



1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

DAVID F. WHITE

503.802.2168
FAX 503.972.3868
davidw@tonkon.com

May 30, 2006

VIA E-FILING & FIRST CLASS MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol St. NE, Suite 215
P. O. Box 2148
Salem, Oregon 97308-2148

Re: *UM 1262*

Attention Filing Center:

Enclosed for filing in the above-referenced docket are the original and five copies of the Motion to Dismiss of Portland General Electric Company. This document is being filed electronically per the Commission's eFiling policy to the electronic address PUC.FilingCenter@state.or.us, with copies being served on all parties on the service list via U.S. Mail. A photocopy of the PUC tracking information will be forwarded with the hard copy filing.

Very truly yours, .

A handwritten signature in black ink that reads "D. F. White".

David F. White

DFW/ldh
Enclosures
cc: Service List
001991\00259\694920 V001

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1262

CITY OF PORTLAND,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation,

Defendant.

**MOTION TO DISMISS OF PORTLAND
GENERAL ELECTRIC COMPANY**

Pursuant to OAR 860-013-0050, Portland General Electric Company ("PGE") hereby moves to dismiss Counts 1 and 2 of the Complaint filed by the City of Portland ("City").¹ The Public Utility Commission ("Commission") does not have jurisdiction with respect to either count.²

BACKGROUND

The City's Complaint is an attempt to relive the past when Enron Corp. ("Enron") owned PGE and filed consolidated federal and state tax returns that included PGE's income. Today Enron has no ownership interest in PGE and no involvement in PGE's taxes. PGE files its own federal and state income taxes.

¹ This motion against the Complaint is submitted in lieu of an Answer pursuant to OAR 860-013-0050 (3)(a). However, PGE generally denies the allegations in the Complaint and maintains that it fully complied with federal and state law.

² PGE makes no motion with respect to Count 3 at this time. PGE asks the Commission to order a procedural conference to discuss scheduling on that count. Although PGE has not moved to dismiss Count 3, PGE believes that summary disposition of that count is appropriate, so PGE will request an opportunity to move for summary judgment against Count 3 before a hearing.

Both the Commission and the Oregon State Legislature have already considered the treatment of income taxes in PGE's rates. In 2001, the Commission approved PGE rates using the traditional standalone approach for including income tax expenses in rates. That was the only PGE general rate case during Enron's ownership of PGE. In 2003, the Commission considered and rejected a petition to open an investigation into PGE's income taxes. *See In the Matter of Utility Reform Project*, UM 1074, Order No. 03-214, 2003 WL 21251774 (Or PUC 2003). The Commission also dismissed a complaint challenging the reasonableness of the treatment of income tax expenses in PGE's historic rates. *See Utility Reform Project v. Portland General Electric*, UCB 13, Order No. 03-401 (Or PUC 2003), *recon. denied*, Order No. 03-629, 2003 WL 22938480. Most recently, during the 2005 legislative session, the Oregon State Legislature passed Senate Bill 408, Oregon Laws Chapter 845, which specifically addresses Oregon utility rate treatment for income taxes.

In the current Complaint, the City alleges that PGE was not permitted to file a unitary tax return with Enron under Oregon corporate tax regulations (Count 1). The City also alleges that PGE and Enron violated SEC Rule 45(c) under the Public Utility Holding Company Act of 1935 in the manner it allocated taxes with Enron from 1997 to 2004 (Count 2). The City does not assert damages, but it requests as relief that the Commission investigate or request the Oregon Department of Justice to investigate Enron and PGE's income tax payments, that PGE be preliminarily enjoined from making any stock dividend distributions until the Commission rules on the tax issues, and that the Commission assess penalties under ORS 756.990.

ARGUMENT

I. LEGAL STANDARD FOR MOTION TO DISMISS

Commission rules specifically permit the filing of a motion to dismiss against a complaint. *See* OAR 860-013-0050(3)(a). Objections that the Commission lacks jurisdiction or that the complaint does not state a claim upon which the Commission may order relief are never waived and may be made at any time. *See* OAR 860-013-0050(4).

To our knowledge, the Commission has not set forth a legal standard for deciding motions to dismiss, but the Commission's practice has been to dismiss claims that are legally defective and do not require an evidentiary hearing for disposition. As such, the Commission has dismissed without a hearing claims that are beyond the Commission's jurisdiction. *See, e.g., Michael Thompson v. Qwest Corp.*, UCB 1, Order No. 02-558 (Or PUC 2002) (dismissing complaint based on phone directory charges as a matter "outside the jurisdiction of the Commission"); *Spring Crest Drapery Center v. Qwest Corp.*, UC 596, Order No. 01-594 (Or PUC 2001) (dismissing complaint seeking monetary damage because "Oregon statutes do not provide the Commission with authority to require telecommunications carriers to pay customers monetary penalties for service failures"). The Commission has also dismissed claims for which it cannot order relief. *See, e.g., Schultz v. Qwest Corp.*, UC 559, Order No. 00-752 (dismissing complaint that failed "to state a cause of action that would authorize the Commission to act").

For the reasons set forth below, the Commission should grant PGE's motion to dismiss Counts 1 and 2 of the City's Complaint.

II. THE COMMISSION'S JURISDICTION IS LIMITED TO ITS STATUTORY AUTHORITY

The regulation of public utilities is a legislative function, delegated to the Commission by the State Legislature. *See Pacific NW Bell Tel. Co. v. Sabin*, 21 Or App 200,

213, 8 PUR 4th 159 (1975) ("That the regulation of public utilities, including the fixing of rates, constitutes a legislative function is beyond argument.") Although its powers are broad with respect to public utilities, the Commission's authority arises from and cannot go beyond the powers expressly conferred by statute. *See id.* (stating that the Commission's power "arises from and cannot go beyond that expressly conferred upon it" by the legislature); *see also Board of Com'rs of Clackamas County v. Department of Land Conservation*, 35 Or App 725, 732 (1978) ("a state agency is a creature of statute whose authority extends as far as the statutes extend, and no further"); *Lee v. Pacific Tel. & Telegraph*, 154 Or 272, 279 (1936) (stating that the Commission's powers "are limited to those conferred by statute, either expressly or by necessary implication"). An agency "has only those powers that the legislature grants and cannot exercise authority that it does not have." *SAIF v. Shipley*, 326 Or 557, 561 (1998).

ORS 756.040 grants the Commission general authority over "all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction." The Commission also has investigative and enforcement powers—it is required to investigate any violations of the state or municipal laws relating to public utilities, required to enforce the state laws relating to public utilities, and permitted to enforce municipal laws relating to public utilities. *See* ORS 756.160. This investigation and enforcement mandate is expressly limited to laws "relating to public utilities." *Id.* It does not require the Commission to investigate and enforce all federal, state and municipal laws of general application—such as the corporate tax laws and federal securities laws—just because those laws apply to public utilities (along with

everyone else).³ See *Lewis v. U S WEST Communications, Inc.*, UC 204, Order No. 92-965, 1992 WL 230115 (Or PUC 1992) (holding the "fact that the defendant is a regulated public utility" insufficient to give the Commission authority to adjudicate claims against it under several Oregon laws of general application).

III. THE COMMISSION DOES NOT HAVE JURISDICTION TO INTERPRET AND ENFORCE OREGON'S TAX LAWS

In Count 1, the City asserts that PGE and Enron were not "unitary" for tax purposes under Oregon law, and therefore violated rules promulgated by the Oregon Department of Revenue with regard to filing corporate income tax returns on a consolidated basis.

(Complaint ¶¶ 15-17.) Whether Count 1 is viewed as a petition for declaratory relief, a petition to investigate, or a claim under ORS 756.500, the Commission does not have jurisdiction to interpret or enforce the Oregon tax statutes or Oregon Department of Revenue regulations.

The Oregon tax laws are a separate and distinct statutory scheme. The State Legislature, which makes the tax laws, has expressly mandated that the Department of Revenue is responsible for administering and enforcing Oregon's tax laws, including the laws governing corporate income taxation and consolidated filing. ORS 305.120, which is part of the general "Revenue and Taxation" chapter of the Oregon tax code, provides:

Enforcement of tax laws. (1) The Department of Revenue shall see that revenue officers comply with the tax and revenue laws, that all taxes are collected, that complaint is made against any person violating such laws and that penalties prescribed by such laws are enforced. (2) The Director of the Department of Revenue may call upon the district attorney or Attorney General to institute and conduct prosecutions for violations of the laws in respect to the

³ To read ORS 756.160 otherwise would mean that the Commission is required to investigate, interpret and enforce any and all Oregon laws applicable to public utilities, even if they are laws of general application addressing matters well outside the Commission's expertise.

assessment and taxation of property and the collection of public taxes and revenues.

(Emphasis added.) ORS 314.085, which is part of the more specific chapter on "Income Taxation Generally," similarly states, "The Department of Revenue shall administer and enforce the tax imposed by any law imposing tax upon or measured by net income." (Emphasis added.) Finally, ORS chapter 318, the chapter of the tax code specifically governing corporate income taxation, begins, "This chapter shall be known and may be cited as the Corporation Income Tax Act of 1955, and it shall be administered by the Department of Revenue." ORS 318.010 (emphasis added).

The State Legislature has also made clear that it is important that the state tax laws are administered and enforced as uniformly as possible. The Legislature expressly incorporated various tax provisions from other parts of the tax code into ORS chapter 318 ("Corporate Income Taxation") specifically because of "the intention of the Legislative Assembly that [ORS chapter 318] and ORS chapter 317 be administered as uniformly as possible." ORS 318.031 (emphasis added). The Legislature has also recognized that consistency is important not only with respect to its own statutes, but relative to other state tax codes and the federal tax code. *See, e.g.*, ORS 314.670(2) (authorizing the Department of Revenue to "adopt rules to promote uniformity and consistency with other states in the application of the Uniform Division of Income for Tax Purposes Act"); ORS 305.655 (enacting the Multistate Tax Compact to promote uniformity or compatibility in significant components of tax systems with respect to multistate taxpayers); ORS 314.011(3) ("Insofar as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law.").

ORS 314.280, ORS 314.605 to 695, and ORS 317.705 to 725 are the statutes governing consolidation of corporate income tax returns by corporate affiliates. Those statutes are all incorporated by reference into chapter 318, specifically to ensure uniform administration by the Department of Revenue. *See* ORS 318.031. ORS 314.280 and ORS 314.605 to 695 are also supposed to be administered by the Department of Revenue in a manner consistent with federal tax law. *See* ORS 314.011(3). The Public Utility Commission has no authority to enforce ORS chapters 314 and 318, and its doing so would interfere with the uniform interpretation and enforcement of the tax laws.

The same is true with respect to rules and regulations the Department of Revenue promulgates. As part of its enforcement authority, the Department of Revenue is authorized to "make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to enforce income tax laws." ORS 314.815; *compare* ORS 756.060 (granting the Public Utility Commission authority to issue rules and regulations relative to the statutes it administers). The Department of Revenue also has specific authority under ORS 314.670(2) to "adopt rules to promote uniformity and consistency with other states in the application of the Uniform Division of Income for Tax Purposes Act," which act includes provisions relevant to the issue of PGE and Enron's corporate income tax consolidation.

Finally, the Commission's lack of jurisdiction is made even further apparent by the distinct penalty provisions and judicial review provisions of the Oregon tax laws. With respect to penalties, the tax code provides that the Department of Revenue is the agency that enforces such penalties. *See* ORS 305.120(1) (granting the Department of Revenue the authority to enforce the tax laws, including seeing that penalties prescribed by such laws are enforced).

The fact that the Commission cannot order any relief for alleged violations of the state tax laws is further indication of its lack of jurisdiction.

As for judicial review, the Legislature's intent is also clear. The Legislature created an entirely separate court to decide tax issues. *See* ORS 305.405. Subject only to limited exceptions not applicable here, the Oregon Tax Court is "the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state." ORS 305.410(1). The judicial review provisions of the tax code alone preclude the possibility that the Public Utility Commission has authority to rule on PGE's compliance with Oregon tax laws. Commission orders are not subject to review by the Tax Court, but rather subject to review by the Court of Appeals. *See* ORS 756.610; ORS 183.482. However, the Legislature specifically excluded the Court of Appeals from any role in reviewing questions of law or fact arising under the Oregon tax laws. *See* ORS 305.445 (sending all appeals from the Tax Court directly to the Oregon Supreme Court); ORS 305.105 (requiring either the Tax Court or the Supreme Court to review any declaratory rulings on the tax laws).

For all the foregoing reasons, the Commission has no statutory authority to investigate or enforce alleged violations of the Oregon tax laws, and Count 1 must be dismissed.

IV. THE COMMISSION DOES NOT HAVE JURISDICTION TO INTERPRET AND ENFORCE FEDERAL SECURITIES REGULATIONS

In Count 2, the City alleges that PGE and Enron violated a rule promulgated by the U.S. Securities and Exchange Commission ("SEC") under Section 12 of the Public Utilities Holding Company Act of 1935 ("PUHCA), specifically Rule 45(c), 17 CFR 250.45. (Complaint

at 5-6 ¶¶ 18-22.) Although PUHCA has since been repealed,⁴ the City asks the Commission to rule that PGE and Enron violated that rule.

The Commission has no jurisdiction whatsoever to enforce federal laws. Its legislative mandate is expressly limited to state and municipal laws. *See* ORS 756.160 (granting the Commission enforcement authority only with respect to state and municipal laws relating to public utilities). Similarly, the Commission has no authority to make a declaratory ruling as to PGE's compliance with federal laws. *See* ORS 756.450 (allowing the Commission to issue declaratory rulings only with respect to a "rule or statute enforceable by the commission"). Such a ruling by the Commission would not be binding on the federal authorities in any event. *See* ORS 756.450 (providing that a declaratory ruling "is binding between the commission and the petitioner on the state of facts alleged"). Finally, the Commission has no authority to impose penalties for violation of the federal securities regulations. *See* ORS 756.990(2) (limiting the Commission's authority to impose penalties to violations of statutes "administered by the Commission" and to situations where penalties are not "otherwise provided by law").

Like the state tax laws, Rule 45(c) is part of a distinct statutory scheme with its own rules, regulations and administrative provisions. The Federal Legislature gave the SEC the authority to investigate potential violations of this statutory scheme, *see* 15 USCA § 79r, including specific authority to bring actions in federal district court to enjoin violations and enforce compliance (*see id.* § 79e), as well as specific authority to apply to the federal district courts to issue writs of mandamus commanding compliance (*see id.* § 79f). The SEC may transmit evidence concerning such acts and practices to the U.S. Attorney General for criminal

⁴ PUHCA was repealed effective February 8, 2006. *See* Pub. L. 109-58, Title XII, Subtitle F, § 1263 (2005). A new "Public Utility Holding Company Act" was enacted in 2005, but the new

prosecution. *See id*; *see also id.* § 79z-3 (creating criminal penalties for willful violation of PUHCA or any rule, regulation or order thereunder). Orders issued by the SEC are subject to judicial review by the appropriate federal circuit court of appeals. *See id.* § 79x.

There is no reason for the Commission to interfere with the SEC's enforcement of PUHCA or the SEC regulations promulgated thereunder, and the fact that they are federal laws in and of itself means the Commission has no statutory authority to do so. *See* ORS 756.160. As such, Count 2 must be dismissed for lack of jurisdiction.

V. TO THE EXTENT THE CITY SEEKS DECLARATORY RULINGS ON STATE TAX AND FEDERAL SECURITIES LAWS, THE COMMISSION LACKS JURISDICTION TO ISSUE SUCH RULINGS

To the extent the City is seeking declaratory rulings on matters of state tax law and federal securities laws, Counts 1 and 2 should be dismissed on that additional basis as well. With regard to Count 1, the City asks the Commission for a "ruling" as to whether PGE was qualified to file unitary state tax returns while owned by Enron (Complaint at 7 ¶ 2), for a "ruling" as to whether PGE failed to file separate income tax returns while it was owned by Enron (Complaint at 7 ¶ 3), and for a "ruling" as to whether PGE was permitted to file unitary tax returns in light of its ring-fencing from Enron (Complaint at 7 ¶ 4). With respect to Count 2, the City asks for a "ruling" as to whether PGE and Enron violated a federal securities regulation in the way they filed their taxes. (Complaint at 7 ¶ 5.)

There is no reason for the Commission to make declaratory rulings on matters outside its own administrative expertise, and the Legislature has not given the Commission the authority to do so. ORS 756.450 only allows the Commission to issue declaratory rulings "with respect to the applicability to any person, property, or state of facts of any rule or statute

act does not contain provisions comparable to Section 12 of the 1935 act.

enforceable by the commission." (Emphasis added.) Compare ORS 305.105 (granting Oregon Department of Revenue authority to issue declaratory rulings with respect to the rules and statutes it administers, subject to review by the Oregon Tax Court and Oregon Supreme Court).

Neither Oregon's state tax laws, nor the federal securities laws, are rules or statutes enforceable by the Public Utility Commission. As previously discussed, both are complex legislative schemes with their own administrative agencies, enforcement mechanisms, and penalties. The Commission has no jurisdiction to interpret or enforce those laws. Moreover, any declaratory ruling the Commission did make with respect to PGE's compliance with state tax law or federal securities regulations would not be binding on either the Oregon Department of Revenue or the SEC. See ORS 756.450 (stating that a declaratory ruling by the Public Utility Commission is "binding between the commission and the petitioner on the state of facts alleged").

VI. THE COMMISSION HAS ALWAYS RECOGNIZED THE LIMITS OF ITS JURISDICTION

The Commission has always understood the limits of its jurisdiction. In *Isom v. Portland General Electric Co.*, 67 Or App 97, rev. denied, 297 Or 272 (1984), residential customers asserted claims against PGE based on its actual or threatened termination of their electricity service. The Oregon Court of Appeals recognized the broad general grant of authority to the Commission, and the Commission's power to regulate public utilities and "do all things necessary and convenient in the exercise of such power and jurisdiction." See *id.* at 101. Nonetheless, the Court also recognized that the Commission had no authority to enforce Oregon's Unlawful Debt Collection Practices Act ("UDCPA"). See *id.* at 104 ("the Commissioner has no power to enforce the act"). There was no question that the UDCPA was an Oregon law that applied to PGE. See *id.* (holding that plaintiffs were "entitled to pursue this

cause of action" in state court, but not before the Commission). However, the fact that the law applied to public utilities (along with everyone else) was not sufficient to give the Commission authority to enforce it.

The Commission itself reached the same result in *Lewis v. U S West Communications, Inc.*, UC 204, Order No. 92-965, 1992 WL 230115 (Or PUC 1992). In that case, a customer filed a complaint with the Commission against her telephone carrier asserting claims under the Oregon Unlawful Debt Collection Practices Act, the Oregon Unfair Trade Practices Act ("UTPA"), and state usury laws. *See id.* at *1-2. The customer asked the Commission for declaratory rulings that U S West had violated the UDCPA and the UTPA, permanent injunctions, statutory minimum damages, and other relief. *See id.* at *2. U S West moved to dismiss for lack of subject matter jurisdiction. *See id.* at *1.

The Commission began its analysis in *Lewis* by recognizing the broad authority granted to the Commission under ORS 756.040(1) and (2). *See id.* at *2. But it continued:

While the scope of Commission authority is broad, however, it is not unlimited. Its power arises from and cannot go beyond that expressly conferred on it by the legislature. Not all disputes between utilities and their customers are within the Commission's jurisdiction. The issue in this case is whether the Commission has authority to adjudicate claims arising under general remedial statutes such as the Unfair Trade Practices Act, the Unlawful Debt Collection Practices Act and the usury laws, by virtue of the fact that the defendant is a regulated public utility.

Id. (emphasis added) (internal citation omitted).

Applying *Isom*, the Commission held that it did not have jurisdiction to enforce the UDCPA or the UTPA against a telephone carrier.

As *Isom* makes clear, the Commission has no power to enforce the UDCPA. The Commission can discern no reason why the UDCPA claim in this case should be treated differently than the claim in *Isom*. For the same reasons, the Commission lacks jurisdiction

over the Unfair Trade Practices Act claims raised in this complaint. As in the case of the UD CPA, the legislature has not given the Commission responsibility for enforcement or adjudication of UTPA claims. On the contrary, the UTPA provides for prosecution of violations in state court, either by the state itself, ORS 646.632, or through a private right of action for persons claiming harm from violations of the act.

Id. at *3 (emphasis added). The Commission also held that it did not have jurisdiction to enforce the state usury laws against a telephone carrier. *See id.* ("[W]ith respect to the usury claims, the Commission also lacks jurisdiction. Equitable relief from usurious transactions is within the jurisdiction of the state courts."). Finally, the Commission rejected the complainant's attempt to bring the claims within its jurisdiction by incorporating references to the Commission's own statutes and rules. "The fact that some of [complainant's] claims incorporate allegations that company conduct is not authorized by the Commission's statutes and rules does not bring the claims themselves within Commission jurisdiction." *Id.*

One of the Commission's most recent rulings on the limits of its jurisdiction involved almost the same issue raised in the City's Complaint. In 2003, the Utility Reform Project filed a complaint before the Commission that included, *inter alia*, (1) a request that the Commission open an investigation to determine the amount PGE paid in state and local income taxes since being acquired by Enron, and (2) a claim that Enron and PGE violated the Oregon UTPA. *See In the Matter of Utility Reform Project*, UM 1074, Order No. 03-214, 2003 WL 21251754 (Or PUC 2003) (ruling on petition to open an investigation), *recon. denied*, Order No. 03-629, 2003 WL 22938480 (Or PUC 2003); *Utility Reform Project v. Portland General*

Electric Co., UCB 13, Order No. 03-401 (Or PUC 2003) (ruling on UTPA claim and another claim⁵).

The Commission denied complainant's petition to open an investigation into the amount of income taxes Enron and PGE paid to taxing authorities, adopting and incorporating by reference Staff's recommendation:

Staff certainly does not condone tax evasion by Enron, if that were proved to be the case. However, the OPUC does not have jurisdiction over whether or not Enron as a corporation appropriately paid its income taxes during the period Enron elected to file its taxes on a consolidated basis. Federal and state taxing authorities are responsible for ensuring that Enron paid the income taxes it owed.

In short, staff believes that income taxes were properly included in PGE's revenue requirement and customer rates, and that PGE properly paid its income tax liability to its parent or to the taxing authorities, as appropriate. Whether or not Enron properly paid its income taxes to the IRS and the State of Oregon is beyond the purview of the OPUC. Any underpayments by Enron would be owed to those taxing authorities and their constituents, not to ratepayers.

In the Matter of Utility Reform Project, supra, Order No. 03-214, at 4 (emphasis added).

Although PGE had already agreed to provide the Commission with records to enable it to verify that PGE had in fact made its reported tax payments either to Enron or the taxing authorities directly, the Commission reiterated its agreement with Staff's recommendation:

"Regardless, [complainant's] petition asks the Commission to take action in an area (possible underpayment of income taxes) in which the OPUC does not have jurisdiction." *Id.* The

⁵ The complainant also alleged that PGE's rates were not just and reasonable during the period Enron made consolidated tax filings that included PGE, in light of the tax issues. The Commission considered this claim, since rate-making is in its jurisdiction, but rejected it because the Legislature did not authorize the Commission to adjust rates retrospectively. *See Utility Reform Project, supra*, Order No. 03-401.

Commission also refused to hear the UTPA claim on jurisdictional grounds. *Utility Reform Project v. PGE, supra*, Order No. 03-401 at 11. There is no basis to reach a different conclusion with respect to the claims asserted in this case. Both Counts 1 and 2 should be dismissed for lack of jurisdiction.

CONCLUSION

For the reasons set forth above, the Commission lacks jurisdiction, and Counts 1 and 2 of the Complaint should be dismissed with prejudice.

DATED this 30th day of May, 2006.

PORTLAND GENERAL ELECTRIC
COMPANY

TONKON TORP LLP

By: _____
J. Jeffery Dudley, OSB No. 89042
121 SW Salmon, 1WTC1301
Portland, OR 97204
Telephone: 503-464-8860
Facsimile: 503-464-2200
jay.dudley@pgn.com

By: _____
Jeanne M. Chamberlain, OSB No. 85169
David F. White, OSB No. 01138
Robyn E. Ridler, OSB No. 00016
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204
Telephone: 503-802-2168
Facsimile: 503-972-3868
jeanne@tonkon.com
davidw@tonkon.com
robyn@tonkon.com

Of Attorneys for Defendant

097204\00001\692698 V004

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing **MOTION TO DISMISS OF PORTLAND GENERAL ELECTRIC COMPANY** on:

Mr. Benjamin Walters
Senior Deputy City Attorney
City Attorney's Office
1221 SW Fourth Avenue, Room 430
Portland, OR 97204
Attorneys for Complainant City of Portland

Melinda J. Davison
Matthew Perkins
Davison Van Cleve PC
333 SW Taylor, Suite 400
Portland, OR 97204
Attorneys for Industrial Customers of Northwest Utilities

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below; or

by faxing a copy thereof to each attorney at his last-known facsimile number on the date set forth below.

DATED this 30th day of May, 2006.

Jeanne M. Chamberlain
David F. White
Robyn E. Ridler

097204\00001\692698 V003