



Oregon

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Public Utility Commission

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January 22, 2007

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
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RE: **Docket No. UM 1271** - In the Matter of PORTLAND GENERAL ELECTRIC
COMPANY Deferred Accounting Authorization for Expenses/Refunds
Associated with SB 408.

Enclosed for electronic filing in the above-captioned docket is the Public Utility
Commission Staff's Response Testimony.

/s/ Kay Barnes

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

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c: UM 1271 Service List (parties)

**PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1271

STAFF RESPONSE TESTIMONY OF

Carla Owings

**In the Matter of
PORTLAND GENERAL ELECTRIC COMPANY
Deferred Accounting Authorization for
Expenses/Refunds Associated with SB 408**

January 22, 2007

CASE: UM 1271
WITNESS: Carla Owings

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 100

Response Testimony

January 22, 2007

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

3 A. My name is Carla Owings. I am a Senior Revenue Requirements Analyst
4 employed by the Public Utility Commission of Oregon. My business address is
5 550 Capitol Street NE Suite 215, Salem, Oregon 97301-2551.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
7 **EXPERIENCE.**

8 A. My Witness Qualification Statement is found in Exhibit Staff/101.

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

10 A. The purpose of my testimony is to provide the Staff recommendation regarding
11 Portland General Electric's (PGE or the Company) request for a deferral to
12 enable the Company to neutralize the tax effect of the loss associated with the
13 sale of a non-utility turbine and transformer. I will provide evidence that
14 pertains to the regulatory policies and principles associated with the purchase
15 and sale of a non-utility asset as it relates to Senate Bill 408¹ (SB 408), codified
16 in ORS 757.267, 757.268 and OAR 860-022-0041.

17 **Q. COULD YOU PLEASE SUMMARIZE PGE'S REQUEST IN UM 1271?**

18 A. PGE purchased an LM6000 turbine and associated transformer (turbine) in
19 2001 and classified the purchase of this asset as a non-utility asset. As is the
20 practice today, PGE maintains specific, separate accounts from its utility
21 accounts for non-utility activities that are supported through retained earnings.

¹ Senate Bill 408 (SB 408) was passed by the 2005 Legislative Assembly and is generally codified at ORS 757.268. It requires investor-owned utilities to file annual tax reports with the Commission in order to determine if taxes paid by the utility differ from the amounts collected in rates. Further, SB 408 requires the Commission to implement an automatic adjustment clause if the variance is greater than \$100,000

1 PGE makes the point that these expenses do not appear in PGE's revenue
2 requirement or as a part of any of its regulated operations. The asset is not
3 classified as rate base, the Company does not earn a return of, or on, the asset
4 and therefore, the purchase and sale of a non-utility asset is not supported
5 through ratepayer contributions.

6 In July 2006, PGE sold the turbine at a loss of approximately \$12.3 million.
7 This loss will reduce the amount of PGE corporate taxes paid to taxing
8 authorities by about \$4.8 million.

9 In its direct testimony, PGE states that; "SB 408 now requires that the tax
10 effects of non-utility expenses and investments affect ratemaking if those tax
11 effects lower the taxes that the utility otherwise would pay" (See Exhibit
12 PGE/100/Dahlgren-Tinker/3, Line 10). PGE asserts that under the SB 408
13 calculation, the tax loss related to the turbine will provide customers a rate
14 credit of approximately \$4.8 million. As a result, in its UM 1271 application,
15 PGE is requesting to defer the tax effect of the sale of the non-utility asset
16 pursuant to ORS 757.259(2)(e) claiming that exempting ratepayers from the
17 effects of the sale of the non-utility asset better matches costs and benefits
18 associated with ratemaking.

19 **Q. WHAT ARGUMENTS DID PGE MAKE IN SUPPORT OF ITS PROPOSAL**
20 **REQUESTING AN EXEMPTION FOR THE LOSS OF THE TAX BENEFIT?**

21 A. The Company points out that this purchase was made in 2001, long before
22 SB 408 became law. PGE's expectations at the time of the purchase were
23 that neither gains, nor losses, associated with the sale of the turbine would

1 affect rates consistent with longstanding Commission policy. PGE's request is
2 that "the Commission restore the regulatory principle under which we made this
3 investment by permitting into ratemaking only so much of the investment cost
4 as is necessary to prevent a windfall gain for customers and unpreventable
5 loss to PGE from this old decision" (See Exhibit PGE/100/Dahlgren-Tinker/3,
6 Line 14).

7 In addition, PGE seeks acknowledgment pursuant to the Commission's
8 Order No. 06-400 that it would consider on a case-by-case basis, the impact on
9 the Utility when administering this law.

10 PGE also characterizes the enactment of SB 408 and its impact on
11 traditional regulatory principles as an "unforeseeable" and "highly unusual"
12 event, not a stochastic risk that can be anticipated or modeled in rates.

13 **Q. DOES STAFF SUPPORT PGE'S REQUEST TO DEFER THE TAX EFFECT**
14 **OF THE SALE OF A NON-UTILITY ASSET?**

15 A. No. As I will explain below, Staff believes the Commission is precluded from
16 authorizing a deferral that disregards the SB 408 legislation.

17 **Q. DOES STAFF AGREE THAT SB 408 WILL HAVE THE TAX EFFECT**
18 **THAT PGE CLAIMS ON ITS CONSOLIDATED FILING FROM THE SALE**
19 **OF THE TURBINE?**

20 A. Yes. SB 408 seeks to true-up the actual taxes paid by a utility company to the
21 actual amounts allowed to be collected in a utility company's base rates. A
22 utility company with a corporate structure that includes affiliate relationships
23 may choose to file its taxes on a consolidated basis. That means that the gains

1 or losses experienced by a related affiliate can impact the tax liability of the
2 corporate filer. In other words, a loss experienced by an affiliate can directly
3 offset a gain experienced by the corporate parent.

4 The same is true for PGE when considering the relationship between PGE's
5 utility and non-utility accounts. PGE will file as a consolidated tax filer and the
6 corporate parent. Activities that take place in its non-utility accounts will impact
7 the outcome of its corporate tax liability. Losses experienced in the non-utility
8 accounts will offset gains in the utility accounts. Under SB 408, those non-
9 utility losses will reduce the total amount of taxes paid to units of government.
10 Therefore, the result of this will be that the amounts of taxes paid that are
11 "properly attributed" to the regulated operations of the utility, will be lower which
12 will have the effect of benefiting customers.

13 **Q. DOES STAFF AGREE WITH PGE WHEN IT STATES THAT COMMISSION**
14 **PRACTICE HAS BEEN TO REQUIRE SEPARATION BETWEEN THE**
15 **UTILITY AND NON-UTILITY ACCOUNTS IN ORDER TO AVOID CROSS**
16 **SUBSIDIZATION ISSUES?**

17 A. Yes. Generally Staff agrees with PGE's assessment that the Commission
18 requires that no cross subsidization should take place and that the practice of
19 separating accounting for utility and non-utility activities, is typical. However,
20 Staff believes that in the implementation of SB 408, that principle no longer
21 applies to the calculation of utility income taxes. PGE must now carefully
22 report all non-utility activities so that they may be properly accounted for in the
23 true-up process.

1 **Q. WILL PGE'S NON-UTILITY ACCOUNT EXPERIENCE A LOSS WITH THE**
2 **SALE OF THE TURBINE?**

3 A. Yes. In the case of the sale of the turbine proposed by PGE in this application
4 the sales price was for an amount less than the purchased cost of the asset,
5 resulting in a tax loss for the non-utility account. In the implementation of
6 SB 408, that tax loss would directly reduce the tax liability for the corporate
7 parent (PGE) and in the true-up process, will reduce the amount of taxes
8 "properly attributed" to PGE.

9 In addition, OAR 860-022-0041(3)(b)(A) directly prescribes the methodology
10 by which the negative tax associated with the tax losses of entities in the
11 utility's consolidated taxpayer groups shall reduce the utility's stand-alone tax
12 liability².

13 **Q. DOES SB 408 PROVIDE AN EXEMPTION FOR LOSSES BY AFFILIATES**
14 **OR BY ENTITIES RELATED TO THE CONSOLIDATED GROUP?**

15 A. No.

16 **Q. DOES SB 408 PROVIDE FOR THE INCLUSION OF OTHER**
17 **EXEMPTIONS?**

18 A. Yes, the legislature did adopt other exceptions such as removing the tax
19 effects of charitable contributions and accelerated depreciation but clearly did
20 not adopt an exemption for non-utility losses. In fact, Staff believes that this
21 very situation represents the core requirement of the legislation; to true-up the

² OAR 860-022-0041(3)(b)(A): "The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group,..."

1 actual taxes collected in rates with the actual taxes paid to units of government
2 which are properly attributed to the regulated operations of the utility.

3 **Q. DOES STAFF BELIEVE THAT THE COMMISSION SHOULD GRANT PGE**
4 **AN EXEMPTION FOR THIS LOSS THROUGH ITS BROAD AUTHORITY IN**
5 **ORS 757.040?**

6 A. No. PGE requests that the Commission grant them neutrality by not allowing
7 ratepayers to gain a tax benefit for a loss experienced by its non-utility
8 activities. Staff believes that since the legislature did not include related entity
9 losses as a deduction to the amount of tax liability that can be credited to a
10 corporate parent, or utility, then to grant an exemption for the loss is
11 inconsistent with the requirements and objectives of SB 408. Staff is
12 sympathetic to the principle raised in PGE's argument, but sees no evidence
13 provided by PGE, nor any other grounds, to recommend that the Commission
14 grant such an exemption.

15 **Q. DOES STAFF AGREE WITH PGE'S ASSERTION THAT THE**
16 **IMPLEMENTATION OF SB 408 CHANGES REGULATORY PRINCIPLES**
17 **AND POLICIES?**

18 A. Yes, with respect to calculation of the amount of income tax expense included
19 base rates. In other words, prior to the implementation of SB 408, taxes were
20 considered only on a regulated utility stand-alone basis. No consideration to
21 affiliate activities, or other related non-utility activities, whether gains or losses,
22 were factored into the calculation of income tax expense for a utility company.

1 It has been the Commission's practice to look at all expenses in the
2 ratemaking process as normalized and on a stand-alone basis. Nevertheless,
3 as I stated above, SB 408 supersedes that principle for calculating income tax
4 expense. To recommend that the Commission allow an exemption for the tax
5 loss associated with the sale of a non-utility asset would circumvent the
6 requirement of the legislation and would be contrary to SB 408.

7 **Q. PLEASE COMMENT ON PGE'S SUGGESTION THAT THE COMMISSION**
8 **SHOULD CONSIDER ON A CASE-BY-CASE BASIS THE IMPACT ON**
9 **THE UTILITY WHEN ADMINISTERING THIS LAW.**

10 A. In Commission Order Nos. 06-400 and 06-532 the Commission indicated that it
11 may consider the effects of SB 408 in making decisions in other forums. In
12 Order No. 07-015, the Commission specifically acknowledged that it
13 considered the impact of SB 408 when designing a Power Cost Adjustment
14 Mechanism (PCAM) for PGE. On the other hand, Staff would expect the
15 Commission not to make future regulatory decisions that are simply designed
16 to reverse the effects of the law.

17 **Q. DO YOU SEE STAFF'S RECOMMENDATION IN THIS DOCKET AS**
18 **BEING INCONSISTENT WITH THE COMMISSION'S DECISION IN ORDER**
19 **NO. 07-015 TO CONSIDER SB 408 WHEN THE COMMISSION DESIGNED**
20 **A PCAM FOR PGE?**

21 A. No. I believe these are two completely different situations. The Commission's
22 decision in Order No. 07-015 was a general consideration of the tax effect of
23 SB 408 in designing the structure of a mechanism to recover a portion of

1 certain regulated utility costs outside of a what would be considered a normal
2 range. By contrast, PGE is requesting that the Commission allow a deferral to
3 offset, dollar for dollar, the tax benefits of a loss related to a non-utility asset—a
4 situation that is already contemplated in the legislation and administrative rules.

5 **Q. DO YOU HAVE ANYTHING FURTHER ON THESE ISSUES OR ANY**
6 **OTHER ISSUES?**

7 A. No.

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes.

CASE: UM 1271
WITNESS: Carla Owings

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 101

Witness Qualification Statement

January 22, 2007

WITNESS QUALIFICATION STATEMENT

NAME: Carla M. Owings
EMPLOYER: Public Utility Commission of Oregon
TITLE: Senior Utility Analyst/Revenue Requirement/Rates and Regulation
ADDRESS: 550 Capitol Street NE Suite 215, Salem, Oregon 97301-2115.
EDUCATION: Professional Accounting Degree
Trend College of Business 1983

EXPERIENCE: I have been employed by the Public Utility Commission of Oregon since April of 2001. I am the Senior Utility Analyst for revenue requirement for the Rates and Regulation Division of the Utility Program. Current responsibilities include leading research and providing technical support on a wide range of policy issues for electric, telecommunications, and gas utilities.

From September 1994 to April 2001, I worked for the Oregon Department of Revenue as a Senior Industrial/Utility Appraiser. I was responsible for the valuation of large industrial properties as well as utility companies throughout the State of Oregon.

I have testified in behalf of the Public Utility Commission in docket nos. UE 180, UM 1234 and UE 167.

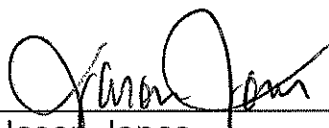
OTHER EXPERIENCE: I received my certification from the National Association of State Boards of Accountancy in the Principles of Public Utilities Operations and Management in March of 1997. I have attended the Institute of Public Utilities sponsored by the National Association of Regulatory Utility Commissioners at Michigan State University in August of 2002 and the College of Business Administration and Economics at New Mexico State University's Center for Public Utilities in May of 2004.
In 2005, I attended the National Association of Regulatory Utility Commissioners Advanced Course at Michigan State University. I worked for seven years for the Oregon State Department of Revenue as a Senior Utility and Industrial Appraiser.

CERTIFICATE OF SERVICE

UM 1271

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 19th day of January, 2007.



Jason Jones

Assistant Attorney General

Of Attorneys for Public Utility Commission's Staff

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UM 1271
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