

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 499

In the Matter of the Adoption of Permanent)	Comments of
Rules Implementing SB 408 Relating to)	The City of Portland
Utility Taxes)	re Straw Proposals

The City of Portland (“Portland”) submits the following comments with respect to the Straw Proposals.

Portland appreciates the opportunity to participate in this proceeding. The collection and payment of taxes by utilities is of critical importance to Portland and the residents it represents. Together with utility customers throughout Oregon, Portland ratepayers suffered first hand the “Enron Problem” that SB 408 was intended to address. Ratemaking employs a specific presumption – that a utility will earn a specific level in net income, which needs to be protected by factoring in a specific percentage of revenue. Enron took this presumption and turned it into a cash cow, by offsetting the “guaranteed” income tax amounts of the utility with losses generated by innumerable other subsidiaries. Of course, it is clear that the “problem” was not specific to Enron and that the recovery of “taxes” in customers rates has been a source of additional revenue to any utility owned by a parent filing on a consolidated basis.

SB 408 was conceived in a somewhat simplistic fashion. It was intended that every dollar paid in rates by customers would be paid to the relevant taxing authorities or returned to the customers through rate reductions or by mechanisms that would adjust when more or less tax monies were due. While there was discussion of the possibility of dramatic swings, the expectation was that these would be the exception and not the rule. The expectation was that each company would use whatever prudent tax analysis that they would have normally used as a basis for collecting taxes in rates and then the monies collected would be compared with the actual dollars paid to taxing authorities after the fact. The difference, plus or minus, would be allocated or returned as appropriate. It was assumed that losses incurred by unregulated affiliates of the parent would be considered in determining the amount of taxes that are properly recovered. Not surprising considering that it is a simple matter, under the control of the parent, to establish unregulated affiliates in which to lodge losses to subsume monies collected as taxes at the utility level into the parent profit and loss sheet.

The straw proposals point out the complexity of these issues. In trying to develop a reasonable solution, it is important to keep in mind the goal of SB 408 – to avoid the situation in which the utility collected in rates monies ostensibly for taxes that were never paid to the taxing authorities themselves. The bottom line is how best to accomplish that goal while balancing the utilities' needs and the customers' right to have power that is safe and reliable at rates that are fair and reasonable. SB 408 was not intended to provide the utilities with a more complicated but equally effective way to take those tax dollars without paying them to the relevant authorities.

If the Commission decides to replace the methodology now in the temporary rules, Portland supports the straw proposals of ICNU and CUB, with one exception, as noted below.

Portland believes that the proposals reasonably allocate tax benefits among affiliated entities while providing protections for the customers from improper taking of monies collected as taxes but are not paid. They recognize that there are different types of tax deductions.

ICNU's proposal to identified affiliated groupings by which tax liability is determined is a reasonable compromise. ICNU's analysis of the sections of the statute is sound particularly in that it recognizes that utility assets and revenues may be used by the parent to secure debt. While some of the calculations become unwieldy, they do balance the interest of ratepayers and utilities appropriately. Portland agrees with ICNU's position that taxes must not be adjusted for actual costs except where the Commission does a true up of specific costs on which the utility does not earn a return.

Portland diverges from the CUB proposal in that it does not support limiting the allocation of the negative stand alone tax liabilities of the affiliates only to the extent that the utility earns over its authorized rate of return on equity. Under certain circumstances, it would be appropriate to limit it further by not allowing the utility to take advantage of this safety net to bring up its actual earnings.

Portland does not support an earnings test either as a result of the allocation of the negative tax liability or as a separate mechanism under SB 408 because Portland believes that it has the potential of subsidizing imprudent decisions of the utilities that should and would have, without this safety net, reduced actual earnings. It concurs with ICNU's proposal in that there is no basis to require an earnings test. That is not what the *Hope* standard requires. Allowing a utility to take these funds to off set lower than expected earnings turns the entire regulatory scheme upside down. A regulated utility's allowed rate of return recognizes that the utility has little risk with its captive customers and provides an incentive for the utility to make prudent decisions. If utilities are allowed to apply the taxes to make up for otherwise imprudent decisions, this would implicitly allow rates that were neither fair nor reasonable. This would not protect

ratepayer interests. The legislature has spoken. It expects the utilities to earn a rate of return determined by the Commission. It does not support the utilities increasing the actual rate of return through an artifice or to be subsidized for imprudent utility decisions.

Portland is willing to work with the stakeholders to determine whether there is a way to prevent monies directly or indirectly collected as "taxes" to be used as a safety net for imprudent utility decisions. It is also willing to work with the stakeholders to determine whether there are additional actions that could be taken that would lower the overall tax liability. The efforts of the stakeholders have clarified the issues resulting in a better understanding of how the collection of taxes has worked in the past. Portland appreciates the opportunity to participate and to submit these comments.

Dated this _____ day of April, 2006.
Respectfully submitted,

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