

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

3   UM 1271

4    In the Matter of

5    PORTLAND GENERAL ELECTRIC  
6    COMPANY

7    Deferred Accounting Authorization for  
8    Expenses/Refunds Associated with SB 408

STAFF’S OPENING BRIEF

9                                   **PROCEDURAL HISTORY**

10            On July 14, 2006, Portland General Electric Company (“PGE” or “Company”) filed an  
11    application for deferred accounting treatment of certain expenses/revenue refunds associated  
12    with Senate Bill 408. (“Application”)<sup>1</sup> Specifically, PGE’s application requests authorization to  
13    defer for later rate-making treatment expenses and revenues associated with the sale of non-  
14    utility assets, namely a LM6000 turbine and associated transformer (turbine) in 2001.

15            On August 1, 2006, Chief Administrative Law Judge (“ALJ”), Michael Grant issued a  
16    ruling suspending the docket until final rules were issued in Docket AR 499 (the rules  
17    implementing SB 408). On October 23, 2006, a joint prehearing conference was held.<sup>2</sup> On  
18    October 24, 2006, ALJ Christina Hayes issued a ruling holding each of the dockets, with the  
19    exception of UM 1271, in abeyance. In regards to UM 1271, ALJ Hayes’ ruling adopted a  
20    schedule that allowed for testimony and a hearing.

21            On December 6, 2006, PGE filed direct testimony in support of its Application. Due to  
22    the application of SB 408, PGE testified that the tax loss generated by the sale of non-utility  
23    assets would lower PGE’s retail electric prices by approximately \$4.8 dollars. *See* PGE/100,  
24    Dahlgren-Tinker/4, lines 15-17. Generally, PGE’s direct testimony describes the factual events  
25

26    

---

<sup>1</sup> Senate Bill 408 has been codified and is now found in ORS 757.267 and ORS 757.268.

<sup>2</sup> The joint prehearing conference involved UM 1238; UM 1240; UM 1244; UM 1266; and UM 1271.

1 related to the purchase and accounting treatment of the non-utility assets. Additionally, PGE  
2 offered policy rationales (benefits and burdens alignment and related policy against cross-  
3 subsidization) along with testimony on why it believed deferred accounting was appropriate in  
4 this instance. Overall, PGE’s direct testimony argues that deferred accounting should be  
5 employed to neutralize the impacts of the implementation of SB 408 as applied to certain non-  
6 utility assets that were purchased before SB 408 become law.

7 In response to PGE’s direct testimony, the Public Utility Commission of Oregon Staff  
8 (“Staff”), Industrial Customers of Northwest Utilities (“ICNU”), and Citizens’ Utility Board of  
9 Oregon (“CUB”) filed responsive testimony. Each and every party that filed responsive  
10 testimony pointed out that PGE’s request was contrary to SB 408 and the Commission’s rules  
11 implementing SB 408. In PGE’s rebuttal testimony, it mainly reasserts why it believes the  
12 deferral would be “good policy,” while recognizing that the contested issue – whether the  
13 deferral is consistent with the application and intent of SB 408 and the rules implementing SB  
14 408 – is legal in nature and, therefore, appropriate for legal briefs, not testimony.

15 On March 8, 2007, ALJ Christina Hayes issued a prehearing conference report for the  
16 remainder of this docket. That report provides for opening briefs on April 27, 2007; reply briefs  
17 by Staff and intervenors on May 18, 2007; and reply briefs by PGE on June, 8, 2007. While  
18 Staff and the intervenors have not yet seen PGE’s opening brief on the legal issues, all of the  
19 parties were given the option of filing opening briefs. As a result, Staff takes the opportunity to  
20 file this opening brief. Obviously, Staff will also file a reply to PGE’s legal assertions once they  
21 are submitted.

22 **DISCUSSION**

23 This case is legally straightforward. SB 408 and the rules implementing it have changed  
24 the paradigm for analyzing tax treatment for certain electric and gas utilities, including PGE. In  
25 response to this paradigm shift, PGE has requested deferred accounting as a mechanism for  
26 returning to the old paradigm for the purpose of the sale of certain non-utility assets. Regardless

1 of past Public Utility Commission of Oregon (“Commission”) policies and treatment, PGE’s  
2 Application utterly ignores and attempts to subvert the plain, natural, and ordinary meaning of  
3 SB 408 and the rules implementing SB 408.

4 Specifically, SB 408 and the rules implementing SB 408, detail authorized adjustments to  
5 the amount of taxes paid. *See* ORS 757.268(13)(f)(A)-(C); OAR 860-022-0041(3). As stated in  
6 its testimony, the Legislature did adopt exemptions for losses by affiliates or other entities  
7 related to the consolidated group, such as removing the tax effects of charitable contributions and  
8 accelerated depreciation. *See* Staff/100, Owings/5, lines 13-20. Absent from the exemptions,  
9 however, is any mention of an exemption for non-utility losses. Indeed, truing up the actual  
10 taxes collected in rates with the actual taxes paid to units of government, which are properly  
11 attributed to the regulated operations of the utility, were the main impetus for the legislation. *See*  
12 *Id.*, line 20 through Owings/6, line 2. In order to grant PGE’s Application, the Commission  
13 would have to ignore the plain, natural and ordinary meaning of SB 408 in violation of the rules  
14 of statutory construction. *See Portland General Electric v. Bureau of Labor and Industries*, 317  
15 Or 606, 859 P2d 1143 (1993); *see also* ORS 174.010 (the courts will not insert what has been  
16 omitted or omit what has been inserted).

17 Presumably, and because SB 408 is clear on this issue, PGE will argue that the  
18 Commission should use its general authority under ORS 757.040 to grant its Application. If  
19 PGE were to make this assertion, the obvious and apparent flaw is that it would simply be asking  
20 the Commission to do indirectly what it cannot do directly. Simply stated, the Commission  
21 should not exercise its general powers in a way that is inconsistent with the specific requirements  
22 and objectives of SB 408. *See also* Staff/100, Owings/6, lines 3-14.

23 ///

24 ///

25 ///

26 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CONCLUSION**

For the foregoing reasons, Staff respectfully urges that the Commission deny PGE's Application to defer expenses associated with the sale of certain non-utility assets.

DATED this 27<sup>th</sup> day of April 2007.

Respectfully submitted,

**HARDY MYERS**  
Attorney General

/s/ Jason W. Jones  
Jason W. Jones, #00059  
Assistant Attorney General  
Of Attorneys for Staff of the Public Utility  
Commission of Oregon

1 **CERTIFICATE OF SERVICE**

2  
3 I certify that on April 27, 2007, I served the foregoing upon all parties of record in this  
4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid  
5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

6 PORTLAND GENERAL ELECTRIC COMPANY  
7 RATES & REGULATORY AFFAIRS  
8 121 SW SALMON ST 1WTC0702  
9 PORTLAND OR 97204  
10 pge.opuc.filings@pgn.com

**DAVISON VAN CLEVE PC**  
MELINDA J DAVISON  
333 SW TAYLOR - STE 400  
PORTLAND OR 97204  
mail@dvclaw.com

9 **W**  
**CITIZENS' UTILITY BOARD OF OREGON**  
10 LOWREY R BROWN  
11 UTILITY ANALYST  
12 610 SW BROADWAY - STE 308  
13 PORTLAND OR 97205  
14 lowrey@oregoncub.org

**DAVISON VAN CLEVE PC**  
MATTHEW W PERKINS  
333 SW TAYLOR - STE 400  
PORTLAND OR 97204  
mwp@dvclaw.com

12 **W**  
**CITIZENS' UTILITY BOARD OF OREGON**  
13 JASON EISDORFER  
14 ENERGY PROGRAM DIRECTOR  
15 610 SW BROADWAY STE 308  
16 PORTLAND OR 97205  
17 jason@oregoncub.org


**KAFOURY & MCDUGAL**  
LINDA K WILLIAMS  
ATTORNEY AT LAW  
10266 SW LANCASTER RD  
PORTLAND OR 97219-6305  
linda@lindawilliams.net

16 **W**  
**CITIZENS' UTILITY BOARD OF OREGON**  
17 ROBERT JENKS  
18 610 SW BROADWAY STE 308  
19 PORTLAND OR 97205  
20 bob@oregoncub.org

**PORTLAND GENERAL ELECTRIC**  
DOUGLAS C TINGEY  
ASST GENERAL COUNSEL  
121 SW SALMON 1WTC13  
PORTLAND OR 97204  
doug.tingey@pgn.com

19 **DANIEL W MEEK ATTORNEY AT LAW**  
20 DANIEL W MEEK  
21 ATTORNEY AT LAW  
22 10949 SW 4TH AVE  
23 PORTLAND OR 97219  
24 dan@meeek.net

**PUBLIC UTILITY COMMISSION**  
JUDY JOHNSON  
PO BOX 2148  
SALEM OR 97308-2148  
judy.johnson@state.or.us

22   
23 Neoma Lane  
24 Legal Secretary  
25 Department of Justice  
26 Regulated Utility & Business Section