

1 **BEFORE THE OREGON PUBLIC UTILITIES COMMISSION**

2
3 **UE 177, UE 178, UG 170, UG 171**

4
5 **In the Matters of OREGON PUBLIC**
6 **UTILITY COMMISSION STAFF**
7 **directing:**

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9 **PACIFIC POWER & LIGHT, dba**
10 **PACIFICORP, (UE 177)**

11
12 **PORTLAND GENERAL ELECTRIC**
13 **COMPANY, (UE 178)**

14
15 **NORTHWEST NATURAL, (UG 170)**

16
17 **and**

18
19 **AVISTA UTILITIES (UG 171)**

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21 **To file tariffs establishing automatic**
22 **adjustment clauses under the terms**
23 **of SB 408.**

OBJECTION TO PROPOSED
COURSE OF ACTION BY ALJ

BY

KEN LEWIS and
UTILITY REFORM PROJECT

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26 Near close of business on January 18, 2007, undersigned counsel received an
27 email from the ALJ in this case, which referred to a communication he received
28 from Jason Jones on behalf of Commission Staff. The ALJ stated that Mr. Jones
29 told them "that the parties have agreed to the resolution of all issues identified in
30 these proceedings" and that the January 19 status conferences were cancelled.

1 Later, on January 19, we were notified by email from the OPUC docketing
2 system that a letter from Jason Jones to the ALJ had been filed.¹ That letter most
3 certainly does not state that "the parties have agreed to the resolution of all issues."
4 Instead, it states that the parties who attended a non-mandatory workshop did not
5 identify any contested issues in this proceeding. That is a very different statement.

6 URP and Lewis did not attend the workshops. Attendance was not
7 mandatory. Lack of attendance did not forfeit their status as parties in the
8 proceedings.

9 These dockets do present the live issue of whether the Commission is going
10 to comply with the legal deadlines for Commission action set forth in SB 408. This
11 issue was specifically raised by undersigned counsel at the October 17, 2006,
12 conference call in these dockets. SB 408 § 3 requires that every public utility file a
13 tax report with the Commission on or before October 15, 2005, and every
14 subsequent year. The Commission is required to determine, for each covered
15 utility, whether the difference between income taxes charged to ratepayers and
16 income taxes paid exceeds an average of \$100,000 for the past 3 years. § 3(4).
17 That determination must be made within 180 days of the utility's tax filing, at the

18 1. This letter was not properly served on the parties. The certificate of service states only
19 that the legal secretary "served the foregoing upon all parties of record in this proceeding
20 by delivering a copy by electronic mail." Mere electronic service in this docket is
21 improper. When URP and Lewis on December 28, 2005, moved to deem electronic
22 service sufficient, ALJ Grant denied that motion, because of his conclusion that "past
23 history has shown electronic mail to be an insufficient form of service."

1 very latest. Then, SB 408 requires the Commission to "require the utility to
2 establish an automatic adjustment clause" to account for the difference between tax
3 charges to ratepayers and tax payments by the utility within a further 60 days, at
4 the latest.

5 Simple math shows that the Commission has not complied with the statutory
6 deadlines. SB 408 required that the Commission make the \$100,000 threshold
7 determinations by April 17, 2006 (assuming a starting date of Monday, October 17,
8 2005). It also directed the Commission to require the qualifying utilities to establish
9 automatic adjustment clauses by June 16, 2006. The Commission has taken
10 neither of these mandatory acts.

11 These dockets offer the Commission an opportunity to mitigate its failure to
12 comply with the terms of SB 408.

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14 Dated: January 24, 2007

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify I FILED the foregoing **OBJECTION TO PROPOSED COURSE OF ACTION BY ALJ BY KEN LEWIS and UTILITY REFORM PROJECT** by e-mail upon the OPUC, followed by mail of the original and 5 copies this date to the Oregon Public Utility Commission, and further I certify that I served a copy as noted, by email and by placing a true copy of the foregoing placed in a sealed envelope and deposited in the U.S. Postal Service at Portland, Oregon, with first class postage prepaid, to:

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Dated: January 24, 2007

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