



Portland General Electric Company

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Via Regular Mail &

Email: PUC.FilingCenter@state.or.us

Commission Chair Lisa Hardie
Commissioner Steve Bloom
Commissioner Megan Decker
Oregon Public Utility Commission
PO Box 1088
Salem, OR 97308-1088

RE: PGE's Advice No. 17-05, Schedule 134 Gresham Privilege Tax Payment
Adjustment – Advice No. 17-05

Dear Commissioners:

PGE is writing in response to the letter sent to you by the City of Gresham that comments on PGE's filing of Advice No. 17-05, Schedule 134 Gresham Privilege Tax Payment Adjustment. It is not usual to comment on Advice Filings in this manner, much less to respond to such comments in a letter to the Commissioners, and we hope you understand that PGE felt it necessary to clarify PGE's position on the matters raised in the City's letter. As you will see, we disagree with many of the things stated in the letter.

PGE views the facts related to the Gresham resolution and the court challenge quite differently from the City, and disagrees strongly with their characterization of PGE's actions. First, and foremost, we need to make this clear: PGE at all times was acting to protect the interests of our customers from paying too much due to the City's actions which we believed were not allowed under Oregon law. We ultimately did not prevail in court but there was never any "profit" or shareholder gain hoped for or achieved by PGE's actions.

We also disagree with their story of the dispute between the parties concerning Gresham's resolution, and its effects. There were three judicial decisions. The first judicial decision invalidated the resolution. Afterward, there was no basis for PGE to continue collecting that portion of the privilege tax from January 2012 going forward, and Gresham did not file for a stay of the decision. If PGE did collect from Gresham customers, we believed that the collection potentially was subject to a class action suit from Gresham residents for collecting money based on a resolution that had been ruled invalid by a court without a stay being granted. PGE could have been accused of collecting money for taxes not owed to or paid to the taxing authority. Based on this, PGE's not collecting the additional amounts from customers at this point in time could hardly be characterized as a "choice", as Gresham portrays it.

The second judicial decision, while it reversed the trial court ruling, did not have the effect of changing the trial court order because an appeal was timely filed. No appellate judgment was issued by the Court of Appeals. Gresham did not move for reinstatement of the resolution at the trial court or ask for a stay. There was, therefore, again no basis for PGE to recommence collecting the extra 2% privilege tax amount from Gresham customers. With no stay asked for or received, the risk of a class action lawsuit was still present.

The third judicial decision, the Oregon Supreme Court decision, did not become final until the Court rejected PGE's request for rehearing. Then and only then did the final "appellate judgment" issue, and the direction was sent to the trial court to reverse the order which had been in place since January 2012. When the question of whether the resolution was validly enacted by the City was finally decided, PGE recommenced collecting the extra 2% from Gresham customers in accordance with OAR 860-022-0040.

As for interest on the unpaid privilege taxes, while PGE calculated and paid the extra 2% of privilege taxes after the Supreme Court's ruling was final, PGE did not pay interest to Gresham on that amount because it believes, and it has argued to the trial court, that no interest is owing. PGE's position is that Gresham is not legally entitled to interest from PGE. NW Natural paid interest to the City on its unpaid amounts because it signed a stipulated order on November 4, 2011 in which it agreed to do so. NW Natural was bound to pay interest by that stipulated order. PGE did not sign such an order then, or anytime afterward.

As for Gresham's legal claims in their letter, the payments PGE made to the City and the collection of those amounts from current customers has no "retroactive ratemaking" component. In fact, it is a perfect match of benefits and burdens. The \$7 million recently paid to Gresham that we are asking to collect from PGE from current customers will benefit only today's customers and those consuming electricity for the next 5 years. If the city invests in new

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Re: Advice No. 17-05

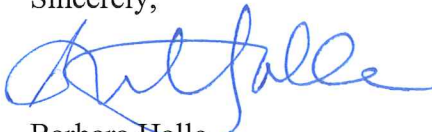
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patrol vehicles, those vehicles will be on the streets today to protect today's residents, not the residents from 2012. If the city uses the \$7 million to pay down city debt and reduce interest payments on the remaining debt, those reduced interest payments will benefit today's residents, and not the residents who left the City after 2012.

Gresham is also incorrect when it characterizes Advice No. 17-05 as causing Gresham customers "to pay exactions for services provided in the past." A privilege tax is not payment for services provided by PGE; it is a payment by PGE for the right to occupy Gresham's right of way in order for PGE to provide electric services to PGE customers. It is a tax on the utility that the utility collects from its customers if the tax exceeds 3.5% of gross revenues earned within the city, as required by OAR 860-022-0040. The tax only uses resident consumption as a "base" from which to compute how much tax the utility must pay to the City. Also, during the whole period in question, PGE paid all of the privilege taxes it owed to Gresham other than the 2% added by the challenged resolution, and its yearly notarized statements of the amounts of those privilege taxes have not been disputed. Given that the calculation of the 2% additional amounts were based on the same gross revenue numbers that PGE used in the past, it is unclear how Gresham can now say that there are questions about whether the amounts were "correctly calculated", but if there are any, PGE is ready to resolve them.

Given that the Supreme Court decision resulted in a retroactive imposition of the 2% portion of the privilege tax from a governmental agency, PGE believes that ORS 757.259(1) applies. This is consistent with a decision of the Commission in the Public Meeting of July 28, 2009 regarding PGE Advice No. 08-16 Colstrip Tax and Royalty Payment Adjustment. While PGE expects the Commission to ultimately conclude that Gresham is incorrect in its interpretation of the doctrine of retroactive ratemaking and the proper interpretation of Oregon law applying to deferrals, these issues can be briefed and argued in the investigation following the suspension, and PGE will support a suspension and investigation of those issues at the April 18 public meeting. Thereafter, PGE would appreciate a timely pre-hearing conference and a prompt assignment of an ALJ so we can move forward to an order regarding PGE's Advice filing.

Sincerely,



Barbara Halle
Associate General Counsel

Cc: Service List