

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

2 CITY OF PORTLAND,

3 Complainant,

4 v.

5 PORTLAND GENERAL ELECTRIC  
6 COMPANY, an Oregon corporation.

7 Defendants.

Docket No.

**COMPLAINT**  
(ORS 756.040, ORS 756.16,  
and ORS 757.500)

8 Complainant, City of Portland, Oregon (“Portland”), alleges as follows:

9 1. At all material times, Portland was and now is a municipality existing and duly  
10 incorporated and organized under the laws of the State of Oregon. As a PGE customer, the City  
11 of Portland has approximately 850 utility accounts with total combined annual PGE utility  
12 billings of approximately \$10.4 million (not including street light maintenance). Under the  
13 Portland City Charter, the Portland electorate has charged the Portland City Council with  
14 responsibility for protecting the interests of Portland’s citizens in matters relating to public  
15 utilities.

16 2. At all material times, Portland General Electric (“PGE”) was and is an Oregon  
17 corporation that provides electricity services, utility management, and related services subject to  
18 regulation by the Commission. PGE is a “public utility” as defined in ORS 757.005.

19 3. The contact information for the parties to be served is as follows:

20 City of Portland, Oregon	Portland General Electric
21 City Attorney’s Office	121 SW Salmon St.
1221 SW Fourth Ave, Room 430	Portland, OR 97204
22 Portland, OR 97204	

23 4. The Commission has jurisdiction to hear this complaint under the provisions of  
24 ORS 756.040, ORS 756.160 and ORS 757.500.

25 5. The Commission approved Enron Corp.’s (“Enron”) acquisition of PGE in 1997.  
26 *In re Enron Corp.*, Order No. 97-196, UM 814, 177 P.U.R.4th 587, 1997 WL 406191 (June 4,

1 1997). In approving Enron’s ownership of PGE under the terms of ORS 757.511, the  
2 Commission imposed various regulatory requirements, including but not limited to, creating a  
3 “ring fence” between PGE and Enron and its other subsidiaries. *See, e.g.,* Order No. 97-196,  
4 Stipulated Condition No. 3 (PGE required to maintain separate accounting systems, apart from  
5 Enron) and Condition No. 5 (PGE required to maintain separate debt and preferred stock ratings).

6 6. On or about July 2, 1997, when Enron’s merger with PGE became effective, PGE  
7 became a member of Enron’s consolidated group for federal income tax purposes. *Portland*  
8 *General Electric Co., Securities and Exchange Commission Form 10-K 1997 Annual Report*, p.  
9 31; *Portland General Electric Co., Securities and Exchange Commission Form 10-K 1998*  
10 *Annual Report*, p. 38; *Portland General Electric Co., Securities and Exchange Commission*  
11 *Form 1999 10-K/A Annual Report*, p. 12; *Portland General Electric Co., Securities and*  
12 *Exchange Commission Form 10-K 2001 Annual Report*, p. 23; *Portland General Electric Co.,*  
13 *Securities and Exchange Commission Form 10-K 2002 Annual Report*, p. 42; *Portland General*  
14 *Electric Co., Securities and Exchange Commission Form 10-K 2003 Annual Report*, p. 52;  
15 *Portland General Electric Co., Securities and Exchange Commission Form 10-K 2004 Annual*  
16 *Report*, p. 42; *Portland General Electric Co., Securities and Exchange Commission Form 10-K*  
17 *2005 Annual Report*, p. 89.

18 7. On or about May 7, 2001, PGE ceased to be a member of Enron’s federal  
19 consolidated tax group. *PGE 2001 10-K*, p. 23; *PGE 2002 10-K*, p. 42; *PGE 2003 10-K*, p. 52;  
20 *PGE 2004 10-K*, p. 42; *PGE 2005 10-K*, p. 89.

21 8. On or about December 24, 2002, PGE again became a member of Enron’s federal  
22 consolidated tax group. *PGE 2002 10-K*, p. 42; *PGE 2003 10-K*, p. 52; *PGE 2004 10-K*, p. 42;  
23 *PGE 2005 10-K*, p. 89.

24 9. On or about December 31, 2002, PGE and Enron entered into a tax allocation  
25 agreement under which PGE made payments to Enron equivalent to the income taxes that PGE  
26 might have otherwise made if it were a stand-alone entity. *PGE 2003 10-K*, p. 52; *PGE 2004 10-*

1 K, p. 42; PGE 2005 10-K, p. 89.

2 10. The tax allocation agreement between PGE and Enron was terminated effective on  
3 or about April 3, 2006. *Portland General Electric Co., Securities and Exchange Commission*  
4 *Form 8-K Current Report*, Exhibit 3.1, Separation Agreement, p. 4 (April 3, 2006).

5 11. On information and belief, PGE's consolidated cash flow statements during the  
6 periods between July 1997 and December 2005 indicated that PGE made cash payments of  
7 income taxes as follows:

Period	Cash Payment (in millions)
6/97	\$73
1997	\$96 (Net \$23 post acquisition)
1998	\$133
1999	\$139
2000	\$109
2001	\$35
2002	\$2
2003	\$39
2004	\$83
2005	\$88
Total	\$651

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15 12. On information and belief, during this time, Enron operated with over 2,500  
16 subsidiaries in the United States, South America, Asia, Europe and the Caribbean, operating  
17 electric generation, transmission, and distribution facilities; gas transmission pipelines and  
18 distribution companies; liquefied natural gas unloading, storage and vaporizing facilities; and  
19 companies engaged in providing water and wastewater services. Securities and Exchange  
20 Commission, *In re Applications of Enron Corp., Administrative Proceeding File No. 3-10909*,  
21 Initial Decisions Release No. 222, 2003 SEC LEXIS 316, \*25-26 (February 6, 2003).

22 13. On information and belief, Enron and PGE represented in sworn filings to federal  
23 agencies that PGE maintained a separate and arm's length business relationship with Enron and  
24 its other subsidiaries. Securities and Exchange Commission, *Enron Corp., et al., Memorandum*  
25 *Opinion and Order Authorizing External and Intrasystem Financing and Related Transactions*;  
26

1 Authorizing Service Agreements; and Reserving Jurisdiction, Release Nos. 35-27809, 70-10200,  
2 2004 SEC LEXIS 546, \*11-\*12 (March 9, 2004). In filings before the Securities and Exchange  
3 Commission, Enron and Portland General Electric maintained that the companies were insulated  
4 from one another in the following particulars:

- 5 • The companies maintained separate books and records
- 6 • The companies maintained separate bank accounts
- 7 • The companies did not commingle assets, and separately managed cash
- 8 • The companies held all assets in their own names
- 9 • The companies conducted business in their own names
- 10 • The companies prepared and maintained separate financial statements
- 11 • PGE accounted for assets and liabilities separate and apart from Enron
- 12 • PGE used only PGE's funds to pay for its liabilities and expenses
- 13 • PGE maintained an arm's length relationship with Enron
- 14 • PGE entered into transactions with Enron only on an arm's length basis, where  
15 permitted by state and federal law
- 16 • PGE used PGE's funds to pay staff and employee salaries
- 17 • PGE did not guarantee or become obligated for Enron's debts
- 18 • PGE's credit was not available to satisfy Enron's obligations
- 19 • PGE's assets were not pledged for Enron's benefit
- 20 • PGE's pension plan was maintained separately

#### 21 **COUNT 1**

22 14. The City realleges paragraphs 1-13 above.

23 15. The Oregon Department of Revenue has established rules for filing corporate  
24 taxes on a consolidated basis. Oregon corporate tax filing instructions require that income and  
25 tax loss from federal consolidated group member corporations that are not unitary with the  
26 Oregon member's business must be excluded from federal consolidated return net income before  
allocation and apportionment of the unitary Oregon member's business income. Unitary  
businesses must have a sharing or exchange of value between members or parts of the business  
enterprise such as: centralized management or common executives; centralized administrative  
services or functions, and functional integration as shown by a flow of goods, capital resources or

1 services. Oregon corporate tax filing instructions also state that a corporation must file a separate  
2 Oregon tax return if it is consolidated for federal tax purposes, but is not in a unitary business  
3 relationship with any other members of its federal consolidated group.

4 16. Under the conditions imposed upon PGE and Enron by the Commission, the two  
5 companies were not unitary under Oregon law, and PGE should not have filed on a consolidated  
6 basis with Enron for Oregon corporate income tax purposes.

7 17. As maintained by PGE and Enron in proceedings before other agencies, such as  
8 the Securities and Exchange Commission, the two companies were separate and not integrated.  
9 According to the facts as represented by the two companies in these other proceedings, the  
10 businesses were not unitary under Oregon law, and PGE should not have filed on a consolidated  
11 basis with Enron for Oregon corporate income tax purposes.

12 **COUNT 2**

13 18. The City realleges paragraphs 1-13 above.

14 19. On March 9, 2004, Enron filed a notice of registration with the Securities and  
15 Exchange Commission pursuant to the Public Utility Holding Company Act of 1935  
16 (“PUHCA”). By filing the notice of registration, Enron became a registered holding company  
17 under PUHCA. *Enron Corporation, Securities and Exchange Commission Form 8-K Current*  
18 *Report*, p. 2 (March 9, 2004).

19 20. Section 12 of PUHCA and Securities and Exchange Commission Rule 45  
20 generally prohibited any public utility holding company or subsidiary company from, directly or  
21 indirectly, lending or in any manner extending its credit to or indemnifying, or making any  
22 donation or capital contribution to, any company in the same holding company system, except  
23 pursuant to a Commission order. As a form of capital distribution between subsidiaries, the  
24 Securities and Exchange Commission required that tax allocation agreements between a  
25 registered holding company and its subsidiaries comply with section 12 of the Act and Rule 45.

26 21. Enron and PGE did not have an approved tax allocation agreement in place until

1 March 9, 2004. Securities and Exchange Commission, *Enron Corp., et al., Memorandum*  
2 Opinion and Order Authorizing External and Intrasystem Financing and Related Transactions;  
3 Authorizing Service Agreements; and Reserving Jurisdiction, Release Nos. 35-27809, 70-10200,  
4 2004 SEC LEXIS 546, \*85- \*90 (March 9, 2004).

5 22. On information and belief, PGE made cash payments to Enron from 1997 through  
6 2004 for consolidated tax purposes despite not having a tax allocation agreement approved by the  
7 Securities and Exchange Commission.

8 **COUNT 3**

9 23. The City realleges paragraphs 1-13 above.

10 24. A tax allocation agreement between PGE and Enron would have been a contract  
11 for payments between affiliated entities ORS 757.495. *Compare, Maine Public Utilities*  
12 *Commission, In re Northern Utilities, Inc Request for Approval of Affiliated Interest Transaction*  
13 *to Participate in an Intercompany Income Tax Allocation*, Order No. 2002-323 (August 6, 2002)  
14 (approving utility's petition to participate in an Intercompany Income Tax Allocation Agreement,  
15 while reserving determination of whether a contract contained a reasonable level of the tax  
16 liability that might be charged to the utility for inclusion in future rates). On information and  
17 belief, Enron and PGE did not submit their tax allocation agreement to the Commission for a  
18 determination as to whether it was fair and reasonable and in the public interest, as provided in  
19 ORS 757.495(3).

20 25. Throughout this time period, PGE and Enron not only enjoyed the fair and  
21 reasonable return to which the utility may have been entitled, "but also the full amount of an  
22 expense never in fact incurred." *Compare, FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 243-  
23 44 (1967).

24 26. At the state level in Oregon, when a significant corporate taxpayer such as PGE  
25 fails, refuses or neglects to pay state income taxes, the absence of these revenues is borne by  
26 other taxpayers. A significant portion of Oregon taxpayers are also PGE ratepayers. These

1 citizens wind up paying twice: Once in payments to PGE in rates, and again to the state in taxes  
2 or foregone services which would have been paid for by the additional tax revenues collected but  
3 not paid to the state by PGE.

4 WHEREFORE, the City of Portland, Oregon requests relief as follows:

5 1. For an Order granting expedited consideration of this Complaint;

6 2. For a ruling as to whether PGE was qualified to file unitary tax returns with the  
7 State of Oregon together with Enron and its other subsidiary corporations during the time period  
8 that PGE was owned by Enron;

9 3. For a ruling as to whether PGE failed to file the required separate Oregon income  
10 tax returns with the State of Oregon during the time PGE was owned by Enron;

11 4. For a ruling as to whether ring-fencing of PGE from Enron, as mandated by Order  
12 No. 97-196, prohibited PGE from filing a unitary tax return with the State of Oregon;

13 5. For a ruling as to whether PGE and Enron violated SEC Rule 45(c) from 1997  
14 through 2004 by distributing amounts collected from Oregon ratepayers for federal and state  
15 taxes, without a tax allocation agreement being in place;

16 6. For a ruling as to whether PGE and Enron violated ORS 757.495 by not  
17 submitting tax allocation agreements to the Commission for a determination as to whether such  
18 agreements were fair and reasonable and in the public interest;

19 7. For the Commission to investigate or request the Department of Justice to  
20 investigate this matter;

21 8. For an Order directing PGE to make no stock dividend distributions until the  
22 Commission determines the legality and reasonableness of PGE's treatment of its tax issues, to  
23 avoid the possibility of further harm to ratepayer interests;

24 9. For an Order assessing penalties of \$10,000 under ORS 756.990 for each instance  
25 of a violation of a statute administered by the Commission, and for each instance of failing to  
26 perform duties enjoined upon the utility; and,

