

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 324**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Advice No. 17-05 (ADV 523), Schedule 134
Gresham Privilege Tax Payment Adjustment.

**FINAL BRIEF OF PORTLAND
GENERAL ELECTRIC COMPANY**

PGE submits this Final Brief to respond to arguments raised in the Cross-Response Brief filed by Gresham.

In its Cross-Response, Gresham asserts that PGE has not sufficiently articulated its position on the issues in this case. PGE has addressed the key issues in depth and will not engage in unnecessary repetition. Instead we provide below the specific pages of PGE's Opening Brief and PGE's Reply Brief that address the issues raised in Gresham's Cross-Response:

- Gresham's false assertion that the additional taxes were "due" during the period of the appeal and "overdue" after its conclusion: Opening p. 10; Reply pp. 3-6, 12-13.
- The legal effect of court *judgments*, distinct from the legal effect of court opinions and orders: Opening p. 10; Reply pp. 3-6, 12-13.¹
- When, how, and by whom the obligation to pay taxes for the retroactive period was lawfully imposed on PGE: Opening pp. 6-7, 10; Reply pp. 3-6, 12-14.
- The proper characterization of PGE's retroactive tax obligation as a *current liability*, not a *past expense*, at the time PGE filed its application in this case: Opening pp. 14; Reply pp. 1-2, 7-8.
- The manner in which OAR 860-022-0040 operates, as to privilege taxes in excess of 3.5%, outside of any rate-making process, with no prospective

¹ Gresham's briefing continues to display a misunderstanding of Oregon civil procedure, referring to court *judgments* as if they were interchangeable with orders and opinions. *See* Gresham Cross-Response, p. 2 (stating that PGE "argues the legal effect of certain court orders" (referring to the First Judgment and the Second Judgment) but does not address "the legal effect of other orders"). Staff's briefing displays a similar misunderstanding of civil procedure. *See* Staff Response, p. 3 (stating that PGE "won the first in a series of appeals" on "January 13, 2012" (the date the *Circuit Court* issued its opinion on PGE's claim for declaratory relief"—Gresham filed its *appeal* two months later).

estimation of anticipated amounts: Reply pp. 8-9.

- How the PUC's precedents in the prior Colstrip and Idaho Power cases (also the prior NW Natural case) support PGE's application in this case: Opening pp. 10-11; Reply pp, 10-12, 14-16.
- Why an earnings test is not appropriate for privilege taxes in excess of 3.5%, which are directly charged to customers under OAR 860-022-0040 and are not included in setting general rates: Reply pp. 16.²

The Commission should approve proposed Schedule 134 for the reasons stated in PGE's Opening Brief and PGE's Reply Brief.

Gresham's Cross-Response also continues to rely on arguments based on unsubstantiated, irrelevant assertions. PGE is filing a Motion to Strike, requesting that the Commission disregard all unsupported factual assertions Gresham relies on in its Response Brief and its Cross-Response Brief. As described in that motion, PGE's application and all of its supporting arguments are based on the law, PUC precedent, and facts that are a matter of public record. It would be improper for the Commission to deny PGE's application based on the irrelevant, unsubstantiated assertions in Gresham's briefings, which are detailed in PGE's Motion to Strike. In the event that the Commission denies the Motion to Strike, PGE reserves the right to conduct discovery and supplement the record with complete facts, and reserves the right to request a hearing.

² Gresham adds a citation in its Cross-Response to Phase II of the Idaho Power case, *Re Idaho Power Company Request for General Rate Revision*, Docket No. UE 233 (Phase H), Order No. 13-416 (Nov. 12, 2013), in which the Commission decided to use an earnings test with regard to retroactive *income tax* refunds under ORS 757.259. The Commission reasoned that the earnings test was appropriate "for revenues and expenses that were not foreseen in a general rate case." *Re Idaho Power Company Request for General Rate Revision*, Order No. 13-416 at 5. That reasoning does not apply to city privilege taxes in excess of 3.5%, which are *not* included in a general rate case.

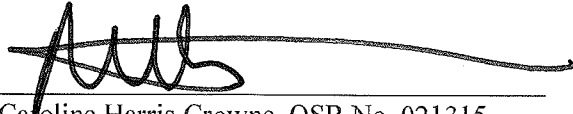
DATED this 20th day of June, 2017.

PORTLAND GENERAL ELECTRIC
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