BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 499

In the matter of the Adoption of Permanent Rules Implementing SB 408 Relating to Utility Taxes	**REPLY COMMENTS OF UTILITY REFORM PROJECT AND KEN LEWIS**

The Utility Reform Project (URP) and Ken Lewis file these reply comments. Our position is that the methodology proposed by the Commission to define and implement "properly attributed" is overly complex and will produce inappropriate results, unless somewhat modified.

If the Commission proceeds to adopt a method that allocates actual taxes paid by a consolidated filer on the basis of gross sales, property value, and payroll, certain changes are absolutely needed. First, it is clear that the comparison should be between the values of the consolidated filer with the values of the regulated operations of the utility serving Oregon customers, no matter where the utility's property or payroll is located. The gross sales, however, should be the regulated utility's gross sales in Oregon only.

Second, it would appear far more simple to use, for purposes of state and local income taxes paid, the unitary filer in Oregon and not an amalgam of all unitary filers in Oregon that include any of the companies included in the consolidated federal filer that includes the regulated operations of the utility in Oregon. The latter calculation boggles the mind.

We do not agree with several of the suggestions set forth at the workshop or in emails.[1] We responded to the proposals by return email (as noted below), but our concerns were then not further addressed. Marcus Wood for Northwest Natural Gas Company (NWNG) offered several proposals to address the circumstance where the net taxable income of the regulated utility Oregon operations exceeds the net taxable income of the consolidated filer. We attempted to comprehend the language he provided to implement his proposals but were unable to do so in the time allowed.

Our emails stated our lack of agreement with various proposals. In not agreeing to the Wood proposal on local taxes, I stated on August 9:

> I do not agree to this.
>
> Here are some questions for each of the utilities. I may know the answers for PP&L but cannot disclose or discuss them now, due to the confidentiality restrictions on documents PP&L has produced in discovery in Multnomah County Circuit Court.
>
> 1. When you file your Multnomah County Business Income Tax (MCBIT) or other local tax return, who is the tax filer? Is it the regulated operations of the utility? Is it the utility, including unregulated operations? Is it a unitary tax filer? Is it a consolidated tax filer? Does it change from year to year?
>
> 2. If the tax filer is any entity other than the regulated operations of the utility, does the tax filing break out the tax liability of the regulated operations of the utility? If not, how does your method propose to attribute part of the tax payments by the tax filer to the regulated operations of the utility?

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1. The August 8, 2006, workshop was scheduled for 1:30 p.m., despite my notice that I had conflicting meetings that day (explanatory statement committee meetings) beginning at 2:00 p.m. and ending at 4:00 p.m.

The utilities did not answer these questions, to my knowledge. Later on August 9, I stated:

> The problem with the local income tax allocation proposal from the utilities is: "Who is paying the local income tax?" If it were merely PP&L, the regulated utility operation, then no problem with pass-through and true-up. But what it if is Pacific Holdings? What if it is MidAmerican Energy? What if it is Berk-Hath?
>
> Assume it is Berk-Hath, and assume that Berk-Hath has a Macleans Corp. warehouse operation in Multnomah County (not unlikely to occur, since Macleans does distribution for Wal-Mart). Berk-Hath pays $10 million in MCBIT. Does all of that get credited to PP&L? No. How much does? The utility proposal appears not to address this.
>
> The 3-prong apportionment suggested the OPUC would be very complex, but at least it addresses the issue.
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> Another way to address it would be for every regulated utility doing business in Multnomah County to agree to pay MCBIT directly from the utility to the county, as a percentage of its net income from regulated operations in Oregon multiplied by the usual allocation factors for MCBIT. Only that payment would get credit as a MCBIT payment by the utility, and rates would be trued up so that ratepayers are not charged more than that for MCBIT. Any payment by the utility's consolidated filer or unitary filer would not count for the utility, and that filer would exclude the utility's income from its calculation of income subject to MCBIT taxation. In other words, the regulated utility operations would have to file a separate MCBIT return, regardless of its inclusion in any consolidated or unitary group for federal or state purposes, and only amounts of MCBIT paid directly by the regulated utility operations to the County would count for the purpose of charging MCBIT to ratepayers.

Finally, today I expressed disagreement with several of the points in the joint comments proposed by Staff.

I concur with these points: 2.

I do not concur with the other points.

Re point 3, the utility should not get to choose the method. It should be the unitary group always. I disagree with all of the subparts of point 3, except 3.A.3 and 3.A.4.

Note re point 4, it is incorrect to state that MCBIT is calculated "based upon Multnomah County gross income." It is calculated based on the entity's net Oregon income, apportioned to Multnomah County by means of relative gross income. That is very different. Thus, gross income is not necessarily a proper method for allocating credit for payment of MCBIT among affiliates, all of which do business in Multnomah County.

Dated: August 14, 2006

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed served for foregoing REPLY COMMENTS OF UTILITY REFORM PROJECT AND KEN LEWIS by email to the current email service list on the Oregon Public Utility Commission (OPUC) web site and by first class mail to the service list:

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Dated: August 14, 2006

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