

1 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

2
3 **UM 1226**

4 **UTILITY REFORM PROJECT and**
5 **KEN LEWIS,**

FIRST AMENDED COMPLAINT

6
7 **Complainants/Applicants,**

8
9 **v.**

10
11 **PORTLAND GENERAL ELECTRIC CO.,**

12
13 **Defendant.**
14

15
16 Pursuant to ORS 756.500 and all other applicable statutes and rules, the
17 Utility Reform Project (URP) and Ken Lewis file this First Amended Complaint.

18 This First Amended Complaint alleges that the rates of Portland General
19 Electric Co. (PGE) rates, since September 2, 2005, and continuing to the present,
20 are not in compliance with the requirements of SB 408 (2005), because they
21 contain charges for state and federal income taxes that are not actually being paid
22 to any government by PGE or by any consolidated filer that includes PGE.

23 In support of this Complaint, Complainants allege:

- 24 1. Utility Reform Project (URP) is a non-profit corporation duly incorporated under
25 the laws of the State of Oregon. Its mailing address is 10949 S.W. 4th
26 Avenue, Portland, Oregon 97219. Among the principal purposes of the
27 Project is to represent its members and utility ratepayers generally in
28 proceedings before the Oregon Public Utility Commission (OPUC). The
29 Project has more than 20 members, several of whom are PGE ratepayers.
30

1 2. Ken Lewis resides in Portland, Oregon, and has been a residential customer
2 of PGE at all relevant times, with one or more accounts for electric service.

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4 3. Complainants are represented by:

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6 Daniel W. Meek
7 Attorney
8 10949 S.W. 4th Avenue
9 Portland, OR 97219
10 (503) 293-9021
11 (503) 293-9099 fax
12 dan@meek.net
13

14 4. Pursuant to ORS 756.500 and OAR 860-13-015, the party defendant is PGE.
15 When this Complaint refers to PGE, it is referring to the regulated utility
16 operations of PGE in the State of Oregon.

17
18 5. Pursuant to ORS 756.500 and OAR 860-13-015, the acts complained are:

19
20 A. The Oregon Legislature and Governor enacted SB 408 (2005), with an
21 effective date of September 2, 2005.

22
23 B. 757.267(1)(f) [SB 408 § 2(1)(f)] declares:

24
25 Utility rates that include amounts for taxes should reflect the
26 taxes that are paid to units of government to be considered
27 fair, just and reasonable.
28

29 C. The Commission has concluded that SB 408 applies, as of September 2,
30 2005, to the rates charged by regulated utilities in Oregon which had more
31 than 50,000 customers in 2003. This category includes PGE.
32

33 D. The Commission has concluded that SB 408, as of September 2, 2005,
34 requires that "rates must reflect the taxes paid to units of government in
35 order to be fair, just and reasonable." OPUC Order No. 05-1050, p. 18.
36

37 E. Rates which are not "fair, just and reasonable" are now unlawful, as they
38 cannot be lawfully authorized by the Commission. ORS 757.210(1)(a) [SB
39 408 § 5] states:

40
41 The commission may not authorize a rate or schedule of
42 rates that is not fair, just and reasonable.

- 1 F. As of September 2, 2005, PGE has been in violation of the SB 408
2 requirement that rates be "fair, just and reasonable," because PGE rates
3 (on and after September 2, 2005) have included amounts for taxes that
4 have not been paid to units of government.
5
- 6 G. Rates which include amounts for taxes that have not been paid to units of
7 government are, on or after September 2, 2005, unlawful, because such
8 rates cannot lawfully be authorized by the Commission.
9
- 10 6. This First Amended Complaint provides a legal basis for the granting of the
11 Application for Deferred Account (October 5, 2005), which instituted the UM 1226
12 docket, and for the granting of the Renewal of Application for Deferred Account,
13 filed in the UM 1226 docket.
14
- 15 7. This First Amended Complaint pertains to rates charged during the period of time
16 from September 2, 2005, until the time at which all unpaid tax charges are
17 removed from PGE's ongoing rates, in accordance with SB 408.
18
- 19 A. This period may end as soon as January 1, 2006. Section 4 (2) of SB 408
20 [Note to ORS 757.268] requires that "the automatic adjustment clause shall
21 apply only to taxes paid to units of government and collected from
22 ratepayers on or after January 1, 2006."
23
- 24 B. However, the Commission could attempt to make the effective date some
25 date later than January 1, 2006, as that would semantically qualify as "on or
26 after January 1, 2006."
27
- 28 C. Consequently, the ending date for the period at issue is presently unknown.
29 We refer to this period as the "Pre-Adjustment Clause Period" or PACP.
30
- 31 8. SB 408 creates a new category or species of unacceptable rates, which the
32 Commission recognized in OPUC Order No. 06-379 and in OPUC Order No. 05-
33 1050: Rates which include an amount for income taxes other than "taxes that
34 are paid to units of government." OPUC Order No. 06-379, p. 2. By deeming
35 that "fair, just and reasonable" rates can include only such amounts to be
36 charged to ratepayers for income taxes, SB 408 effectively deems unacceptable
37 rates which include larger amounts than the utility (or its consolidated tax filer)
38 actually pay in such taxes. SB 408 thus significantly changes the entire concept
39 of "just and reasonable," as applied by the Commission. The Commission has
40 used these terms to evaluate the overall justness or reasonableness of rates but
41 not to determine whether rates are acceptable or even allowable based on the
42 presence of absence of one particular element of cost (or alleged cost). SB 408

1 changes those terms, however, so that rates which include a particular item of
2 cost (estimated taxes higher than actually paid taxes) are now automatically not
3 "fair, just and reasonable" and are now expressly beyond the authority of the
4 Commission to authorize. A term that accurately describes such an element of
5 cost that cannot lawfully be included in rates is "unlawful."
6

7 9. SB 408 does not allow the usual overall balancing test applied to determine
8 whether utility rates are "just and reasonable" as a whole. Instead, SB 408 has
9 altered that term to "fair, just and reasonable" and has expressly prohibited the
10 Commission from allowing such rates to include charges for taxes that are not
11 actually paid to government.
12

13 10. WHEREFORE, Complainants request that the Commission:
14

15 A. Conduct a contested case hearing on this Complaint;
16

17 (1) Convene a prehearing conference to establish the parties and a
18 schedule for discovery.
19

20 (2) Establish a service list that includes:
21

22 Daniel W. Meek
23 10949 S.W. 4th Avenue
24 Portland, OR 97219
25 (503) 293-9021
dan@meek.net

Linda K. Williams
10266 S.W. Lancaster Road
Portland, OR 97219
(503) 293-0399
linda@lindawilliams.net

26 Ken Lewis
27 P.O. Box 29140
28 Portland, OR 97296
29 KL04@mailstation.com
30

31 B. Order the creation of a deferred account for all amounts charged to
32 ratepayers, since September 2, 2005, for "federal income taxes" and "state
33 income taxes," less amounts actually paid by or on behalf of PGE to the
34 federal government and state governments for income taxes.
35

36 C. In the alternative, order the creation of a deferred account for all amounts
37 charged to ratepayers, since October 5, 2005, for "federal income taxes"
38 and "state income taxes," less amounts actually paid by or on behalf of
39 PGE to the federal government and state governments for income taxes.
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D. Declare that the amounts PGE charges to ratepayers during the Pre-Adjustment Clause Period (PACP) for income taxes that are not actually paid to units of government are:

- (1) Not "fair, just and reasonable"; and
- (2) Beyond the authority of the Commission to authorize and thus unlawful.

E. Order that PGE credit to the deferred account, for the Pre-Adjustment Clause Period (PACP):

- (1) All amounts charged to ratepayers for income taxes;
- (2) Less amounts paid by PGE (or by others and properly attributed to the regulated operations of PGE) to units of government for income tax liabilities incurred for its operations during the PACP.

F. Order that the amounts in this deferred account be credited to ratepayers, with interest at PGE's authorized rate of return on investment, at the next available opportunity.

Dated: November 1, 2006

Respectfully Submitted,

DANIEL W. MEEK
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dan@mEEK.net

Attorney for
Complainants/Applicants

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I filed served for foregoing FIRST AMENDED COMPLAINT by
5 email to the list below and by depositing a true copy in the U.S. Mail, first class
6 postage prepaid, a true and correct copy upon the addresses below.

7 David White
8 Tonkon, Trop
9 888 SW 5th Avenue #1600
10 Portland, OR 97204

11 Inara Scott
12 Portland General Electric Co.
13 121 S.W. Salmon 1WTC1300
14 Portland, OR 97204

15 David B. Hatton
16 Assistant Attorney General
17 Oregon Department of Justice
18 Regulated Utility & Business Section
19 1162 Court Street NE
20 Salem, OR 97301-4096

21 Linda K. Williams
22 Kafoury & McDougal
23 10266 SW Lancaster Road
24 Portland, OR 97219-6305

25 Portland General Electric Company
26 Rates & Regulatory Affairs
27 121 SW Salmon Street, 1WTC0702
28 Portland, OR 97204

29 Dated: November 1, 2006

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31
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33
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35
36 _____
37 Daniel W. Meek