

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 499

In the Matter of the Adoption of Permanent
Rules Implementing SB 408 Relating to
Utility Taxes

REPLY COMMENTS OF
PORTLAND GENERAL ELECTRIC
REGARDING INTERPRETATION OF
SB 408 SECTION 3(13)(e)

I. Introduction

Portland General Electric Company (PGE) believes that the plain language and overall context of Senate Bill 408 (SB 408) and Section 3(13)(e) require the use of actual data to calculate the amount of taxes the utility collects from ratepayers. Test year rate case data cannot achieve the objectives of SB 408, and the use of such assumed data will perpetuate a system in which customers pay rates with over- or under-charges for taxes. In this Reply Brief, PGE responds to the Opening Comments filed by the Industrial Customers of Northwest Utilities (ICNU) and the Northwest Industrial Gas Users (NWIGU) on this issue, and demonstrates with some simple examples that the use of test year rate case data as advocated by these parties runs counter to the intent of SB 408.¹

¹ This brief does not reiterate PGE's position that the plain language of SB 408 requires the use of actual financial data, which was set forth in detail in PGE's Opening Comments on the Interpretation of Section 3(13)(e)(B) and (C). Under *PGE v. BOLI*, 317 Or 606, 611 (1993), because the text and context of the bill make the legislature's intent clear, further inquiry into the legislative history of these provisions is unnecessary. *Id.* However, PGE believes the legislative history also evidences the legislature's intent to use actual data. *See, e.g.,* Statement of Sen. Metsger, Senate Chamber, Aug. 1, 2005 (page 1, OPUC Legislative History), "Colleagues, [with this bill] Oregon will be joining 19 other states who have taken action to make sure that taxes equal in rates those that are actually collected." *See also* statement of Michael Early, House State and Federal Affairs Committee, SB 408 Public Hearing, Jun. 30, 2005 (page 4, OPUC Legislative History), "[A]gain, in concept it's relatively simple. We measure actual taxes collected, and then actual taxes paid, and attribute those actual taxes paid to those of the regulated operations and true them up."

In its Opening Comments on this topic, NWIGU appears to argue that the Legislature did not intend for SB 408 to adjust utility rates between rate cases to pass through to customers the actual cost of taxes paid. NWIGU Opening Comments at 13-14. NWIGU's argument runs directly counter to the stated purpose of the bill, which was to "stop the practice of private utilities charging taxpayers for taxes that they don't actually owe and true-up those tax collections to those liabilities they actually incur." Statement of Sen. Metsger, Senate Chamber, Aug. 1, 2005 (page 1, OPUC Legislative History). ICNU argues in its Opening Comments that test year data should be used to calculate "taxes authorized to be collected" because those assumed amounts will be more consistent across utilities than actual results. ICNU further contends that the old test year data will make it easier for the Commission to audit the utility's tax reports. ICNU does not support this position -- which defies the Legislature's goal of accurately matching taxes collected and taxes paid -- by reference to the text or context of SB 408.

II. Reply

A. The Legislature Intended to Create an "Actual Taxes Paid" Standard for Collecting Taxes in Rates

The plain language of SB 408 provides both the express intent and the methodology for creating an "actual taxes paid" standard for utility rates. The findings of SB 408 state that "the alignment of taxes collected by public utilities from utility customers with taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state," (Section 2(1)(a)), and that "utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable," (Section 2(1)(f)). The bill carries out this express intent through an automatic adjustment clause,

which is triggered by a \$100,000 difference between taxes collected and taxes paid.

Section 3(6). The automatic adjustment clause accounts for “all taxes paid to units of government” and “all taxes that are authorized to be collected through rates” so that “ratepayers are not charged for more tax than [] the utility pays...” *Id.* NWIGU itself stated in its Opening Comments in this proceeding that SB 408 is intended “to remedy the mis-match between taxes collected in rates and taxes ultimately paid to the government.” NWIGU Opening Comments, AR 499 (Oct. 28, 2005).

To implement this actual taxes paid standard, SB 408 modifies the way utilities recover taxes in rates and requires the Commission to treat taxes differently than other utility costs.² Specifically, SB 408 requires that the Commission “true-up” costs for taxes each year and adjust rates to match the amounts recovered through rates with taxes actually paid to government entities. If SB 408 does not, as NWIGU argues, “give rise to single issue rate adjustments between rate cases,”³ then what does the automatic adjustment clause do? NWIGU accurately describes the way taxes in rates were calculated prior to the implementation of SB 408, but fails to recognize the sea change brought about by the passage of the bill. *See* NWIGU Opening Comments at 13-14.

B. Test Year Rate Case Numbers Impede the Operation of the Automatic Adjustment Clause

NWIGU states, “if anything between rate cases cause either the net to gross calculation to change or the effective tax rate to change, those changes that occurred after the rate case should

² ICNU described the change instituted by SB 408 this way: “[T]he purpose of SB 408 was ... to require the Commission to depart from historic practice and ensure that utility rates reflect the actual taxes paid to governmental authorities.” Answer of ICNU to PacifiCorp’s Application for Reconsideration or Rehearing at 9, UE 170 (Nov. 14, 2005).

³ NWIGU at 13.

not be passed onto customers until the next rate case.” NWIGU at 13. The following examples show how this reasoning works directly counter to the express intent of the legislature in enacting SB 408. Note that matching actual revenues for Section 3(13)(e)(A) with test year data for Sections 3(13)(e)(B) and 3(13)(e)(C) does not produce an accurate picture of taxes collected in a given year. The amount of actual taxes collected could rise relative to revenue due to a higher net to gross ratio caused by declining costs, or due to a change in the effective tax rate mandated by statute or rule. *See* Example 1. Alternatively, the amount of actual taxes collected could fall relative to revenue due to a lower net to gross ratio caused by increasing costs, or a decrease in the effective tax rate.

Example 1:

Taxes Authorized to be Collected Per Rate Case Numbers:	\$ 70
Taxes Actually Paid:	\$ 90
Taxes Actually Collected:	\$ 90

Using Test Year Data	Using Actual Data
Customers charged an <u>additional \$20</u> through the automatic adjustment clause, despite the fact that taxes actually paid equal taxes actually collected.	No rate change because taxes paid equals taxes actually collected.

Example 2:

Taxes Authorized to be Collected Per Rate Case Numbers: \$ 60

Taxes Actually Paid: \$ 60

Taxes Actually Collected: \$ 70

Using Test Year Data	Using Actual Data
Customers see no rate change, even though the utility collected more in taxes than it paid.	Utility would refund \$10 to customers because taxes paid was less than taxes actually collected.

These examples demonstrate the perverse result caused by using test year data in the calculation of taxes collected. In Example 1, the automatic adjustment clause charges customers an additional \$20 in rates for taxes even though actual taxes paid is equal to actual taxes collected. In Example 2, the automatic adjustment clause would not refund any money to customers, even though the utility paid \$10 less in taxes than it actually collected. Both results run directly counter to the plain language and intent of SB 408.

C. SB 408 Does Not Permit the Commission to Sacrifice Accuracy for Expediency

SB 408 mandates a result that is “fair, just and reasonable”; a result that is accurate enough to determine – within a \$100,000 range – the difference between taxes paid and taxes collected, to ensure that ratepayers are not charged for more taxes than the utility actually pays. ICNU suggests that the Commission sacrifice this accuracy for efficiency. ICNU argues the use of actual data will cause the Commission difficulty in auditing tax reports and implementing Section 3 of SB 408, and that the data it receives will not be consistent. ICNU Opening Comments at 27, 28. PGE disagrees that the Commission will encounter such difficulty, or that SB 408 allows it to ignore accurate and reliable actual financial data simply for efficiency’s sake.

The Commission analyzes and assesses complex financial information whenever it makes ratemaking decisions, and does so in a manner that is just and reasonable. There is no reason to think the Commission will lose this ability when implementing SB 408. The purpose of AR 499 is to develop policies and procedures that ensure the consistent and accurate implementation of SB 408. The Commission can address the calculation of Section 3(13)(e)(B) and (C) in this rulemaking to ensure that the utilities use consistent data to calculate their actual taxes collected. Moreover, ICNU identifies nothing in the language or history of the bill that supports “consistency” over accuracy. In fact, SB 408 never mentions consistency -- rather, it stresses fairness and accuracy. *See* Section 2(1)(a), (e), (f), Section 3(4), (6), Section 5 (amending ORS 757.210).

ICNU also suggests that the language of SB 408 supports the use of rate case test year data, referencing the Section 3(4) language “amounts of taxes assumed in rates or otherwise collected from ratepayers.” ICNU’s emphasis on the language “assumed in rates” ignores the more compelling language “or otherwise collected from ratepayers” that strongly evidences the intent to determine the amount of taxes actually collected, using actual data.

III. Conclusion

PGE does not believe customers or utilities benefit from a “halfway” approach to the implementation of SB 408 that builds inaccuracy into the calculation of taxes collected in rates. In its Opening Comments, PGE demonstrated how the text of Section 3(13)(e)(B) and (C) and SB 408 supports the use of actual financial data, rather than test year data. In these Reply Comments, PGE further demonstrates how the context and intent of the legislature in passing SB 408 requires the use of actual results to ensure a fair, just and reasonable outcome. PGE

respectfully requests that the Commission implement SB 408 in a manner that achieves the legislature's intent and mutually benefits all parties to this proceeding.

DATED this 18th day of November, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing OPENING COMMENTS REGARDING INTERPRETATION OF SB 408 SECTION 3(13)(e) OF PORTLAND GENERAL ELECTRIC COMPANY to be served by First Class US Mail, postage prepaid and properly addressed, and by electronic mail, upon each party on the attached service list.

Dated at Portland, Oregon, this 18th day of November, 2005.

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