SENATE BILL 408, TAX FILINGS
STAFF'S INITIAL FINDINGS
FOR PORTLAND GENERAL ELECTRIC – UE 178

TO: ALL PARTIES
DOCKET NO. UE 178(1)
PORTLAND GENERAL ELECTRIC
SB 408 TAX FILINGS – UE 178(1)
2006 TAX PERIOD

FROM: DUSTIN BALL, SENIOR UTILITY ANALYST,
CARLA OWINGS, SENIOR UTILITY ANALYST,
PUBLIC UTILITY COMMISSION

DATE: DECEMBER 17, 2007

CC: LEE SPARLING, ED BUSCH, JUDY JOHNSON AND JASON JONES

On October 15, 2007, Portland General Electric (PGE or Company) filed UE 178(1), its tax report covering the 2006 calendar year pursuant to Senate Bill 408 (SB 408) (codified at ORS 757.267, 757.268 and OAR 860-022-0041).

Much of the information contained in these tax reports represents highly confidential and sensitive information. Staff has structured its initial findings in this report in a generic manner in order to avoid the possibility of disclosing confidential, or sensitive, information.

Staff has thoroughly reviewed each calculation and all documentation provided by the Company.

PGE reports the following for its Regulated Results of Operations for the 2006 Tax period:

Taxes Paid and Properly Attributed to Regulated Operations	Taxes Authorized to be Collected in Rates	Difference between Taxes Paid and Collected Surcharge or (Refund)
$34.2 million	**$71.3 million**	**$(37.1) million**

Staff conducted interviews with the Company, sent 17 Data Requests, met face-to-face with the Company in mid November, and conducted several phone interviews.

Staff and the Company have discussed the issues outlined in this document. Staff has requested that Company file a revised version of the Staff Template no later than January 2, 2008*, *and compliant with the Staff recommendations in this document. Having a revised version filed by this date will allow Staff a short period of time to review the revisions prior to Settlement Conferences which are currently scheduled for the week of January 7, 2008. While Staff raises numerous issues in this document, it reserves the opportunity to raise new issues during the time remaining in this proceeding.

Prior to March of 2006, PGE was owned by the Enron Corporation. On April 1, 2006, PGE separated from Enron, however, this mid-year separation required PGE to file two separate tax returns; one with Enron for the period of January 1, 2006 to April 1, 2006, and a second filing for the period beginning April 1, 2006 through December 31, 2006. OAR 860-022-0041(5)(a)(A) requires the Company to reflect the weighted average of months in effect related to each tax period. For purposes of this tax filing, PGE has assigned a 25.0% weighting factor to the Enron tax filing and a 75.0% weighting factor to the PGE tax filing.

Following is a detailed summary of Staff's review:

Staff requested the Company provide further clarification related to the following items:

- provide documentation from the parent corporation for the tax liability reported in the consolidated tax filing;

- document calculations related to the Multnomah County Income Tax schedule related to the inclusion of subsidiaries;

- provide a work papers showing the calculation pertaining to Wages & Salaries for Montana;
- provide a narrative explanation for a normalization adjustment related to depreciation and deferred taxes;
- provide calculations for Lines 2 and 3 of Page 1 of Staff's Template;
- provide a break-out for the amounts required on Page 7c, lines 4 & 5, lines 12 &13, and lines 20 & 21 of Staff's Template;
- provide a narrative explanation for the use of certain columns related to the results of operations report;
- provide a copy of all Schedule M's for the 2006 Tax period;
- provide a revised Stand-alone calculation using Schedule M adjustments;
- clarify the way the Company booked the iterative effect;
- correct an entry from a positive entry to a negative entry
- correct a math error;
- justify choosing the "greater of" the different methods for Federal Income Taxes paid for different portions of the year;
- provide a revised Stand-alone calculation using actual Schedule M adjustments;
- provide a narrative explanation for an adjusting account;
- provide a narrative explanation for the use of a normalizing adjustment to the local tax benefit of depreciation;
- justify the source of the amounts reported on Page 2, lines 6, 7 and 8 of Staff's Template; and
- justify using estimated Schedule M adjustments rather than actual Schedule M adjustments.

As a result of our review, Staff recommends the following changes to PGE's original filing:

1. Workpapers:

Staff Comment:

Other than providing documentation for the portion of the tax period pertaining to the time period where PGE was affiliated with the Enron Corporation, PGE did an excellent job of providing a simplified filing that included an adequate number of back-up worksheets showing the origin of amounts and documenting calculations. Staff commends the Company for a filing that provides excellent organization and structure to facilitate Staff's review.

Staff recommendation:

For the 2007 tax period filing, Staff recommends the Company provide the same work papers and documentation provided in the 2006 tax filing and organize the packet in a manner similar to the 2006 filing.

2. Normalization Calculation:

Staff Comment:

To calculate the tax benefit of depreciation for lines 6, 15 and 24 on page 6 of Staff's template for the federal, state and local amounts, PGE performed an adjustment to normalize the impact of depreciation. Staff does not agree that this adjustment is appropriate for the calculation of the tax benefit of depreciation.

Staff recommendation:

Staff recommends that PGE remove the effect of the normalizing adjustment to the calculation of depreciation for the federal, state and local tax benefit and revise the template to include the outcome of these calculations. Staff believes that this will result in a reduction of the federal and state income taxes paid by the Company.

3. Gross Revenue and Pre-tax Income:

Staff Comment:

Page 1, lines 2 and 3 of Staff's template require the Company to provide its Gross Revenues and Pre-tax Income from the most recent general rate case.

Staff's review determined that PGE did not provide such a break-out, but did provide the documentation of the amounts it used and the ratios derived from these amounts. Staff was able to verify that including these amounts did not change the outcome of the Company's ratio reported on line 6 of page 1 of Staff's Template.

Staff recommendation:

Staff recommends that PGE revise the template to include the relevant portions of the tax report for lines 2 and 3 of page 1 of Staff's Template.

4. Information from the Results of Operations Report.

Staff Comment:

In order to develop ratios and to perform the Stand-alone utility tax liability, OAR 860-022-0041 requires the Companies use information from the Results of Operations reports to perform these calculations. Staff believes that the Companies should use column 1 of this report for these calculations because column 1 most closely represents the actual results of operations prior to regulatory adjustments that take place in columns two and four of the report.

In a Data Response PGE states that it believes that it should use column 5 of the results of operations report as this column represents the regulated adjusted results for the period, after reflecting the ratemaking treatment of costs accorded by the Commission from the Company's last rate case.

Staff believes that even though there may be costs or revenues that are not included in a ratemaking proceeding, all costs and revenues are either deductible or includable in the Company's proforma tax report. Therefore, costs and revenues that most closely represent the actual income statement of the Stand-alone utility would be the most representative of the appropriate amount to use as a proxy for the Stand-alone calculation.

Additionally, in response to Staff's Data Request No. 8, PGE performed a Stand-alone calculation compliant with Staff's interpretation of the rules and applying the actual Schedule M adjustments. However, in doing so, the Company used column 5 of the results of operations report rather than column 1 to perform the Stand-alone calculation.

Staff recommendation:

Staff recommends that PGE use column 1 to develop its ratios and to calculate its Stand-alone utility tax liability. PGE should revise the portions of the Staff Template that relate to numbers derived from column 5 of the regulatory results of operations to the figures that appear in column 1 of the results of operations report.

5. Mathematical Corrections to the Staff Template :

Staff Comment:

On Page 7c of the Staff Template, Staff noted that PGE had not segregated amounts that related to the deferred tax amounts on lines 5, 13 & 21 of page 7c. The break out of these amounts will not have a material impact on the calculation, but rather will inform a separate calculation in the template.

Additionally, two mathematical errors were found in Staff's review that resulted in a large adjustment to the outcome of the amount determined to true up the taxes paid and taxes collected for the local amounts.

Staff recommendation:

Staff recommends PGE revise the Staff Template to provide a break out of the deferred taxes related to depreciation on public utility property on lines 5, 13 & 21 of page 7c. Additionally, Staff recommend the Company revise the input on line 6 and the formula on line 8 of page 7c, of the Staff Template. Staff believes these adjustments will reduce the outcome of the Local Income Taxes paid and properly attributed on line 12 of page 1, of the Staff Template, as well as the difference between Taxes paid and Taxes collected on line 14, page 1, of the Staff Template.

6. Apportionment Method:

Staff Comment:

On Page 2 of the Staff Template, lines 6, 7, and 8 (the federal taxpayer's plant, wages/salaries, and sales/other receipts) were all derived from sources other than the Oregon Schedule AP. Staff disagrees with the source data for the federal taxpayer amounts reported by PGE. Staff believes that the Oregon Schedule AP (column "total within and without Oregon") contains the most accurate and comparable information on the federal taxpayer's plant, wages/salaries, and sales/other revenues.

Additionally, Staff has an outstanding data request pertaining to this question, which at the time of this writing a response has not yet been submitted by the Company.

Staff recommendation:

Staff recommends that PGE recalculate their Oregon allocation percentages using the Oregon Schedule AP, column "total within and without Oregon" as the federal taxpayer's gross plant, wages/salaries, and sales/other receipts.

7. "Greater of" Determination for the Apportionment Method:

Staff Comment:

The method for determining the apportioned federal income tax contains a "greater of" factor that determines whether a utility should report its apportioned consolidated federal tax amount, or its Stand-alone federal tax amount minus the apportioned share of the taxpayer losses. This factor is considered so that the federal income tax paid, that is properly attributable to the regulated operations of the utility, will not be less than the amount of federal Stand-alone liability adjusted for losses.

For the portion of the year that PGE was a part of Enron, PGE performed the "greater of" test choosing the consolidated method, and then chose the adjusted Stand-alone for the second portion of the year.

While Staff agrees it is appropriate for the Company to choose when calculating Federal Tax liability separate from State Tax liability between the different methods, Staff believes it is inappropriate to choose between the methods based on two separate tax periods to calculate a single tax liability (in this case, Federal Tax liability). Staff believes that the Company should use the same allocation method for both portions of the year.

Staff recommendation:

Staff recommends that PGE revise the Staff template to reflect only one apportionment method in arriving at the apportioned federal income tax amount that is properly attributed to the regulated operations of the utility.

8. Applying Imputed Losses to the Stand-Alone Calculation:

Staff Comment:

Pursuant to Staff's request, PGE submitted a revised Stand-alone calculation during the review period based on the results of operations report, however PGE did not "split" this calculation to arrive at separate Stand-alone tax liabilities for the portion of the year that PGE was under different ownerships. In response to Staff's data request, PGE objected to making this "split" and to derive the separate Stand-alone tax liabilities. Staff contends that this "split" is necessary so that the applicable imputed tax losses in the federal taxpayer group can be accurately applied to the separate portions of the year.

Staff recommendation:

Staff recommends that PGE "split" the Stand-alone calculation to represent the separate portions of the year that PGE was under different ownerships. Staff recommends that PGE apply separately, the Schedule M items appropriate to the separate portions of the year.

9. Applying Schedule M Items to the Stand-Alone Calculation:

Staff Comment:

The revised Stand-alone calculation submitted by PGE was adjusted by the actual Schedule M Items prior to arriving at Stand-alone taxable income. Included in these actual book-tax differences was an adjustment for the SB 408 accrual. Staff requested that this Schedule M item, as well as any regulatory disallowances, be removed for purposes of calculating the Stand-alone tax liability. In response to Staff's Data Request No. 13, PGE objected to making this change.

Staff contends that since PGE used column 5 of the results of operations report as described in Issue 4, above, the SB 408 accrual, as well as any regulatory disallowances, are not included in the amounts from which PGE's Stand-alone tax liability is derived. Staff believes it would be inappropriate for there to be Schedule M adjustments for these items.

Staff recommendation:

Staff recommends that PGE remove the Schedule M adjustment for the SB 408 accrual, as well as any regulatory disallowances, prior to applying the Schedule M's for purposes of calculating the Stand-alone tax liability.

10. Deferred Taxes:

Staff Comment:

The deferred tax amounts reported by PGE on Page 6, lines 4, 5, 12, 14, 22, and 23 of the Staff Template appear to be estimated book-tax differences from the results of operations report rather than the actual deferred tax amounts used to prepare the tax filing.

Staff contends that the actual deferred taxes, as of the tax filings, should be reported on Page 6 of the Staff Template rather than estimated book-tax differences. Staff's believes that because SB 408 is attempting to compare the actual taxes paid to the actual taxes collected by a utility, the deferred taxes on Page 6 should also reflect actuals. PGE is the only Company that has taken the position that the deferred tax amounts on Page 6 of the Staff template should be based on estimates rather than actuals.

Staff recommendation:

Staff recommends that PGE recalculate their deferred tax amounts on Page 6 of the Staff Template based on the actual book-tax differences as of the tax filings.

Generic issues:

Following is a description of generic issues Staff raises regarding the rules in general, followed by the specific issues Staff has identified.

Generic Issue 1) Modifications to the Staff template

In its review, Staff recommends modifications to the Staff template in order to facilitate more consistency in the Company filings.

a. Add a column to the Staff Template between the Line No. Column and the boxes used to report dollar amounts so that the Company can input a reference to the source document related to the dollar amount in the associated box.

b. Add a blank header line to the Staff Template that will allow the Company to add the Company name so each page of the template will contain the Company name.

c. Add a worksheet to the Staff Template packet that contains a format for the Stand-alone calculation in order to create consistency as to how the Stand-alone calculation should be done and the source information that should be used to calculate Stand-alone.

d. Each Company should provide an electronic version on a CD of the Staff template in order to facilitate the review of calculations.

Generic Issue 2) **Calculation of Stand-alone Utility.**

Staff Comments:

Pursuant to OAR 860-022-0041(2)(p), the Utility's Stand-alone calculation means the amount of income tax liability calculated using a *pro forma*[1] tax return and revenues and expenses in the Utility's results of operations report for the year, except using zero depreciation expense for the pubic utility property, excluding any tax effects from the investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates.

Staff found that the utility companies interpret this calculation differently. One company used the actual tax liability from the consolidated tax return, and applied the *actual* Schedule M adjustments (rather than the estimated amounts that would be used to prepare its results of operations report) in order to derive a pre-tax income from the results of operations. The Company then used this calculation as the outcome of the Stand-alone tax liability.

Another Company used the Revenues and Expenses reported in the results of operations, applied *estimated* Schedule M adjustments (as used in the results of operations report) and then used the interest synchronization method as an interest expense pursuant to the method described in the rule above.

Yet another Company used the revenues and expenses from the results of operations and calculated interest as directed in the rules, but did not apply *any* Schedule M adjustments (the current rules do not direct the Utility to apply Schedule M's).

Staff believes that the rules as they currently written are unclear and that they do provide an accurate proxy for the calculation of Stand-Alone Utility Tax Liability.

The results of operations report is a proforma regulatory report that requires that the Company use Annual Average amounts rather than the actual End-of-Period amount. For an actual Tax Return, the Company would be required to use actual revenues and expenses on a cash basis (not accrued). To accomplish this, the Company applies Schedule M adjustments on a permanent and temporary basis. These adjustments simply bring the Company from a

---

[1] Emphasis added.

"book" basis to a cash basis. The appropriate interest deduction is accounted for when the actual Schedule M adjustments are applied to the cash basis of revenues and expenses, making it unnecessary to calculate interest using the Company's weighted cost of debt and annual average rate base.

The rules, as written, create an inaccurate view of the Utility's Stand-alone tax liability by requiring the Company to use annual average amounts and interest synchronization without consideration of the application of Schedule M's, whether estimated or actual. Additionally, as the rules currently exist, there is no direction as to all the functions that should be required in order to perform the Stand-alone calculation.

Staff believes the Stand-alone Utility calculation should use revenues and expenses on a cash basis, apply actual Schedule M adjustments, appropriately deduct all interest associated with its actual debt (not a proxy for debt) and other allowable interest expenses, and then apply Tax Credits that may, or may not be, available to the Utility on a Consolidated basis.

<u>Staff recommendation:</u>

Staff suggests a housekeeping change to this section of the rule to revise the "Stand-alone" calculation in order to develop a method to perform this calculation more consistently to what a pro forma tax return would look like for a Stand-alone Utility. Staff will make a recommendation in the rulemaking, which is expected next spring.

CERTIFICATE OF SERVICE

UE 178

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 19th day of December, 2007.

Kay Barnes

Kay Barnes
Public Utility Commission
Regulatory Operations
550 Capitol St NE Ste 215
Salem, Oregon 97301-2551
Telephone: (503) 378-5763

UE 178
Service List (Parties)

PORTLAND GENERAL ELECTRIC COMPANY RATES & REGULATORY AFFAIRS	121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com
CITIZENS' UTILITY BOARD OF OREGON LOWREY R BROWN **(C) (HC)** UTILITY ANALYST	 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org
JASON EISDORFER **(C) (HC)** ENERGY PROGRAM DIRECTOR	610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
DANIEL W MEEK ATTORNEY AT LAW DANIEL W MEEK **(C)** ATTORNEY AT LAW	 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net
DAVISON VAN CLEVE PC ALLEN C CHAN **(C)**	 333 SW TAYLOR, SUITE 400 PORTLAND OR 97204 mail@dvclaw.com
MELINDA J DAVISON **(C) (HC)**	333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com
DEPARTMENT OF JUSTICE DAVID HATTON **(C) (HC)** ASSISTANT ATTORNEY GENERAL	 REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us
KAFOURY & MCDOUGAL LINDA K WILLIAMS **(C)** ATTORNEY AT LAW	 10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net
PORTLAND GENERAL ELECTRIC DOUGLAS C TINGEY **(C)** ASST GENERAL COUNSEL	 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com