BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1587

In the Matter of the Investigation of Issues Relating to Direct Access	))	City of Portland's Comments

The City of Portland ("Portland" or "the City") submits the following comments in response to the Administrative Law Judge's amended ruling, issued on May 3, 2012:

Introduction

Portland is a home rule charter municipality. The City has charter and statutory authority to impose taxes to raise revenues, and to grant franchises for management of street use. Portland has over 50 franchised entities with facilities within the public right-of-way, including two investor-owned electric utilities. Portland also is a large electricity consumer, with significant billings over a wide range of accounts. The May 3rd amended ruling indicated that the Commission will continue forward with addressing franchise fees in this proceeding, despite the lack of any concrete identification of how franchise fees significantly contribute to the lack of direct access suppliers in Oregon.

Multi Year Direct Access for Unmetered Accounts, such as Street Lighting and Traffic Signals

Problem statement:

The opportunity for customers to reduce their electricity costs through an Electricity Service Supplier and Direct Access depends in significant part on Transition Cost Adjustments. For PGE customers such as the City of Portland, these "exit" fees are calculated and assessed through PGE Schedule 128 (applied to customers who opt out one year at a time) and PGE Schedule 129 (applied to three or five-year opt out customers). From the customer's perspective, maximum bill savings are achieved when one uses Direct Access on a multi-year basis because the published multi-year charges decline sharply over time. For example, PGE's most recent Schedule 129 Long-Term Transition Cost Adjustment is a charge of 2.182 cents per kWh in year one; in year two that charge drops to 1.492 cents; year three drops to 1.022 cents; year four drops to .749 cents; year five drops to .601 cents and thereafter zero Transition Costs.

This proceeding should address customers who do not have access to the multi-year Direct Access option. Presently only large commercial and industrial customers have multi-year Direct Access through PGE Schedules 485 and 489. However, unmetered PGE customers (Street Lighting and Traffic Signals) or medium sized commercial

customers (with a Facility Capacity of less than 250 kW and usage of less than 8,760,000 kWh per year) are presently excluded from participating in multi-year Direct Access.

Significance of the issue and why the Commission should address it:

Street Lighting (Schedule 91), Traffic Signals (Schedule 92) and medium sized customers (Schedule 83 and some Schedule 85 customers) are economically disadvantaged by being denied multi-year Direct Access. At present, a select group of larger users experience lower Transition charges (exit fees) than do the mid-sized commercial customers who only have access to a one-year Direct Access and higher overall Transition charges.

The rule needed to address the barrier:

OAR 860-038-0275(5) states: "At least once each year electric companies must offer customers a multi-year direct access program with an associated fixed transition adjustment." This OAR should be modified to clarify that this rule applies to all non-residential customers larger than 30 kW demand, including the unmetered ratepayers under PGE Schedule 91 for Street Lighting and PGE Schedule 92 for Traffic Signal rate schedules, plus all medium-large sized customers of PGE under Schedules 83 and 85.

Franchise Fees and Privilege Taxes

The May 3rd amended ruling indicated that the Commission intends to continue with addressing the franchise fee issue. As the Commission stated, "one or more cities in PGE's service territory has indicated that it **may** seek to impose franchise fees on ESSs." Order No. 12-057, p. 4. The treatment of franchise fees and other city charges are a matter of longstanding Commission policy. The Commission has limited statutory authority regarding the treatment of privilege taxes for electricity service suppliers.

In previously addressing the treatment of franchise fees within utility rates, the Commission stated:

> As a practical matter, the tax considered here is only one of a great many taxes imposed on Oregon industry. All those taxes are added to the prices of end products and services sold in this state. The end users, citizens of Oregon, regularly buy those products and services without any accounting of producer taxes. In most cases, where products and services pass through a number of manufacturing, transportation, wholesaling and retailing processes, a pro rata accounting of every tax imposed on every participant probably would be prohibitively expensive to create and too long to read . . . [I]f the utilities are allowed to itemize [municipal taxes and fees] and charge it directly, in its entirety, to municipal ratepayers, the utilities will be in a position of a collection agency for the municipalities, and nothing more. The utilities will not pay any municipal tax, because their municipal customers will pay the entire tax for them.

In the Matter of the Proposed Rulemaking in Connection with Municipal Privilege Tax, OPUC AR 218, Order No. 90-1031, pp. 6-7 (June 29, 1990).

The Commission's policy is reflected in OAR 860-022-0040(1) which provides that: "the aggregate of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions imposed upon gas, electric or steam utilities by any city ... shall be allowed as operating expenses of such utilities for rate making purposes and shall not be itemized or billed separately." The Commission adopted this administrative rule as an exercise of its authority in the area of utility ratemaking. *See*, 36 Or Atty Gen 131 (1972). *See also*, *Multnomah County v. Davis*, 35 Or App 521, 527 (1978), rev. den. 285 Or 73 (1979) "([S]ome services provided by the cities, such as city streets, are in the nature of a utility operating expense and thus are at least in part passed on to all ratepayers.)" No compelling rationale exists for changing this well-established policy.

Under ORS 757.667, the Legislature expressed its intent that the direct access statutes would not "diminish, or authorize regulations that diminish, a city's authority to control the use of its rights of way and to collect license fees, privilege taxes, rent or other charges for the use of the city's rights of way." ORS 221.655(4)(a) provides limited authority to the Commission to address volumetric privilege taxes imposed upon distribution utilities "collected from the customers of an electric company." OAR 860-022-0040(3). ORS 757.659 addresses the Commission's authority to adopt rules implementing direct access. The statute does not provide authority to address taxes upon electricity service suppliers.

The Commission lacks authority to determine rates and charges set by electricity service suppliers. A fee or tax imposed upon an ESS by a municipality is not an operating expense of an entity subject to the Commission's utility rate making authority.

Dated this 16th day of May, 2012.

/s/ Benjamin Walters

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing City of Portland's Comments on:

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on the 16th day of May, 2012, by electronic copy to e-mail address PUC.FilingCenter@state.or.us.

I further certify that I served a copy of the foregoing City of Portland's Comments on the individuals listed on the attached Service List by electronic mail on the 16th day of May, 2012.

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