

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1271

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY)
)
Deferred Accounting Authorization for certain)
Expenses/Revenue Refunds Associated with)
SB 408 and the Sale of Certain Non-utility)
Assets)

**DIRECT TESTIMONY OF
MICHAEL B. EARLY
ON BEHALF OF
THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

January 22, 2007

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

2 **A.** My name is Michael B. Early. I am the Executive Director of the Industrial
3 Customers of Northwest Utilities (“ICNU”). My business address is 333 S.W.
4 Taylor Street, Suite 400, Portland, OR 97204.

5 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
6 **QUALIFICATIONS.**

7 **A.** I received a B.S. from the University of Illinois in 1973, an A.M. from Harvard
8 University in 1975, and a J.D. from Northwestern University in 1978. Exhibit
9 ICNU/101 summarizes my qualifications.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 **A.** Portland General Electric Company (“PGE” or the “Company”) has filed an
12 application for deferred accounting treatment of the tax implications of the sale of
13 a simple cycle turbine and transformer by a PGE affiliate. My testimony
14 addresses the issues raised in PGE’s application and the direct testimony that PGE
15 filed on December 6, 2006. Specifically, ICNU believes that the application
16 should be denied because Senate Bill 408 and the rules that the Public Utility
17 Commission of Oregon (“OPUC” or the “Commission”) adopted to implement
18 the law address the tax implications of events such as the sale of assets by an
19 affiliate. This is a legal question that ICNU will address in detail in briefs in this
20 docket.

21 **Q. PLEASE SUMMARIZE PGE’S APPLICATION.**

22 **A.** PGE requests authorization to defer the revenue refund or tax loss of the sale of a
23 47 MW capacity simple cycle turbine and a related transformer. A PGE affiliate
24 purchased the turbine in 2001 for \$16.8 million and PGE states that the turbine

1 was not included in rate base. PGE estimates that the sale of the turbine will
2 produce a loss of approximately \$12 million and reduce PGE's tax expense by
3 \$4.2 million.

4 PGE proposes two methods for deferral: 1) defer the anticipated revenue
5 refund that would be issued as a rate adjustment; or 2) defer the tax effect of the
6 loss on the sale of the turbine on the basis that the loss should be considered a
7 utility expense if credited to customers. PGE's position appears to be that it is
8 unfair to offset the "taxes paid" calculation in SB 408 by the tax effect of the sale
9 of a asset by an affiliate.

10 **Q. PLEASE EXPLAIN THE CONCEPT OF SB 408.**

11 **A.** In passing SB 408, the Oregon Legislature intended to match the amount of taxes
12 collected by Oregon utilities to the amount of taxes paid that are properly
13 attributed to regulated utility operations. The law requires the Commission to
14 implement an automatic adjustment clause under certain circumstances to help
15 ensure that the amounts of "taxes collected" matched the amount of "taxes paid."
16 SB 408 is codified in ORS § 757.268.

17 SB 408 specifically authorizes adjustments to the amount of taxes paid for
18 three reasons: 1) charitable contribution deductions; 2) tax credits associated with
19 investments in the regulated operations of the utility not considered in the last rate
20 case; and 3) deferred taxes related to the regulated operations of the utility.

21 ORS §§ 757.268(13)(f)(A)-(C). SB 408 does not provide for other adjustments to
22 the taxes paid calculation. Thus, PGE's application is contrary to Oregon law.

1 **Q. WHAT DOES PGE SEEK THROUGH ITS APPLICATION IN THIS**
2 **CASE?**

3 **A.** PGE effectively asks the Commission to authorize a deferred account to record
4 amounts related to the tax effect of the turbine sale for use in adjusting the amount
5 that it would otherwise include in the automatic adjustment clause.

6 **Q. HAS PGE ADVOCATED FOR SIMILAR DEFERRED ACCOUNTS**
7 **BEFORE?**

8 **A.** Yes. In AR 499, PGE suggested that the Commission’s rules allow for a deferred
9 account to be set up each year to account for the tax implications of disallowed
10 expenses or investments that are not included in rates. In Order No. 06-400, the
11 Commission rejected PGE’s proposal, finding that deferral of the tax benefit of
12 expenses not explicitly listed in the statute “would effectively offset the automatic
13 adjustment clause so that it did not ‘adjust’ rates, as it was designed to do.” Re
14 Adoption of Permanent Rules to Implement SB 408 Relating to Utility Taxes,
15 OPUC Docket No. AR 499, Order No. 06-400 at 12 (July 14, 2006). The
16 Commission stated that it “will consider applications for deferral with a skeptical
17 eye” Id. at 11.

18 **Q. WHAT IS ICNU’S POSITION REGARDING THE ISSUES THAT PGE’S**
19 **APPLICATION RAISES?**

20 **A.** ICNU believes that the Commission should deny PGE’s application because
21 SB 408 and the OPUC’s rules already address the treatment of events such as the
22 sale of assets by affiliates. ICNU believes that this is a legal question, and ICNU
23 will address this question in its briefs in this docket.

24 **Q. DOES THIS CONCLUDE THIS TESTIMONY?**

25 **A.** Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1271

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY)
)
Deferred Accounting Authorization for certain)
Expenses/Revenue Refunds Associated with)
SB 408 and the Sale of Certain Non-utility)
Assets)

ICNU/101

QUALIFICATIONS OF MICHAEL B. EARLY

January 22, 2007

Statement of Qualifications and References

Education

Michael B. Early received his B.S. from the University of Illinois in Physics in 1973, his A.M. in Physics from Harvard University in 1975, and his J.D. from Northwestern University School of Law in Chicago, Illinois in 1978.

Employment

Reid & Priest, New York, N.Y. and Washington D.C., (now Thelen, Reid & Priest LLP) 1978-1984.

Heller, Ehrman, White & McAuliffe, Portland, Oregon, 1984-1992, partner.

Ball Janik LLP, Portland, Oregon, 1993-1998, partner.

Sole Practitioner, Portland, Oregon, 1999-2005

Executive Director, Industrial Customers of Northwest Utilities, 2005-present.

- Mr. Early represented Northwest companies in power and transmission matters from 1984 to present.
- He has negotiated long and short-term power supply agreements, load control services agreements, and transmission agreements.
- He has also provided legislative advice relating to state tax, public benefits, and power portfolio legislation.

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

January 22, 2007

Via Electronic and U.S. Mail

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

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Deferred
Accounting Authorization for certain Expenses/Revenue Refunds Associated with
SB 408 and the Sale of Certain Non-utility Assets
Docket No. UM 1271

Dear Filing Center:

Enclosed please find the original and five copies of the Direct Testimony of
Michael B. Early on behalf of the Industrial Customers of Northwest Utilities in the above-
referenced matter.

Thank you for your assistance.

Sincerely,

/s/ Christian Griffen
Christian W. Griffen

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Direct Testimony of Michael B. Early on behalf of the Industrial Customers of Northwest Utilities upon the parties on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid.

Dated at Portland, Oregon, this 22nd day of January, 2007.

/s/ Christian Griffen
Christian W. Griffen

CITIZENS' UTILITY BOARD OF OREGON
JASON EISDORFER
ROBERT JENKS
610 SW BROADWAY STE 308
PORTLAND OR 97205
dockets@oregoncub.org

PORTLAND GENERAL ELECTRIC
RATES & REGULATORY AFFAIRS
121 SW SALMON ST
PORTLAND OR 97204
pge.opuc.filings@pgn.com

DEPARTMENT OF JUSTICE
JASON W JONES
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

PUBLIC UTILITY COMMISSION
JUDY JOHNSON
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

PORTLAND GENERAL ELECTRIC
DOUGLAS TINGEY
ASSISTANT GENERAL COUNSEL
121 SW SALMON ST
PORTLAND OR 97204
inara.scott@pgn.com

DANIEL W MEEK
ATTORNEY AT LAW
10949 SW 4TH AVE
PORTLAND OR 97219
dan@meek.net

KAFOURY & MCDUGAL
LINDA K WILLIAMS
10266 SW LANCASTER RD
PORTLAND OR 97219-6305
linda@lindawilliams.net