

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **DR 32**

4 **In the Matter of the Petition of**
5 **PORTLAND GENERAL ELECTRIC**
6 **COMPANY for a Declaratory Ruling**
7 **Regarding the Application of OAR 860-**
8 **022-0045**

Portland General Electric
Company's Memorandum In
Support Of Petition For Declaratory
Ruling

9 **INTRODUCTION**

10 Portland General Electric Company ("PGE") petitioned the Oregon Public Utility
11 Commission (the "Commission") for a declaratory ruling that OAR 860-022-0045 requires a
12 utility to bill its customers the local income taxes that the utility would pay for its stand-alone
13 regulated operations. Various entities have intervened. PGE asks the Commission to clarify
14 that utilities must bill local income taxes under OAR 860-022-0045 on the same basis that
15 the Commission requires be used for federal and state income taxes in setting rates generally.
16 This is how PGE has billed customers for the Multnomah County Business Income Tax
17 ("MCBIT") under OAR 860-022-0045.

18 For federal and state income taxes, the Commission has already expressly established
19 a policy of setting utility rates to recover forecasted federal and state income taxes arising
20 only from regulated operations within the utility as a stand-alone entity. Historically, this
21 policy has also applied to local income taxes. In the interests of uniformity and consistency,
22 PGE requests that the Commission declare that the same policy that applies to federal and
23 state income taxes applies equally to local income taxes like the MCBIT. However, if the
24 Commission decides that OAR 860-022-0045 requires a different basis for calculation and
25 collection of local income taxes, PGE requests the Commission to declare that OAR 860-
26 021-0135, governing billing adjustment, limits any recovery for overbilling to a three year
period.

1 **BACKGROUND**

2 **I. OAR 860-022-0045 requires a utility to collect local income taxes from its**
3 **customers.**

4 OAR 860-022-0045 provides that, if any county imposes a new tax or an increased
5 tax on a utility, the utility shall collect from customers within that county the amount of the
6 tax:

7 “(1) If any county in Oregon . . . imposes upon an
8 energy . . . utility any new taxes or . . . fees, the utility
9 required to pay such taxes or fees shall collect from its
10 customers within the county imposing such taxes or fees the
11 amount of the taxes or fees. . . . ‘Taxes,’ as used in this rule,
12 means sales, use, net income, gross receipts, payroll, business
13 or occupation taxes, levies, fees, or charges other than ad
14 valorem taxes.

15 (2) This amount collected from each utility customer
16 pursuant to section (1) of this rule shall be separately stated and
17 identified in all customer billings.”

18 (Ex A to Petition for Declaratory Ruling of PGE is the full text of OAR-860-022-0045.)

19 OAR 860-022-0045, which the Commission promulgated in 1974, applies to new and
20 increased taxes imposed on or after December 16, 1971.¹

21 Multnomah County challenged the rule’s validity, but it was upheld based on the
22 Commission’s statutory power to set rates:

23 “The rule [OAR 860-022-0045] adopted here is a directive,
24 regulation or statement of general applicability for the purpose
25 of implementing the statutes administered by the
26 Commissioner. Such rule is within his express statutory
powers The Commissioner’s power over rates constitutes
a broad delegation of legislative authority. . . . Confronted
with such a broad delegation, courts either have encouraged or
compelled administrative agencies to adopt rules of the kind
here at issue establishing the standards for the exercise of such
authority.”

¹ OAR 860-022-0045 ensures that taxes imposed by counties and cities are not included in general rates, which are paid by customers statewide, but rather are charged only to customers in the counties and cities that benefit from such taxes. For a discussion of the history and purposes of these rules, see In Re Triennial Review of Chapter 860, AR 395, Order No. 01-728 (Oregon Public Utility Comm’n Aug 17, 2001).

1 Multnomah County v. Davis, 35 Or App 521, 526, 581 P2d 968, 971 (1978) (Ex B to Petition
2 for Declaratory Ruling of PGE).

3 Rule OAR 860-022-0045 is referenced in PGE's Commission-approved tariff in Rule
4 E(1)(D) ("A separately stated tax adjustment is billed in any community or area where a
5 governmental authority imposes a tax or assessment in excess of the limit established by the
6 Commission in OAR 860-022-0040 and 0045."). (Ex F to Petition for Declaratory Ruling of
7 PGE at 2.)

8 **II. Federal and state tax laws allow affiliated corporations to file consolidated tax
9 returns.**

10 The Internal Revenue Code and Oregon tax law allow an affiliated group of
11 corporations to elect to file a consolidated income tax return reporting the taxable income of
12 the group on a single return. PGE's parent company, Portland General Corporation ("PGC"),
13 merged with Enron in mid-1997 and Enron became the parent company of PGE. From July
14 1997 to May 2001, and from December 2002 to the present, Enron filed consolidated federal,
15 state, and local income tax returns for an affiliated group that includes PGE. During the
16 period that PGE was deconsolidated from Enron for federal, Oregon state and local income
17 tax purposes (May 8, 2001 to December 23, 2002), PGE filed consolidated federal, state and
18 local income tax returns for an affiliated group that included PGE subsidiaries.

19 **III. Under the Multnomah County Code, the MCBIT is calculated based on net
20 income as reported in Oregon state tax returns including PUC regulated and
21 non-regulated operations.**

22 The MCBIT is imposed on each corporation doing business in Multnomah County.
23 The starting point for determining a corporation's net income for purposes of the MCBIT is
24 the corporation's net income as reported on its Oregon state tax return. The amount of the net
25 income is then apportioned based on the ratio of the corporation's Multnomah County gross
26 income to the corporation's total gross income. For corporations that file a consolidated
Oregon tax return, the starting point is the group's consolidated net income as reported on its
consolidated state tax return. The amount of the consolidated net income is then apportioned

1 based on the ratio of Multnomah County gross income of the consolidated group to the total
2 gross income of the consolidated group. See, generally, Multnomah County Business
3 Income Tax Law, Multnomah County Code §§ 12.005-12.850.

4 **IV. The Commission’s rules require a utility to calculate its income taxes on a stand-
5 alone regulated basis for ratemaking purposes.**

6 For purposes of computing rates and regulatory reporting, the Commission has a
7 long-standing policy of considering only expenses and revenues related to providing
8 regulated services. This policy disregards unregulated operations of the utility, its
9 subsidiaries, and its parent company. The policy was recently incorporated into the
10 Commission’s rules governing the allocation of costs by energy utilities in OAR 860-027-
11 0048 (adopted in December 2003). OAR 860-027-0048 requires energy utilities in Oregon to
12 calculate and report income taxes on a regulated, stand-alone basis for ratemaking purposes
13 and regulatory reporting, even if those taxes are paid on a consolidated basis:

14 “(3) The energy utility shall use the following cost allocation
15 methods when transferring assets or supplies, or providing or
16 receiving services between regulated and nonregulated
17 activities:

18

19 (g) Income taxes shall be calculated for the regulated activity
20 on a standalone basis for both ratemaking purposes and
21 regulatory reporting. When income taxes are determined on a
22 consolidated basis, the regulated activity shall record income
23 tax expense as if it were determined for the regulated activity
24 separately for all time periods.

25 (4) The energy utility shall use the following cost allocation
26 methods when transferring assets or supplies or providing or
receiving services involving its affiliates:

.

(h) Income taxes shall be calculated for the energy utility on a
standalone basis for both ratemaking purposes and regulatory
reporting. When income taxes are determined on a
consolidated basis, the energy utility shall record income tax
expense as if it were determined for the energy utility
separately for all time periods.”

1 **V. PGE calculated the amount it charged customers for the MCBIT on a stand-**
2 **alone regulated basis, and consistent with tax laws, computed the amount it paid**
3 **for MCBIT based on both its regulated and non-regulated operations.**

4 Conforming to the Commission's general policy that a utility should account for
5 income tax payments based on stand-alone regulated operations only, now embodied in OAR
6 860-027-0048, PGE consistently calculated the amount it charged customers for the MCBIT
7 on a stand-alone regulated basis.

8 Consistent with the tax laws described above, during the periods that PGE was
9 included in Enron's consolidated tax returns, PGE calculated the amount to be paid for
10 MCBIT on both its regulated utility and non-regulated operations, and paid those amounts to
11 its parent corporation.² During the period that PGE was consolidated with Enron for tax
12 purposes, Enron had the responsibility to file a consolidated tax return and pay Multnomah
13 County the appropriate county tax based on the consolidated income of the group as
14 apportioned to income generated in Multnomah County. During the period of
15 deconsolidation (May 8, 2001 through December 23, 2002), PGE calculated the amount to be
16 paid on both its regulated utility and non-regulated operations, and paid the amounts owed, if
17 any, for PGE and its subsidiaries on a consolidated basis to the City of Portland.

18 **VI. The Commission's rule is based on a public policy rationale stated in a decision**
19 **in which the Commission determined that PGE properly calculated its federal**
20 **and state income taxes.**

21 The Commission recently explained its policy in a proceeding challenging PGE's
22 accounting of federal, state and local income tax payments on a stand-alone basis. In re
23 Utility Reform Project, UM 1074, Order No. 03-214 (Apr 10, 2003). (Ex C to Petition for
24 Declaratory Ruling of PGE.) The Commission's Order (adopting and incorporating by
25 reference its Staff's Report) explained:

26 "For ratemaking purposes, the Commission sets PGE's rates to
reflect the costs of the company's regulated operations. That is,

² Prior to the merger with Enron on July 2, 1997, PGE calculated the amount to be paid for the MCBIT on both its regulated utility and non-regulated operations, and paid those amounts to its then parent, Portland General Corporation.

1 in a rate proceeding, PGE's rates are set based on its own
2 revenues, costs and rate base for a given test year. Income
3 taxes are calculated using PGE's net operating income. The tax
4 effects of Enron's other operations are ignored for purposes of
5 setting rates. This is consistent with standard ratemaking
6 principles.”

7 (Id. at 4.) The Commission reasoned that, if rates were set in a manner that captured the
8 parent's tax losses – a rationale that applies equally to capturing losses by PGE's unregulated
9 operations – the expenses that created those tax savings would also need to be reflected in
10 rates and would harm PGE's customers:

11 “Calculating PGE's costs, including income taxes, for
12 ratemaking on a stand-alone basis protects PGE's customers
13 from the financial difficulties experienced by Enron's other
14 subsidiaries. When the Commission approved Enron's
15 acquisition of PGE, it had the option of incorporating the
16 effects of Enron's non-utility operations in PGE rates or
17 treating PGE as a stand-alone entity. Consistent with long-
18 standing OPUC policy, the Commission chose the latter
19 approach . . . [T]he Commission created a wall between
20 PGE's operations and Enron's other subsidiaries. As stated by
21 [PUC] Order No. 97-196: ‘These conditions and commitments
22 provide important measures and requirements, beyond those
23 provided by the Commission's statutory authority and existing
24 rules, to protect PGE's customers, competitors, and the public
25 generally.’

26 If PGE's rates were set in a manner that captured some of
27 Enron's tax losses, PGE's rates would also have needed to
28 reflect the expenses that created those tax savings, and
29 customers would be worse off.”

30 (Id. at 4.) “[S]uch an approach [of capturing tax losses] may lead to confiscatory rates.” (Id.
31 at 4-5.)

32 In establishing this policy, the Commission relied on an accounting treatise for public
33 utilities that explains why a stand-alone regulated basis (as opposed to a consolidated tax rate
34 basis) for computing the income tax component of cost of service is the best method for
35 ratemaking purposes:

36 “Non-utility operations involve financial risks that are different
37 from a utility's regulated operations. When these risks are not
38 borne by the ratepayers, it is unfair to make use of the business
39 losses generated in those nonregulated entities to reduce the

1 utility's cost in determining the rates to be charged for utility
2 services. By the same token, when a company's
3 nonjurisdictional activities are profitable, the ratepayers have
4 no right to share in these profits, but neither are they required
5 to pay any of the income taxes that arise as a result of those
6 profits. Thus, a 'stand alone' method (as opposed to a
7 consolidated effective tax rate method) for computing the
8 income tax expense component of cost of service is the proper
9 and equitable method to be followed for ratemaking purposes."

10 (Id. at 7, Excerpts from Accounting for Public Utilities.)

11 The Commission ultimately concluded that PGE's "income taxes were properly
12 included in PGE's revenue requirement and customer rates, and that PGE properly paid its
13 income tax liability to its parent or to the taxing authorities, as appropriate." (Id. at 5.) Thus,
14 the Commission both approved of PGE's specific actions and explained its public protection
15 policy requiring the calculation of income tax liability for ratemaking purposes solely on the
16 basis of income from a utility's stand-alone regulated operations.

17 **VII. In an unrelated Commission proceeding, the Commission's Staff recently**
18 **reiterated the long-standing nature of the Commission's stand-alone tax policy.**

19 On June 27, 2005, testifying in a unrelated proceeding, the Commission's Staff
20 responded to testimony from various parties concerning the use and application of the
21 traditional stand-alone (as opposed to a consolidated tax rate method) for computing the
22 income tax expense component of cost of service. Staff explained how the stand-alone tax
23 expense is calculated: "Under the 'stand-alone' method, ratemaking tax expense is
24 calculated based on the items of income and expense included in the regulated utility's
25 revenue requirement calculation." (June 27, 2005 Conway-Johnson Testimony before Public
26 Utility Commission, Staff Exhibit 1000, PUC No. UE 170 at 2-3.) Staff further testified that
27 "[i]n all historic rate cases, the Commission has used the 'stand-alone' method to calculate
28 income taxes. To our knowledge, this is the first time the 'stand-alone' method has ever been
29 challenged." (Id. at 3.)

1 **VIII. A class action complaint was filed contending that PGE’s billing for the local**
2 **income tax, MCBIT, was improper; the court stayed that lawsuit to October 15,**
3 **2005 to give the Commission time to rule on DR 32.**

4 Despite the Commission’s determination that PGE calculated and paid federal and
5 state income taxes in conformance with the Commission’s public policy, on January 18,
6 2005, a class action complaint was filed against PGE in Kafoury, et al. v. Portland General
7 Electric Co., Multnomah County Circuit Court No. 0501- 00627, contending that PGE’s
8 similar calculation and payment of the local income tax, MCBIT, was improper. (Ex D to
9 Petition for Declaratory Ruling of PGE.) The plaintiffs demand restitution of over \$6 million
10 contending that PGE improperly billed customers for the MCBIT under OAR 860-022-0045.
11 (Id.) On February 24, 2005, PGE filed this Petition for a Declaratory Ruling to seek
12 clarification from the Commission on the application of OAR 860-022-0045 to the MCBIT.
13 (DR 32.) In the court action, PGE moved to dismiss the complaint on various grounds,
14 including that the Commission has primary jurisdiction. On June 23, 2005, the Honorable
15 John A. Wittmayer, Multnomah County Circuit Court, ruled that the lawsuit was stayed for
16 all purposes until October 15, 2005, pending action by the Commission on DR 32. If, as
17 PGE seeks, the Commission clarifies that utilities must collect local income taxes under OAR
18 860-022-0045 on the same basis that the Commission requires be used for federal and state
19 income taxes in setting rates, the clarification will assist the court in its further disposition of
20 the complaint.

21 **IX. A future legislative change may address these issues prospectively but does not**
22 **retroactively apply.**

23 The legislature is currently debating whether or not the stand-alone policy should
24 continue to be applied. But regardless of the outcome of that debate, the stand-alone policy
25 has historically been the policy applicable to utilities. On March 22, 2005, the PUC
26 recommended to the Oregon Senate Revenue Committee and the Senate Business and
Economic Development Committee that the legislature make various changes in Oregon law
“to better match taxes collected and taxes paid by regulated utilities[.]” (Ex G, 3/22/05 PUC

1 “Recommendation on treatment of utility income taxes,” attached). The changes are: “1.
2 Require regulated utilities to file stand-alone (deconsolidated) income tax returns in Oregon.
3 2. Direct the Commission to consider consolidated tax benefits when it includes federal
4 income taxes in customer rates. 3. Require regulated utilities to file a general rate case at
5 least once every five years.” (Id. at 1.) As rationale for its recommendation, the PUC stated,
6 for example, that “we recognize that it is widely perceived as unfair that taxes collected in
7 utility rates aren’t always paid to the taxing authorities” (id.), due to various factors,
8 especially reliance on consolidated tax returns: “Most of the concern raised about the
9 mismatch between taxes collected and taxes paid is directed at the effect of consolidated tax
10 filing. When the utility’s parent files taxes on a consolidated basis, losses in other,
11 unregulated operations can offset the utility’s taxable income and reduce the parent’s overall
12 tax liability.” (Id. at 2.)

13 The PUC’s statements demonstrate that PGE’s current practices comply with the
14 current regulations, but there may be a future change in the law. Naturally, any change in the
15 future would not apply retroactively to plaintiffs’ claims here.

16 **X. If PGE’s calculation and payment of the MCBIT was improper, PGE requests**
17 **the Commission to determine that OAR 860-021-0135 limits any recovery for**
18 **overbilling to a three year period.**

19 OAR 860-021-0135 provides that when an overbilling or underbilling has occurred,
20 the utility is to provide written notice to the customer detailing the circumstances, period of
21 time and amount of adjustment. (Ex E to Petition for Declaratory Ruling of PGE is the full
22 text of OAR 860-021-0135.) OAR 860-021-0135 also fixes the period of time over which a
23 billing adjustment is to be determined to a maximum of three years usage:

24 “If it can be shown that the error was due to some cause and
25 the date can be fixed, the overcharge or undercharge shall be
26 computed back to such date. If no date can be fixed, the
energy or telecommunications utility shall refund the
overcharge or rebill the undercharge for no more than six
months usage. In no event shall an overbilling or underbilling
be for more than three years’ usage.”

1 Id. OAR 860-021-0135 is reflected in PGE’s tariff in Rule E(3)(D), which states that as to
2 service that “has been . . . incorrectly metered or billed, regardless of cause . . . the Company
3 will adjust its billings and notify the Consumer . . . In no event, however, shall an overbilling
4 or underbilling be for more than three years’ usage.” (Ex F to Petition for Declaratory
5 Ruling of PGE at 4.)

6 **ARGUMENT**

7 **I. There is no substantive difference between charges made to recover local income**
8 **taxes under OAR 860-022-0045 and rates set under ORS 757.205 to 757.225 to**
9 **recover federal and state income taxes, so there should be no difference in how**
10 **utilities account for these taxes.**

11 As Multnomah County v. Davis recognized, OAR 860-022-0045 is a ratemaking rule
12 promulgated within the Commission’s broad authority to set fair and reasonable rates. The
13 rule creates a separate **procedure** for charges to customers based on a utility’s county tax
14 expenses. Under the rule, a utility must calculate its local income taxes on an annual basis
15 and charge customers to recover those amounts. By contrast, in a typical ratemaking
16 proceeding, the Commission sets rates to include the utility’s projected tax expenses. The
17 only difference in **substance**, however, between charges made to recover local taxes under
18 OAR 860-022-0045 and rates set under ORS 757.205 to 757.225 to recover federal and state
19 taxes is that charges made under OAR 860-022-0045 apply to customers within particular
20 counties, while rates set under ORS 757.205 to 757.225 apply to customers statewide.

21 This procedural difference does not logically give rise to any different substantive
22 treatment. It merely reflects the practicalities inherent in providing for recovery of local
23 income taxes not imposed on utilities statewide. The separate itemization of local income
24 taxes on customer bills versus the rolling of other income taxes into the rates does not
25 suggest that a different policy should govern the local taxes. The underlying expenses at
26 issue are the same, and there is no sound reason to force utilities to use conflicting
accounting methods for the same types of expenses.

1 **II. The need for uniformity and consistency requires that the same Commission**
2 **rules and policy govern local income taxes as govern federal and state taxes.**

3 Because OAR 860-022-0045 is a ratemaking rule, it should be interpreted and applied
4 consistently with the Commission’s general ratemaking policies. Both the Commission’s
5 promulgated rules (see OAR 860-027-0048, quoted above) and policy (reiterated in Order
6 No. 03-214, also quoted above) require utilities to calculate tax expenses on a stand-alone
7 regulated basis for purposes of ratemaking.

8 There is no good reason why income taxes imposed by a local taxing entity would be
9 subject to a different policy than income taxes imposed by state and federal taxing entities.
10 Each facet of the Commission’s rationale for requiring utilities to calculate their tax expenses
11 on a stand-alone regulated basis applies to local income taxes as much as to federal and state
12 taxes. For example, “standard ratemaking principles” that dictate ignoring “the tax effects of
13 Enron’s other operations” (Ex C to Petition for Declaratory Ruling of PGE at 4) --and PGE’s
14 unregulated operations -- apply no less to local income taxes than to federal and state income
15 taxes. The need to “protect[] PGE’s customers from the financial difficulties experienced by
16 Enron’s other subsidiaries” (id.) -- or from financial difficulties experienced by PGE’s
17 unregulated operations -- is equally applicable to local income taxes as to federal and state
18 income taxes. “Creat[ing] a wall between PGE’s operations and Enron’s other subsidiaries . .
19 . to protect PGE’s customers, competitors, and the public generally” (id.) – or between PGE’s
20 regulated operations and unregulated operations – applies to all types of taxes ultimately
21 passed along to the public by the utility. The concern over “confiscatory rates” that may be
22 caused by capturing tax losses and reflecting expenses that created those tax savings (id. at 4-
23 5) is not lessened if the income tax is a local one rather than a federal or state income tax.
24 The utility customer needs to be protected under all circumstances from unregulated parts of
25 the business. Consolidated tax filings, which are computed from the consolidated financial
26 performance of the utility, its parent company, and any other consolidated subsidiaries (that
include unregulated operations), do not provide a fair or reasonable basis for calculating

1 charges to utility customers. See id. at 7, Excerpts from Accounting for Public Utilities,
2 quoted above.

3 Uniform application of the law is desirable. See Trebesch v. Employment Div., 300
4 Or 264, 276, 710 P2d 136, 143 (1985) (“Interpretation of statutory terms by orders in
5 contested cases is an adequate alternative to rules. Both are capable of achieving a uniform
6 application of the law.”); Continental Cas. Co. v. Downs, 81 S.W.3d 803, 809 (Tex
7 2002)(“great benefit is to be derived from a uniform interpretation of laws, rules and
8 regulations by an administrative body . . .”). Here, the only way to achieve uniformity is for
9 the Commission to determine that utilities must collect local income taxes under OAR 860-
10 022-0045 on the same basis that the Commission requires be used for recouping federal and
11 state income taxes in setting rates generally.

12 **III. PGE seeks a declaration that OAR 860-021-0135, governing billing adjustment,
13 limits any recovery for overbilling to a three year period.**

14 OAR 860-021-0135, quoted above, provides that no overbilling shall be for more than
15 three years’ usage. As also described above, PGE has been billing and collecting local
16 income taxes on a stand-alone basis for longer than three years. PGE requests the
17 Commission to declare whether OAR 860-021-0135 applies to limit any refund to three years
18 of taxes.

19 Prior Commission decisions indicate that OAR 860-021-0135 governs all billing
20 adjustments. In 1983 the Commission issued an order amending various OAR provisions
21 including OAR 860-021-030 (now OAR 860-021-0135). In the Matter of the Adoption and
22 Amendment of Utility Rules relating to Customer Service, Order No. 83-284 (Oregon Public
23 Utility Comm’n, May 20, 1983). That order stated that the billing adjustment rule had been
24 modified to treat all billing adjustments, both meter and non-meter related errors, in the same
25 manner. Id. at 6. In addition, in at least two cases the rule has also been interpreted to apply
26 where customers were billed on an inappropriate rate schedule. See In the Matter of Historic
Kenton Hotel v. Portland General Electric Co., Order No. 97-249 (Oregon Public Utility

1 Comm'n, June 8, 1992); Belozer Poultry Farms, Inc. v. Portland General Electric Co., Order
2 No. 92-962 (Oregon Public Utility Comm'n, June 8, 1992).

3 DATED this 14th day of July, 2005.

4 PORTLAND GENERAL ELECTRIC COMPANY

5
6 By: /s/
7 Douglas C. Tingey, OSB #04436
8 Assistant General Counsel

9 MARKOWITZ, HERBOLD, GLADE &
10 MEHLHAF, P.C.

11 By: /s/
12 Lisa A. Kaner, OSB #88137

13 Of Attorneys for Portland General Electric Co.

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EXHIBIT G

Excerpt of Staff Exhibit 100

Case: UE 170
before the Public Utility Commission of Oregon

CASE: UE 170
WITNESS: Bryan Conway
Judy Johnson

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 1000

Surrebuttal Testimony

Redacted Version

June 27, 2005

1 rates. Income or expenses not included in rates, such as non-operating
2 income or disallowed expenses, are excluded from the ratemaking tax
3 calculation under the traditional method.

4 **Q. IS THE STAND-ALONE METHOD CONSISTENT WITH PAST**
5 **COMMISSION DECISIONS?**

6 A. Yes. In all historic rate cases, the Commission has used the "stand-alone"
7 method to calculate income taxes. To our knowledge, this is the first time
8 the "stand-alone" method has ever been challenged.

9 **Q. HOW DOES THE STAND-ALONE METHOD DIFFER FROM THE**
10 **METHOD ADVOCATED IN THIS CASE BY CUB AND ICNU?**

11 A. ICNU's and CUB's proposals seek to capture for customers the tax benefit
12 associated with the loan that PacifiCorp's shareholder, PHI, used to
13 purchase its investment in PacifiCorp.

14 **Q. HAS THE OPUC STAFF RECENTLY REVISITED ITS POSITION WITH**
15 **RESPECT TO CALCULATING TAXES FOR SETTING RATES?**

16 A. Yes, the issues surrounding how taxes are estimated have recently
17 received a lot of interest primarily due to Enron's demise. However, the
18 same issues apply to all utilities that have a holding company or
19 unregulated subsidiaries.¹ And, taxes have been raised as an issue in this
20 case. Staff recently created a white paper for presentation to the Oregon
21 Senate. In the Staffs white paper, staff compared the "stand-alone"

¹ Even if a utility did not have a parent or any affiliates, and was solely a stand-alone company, actual taxes paid will differ from those included in rates because the company's actual financial performance will differ from the projections established in a general rate case.



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Douglas C. Tingey
Assistant General Counsel

July 14, 2005

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
PO Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Petition for a
Declaratory Ruling Regarding the Application of OAR 860-022-0045
OPUC Docket No. DR 32

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's
Memorandum in Support of Petition for Declaratory Ruling. This document is being filed by
electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return
it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas C. Tingey", written in a cursive style.

DCT:am

cc: DR 32 Service List

Enclosure




CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing Memorandum in Support of Petition for Declaratory Ruling of Portland General Electric, in OPUC Docket No. DR 32, by electronic mail and First Class U.S. Mail, postage prepaid and properly addressed, and by electronic mail, to those persons on the attached service list maintained by the OPUC.

Dated this 14th day of July, 2005.

PORTLAND GENERAL ELECTRIC COMPANY

By 
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Service List
DR 32

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