COMMENTS ON OPUC STAFF REVIEW OF PGE TAXES AND TRADING

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The OPUC Staff Review addresses various topics that have been raised by the City of Portland. The only issue which has been raised by Utility Reform Project (URP) is that PGE has been allowed to charge Oregon ratepayers over $800 million of "income taxes" that in fact were not paid by PGE or by its corporate parent, Enron.

I. SOME STAFFF SLIDES ARE MISLEADING.

Some of the Staff's slides are misleading. For example, pages 4 and 5 are entitled "Income Taxes Collected versus Paid." But these slides refer not to taxes actually paid but to amounts PGE sent to Enron under the guise of paying taxes. Thus, the slides are profoundly misleading. "Taxes" are "paid" to government. When a corporation ships money to its corporate parent, for whatever reason, that does not constitute the paying of taxes, particularly when (as here) the corporate parent did not pay those monies to government.

II. STAFF ANALYSIS OF AMOUNTS PAID TO ENRON FOR "TAXES" IS CONFUSING.

The Staff is apparently stating that PGE sent to Enron $56 million more for "federal and state income taxes" than PGE charged to ratepayers. Apart from the errors in the Staff numbers for taxes charged to ratepayers, this conclusion is both irrelevant and apparently nonsensical.

It is irrelevant, because the issue is that PGE is charging ratepayers for "federal and state income taxes" that are not actually being paid to government. The alleged fact that PGE sent $56 million more to Enron than it charged ratepayers for "federal and state income taxes" is irrelevant.

Also, the conclusion Staff seems to draw makes no sense. How is it a benefit to ratepayers that Enron took from PGE this additional $56 million? In later parts of the report, the Staff claims that Enron did not take excess money from PGE (in the form of cancelled debts, etc.). Here, however, the Staff claims that Enron did obtain excess money from PGE in the form of "federal and state income taxes." In either event, Staff concludes that whatever happened was just fine. Either way.

III. STAFF ANALYSIS OF WHOLESALE REVENUE MANIPULATION TO INCREASE MULTNOMAH COUNTY BUSINESS INCOME TAX CHARGES IS INCOMPLETE.

Here, Staff makes numerous errors of fact and of reasoning. Because this matter is before the Multnomah County Circuit Court, I shall not offer comments.

IV. STAFF ANALYSIS OF PGE CLAIMS AGAINST ENRON REQUIRES IGNORANCE OF COURT DECISIONS AND CONFUSING CAUSE WITH EFFECT.

Staff's analysis here requires assuming that at least 3 Oregon court decisions are wrong, despite the fact that these courts, including the Oregon Supreme Court have found the OPUC decisions at issue to be unlawful.

Staff says that PGE ratepayers got the $73 million unpaid merger credit through reduction of its Trojan investment balance. That requires disregarding 3 Oregon court decisions, including the decision of the Oregon Supreme Court in November 2002 upholding the June 1998 decision of the Oregon Court of Appeals that charging ratepayers for profits on Trojan under OPUC Order No. 95-322 was unlawful.

In essence, by the time of the so-called "settlement" among PGE, OPUC staff and CUB in September 2000, PGE had already charged ratepayers far more than enough to pay the entire investment balance of Trojan. Thus, there was no remaining $73 million balance to "offset" by cancelling the $73 million merger credit Enron still owed to PGE ratepayers.

The remainder of the Staff analysis here is baffling. While PGE filed claims of $246 million against Enron in the bankruptcy proceeding, Staff (p. 20) says:

> At the end of 2004, PGE "settled" its claims against Enron by making a non-cash distribution to Enron of approximately $66.3 million and a cash payment of $9.3 million.
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> **Why did PGE make the distributions to Enron?**
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> PGE made the distributions for two reasons. First, it wanted to clear its books of accounts receivable and payable with Enron before the anticipated sale to the Texas Pacific Group (TPG). Since PGE didn't expect substantial recovery in the bankruptcy proceeding or that it would receive any proceeds and be able to book them before the sale to TPG, it decided to settle the claims through the non-cash dividend and cash payment.

First, how can PGE "settle" anything with Enron, which is PGE's 100% owner and controls PGE 100%? Maybe that is why the Staff report put the word "settled" in quotation marks. Second, how are ratepayers protected, when PGE settles its $246 million of claims against Enron ... by paying Enron $75.6 million ($66.3 million plus $9.3 million).

The Staff review (p. 21) almost appears to recognize the absurdity of this explanation, when it notes that "any recovery by PGE [against Enron] could then have been returned to Enron as a dividend anyway." If Enron wants money from PGE, it commands PGE to pay it money. Call it "income taxes" or "dividends" or whatever. But then Staff concludes that all is well, because the OPUC has imposed on PGE a "minimum equity standard" which limits the dividends PGE can pay Enron. This stands reality on its head. The reason PGE easily meets the "minimum equity standard" and thus can pay the dividends Enron demands is because the OPUC has allowed PGE's rates to be so high. Higher rates enables PGE to build up "equity" and thus meet the standard that then allows Enron to drain the money out of PGE.

PGE's level of equity is extremely high for a utility, last reported at 57.3% at close of September 2005 (compared with the standard, which calls for 48%). Under the OPUC's ratemaking methods, recognition of this excessive level of equity increases PGE's rates, because equity is figured in rates to cost far more than debt. PGE's debt costs around 7% to ratepayers, but its equity costs over 14% to ratepayers.

Staff says that this draining of money out of PGE "did not harm customers because PGE maintained a reasonable level of equity in the business." This confuses cause and effect. Ratepayers are harmed by the high rates that enable PGE to maintain the "reasonable level of equity" despite being drained of money by Enron. Note that PGE paid Enron another dividend of $150 million in July 2005.

V. DISPARITY IN RATES BETWEEN PGE AND PP&L WILL BE ADDRESSED.

The Staff Review cannot deny that PGE's rates are higher due to the market manipulation in 2000 and 2001, which formed the basis for the 43% overall rate increase granted by the OPUC in 2001 (effective October 2001). Staff tries to say that the higher rates are the result of natural gas prices, but that is simply not true. Rates were set in 2001 on the basis of gas price assumptions in 2001. If PGE had a new rate case, then current gas price assumptions could be examined.

Further, it appears that the main strategy for reducing the disparity between PGE rates and PP&L rates will be to increase PP&L rates.