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State report supports PGE actions

Portland officials, who wave off the PUC report, call for reorganizing the utility and cutting rates

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A staff report released Thursday by the Oregon Public Utility Commission systematically shoots down the city of Portland's reasons for launching an investigation of Portland General Electric and calling for lower rates.

But city commissioners just as emphatically stood by the validity of claims that PGE and parent company Enron have overcharged customers hundreds of millions of dollars during the past nine years. Waving off the staff report as irrelevant, they presented the PUC with a new proposal that would restructure the utility and cause an "instant" rate reduction of 7 percent to 10 percent.

In an interview later in the day, PGE criticized the city's latest plan as ill-defined and unsubstantiated.

The face-off over PGE's finances came during a meeting of the PUC in Salem. Although regulators will not formally respond to the staff report's findings until a March 13 follow-up hearing, the conflicting views deepened divisions and dimmed the possibility of a smooth resolution of the controversy.

PUC Chairman Lee Beyer had asked his staff to review a Dec. 6 analysis by the city that suggested PGE may have inflated rates by almost \$1 billion since Enron purchased the utility in 1997. The report released Thursday was the product of that request.

In testimony to the PUC, City Commissioner Erik Sten called the staff report "off point."

"We understand why they might be legal," Sten said of the ways PGE calculated its taxes and accompanying customer charges, "but from our point of view, they weren't appropriate."

"Close to \$1 billion has disappeared from ratepayers pockets, and we want to make it right."

PGE contends it has calculated its rates and accounted for its trading revenue legally and appropriately.

"The PUC conducted a very thorough, very fair review of the issues," said PGE spokesman Scott Simms.

At issue is more than \$700 million that PGE has collected from ratepayers since 1997 to meet estimated federal and state income tax obligations. Just \$11 million of those collections reached the Internal Revenue Service and other taxing authorities because parent Enron established itself as the consolidated tax filer and was able to offset the utility's gains with losses from other subsidiaries.

The city has argued that ratepayers should get most of that money back because the taxes were never paid. Portland also has zeroed in on an \$88 million piece of the total, which it claims PGE kept for itself rather than sending on to Enron as it has claimed.

The PUC staff report affirmed the legality of rate and tax calculations that can produce substantial gaps between customer charges and tax payments. It also concluded that PGE did not retain \$88 million; instead, it paid \$56 million more in taxes to Enron than it collected from ratepayers.

The report noted that various methods can be used to calculate the gap. "There is not one right way," the report said.

Claims against Enron

The other large item tagged as a potential overcharge by PGE involved \$246 million in the utility's

bankruptcy claims against Enron. The report concluded that all but \$68 million was offset by money PGE owed Enron, and that shareholders, not customers, took the hit for the outstanding \$68 million.

"Customers were not harmed," the report said.

The city also has been critical of the way PGE accounted for its wholesale power trading revenue, which affected how much utility customers in Multnomah County were charged to cover a county business tax.

A 2000 change in how PGE booked the revenue and therefore calculated its tax liability dramatically increased the ratepayer charge, which appeared as a line-item fee on monthly bills.

City Commissioner Randy Leonard has argued that PGE purposely manipulated its accounting of trading revenue in Multnomah County to increase its tax liability and therefore enrich Enron. Internal PGE e-mails substantiate his claims, he said.

The PUC report found the utility's methodologies "plausible." Staff analysts found nothing suspect in the e-mails. The report noted, however, that analysts did not have access to any PGE documents that explained why the utility changed the way it accounted for trading revenue in 2000 and again in 2001.

In a recent settlement in a class-action lawsuit, PGE agreed to refund Multnomah County ratepayers \$10 million in local tax-related charges. It admitted no wrongdoing.

City claims rate powers

In an interview after the meeting, Leonard said the staff report had done nothing to ease his concerns. He said he plans to push ahead with the city's investigation and, if evidence warrants, begin independent rate-making proceedings that could lead to refunds or rate cuts.

The city contends it has rate-making authority under a 1931 state law. The law has never been used, and last week, PGE said it was prepared to legally challenge its use.

Last week, PGE officials also refused to turn over a second round of documents requested by the city. The utility had complied with an earlier request, but the scathing nature of the resulting city analysis prompted the Feb. 24 about-face.

"There has been a complete lack of due process on the part of the city," said Simms, the PGE spokesman.

Leonard said he would urge the City Council to exercise its subpoena powers to force compliance. A resolution approving the action could come to a vote as early as next week, Leonard said.

Meanwhile, Leonard wants the PUC to consider a new corporate structure for PGE that would lower the utility's income taxes and therefore rates.

"It's an instant 7 to 10 percent rate reduction," he said.

Under the plan, PGE would convert to a limited liability company, or LLC, an entity with some of the characteristics of a partnership and some of a corporation. The change would allow PGE to reset the value of assets at market value, rather than at fully depreciated value, and accordingly use depreciation again to reduce tax liability.

Few details of the plan were available at the meeting, but David Jubb, an accountant and lawyer retained by the city to aid in the investigation, called it "garden-variety stuff."

Stock distribution

The hook is that the change must occur quickly, Jubb said, before Enron activates the piece of its bankruptcy plan that transfers ownership of the utility to creditors through a distribution of newly issued PGE stock. The first phase of the spinoff is set for April.

PGE officials said they were committed to the stock-distribution plan and surprised by the city's last-minute proposal.

"The train has left the station, and we're moving forward," PGE's Simms said. "We wish the city could be on board."

PUC Chairman Beyer said regulators would have been able to review the proposal more thoroughly if the city had presented it earlier. The PUC approved the stock distribution on Dec. 14.

Nevertheless, he said the PUC will consider all responses to the staff report and gather again on March 13.

"This is not a shine-on job for us," he said. "We'll look at everything."

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