

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
 A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
Diane Davis	(503) 378-4372
Rules Coordinator	Telephone
PO Box 2148, Salem, OR 97308-2148	
Address	

**RULE CAPTION**

In the Matter of Permanently Amending OAR 860-022-0041 to be Consistent with ORS 757.268.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

<b>08/27/2009</b>	<b>9:30 am</b>	550 Capitol Street NE - Main Hearing Room, Salem, OR 97301	Sarah K. Wallace
Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
**ADOPT:**

**AMEND:** 860-022-0041

**REPEAL:** 860-022-0041(T)

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth. : ORS 183, 756, & 757

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Other Auth.:

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Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268

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**RULE SUMMARY**

This proposed rule adopts a permanent solution to the discrepancy that existed between OAR 860-022-0041(10) and ORS 757.268 prior to the adoption of a temporary amendment in April 2009, in docket AR 536. On September 2, 2005, the Governor signed into law SB 408, primarily codified at ORS 757.268, requiring certain public utilities to file annual tax reports and other tax information with the Public Utility Commission (Commission). The tax reports and information concern the amount of taxes paid by the utility and the amount of taxes collected in rates during specified time periods. The law requires that the Commission determine if the amount of taxes assumed in rates differed by at least \$100,000 from the amount of taxes paid by the public utility to units of government. Further, the law directs that if the Commission finds a difference of \$100,000 or more, the Commission must require the public utility to implement a rate schedule with an automatic adjustment clause accounting for the difference. The Commission adopted OAR 860-022-0041 to implement SB 408. Prior to the temporary amendment, the time period used for the Commission's earnings review of a utility was the "applicable tax year." To be consistent with the law, the rule section was temporarily amended to reflect that the time period used for the Commission's earnings review of a utility is the period during which the utility's automatic adjustment clause was in effect. The

temporary amendment also clarified that a claim under the section (10) of the rule should be made after the tariffs establishing the automatic adjustment clause are filed. The permanent amendment proposes the same clarifications. The temporary amendments will be repealed upon filing of the adopted permanent rule amendments.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 537 on comments and file them by email to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us) and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97301. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business August 25, 2009, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

8/27/2009 Close of Hearing

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

/s/ Diane Davis	Diane Davis	<a href="mailto:diane.davis@state.or.us">diane.davis@state.or.us</a>	07/15/09
Signature	Printed name		Date Filed

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of Permanently Amending OAR 860-022-0041 to be Consistent with ORS 757.268.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Permanently Amending OAR 860-022-0041 to be Consistent with ORS 757.268.

Statutory Authority: ORS 183, 756, &amp; 757

Other Authority:

Stats. Implemented: ORS 756.040, 756.060, 757.267 &amp; 757.268

**Need for the Rule(s):** Before the temporary amendment to the rule in April 2009, the Commission was required to perform an earnings review using the utility's results of operations "for the applicable tax year." According to ORS 757.268, the Commission reviews a utility's tax report to determine whether a rate adjustment under an automatic adjustment clause violates ORS 756.040 or otherwise has a "material adverse effect on customers" by examining the utility's rates during the period the automatic adjustment clause is in effect, not during the "applicable tax year." The temporary rule amendment adopted in Commission Docket AR 536 accomplished consistency between the Commission's rule and the law. This proceeding will make that amendment permanent to protect against serious prejudice to the public interest.

**Documents Relied Upon, and where they are available:**

OAR 860-022-0041 available online at

[http://arcweb.sos.state.or.us/rules/OARS\\_800/OAR\\_860/860\\_022.html](http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_022.html)ORS 757.268 available online at <http://www.leg.state.or.us/ors/757.html>**Fiscal and Economic Impact:**

Fiscal and economic impact of the proposed rule change exists only if, for a subject public utility, the difference between the taxes collected in rates and the taxes paid to units of government is \$100,000 or higher. The potential magnitude of such rate adjustments cannot be quantified at this time.

**Statement of Cost of Compliance:****1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The proposed amendments may have no impact on state agencies, units of local government or the public. The Staff of the Commission currently review the filings associated with the law and this rule. The impact on state agencies, units of local government and the public exists only if the difference between the taxes collected in rates and the taxes paid to units of government is \$100,000 or higher, and then by using the correct review period, the amount of rate adjustment would be more accurate for the customers of the utilities.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

The businesses subject to this rule are investor-owned public utilities and are not small businesses.

**b. Projected reporting, recordkeeping, and other administrative activities required for compliance, including costs of professional services:**

The proposed amendments to this rule will not increase the projected reporting, recordkeeping or other administrative activities required by the public utilities for compliance with the rule.

**c. Equipment, supplies, labor and increased administration required for compliance:**

The proposed amendments to this rule will not increase the equipment, supplies, labor, or administration required by the public utilities for compliance with the rule.

**How were small businesses involved in the development of this rule?**

The businesses subject to this rule are investor-owned public utilities and are not small businesses. Small businesses were not involved in the development of the proposed amendments, which are necessary to achieve consistency between the Commission's rules and the law.

**Administrative Rule Advisory Committee consulted?:** No

**If not, why?:**

The proposed changes are necessary to make the Commission's rules consistent with the law. Stakeholders may participate in the proposed rulemaking by submitting comments to the Commission before the close of the comment period.

	Diane Davis	diane.davis@state.or.us	7/15/09
Signature	Printed name		Date Filed

**860-022-0041****Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes**

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a);

(b) "Deferred taxes" for purposes of the utility means 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, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment;

(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations;

(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property;

(e) "IRC" means Internal Revenue Code;

(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers;

(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment;

(h) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line-item of customers' bills calculated on a separate city or county basis;

(i) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding;

(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g) and (4)(h), of this rule;

(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10);

(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c);

(m) "Results of operations report" means the utility's annual results of operations report filed with the Commission;

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule;

(o) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other

general rate revision, including an annual automatic adjustment clause under ORS 757.210;

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates;

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions, that are subject to rate regulation by any state commission;

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d);

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income;

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues or effective tax rate, the amount of taxes authorized to be collected in rates will be calculated using a weighted average of months in effect;

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f);

(u) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government;

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268;

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return; and

(x) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator;

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator;

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator;

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of

the utility in the numerator and amounts for the system regulated operations in the denominator;

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility;

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:



(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and 469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities;

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order;

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule;

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006;

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment;

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule;

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission;

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission;

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year;

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law;

(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate

the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

(10) At any time, **after filing a tariff implementing an automatic adjustment clause** a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040 or other applicable law. In making a determination regarding a potential violation of 756.040, the Commission will ~~perform an earnings review using the utility's results of operations report for the applicable tax year~~ **examine the utility's projected earnings during the period the automatic adjustment clause would be in effect.**

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268