

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 498

In the Matter of the Adoption of)
Temporary Rules to Implement SB 408) ORDER
Relating to Annual Tax Reports and)
Automatic Adjustment Clauses Relating to)
Public Utility Taxes)

DISPOSITION: TEMPORARY RULE ADOPTED

On September 2, 2005, Governor Theodore Kulongoski signed into law Chapter 757, OR Laws 2005 (Senate Bill 408). Senate Bill 408 requires certain public utilities to file annual tax reports and other tax information with the Commission. The bill requires the report to provide information concerning the amount of taxes paid by the public utility and the amount of taxes authorized to be collected in rates during specified time periods. Further, the bill requires the Commission to review the report and 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. Senate Bill 408 directs the Commission, upon finding that difference in amounts, to require the public utility to implement a rate schedule with an automatic adjustment clause accounting for the difference.

The bill requires certain public utilities to file a tax report by October 15, 2005. The purpose of the temporary rule is to establish the filing requirements for the tax report. All issues relating to the implementation of this bill, including details regarding the automatic adjustment clause, will be further reviewed in a permanent rulemaking, docketed as AR 499.

Failure to immediately adopt a temporary rule will result in serious prejudice to the public interest. *See* ORS 183.335(5). Without this temporary rule, the utilities have not been told what is required in the October 15, 2005, tax report filing. The temporary rule meets this need by defining certain terms included in SB 408. Further, the rules grant the Commission additional time after the filing of the tax report in which to make certain determinations as required by SB 408. We adopt these provisions granting this additional time so that we may hopefully conclude the permanent rulemaking in time to apply the new rules to our decision process. None of the decisions made in this temporary rule should be considered as precedent for our findings in the permanent rulemaking.

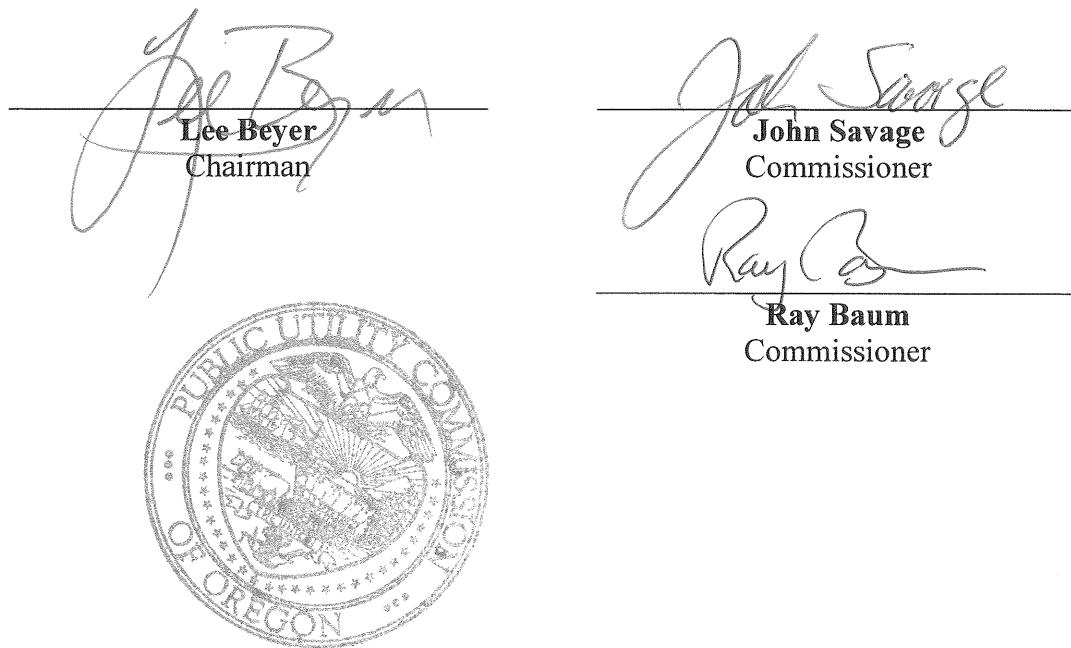
At the September 14, 2005, public meeting of the Public Utility Commission of Oregon, numerous participants made comments regarding the proposed temporary rule. Additionally, we considered written comments. We will adopt the temporary rule as contained in Appendix A.

ORDER

IT IS ORDERED that:

1. The temporary rule attached as Appendix A is adopted.
2. The temporary rule shall be effective for a maximum of 180 days beginning September 15, 2005.

Made, entered, and effective SEP 15 2005.



A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-022-0039

Annual Tax Reports and Automatic Adjustment Clauses Relating to Public Utility Taxes

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

(2) As used in this rule:

(a) "Affiliated group" means an affiliated group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

(b) "Deferred taxes" means the total deferred tax expense of regulated operations as reported in the appropriate FERC deferred tax expense accounts that relate to the year being reported.

(c) "Income" means taxable income.

(d) "Properly attributed" means the product determined by multiplying the following two values:

(A) The total amount of taxes paid by the public utility or affiliated group to units of government; and

(B) The ratio of the tax liability of Oregon regulated operations of the public utility to the total tax liability from all affiliates of the public utility or the affiliated group with a positive tax liability.

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

(f) "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.

(g) "Taxes authorized to be collected in rates" means the product determined by multiplying the following three values, calculated excluding the revenues and costs related to sales for resale and purchased gas for natural gas utilities:

(A) The revenues the public utility collects from ratepayers in Oregon, adjusted for any rate adjustment imposed under this rule;

(B) The ratio of the net revenues from regulated operations of the public utility to gross revenues from regulated operations of the public utility, as determined by the Commission in establishing rates; and

(C) The effective tax rate used by the Commission in establishing rates, calculated as the ratio of total taxes to pre-tax income.

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

(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 public utility;

(B) Increased by the amount of tax savings realized as a result of tax credits associated with investment by the public utility in the regulated operations of the public utility, 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 public utility's last general ratemaking proceeding; and
(C) Adjusted by deferred taxes related to the regulated operations of the public utility.

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

(3) By October 15, 2005, each public 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:

(a) The amount of taxes paid to units of government by the public utility or its affiliated group, without regard to the tax year for which the taxes were paid;

(b) The amount in section (3)(a) of this rule that is properly attributed to Oregon regulated operations of the public utility;

(c) The amount of tax liability of Oregon regulated operations of the public utility calculated on a stand-alone basis using Oregon results of operations;

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

(e) An explanation of the method by which the above amounts were calculated and all supporting workpapers and documents supporting the calculations.

(4) Each public utility will provide any information the Commission requires to make the determination in section (6) of this rule.

(5) 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 public utility or from the affiliated group differed 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 authorize disclosure of any information that is exempt from disclosure under the Public Records Law ORS 192.410 – 192.505.

(6) Within 180 days following the filing of the public utility's tax report, the Commission will determine whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differed 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 public utility.

(7) If the Commission makes a finding of a difference of \$100,000 or more in section (6) of this rule, the Commission will require the public utility to make a compliance filing establishing an automatic adjustment clause tariff to be effective within 60 days of the finding.

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

Stats. Implemented: ORS 756.040 & 756.060

Hist.: New