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July 7, 2006

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
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Re: Docket AR 499

Following up on the June 7, 2006 workshop in this matter and the ALJ's June 21 Memorandum, enclosed for filing in the above-referenced matter are proposed amendments to the draft rules on SB 408. These amendments generally reflect changes discussed and agreed upon during the June 7, 2006 workshop. As PGE indicated in a letter filed earlier today, the amendments do not include a provision on how to address a mid-year change in tax filing status. PacifiCorp and PGE were unable to draft such a rule prior to a decision on the definition of "properly attributed."

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,



Sarah Adams Lien

Enclosures

cc: Service List

DRAFT RULES

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.

Deleted: Avista Corporation, Northwest Natural Gas Company, PacifiCorp, and Portland General Electric Company, or to any successors in interest of those utilities.

Revision agreed to at 6/7/06 workshop.

(2) As used in this rule:

(a) "Affiliated group" means the group of corporations, of which the utility is a member, which files a consolidated federal income tax return.

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations as reported in the FERC deferred tax expense accounts that relate to the year being reported as indicated in the utility's results of operations report or tax returns.

Revision agreed to at 6/7/06 workshop.

(c) "Income" means taxable income as determined by the applicable taxing authority or regulatory taxable income when reporting or computing the tax liability resulting from a utility's regulated operations.

Revision agreed to at 6/7/06 workshop.

(d) "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.

PacifiCorp is reviewing the treatment of interest expense in this definition.

(e) "Properly attributed" means

(f) "Regulated operations of the utility" means those activities of a utility that are subject to rate regulation by the Commission.

Avista is reviewing this definition to determine whether it should be modified to account for multi-state operations.

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

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(h) "Revenue" means retail revenues from ratepayers in Oregon as defined by FERC, excluding other operating revenues as defined by FERC and supplemental schedules not included in the utility's revenue requirement, and adjusted for any rate adjustment imposed under this rule.

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This definition excludes "other revenues," which Staff requested at the 6/7 workshop. By saying "as defined by FERC," the definition references an independent definitional source with an established body of rules, which gives guidance as to what is included in revenue.

(i) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210.

(j) "Subgroup" means

(k) "Tax" means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to a unit of government, but does not include a franchise fee or privilege tax.

(l) "Taxes authorized to be collected in rates" means the product determined by multiplying the following three values:

All participants at 6/7 workshop agreed that definition of "taxes authorized to be collected in rates" may change depending on pending Commission decision. PGE asked that the language in 2(l)(B) "with revenue weighted by months when revenue requirement is reauthorized during the year" be added to each of the 3 prongs of the "taxes authorized to be collected in rates" definition. All agreed.

(A) The revenue the utility collects, using information from the utility's results of operations report;

(B) 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, with revenue weighted by months when revenue requirement is reauthorized during the year; and

(C) 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, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

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(m) "Local taxes collected in rates" means the total amount collected from customers under the local tax line-item of customers' bills calculated on a separate city or county basis.

Revision agreed to at 6/7/06 workshop.

(n) "Taxes paid" means net amounts received by units of government from the utility or from the affiliated group and properly attributed to regulated operations of the utility, adjusted as follows:

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(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed because of the charitable contributions made by the utility;

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Revision agreed to at 6/7/06 workshop.

(B) Increased by the amount of tax credits on the tax return that are associated with investment by the utility in the regulated operations of the utility, which may include, but are not limited to, tax credits associated with renewable electricity production, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the Commission in the utility's most recent general ratemaking proceeding; and

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Participants at the 6/7/06 workshop agreed that the credit add-back includes PTCs. The language "renewable electricity production" is from IRC Sec. 45 (the source of the federal PTC).

(C) Adjusted by deferred taxes related to the regulated operations of the utility. The utility must initially use its results of operations report to establish the amount of deferred taxes. If the utility does not believe that the results of operations report sufficiently reflects the amount of the utility's deferred taxes for the applicable tax year, the utility may also use its tax returns for the tax year as a supplemental source for calculating the deferred taxes adjustment as a separate submission. Deferred taxes do not include deferred tax items related to an adjustment under section 10 of this rule.

Consider whether we should add back affiliate deferred taxes as part of definition of "taxes paid" to avoid normalization violation.

(o) "Local taxes paid" means [Note: We are working with PGE to review the treatment of local taxes and will propose other definitions and rules for local taxes as needed, including a rule regarding calculation of "local taxes paid."]

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(p) "Units of government" mean federal, state and local taxing authorities.

Deleted: Any person may request to be placed on a list to receive all such tax report filings at the time they are submitted to the Commission or may request a copy of individual filings. Any person wishing to participate as a party shall so notify the Commission and other parties.

(3) By October 15 of each year, each utility will file a tax report with the Commission. The tax report will contain the following information for each of the three preceding fiscal years:

Access to tax report information will be addressed in section 11 below.

PacifiCorp and PGE are working on revisions to this and other sections to address situations in which a utility changes its consolidated group or tax fiscal year end.

(a) The amount of federal and state income taxes paid to units of government by the utility or its affiliated group;

(b) The amount of the federal and state income taxes paid that is incurred as a result of income generated by the Oregon regulated operations of the utility, calculated using a pro forma tax return and including a reconciliation with revenues and expenses in the utility's results of operations report for the year;

(c) The amount of federal and state income taxes paid to units of government by the utility or its affiliated group that is properly attributed to the Oregon regulated operations of the utility;

(d) The amount of federal and state income taxes authorized to be collected in rates for Oregon regulated operations of the utility;

(e) The amount of the difference between the amount in section 3(d) of this rule and the lowest of the amounts in sections 3(a), 3(b) and 3(c).

(f) The amount of local income taxes paid to units of government by the utility or its affiliated group that is incurred as a result of income generated by the Oregon regulated operations of the utility, by local taxing authority;

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Revision agreed to at 6/7/06 workshop.

(g) The amount of local income taxes collected from Oregon customers, by local taxing authority;

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Revision agreed to at 6/7/06 workshop.

(h) The amount of the difference between the amounts in sections 3(f) and 3(g) of this rule; and

(i) the proposed surcharge or surcredit rate adjustments to charge or refund customers the amount of the differences in sections 3(e) and 3(h) of this rule.

(4) In calculating the amount of taxes paid under section (3) of this rule:

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

(A) For each tax liability shown on an initial or amended tax return for the immediately preceding tax year, which return is filed on or before the date the tax report is due for such tax year, to the tax year for which such return is filed.

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Revision agreed to at 6/7/06 workshop.

(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, to the tax year in which the related tax liability or tax adjustment is recognized by the utility for accounting purposes.

Deleted: positive or negative

Revision agreed to at 6/7/06 workshop.

(C) Taxes paid shall be inclusive of any interest paid to or interest received from units of government with respect to tax liabilities.

(b) A multi-state jurisdictional utility will determine the portion of state and federal taxes allocated to its Oregon jurisdictional operations using the allocation methodology approved for use in setting the utility's rates. The utility will apply this methodology to the utility's total taxes paid on a multi-state basis, including any tax settlement payments and refunds and interest paid to or received from units of government, adjusted to include the utility's total deferred taxes.

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Revision agreed to at 6/7/06 workshop.

(c) When an affiliated group/sub group changes during the year, taxes paid will be calculated . . .

At the 6/7 workshop, parties discussed issues concerning a change in utility ownership. All agreed that the complexity of the issue depended in large part on definition of "properly attributed." Staff suggested that we refrain from providing specific direction in the rules and instead allow each utility that encounters this issue to propose appropriate case-specific treatment when it files its tax report. Staff asked parties to begin working on language dealing with this issue for review at the July 21 workshop.

(5) A utility with a fiscal year other than a calendar year will also provide, to the extent such information is available, the information requested in section (3) of this rule for each calendar year beginning 2006.

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Revision agreed to at 6/7/06 workshop.

PacifiCorp is reviewing the impact of this rule on non-calendar year tax filers.

(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. Each utility must obtain and provide any information requested by the Commission to implement and administer this rule.

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Revision agreed to at 6/7/06 workshop.

(7) Within 20 days following the October 15 tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule that includes the following events for each utility:

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Staff is rewriting this section of the draft rules.

(a) On the second Monday in January, discovery completed and Commission staff issue its initial recommendations regarding the findings in section 9 of this rule;

(b) During the second to fourth weeks in January, a settlement conference;

(c) One week following the settlement conference, Commission staff and intervenor testimony;

(d) Two weeks following Commission staff and intervenor testimony, utility rebuttal testimony;

(e) Two weeks following utility rebuttal testimony, a hearing;

(f) Two weeks following the hearing, simultaneous briefs; and

(e) Within 180 days of the tax report filings, the Commission order making the findings in section 9 of this rule.

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(8) The Commission's order in section 7(e) of this rule will contain the following findings:

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(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 are properly attributed to the Oregon regulated operations of the utility;

(b) for each of the three preceding fiscal years, the difference between federal and state income taxes paid to units of government by the utility or its affiliated group that is properly attributed to the Oregon regulated operations of the utility and taxes authorized to be collected in rates;

Deleted: amount in section 3(e) of this rule for federal and state income taxes;

(c) for each of the three preceding fiscal years, the difference between local income taxes paid to units of government by the utility or its affiliated group that is properly attributed to the Oregon regulated operations of the utility and local taxes collected in rates; and

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(d) any other finding or determination necessary to implement the automatic adjustment clause.

Deleted: the amount of the surcharge or surcredit rate adjustments to charge or refund customers the amounts in sections 9(b) and 9(c) of this rule.

Revision agreed to at 6/7/06 workshop.

(9) Upon entry of an order finding a difference of \$100,000 or more in section (8) of this rule, the utility must file an amendment to its automatic adjustment clause tariff to be effective each June 1 unless otherwise authorized by the Commission. The amended tariff will implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each calendar year beginning 2006.

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Revision agreed to at 6/7/06 workshop.

(a) The utility will establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in section 8(b) of this rule through a surcharge or surcredit rate adjustment.

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(b) A utility that is assessed a local income tax shall establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility will 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 will be calculated to recover or refund the difference determined by the Commission in section 8(c) of this rule.

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Revision agreed to at 6/7/06 workshop.

(c) Any rate adjustment will be calculated to amortize the difference determined by the Commission in sections 8(b) and 8(c) of this rule over a period authorized by the Commission.

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Revision agreed to at 6/7/06 workshop.

(d) Any rate adjustment will 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.

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Revision agreed to at 6/7/06 workshop.

(e) Each balancing account will 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 January 1 in the year following the tax report filing.

At 6/7/06 workshop, Staff proposed revising this section to calculate interest as though the amounts were added to the balancing account on January 1 of the year the tax report is filed. Staff asked parties to address this issue in their comments.

(f) The automatic adjustment clause shall 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.

Consider whether this should include all affiliate deferred taxes in order to avoid normalization violations.

(g) Prior to initial implementation of the automatic adjustment clause, each utility will seek and obtain a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with Senate Bill 408, this rule, or any other relevant guidance or authorities would cause the utility to fail to comply with federal normalization requirements or other requirements of federal tax law. No rate adjustment will be implemented while a Private Letter Ruling or Revenue Ruling regarding a utility's compliance with Senate Bill 408, this rule, or any other relevant guidance or authorities that would cause the utility to fail to comply with federal normalization requirements or other requirements of federal tax law is pending. While such a Private Letter Ruling or Revenue Ruling is pending, interest will accrue according to section 9(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to sections 8(b) and (c) of this rule.

Participants at 6/7/06 workshop agreed that no adjustment should occur, but interest should accrue, while Private Letter Ruling or Revenue Ruling pending.

(10) No later than 30 days following the Commission's findings in section 8 of this rule, any person may file a claim that a rate adjustment under the automatic adjustment clause will have a material adverse effect on customers or result in a potential violation of ORS 756.040.

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756.210(1) or any other applicable statute. The Commission will hold a hearing and make a determination of whether a rate adjustment under the automatic adjustment clause has a material adverse effect on customers or results in a statutory violation within 120 days following any such filing. In the event of a claim under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination, but interest will accrue according to section 2(e) of this rule on the final amount of the rate adjustment. The person filing the claim will bear the burden of proof to substantiate the claim. In making a determination regarding a potential violation of ORS 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year.

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Participants at 6/7/06 workshop "agreed to disagree" regarding whether the rules should provide for an expedited hearing for violations of ORS 756.040, 756.210(1) or other applicable statutes.

(12) The Commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative. An intervenor may not disclose any further information unless the Commission allows the disclosure. The Commission will not disclose or authorize disclosure of any information that is exempt from disclosure under the Records Law (ORS 192.410-192.505).

Staff is revising this section of the draft rules.

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

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

[Hist.: PUC 5-2005(Temp), f. & cert. ef. 9-15-05 thru 3-13-06]

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CERTIFICATE OF SERVICE

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I hereby certify that I served a true and correct copy of the foregoing document in

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Docket AR 499 on the following named person(s) on the date indicated below by email and

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first-class mail addressed to said person(s) at his or her last-known address(es) indicated

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DATED: July 7, 2006.



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