

1 **BEFORE THE OREGON PUBLIC UTILITIES COMMISSION**

2  
3 **UE 178**

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

8  
9 **Portland General Electric Company**  
10 **(PGE)**

11  
12 **To file tariffs establishing automatic**  
13 **adjustment clauses under the terms**  
14 **of SB 408.**

**REQUEST FOR OFFICIAL NOTICE**  
**BY**  
**KEN LEWIS and**  
**UTILITY REFORM PROJECT**

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17 Ken Lewis and the Utility Reform Project [hereinafter "Lewis and URP"]  
18 request official notice of the information in the following documents.

- 19  
20 **1. PGE's "OPUC REGULATORY REPORTING RESULTS OF OPERATIONS**  
21 **January 2007 through December 2007" [hereinafter PGE 2007 Results of**  
22 **Operations Report"].**  
23

24 PGE filed this document with the Commission on June 2 or 3, 2008. OAR  
25 860-014-0050(1)(a), (1)(e) and (1)(f). The report is required by OAR 860-027-0070.  
26 The facts contained therein are presumed accurate and are completely within the  
27 definition of Rule OEC 201(b) of the Oregon Rules of Evidence and OAR 860-014-  
28 0050(1)(a).<sup>1</sup> The report has been filed "in the regular course of performing the

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**1. Rule 201(b) [ORS 40.065(2)]:**

31 A judicially noticed fact must be one not subject to reasonable dispute in  
32 that it is either:

33 (continued...)

1 Commission's duties" [OAR 860-014-0050 (1)(e)] and contains "[g]eneral, technical  
2 or scientific facts within the specialized knowledge of the agency." OAR 860-014-  
3 0050(1)(f).

4 It would be an abuse of discretion, and contrary to statutory duty, for the  
5 Commission to *forbid* the inclusion of probative evidence of the highest authenticity  
6 and accuracy from the record of the proceeding. See generally, ***Arlington Educ.***  
7 ***Ass'n v. Arlington School Dist. No. 3***, 177 OrApp 658, 663, 34 P3d 1197, 1200  
8 (2001) (construing the similar language of ORS 183.450(4)). There can be no  
9 "rational relationship" between determining fair, just and reasonable rates and  
10 refusing to consider the best evidence available, particularly when the evidence is  
11 produced by the party (here, PGE) most likely to oppose its consideration.

12 A issue in this case, identified as one of the nine in the Issue Statement filed  
13 by Lewis and URP in this docket on December 23, 2008, is:

- 14 1. If the utility's earnings for the tax year at issue were above its authorized  
15 rate of return on investment, should the utility be allowed to surcharge  
16 ratepayers for a deficit in income taxes charged v. income taxes actually  
17 paid by the utility?<sup>2</sup>  
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19 1.(...continued)

20 (1) Generally known within the territorial jurisdiction of the trial court; or

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22 (2) Capable of accurate and ready determination by resort to sources  
23 whose accuracy cannot reasonably be questioned.  
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- 25 2. The information in the PGE 2007 Results of Operations Report is also relevant to the  
26 other issues identified by Lewis and URP.

1 The PGE 2007 Results of Operations Report shows "Regulated Adjusted Results"  
2 for 2007 produced a "Return on Equity" of 11.58%. PGE 2007 Results of  
3 Operations Report, p. 1, col 5. This is higher than PGE's 10.1% authorized rate of  
4 return for 2007. The PGE 2007 Results of Operations Report uses the rate order in  
5 UE 180 (OPUC Order No. 07-015) as establishing the authorized rate of return  
6 applicable to 2007: 10.1%.

7 Another way of quantifying the 2007 overearning is that, under OPUC Order  
8 No. 07-015 (App F, p. 1, col 5, line 23), PGE was authorized to earn \$143,306,000  
9 in net operating revenues for 2007. In reality (under Regulated Adjusted Results for  
10 2007), PGE earned \$180,224,000. The difference is earnings of \$36,918,000 for  
11 2007 in excess of the level authorized by OPUC Order No. 07-015.

12 Lewis and URP intend to use this information in their argument that PGE  
13 should not be allowed any surcharge for 2007 in this docket. When the  
14 circumstances were reversed during the last 3 months of 2005, PGE and Staff in  
15 UM 1224 both argued that PGE should not be required to refund excess income tax  
16 collections (quantified by Staff at \$26.5 million during those 3 months), because  
17 PGE's earnings during a 12-month earnings review period (which included the 3  
18 months) were below the authorized level. The Commission has not issued an order  
19 resolving this issue in UM 1224.

20 In this UE 178 docket, a pertinent Lewis and URP argument will be: If the  
21 lack of such earnings enables PGE to avoid making a refund of excess income

1 taxes charged to ratepayers, then an abundance of earnings should likewise  
2 prevent PGE from surcharging ratepayers when income taxes paid (allegedly)  
3 exceed the amount charged to ratepayers. Lewis and URP will argue that  
4 ratemaking which imposes surcharges despite contemporaneous excess earnings,  
5 but does not require refunds because of contemporaneous deficient earnings,  
6 results in unjust, unfair, unreasonable, and unlawful rates, and it violates the rule  
7 against retroactive ratemaking.

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9 **2. TESTIMONY, EXHIBITS, AND HEARING TRANSCRIPT OF THE UM 1224**  
10 **CONTESTED CASE PROCEEDING.**

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12 These documents establish the position of the parties on how PGE's actual  
13 earnings should affect the Commission's determinations on allowing PGE to avoid  
14 making refunds to customers, if the overcollection of taxes occurs during a period of  
15 actual earnings below authorized rate of return on investment.

16 Official notice of these documents is authorized by OAR 860-014-0050,  
17 because these are "[d]ocuments and records in the files of the Commission which  
18 have been made a part of the file in the regular course of performing the

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Commission's duties."

Dated: March 3, 2009

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify I FILED the foregoing REQUEST FOR OFFICIAL NOTICE BY KEN LEWIS and UTILITY REFORM PROJECT by e-mail upon the OPUC, followed by mail of the original and 8 copies this date to the Oregon Public Utility Commission, and further I certify that I served a copy by placing a true copy 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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I further emailed said document to the entire email service list as shown this day on the OPUC web site:

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38 Dated: March 3, 2009

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Daniel W. Meek