

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1271**

In the Matter of )  
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 )  
PORTLAND GENERAL ELECTRIC, )  
 )  
Deferred Accounting Authorization for )  
Expenses/Refunds Associated with SB 408. )  
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**RESPONSE TESTIMONY**  
**OF THE**  
**CITIZENS' UTILITY BOARD OF OREGON**

January 22, 2007



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Deferred Accounting Authorization for	)	OF OREGON
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_____	)	

1           My name is Lowrey Brown, and my qualifications are listed in CUB Exhibit 101.

2   **I. Introduction**

3           In this docket, PGE asks the Commission for permission to defer the tax impact of  
4 unregulated activity, such that the amount collected for taxes in rates would not reflect  
5 the amount of taxes paid to government entities. That PGE would file this Application in  
6 the face of Senate Bill 408 and the Commission's rules implementing the Bill is stunning.  
7 To justify its request, the Company argues that it could not have foreseen SB 408, and so  
8 unregulated activity commenced before the passage of SB 408 should be excluded from  
9 the Bill's implementation. Never mind that SB 408 contains no such grandfathering  
10 language, and that distinguishing between unregulated activities commenced before the  
11 passage of SB 408 and after would be a procedural rat's nest. PGE's request in this  
12 docket is contrary to both SB 408 and the Commission's rules implementing it, and  
13 should be denied outright.

1 **II. The Impetus For SB 408**

2           There was, and continues to be, a great deal of controversy surrounding Senate  
3 Bill 408. It seems safe to say, however, that one thing most people involved would agree  
4 on is that the issue of utility taxes in rates was brought to a head by Enron's use of  
5 unregulated tax deductions to reduce the amount of taxes paid to government entities,  
6 while PGE continued to collect tax payments from regulated customers as if PGE were  
7 not a part of Enron's consolidated tax filing.

8           Though SB 408 addresses the unfairness of stand-alone tax attribution in general,  
9 the most egregious abuse of stand-alone attribution was perpetrated by Enron, giving rise  
10 to the phrase "the Enron problem." The phrase was used to describe circumstances  
11 where the net consolidated tax liability of a utility's entire corporate family was lower  
12 than the utility's stand-alone tax liability that had been forecast for rates. Not only does  
13 PGE's application here violate the principles of SB 408, it could actually resurrect "the  
14 Enron problem." In testimony, Messrs. Piro and Tamlyn state that the entirety of the  
15 approximately \$4.8 million in tax savings would flow to customers, suggesting that  
16 PGE's consolidated tax liability will be \$4.8 million below the stand-alone forecast  
17 included in rates (all other things equal).<sup>1</sup> Thus, once again, PGE would collect from  
18 customers more taxes in rates than would be paid to any government entity.

19 **III. SB 408 & PGE's Request**

20           An excerpt from SB 408 follows:

21           (d) The parent company of a utility may employ accounting methods,  
22 debt, consolidated tax return rules and other techniques in a way that  
23 results in a difference between the tax liability paid to units of government  
24 by the utility, or the affiliated group of corporations of which the utility is

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<sup>1</sup> UM 1271 PGE/200/Piro-Tamlyn/4-5.

1 a member, and the amount of taxes collected, directly or indirectly, from  
2 customers.

3 (e) Tax uncertainty in the ratemaking process may result in collecting  
4 taxes from ratepayers that are not paid to units of government.

5 (f) Utility rates that include amounts for taxes should reflect the taxes that  
6 are paid to units of government to be considered fair, just and reasonable.

7 Senate Bill 408, Section 2.

8 Senate Bill 408 was signed by the Governor and became effective on  
9 September 2, 2005. As of that date, Senate Bill 408 became law, and the Commission is  
10 responsible to implement the Bill in rule and policy. In PGE's testimony in this case, the  
11 Company summarizes the change in law enacted by the Bill, and therefore the change in  
12 Commission policy.

13 Senate Bill 408 (SB 408) now requires that the tax effects of non-utility  
14 expenses and investments affect ratemaking if those tax effects lower the  
15 taxes that the utility otherwise would pay.

16 UM 1271 PGE/100/Dahlgren-Tinker/3.

17 Given PGE's apparent understanding of Senate Bill 408 and the Company's  
18 experience as a focal point of frustration regarding the collection of utility taxes, the  
19 Company's request in this case is baffling. Senate Bill 408 says that "rates that include  
20 amounts for taxes should reflect the taxes that are paid to units of government," yet PGE  
21 is asking the Commission to ignore the fact that PGE's unregulated operations will  
22 reduce the taxes that are paid to units of government and include that amount in rates.

#### 23 **IV. PGE Arguments**

24 Most of PGE's arguments in this case simply rehash arguments that were made in  
25 opposition to SB 408 and in AR 499, the Commission's rulemaking proceeding to  
26 implement SB 408. These arguments are rendered moot, as the Legislature and the

1 Commission have both decided that these arguments are not persuasive. The only new  
2 arguments presented are that the Company could not have foreseen SB 408 when it  
3 purchased the turbine in 2001,<sup>2</sup> and that the Commission has shown a willingness to  
4 consider the impact of SB 408 in future dockets.<sup>3</sup>

5 PGE's argument that it could not have foreseen SB 408 when it purchased the  
6 turbine and that SB 408 should not be applied to an "old decision" is irrelevant.<sup>4</sup> PGE  
7 also did not foresee that prices in the wholesale market would drop after the Company  
8 had committed to the turbine.<sup>5</sup> Should PGE be compensated for profits the Company  
9 would have made in a world that did not materialize? PGE's request suggests that  
10 anything initiated before the passage of SB 408 be grandfathered out of the law. Not  
11 only does the law not say this, but the repercussions of such a policy would render  
12 SB 408 meaningless. Never mind the complexity of distinguishing between unregulated  
13 activities commenced before the passage of SB 408 and after. Should the tax impacts of  
14 an unregulated power plant built before SB 408 be excluded? Should all unregulated  
15 activities of a company in existence before SB 408 be excluded? It should also be noted  
16 that the law is very clear in its applicability to taxes in 2006.<sup>6</sup>

17 Finally, the Company argues that the Commission has "expressed a willingness to  
18 consider unique circumstances caused by the application of SB 408 as they arise."<sup>7</sup> First  
19 of all, this is not a unique circumstance in that it involves the tax consolidation of  
20 unregulated and regulated businesses. Second, the Commission quote provided by PGE

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<sup>2</sup> UM 1271 PGE/100/Dahlgren-Tinker/1, 3, & 6-7.

<sup>3</sup> UM 1271 *id.* at 5-6.

<sup>4</sup> UM 1271 *id.* at 1 & 3.

<sup>5</sup> UM 1271 PGE/200/Piro-Tamlyn/2.

<sup>6</sup> SB 408 Section 4(2) "... the automatic adjustment clause shall apply only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006."

<sup>7</sup> UM 1271 PGE/100/Dahlgren-Tinker/5-6.

1 appeared in the section, as acknowledged by the Company, addressing the proposed  
2 “Earnings Test and the ‘Double Whammy’.”<sup>8</sup> PGE’s request in this case in no way  
3 relates to the so-called “double whammy,” and the Commission quote cited by PGE is  
4 applied out of context in reference to an unregulated tax deduction.

5 Third, the Commission considered this very issue in AR 499; in its Order, the  
6 Commission states:

7 PGE also proposes a deferral mechanism to ensure “the proper treatment  
8 of disallowed expenses, non-utility expenses, and expenses that have not  
9 been included in rates.” ... PGE uses the example of a turbine not included  
10 in rates, and which was sold at a loss. This sale would result in a tax  
11 deduction, which PGE argues should not flow to ratepayers because they  
12 did not pay for the turbine ...

13 The automatic adjustment clause for taxes is certainly foreseeable; it is set  
14 in statute. As to variances as a result of items not included in rates, those  
15 too are foreseeable. In keeping with our prior decisions to consider  
16 deferral applications on a case by case basis, we will consider applications  
17 for deferral with a skeptical eye in light of the principles set forth in this  
18 order ... Finally, we believe that adoption of a deferral mechanism would  
19 be in opposition to the intent of the legislature, because it would  
20 effectively offset the automatic adjustment clause so that it did not  
21 “adjust” rates, as it was designed to do.

22 OPUC Order No. 06-400 at 10-12.

23 The Commission has stated that it will consider, “with a skeptical eye,” deferral  
24 applications for non-utility expenses, and declined to establish an ongoing deferral to  
25 address such expenses, as to do so would “be in opposition to the intent of the  
26 legislature.” CUB was an active participant in the drafting of SB 408 and the ensuing  
27 ratemaking proceeding, AR 499, and we find it unfathomable that the legislature did not

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<sup>8</sup> OPUC Order No. 06-400 at 8-9.

1 intend to capture the tax impacts of consolidating the taxes of a regulated utility's  
2 business with "merchant" or "non-utility" activity.<sup>9</sup>

3 **V. Conclusion**

4 PGE's request in this case is contrary to SB 408 and the Commission's rules  
5 implementing SB 408. The Company's Application should be denied.

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<sup>9</sup> UM 1271 PGE Application at 3 and PGE/200/Piro-Tamlyn/2.

## WITNESS QUALIFICATION STATEMENT

**NAME** Lowrey R. Brown

**EMPLOYER** Citizens' Utility Board of Oregon

**TITLE** Utility Analyst

**ADDRESS** 610 SW Broadway, Suite 308  
Portland, OR 97205

**EDUCATION** Master of Science, Engineering  
Bachelor of Science, Civil Engineering  
Stanford University, Stanford California

**EXPERIENCE** Provided comments and participated in settlement discussions in OPUC dockets AR 495, UE 161, UE 173, UM 1014, UM 1147, UM 1158, UM 1169, UM 1206, and UM 1209. Presented testimony and engaged in settlement proceedings in UE 165, UE 167, UE 170, UM 1121, and UM 1187. Participated in technical subcommittees for the Governor's Advisory Group on Global Warming, and in the Regional Representatives Group for Grid West. Currently involved in the development of PacifiCorp's and PGE's integrated resource plan.

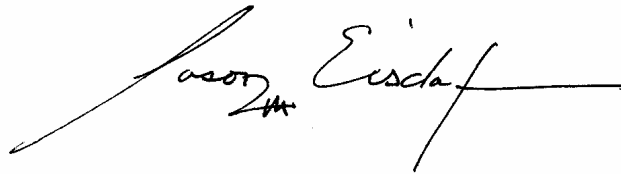
Prior to this, worked as a consultant with KEMA-Xenergy in Portland from 2002 to 2003 on energy and energy efficiency issues. Between 1997 and 2001, freelanced in Colorado for The Valley Journal, Solar Energy International, Energy Systems Engineering, and Resource Engineering providing writing and technical assistance.



**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of January, 2007, I served the foregoing Response Testimony of the Citizens' Utility Board of Oregon in docket UM 1271 upon each party listed below, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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Jason Eisdorfer #92292  
Attorney for Citizens' Utility Board of Oregon

**W=Waive Paper service, C=Confidential, HC=Highly Confidential**

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