

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
AR 517**

In the Matter of Housekeeping and
Clarification Changes to OAR 860-022-0041

**PORTLAND GENERAL ELECTRIC
COMPANY'S OPENING COMMENTS**

On June 19, 2007, the Commission issued a memorandum and notice of rule-making hearing concerning proposed amendments to OAR 860-022-0041 (the "SB 408 Rules"). Attached to the memorandum were proposed rule amendments intended to (1) mitigate the iterative effects of SB 408 adjustments; (2) allow a change in methodology for calculating state taxes paid from other states if the ownership of a utility changes; (3) change the calculation of the floor for taxes paid under the Apportionment Method; (4) remove a potential federal tax law normalization problem; and (5) create a proposed amendment placeholder related to BETCs. The memorandum established a procedural schedule for comments and a rule-making hearing.

Portland General Electric Company ("PGE") respectfully submits the following opening comments on the proposed housekeeping and clarification changes to the SB 408 Rules.

I. RESTORE ITERATIVE EFFECTS PROVISIONS

PGE supports the housekeeping changes that eliminate the potential iterative effects of SB 408 adjustment amounts.¹ These changes ensure that a SB 408 rate adjustment does not itself cause a recalculation of "taxes paid," which would revise the SB 408 rate adjustment, causing a recalculation of "taxes paid," and so on. The changes operate in a symmetrical manner, removing the iterative effects of both surcharges and refunds alike.

These amendments are truly housekeeping changes. The initial draft of the permanent AR 499 rules contained a provision eliminating the iterative effects of SB 408

¹ The iterative effect amendments concern subsections 2(b), 2(g), 4(d)(E), and 4(j)(C).

adjustments. That provision was inadvertently omitted in the final rules.² These housekeeping changes restore the substance of that iterative effects provision.

The changes to subsection 2(b) address the iterative effects of a rate adjustment imposed through SB 408's automatic adjustment clause. The changes to subsections 2(g), 4(d)(E), and 4(j)(C) mitigate the iterative effects in the less likely scenario in which an SB 408-related adjustment is made in a rate case.

II. ELECTION TO CHANGE METHODOLOGY FOR NON-OREGON STATE TAXES WHENEVER THERE IS A CHANGE IN OWNERSHIP

Section 3(c)(C) of the SB 408 Rules allows utilities to make a one-time election between the Oregon effective tax rate and a state-by-state approach when determining taxes paid for non-Oregon state taxes. The election between the two approaches is driven by administrative considerations. Depending upon the utility and its ownership structure, it may be simpler and more efficient to adopt one approach or the other. The proposed rule change would enable a utility to change its election on a one-time basis after a change in ownership.

PGE supports this change. A change in ownership structure of the utility may well affect the efficiency of electing an effective tax rate approach or the state-by-state method. The utility should be able to change its filing method in the first tax report filing that reflects a new owner. This change will not lead to gamesmanship by affected utilities. The utility must elect a single method while it remains under the same ownership. A utility will be unable to change its election until its ownership changes.

III. PGE OPPOSES THE CHANGES TO THE APPORTIONMENT FLOOR CALCULATION

The SB 408 Rules contain a floor calculation for the Apportionment Method for both federal and state taxes (the "Apportionment Floor"). Sections 3(b) and 3(d). The Apportionment Floor is the stand-alone tax liability of the utility minus the negative tax liabilities of members of the unitary tax group. This floor calculation was first proposed in joint

² See October 5, 2006 letter from Inara Scott to Ed Busch (attached as Exhibit 1).

comments filed on behalf of Staff, PGE, PacifiCorp, Avista and Northwest Natural. The purposes of the floor are manifold:

These changes are proposed to decrease the risk of violation of normalization requirements of federal tax law, eliminate unnecessary inconsistencies between how taxes paid and taxes collected are calculated, conform the attribution of the MCBIT to the method used by the county to allocate the unitary group's gross income, and remove the potential for utility customers to receive more than 100 percent of the benefits from losses within the affiliated group.

Joint Comments at 3 (Aug. 14, 2006). In AR 499, the Commission adopted the Joint Comments' recommendation. Order No. 06-532 at 8-9.

The proposed changes to the calculation of the Apportionment Floor would remove the negative tax liability associated with the tax benefit for (a) tax depreciation on public utility property and (b) federal investment tax credits related to public utility property.³ The effect of these changes will be to reduce the Apportionment Floor.

We oppose these changes to the Apportionment Floor. The changes make it more likely that "taxes paid" as calculated using the Apportionment Method will reflect a negative tax, which will then result in a "taxes-paid" figure that is less than the deferred taxes of the utility related to public utility property. Aside from normalization concerns, such an outcome defies common sense. The apportionment method is designed to allocate "taxes paid" among the members of the unitary tax group. It makes no sense to allocate a negative taxes paid figure.

Our main concern with these proposed changes is the risk of a normalization violation. On its face, a situation in which the apportioned amount is less than zero creates a significant risk of a normalization violation. While such examples may not be common, they are possible if the proposed changes were adopted. The consequences of a normalization violation are severe. In 2005, Staff estimated the loss of accelerated tax deductions for public utility

³ The proposed changes to the Apportionment Floor are set forth in Sections 3(b)(A), 3(d)(A) and 3(d)(B)(i).

property could cost customers between \$20 million and \$30 million per year. Staff Whitepaper, February 2005, at 9.

The proposed changes to the Apportionment Floor also increase the risk that the IRS will issue a negative or equivocal response to our Private Letter Ruling request or simply decline to respond. Either of these alternatives would create considerable uncertainty, potentially delaying implementation of the SB 408 automatic adjustment.

We recognize the proposed changes to Section 4(d) are designed to address normalization concerns. However, these changes do not fully mitigate the normalization risk created by the proposed changes to the Apportionment Floor. In particular, the proposed changes still use the new Apportionment Floor calculation in cases where it results in a negative taxes paid figure.⁴ To minimize the risk of a normalization problem, we believe any method that can result in such an outcome should be rejected. We, therefore, oppose changes to the Apportionment Floor.

IV. REMOVE POTENTIAL NORMALIZATION PROBLEM

The proposed amendment to Section 4(d) clarifies that none of the methods used to calculate "taxes paid" may result in an outcome in which taxes paid is less than deferred taxes related to depreciation of public utility property. This is an important protection against potential normalization violations. We support it.

V. BUSINESS ENERGY TAX CREDIT

We support the business energy tax credit ("BETC") amendment (Section 4(d)(D)). To further this state's mission of protecting Oregon's environment, the Oregon Department of Energy ("DOE") offers BETCs to those who invest in energy conservation, recycling, renewable energy resources and less-polluting transportation fuels. The DOE offers a "pass-through" option that allows non-profit organizations, schools, government agencies, tribes,

⁴ In such circumstances, the proposed rules use a "taxes paid" figure equal to deferred taxes related to public utility property. Even in that circumstance, the method reflects an Amortization Floor calculation without the normalization protection the current rules provide.

and other public entities and businesses without tax liability to use BETCs by transferring their tax credits to a partner with a tax liability. Oregon utilities are potential pass-through partners and have traditionally served in that role by acquiring BETCs. SB 408 could potentially interfere with utilities' participation in this program by passing through to customers the tax savings associated with BETCs when the cost of acquiring the BETC has been borne by the utility and not the customers. If the SB 408 Rules were not changed to address this unintended consequence, utilities would likely no longer serve as pass-through partners given that they would be forced to incur the cost of acquiring BETCs without receiving the tax benefit.

The BETC amendment to the SB 408 Rules would align the Commission's rules with the state's broader energy policies. The tax savings from BETCs would be added back to "taxes paid." This change would not harm customers, who bear none of the costs of acquiring BETCs. Instead, it would remove an unintended windfall and align the beneficiary of the tax benefit with the party bearing the cost of acquiring the BETC.

The BETC amendment is consistent with the Commission's policy of encouraging investment in energy conservation and renewable resources. It fully implements the Commission's support for BETCs in AR 499:

We 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 to go to shareholders as intended under law and not be flowed through to ratepayers except when they bear the associated cost.

AR 499, Order No. 06-532 at 5 (Sept. 14, 2006). The SB 408 Rules only partially implemented the Commission's support for the BETC program, excluding from the operation of SB 408 BETCs related to conservation and renewable resources only under the Apportionment Method but not under the alternative methods for calculating "taxes paid:" the stand-alone or consolidated methods. Section 3(c)(A)(ii). The proposed BETC amendment fully accomplishes the Commission's directive in AR 499 by protecting BETCs from the operation of SB 408 under

all of the methods used to calculate "taxes paid."

The memorandum accompanying the proposed rules labeled the BETC amendment a "placeholder" because at that time the 2007 Legislature had not yet passed the law amending the BETC pass-through program. The law mandated the removal of BETC tax benefits from the operation of SB 408. On June 25, 2007, the Legislature passed that law (HB 3201)⁵, which provides as follows:

Notwithstanding any other provision of law, a tax credit pursuant to this section does not decrease the amount of taxes required to be reported by a public utility.

HB 3201, Section 19. The intent of HB 3201 is to remove any potential impediment to utilities acting as pass-through partners:

It's designed to protect the utilities' pass-through investment by preventing the credit from lowering the amount of taxes paid that a utility is required to report each year under ORS 757.268, that's the PUC statute regarding adjustments to rates [by reason of] taxes paid by the utility. Again, this section is needed to clarify that investor-owned utilities can participate as pass-through partners for those entities that want to use the tax credit but don't have tax liability.

Oregon Department of Energy Director Mike Grainey Testimony before Senate Environment and Natural Resources Committee, April 5, 2007. With passage of HB 3201, the BETC amendment not only furthers the Commission's policy of supporting energy conservation, but will be required by law.

VI. OTHER CHANGES

The proposed amendments also delete the reference to "deferred tax expense accounts as defined by Federal Energy Regulatory Commission" in the definition of deferred taxes. Section 2(b). FERC treats deferred taxes associated with interest income on regulatory assets differently than interest income on regulatory liabilities. This asymmetry makes no sense under SB 408. The removal of the reference to FERC accounts will allow the Commission to treat these deferred taxes in a symmetrical, consistent and fair manner. In any case, the utility

⁵ The Governor is expected to sign the bill soon.

maintains responsibility to show that its calculation of taxes paid, including utility deferred taxes added to taxes paid, is reasonable.

VII. CONCLUSION

PGE appreciates the Commission's consideration of these comments and urges the adoption of the proposed amendments to the SB 408 Rules with the exception of the proposed changes to the floor calculation under the Apportionment Method.

We request that the following individuals be added to the service list in this docket:

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DATED this 16th day of July, 2007.

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Attorneys for Portland General Electric
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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S OPENING COMMENTS** by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.

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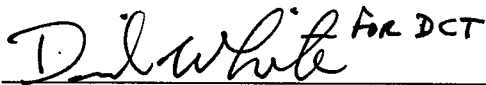
We request that the following individuals be added to the service list in this docket:

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DATED this 16th day of July, 2007.

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P.U.C

Inara K. Scott
Assistant General Counsel

October 5, 2006

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Re: AR 499


Dear Ed,

This letter is to confirm our understanding that Staff agrees the utilities should calculate deferred taxes (defined at OAR 860-022-0041(2)(b)) and the "current tax benefit...of tax depreciation on public utility property" (used at OAR 860-022-0041(3)(a)(A)(i), (3)(c)(A)(i), and (3)(e)(i)) excluding deferred tax items related to rate adjustments under OAR 860-022-0041 and ORS 757.268. The exclusion of deferred tax items related to adjustments under OAR 860-022-0041 and ORS 757.268 eliminates the so-called "iterative effect." This exclusion is referenced on page 5 lines 7 and 18, and page 6 line 13 of the revised template the utilities must complete as part of the tax report required by OAR 860-022-0041. Our understanding of Staff's position in this matter is based on a telephone conversation between you and Jay Tinker on September 26, 2006, comments by Staff at the September 27, 2006 AR 499 workshop, and the subsequent email from Staff regarding the use of the amended template in creating utility tax reports.

We also understand that Staff will seek to clarify this issue in a future rulemaking proceeding, prior to the filing of the October 15, 2007 tax report.

Thank you very much for your consideration.

Sincerely,



Inara K. Scott

IKS:mmd

CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S OPENING COMMENTS** by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.

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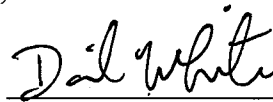
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DATED this 16th day of July, 2007.



DAVID F. WHITE

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DAVID F. WHITE

July 16, 2007

VIA E-FILING & FIRST CLASS MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol St. NE, Suite 215
P. O. Box 2148
Salem, Oregon 97308-2148

Re: *AR 517*

Attention Filing Center:

Enclosed for filing in the above-referenced docket are the original and five copies of Portland General Electric Company's Opening Comments. This document is being filed electronically per the Commission's eFiling policy to the electronic address PUC.FilingCenter@state.or.us, with copies being served on all parties on the service list via e-mail and, if they have not waived paper service, by U.S. Mail. A photocopy of the PUC tracking information will be forwarded with the hard copy filing.

Very truly yours,

A handwritten signature in cursive script that reads 'David White'.

David F. White

DFW/ldh
Enclosures
cc: Service List
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