

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 517

In the Matter of)	
)	OPENING COMMENTS OF THE
Housekeeping and Clarification Changes to)	INDUSTRIAL CUSTOMERS OF
OAR 860-022-0041.)	NORTHWEST UTILITIES
_____)	

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments regarding the proposed amendments to OAR § 860-022-0041, relating to utility income taxes. The June 19, 2007 Memorandum and Notice of Rulemaking Hearing issued by Chief Administrative Law Judge Grant identifies five issues that the proposed amendments address: 1) removing the iterative effect caused by calculating a tax effect on the amount either refunded or collected from customers; 2) allowing a change in methodology if ownership of the utility changes; 3) removing a potential federal tax law normalization problem caused by drawing down current deferred taxes; 4) creating a placeholder due to a legislative proposal so all parties will have the ability to comment on any changes to treatment of the Business Energy Tax Credit (“BETC”); and 5) correcting the calculation of the “floor” for the three-factor Apportionment Method. ICNU provides these comments to highlight certain issues with the proposed amendments.

1. The Commission Should Ensure that Provisions Governing the Iterative Effect of SB 408 Rate Adjustments Are Applied Narrowly

Subsections (4)(d)(E) and (4)(j)(C) of the rule provide that the utility will report certain amounts in the October tax report after eliminating the “iterative tax effect” to the extent that the effect has not been eliminated by other adjustments under the rule. Subsection (2)(g) defines “iterative tax effect” as “the tax effect of a rate adjustment for taxes related to ORS 757.267 or ORS 757.268 in the tax reporting period that includes the rate adjustment.”

The Commission should narrowly apply the provision dealing with the iterative tax effect of rate adjustments. As the definition itself states, utilities are to account for only the iterative effect of rate adjustments made under ORS 757.267 or ORS 757.268 when calculating the amounts in the tax reports. This means rate adjustments made through the automatic adjustment clause called for in SB 408 rather than adjustments to base rates in general rate cases.

In addition, the rule specifically provides that eliminating the iterative tax effect of rate adjustments is appropriate only to the extent that the effect is not already accounted for in the calculation of “taxes paid” as defined by the statute. Parties have disagreed in the past about what events result in an “iterative tax effect” as defined in the rule as well as the extent of the adjustment that may offset any effect. ICNU urges the Commission to thoroughly scrutinize any adjustments made to eliminate the iterative tax effect of rate adjustments under SB 408 to ensure that such adjustments are consistent with the narrow intent of these provisions.

2. The Rule Should Provide the Ability to Address New Circumstances Resulting from Changes in Ownership

The opportunity for a utility to make an election regarding the means to calculate states taxes paid after a change in ownership is appropriate. The SB 408 rule should provide

some flexibility to address changed circumstances in this situation, subject to maintaining the overall intent of the law.

3. SB 408 Is Intended to Avoid Violation of Normalization Requirements and the OPUC's Rules Should Help to Prevent Such Violations

SB 408 was drafted to avoid violation of federal normalization rules. The amendments regarding the treatment of deferred taxes provide additional protection to ensure that all adjustments under SB 408 are consistent with ORS requirements. ICNU supports these provisions of the amendments.

4. The Amendments Should Incorporate Legislative Changes Regarding BETCs While Preserving the Commission's Intent in the Original Rule

The proposed amendments regarding the treatment of BETCs should not alter the intent behind the Commission's original decision to add back BETCs to the calculation of the taxes paid that are properly attributed to regulated utility operations. The Commission's order adopting the rule implementing SB 408 states:

[W]e agree that certain tax credits should be added to taxes paid for purposes of determining amounts properly attributed to the utility. On the state level, we agree BETCs related to conservation and renewable resources for all affiliates should be added back so that these kinds of investments are encouraged. This will allow the benefits of these credits go to shareholders as intended under law and not be flowed through to ratepayers except when they bear the associated cost.

Re Adoption of Permanent Rules to Implement SB 408, OPUC Docket No. AR 499, Order No.

06-532 at 5 (Sept. 14, 2006). This order provides that only BETCs that are: 1) related to conservation and renewable resources; and 2) not paid for by ratepayers would be added back to the calculation of taxes paid.

The 2007 legislature modified the laws regarding BETCs in House Bill 3201, amending ORS § 469.206 to provide that “a tax credit transferred pursuant to this section does not decrease the amount of taxes required to be reported by a public utility.” Amending the OPUC’s rule implementing SB 408 to account for this change is appropriate, but only to the extent that transferred BETCs meet the other conditions that the Commission previously identified (i.e., BETCs related to conservation and renewable resources and not paid for by ratepayers).

The proposed amendments to OAR § 860-022-0041 go beyond the limited changes needed to account for the legislative changes regarding transferred BETCs. ICNU proposes that the Commission include the following language in the provisions governing the calculation of the state taxes paid that is properly attributed to regulated utility operations (OAR § 860-022-0041(3)(c)(A)) to account for the amendments in HB 3201:

- (ii) Imputed Oregon tax benefits on charitable contributions ~~and state business energy tax credits related to conservation and renewable energy production~~ of the unitary group, except those tax benefits ~~or credits~~ associated with regulated operations of the utility; ~~and~~
- (iii) State business energy tax credits related to conservation and renewable energy production and acquired by a member of the unitary group or transferred to the utility pursuant to ORS 469.206 and ORS 469.208, except those credits associated with regulated operations of the utility; and

Under this amendment, the adjustment for BETCs would remain in the calculation of the amount of state taxes paid that is properly attributed to regulated utility operations. The proposed rule attached to the June 19, 2007 Memorandum and Notice of Rulemaking Hearing provides that

this adjustment be made to amounts calculated for purposes of the tax report.^{1/} In addition, ICNU's proposed amendment ensures that only those transferred BETCs satisfying the criteria identified in Order No. 06-532 are added back to taxes paid.

5. The Commission Should Correct the Floor Calculation to Restore the Intent of this Provision

ICNU expressed concern at the time that the Commission adopted the rules implementing SB 408 that the "floor" applied to the properly attributed amount should be narrowly focused on the potential for the apportionment method to result in customers receiving benefits of more than 100% of the total losses within the consolidated group. See Order No. 06-532 at 8. Following adoption of the rule implementing SB 408, the October 2006 filings revealed that calculating the floor according to plain language in subsections (3)(b) and (d) resulted in a floor amount other than what was intended. The rule currently calculates the floor as the utility's stand-alone income tax liability reduced by a proportionate share of the tax losses of affiliated group members, after making adjustments for the tax effects of depreciation and tax credits for public utility property. Under the current rule language, utilities add back all tax effects of public utility property rather than just the effects for those affiliated group members with losses, and the tax losses of unregulated entities are offset by the more significant tax effects associated with public utility property. This results in the floor being equal to the utility's stand-alone income tax liability, which was not the original intent.

The proposed amendments to the rule eliminate the language referring to public utility property in subsections (3)(b) and (3)(d) to ensure that the floor calculation focuses only

^{1/} This amendment would eliminate the need for the proposed section (4)(d)(D) in the amended rules attached to ALJ Grant's June 19, 2007 Memorandum and Notice of Rulemaking Hearing.

on losses of unregulated companies. This amendment helps to codify the Commission's intent; however, the Commission should thoroughly scrutinize the calculation of the floor amount any time that it applies to a rate adjustment in the future.

5. Conclusion

ICNU appreciates the opportunity to comment on the proposed amendments to the rules implementing SB 408.

Dated this 16th day of July, 2007.

Respectfully submitted,

/s/ Matthew Perkins

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July 16, 2007

Via Electronic and US Mail

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Re: In the Matter of Housekeeping and Clarification Changes to OAR 860-022-0041
Docket No. AR 517

Dear Filing Center:

Enclosed please find the Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely,

/s/ Christian Griffen
Christian W. Griffen

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail to those parties who waived paper service.

Dated at Portland, Oregon, this 16th day of July, 2007.

/s/ Christian Griffen
Christian W. Griffen

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