



CITY OF  
**PORTLAND, OREGON**

OFFICE OF CITY ATTORNEY

**Linda Meng, City Attorney**  
1221 S.W. 4th Avenue, Suite 430  
Portland, Oregon 97204  
Telephone: (503) 823-4047  
Fax No.: (503) 823-3089

March 2, 2006

**BY E-MAIL AND FIRST CLASS MAIL**

Oregon Public Utility Commission  
550 Capitol St., NE, Suite 215  
PO Box 2148  
Salem OR 97308-2148

Re: **UF 4218/UM 1206** -- In the Matter of Portland General Electric Company Application for an Order Authorizing the Issuance of 62,500,000 Shares of New Common Stock Pursuant to ORS 757.410 *et seq.* and In the Matter of Stephen Forbes Cooper, LLC

To Whom It May Concern:

On March 2, 2006, Commissioner Randy Leonard from the City of Portland attended a public meeting of the Oregon Public Utility Commission (OPUC) held in Salem, Oregon. At the meeting, the OPUC received a Staff Report on PGE tax, trading and other issues.

At the conclusion of the staff presentation, the OPUC invited attendees to make presentations to the Commission. Commissioner Leonard accepted this invitation and provided written materials to the OPUC, as well as making those materials available to others in attendance.

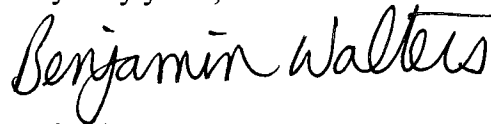
At the conclusion of Commissioner Leonard's presentation, Administrative Law Judge Michael Grant advised the OPUC that the written materials appeared to relate to the merits of issues pending before the Commission, as it continues to retain jurisdiction over this matter under the request for reconsideration presented by the Utility Reform Project. Given this continuing jurisdiction, ALJ Grant advised that this might constitute an *ex parte* contact under OAR 860-012-0015(2). As such, ALJ Grant cautioned that parties in this proceeding would have the right to rebut these communications on the record.

A copy of Commissioner Leonard's written materials is enclosed with this letter. In accordance with other proceedings, it would seem that the Commission will now treat this as part of the official record in this proceeding.

Oregon Public Utility Commission  
March 2, 2006  
Page 2

The parties in this matter are being served electronically and/or by first class mail. Please let me know if you have any questions regarding this matter.

Very truly yours,

A handwritten signature in black ink that reads "Benjamin Walters". The signature is written in a cursive style with a horizontal line underlining the name.

Benjamin Walters  
Senior Deputy City Attorney

BEW:lw

Enclosure

cc: Service List for Docket UF 4218/UM 1206  
Commissioner Randy Leonard

**SERVICE LIST (UF 4218/UM 1206)**

<p>PGE MUTUAL UTILITY, INC. 5 CENTERPOINTE DR SUITE 400 LAKE OSWEGO OR 97035</p>	<p>JIM ABRAHAMSON COMMUNITY ACTION DIRECTORS OF OREGON 4035 12TH ST CUTOFF SE STE 110 SALEM OR 97302 jim@cado-oregon.org</p>
<p>SUSAN ANDERSON CITY OF PORTLAND OFFICE OF SUSTAINABLE DEV 721 NW 9TH AVE -- SUITE 350 PORTLAND OR 97209-3447 susananderson@ci.portland.or.us</p>	<p>STEPHANIE S. ANDRUS DEPARTMENT OF JUSTICE REGULATED UTILITY &amp; BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us</p>
<p>TIMOTHY V RAMIS RAMIS CREW CORRIGAN LLP 1727 NW HOYT STREET PORTLAND OR 97239 timr@rcclawyers.com</p>	<p>KEN BEESON EUGENE WATER &amp; ELECTRIC BOARD 500 EAST FOURTH AVENUE EUGENE OR 97440-2148 ken.beeson@eweb.eugene.or.us</p>
<p>LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org</p>	<p>J LAURENCE CABLE CABLE HUSTON BENEDICT ET AL 1001 SW 5TH AVE STE 2000 PORTLAND OR 97204-1136 lcable@chbh.com</p>
<p>BRYAN CONWAY PO BOX 2148 SALEM OR 97309-2148 bryan.conway@state.or.us</p>	<p>JOAN COTE OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwwcaa.org</p>
<p>MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com</p>	<p>J JEFFREY DUDLEY PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC1300 PORTLAND OR 97204 jay.dudley@pgn.com</p>
<p>JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org</p>	<p>JAMES F FELL STOEL RIVES LLP 900 SW 5TH AVE STE 2600 PORTLAND OR 97204-1268 jffell@stoel.com</p>
<p>ANN L FISHER AF LEGAL &amp; CONSULTING SERVICES 2005 SW 71ST AVE PORTLAND OR 97225-3705 energlaw@aol.com</p>	<p>DAVID E HAMILTON NORRIS &amp; STEVENS 621 SW MORRISON ST STE 800 PORTLAND OR 97205-3825 davidh@norrstev.com</p>

<p>CHRIS JORDAN CITY OF WEST LINN 22500 SALAMO ROAD WEST LINN OR 97068 cjordan@ci.west-linn.or.us</p>	<p>ANDREA FOGUE LEAGUE OF OREGON CITIES PO BOX 928 1201 COURT ST NE STE 200 SALEM OR 97308 afogue@orcities.org</p>
<p>CHRISTY MONSON LEAGUE OF OREGON CITIES 1201 COURT ST. NE STE. 200 SALEM OR 97301 cmonson@orcities.org</p>	<p>RANDALL C TOSH CITY OF SALEM 555 LIBERTY STREET SE, ROOM 205 SALEM OR 97301 rtosh@cityofsalem.net</p>
<p>DAN LYONS ENRON CORPORATION PO BOX 1188 HOUSTON TX 77251-1188 dan.lyons@enron.com</p>	<p>GEOFFREY M KRONICK LC7 BONNEVILLE POWER ADMINISTRATION PO BOX 3621 PORTLAND OR 97208-3621 gmkronick@bpa.gov</p>
<p>GORDON MCDONALD PACIFIC POWER &amp; LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 gordon.mcdonald@pacificorp.com</p>	<p>DANIEL W MEEK DANIEL W MEEK ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net</p>
<p>MICHAEL M MORGAN TONKON TORP LLP 888 SW 5TH AVE STE 1600 PORTLAND OR 97204-2099 mike@tonkon.com</p>	<p>PGE- OPUC FILINGS RATES &amp; REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON STREET, 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com</p>
<p>LAWRENCE REICHMAN PERKINS COIE LLP 1120 NW COUCH ST - 10 FL PORTLAND OR 97209-4128 lreichman@perkinscoie.com</p>	<p>CRAIG SMITH BONNEVILLE POWER ADMINISTRATION PO BOX 3621--L7 PORTLAND OR 97208-3621 cmsmith@bpa.gov</p>



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF PUBLIC SAFETY

**Randy Leonard, Commissioner**  
1221 S.W. 4th Avenue, Room 210  
Portland, Oregon 97204  
Telephone: (503) 823-4682  
Fax: (503) 823-4019  
randy@ci.portland.or.us

DATE: March 2, 2006

TO: Public Utility Commission

FROM: Portland City Commissioner Randy Leonard

RE: Portland General Electric

The City of Portland is initiating a process to resolve fundamental questions about PGE's rate setting, tax collection, tax payment, and accounting practices. The answers to those questions may lead to the City of Portland exercising its authority to set rates for PGE customers residing within the City limits of Portland.

The following list outlines key areas of interest to the City of Portland that we believe should be resolved completely in any rate setting process for a public utility:

- 1. PGE is a profitable entity whose tax liability has been engulfed by the massive losses of its parent company Enron. However, there are multiple provisions of state law which enable the State to retain those dollars paid by ratepayers for State taxes in Oregon, instead of having them paid to Enron:***

The Department of Revenue is authorized by ORS 314.280 (OAR 150-314-280(M)) to require the segregated method of reporting for a public utility. This is the alternative to the consolidated method of reporting, which is the current practice of PGE and Enron and allows PGE and Enron to combine their income for tax reporting purposes. The consolidated method in this case has reduced or eliminated any tax debt to Oregon for PGE because of substantial losses reported by Enron. Under the status quo, any PGE tax debts are paid to Enron as cash and not to State government.

Additionally, ORS 314.670 states that where the reporting requirement utilized does not fairly represent the extent of the taxpayer's business in the State, the Department of Revenue may require separate accounting, which would dramatically increase PGE's tax liability in the State of Oregon, since nearly all its income is derived within the State.

Finally, even though PGE and Enron have been allowed to use the consolidated method of reporting, their application of this provision under State Law is incorrect. ORS 317.710 states in section 5(a) that if two or more affiliated Corporations (in this case PGE, Enron, and all of Enron's 346 subsidiaries) are filing a joint return for Federal tax purposes, that they shall only file a joint State

return with those entities who are unitary in nature (in other words affiliated entities who engage in similar business). In the case of PGE and Enron, this provision would not have allowed the summary consolidation of Enron's filing with PGE, but rather consolidated filing with only like companies under Enron. Available information suggests that complying with this statute would result in PGE consolidating their filing with only a small number of Enron affiliates, and it would almost certainly result in income tax due to the State.

The need for Senate Bill 408 would not be necessary were the State enforcing these provisions.

*In light of these features of State Law, why wasn't the Oregon Public Utility Commission proactive in making sure the taxes provided for in rates for the State of Oregon were paid to the State of Oregon?*

**2. *Why would PGE be permitted to include the cost of income tax liability in rates if there is no actual or potential income tax liability to be paid by PGE?***

Federal Energy Regulatory Commission Policy permits an income tax allowance in rates for all entities owning utility assets **ONLY** if the entity has an actual or potential income tax liability to be paid. When Enron declared bankruptcy in 2002, the possibility of a potential tax liability for PGE was effectively eliminated and the PUC had basis for reducing rates by the amount of tax expense collected in rates.

**3. *What is the explanation for PGE retroactively more than doubling its assignment of wholesale revenue to Multnomah County in 2001?***

Emails between PGE employees in 2001 demonstrate an initiative by PGE to ascribe additional wholesale revenues to Multnomah County for the purpose of elevating their Multnomah County Business Income Tax (MCBIT) liability, even though trading energy through Multnomah County is virtually unheard of. Since it is clear from the emails that PGE did not consider the MCBIT a liability, but rather an opportunity to increase their cash disbursements to Enron, the question of whether or not it is appropriate to ascribe the revenue to Multnomah County is secondary to the apparent motivation behind this change in approach.

**4. *Did PGE violate its fiduciary duty to the ratepayers and Multnomah County by disbursing monies collected for Multnomah County Business Income Tax (MCBIT) to Enron?***

It is clear that PGE collects money for the purpose of paying the Multnomah County Business Income Tax because it is explicit as an adder on ratepayer bills. What is also clear is that PGE has paid almost no Multnomah County Business Income Tax over the past several years. This is important because by placing the

adder outlining to the ratepayer exactly what amount of their payment is going to Multnomah County for taxes, PGE accepts the role as fiduciary of those monies, and should correspondingly act in scrupulous good faith and candor. If PGE has inappropriately disbursed these monies for any purpose other than tax payments to Multnomah County, they are in violation of their fiduciary duty to the ratepayers and the County.

**5. *In addition to not paying the Multnomah County Business Income Tax, has PGE been double charging the ratepayers for this tax, once in rates and again in the bill adder?***

Public financial statement information about its actual effective tax rate at 46% versus an expected combined federal and state rate of 39 % suggests that PGE may have charged ratepayers in Multnomah County twice for its Multnomah County Business Income Tax liability—once in rates and again on the PUC authorized bill adder. Further, despite the potential double charging of this tax to ratepayers, the tax was never paid to Multnomah County.

**6. *Did PGE engage in unlawful or fraudulent trading activities that contributed to the inflated energy costs during the west coast energy crisis? Did PGE use the high cost of energy and the unstable market they helped create as a basis for a 41% residential rate increase in 2001?***

In 2000, a west coast “energy crisis” occurred when Enron and subsidiary traders engaged in market manipulation, which created artificial energy shortages and drove up energy prices. PGE traders were directly involved in “Death Star” trading schemes which contributed to this crisis. PGE went to the OPUC seeking a 41% residential rate increase in the wake of the crisis, despite a trend of substantial increases in profits between 1999 and 2001, which suggested that they were not in need of a rate increase at all.

Given the questionable need for a rate increase, and the fact that PGE was involved in fraudulent “Death Star” trades, which in part served to artificially inflate energy markets, it follows that PGE may have been motivated to pursue a rate case in 2001 to capitalize on an environment of instability in energy markets that they had a hand in creating, rather than to address new revenue requirements.

**7. *Is PGE now preparing to disburse \$106 million in deferred taxes and \$54 million in current taxes to Enron?***

PGE’s September Form 10-Q shows a sudden increase in current deferred tax liability, meaning the deferred tax was owed within a year. Combined with other current tax liabilities of \$54 million, this may signal an additional disbursement to Enron totaling \$158 million right before the stock redistribution occurs.

We are appealing the PUC's decision to approve the redistribution of stock from Enron to its creditors. While we are not suggesting the following as the only alternative to the plan that the PUC approved, we do believe it represents but one example of many that the PUC could have added to the approval as a condition that would have resulted in a huge benefit to ratepayers:

**Proposed Alternative to PUC Approved PGE Stock Redistribution Plan:**

PGE seeks their stock redistribution plan to get a "fresh start" in the wake of Enron's unfortunate stewardship of the utility. What the OPUC should consider is how also to help the ratepayers enjoy the same kind of "fresh start." The City of Portland has identified a reorganization approach that has all the same benefits to PGE and its shareholders that the current proposal does, *plus* the benefit of reduced electricity rates due to reduced tax liability, thus providing an undeniable benefit. Part of this benefit could also be dedicated to restoring the lost pensions of PGE employees.

The City of Portland's suggested alternative reorganization is based on the following:

Revenue Ruling 63-228, provides in part:

"Where property having a fair market value is received in satisfaction of a debt, such fair market value is the unadjusted basis of the property for the purpose of computing gain or loss upon the subsequent sale or other disposition of the property. See Lawrence S. Vadner et ux. V. Commissioner, Tax Court Memorandum Opinion filed July 29, 1955, and Mary Kavanaugh Feathers v. Commissioner, 8 T.C. 376 (1947)"

In addition, Treas. reg. 301.7701-3(b)(1) and (2), provides in part:

"an eligible entity with a single owner may be disregarded as an entity separate from its owner."

The City's proposed course of action is to have PGE convert to an LLC (a disregarded entity) prior to its distribution to Enron's creditors such that PGE LLC would receive a "step up" in the basis of its assets to the fair market value of the assets (as opposed to their fully depreciated value). The net benefit to ratepayers would be 40% of the amount of the step up in reduced future income taxes to PGE flowing through to them via the elimination of the deferred taxes currently listed on PGE's balance sheet. The net benefit amounts to a rate savings estimated to be between 7 and 10%.