

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UE 178**

In the Matter of the PUBLIC UTILITY  
COMMISSION OF  
OREGON STAFF directing:

PORTLAND GENERAL ELECTRIC  
COMPANY,

To file tariffs establishing automatic adjustment  
clauses under the terms of SB 408

**PORTLAND GENERAL ELECTRIC  
COMPANY'S MOTION TO TAKE  
OFFICIAL NOTICE**

Pursuant to OAR 860-014-0050(1)(c), Portland General Electric Company ("PGE") hereby moves for an ALJ ruling or Commission order taking official notice of Commission Order No. 07-421 (in UM 1271). PGE has conferred with the other parties in this docket and none oppose this motion. Because the granting of this motion will affect the scope of PGE's opening testimony, PGE requests expedited consideration of this motion. PGE respectfully requests issuance of a ruling or order by November 15, 2007.

UM 1271 concerned PGE's application for deferred accounting treatment for the expected SB 408 pass through of the tax benefits which flowed from the sale of an unregulated asset, an LM 6000 turbine in 2006. In UM 1271, PGE argued that depriving it of the \$4.9 million tax benefit from the turbine sale would violate constitutional principles. The Commission declined to address those constitutional arguments, concluding that they were premature until such time as the Commission imposed a SB 408 rate adjustment for PGE's tax report for the tax year 2006:

Accordingly, PGE's arguments that it would be unconstitutional or otherwise illegal to 'deprive PGE of \$4.9 million in tax benefits' are premature. It is the future application of SB 408, and not denial of this deferral application, that may deprive PGE of these tax benefits. PGE may raise its constitutional arguments if and when that future contingency occurs.

UM 1271, Order No. 07-421 at 8 (Sept. 26, 2007). The Commission observed that the PGE could “raise its constitutional and statutory challenges during the Commission’s determination of whether SB 408 requires a rate adjustment.” *Id.* n3.

What was a future contingency in UM 1271 will become a fact in this proceeding. The relevant facts regarding the LM 6000 purchase and sale, its tax impact, and likely treatment under SB 408 were the subject of a fully developed record in UM 1271. The Commission entered findings of fact on the subject, underscoring that the “facts are undisputed:” PGE sold the turbine for a loss, a tax benefit accrued, and SB 408 requires the pass-through of such tax benefits. *Id.* at 2. Putting those facts into the UE 178 record is necessary for PGE to make the constitutional arguments that the Commission concluded should be made in this proceeding. *Id.* at 8 n3. At this point in time, PGE is not certain whether it will raise its constitutional defenses to the application of SB 408 to the turbine sale. Nevertheless, it is unwilling to waive those arguments at this early juncture in the proceeding.

Sound administrative and regulatory rules support the taking official notice of Order No. 07-421. The Commission rules expressly provide for the taking official notice of Commission final orders, no doubt for situations like this one. OAR 860-014-0050(1)(c). Recreating a record would be inefficient and wasteful of the parties’ and the Commission’s resources when the Commission issued findings of fact based on a fully developed record on the topic in UM 1271. No purpose would be served other than the unnecessary expenditure of time and resources in a docket with statutorily imposed tight deadlines. *See* ORS 757.268(4) (requiring the Commission to issue an order within 180 days of the utility’s filing of a tax report).

PGE respectfully requests that the Commission consider this motion on an expedited basis and issue an order or ruling taking official notice of Order No. 07-421.

DATED this 5th day of November, 2007.

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## CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S MOTION TO TAKE OFFICIAL NOTICE** by e-mail or by mailing a copy thereof to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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DATED this 5th day of November, 2007.

  
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