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	**CLOSING COMMENTS OF UTILITY REFORM PROJECT AND KEN LEWIS**

The Commission's proposed method for properly attributing federal, state, and local income tax payments by a consolidated or unitary filer to the regulated Oregon operations of the utility is very complex, and its outcome appears highly sensitive to the specific wording. Commission should not adopt a final rule without issuing another draft, so that the parties can examine the exact language proposed and work through the results under a variety of scenarios.

Complexity benefits the utilities and the large customer groups with sufficient funds and expertise to determine the outcome of the formula under hundreds of scenarios. This naturally places the residential customer group at a disadvantage, as they rely upon the unpaid efforts of activists (Utility Reform Project) and the limited compensation provided to the Citizens Utility Board of Oregon. We believe that the current draft is not comprehensible to non-experts or persons without degrees in accounting and perhaps tax law as well.

Further, implementing the Commission's proposal will depend upon using masses of data supplied by the worldwide operations of various consolidated and/or unitary tax filers. We are told that some of this data is sometimes audited by the Multistate Tax Commission, but we do not know whether the processes or results of those audits are available for public scrutiny or whether those audits are even appropriate for this task.

The Commission's proposal could produce very anomalous, unexpected, and even unfair results, as demonstrated in the workshops by Marcus Wood for NWNG. These anomalies would require the adoption of numerous tweaks, floors, ceilings, and other side calculations that would render the method even less comprehensible and more subject to manipulation by experts.

The Commission need not re-invent the wheel here. The Public Utility Commission of Pennsylvania has for years been attributing tax payments by consolidated filers to the regulated operations of utilities regulated in Pennsylvania, including utilities whose operations straddle several state lines, as do those of PacifiCorp, Avista, and others in the Pacific Northwest.

The PaPUC approach is very simple, compared with the OPUC proposal. It appears that normalization questions regarding the Pennsylvania approach have been resolved. A simple description is found in ***Barasch v. Pennsylvania Public Utility Commission***, 548 A.2d 1310 (Pa. Commonwealth 1988):

> The method advocated by OCA [Office of Consumer Advocate] in these proceedings for calculating consolidated tax savings may be characterized as a "modified effective tax rate" method. An effective tax rate method calculates the consolidated tax savings by determining the difference between the total of the stand-alone tax liabilities of all of the members of the consolidated group and the tax actually paid after offsetting of income because of consolidation and then allocates those savings among all of the members. The rationale of this method is that, because the parent pays tax at the marginal rate but on an amount of income reduced by consolidated offsetting, the parent, and in turn the subsidiaries, should be viewed as paying at an "effective" tax rate that is below what

> they would have paid if the tax had been calculated by applying the marginal tax rate to the full income of each member on a stand-alone basis.
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> In this case OCA's expert witness, Nancy B. Bright, calculated the amount of savings by an effective tax rate method and then allocated those savings among members of the group based on the ratio between the individual member's stand-alone tax liability and the total of the stand-alone liabilities of all subsidiaries with positive taxable income. OCA Statement No. 2 at 30; R.R. 29a. Ms. Bright's method was a modified instead of a pure effective tax rate method because (1) it examined tax losses before consideration of investment tax credits (ITCs) in order to avoid any flow-through of those credits to companies other than those to whom they were due, and (2) it excluded losses of regulated companies from consideration in order to avoid any flow-through of accelerated depreciation benefits accruing to those companies, which would violate federal tax law. Id. at 31; R.R. 30a. The commission's witness agreed that these modifications to the effective tax rate method successfully eliminated concerns of violations of federal tax law in regard to ITCs and accelerated depreciation benefits. Notes of Testimony 1261; R.R. 103a. As noted above, OCA's calculations showed a consolidated tax savings of approximately $1.7 million. As OCA emphasizes in its brief, such a reduction to allowable tax expense would have reduced Peoples' allowable revenues by approximately $3.4 million.

While the Pennsylvania Commission attempted to revert to the "pour-over" method, the Court invalidated the decision and ordered the PaPUC to "issue a new order after incorporating in its rate calculations the consolidated tax savings adjustment proposed by the Office of Consumer Advocate."

Thus, the Pennsylvania method is available as a far more simple model for implementation of SB 408. It would not rely on data on the worldwide gross sales, property values, and payrolls of companies with operations that literally span the globe. It appears to have been used in Pennsylvania for many years. *See, e.g.*, ***Pennsylvania public utility commission v. Philadelphia Suburban Water Company***, 219 P.U.R. 272 (2002).

The Utility Reform Project (URP) and Ken Lewis request the Commission to adopt the Pennsylvania method or other simple method that does not introduce such complexity that its implementation can only be understood by well-paid tax accountants.

Dated: August 21, 2006

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed served for foregoing CLOSING 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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