, SSH, ESG and PGRD.

"Subsidiary" means any subsidiary of Enron and/or PGE (as a Present Subsidiary), *i.e.*, any corporation which would be an includible member of an affiliated group of which Enron would be the ultimate common parent corporation within the meaning of Code Section 1504(a)(1)) in the individual sense. A Subsidiary includes both a Present Subsidiary and any Future Subsidiary. "Subsidiaries" shall mean any such subsidiaries of Enron and/or PGE, in the collective sense.

"SR Tax" means, with respect to any tax year, the "separate return" tax liability of a Member as determined pursuant to Section 1.1552-1(a)(2)(ii) of the Treasury Regulations, *except* that such determination shall not take into account (i) any net operating losses or tax credits which are not utilized in the computation of

Consolidated Tax Liability and (ii) any alternative minimum tax liability or (iii) any Consolidated Minimum Tax Credit.

"Tax Difference" means, with respect to a Member for any tax year, the excess of SR Tax over such Member's CR Tax, if any.

"Tax Difference Member" means, with respect to any tax year, a Member who has a Tax Difference.

"Treasury Regulations" mean the federal income tax regulations issued as the official Treasury Department's interpretation of the Internal Revenue Code. The term shall include proposed regulations, temporary regulations, and final regulations.

"Unitary Taxes" means state income tax reported on a Unitary Tax Return.

"Unitary Tax Return" means a state income tax return which reflects combined reporting (on either a domestic or worldwide basis) of the Members' net income on an apportioned basis.

ARTICLE II

FILING OF CONSOLIDATED RETURNS

2.1 Consent to File.

(a) Enron and the Present Subsidiaries hereby consent, and agree to cause any Future Subsidiary to consent, to the extent necessary, to the filing of Consolidated Returns, including the tax year ended December 31, 2002, and for each year thereafter in which Enron and the Present Subsidiaries or Future Subsidiary are eligible to file Consolidated Returns, until such time as Enron, in the exercise of its sole discretion, elects to refrain from filing Consolidated Returns. Such agreement reflects prior practice of Enron and the Present Subsidiaries and their intention to continue such practice absent an amendment to or termination of this Agreement.

(b) Enron and the Present Subsidiaries agree to furnish and cause each Future Subsidiary to furnish, all information and to execute all elections and other documents which may be necessary or appropriate to evidence such consent and to prepare and file such Consolidated Returns and such applications for extension of time to file such Consolidated Returns as Enron may from time to time request.

(c) Enron and the Present Subsidiaries agree, and shall cause each Future Subsidiary to agree, that Enron shall be authorized to and shall undertake those actions which are within the scope of Enron's "agency" (within the meaning of and pursuant to Section 1.1502-77(a) of the Treasury Regulations) in connection with a Consolidated Return, including, without limitation:

(i) taking any and all action necessary or incidental to the preparation and filing of a Consolidated Return;

(ii) making elections and adopting accounting methods;

(iii) filing all extensions of time, including extensions of time for payment of tax under Section 6161 and other sections of the Code;

(iv) filing claims for refund or credit;

(v) giving waivers or bonds;

(vi) executing closing agreements, settlement agreements, offers in compromise, and all other documents;

(vii) obtaining private letter rulings or technical advice memoranda; and

(viii) contesting (both administratively and judicially) the proposal of adjustments to tax liability and the assessment of any deficiency.

It is intended that the Present Subsidiaries shall not have any authority to act for or to represent themselves in any such matter to which this paragraph relates; however, to the extent any such matter described in this Section 2.1 relates to a Present Subsidiary or to a Future Subsidiary, Enron agrees to timely apprise PGE's management and tax personnel regarding such matter. Furthermore, Enron agrees that in those situations when it is exercising its agency to settle proposed adjustments to the federal income tax liability of the Consolidated Group, it will, with regard to any tax issue which could impact the Subsidiaries, timely apprise such Subsidiaries' management and tax personnel of the plans for settling such issue.

2.2 Cooperation.

(a) Enron and PGE agree to cooperate, and Enron and PGE agree to cause each Present and Future Subsidiary to cooperate, with Enron in filing any return or consent or taking any other action contemplated by this Agreement and agrees to take such action as Enron may request in connection therewith. Enron and PGE agree that Enron shall bear its own costs in meeting its obligation to prepare and file Consolidated Returns pursuant to this Article 2 of the Agreement.

(b) The authorization and obligations set forth herein under Article II shall survive the termination of this Agreement with respect to any tax year (or portion thereof) ending on or prior to termination of this Agreement.

ARTICLE III

ALLOCATIONS OF TAX LIABILITIES

3.1 Allocation of Consolidated Tax Liability for Earnings and Profits Purposes. With respect to the determination of earnings and profits for federal income tax purposes (as described under Treasury Regulation Section 1.1502-33(d)), the Present Subsidiaries shall have allocated to them that portion of the Consolidated Tax Liability determined in accordance with the method set forth in Code Section 1552(a)(1) and Treasury Regulation Section 1.1552-1(a)(1), all as required under Treasury Regulation Section 1.1552-1(c)(1).

3.2 Allocation of Consolidated Tax Liability and Compensation for Tax Differences.

(a) The Parties shall allocate the Consolidated Tax Liability for each taxable period among the Members and compensate a Member for the use of its net operating losses and/or tax credits in arriving at the Consolidated Tax Liability pursuant to the following steps:

(i) Step One: Except as provided herein, the Consolidated Tax Liability shall be allocated to each Present Subsidiary in accordance with Treasury Regulation Section 1.1552-1(a)(1) (*i.e.*, Consolidated Tax Liability allocated on the basis of "separate return" taxable income to total consolidated income) and the amount allocated to a Present Subsidiary shall be its CR Tax. Each Present Subsidiary shall be liable for and pay to Enron, pursuant to the provisions of Article IV of this Agreement, the amount of its CR Tax.

(ii) Step Two: The Tax Difference, if any, shall be calculated with respect to each Present Subsidiary and if a Present Subsidiary is a Tax Difference Member it shall be liable for and pay to Enron, pursuant to the provisions of Article IV of this Agreement, the amount of its Tax Difference.

(iii) Step Three: Enron shall be liable for and pay to each Present Subsidiary, if it is a Credit Member, the portion of the total Tax Difference attributable to it as a Credit Member, determined in accordance with the "percentage method" requirements of Treasury Regulation Section 1.1502-33(d)(3). Such payments will be equal to: (y) in the case of net operating losses, the product of (1) the amount of net operating losses of such Credit Member claimed as deductions in computing the Consolidated Tax Liability used in the calculation of the Tax Difference times (2) the statutory tax rate applicable to the Consolidated Return filed for the tax period in which the net operating losses are claimed as deductions; and (z) in the case of tax credits, one hundred percent (100%) of the tax credits of such Credit Member utilized in the determination of Consolidated Tax Liability, reduced by the amount by which the SR Tax of the Credit Member, computed without regard to such credits, exceeds the CR tax of the Credit Member.

(b) The following rules shall apply in carrying out the steps of Section 3.2(a) of this Agreement:

(i) In determining the "net operating loss" of a Present Subsidiary if a Credit Member, the principles of Revenue Ruling 66-374, 1966-2 C.B. 427, shall be utilized;

(ii) In no event shall a Tax Difference payment be made to a Present Subsidiary, if a Credit Member, unless the net operating loss and/or tax credit to which such payment relates resulted in a reduction in the Consolidated Tax Liability; and

(iii) In calculating the amount of Tax Difference resulting from a carryback or carryover of net operating losses, adjustment shall be made to the SR Tax for such prior year or subsequent year as required under Code Sections 172(b)(2) and 172(d). For purposes of this calculation, the election under Section 172(b)(3) of the Code shall be in the sole discretion of Enron.

(c) The liability of a Present Subsidiary to Enron for the amount of its CR Tax and Tax Difference, if any, shall be represented on the books of the Present Subsidiary and Enron as an account payable and account receivable, respectively. The liability of Enron to a Present Subsidiary, if a Credit Member, for the portion of total Tax Difference attributable to it shall be represented on the books of Enron and the Present Subsidiary as an account payable and account receivable, respectively, as provided for under Article IV.

ARTICLE IV

PAYMENTS; CARRYBACKS/CARRYFORWARDS

4.1 Intercompany Settlements.

(a) The intercompany accounts established for each Present Subsidiary shall be adjusted as of the "accounting close" following the end of each month so as to reflect each Present Subsidiary's obligations and entitlements under Sections 3, 4 and 5. If a Present Subsidiary has a liability to Enron for a month, the intercompany accounts shall be settled in cash by the earlier of (i) 15 days after each calendar quarter-end or (ii) immediately prior to a Present Subsidiary ceasing to be a member of the Consolidated Group. If Enron has a liability to a Present Subsidiary for a month, Enron shall settle its obligation in cash immediately upon determination of such liability.

(b) On or before the ninetieth (90th) day after the date of the filing of a Consolidated Return for a tax period, each Present Subsidiary's intercompany payable account vis-à-vis Enron shall be increased for the tax period (or any relevant portion thereof) so as to reflect any additional Tax Difference attributable to such Present Subsidiary that has not previously been recorded in the intercompany accounts.

(c) On or before the ninetieth (90th) day after the date of the filing of a Consolidated Return for a tax period, each Present Subsidiary's intercompany receivable account vis-à-vis Enron shall be increased for the tax period (or any relevant portion thereof) so as to reflect any additional Tax Difference attributable to such Present Subsidiary (as a Credit Member) that has not previously been recorded in the intercompany accounts.

4.2 Carrybacks and Carryovers of Losses and Credits. If part or all of any unused consolidated net operating loss or tax credit is allocated to a Present Subsidiary pursuant to Section 1.1502-79 of the Treasury Regulations, and it is carried back or forward to a year in which the Present Subsidiary filed a separate income tax return or was included in a consolidated federal income tax return with another affiliated group, any refund or reduction in federal income tax liability arising from the carryback or carryover shall be retained (or, if appropriate, credited to such Present Subsidiary if a refund is received by another Member) by such Present Subsidiary.

ARTICLE V

ADJUSTMENTS TO CONSOLIDATED TAX LIABILITY

5.1 Recomputations. If a Consolidated Tax Liability is adjusted for any taxable period, whether such adjustment is by means of an amended return, claim for refund, or examination by the IRS, the calculations made under Article IV of this Agreement shall be recomputed by giving effect to such adjustments. In all cases the recomputations required by the preceding sentence shall be performed consistently with the definition of "Consolidated Tax Liability," which requires that consolidated federal income tax liability be computed in accordance with Section 1.1502-2 of the Treasury Regulations, which generally requires (i) that taxable income of the Consolidated Group be determined, (ii) that tax liability for the Consolidated Group be determined based on such consolidated taxable income, and (iii) that credit then be applied against the tax on the consolidated taxable income.

5.2 Member's Liability. If, following such recomputation, a Present Subsidiary is liable to Enron for additional CR Tax or Tax Difference, the Present Subsidiary's intercompany payable account shall be increased so as to reflect such additional amount within ninety (90) days after the earlier of either of the following events which relate to such recomputation: (i) Enron files an amended Consolidated Return; or (ii) Enron settles an examination with the IRS.

5.3 Enron Liability. If, following such recomputation, Enron is liable to a Present Subsidiary, as a Credit Member, for an increase in the portion of the total Tax Difference attributable to such Present Subsidiary, the Present Subsidiary's intercompany receivable account shall be credited by Enron so as to reflect such benefit. Such adjustment shall be made at the following times: if Enron is in a net refund position with respect to such recomputation, the adjustment shall be made under this Section 5.3 within

ninety (90) days of receipt of the refund; otherwise, within ninety (90) days after Enron makes payment to the IRS with respect to such recomputation.

5.4 Interest and Penalties. Any interest and/or penalty not specifically allocated to a Present Subsidiary by the IRS may be allocated to a Present Subsidiary upon such basis as Enron deems just and proper after consulting with PGE's management and tax personnel and in view of all applicable circumstances.

ARTICLE VI

MISCELLANEOUS

6.1 Term of this Agreement.

(a) This Agreement is effective for all "open years" under Code Section 6501 and the applicable state and local provisions for purposes of federal income taxes, Unitary Taxes of the Members, and Other Taxes, including the tax year ended December 31, 2002. As such, this Agreement shall apply to all taxable years or portions thereof (including those prior to the date of this Agreement) for which a Consolidated Return or Unitary Tax Return was or is filed with respect to a Present Subsidiary that were included as part of such Return(s), unless Enron and the Present Subsidiary agree in writing to another arrangement or otherwise agree to terminate this Agreement. Notwithstanding such termination, this Agreement shall continue in effect with respect to any payment or refund due for all taxable periods prior to termination. Nothing herein shall be construed to prevent Enron from terminating its election to file a Consolidated Return.

(b) Enron and PGE agree to cause and permit each Future Subsidiary to join in, and become parties to, this Agreement having rights and obligations comparable to the rights and obligations of Present Subsidiaries.

6.2 Assignability. The rights and obligations under this Agreement of the parties to this Agreement may not be assigned by a Party without the prior written and unanimous consent of the other Parties to this Agreement.

6.3 Effect of Changes to the Code. Any alteration, modification, addition, deletion, or other change in the federal income tax laws or regulations relating to consolidated federal income tax returns shall automatically be applicable to this Agreement, provided, however, that if all the Parties to this Agreement unanimously agree, this Agreement shall be amended or terminated in the event of any such alteration, modification, addition, deletion or other change.

6.4 Disqualification of a Member. Failure of a Present Subsidiary to continue to qualify as a Member shall not operate to terminate this Agreement with respect to the other Members as long as Enron and one other Member continue to so qualify.

6.5 Other Taxes; Unitary Taxes. To the extent a Present Subsidiary is permitted or required to file consolidated or combined returns (including Unitary Tax Returns) with one or more related parties that may or may not be Subsidiaries, such Other Taxes and Unitary Taxes shall be allocated among the Members in accordance with the principles and provisions of this Agreement including, without limitation, the principles and provisions in respect of payments and adjustments.

6.6 Record Retention. Enron and PGE shall make available, and Enron and/or PGE shall cause the Present and Future Subsidiaries to make available, to Enron all materials (including, without limitation, returns, supporting schedules, work papers, correspondence, and other documents) relating to the Consolidated Returns filed for the taxable years during which this Agreement was in effect during regular business hours for a period that is not less than the applicable Federal record retention requirement period.

6.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto; but no assignment shall relieve any party's obligations hereunder without the written consent of the other parties. In the event PGE leaves the Consolidated Group, it shall be bound, nevertheless, by this Agreement with respect to any matter which involves a taxable year (or portion thereof) during which it was included in a Consolidated Return.

6.8 Governing Law. This Agreement shall be governed by the laws of the State of Oregon.

IN WITNESS THEREOF, the Parties hereto have caused their names to be subscribed and executed by their respective authorized officers as indicated.

ENRON CORP.

By: [signature]
Name: Jordan H. Mintz
Title: Managing Director and General Counsel, Tax

PORTLAND GENERAL ELECTRIC COMPANY

By: [signature]
Name: Peggy Fowler
Title: CEO / President

PORTLAND GENERAL TRANSPORT CORP.

By: [signature]
Name: JAMES J. PIRO
Title: Treasurer

121 S.W. SALMON ST. CORP.

By: [signature]
Name: JAMES J. PIRO
Title: Treasurer

WORLD TRADE CENTER NORTHWEST CORP.

By: [signature]
Name: JAMES J. PIRO
Title: Treasurer

SALMON SPRINGS HOSPITALITY GROUP, INC.

By: James J. Piro

Name: JAMES J. PIRO

Title: Treasurer

EFFICIENCY SERVICES GROUP, INC.

By: James J. Piro

Name: JAMES J. PIRO

Title: Treasurer

PORTLAND GENERAL RESOURCE DEVELOPMENT, INC.

By: James J. Piro

Name: JAMES J. PIRO

Title: Sr. Vice President

Portland General Electric Company
121 SW Salmon Street • 1WTC1703 • Portland, Oregon 97204
office (503) 464-7353 • facsimile (503) 464-7050

Pamela Grace Lesh
Vice President
Regulatory & Federal Affairs

December 23, 2002

Marc Hellman
Administrator
Oregon Public Utility Commission
PO Box 2148
Salem, OR 97308-2148

RE: Tax Allocation Agreement

Dear Marc:

Attached is the Tax Allocation Agreement Enron presented to the Bankruptcy Court today, along with motions designed to reconsolidate PGE with Enron and its other subsidiaries for purposes of federal income taxes. We anticipate its approval. As you may recall, Enron took steps to de-consolidate PGE several years ago. Under the Tax Allocation Agreement, the parties will elect to file a consolidated federal income tax return for the tax year ending December 31, 2002 and each subsequent tax year during which the election remains in effect. Generally, the consolidated return election allows Enron and PGE to report as if they were a single corporation. To achieve this, the Tax Allocation Agreement contains a regime for using each member's tax benefits. Generally, Enron net operating losses are used to offset PGE operating income and eliminate federal income taxes that PGE would otherwise have owed to the Internal Revenue Service.

The Tax Allocation Agreement provides for inter-company payments to the extent that one corporation uses the tax benefits of another. For example, if Enron net operating losses offset PGE taxable income, PGE is obligated to pay to Enron the amount of taxes that it would have been obligated to pay, but for its utilization of Enron's net operating losses. The Tax Allocation Agreement also authorizes Enron, as the common parent corporation, to make various elections and take such actions with respect to PGE in connection with the consolidated returns. To ensure that this agreement does not result in PGE extending Enron credit on our books, any payments owed by Enron to PGE must occur immediately. On the other hand, any payments PGE owes Enron occur quarterly.

After reviewing the agreement, we do not believe that it requires Commission approval under ORS 757.495. Please let me know, however, if you think otherwise and we will address the issue. Also feel free to call me if you think it would be useful to meet with us regarding this agreement and its effects on PGE.

Sincerely,

Pamela G. Lesh

c: Jim Piro
Patrick Hager
Barbara Halle
Ed Busch

REPORT OF INVESTIGATION OF ENRON CORPORATION AND RELATED ENTITIES REGARDING FEDERAL TAX AND COMPENSATION ISSUES, AND POLICY RECOMMENDATIONS

VOLUME I: REPORT

**Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION**

**At the Request of
Senator Max Baucus
and
Senator Charles E. Grassley
of the
SENATE COMMITTEE ON FINANCE**

February 2003

JCS-3-03

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108TH CONGRESS, 1ST SESSION

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Mary M. Schmitt, *Deputy Chief of Staff*

TRANSMITTAL LETTER

Senator Max Baucus
Senator Charles E. Grassley
Senate Committee on Finance
Washington, DC 20510

Dear Senators Baucus and Grassley:

By this letter, I am hereby transmitting to you an official report of the investigation of the staff of the Joint Committee on Taxation relating to Enron Corporation and related entities, which was prepared pursuant to your request dated February 15, 2002. This investigation took nearly a year to complete. The Joint Committee staff spent countless hours reviewing documents and other information, interviewing individuals relevant to the investigation, and preparing this Report, while at the same time continuing to perform the normal legislative duties with which the Joint Committee staff is charged.

Each member of the Joint Committee staff contributed to the investigation. However, special recognition must be given to certain members of the Joint Committee staff who devoted much of their time during the last year to the investigation. Mary Schmitt, Sam Olchyk, and Carolyn Smith coordinated all aspects of the Joint Committee staff work on the investigation and were each primarily responsible for certain aspects of the investigation. Other Joint Committee professional staff members who also had primary responsibility for the investigation include E. Ray Beeman, Nikole Clark, Robert Gotwald, Brian Meighan, David Noren, Cecily Rock, Carol Sayegh, Ron Schultz, and Allison Wielobob. Other professional staff members who contributed to the investigation include Roger Colinvaux, Patrick Driessen, Deirdre James, Laurie Matthews, Patricia McDermott, Pamela Moomau, John Navratil, Oren Penn, and Tara Zimmerman. Recognition is provided to the administrative and support staff who assisted with the investigation, including Jean Best, John Bloyer, Sean Corcoran, Kathleen Dorn, Jayne Gribbin, Debra McMullen, Neval McMullen, Kristine Means, Tracy Nadel, Melissa O'Brien, Lucia Rogers, and Patricia Smith. A special thanks goes to Christine Simmons, whose skill at pulling together an enormous document made the Joint Committee staff's work much easier.

The Joint Committee staff gratefully acknowledges the contribution of Christopher Hanna, Professor of Law, Southern Methodist University, who contributed to the Joint Committee staff investigation as a consultant and was particularly helpful in assisting the Joint Committee staff understand Enron's complex tax transactions. In addition, Claire Merkine who was with the Joint Committee staff for six months under a special fellowship program with the New York University School of Law, also assisted in the investigation.

Sincerely,

Lindy L. Paull
Chief of Staff

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D. Enron's Federal Income Tax Position

1. Enron's consolidated Federal income tax filings

Enron Corp. is a calendar year taxpayer that uses the accrual basis method of accounting for Federal income tax purposes. Enron Corp. files consolidated Federal income tax returns in which it reports the consolidated taxable income of its affiliated group within the meaning of section 1504(a).[144] Enron reported 346 entities as members of its affiliated group in its 2000 tax return.[145] Enron's consolidated group also includes numerous single member limited liability companies that Enron treats as disregarded entities for Federal income tax purposes.[146]

The IRS master file account information pertaining to Enron Corp. as of January 8, 2003, shows that Enron filed Federal income tax returns for each of its taxable years from 1988 through 2001. Enron filed its Federal income tax return for its 2001 taxable year in September 2002.[147] Enron's tax return for calendar year 2002 is not due until March 17, 2003.

Mr. Robert J. Hermann signed Enron's Federal income tax returns for the years 1985 through 2000 in his capacity as an officer of the company.[148] Mr. Jordan H. Mintz signed

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[144] In general, an affiliated group is defined for this purpose to mean one or more chains of corporations connected through stock ownership with a common parent if the common parent owns, directly or indirectly, at least 80 percent of the total voting power and value of the stock of such corporations. Certain corporations, including tax-exempt corporations, life insurance companies, foreign corporations, section 936 corporations (regarding the Puerto Rico and possessions tax credit), regulated investment companies, real estate investment trusts, domestic international sales corporations, and S corporations, generally are not eligible to be included in an affiliated group. Sec. 1504(b).

[145] Form 1120, Enron Corp., 2000 (Form 851 Affiliations Schedule).

[146] Enron North America, Corp. (a subsidiary of Enron Corp.) alone reported in excess of 100 such entities. *See* Diagram of Enron North America - Disregarded entities. EC2 000025345. Under the Treasury Department's "check-the-box" entity classification regulations issued in December 1996, a domestic entity (other than a corporation and certain other ineligible entities) with a single owner is disregarded as an entity separate from its owner for Federal income tax purposes unless such entity elects to be treated as an association taxable as a corporation. Treas. Reg. secs. 301.7701-3(b)(1)(ii) and 301.7701-2(c)(2). Such a disregarded entity is treated as a branch or division of its sole owner for Federal income tax purposes.

[147] Enron filed documents with the Federal bankruptcy court which state that PGE has ceased to join in the filing of Enron's consolidated Federal income tax returns as a result of a May 7, 2001, transaction that caused PGE to cease to qualify as a member of Enron's affiliated group. Docket No. 8232, paragraph 27.

[148] Mr. Hermann signed the returns as "Vice-President, Tax" for the tax years through 1995, as "VP & General Tax Counsel" for the tax years 1996 through 1998, and as "Managing Director and General Tax Counsel" for the tax years 1999 and 2000.

Enron's Federal income tax return for the 2001 taxable year as Enron's Managing Director and General Tax Counsel.

Table 7, below, provides a reconciliation of Enron's consolidated financial statement net income and Enron's consolidated taxable income for 1996 through 2000. The information contained in the table is based on Enron's tax returns as filed without regard to audit adjustments.[149] In addition, the information contained in the table is based on Enron's financial statements as initially reported, without regard to earnings restatements as announced on November 19, 2001.[150]

[149] The IRS examination of tax years 1996 through 2000 is ongoing.

[150] *See* Table 6, above, November 19, 2001, Form 10-Q Accounting Restatements for Enron, for a detailed listing of Enron's restatements. It is impossible to fully assess Enron's book to tax differences prior to determination of Enron's ultimate tax liability, which is under review by the bankruptcy court, and without a restatement of Enron's financial statements for these periods to reflect generally accepted accounting principles.

Table 7.–Enron Corp. and Subsidiaries: Reconciliation of Financial Statement Income to Taxable Income 1996-2000
[millions of dollars]

	1996	1997	1998	1999	2000
Net Income Reported in Consolidated Financial Income Statement[1]	584	105	703	893	979
Less Net Income from Entities not Included in Consolidated Tax Return					
Domestic Corporations[2]	-96	-189	-149	-152	-345
Foreign Corporations[3]	-232	-44	-521	-1,110	-1,722
Partnerships[4]	-145	-211	-319	-638	-6,899
	-473	**-444**	**-989**	**-1,900**	**-8,966**
Plus Net Income from:					
Intercompany Elimination Made for Books but not for Tax	1,322	1,300	1,884	3,997	13,625
Entities not Controlled for Financial Accounting Included for Tax[5]	0	0	14	122	258
	1,322	**1,300**	**1,898**	**4,119**	**13,883**
Book Income Reported on Consolidated Tax Return	**1,433**	**961**	**1,612**	**3,112**	**5,896**
Significant Book to Tax Adjustments[6]					
Federal Income Taxes	159	-35	45	-128	193
Net Partnership Adjustments	-107	-122	-109	-338	-481
Net Mark to Market Adjustments	-118	118	-333	-906	-537
Constructive Sale (section 1259)	0	0	0	0	5,566
Structures Treated as Debt for Tax not for Book (e.g., equity or minority interest)	-2	-24	-3	-12	-149
Company Owned Life Insurance Adjustment	-19	-24	-27	-35	-20
Stock Options Deduction	-113	-9	-92	-382	-1,560
Depreciation Differences	-67	-65	-57	-124	-154
Equity Earnings Reversal Per Tax Return	-1,183	-1,023	-1,688	-2,868	-5,516
All Other Book to Tax Differences	-293	-281	-101	223	-137
Taxable Income Reported on Consolidated Tax Return	-310	-504	-753	-1,458	3,101

Notes:
(1) As originally reported. (2) Corporations not meeting 80 percent vote and value test (sec. 1504(a)(2)). The financial accounting to tax return reconciliation in Appendix A contains additional details of these amounts. (3) Foreign corporations are not eligible for inclusion in consolidated tax return (sec. 1504(b)(3)). (4) Partnerships are required to file separate Federal income tax returns. The financial accounting to tax return reconciliation in Appendix A contains additional details of these amounts. (5) Disregarded entities for tax purposes (Treas. reg. sec. 301.7701-3) not included in consolidated financial statements. The financial accounting to tax return reconciliation in Appendix A contains additional details of these amounts. (6) Amounts as reported in Enron presentation to the Joint Committee staff, June 7, 2002. Appendix B contains this presentation. In addition, Appendix A contains further details of Enron's book to tax adjustments as reported in the tax return.

2. Interaction between Enron and the Internal Revenue Service

Selected information regarding Enron's tax department

Prior to the 1985 acquisition of HNG by InterNorth, HNG had a tax department with 24 employees, and InterNorth had approximately 55 tax department members. The 1985 HNG/InterNorth combination created a combined tax department with approximately 80 employees, led by Mr. Hermann, who had served as HNG's Vice President of Corporate Taxes.[151] The size of the Enron tax department decreased in the late 1980s as a result of recommendations by external management consultants that the company's tax department should be reduced to about 40 employees.

Enron's tax department went through significant expansion and reorganization during the 1990s. Beginning in 1989 or 1990, when Enron's business was moving beyond physical assets into financial products, Enron's tax department began "managing" Enron's tax liability, rather than merely preparing a tax return to report income resulting from Enron's operations. During the late 1980s Enron had been reporting net operating losses for Federal income tax purposes, resulting in a cumulative reported net operating loss carryover of approximately $404 million available from its 1990 taxable year.[152] Enron had "tight sands" tax credits, however, that Enron could utilize only if it had taxable income that generated a Federal income tax liability. It became advantageous for Enron to begin reporting positive taxable income for Federal income tax purposes, rather than net operating losses, to ensure full utilization of the tight sands tax credits. In its 1990 annual report letter to its shareholders and customers, Enron reported that the tight sands tax credits, combined with a Texas severance tax exemption, could be worth more than $100 million to Enron on a present value basis.[153] For 1991, Enron reported Federal taxable income of $167.5 million after fully utilizing its $404 million net operating loss carryover from 1990.[154] Enron also reported that its tight sands tax credits amounted to $17 million in 1991 and could exceed $40 million in 1992.[155] By this time, Enron recognized the importance of Federal income tax benefits, such as the tight sands tax credits, as a means of favorably affecting income

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[151] The information regarding Enron's tax department was obtained during the course of interviews conducted by the Joint Committee staff.

[152] Enron reported a consolidated net operating loss carryover of $403 million, available until 2003, in its notes to its 1990 annual report. Enron Corp., 1990 Annual Report, at 47 (1991). The actual amount of the carryover reported on Enron's 1991 tax return was $404 million.

[153] Enron Corp., 1990 Annual Report, at 6 (1991). The letter stated the successful move to longer term contracts and "the supportive role Enron Oil & Gas played in the passage of tight sands legislation were significant accomplishments in 1990." *Id.*

[154] Enron Corp., 1991 Annual Report, at 43 (1992).

[155] *Id.* at 3. Enron stated that the "positive impact of the tight gas sand tax credit, continued emphasis on cost control and net revenue from other marketing activities should allow EOG earnings to continue to improve despite low natural gas prices." *Id.*

for financial reporting purposes.[156] From the period 1991 through 1995, Enron claimed tight sands tax credits of approximately $150 million.[157]

In 1991, Enron also started expanding into international business ventures. In order to win bids on international ventures, the tax department provided tax planning methods involving the establishment of offshore companies to reduce U.S. tax on income from the ventures.[158] This led to staffing increases in the international tax area in Enron's tax department personnel and in other areas as well, causing the staff to approximately double in size from the late 1980s to 1996. Enron's tax department grew from a staff of 83 in 1996 to 253 in 2000.[159] The majority of these employees were located in Houston, although a few were in Portland, Oregon, and others were in Enron's office in London, England. By the end of 2001, however, the tax department had decreased to 183 employees. By 2002, the Enron tax department had further declined to 117 employees.

During the second half of the 1990s, the Enron tax department was divided into 12 separate and distinct functions. These functions included: Managing Director/General Tax Counsel; Planning; Reporting & Analysis; Tax Systems; Structured Transactions; Audits; Sales and Use Tax; Ad Valorem Tax; Administrative; Azurix; PGE - Portland; and London.[160] At the beginning of 2001, Enron's tax department was organized into several groups, generally with a vice president in charge who reported to Mr. Hermann. These groups included: Corporate Reporting and Analysis; Corporate – International; Corporate - Tax Planning; Enron North

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[156] Enron was able to reduce its income tax expense (and increase its financial statement net income) by the amount of its tight sands tax credits. *See e.g.*, Enron Corp., 1993 Annual Report (1994), at 52, n.3. Enron reported that it utilized tight sand tax credits of approximately $42.5 million in 1992, and that it expected to utilize approximately $50 million of the credit in 1993. Enron Corp., 1992 Annual Report, at 31 (1993). Enron reported it would continue to support a possible extension of the credit qualification period beyond 1992, and that it would continue to benefit from the credit after 1992 because it applied to previously qualified production through 2002. Enron Corp., 1992 Annual Report 31 (1993).

[157] *See* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

[158] These offshore structures are discussed in more detail in Part Five.C., below, of this Report.

[159] *See* Appendix B, Enron Corp. Tax Department Summary Headcount Analysis, Enron Corp. Presentation to the Joint Committee on Taxation (June 7, 2002), at 8.

[160] *See* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

America; Enron Energy Services; Europe; Enron Broadband Services; Gas Pipeline Group; Audits; and Structured Transactions.[161]

Enron's tax department was proactive. Over time the tax department generated benefits for Enron that equaled, or eventually far outstripped, the budgeted cost of the tax department itself. The benefits generated by Enron's tax department included financial earnings as well as tax savings.[162]

Enron's tax department obtained the services of external tax advisors for general tax advice that included: tax return preparation, transfer pricing documentation, State tax issues, tax audit support, and Federal tax consulting.[163] Enron estimated that it paid $14 million in external U.S. tax advisor fees in connection with such advice during the late 1990s.[164]

During the period 1997 through 2000, Enron prepared more than 1,000 Federal tax returns for each year with respect to its affiliated and related entities.[165] From 1997 to 2000, the total number of Federal tax returns prepared by the department increased from 1,002 to 2,486.[166] Similarly, the total number of State income and franchise tax returns prepared by the department increased during this period from 622 to 1,422.[167]

Enron's tax department prepared an annual report measuring the total tax savings generated by the department. The tax department transmitted the report to Enron's Board of Directors each December, before the Board approved the bonus pool for employees. In the late 1990s, the pay and bonuses of the tax department personnel were determined, like those of other Enron employees, on a ranking system with different levels. The base pay and bonus for any particular individual in the tax department were not specifically dependent on the tax savings

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[161] Appendix B, Tax Department Organization As Of January 1, 2001, Enron Corp. Presentation to the Joint Committee on Taxation (June 7, 2002), at 7; a description of the Structured Transactions Group is included in Part Three. A of this Report.

[162] These benefits are described in more detail with respect to the structured transactions described in Part Three.A., below, of this Report.

[163] *See* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

[164] *Id.* These estimates do not include external tax advisor fees paid with respect to Enron's structured transactions.

[165] *See* Part Two, Background and Methodology. *See also* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

[166] *Id.*

[167] *See* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

generated by that individual. A general discussion of Enron employee compensation is described in more detail in Part Four of this Report.

IRS examination of Enron tax returns

From 1990 to the present, the IRS conducted four examinations of Enron's Federal income tax returns. The examinations were divided into four audit cycles as follows: (1) taxable years 1983 through 1987; (2) taxable years 1988 through 1991; (3) taxable years 1992 through 1994; and (4) taxable years 1995 through 2001. The first three audit cycles were closed by the IRS in 1993, 1996, and 1998, respectively.[168] The net agreed deficiencies with respect to these examination cycles totaled $4.3 million. The audit cycle for 1995 through 2001 is currently under examination by the IRS.[169]

Each of the IRS's examinations of Enron's tax returns was coordinated through a team manager and a team coordinator. The IRS team generally included revenue agents, economists, engineers, and specialists in financial products, international examinations, and computer audits.[170] Each IRS team that examined Enron's 1985 through 1987 and 1988 through 1991 audit cycles consisted of 11 individuals. The IRS team size increased to 13 individuals for the 1992 through 1994 audit cycle, and to 27 individuals for the 1995 through 2001 audit cycle. The team manager for the last three audit cycles was the same IRS employee. The IRS assigned a different revenue agent as the team coordinator for each of the four audit cycles.

The IRS reported certain audit adjustment information to the Joint Committee staff. According to those reports, the adjustments to taxable income made by the IRS audit teams for Enron's taxable years 1988 through 1995 were as follows: -$18.8 million for 1988, -$27.3 million for 1989, -$11.7 million for 1990, $19.7 million for 1991, $101.6 million for 1992, $85.9 million for 1993, and $211.8 million for 1994. The total net adjustments made by the IRS audit teams for taxable years 1988 through 1994 increased Enron's taxable income by $361.2 million.

For the 1995 through 1999, the IRS issued 854 information document requests to Enron through March 5, 2002. Some of the information or materials requested included or involved: planning materials, partnership filings and returns, phantom stock deductions, other deductions, balance sheets, reorganization materials, affiliates' receivables, commodity derivatives and commodity physical positions, employee status, company policies, and general information. As of March 5, 2002, Enron had completed its responses to 830 requests. The outstanding requests involved related party transactions, potentially abusive tax shelters, development costs,

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[168] Internal Enron management documents reported that Enron had "successfully concluded the audit of the 1989-1991 tax returns, sustaining the deductibility of Net Operating Loss carry forward, which allowed recognition of $10 MM in tax benefit during third quarter 1995." 1995 Performance Review. EC 000102767.

[169] The Joint Committee staff understands that the IRS examination of Enron's 1995 taxable year is complete and that proposed adjustments have been made with respect to 1995.

[170] The IRS team for the 1995 through 2001 audit cycle also included specialists in employee plans and a specialist in excise taxes.

partnership income/loss, trading in the context of financial deals, capital gains, political contributions, and certain self-audit adjustments. The IRS expects to propose or make adjustments to one or more of the years in the open audit cycle, which could affect Enron's tax liability for such years.

Enron's overall working relationship with the IRS was described by Mr. Hermann as "professional" and "good" from the mid-1980s through the mid-1990s.[171] Mr. Hermann reported that Enron's expansion into international markets in the mid-1990s complicated the IRS's development of an audit plan and audit team to examine the tax implications of this growth, resulted in the IRS exploring irrelevant issues, and caused the working relationship between the IRS and Enron to deteriorate.[172] During IRS briefings, the Joint Committee staff was told that the relationship between Enron and the IRS became strained in the later years.

Enron's involvement in the coordinated industry case program

The IRS uses a coordinated industry case program[173] ("CIP") to coordinate the examination of large and highly diversified taxpayers. Pursuant to the CIP, over 1,600 of the largest corporate taxpayers are audited on an ongoing basis for a period of one or more years. If a taxpayer is chosen for the CIP, the taxpayer and all of their effectively controlled entities are included in the case. Unrelated entities may also be included in the case if they are associated

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[171] Joint Committee staff interview.

[172] *Id.*

[173] The CIP was created to centralize control of large cases and obtain uniformity and consistency in management. *See* Internal Revenue Manual Ch. 4.45.3.1 (Primary Control—Overview). CIP cases generally are selected based on factors that potentially indicate a high level of tax complexity. Such factors include the taxpayer's gross assets (usually starting at $500 million), gross receipts (usually starting at $1 billion), the number of entities involved, the number of separate and distinct major industries the taxpayer is involved in, and the specialized staff-related resources required to conduct the audit. Each of these factors is considered for a specific taxpayer and if certain thresholds are met the case qualifies as a CIP case. Usually, once a corporation qualifies as a CIP case it will remain in the program even if there may be a change in its circumstances. *See* Internal Revenue Manual Ch. 4.45.2.1 (Case Selection--Identification of Cases). Irrespective of whether a case exceeds the required threshold, a case may be included in the program if it is determined to be sufficiently complex and would likely benefit from using the team approach of the CIP. Likewise, cases meeting the thresholds may be excluded from the examination under the CIP. *See* Internal Revenue Manual Exhibit 4.45.2-1 (Criteria for the identification of Coordinated Industry Program cases).

Audit-related work in CIP cases is carried out by a team of revenue agents and other specialist members (such as international tax specialists, employment and excise tax specialists, economists, and engineers) who are responsible for reviewing and analyzing the tax liabilities of the corporate taxpayer in their respective area of specialization over a period of approximately 26 months. *See* Internal Revenue Manual Ch. 4.45.7.1 (Examination Cycle).

with the taxpayer in activities that have significant tax consequences. In 2001, over 400 cases and 3,700 returns were closed after being examined under the CIP.[174] Enron has been a CIP program participant since January 1989.

3. Enron's Federal income tax payments

Enron filed Federal income tax returns for 1996 through 2001 that reported a tax liability (before payments and credits) only for its 2000 and 2001 taxable years. These returns report that Enron paid no Federal income taxes with respect to taxable years 1996 through 1999.[175] Enron's taxable year 2000 Federal income tax return reported a tax liability of $63.2 million, tax payments and other credits of $70.1 million, and an overpayment of $6.9 million. Enron's taxable year 2001 Federal income tax return reported a total tax of $13,331, but a refund due to Enron of $20,428.[176]

Table 8, below, contains selected information regarding the company's taxable years 1986 through 2001, based on Enron's consolidated Federal income tax returns as filed without regard to audit adjustments.[177]

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[174] These returns related to a number of different taxable years. *See* Department of Treasury, Program Performance Report for FY2001, at http://www.ustreas.gov/gpra/2001rpt.pdf.

[175] This is consistent with the IRS master file account information pertaining to Enron Corp. as of January 8, 2003.

There have been conflicting accounts regarding whether Enron paid Federal income taxes during its profitable years. For example, a January 17, 2002, analysis of Enron's financial documents by Citizens for Tax Justice concluded that Enron received a net tax rebate of $381 million for the five-year period 1996 to 2000, even though it had U.S. profits before Federal income taxes of $1.785 billion for the same period. http://www.ctj.org/html/enron.htm. The Congressional Research Service, however, concluded that Enron paid U.S. Federal taxes during 1996 through 2000. Congressional Research Service, Report for Congress: *Enron and Taxes*, No. RS21149 (February 12, 2002).

[176] Although Enron made no Federal income tax payments with respect to its 2001 taxable year, Enron's 2001 return reported a credit for Federal tax on fuels of $33,759, which exceeded the reported tax due of $13,331 and created the reported refund of $20,428.

[177] These figures do not include taxes paid by related entities that were not included in Enron's consolidated group. For example, EOG was not included in Enron's consolidated Federal income tax return for those periods in which Enron owned less than 80 percent of EOG, and the figures do not include any taxes paid by EOG during such period. *See* Appendix B, Enron Corp., Presentation to the Joint Committee on Taxation, (June 7, 2002).

Table 8.–Selected Information Relating to Enron's U.S. Federal Taxes for 1986-2001, Per Original or Amended Returns [millions of dollars]

Year	Regular income tax	Alternative minimum tax	Other taxes	Nonrefundable credits	Total tax	Tax payments	Refundable credits	Tax due or overpaid
1986	0	0	1.4	0	1.4	1.3	0	0.1
1987	0	0	0.6	0	0.6	0.6	0	0
1988	0	0	0	0	0	11.0	0	-11.0
1989	0	1.2	0.1	0	1.3	2.0	0	-0.7
1990	0	31.4	0.4	0	31.8	41.4	0	-9.6
1991	56.9	90.4	0.8	-30.1	118.0	124.0	0	-6.0
1992	68.2	0	0.3	-12.4	56.1	60.0	0	-3.9
1993	78.7	0	0.3	-29.2	49.8	56.0	0	-6.2
1994	62.5	0	0.2	-23.7	39.0	44.0	0	-5.0
1995	56.7	0	0.2	-26.5	30.4	21.6	0	8.8
1996	0	0	0	0	0	0	0	0
1997	0	0	0	0	0	0	0.1	-0.1
1998	0	0	0	0	0	0	0	0
1999	0	0	0	0	0	0	0	0
2000	21.3	41.9	0	0	63.2	70.0	0.1	-6.9
2001	0	0	0	0	0[1]	0	0	0
Totals	344.3	164.9	4.3	-121.9	391.6	431.9	0.2	-40.5

Notes: (1) Enron reported tax for 2001of $13,331, tax credits of $33,759, with a refund due of $20,428.

Source: Forms 1120, Enron Corp., 1986-2001.

4. Enron's reported present Federal income tax position

Enron reported net operating losses (before net operating loss carryovers) for each of its taxable years 1996 through 1999. Enron did not seek to carry back those net operating losses to receive a refund of income taxes paid in earlier years. Instead, Enron carried forward these net operating losses ($3.1 billion) into 2000.[178] The net operating losses for 1996 through 1999 prevented Enron from obtaining closure for Federal income tax audit purposes with respect to those years.[179] As a result, Enron adopted a strategy to pay tax for 2000 to close out the audit for 1996 through 1999. Late in 2000, Enron entered into a number of transactions intended to generate taxable income in 2000 that would absorb the entire $3.1 billion net operating loss carryover to that year.[180] In its 2000 Federal income tax return, Enron reported $3.1 billion of taxable income (before its net operating loss deduction), which Enron offset with its reported net operating loss carryover from 1999 to 2000 of approximately the same amount. The following year, 2001, Enron recognized losses from closing out the transactions that had generated taxable income in 2000. This resulted in a net operating loss of $4.6 billion on Enron's 2001 Federal income tax return.[181]

5. Federal income tax claims in Enron's bankruptcy proceeding

Enron Corp. and each of its affiliates included in the consolidated bankruptcy proceeding that filed a Statement of Financial Affairs with the bankruptcy court (except one company, Enron LNG Shipping Company) listed the IRS as a creditor holding an unsecured claim, with the total

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[178] The $3.1 billion net operating loss carryover (as reported in Enron's 1999 return) consisted of $337.5 million from 1996, $503.5 million from 1997, $752.8 million from 1998, and $1.4 million from 1999. The 1996 loss amount of $337.5 million differs slightly from the $310.2 million reported on Enron's 1996 return. Enron reported its consolidated alternative minimum tax net operating loss carryover from 1999 to 2000 as $2.9 billion.

[179] A net operating loss carryover from a year closed under the generally applicable limitations provisions of Section 6501 may be examined for purposes of adjusting the net operating loss deduction allowable in a subsequent open year. Rev. Rul. 56-285, 1956-1 C.B. 134; Rev. Rul. 65-96, 1965-1 C.B. 126. This rule has the effect of keeping open Enron's taxable years for which it had reported unexpired net operating losses (1996 through 1999), for these limited purposes, beyond the generally applicable limitations periods.

[180] These transactions were part of the Project NOLy transaction that is described in Part Three of this Report, which by itself generated $5.5 billion of the taxable income that Enron reported in its 2000 tax return. A member of Enron's tax department described the transactions "as generating income [to] close tax years". In that person's words, "we needed a statute and so in the year 2000 we managed our taxable income to pay $60 million in tax so that we'd have a statute and use up the $3 billion NOL we had." Joint Committee staff interview.

[181] The intent of Project NOLy was to generate sufficient income in taxable year 2000 to use the company's $3.1 billion net operating loss carryover, and reverse the income recognized by Enron the following year (in 2001).

amount of the claim being unknown. Enron Corp. listed as an asset a Federal income tax refund of $63.2 million in its Statement of Financial Affairs, Schedule B, filed with the bankruptcy court on June 17, 2002. On August 1, 2002, the bankruptcy court ordered that the IRS has until March 31, 2003, to file proofs of claim or interests against any of the Enron entities that are part of the consolidated bankruptcy proceeding. Under that order, the IRS may seek an extension of the deadline for filing its proof of claim beyond March 31, 2003.

IE]> <![endif]-->

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Disregarded entities. This ruling concludes that, if an eligible entity has two owners under local law, but one of the owners is, for federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

ISSUE

How is an eligible entity (as defined in § 301.7701-3(a) of the Procedure and Administration Regulations) classified for federal tax purposes if the entity has two members under local law, but one of the members of the eligible entity is disregarded as an entity separate from the other member of the eligible entity for federal tax purposes?

FACTS

Situation 1. *X*, a domestic corporation, is the sole owner of *L*, a domestic limited liability company (LLC). Under § 301.7701-3(b)(1), *L* is disregarded as an entity separate from its owner, *X*. *L* and *X* are the only members under local law of *P*, a state law limited partnership or LLC. There are no other constructive or beneficial owners of *P* other than *L* and *X*. *L* and *P* are eligible entities that do not elect under § 301.7701-3(c) to be treated as associations for federal tax purposes.

Situation 2. *X* is an entity that is classified as a corporation under § 301.7701-2(b). *X* is the sole owner of *L*, a foreign eligible entity. Under § 301.7701-3(c), *L* has elected to be disregarded as an entity separate from its owner. *L* and *X* are the only members under local law of *P*, a foreign eligible entity. There are no other constructive or beneficial owners of *P* other than *L* and *X*.

LAW AND ANALYSIS

Section 7701(a)(2) of the Internal Revenue Code provides that the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, or corporation.

Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law

and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more owners is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

Section 301.7701-2(c)(1) provides that, for federal tax purposes, the term "partnership" means a business entity that is not a corporation under § 301.7701-2(b) and that has at least two owners.

Section 301.7701-2(c)(2)(i) provides, in general, that a business entity that has a single owner and is not a corporation under § 301.7701-2(b) is disregarded as an entity separate from its owner.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two owners can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides generally that in the absence of an election otherwise, a domestic eligible entity is (a) a partnership if it has at least two members, or (b) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(b)(2) provides generally that, in the absence of an election otherwise, a foreign eligible entity is (a) a partnership if it has two or more owners and at least one owner does not have limited liability, (b) an association if all its owners have limited liability, or (c) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Situation 1. Under § 301.7701-2(c)(2), *L* is disregarded as an entity separate from its owner, *X*, and its activities are treated in the same manner as a branch or division of *X*. Because *L* is disregarded as an entity separate from *X*, *X* is treated as owning all of the interests in *P*. *P* is a domestic entity, with only one owner for federal tax purposes, that has not made an election to be classified as an association taxable as a corporation. Because *P* has only one owner for federal tax purposes, *P* cannot be classified as a partnership under § 7701(a)(2).For federal tax purposes, *P* is disregarded as an entity separate from its owner.

Situation 2. Under § 301.7701-3(c), *L* is disregarded as an entity separate from its owner, *X*, and its activities are treated in the same manner as a branch or division of *X*. Because *L* is disregarded as an entity separate from *X*, *X* is treated as owning all of the interests in *P*. Because *P* has only one owner for federal tax purposes, *P* cannot be classified as a partnership under § 7701(a)(2). For federal tax purposes, *P* is either disregarded as an entity separate from its owner or an association taxable as a corporation.

HOLDING

If an eligible entity has two members under local law, but one of the members of the eligible entity is, for federal tax purposes, disregarded as an entity separate from the other member of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jason T. Smyczek of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Smyczek at (202) 622-3050 (not a toll-free call).

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<SEQUENCE>2
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EXHIBIT 2.1

PURCHASE AND SALE AGREEMENT

by and among

GENERAL MOTORS CORPORATION,

GENERAL MOTORS ACCEPTANCE CORPORATION,

GM FINANCE CO. HOLDINGS INC.

and

FIM HOLDINGS LLC

Dated as of April 2, 2006

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awareness of Investor), shall mean, and shall be limited to, the actual knowledge of the individuals set forth on Schedule 1.3(c)(II) as of the date the representation is given. The term "knowledge" (and similar terms, including "aware"), when used in the phrase "to the knowledge of Seller" (or when used in similar phrases to refer to the knowledge or awareness of Seller), shall mean, and shall be limited to, the actual knowledge of the individuals set forth on Schedule 1.3(c)(III) as of the date the representation is given. The word "or" shall not be deemed to be exclusive. All references to "dollar" or "$" are references to United States dollars and, where the context requires, to the equivalent thereof in any foreign currency.

(d) Laws. Any references to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Any reference to any particular Law will be interpreted to include any revision of or successor to such law or regulation regardless of how it is numbered or classified.

ARTICLE II
PURCHASE AND SALE OF SHARES

2.1 Purchase and Sale of Investor Equity Interests. On the terms and subject to the conditions of this Agreement, at the Closing Seller shall sell, transfer and deliver to Investor, and Investor shall purchase from Seller, 51,000 Class A Membership Interests (the "Investor Equity Interests") for the AutoCo Purchase Price (the "Equity Purchase"). In addition, the Company shall issue to Investor, and Investor shall purchase from the Company, 555,000 preferred limited liability company interests (the "Preferred Membership Interests") on the terms set forth on Exhibit Z attached hereto (the "Direct Preferred Investment").

2.2 Purchase Price. For purposes of this Agreement, the aggregate purchase price to be paid by Investor to Seller for the Investor Equity Interests (the "AutoCo Purchase Price") shall be an amount in cash equal to $7,353,000,000. The aggregate purchase price to be paid at Closing for the Direct Preferred Investment shall be an amount in cash equal to $500,000,000 (the "Direct Preferred Investment Purchase Price").

<PAGE>

2.3 Pre-Closing Transactions. Prior to the Closing Date, Seller, Holdco and the Company, as appropriate, shall use their respective reasonable best efforts to consummate the following transactions (the "Pre-Closing Transactions"):

(a) Substantially all (measured by book value) of the entities set

forth on Schedule 2.3(a) (which Schedule shall indicate, with respect to each such entity, whether such entity will be treated as a partnership or disregarded entity) shall have been converted to limited liability company form (whether by statutory conversion or merger) and shall have elected to change its classification to be treated as a partnership or disregarded entity, as applicable, for Tax purposes on or prior to the Closing Date and to file any related forms with any Governmental Entity including, but not limited to, Form 8832 (the "Conversion"); provided, however, that any such conversion and election that could give rise to a material tax income liability if completed after the Closing Date shall have been completed prior to the Closing Date;

(b) Seller and the Company shall have effected the transactions described in the Carve-Out Agreement, including a dividend by Seller of the assets designated for that purpose in the Carve-Out Agreement (such transactions, the "Asset Distribution");

(c) Seller and the Company shall have effected a distribution by the Company of the synthetic lease assets described on Schedule 2.3(c) pursuant to the Synthetic Lease Assignment and Assumption Agreement (the "Synthetic Lease Distribution");

(d) The bank restructuring contemplated by Exhibit H shall have been completed and, without regard to the preamble language in Exhibit H, such restructuring shall have been completed in accordance with the particular actions set forth in Sections I and II of Exhibit H and, to the extent the bank restructuring includes any other or different actions (or excludes any of the particular actions set forth in Sections I and II), and such other or different actions (or the absence of a particular action set forth in Sections I and II) will result in a material adverse consequence for the Company or ResCap or will result in GMAC Automotive Bank ceasing to be directly or indirectly wholly owned by Company, such other or different actions (or the absence of any of the particular actions set forth in Sections I and II) must be reasonably satisfactory to each FIM Investor and the Seller;

(e) The Company shall have effected a distribution of $2.728 billion to Seller as the sole member of the Company (the "Cash Distribution" and, together with the Asset Distribution and Synthetic Lease Distribution, the "Recapitalization"); and

(f) Seller shall have contributed to Holdco 49,000 Class B Membership Interests (the "Contribution");

provided, however, that no Person shall be required to consummate any of the Pre-Closing Transactions unless all conditions to Closing set forth in ARTICLE IV have been satisfied or waived in writing and each of the Parties is prepared to consummate the Closing immediately following the Pre-Closing Transactions.

Internal Revenue Service
Revenue Ruling

TaxLinks.com sm

Rev. Rul. 63-228

1963-2 C.B. 229

Sec. 671

Sec. 677

Sec. 1011

IRS Headnote

Where creditors acquire the assets of the debtor partnership from a trustee in bankruptcy and establish a trust, with themselves as beneficiaries, to dispose of the assets and distribute the proceeds, all items of income, deduction, or credit with respect to the sale of the assets are includible in computing the Federal income tax liability of the creditors in the year of sale to the extent that such items would be taken into account had the trust not been in existence.

The portion of the fair market value of the property allocable to each creditor 's claim against the partnership is the unadjusted basis of the property in the hands of the creditor. Proper additions to basis include bankruptcy costs, construction costs, real estate taxes accrued prior to acquisition from the trustee in bankruptcy and other capital expenditures.

Real estate taxes accruing between the acquisition date and the date of sale are deductible by the seller. Real estate commissions, loan closing costs and costs of preparing abstracts are offsets against the selling price.

Full Text

Rev. Rul. 63-228

Advice has been requested with respect to the Federal income tax treatment to be accorded to a sale of real estate by trustees under the circumstances described below.

A certain partnership and its partners were adjudicated bankrupts in 1959. The partnership had been engaged in the general contracting business and had as its only assets at the time of bankruptcy a number of partially completed residences. The appraised value of the assets at that time was substantially less than the amounts owed by the partnership to the mortgagee, mechanics' lien holders and the United States Government for certain unpaid taxes.

To recover as much as possible from the assets, the mechanics' lien holders and the mortgagee executed a trust agreement in 1959 authorizing designated trustees to borrow money with which to acquire the partnership assets from the trustee in bankruptcy. The agreement empowered the trustees to pay the Federal tax lien, complete the construction of the residences and sell the properties for the highest prices possible. The agreement provided for the distribution of the sales proceeds among the mechanics' lien holders and the mortgagee.

In 1959 the trustees acquired the assets from the trustee in bankruptcy upon payment of an emount sufficient to satisfy the Federal tax lien. After completion of construction and the sale of several of the residences in 1960, the trustee filed a United States Fiduciary Income Tax Return (Form 1041) for the calendar year 1960 which disclosed a net loss. The remaining residences were sold and the trust was terminated in 1961.

The specific issues in the instant case relate to (1) the status of the trust as a liquidating trust or an association taxable as a corporation, (2) the trustees' method of reporting the sales transactions, and (3) the basis of the property for the purpose of computing gain or loss from the sale thereof.

An organization will be considered a liquidating trust if it is organized for the single purpose of liquidating and distributing its assets and its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. See Broadway-Brompton Buildings Liquidation Trust v. Commissioner , 34 B.T.A. 1089, acquiescence, C.B. 1938-2, 4. Where liquidation is unreasonably prolonged or so obscured by business activities that the declared purpose of liquidation can be said to be lost, changed or abandoned, the organization will constitute an association taxable as a corporation. See Tom Anderson, Trustee, et al. v. James S. Lamb , 222 Fed.(2d) 176 (1955). For taxable years beginning after December 31, 1960, see section 301.7701-4 of the Income Tax Regulations.

In the instant case the single purpose of the trust was to liquidate and distribute assets. The activities of the trust were reasonably necessary to, and consistent with, the accomplishment of that purpose and efforts were made to dispose of the residences as soon as possible. Accordingly, the business arrangement does not constitute an association taxable as a corporation.

Section 677 of the Code provides, in part, that the grantor shall be treated as the owner of any portion of a trust whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to the grantor or held or accumulated for future distribution to the grantor.

Section 671 of the Code provides, in part, that where the grantor or another person is regarded as the owner of any portion of a trust, there shall be included in computing his taxable income and credits those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing the taxable income or credits of an individual. As interpreted in section 1.671-2(c) of the regulations, the effect of that section is to require such items to be taken into account as if received or paid directly by the grantor or other person (whether or not an individual). See also section 1.671-3(a) of the regulations.

Since the trust agreement in the instant case provides for the distribution of the sale proceeds among the mechanics' lien holders and the mortgagee (grantors), they are regarded as owners of the trust under the provisions of section 677 and subject to the provisions of section 671 of the Code.

Items of income, deductions and credit attributable to any portion of the trust which is treated as owned by the grantors, under the provisions of section 677 of the Code, should not be reported by the trust on Form 1041, but shown on a separate statement attached to that form.

Under these circumstances the adjusted basis of the property sold by the trust must be determined under section 1011 of the Code for the purpose of computing the amount of income, deductions or credit allocable to the grantors of the trust. In this regard, where property having a fair market value is received in satisfaction of a debt, such fair market value is the unadjusted basis of the property for the purpose of computing gain or loss upon the subsequent sale or other disposition of the property. See Lawrence S. Vadner et ux. v. Commissioner , Tax Court Memorandum Opinion filed July 29, 1955, and Mary Kavanaugh Feathers v. Commissioner , 8 T.C. 376 (1947).

In the instant case, the trustee in bankruptcy, in effect, distributed undivided interests in a portion of the bankrupt partnership's property to the mortgagee and the mechanics' lien holders, in 1959, in satisfaction of their individual claims against the partnership and they acquired the remainder of the property by payment of the Federal tax lien. Accordingly, the unadjusted basis of the distributed property in the hands of the mortgagee and mechanics' lien holders immediately after the distribution by the trustee in bankruptcy was that portion of the fair market value of such property which was allocable to their individual claims against the partnership before settlement of the tax lien, plus their pro rata share of the amount paid for the release of the Federal tax lien. Proper additions to basis are bankruptcy costs, construction costs, real estate taxes accrued prior to the acquisition of the real estate from the trustee in bankruptcy and any other payments made which are properly chargeable to capital accounts.

Real estate taxes for periods subsequent to the acquisition date are deductible by the sellers up to the date of sale of

property. Section 164 of the Code. Real estate commissions, loan closing costs and costs of preparing abstracts are offsets against the selling price of the real estate. See Rev. Rul. 56-43, C.B. 1956-1, 210.

Oregon

Theodore R. Kulongoski, Governor

Public Utility Commission
550 Capitol Street NE, Suite 215
Mailing Address: PO Box 2148
Salem, OR 97308-2148
Consumer Services
1-800-522-2404
Local: 503-378-6600
Administrative Services
503-373-7394

March 7, 2006

BEN WALTERS
DEPUTY CITY ATTORNEY
1221 SW 4TH AVENUE, ROOM 430
PORTLAND OR 97204

RE: Workpapers

In response to Linda Meng's request, enclosed are PUC Staff's work papers for the March 2 report. I have not included any confidential materials.

Please give me a call or send me an e-mail if you want to set up a meeting or conference call to go over the work papers or the report.

Lee Sparling

Lee Sparling
Director, Utility Program
503-378-6137
lee.sparling@state.or.us

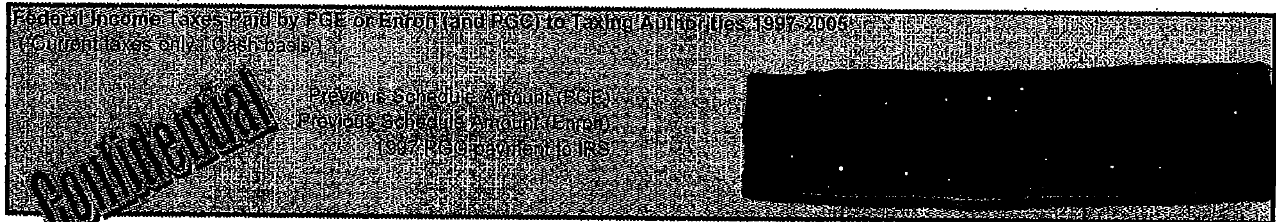
Enclosure

**Corrected Schedule of Taxes "Collected" and Tax Payments
1997- Sept. 30, 2005 (from City of Portland fax of 12/1/2005)**

This is a correction only - PGE does not sponsor this analysis.

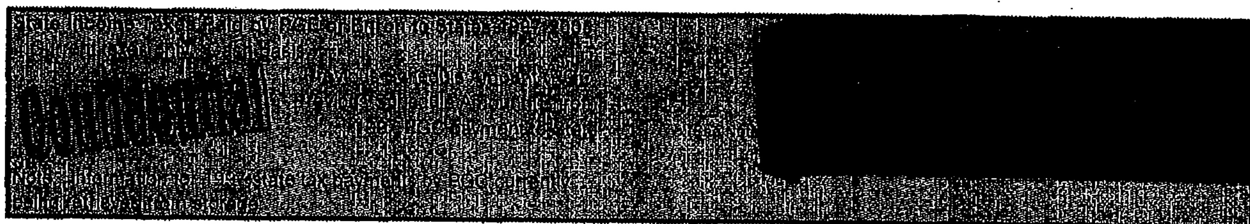
Income Taxes "Collected" by PGE 1997-2005 (Includes federal, state and local income taxes. Includes current and deferred.)		Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS	DIFFERENCE
	1997		90,349,000	83,033,000	
	1998		91,653,000	81,368,000	
	1999		83,268,000	84,250,000	
	2000		86,899,000	94,140,000	
	2001		50,545,000	38,389,000	
	2002		74,459,000	67,261,000	
	2003		58,989,000	49,380,000	
Note for 2005: City prorated partial year amounts to	2004		69,308,000	56,587,000	
present on a 12 monthly basis. Corrected column is	09/30/2005	(see note)	65,000,000	49,600,000	
actual amount through Sept. 30, 2005.		(a)	670,470,000	604,008,000	66,462,000

Federal Income Taxes Paid by PGE to Enron (and PGC) 1997-2005 (Current taxes only. Cash basis.)		Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS	DIFFERENCE
	1997		-	77,974,000	
	1998		111,331,777	111,331,777	
	1999		113,512,357	113,512,357	
	2000		92,665,953	92,665,953	
	2001		29,341,127	29,341,127	
	2002		-	-	
	2003		35,114,773	35,114,773	
	2004		73,885,366	73,885,366	
(City used two quarterly payments. Corrected amount	2005		58,279,185	67,814,743	
includes payments for first 9 months.)		(b)	514,130,538	601,640,096	(87,509,558)



State Income Taxes Paid by PGE to Enron (and PGC) 1997-2005 (Current taxes only. Cash basis.)		Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS	DIFFERENCE
	1997		-	11,318,213	
Corrected column includes all state income taxes,	1998		10,030,343	11,085,874	
Oregon, Montana and others.	1999		13,631,280	14,405,568	
	2000		14,701,082	15,279,676	
	2001		5,320,790	5,579,393	
	2002		-	-	
	2003		2,244,399	2,313,700	
	2004		7,290,536	7,812,479	
(City used two quarterly payments. Corrected amount	2005		7,349,909	5,505,937	
includes payments for first 9 months.)		(e)	60,568,339	73,300,840	(12,732,501)

		Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS	DIFFERENCE
Local Income Taxes Paid by PGE to Enron (and PGC) 1997-2005 (Current taxes only. Cash basis.)					
	1997		-	990,743	
	1998		-	430,553	
	1999		-	1,212,082	
	2000		-	1,453,449	
	2001		-	403,608	
	2002		-	-	
	2003		-	426,466	
	2004		-	990,690	
(2005 corrected amount includes payments for first 9 months.)	2005		-	1,890,072	
		(f)	-	7,797,663	(7,797,663)

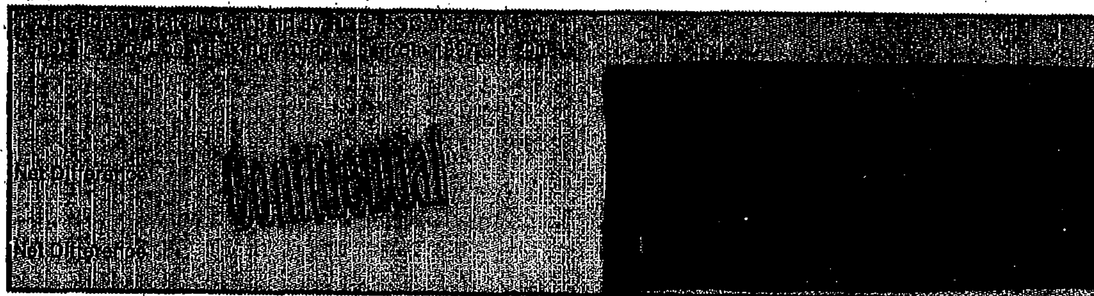


Local Income Taxes Paid by PGE 1997-2005

	Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS	DIFFERENCE
Previous Schedule Amount		-	-	
1997 PGC payment to Local	(See Note)	-	TBD	
	(i)	-	-	-

Note: Information for 1997 state tax payments by PGC currently being retrieved from storage.

	Reference	CITY OF PORTLAND ANALYSIS	CORRECTED ANALYSIS
Total Federal/State (and Local) Income Taxes Paid by PGE to Enron or PGC for 1997- Q3 2005	(J): sum of (b)+(e)+(f)	574,698,877	682,738,599



For discussion of the difficulties of determining income tax "collected" in utility rates see PGE answer to City Question 001.

Principal difference between City fax of 12/1/2005 and corrected analysis is 1) Use of correct data on the amount of taxes "collected," 2) Inclusion of taxes paid in 1997, 3) Inclusion of amounts paid for Montana and other state taxes 4) Inclusion of amounts paid for local taxes 5) Use of consistent data for 2005.

The principal difference between taxes "collected" and taxes paid in the corrected analysis is 1) deferred taxes 2) non-utility taxes and 3) cash accrual timing differences

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

[X] **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended June 30, 2006
OR
[ ] **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Transition period from _____v__________ to ______________

Commission File Number 1-5532-99

PORTLAND GENERAL ELECTRIC COMPANY

(Exact name of registrant as specified in its charter)

Oregon (State or other jurisdiction of incorporation or organization)	**93-0256820** (I.R.S. Employer Identification No.)

121 SW Salmon Street, Portland, Oregon 97204
(Address of principal executive offices) (zip code)

Registrant's telephone number, including area code: **(503) 464-8000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes _X_ No ___

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer [ ] Accelerated filer [ ] Non-accelerated filer [X]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ___ No _X_

Number of shares of Common Stock outstanding as of July 31, 2006: 62,500,000 shares of common stock, no par value.

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Note 5 - Related Party Transactions

The tables below detail the Company's related party balances and transactions (in millions):

	June 30, 2006	December 31, 2005
Payables to affiliated companies		
Enron Corp:		
Accounts Payable[(a)]	$ -	$ 4
Income Taxes Payable[(b)]	-	25

(a) Included in Accounts payable and other accruals on the Condensed Consolidated Balance Sheets
(b) Included in Accrued taxes on the Condensed Consolidated Balance Sheets

For the Six Months Ended June 30	2006	2005
Expenses billed from affiliated companies		
Enron Corp:		
Intercompany services[(a)]	$ (1)	$ 2

(a) Included in Administrative and other on the Condensed Consolidated Statements of Income

Effective with the April 3, 2006 issuance of new PGE common stock, PGE is no longer a subsidiary of Enron. PGE and its subsidiaries are no longer included in Enron's consolidated tax return and will file their own consolidated tax returns and remit payments directly to taxing authorities.

As PGE was included in Enron's consolidated income tax return prior to April 3, 2006, the Company made payments to Enron for PGE's income tax liabilities. The $25 million income taxes payable to Enron at December 31, 2005 represents a net current income taxes payable for the fourth quarter of 2005 that was paid to Enron in January 2006. In April 2006, PGE paid Enron $17 million for net current income taxes payable for the first quarter of 2006.

Enron incurred costs related to the resolution of issues associated with its bankruptcy and litigation related to certain employee benefit plans in which PGE employees previously participated. Enron billed PGE for a portion of these costs as work continued toward resolution of the issues. At December 31, 2005, PGE had $4 million payable to Enron related to these costs. Final resolution of the issues resulted in a $1 million reduction in the amount payable to Enron and a corresponding reduction in Administrative and other expense. In March 2006, PGE paid the remaining $3 million balance due to Enron.

Note 6 - Receivables and Refunds on Wholesale Market Transactions

Receivables - California Wholesale Market

As of June 30, 2006, PGE has net accounts receivable balances totaling approximately $63 million from the California Independent System Operator (ISO) and the California Power Exchange (PX) for wholesale electricity sales made from November 2000 through

EXHIBIT 32

**CERTIFICATIONS OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
OF PORTLAND GENERAL ELECTRIC COMPANY
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

We, Peggy Y. Fowler, Chief Executive Officer and President, and James J. Piro, Chief Financial Officer, of Portland General Electric Company (the "Company"), hereby certify that the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2006, as filed with the Securities and Exchange Commission on the date hereof pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the "Report"), fully complies with the requirements of that section.

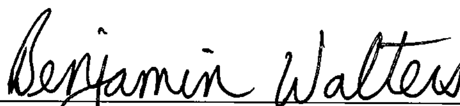
We further certify that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Peggy Y. Fowler	/s/ James J. Piro
Peggy Y. Fowler	James J. Piro
Date: August 3, 2006	Date: August 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing CITY OF PORTLAND – DIRECT TESTIMONY OF DAVID R. JUBB on the individuals on the attached Service List by electronic mail and, for those individuals who have not waived paper service, by First Class Mail with the U.S. Postal Service in a sealed envelope with postage paid, and deposited in the post office at Portland, Oregon on said day.

DATED this 9th day of August, 2006



Benjamin Walters, OSB #85354
Senior Deputy City Attorney
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UE 180 - SERVICE LIST

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Case UE 180
Exhibit COP/300
Witnesses: Duane Sanger, David Tooze and Lon L. Peters

BEFORE THE PUBLIC UTILITY COMMISSION

OF THE STATE OF OREGON

CITY OF PORTLAND

Direct Testimony of Duane Sanger, David Tooze and Lon L. Peters

Retail Access in the City of Portland
Schedule 38
Schedules 75 and 76R

August 2006

1 **Q. PLEASE IDENTIFY YOURSELVES.**
2
3 A. (by Mr. Sanger) My name is Duane Sanger. My business address is 5001 N.
4 Columbia Boulevard, Portland, Oregon 97203. I am currently employed by the City of
5 Portland in the Bureau of Environmental Services as Electrical and Instrument
6 Supervisor. My qualifications are listed in COP/301.
7 (by Mr. Tooze) My name is David A. Tooze. I am the Senior Energy Specialist
8 for Portland's Office of Sustainable Development. My business address is 721 N.W. 9th
9 Avenue, Suite 350, Portland, Oregon 97209. My qualifications are listed in COP/302.
10 (by Mr. Peters) My name is Lon L. Peters. My business address is 607 S.E.
11 Manchester Place, Portland, Oregon 97202. I am the President of Northwest Economic
12 Research, Inc. My qualifications are listed in COP/303.
13 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**
14
15 A. This testimony is sponsored by the City of Portland ("City").
16 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**
17
18 A. In this testimony we address Schedules 38, 75 and 76R. Also, given the
19 continuing uncertainty regarding the City's proposal regarding direct access for
20 streetlights in the City of Portland, we reiterate the City's position as expressed in Docket
21 UE 179.
22 <u>I. Retail Access in the City of Portland</u>
23 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**
24
25 A. In this section we ask the Commission to require PGE to clarify, with PacifiCorp,
26 that the Agreement between the two utilities regarding service to certain City-owned
27 facilities in PacifiCorp's service territory does not in any way alter, interfere with the

1 ability of retail consumers in PacifiCorp's service territories in Multnomah County to be
2 eligible for direct access service under Commission-approved rate schedules.

3 **Q. HOW ARE CITY-OWNED STREETLIGHTS IN PACIFICORP'S**
4 **SERVICE TERRITORY IN THE CITY OF PORTLAND CURRENTLY**
5 **SERVED?**
6
7 A. Under an arrangement that dates back to the late 1970s, PacifiCorp delivers power
8 to the City-owned facilities, but the City pays PGE for the power under Commission-
9 approved Schedule 91. PGE and PacifiCorp have an agreement under which PGE
10 reimburses PacifiCorp for this service. We refer to this as the "1977 Agreement".

11 **Q. HAS THE COMMISSION PREVIOUSLY RULED ON THIS ISSUE?**
12
13 A. No. However, the Commission has ruled on a related issue. See Order 01-846,
14 October 1, 2001, at 7. At that time, the Commission noted that the time to change the
15 contractual arrangements between the utilities would be if there were modifications to the
16 service territory. However, to the extent that the contractual arrangements serve as a
17 barrier to entering the direct access market, the Commission has a positive responsibility
18 to act.

19 **Q. HOW HAVE CIRCUMSTANCES CHANGED SINCE THE FALL OF**
20 **2001?**
21
22 A. The City is now seriously considering offers to provide wind-powered generation
23 to meet the City's electricity consumption requirements. This was not the case in 2001.
24 In order to implement retail access and purchase the output of a new renewable resource,
25 the City prefers that the agreement between PGE and PacifiCorp regarding service to
26 City-owned facilities in PacifiCorp's service territory be clarified. We ask that the
27 Commission require PacifiCorp and PGE to provide such clarifications as are necessary,
28 in consultation with the City and other potentially effected customers, for service

1 effective January 1, 2007. In the stipulation filed on August 3, 2006 in UE 179,
2 PacifiCorp has already agreed to work with the City and PGE to "ensure that no direct
3 access barriers exist for City of Portland street lighting customers covered by the 1977
4 contract between PacifiCorp and PGE."

5 **Q. WHAT WOULD BE THE BENEFIT TO THE CITY OF THIS CHANGE?**
6
7 A. The City currently purchases power from PGE for service to City-owned facilities
8 in PacifiCorp's service territory. Although we are not offering a legal opinion, based on
9 our professional experience we believe that the 1977 Agreement does not address the
10 possibility of retail access. At the time that the 1977 Agreement was developed, direct
11 access to retail markets was simply not contemplated. The clarification that we request
12 here would simplify the contracting, scheduling, billing, and settlement for the City if it
13 chooses direct access for these accounts. There would be no need to work with two
14 utilities (PGE and PacifiCorp) to enable direct access for a single account.

15 **Q. WHY ARE YOU ASKING THE COMMISSION TO REQUIRE THIS?**
16
17 A. During discovery, the City asked PacifiCorp and PGE to provide this clarification.
18 Neither utility was willing to do so. See Exhibit COP/304, which contains the
19 companies' responses to COP/PGE-022 and COP/PAC-013.[1] In addition, to the extent
20 that the agreement restricts the ability of any customer to participate in direct access, we
21 believe that the restriction would be against the policies embodied in SB 1149. The
22 Commission has the responsibility for ensuring that all Oregon retail electricity
23 consumers be provided fair, non-discriminatory access to competitive electricity options,
24 and that retail electricity consumers with the technical capability and desire should be

[1] The entire 1977 Agreement, Attachment COP/PGE-022A, is not included here. The Commission approved the 1977 Agreement in Order No. 92-557, April 16, 1992, Docket Nos. UA 37 and UA 41.

1 able to take advantage of competitive electricity markets; not some categories, but all
2 classes of electricity consumers should have access to and benefit from a competitive
3 electricity market. The Commission has the responsibility for eliminating all barriers to
4 development of a competitive retail market. There is no current, valid public purpose
5 served by any such restriction. The terms of the 1977 agreement reflect the now out-
6 dated policies of territorial allocation for bundled services offered by monopoly utilities.
7 Now that SB 1149 and the Commission's implementing administrative regulations
8 mandate decoupling and unbundling, any inter-utility agreements should reflect the new
9 statutory requirements.

10 **Q. WOULD THIS CHANGE AFFECT ANY OTHER PGE CUSTOMERS?**
11
12 A. We do not believe that it would, because the 1977 Agreement is specifically
13 restricted to Multnomah County only.

14 II. <u>Schedule 38: Time-of-Use Energy Supply</u>
15
16 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**
17
18 A. In this section, we propose a modification to the eligibility language in Schedule
19 38, Large Nonresidential Optional Time-of-Day Standard Service (Cost of Service),
20 which should expand the number of customers who can qualify for this energy pricing
21 option.

22 **Q. WHICH TYPES OF CUSTOMERS CAN CURRENTLY OPT FOR TIME-**
23 **OF-USE ENERGY SUPPLY FROM PGE?**
24
25 A. Under the currently effective version of PGE rate schedules, customers between
26 200 kW and 1,000 kW peak demand are not eligible for time-of-use energy pricing.
27 Customers under 200 kW can purchase time-of-use energy supplies under Schedule 38.
28 Customers over 1,000 kW in peak load can purchase time-of-use energy supplies under

1 Schedules 83 or 89. There is thus a gap between 200 kW and 1,000 kW, in which
2 customers are automatically excluded from time-of-use energy pricing.

3 **Q. UNDER WHICH RATE SCHEDULES DOES THE CITY PURCHASE**
4 **POWER FROM PGE?**
5
6 A. Almost all of the City's power supplies from PGE are delivered under Schedules
7 32 and 83.

8 **Q. WHAT DO YOU PROPOSE REGARDING SCHEDULE 38?**
9
10 A. Schedule 38 should be revised to expand the availability to all customers below
11 1,000 kW. There is no reason that we can think of to preclude these intermediate-sized
12 customers from the potential economic benefits of shifting load from peak to off-peak
13 periods.

14 III. Schedules 75 and 76R: Partial Requirements Service
15
16 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**
17
18 A. In this section we review the non-rate terms and conditions of Schedules 75 and
19 76R, which will become important to the City when it installs cogeneration at the
20 Columbia Boulevard waste-water treatment plant, expected to occur in the spring of
21 2007.

22 **Q. PLEASE DESCRIBE THE CITY'S LOAD AT THE TREATMENT PLANT.**
23
24 A. The load at the wastewater treatment plant is highly variable, ranging from about
25 1.3 MW to about 5.6 MW due to weather conditions. Wet weather in particular affects
26 the plant because the water treatment facilities treat storm water runoff from roofs,
27 parking lots, streets, and other impermeable surfaces.

28 **Q. WHY IS THE CITY INSTALLING COGENERATION AT THE PLANT?**
29

1 A. The City's objectives are simple: to utilize a free renewable fuel (anaerobic
2 digester gas) and to generate electricity to control the cost of operations and the emission
3 of methane gas. The City has no plans to enter the wholesale market and attempt to sell
4 the output of the plant, in large part because its output is highly variable and
5 unpredictable, and thus of little market value. In addition, the size of the cogeneration
6 facility is a fraction of the size of standard wholesale market products.

7 **Q. WHAT IS THE EXPECTED OPERATIONAL PROFILE OF THE**
8 **COGENERATION?**
9
10 A. Again, the operation of the cogeneration will be unpredictable and variable.
11 Weather conditions will determine the amount of fuel available for generation. The
12 nameplate rating of the cogeneration will be about 1,730 kW, with an annual production
13 of 1,100 akW, implying a 63.5 percent plant factor. In addition, the treatment plant has
14 existing on-site digester gas generation totaling 120 kW, consisting of four 30 kW
15 microturbines.

16 **Q. DOES THE CITY CONTROL THE EXACT OPERATIONS OF THE**
17 **WATER TREATMENT PLANT?**
18
19 A. No. Operation of the water treatment plant depends largely on the weather.

20 **Q. WILL THE CITY CONTROL THE EXACT OPERATIONS OF THE**
21 **COGENERATION FACILITY?**
22
23 A. No. Operation of the cogeneration facility will also depend largely on the
24 weather.

25 **Q. WHICH PROVISIONS OF SCHEDULE 75 CAUSE CONCERN FOR THE**
26 **CITY, AND WHY?**
27
28 A. We find that Special Conditions 9, 11 and 12 are onerous and unnecessary in this
29 instance. First, the City simply cannot give two years notice for changes in operation of a

1 cogeneration facility that is contingent on the daily variations of weather. Second, the
2 City expects to comply with WECC reliability criteria that are designed for the size of
3 generation facility to be installed, and so any reference to WECC "guidelines" in
4 Schedule 75 is unnecessary. Third, the City is not interested in procuring replacement
5 power under Schedule 76R for economic reasons, because the City will not be making
6 economic choices between self-generation and market-priced energy. Again, the
7 cogenerator cannot be simply turned on or off depending on market conditions.

8 **Q. WHAT CHANGES DO YOU PROPOSE TO SCHEDULE 75?**
9
10 A. We propose two alternative approaches. The preferred approach is to increase the
11 minimum threshold on customer-owned generation in the applicability section (Sheet 75-
12 1) from one megawatt to two megawatts. This would mean that the City's Columbia
13 Boulevard account could remain on Schedule 89. Working with PGE, the City would
14 ensure that metering is installed at the generator, in addition to the metering currently in
15 place at the load, so that PGE is able to calculate a "net consumption" for the plant under
16 Schedule 89. Schedule 89 itself would also have to be modified so that it would be
17 available for partial requirements service where the customer's generation is less than
18 two megawatts.

19 In the alternative, Special Conditions 9, 11 and 12 of Schedule 75 should be
20 deleted, and the Unscheduled Energy charge should have an option for cost of service
21 under Schedule 89 for self-generation that relies on fuel supplies that are outside the
22 control of the customer. Again, we emphasize that this alternative approach would be
23 much more cumbersome to implement for both the City and PGE, and would incur
24 significant transactions costs, which we believe would not be proportional to the situation

1 given the size of the cogeneration and the lack of control that the City has over the

2 operation of the plant.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**
4
5 A. Yes.

1 **Qualification Statement of Duane Sanger**
2

3 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
4 **ADDRESS.**
5
6 A. My name is Duane Sanger. I am currently employed as Electrical and Instrument
7 Supervisor with the Bureau of Environmental Services Wastewater Group for the City of
8 Portland. My business address is 5001 N. Columbia Blvd, Portland, Oregon 97203.

9 **Q. PLEASE STATE YOUR EDUCATIONAL QUALIFICATIONS.**
10
11 A. I have an Oregon General Electrical Supervisor License (3943S).

12 **Q. PLEASE REVIEW YOUR EXPERIENCE IN THE ELECTRIC UTILITY**
13 **INDUSTRY.**
14
15 A. In my current capacity I am responsible for tracking the utility usage, billing and
16 trending for the two Wastewater Treatment Plants and 95 sewage pumping stations. I am
17 also responsible for the maintenance of their electrical and instrument systems. These
18 functions require me to perform functions not directly related to maintenance. The
19 functions include legislative analysis, utility liaison, policies and practices relating to
20 electrical distribution and generation.

21 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

22 A. Yes. I submitted testimony in the UE 115 and UE 116 rate proceedings.

23 **Q. DOES THIS COMPLETE YOUR QUALIFICATION STATEMENT?**
24
25 A. Yes.

1 **Qualification Statement of David A. Tooze**

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is David A. Tooze. I am the Senior Energy Specialist for Portland's
5 Office of Sustainable Development. My business address is 721 N.W. 9th Avenue, Suite
6 350, Portland, Oregon 97209.

7 **Q. PLEASE STATE YOUR EDUCATIONAL QUALIFICATIONS.**

8 A. I received the Bachelor of Science Degree in Park Management from Oregon
9 State University in 1974.

10 **Q. PLEASE REVIEW YOUR EXPERIENCE IN THE ELECTRIC UTILITY**
11 **INDUSTRY.**

12 A. In 1980 I joined the Pacific Power and Light Company's Cottage Grove District
13 as an Energy Conservation Specialist. Through a chain of increasing responsibility, I
14 provided energy studies, contractor referrals and inspections for Pacific Power's Home
15 Weatherization Program. In 1983 I was assigned to the Grants Pass District to continue
16 energy efficiency for residential and commercial customers and assignment of Account
17 Manager duties for selected commercial and industrial customers.

18 In 1987 I joined the Energy Office of the City of Portland as a Technical Analyst
19 to design and launch a new energy program targeting multifamily rentals. In 1991 I
20 began the City Energy Challenge, Portland's internal energy efficiency program. Under
21 my direction more than 75 energy efficiency projects have been completed in office
22 buildings, police stations, fire stations, water and wastewater treatment facilities and
23 traffic/pedestrian signals producing annual savings of $2.1 million. From 1999 to 2002 I
24 led the Energy Division of the Office of Sustainable Development ("OSD"), and was

1 responsible for six energy efficiency programs and contracts. In 2002 OSD was
2 restructured for improved delivery of program services, and since then I have had lead
3 responsibility for energy efficiency and renewables on City facilities, optimizing traffic
4 signals for time and energy savings, and a statewide program for LED traffic and
5 pedestrian signals.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

7 A. Yes. I have testified in Dockets UE 115, UE 116 and UE 179.

8 **Q. DOES THIS COMPLETE YOUR QUALIFICATION STATEMENT?**

9 A. Yes.

1 **Qualification Statement of Lon L. Peters**
2
3 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
4 **ADDRESS.**
5
6 A. My name is Lon L. Peters. I am the President of Northwest Economic Research,
7 Inc. My business address is 607 S.E. Manchester Place, Portland, Oregon 97202.
8 **Q. PLEASE STATE YOUR EDUCATIONAL QUALIFICATIONS.**
9
10 A. I received the Bachelor of Arts degree in economics from Reed College in 1974,
11 and was elected to Phi Beta Kappa. I received the Master of Arts, Master of Philosophy,
12 and Doctor of Philosophy degrees, also in economics, from Yale University in 1976,
13 1978, and 1981, respectively.
14 **Q. PLEASE STATE YOUR ACADEMIC EXPERIENCE.**
15
16 A. From 1976 to 1979, I was a Graduate Research and Teaching Fellow at Yale
17 University. From 1979 to 1980, I was a Guest Scholar at The Brookings Institution in
18 Washington, D.C., and taught economics at Goucher College, in Towson, Maryland.
19 From 1980 to 1982, I was a member of the Economics Department at Reed College, in
20 Portland, Oregon, where I taught microeconomic theory, the economics of industrial
21 organization, and economic history. In the winter of 1984, I was a guest lecturer at the
22 School of Public Administration, at Lewis and Clark College in Portland. I have also
23 published and presented various papers in the fields of energy economics and economic
24 history. From 1991 to 1996, I was the Chair or Co-Chair of the Economics Section of the
25 Oregon Academy of Science. From 1991 to 2005, I was an Academic Advisor to the
26 Cascade Policy Institute.
27

1 **Q. PLEASE REVIEW YOUR EXPERIENCE IN THE ELECTRIC UTILITY**
2 **INDUSTRY.**
3
4 A. In 1982 I joined the Division of Rates at the Bonneville Power Administration,
5 and subsequently was appointed Chief of the Wholesale Rate Section. While at BPA I
6 worked on forecasts of wholesale and retail rates in the Pacific Northwest, and on BPA's
7 long-run incremental cost of service. I also supervised the development of BPA's
8 Wholesale Power Rate Design Study for the 1985 rate adjustment, and assisted in the
9 development of BPA's testimony for the hearings before the Federal Energy Regulatory
10 Commission (FERC) concerning BPA's 1981, 1982, and 1983 nonfirm energy rate
11 schedules.
12 In 1986 I joined the Public Power Council as Senior Economist, where I worked
13 on most aspects of the relationship between BPA and its consumer-owned utility
14 customers in the Northwest: wholesale rates, regional and extra-regional marketing,
15 revenue requirements, resources, contracts, fish and wildlife economics, federal and state
16 regulations, and load forecasting. I have served on technical review panels at BPA, the
17 Pacific Northwest Utilities Conference Committee, the Northwest Power Planning
18 Council, and the National Marine Fisheries Service.
19 In late 1994, I joined the firm of R.W. Beck, a national economics and
20 engineering consulting firm, and opened its Portland office. Until January 1996, I served
21 as Director of the Portland Office and as Executive Economist. My practice included
22 advising a variety of public power clients across the country on issues of wholesale
23 power supply, including the solicitation and analysis of proposed power supplies, retail

1 contracts and rate design, power and transmission contract negotiation and renegotiation,
2 transmission access and pricing, and unbundled wholesale power rate design.
3 Since early 1996, I have operated my own firm, providing independent economic
4 consulting services to a variety of clients in the Northwest, California, and the rest of the
5 United States.
6 **Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT WITNESS?**
7
8 A. Yes. I testified on behalf of BPA in the hearings before Federal Energy
9 Regulatory Commission (FERC) regarding BPA's 1983 nonfirm energy rate schedule,
10 and in BPA's 1985 wholesale power rate filling.
11 On behalf of the Public Power Council (PPC), I testified in BPA's 1987, 1991,
12 and 1993 rate proceedings. I testified on behalf of the PPC before state regulatory
13 commissions in Idaho, Oregon and Washington on the proposed merger of Pacific Power
14 and Light with Utah Power and Light, and on the same subject at the FERC on behalf of
15 PPC and the Northwest Public Power Association. In addition, I testified before the
16 Washington Utilities and Regulatory Commission in two cases on Puget Sound Power
17 and Light's Energy Cost Adjustment Clause.
18 On behalf of the Public Generating Pool (PGP), I testified in the 1996 BPA
19 wholesale power and transmission rate case and in the related transmission terms and
20 conditions case, and in the 2002 BPA wholesale power rate case.
21 On behalf of the City of Glendale, California, I testified before the Oregon Public
22 Utility Commission (OPUC) regarding the auction of generation and contract assets by
23 Portland General Electric.

1 On behalf of the Metropolitan Water District of Southern California, I testified
2 before the California Assembly on the subject of wholesale water wheeling in the state of
3 California.
4 On behalf of the Cities of Burbank, Glendale, and Pasadena, California, I testified
5 before the Department of Energy Board of Contract Appeals regarding financial damages
6 sustained under long-term power purchase agreements.
7 On behalf of the Public Generating Pool, Benton, Franklin, and Grays Harbor
8 County PUDs, and the Eugene Water and Electric Board, I submitted testimony before
9 the Bonneville Power Administration, on the subject of the Safety Net Cost Recovery
10 Adjustment Clause (SN-03).
11 On behalf the Public Generating Pool, Tacoma Power, and the Washington Public
12 Utility Districts Association, I delivered testimony before the Northwest Energy Caucus
13 of the U.S. Congress, on the subject of proposals for restructuring of the Northwest
14 transmission system.
15 On behalf of REBOUND, I prepared reports on regional energy market conditions
16 and testified before the Idaho Department of Water Resources regarding the application
17 for water rights by Cogentrix, Inc. and Newport Northwest.
18 On behalf of the City of Portland, I testified before the Oregon Public Utility
19 Commission in Dockets UE 115 and UE 116, regarding unbundled rates, marginal cost
20 rate design, tariff provisions, credits for demand reductions and small power generation.
21 On behalf of the City of Hermiston, Oregon, I prepared a report on "Private Costs
22 and Public Benefits Associated with the Condemnation of Electric Utility Distribution

1 Facilities by the City of Hermiston, Oregon", and testified at trial before the Circuit Court
2 of the State of Oregon for the County of Umatilla.

3 On behalf of Emerald People's Utility District, Eugene, Oregon, I prepared a
4 report on "Potential Private Injury Aspects of the Transfer of Service Territory to the
5 Emerald People's Utility District", and testified at trial before the Circuit Court of the
6 State of Oregon for the County of Linn.

7 On behalf of the City of Glendale, California, I filed an affidavit at the Federal
8 Energy Regulatory Commission regarding damages under complex pricing provisions of
9 a long-term power sale and exchange agreement in Docket No. EL06-5-000; this
10 affidavit was also filed before the U.S. District Court for the District of Oregon, Case
11 3:05-cv-01321-PK, in support of a motion to dismiss.

12 On behalf of the Cities of Tacoma and Seattle, Washington, I filed a declaration
13 before the Superior Court of the State of Washington in and for the County of Spokane,
14 No. 05201697-8, regarding the interpretation and application of the term "prudent utility
15 practices" to retail rate-setting by municipal utilities, and submitted a report regarding
16 damages to a mediator designated under a power purchase agreement.

17 On behalf of Turbine Technology Services, Inc., I testified before an arbitrator
18 appointed by the Supreme Court for the County of Niagara, State of New York, in Case
19 No. 110482, regarding damages associated with generation plant capacity and general
20 determinants of the value of assets in power markets, in litigation related to an outage of
21 a power generation plant in upstate New York.

22 On behalf of several groups of publicly-owned utilities, I testified before the
23 Bonneville Power Administration in Docket WP-07 on a variety of subjects, including

1 the costs of the Slice of System product, the proposed Operating Reserves credit, the

2 surplus power rate schedule, rate design, and the Emergency Surcharge for fish-related

3 expenses.

4 On behalf of the City of Portland, I have submitted testimony before the Oregon

5 Public Utilities Commission in Docket UE 179.

6 **Q. DOES THIS COMPLETE YOUR QUALIFICATION STATEMENT?**
7
8 A. Yes.

City of Portland Data Request 13

(a) Please provide a copy of the agreement between PacifiCorp and PGE regarding the provision of electricity to City-owned streetlights in PacifiCorp's service territory. (b) Please identify any effects on the agreement or otherwise if the City were to switch from service under PGE Schedule 91 to service under PGE Schedule 591.

Response to City of Portland Data Request 13

(a) See Attachment City of Portland 13.

(b) Please refer to PGE's Response to the City of Portland's Data Request 22 in PGE's UE 180 rate filing for part (b) of this request.

June 5, 2006

TO: Benjamin Walters
Office of City Attorney

FROM: Patrick G. Hager
Manager, Regulatory Affairs

PORTLAND GENERAL ELECTRIC
UE 180
PGE Response to City of Portland Data Request
Dated May 17, 2006
Question No. 022

Request:

Please provide a copy of the agreement between PacifiCorp and PGE regarding the provision of electricity to City-owned streetlights in PacifiCorp's service territory. Please identify any effects on the agreement or otherwise if the City were to switch from service under PGE Schedule 91 to service under PGE Schedule 591.

Response:

Attachment 022-A contains a copy of the Agreement. PGE objects to the question regarding the effects on the Agreement should the City switch service from Schedule 91 to Schedule 591 on the basis that it requests a legal opinion.

UE 180
Attachment 022-A

PacifiCorp and PGE Agreement

1 **Qualification Statement of Richard Gray**
2

3 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
4 **ADDRESS.**
5
6 A. My name is Richard Gray. I am currently employed as a Contract Administrator
7 and Senior Management Analyst with the Office of Transportation for the City of
8 Portland ("PDOT"). My business address is 1120 S.W. 5th Avenue, Room 800, Portland,
9 Oregon 97204.

10 **Q. PLEASE STATE YOUR EDUCATIONAL QUALIFICATIONS.**
11
12 A. I have a Bachelor's Degree in Political Science from the University of Oregon
13 and a Master's Degree in Public Affairs from the University of Oregon.

14 **Q. PLEASE REVIEW YOUR EXPERIENCE IN THE ELECTRIC UTILITY**
15 **INDUSTRY.**
16
17 A. In my current capacity I assist in managing the administration of contracts for
18 PDOT. This includes ensuring compliance with laws and policies and outreach to the
19 minority contracting community. I also perform several other functions that are not
20 directly related to contract administration. These functions include: legislative analysis
21 and liaison, utility pole attachment policies and practices, and street lighting rates and
22 finances. Prior to my current position, I performed various management and analytical
23 tasks for PDOT. For ten years, I was the City's Street Lighting Manager. I also serve as
24 a Board Member and Officer in the Oregon Joint Use Association, which is a utility
25 group with statutory authority to advise the Commission on utility pole joint use issues.
26

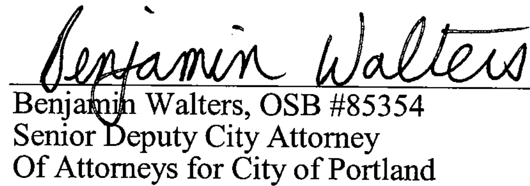
1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**
2
3 A. Yes. I testified in Docket UE 115, provided comments in AR 506, and filed
4 testimony in UE 179.

5 **Q. DOES THIS COMPLETE YOUR QUALIFICATION STATEMENT?**
6
7 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing CITY OF PORTLAND – DIRECT TESTIMONY OF DUANE SANGER, DAVID TOOZE AND LON L. PETERS on the individuals on the attached Service List by electronic mail and, for those individuals who have not waived paper service, by First Class Mail with the U.S. Postal Service in a sealed envelope with postage paid, and deposited in the post office at Portland, Oregon on said day.

DATED this 9th day of August, 2006



Benjamin Walters, OSB #85354
Senior Deputy City Attorney
Of Attorneys for City of Portland

UE 180 - SERVICE LIST

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