



# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

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December 28, 2010

### ***Via Electronic Filing and U.S. Mail***

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
PO BOX 2148  
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**RE: Docket No. UE 178(4) – In the Matter of PORTLAND GENERAL  
ELECTRIC's, Senate Bill 408 Tax Filing for 2009 Tax Period.**

Enclosed for electronic filing in the above-captioned docket is the Public Utility Commission's Staff Errata Filing of Issues List.

*/s/ Kay Barnes*

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

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c: UE 178 Service List (parties)

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**PUBLIC UTILITY COMMISSION  
OF OREGON**

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**UE 178(4)**

**ERRATA FILING  
STAFF ISSUES LIST**

**Carla Owings  
Dustin Ball  
Deborah Garcia**

**In the Matter of  
PORTLAND GENERAL ELECTRIC  
Senate Bill 408 Tax Filing  
for 2009 Tax Period**

**December 28, 2010**

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**SENATE BILL 408, TAX FILINGS  
STAFF'S INITIAL FINDINGS  
FOR PORTLAND GENERAL ELECTRIC – UE 178(4)**

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**TO:** LEE SPARLING, MAURY GALBRAITH, JUDY JOHNSON AND  
JASON JONES

**RE: PORTLAND GENERAL ELECTRIC – UE 178 (4)  
SB 408 TAX FILINGS  
2009 TAX PERIOD**

**FROM:** CARLA BIRD, SENIOR UTILITY ANALYST,  
DUSTIN BALL, SENIOR UTILITY ANALYST, AND  
DEBORAH GARCIA, SENIOR UTILITY ANALYST  
PUBLIC UTILITY COMMISSION

**DATE:** DECEMBER 23, 2010

**CC:** ALL PARTIES

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On October 15, 2010, Portland General Electric (PGE or Company) filed UE 178(4), its tax report covering the 2009 calendar year pursuant to Senate Bill 408 (SB 408) (codified at ORS 757.267, 757.268 and OAR 860-022-0041).

Much of the information contained in these tax reports represents highly confidential and sensitive information. Staff has structured its initial findings in this report in a generic manner in order to avoid the possibility of disclosing confidential, or sensitive, information.

Staff has thoroughly reviewed each calculation and all documentation provided by the Company.

*At the conclusion of Staff's review and after some of the Parties<sup>1</sup> had reached an agreement in principal for settlement Staff discovered a potential inconsistency between SB 408 and OAR 860-022-0041. The inconsistency involves the manner for determining the existence of a normalization violation<sup>2</sup> under (4)(d) of the commission rule and under Staff's template. The impact of improperly applying the normalization violation test (on Page 8 of Staff's template) would not likely result in a significant change to PGE's 2009 SB408 filing however, due to the magnitude of the issue, Staff was unwilling to commit to a Stipulation prior to the writing of this issues list.*

*Upon discovering this issue, Staff immediately consulted with the Assistant Attorney General's (AAG or Staff's Counsel) office and our upper management team. As a result of those discussions, Staff requested a delay of six days from December 17, 2010 to December 23, 2010 to publish this issues list. In addition, Staff and its Counsel held phone discussions with each of Utility companies as well as the Parties represented at the Settlement conference<sup>3</sup> to notify them of the potential impacts of this issue. Staff also informed the Parties that we could not go forward with the initial agreements made at the Settlement Conferences.*

*The basis of the Staff recommendation in this report outlines the foundation of Staff's findings and agreements made in Settlement discussions. Most importantly, these recommendations are based upon rule implementation prior to Staff's discovery of the issue described above.*

*Staff is in the process of investigating the validity of the assumption that the rules and Staff's template conflict with the original intent of the test for a Normalization Violation. If Staff concludes there is a conflict in the rules and Staff's template from the intent of SB408, then the findings in the report below would change significantly. Staff's Testimony is scheduled to be published on January 11, 2011 which would incorporate the findings of Staff's investigation into this matter. If Staff's investigation concludes that there is no conflict between the current rules and Normalization Violations, Staff will likely propose settlement based upon the original agreements described below.*

## **SUMMARY OF 2009 SB 408 IMPACT:**

PGE reports the following for its Regulated Results of Operations for the 2009 tax period:

### **Table 1-Original Filing**

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<sup>1</sup> The Parties to the Stipulated Agreements are defined in the section "Summary of Review" section on Page 4 below.

<sup>2</sup> Discussed in section "Staff Review" on page 5 below.

<sup>3</sup> Id.

<b>Federal and State Taxes</b> Paid to units of Government	<b>Taxes Collected</b>	<b>Surcharge or (Refund)</b>	<b>Interest<sup>4</sup></b> (7/1/08 through 6/1/2011)	<b>Total Refund</b>
<b>\$57.3 million</b>	<b>\$60.0 million</b>	<b>(\$2.7 million)</b>	<b>(\$435,000)</b>	<b>(\$3.1 million)</b>
<b>Local Taxes</b> Paid to units of Government	<b>Taxes Collected</b>	<b>Total Surcharge or (Refund)</b>	<b>Interest<sup>5</sup></b> (7/1/09 through 6/1/2011)	<b>Total Surcharge</b>
<b>\$1.3 million</b>	<b>\$1.0 million</b>	<b>\$285,000</b>	<b>\$46,000</b>	<b>\$331,000</b>

PGE's original filing reflected a total refund related to the Federal and State tax true-up for the 2009 tax period to be \$3.1 million including interest through the deferral period. As filed, PGE relied upon the stand-alone method to determine the variance of \$2.7 million refund. Below is Staff's recommendation for PGE's 2009 tax period:

**Table 2- Staff Recommendation**

<b>Federal and State Taxes<sup>6</sup></b> Paid to units of Government	<b>Taxes Collected<sup>7</sup></b>	<b>Surcharge or (Refund)<sup>8</sup></b>	<b>Interest<sup>9</sup></b> (7/1/08 through 6/1/2011)	<b>Total Refund</b>
<b>\$51.9 million</b>	<b>\$60.5 million</b>	<b>(\$8.6 million)</b>	<b>(\$1.4 million)</b>	<b>(\$10.0 million)</b>

<sup>4</sup> This is an estimate of all interest that will apply until amortization is complete.

<sup>5</sup> Estimate includes interest applied through deferral period.

<sup>6</sup> Stipulated Agreement

<sup>7</sup> Stipulated Agreement

<sup>8</sup> Stipulated Agreement

<sup>9</sup> See footnote above.

<b>Local Taxes</b> Paid to units of Government	<b>Taxes Collected</b>	<b>Surcharge or (Refund)</b>	<b>Interest<sup>10</sup></b> (7/1/09 through 6/1/2011)	<b>Total Surcharge</b>
<b>\$1.3 million</b>	<b>\$1.0 million</b>	<b>\$285,000</b>	<b>\$46,000</b>	<b>\$331,000</b>

Staff recommends PGE's refund be increased from approximately \$2.7 million in the original request to approximately \$8.6 million. Including the impact of interest during the deferral period of approximately \$1.4 million, Staff estimates the refund to be approximately \$10.0 million. Staff estimates the interest that will accrue during the amortization phase will be an additional \$191,000 for a total refund of approximately \$10.2 million.

The impact of PGE's refund of approximately \$10.2 million represents a decrease of approximately 0.6 percent to PGE's retail rates without consideration of the 2008 SB 408 rate implementation currently in rates.

For the 2008 tax period, PGE had a refund of approximately \$10.2 million. Removing the impact of the 2008 tax period and replacing it with the 2009 SB 408 refund will have a net zero impact on rates as the two amounts are nearly the same.

Incorporating the Staff recommendations would require PGE to rely upon the Consolidated Method for the outcome of its 2009 SB408 filing. As stated above, the Company's original filing relies upon the stand-alone method as the outcome for the 2009 SB408 filing.

Prior to June 1, 2011, Staff will review the remaining balance of the 12-month amortization related to the refund for the tax period. PGE states that any over- or under-collection of these amortizations will be rolled into a miscellaneous account established through UM 1147 for residual balances.

PGE paid approximately \$1.3 million in local taxes for the 2009 tax period and collected approximately \$1.0 million in rates. The variance between taxes paid and taxes collected results in a surcharge of approximately \$285,000. Interest of approximately \$46,000 will accrue on this balance beginning July 1, 2009 to June 1, 2011.

On June 1, 2011, PGE will implement a surcharge to Multnomah County ratepayers of approximately \$331,000. This surcharge will be implemented simultaneous to the refund generated from the true-up related to the State and

<sup>10</sup> Estimate includes interest applied through deferral period.

Federal taxes. For this reason, PGE's Multnomah County ratepayers will experience a slightly smaller overall refund than those outside of the Multnomah County jurisdiction.

#### **SUMMARY OF STAFF REVIEW:**

Staff and PGE had come to an agreement based upon what Parties believe results in a reasonable outcome to the filing. As part of this agreement, Staff and the Company have agreed that PGE will include the effects of the 2009 refund into its Consolidated Method as discussed in item 1) below. In turn, Staff has agreed that PGE should include the adjustment related to a true-up of deferred taxes for prior years as discussed in item 2) below. The monetary outcome of this agreement is reflected in the Staff recommendation above.

The Citizens' Utility Board (CUB) has agreed to support this stipulation as a reasonable outcome, pending the review of a term paper that will be provided by PGE in the days following the publishing of this report. The Industrial Customers of Northwest Utilities is not in support of the stipulation. Due to the magnitude of the Staff investigation related to a normalization violation, Staff was unwilling at this time to commit to the agreements outlined above.

#### **STAFF REVIEW:**

Staff conducted face to face interviews on November 2, 2010 and December 9, 2010. Citizens' Utility Board and the Industrial Customers of Northwest Utilities were present for each meeting and participated in these discussions. Staff also sent data requests and conducted informal phone discussions with the Company.

In general, SB408 defines taxes paid as the "lesser of" three alternative calculations: (1) the utility's stand alone tax liability; (2) the total consolidated tax liability of the affiliated group; and (3) the total consolidated tax liability of the affiliated group "properly attributed" to the regulated operations of the utility.

Commission Order 07-401 adopted specific rules to preclude "taxes paid" from falling below the utility's deferred tax balance related to the depreciation of its public utility property. Such a scenario would create a normalization violation by allowing ratepayers to share in the benefits received from accelerated depreciation. Specifically, OAR 860-022-0041(4)(d) requires that we rely upon the lowest of the three "taxes paid" methods except that the lowest method cannot produce a result that is *less* than the deferred taxes related to public utility property for regulated operations of the utility, reduced by any tax refunds recognized in the reporting period, and allocated to the regulated operations of the utility.

Page 8, of Staff's template, provides for this alternative calculation. Here the reporting utility must enter the amount of deferred taxes related to depreciation of public utility property (hereafter referred to as the "4(d) tax limitation") for the regulated operations in Oregon. This amount is then reduced by the amount of refund recognized in the reporting period that is allocable to the regulated operations.

In its filing, PGE performed the test to determine whether it would fall under the 4(d) tax limitation for the 2009 tax period. The amount attributable to the deferred tax balance was indeed below the result of the calculation of "taxes paid" in the alternative three methods. The next step is to apply any refunds recognized in the reporting period that are allocable to the regulated operations.

After the application of a 2009 refund, the 4(d) tax limitation method was eliminated for PGE because the amount attributable to the 4(d) limitation modified by a 2009 refund fell below "taxes paid" in the other three methods. As a result, PGE ended up relying upon the consolidated method as the most appropriate representation of "taxes paid" for the 2009 filing.

As a result of our review, Staff identified several issues that were discussed with the Company during the review period, workshops and during phone discussions. For the purposes of this memo, Staff focuses on three issues that when applied result in the Staff recommendation:

- (1) Application of a 2009 Tax Refund (Taxes Paid);**
- (2) Adjustment to Deferred Taxes for Tax Rate Change during tax period; and**
- (3) Calculation of Gross Revenues (Taxes Collected).**

**(1) Application of a 2009 Tax Refund:**

In its cover letter submitted on October 15, 2010 with its original SB408 2009 tax filing, PGE states that due to revisions adopted in Commission Order 10-249 to OAR 860-022-0041, the treatment of income tax audits, amended tax return payments and refunds must be delayed until a taxing authority has made final determination on these amounts. PGE states that its 2009 refund has not yet received final determination therefore it cannot be applied to the consolidated or consolidated apportioned methods. However, the Company states that these



revisions do not preclude the application of amended tax return payments and refunds from being included in the stand-alone method or the deferred tax floor<sup>11</sup>.

As a result, PGE did not apply a 2009 refund to each of the methods used to calculate “taxes paid” in its current filing. Rather, the Company contends, that once a taxing authority has made a final determination on the refund, the Company will apply the final amount in the reporting period following final determination.

Staff believes that PGE should be required to include the 2009 refund in all parts of the SB 408 report, including consolidated and consolidated apportioned. Staff pointed out to PGE that the 2009 Schedule 1120 (which is the basis of consolidated and consolidated apportioned methods) has yet to be audited and receive final determination. For that matter, the 2008, 2007 and 2006 Schedule 1120’s are still awaiting final determination from Internal Revenue Service (IRS). By applying the refund to only portions of the SB 408 report, PGE is applying a stricter standard to the 2009 refund than to the 2009 Schedule 1120 filed to the IRS.

Additionally, Staff views the fact that PGE has already received the money and the IRS has accepted PGE’s application as evidence of final determination for the purposes of including the refund in the 2009 SB408 report.

By applying the refund to the consolidated and consolidated apportioned method, the refund associated with the 2009 SB408 filing increases by approximately \$8.8 million.

*Staff recommends that PGE revise its filing to include the 2009 refund to the Consolidated and Consolidated apportioned methods resulting in an increase to PGE’s refund of approximately \$8.8 million.*

## **(2) Adjustment to Deferred Taxes for Tax Rate Change during tax period; and**

In its calculation of deferred taxes related to the depreciation of public utility property, PGE includes an adjustment to true-up the deferred tax balance related to the amounts booked to deferred taxes for prior periods. PGE states that this is necessary due to the new tax rate implemented for 2009 by the Oregon Department of Revenue (ODR). This adjustment increases the balance of deferred taxes by approximately \$3.5 million.

Staff believes that PGE should not include amounts that relate to prior periods to the deferred tax balance in the 2009 SB 408 report. Rather, PGE should reflect only the year being reported in the utility’s results of operations report.

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<sup>11</sup> 4 (d) tax limitation-described above

OAR 860-022-0041(2)(b) defines “Deferred Taxes” in part as... *“the total deferred tax expense of regulated operations that relate to the year being reported in the utility’s results of operations report or tax returns.”*

SB408 is intended to true-up the taxes paid for 2009 operations to the amount of taxes collected in rates during 2009. Including a true-up of the deferred tax balance for prior years, as proposed by PGE, would deviate from this purpose. The true-up to the deferred tax balance would as proposed by the Company would be to include years prior to the enactment of SB408. Staff believes including a true-up for prior years would result in a mismatch for the current year’s true-up of taxes paid and taxes collected.

In its current filing, PGE has made this adjustment only to the stand-alone method for “taxes paid” and not to the consolidated or consolidated-apportioned methods. However, during Staff’s review, PGE asserts that this adjustment is appropriate for all three methods used to calculate “taxes paid”. Therefore, Staff recommends no further adjustment be made to “taxes paid” for the 2009 SB 408 filing.

*Staff recommends that there be no adjustment to the balance of deferred taxes related to the depreciation of public utility property for a true-up of prior period amounts of deferred taxes due to the 2009 tax rate change.*

### **(3) Calculation of Gross Revenues (Taxes Collected):**

OAR 860-022-0041(2)(n) describes “revenue” as being the utility’s Oregon retail revenues, excluding supplemental schedules or other revenues not included in the utility’s revenue requirement and adjusted for any *rate adjustment* imposed under this rule.

In its original filing, PGE did not include revenues related to supplemental Schedules 111 and 120. Schedule 111 relates to the implementation of the Automated Meter Infrastructure and Schedule 120 relates to the amortization of costs for PGE’s Biglow Canyon Phase 1. Staff believes that each of these schedules should be included as they represent a rate adjustment and both have a revenue requirement that includes a tax component.

In a supplemental response to Staff’s Data Request No. 14, PGE agreed that it is appropriate to include these amounts in the calculation of Gross Revenues. Doing so results in an increase to “taxes collected” and increases PGE’s refund by approximately \$500,000.

*Staff recommends that an adjustment related to the calculation of Gross Revenues be included in PGE's 2009 SB 408 filing resulting in an increase to PGE's refund of approximately \$500,000.*

**Summary:**

*Staff believes that PGE, CUB and Staff have an agreement in principal and PGE will Stipulated to the recommendations made in this Staff Issues list. If so, a Stipulation will be filed prior to January 10, 2011. To Staff's knowledge, ICNU does not support the proposed Stipulation and will provide separate proposals.*

**CERTIFICATE OF SERVICE**

**UE 178(4)  
Errata Filing  
Staff Issues List**

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 860-001-0180, to the following parties or attorneys of parties.

Dated this 28th day of December 2010, at Salem, Oregon.



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Kay Barnes  
Public Utility Commission  
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UE 178  
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