



# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

550 Capitol St NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

### Consumer Services

1-800-522-2404

Local: (503) 378-6600

### Administrative Services

(503) 373-7394

December 18, 2009

### *Via Electronic Filing and U.S. Mail*

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
PO BOX 2148  
SALEM OR 97308-2148

**RE: Docket No. UE 178 – In the Matter of PORTLAND GENERAL ELECTRIC  
COMPANY's Senate Bill 408 Tax Filing for 2008 Tax Period.**

Enclosed for electronic filing in the above-captioned docket is the Public Utility  
Commission's Staff Issues List.

*/s/ Kay Barnes*

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

(503) 378-5763

Email: [kay.barnes@state.or.us](mailto:kay.barnes@state.or.us)

c: UE 178 Service List (parties)

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**PUBLIC UTILITY COMMISSION  
OF OREGON**

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**UE 178(3)**

**STAFF ISSUES LIST**

**Carla Owings  
Dustin Ball  
Deborah Garcia**

**In the Matter of  
PORTLAND GENERAL ELECTRIC COMPANY's  
Senate Bill 408 Tax Filing  
for 2008 Tax Period**

**December 18, 2009**

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**SENATE BILL 408, TAX FILINGS  
STAFF'S INITIAL FINDINGS  
FOR PORTLAND GENERAL ELECTRIC – UE 178(3)**

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**TO:** LEE SPARLING, ED BUSCH, JUDY JOHNSON AND  
JASON JONES

**RE: PORTLAND GENERAL ELECTRIC – UE 178 (3)  
SB 408 TAX FILINGS  
2008 TAX PERIOD**

**FROM:** CARLA OWINGS, SENIOR UTILITY ANALYST,  
DUSTIN BALL, SENIOR UTILITY ANALYST, AND  
DEBORAH GARCIA, SENIOR UTILITY ANALYST  
PUBLIC UTILITY COMMISSION

**DATE:** DECEMBER 18, 2009

**CC:** ALL PARTIES

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On October 15, 2009, Portland General Electric (PGE or Company) filed UE 178(3), its tax report covering the 2008 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.

## SUMMARY OF 2008 SB 408 IMPACT:

PGE reports the following for its Regulated Results of Operations for the 2008 tax period:

**Table 1-Original Filing**

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest <sup>1</sup> (7/1/08 through 6/1/2011)	Total Refund
<b>\$49.0 million</b>	<b>\$57.7 million</b>	<b>(\$8.7 million)</b>	<b>(\$1.5 million)</b>	<b>(\$10.2 million)</b>

PGE's original filing reflected a total refund related to the Federal and State tax true-up for the 2008 tax period to be \$10.2 million including interest.

**Table 2- Staff Recommendation**

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest <sup>2</sup> (7/1/08 through 6/1/2011)	Total Refund
<b>\$48.3 million</b>	<b>\$57.7 million</b>	<b>(\$9.4 million)</b>	<b>(\$1.5 million)</b>	<b>(\$10.9 million)</b>

The impact of PGE's refund of approximately \$10.9 million represents a decrease of approximately 0.66 percent to PGE's retail rates. For the 2007 tax period, PGE had a surcharge of approximately \$14.7 million. However, due to a large refund that related to the 2006 tax period, which was amortized over a two-year period, PGE is currently amortizing a refund of approximately \$8 million.

In June 2010, the effect of removing the current refund related to the prior periods, and replacing it with the 2008 tax period refund of \$10.9 million will reduce current rates by approximately 0.13 percent (without consideration of interest). PGE relied upon the Consolidated Method for the outcome of its 2008 SB 408 filing. Prior to June 1, 2010, Staff will review the remaining balance of the 12-month amortization related to the surcharge for the 2007 tax period. Any over- or under-collection of these amortizations will be either included in, or netted against, the total 2008 tax variance plus interest on June 1, 2010.

<sup>1</sup> This is an estimate of all interest that will apply until amortization is complete.

<sup>2</sup> See footnote above.

PGE paid approximately \$834,000 in local taxes for the 2008 tax period and collected \$1.0 million in rates. The variance between taxes paid and taxes collected is a refund of approximately \$177,000. Interest of approximately \$28,000 has accrued on this balance since January 1, 2008. On June 1, 2010, PGE will implement a refund to Multnomah County ratepayers of approximately \$206,000. This refund will be implemented simultaneous to the refund generated from the true-up related to the State and Federal tax true-up. For this reason, PGE's Multnomah County ratepayers will experience a slightly higher refund than those outside of the Multnomah County jurisdiction.

### **STAFF REVIEW:**

Staff conducted face to face interviews on November 12, 2009, December 1, 2009 and by phone on December 15, 2009. Citizens' Utility Board and the Industrial Customers of Northwest Utilities were present for each meeting and participated in these discussions. Staff sent ten data requests and conducted informal phone discussions.

The Company provided several work papers, an electronic version of Staff's Tax form and responses to Staff's data requests. While Staff raises numerous issues in this document, it also reserves the opportunity to raise new issues during the time remaining in this proceeding.

Following is a detailed summary of Staff's review:

Staff requested the Company provide responses to the following items:

- the amended tax returns included in the taxes paid calculation;
- the SB 408 2006 deferral Schedule M item;
- the various adjustments to deferred taxes;
- the adjustments to interest synchronization method for purposes of the stand-alone calculation;
- reconcile the charitable contribution add-back on Page 6 of Staff's template;
- why tax credits were applied in a different order for stand-alone than for the consolidated and apportionment methods; and
- why the add-back related to the ISFSI tax credit is greater than the actual reduction to taxes on page 6 of the Staff Template.

As a result of our review, Staff identified the following issues regarding PGE's original filing:

**(1) Amended filings included in taxes paid;**

This amendment adjusts taxes paid for 2008 plus interest to include amounts for anticipated amended tax returns related to PGE's 2006 and 2007 tax periods. However, these amended tax returns were not filed or paid to Internal Revenue Service (IRS) at the time PGE filed its SB 408 filing on October 15, 2009.

OAR 860-022-0041(5)(a)(B) states: "For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes."

Staff interprets this rule to mean that an amended tax return that is "filed, paid or received" after the "date the tax report is due" for the applicable tax year would mean (in this scenario) that a 2008 tax filing that is "amended, paid or filed" before October 15, 2009, would qualify as an "amended return". In this circumstance, however, PGE had not "yet" filed the amended returns or paid the tax as of October 15, 2009. Instead, PGE relies upon the wording at the end of the rule which states that the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes."

The actual date for this amended filing occurred after the October 15, 2009 due date for PGE to submit its SB 408 filing, therefore Staff had no documentation of the "actual" amendment submitted to the IRS, only the estimate of what the Company intended to submit.

Staff believes the rule language seems to contradict itself from the beginning of the statement to the end of the statement. During settlement discussions, Staff and the Company were ultimately at a stalemate as to which language should apply to this circumstance. The amended return was filed by PGE on November 13, 2009, therefore, PGE was able to provide documentation of the amendment prior to the publication of this Staff issues list.

While the Company provided a copy of the amended filing, however, upon review the amendment did not match the SB408 adjustment included in PGE's tax report. In the SB 408 filing, PGE's estimate of tax and interest was approximately \$100,000 higher than the actual amount paid with the amended returns. The adjustment results in a decrease to PGE's federal and taxes paid of approximately \$122,000.

It is essential that Staff be provided with the proper documentation of amended returns in a timely manner to complete its review of the SB 408 filings.

This would require that any amendments booked as a provision to any tax period must be “filed, paid and received” by October 15<sup>th</sup> of that tax period in order for them to be included in the SB 408 filing.

*Staff recommends that PGE revise its federal and state taxes paid by \$122,175 to reconcile the actual tax and interest that relates to the amended filings. Doing so will result in an increase to PGE’s refund to customers of \$122,175.*

*Further Staff recommends that the Commission open a rule-making in order to clarify the language in this section of the rules and will recommend that amendments be filed, paid and received prior to October 15<sup>th</sup> of each year to be included in the SB 408 tax filings.*

**(2) Adjustments made to deferred taxes related to carrying charges on regulatory assets;**

FERC requires the utilities to book these carrying charges below-the-line. In its stand-alone calculation, PGE made an adjustment to its temporary Schedule M’s that relate to carrying charges on regulatory assets in order to attribute the impact of deferred taxes to the utility activities rather than treat them as any other costs that are booked below-the-line. PGE feels it is appropriate to adjust the deferred tax impact of these costs because it believes that the interest on regulatory assets is related to regulatory operations.

Specifically, PGE did not apply the Schedule M deduction in the stand-alone calculation which would have served to reduce taxes paid. Instead, PGE made an adjustment to retain the credit for the associated deferred taxes for the utility only, which increases taxes paid. Staff believes PGE’s adjustment is inappropriate because these costs are required to be booked below-the-line and should be treated as such in the SB408 filing.

Additionally, Staff believes that if the Company were to recover the cost of items booked to regulatory assets it would do so in a supplemental tariff and not in base rates. Supplemental tariffs are not included in the taxes collected calculation because these are items that are typically temporary rate impacts, collected from prior periods, or simply disallowed and not recovered from ratepayers.

*Staff recommends that PGE revise its calculation of stand-alone to apply the Schedule Ms that relates to the carrying charges on regulatory assets. This revision will not impact PGE’s refund because the consolidated method is the lowest three methods and this adjustment will only impact the stand-alone calculation.*

**(3) Review whether interest synchronization was applied to the stand-alone method for calculating taxes paid;**

On Work Paper (WP) E-1, PGE makes an adjustment to interest synchronization in its stand-alone method to include interest on regulatory liabilities. Staff believes these adjustments serve to modify PGE's taxable income in the stand-alone calculation and nullifies the use of interest synchronization.

Staff believes that the Company should not make adjustments to the interest synchronization as it is a proforma calculation intended to serve as a proxy for the interest deduction on the tax return. Therefore, these adjustments to deferred taxes tend to modify interest synchronization and inaccurately modify the taxable income of the utility on a stand-alone basis.

*Staff recommends that PGE remove the adjustments to the taxable income made on WP E-1 by approximately \$9.1 million. This modification would not impact the outcome of PGE's refund because the outcome of PGE's SB 408 filing relies upon the consolidated method rather than stand-alone.*

**(4) Demonstrate how charitable contributions made by PGE reduced the apportioned Stand-alone tax liability and therefore need to be added-back on Page 6 of the tax report;**

On page 6, Line 2 of the Staff report, PGE adds back the federal tax benefit of charitable contributions. The first section of page 6 recognizes the apportionment method of taxes paid, which is the "greater of" apportioned consolidated or apportioned stand-alone. For PGE, in this reporting period the apportioned stand-alone method ends up being the "greater of" the two methods.

Because charitable contributions are below-the-line activities and are therefore not included in the results of operations, Staff believes that there was no tax benefit of charitable contributions in the apportioned stand-alone calculation.

*Staff recommends PGE remove the add-back from page 6, line 2 by approximately \$56,000. Doing so does not ultimately impact the outcome of PGE's refund because for this reporting period PGE relies upon the consolidated method. This revision will only affect the stand-alone and the apportioned stand-alone methods.*

**(5) The application of tax credits and the add-back of tax credits on Page 6 of the Staff report;**

On Page 2 of Staff's tax report, PGE includes sixty-five percent of the value of ISFISI tax credits when calculating taxes paid. This reduction represents the net of the actual benefit of the tax credit. Due to a net loss for federal taxes the



Company does not experience the entire benefit of this tax credit. However, on Page 6 of the tax report, the Company adds the entire ISFISI tax credit back creating a mismatch in the calculations. In response to Staff's data request no. 39, PGE agreed to revise the add-back amount to match the calculation of taxes paid on Page 2 of Staff's tax report.

*Staff recommends that PGE revise its tax report so that the add-back on Page 6 is equal to the benefit of the ISFISI tax credit included in the taxes paid line on Page 6. This revision will increase PGE's SB 408 federal and state refund by approximately \$600,000.*

**Summary.** *The summary of Staff's initial findings results in a total increase to PGE's federal and state refund of \$725,260. Staff has no recommended revisions to PGE's total refund of local taxes of \$177,439.*

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
<b>CITIZENS' UTILITY BOARD OF OREGON</b>  OPUC DOCKETS	610 SW BROADWAY STE 308 PORTLAND OR 97205 dockets@oregoncub.org
GORDON FEIGNER <b>(C) (HC)</b> ENERGY ANALYST	610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 gordon@oregoncub.org
ROBERT JENKS <b>(C) (HC)</b>	610 SW BROADWAY STE 308 PORTLAND OR 97205 bob@oregoncub.org
G. CATRIONA MCCrackEN <b>(C) (HC)</b> LEGAL COUNSEL/STAFF ATTY	610 SW BROADWAY - STE 308 PORTLAND OR 97205 catriona@oregoncub.org
<b>DANIEL W MEEK ATTORNEY AT LAW</b>  DANIEL W MEEK <b>(C) (HC)</b> ATTORNEY AT LAW	10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net
<b>DAVISON VAN CLEVE</b>  JESSE E COWELL <b>(C)</b>	333 SW TAYLOR ST., SUITE 400 PORTLAND OR 97204 jec@dvclaw.com
<b>DAVISON VAN CLEVE PC</b>  MELINDA J DAVISON <b>(C) (HC)</b>	333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com
<b>DEPARTMENT OF JUSTICE</b>  JASON W JONES <b>(C) (HC)</b> ASSISTANT ATTORNEY GENERAL	REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us
<b>KAFOURY &amp; MCDUGAL</b>  LINDA K WILLIAMS <b>(C) (HC)</b> ATTORNEY AT LAW	10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net
<b>PORTLAND GENERAL ELECTRIC</b>  DOUGLAS C TINGEY <b>(C) (HC)</b> ASST GENERAL COUNSEL	121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com

**CERTIFICATE OF SERVICE**

**UE 178(3)  
Staff Issues List**

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 18th day of December, 2009.

*Kay Barnes*

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