

AR 499

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

(C) The effective tax rate used by the Commission in establishing rates.

PGE and Northwest Natural misconstrue the meaning of SB 408 and suggest a meaning that is inconsistent with its intent. PGE argues that the phrase “in establishing rates” is the controlling language and that it refers to the “process” by which the Commission makes adjustments to rates for income taxes. This interpretation is incorrect.

What Section 3(13)(e) determines is the “[t]axes authorized to be collected in rates.” This refers to an amount authorized to be collected by the Commission, and the Commission authorizes collection of costs in a rate case.

“Revenues,” as identified in (A), are a product of the utility’s sales multiplied by the utility’s rates, which includes a component of costs for taxes. Every sale collects revenues from customers, including a portion collected for the tax component in the rate. When the statute refers, in (B), to the “ratio” of net revenues to gross revenues “as determined by the Commission in establishing rates” and, in (C), to the “effective tax rate used by the Commission in establishing rates,” this ratio and effective tax rate are those that the Commission used in establishing the rates that, in turn, produced the revenues in (A). Thus, (B) and (C) refer to data used by the Commission in the rate case that established the rates and produced the revenue in (A).

PGE also makes a puzzling argument based on the “progressive tense” of the language in this Section, but ignores that the statute states as “determined” by the Commission and as “used” by the Commission. SB 408 does not refer to an ongoing or new process for

establishing rates; the amount of “taxes collected” was intended to be based on the rates, ratio, and effective tax rate established and used in the utility’s last rate case.

Northwest Natural focuses its comments on the “double whammy” potentially caused by the alleged “elephant in the room” with respect to SB 408. Northwest Natural’s colorful description aside, using rate case data to determine the “taxes authorized to be collected in rates” will not, Northwest Natural suggests, have perverse effects on a utility that is overearning or underearning. The use of rate case data to determine the taxes collected creates the proper incentives for a utility to manage and control its costs. To the contrary, allowing the utility to use actual expense data to calculate the ratio in (B) or the effective tax ratio in (C) would create perverse incentives for utilities that fail to control costs between rate cases.

Dated this 18th day of November, 2005.

Respectfully submitted,

/s/ Matthew Perkins

Melinda J. Davison

Matthew Perkins

Davison Van Cleve, P.C.

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mail@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

November 18, 2005

Via Electronically and US Mail

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

Re: In the Matter of the Adoption of Permanent Rules Implementing SB 408
Relating to Matching Utility Taxes Paid with Taxes Collected
Docket No. AR 499

Dear Filing Center:

Enclosed please find an original and six (6) copies of the Reply Legal Comments of the Industrial Customers of Northwest Utilities in the above-captioned Docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely yours,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing Reply Legal Comments of the Industrial Customers of Northwest Utilities, upon the parties, on the official service list for AR 499, by causing the same to be electronically served, to those parties with an email address, as well as mailed, postage-prepaid, through the U.S. Mail.

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

/s/ Anna E. Studenny
Anna E. Studenny

SAMMIE B ADAMS 1141 WYLIE LANE GRANTS PASS OR 97527	GARY BAUER NORTHWEST NATURAL 220 NW 2ND AVE PORTLAND OR 97209 gary.bauer@nwnatural.com
LAURA BEANE PACIFICORP 825 MULTNOMAH STE 800 PORTLAND OR 97232-2153 laura.beane@pacificorp.com	SCOTT BOLTON PACIFICORP 825 NE MULTNOMAH PACIFICORP OR 97232 scott.bolton@pacificorp.com
JULIE BRANDIS ASSOCIATED OREGON INDUSTRIES 1149 COURT ST NE SALEM OR 97301-4030 jbrandis@aoi.org	LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org
ED BUSCH PUBLIC UTILITY COMMISSION OF OREGON PO BOX 2148 SALEM OR 97308-2148 ed.busch@state.or.us	R. TOM BUTLER tom@butlert.com
REP TOM BUTLER H-289 STATE CAPITOL SALEM OR 97310 cpatom@fmtc.com	RANDALL DAHLGREN PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC 0702 PORTLAND OR 97204 randy.dahlgren@pgn.com
MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com	JIM DEASON ATTORNEY AT LAW 521 SW CLAY ST STE 107 PORTLAND OR 97201-5407 jimdeason@comcast.net

MICHAEL EARLY INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES 333 SW TAYLOR STE 400 PORTLAND OR 97204 mearly@icnu.org	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
STEVE EVANS MIDAMERICAN ENGERY HOLDINGS COMPANY 666 GRAND AVE DES MOINES IA 50303 srevans@midamerican.com	DON M FALKNER AVISTA UTILITIES PO BOX 3727 SPOKANE WA 99220-3727 don.falkner@avistacorp.com
EDWARD A FINKLEA CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW 5TH, SUITE 2000 PORTLAND OR 97204 efinklea@chbh.com	ANN L FISHER AF LEGAL & CONSULTING SERVICES 2005 SW 71ST AVE PORTLAND OR 97225-3705 energlaw@aol.com
ANDREA FOGUE LEAGUE OF OREGON CITIES PO BOX 928 1201 COURT ST NE STE 200 SALEM OR 97308 afogue@orcities.org	KELLY FRANCONI ENERGY STRATEGIES 215 SOUTH STATE ST STE 200 SALT LAKE CITY UT 84111 kfranconi@energystrat.com
PAUL GRAHAM DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 paul.graham@state.or.us	ROBERT JENKS CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 bob@oregoncub.org
JUDY JOHNSON PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 judy.johnson@state.or.us	JASON W JONES DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us
GREGG KANTOR NORTHWEST NATURAL 220 NW SECOND PORTLAND OR 97209 gsk@nwnatural.com	MARGARET D KIRKPATRICK NORTHWEST NATURAL 220 NW 2ND AVE PORTLAND OR 97209 margaret.kirkpatrick@nwnatural.com
PAMELA G LESH PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1 WTC 1703 PORTLAND OR 97204 pamela.lesh@pgn.com	KEN LEWIS P.O. BOX 29140 PORTLAND OR 97296 kl04@mailstation.com
BLAIR LOFTIS PACIFICORP 825 NE MULTNOMAH PORTLAND OR 97232 blair.loftis@pacificcorp.com	LARRY O MARTIN PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 larry.martin@pacificcorp.com

KATHERINE A MCDOWELL STOEL RIVES LLP 900 SW FIFTH AVE STE 1600 PORTLAND OR 97204-1268 kamcdowell@stoel.com	RON MCKENZIE AVISTA UTILITIES PO BOX 3727 SPOKANE WA 99220-3727 ron.mckenzie@avistacorp.com
DANIEL W MEEK DANIEL W MEEK ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net	SENATOR RICK METSGER STATE CAPITOL 900 COURT ST NE S-307 SALEM OR 97301 sen.rickmetsger@state.or.us
DAVID J MEYER AVISTA CORPORATION PO BOX 3727 SPOKANE WA 99220-3727 david.meyer@avistacorp.com	JAN MITCHELL PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 2000 PORTLAND OR 97232 jan.mitchell@pacificorp.com
CHRISTY OMOHUNDRO PACIFICORP 825 NE MULTNOMAH BLVD STE 800 PORTLAND OR 97232 christy.omohundro@pacificorp.com	THOMAS R PAINE AVISTA CORPORATION 1411 EAST MISSION SPOKANE WA 99202 tom.paine@avistacorp.com
RICHARD PEACH PACIFICORP 825 NE MULTNOMAH PORTLAND OR 97232 richard.peach@pacificorp.com	MATTHEW W PERKINS DAVISON VAN CLEVE PC 333 SW TAYLOR, STE 400 PORTLAND OR 97204 mwp@dvclaw.com
PAULA E PYRON NORTHWEST INDUSTRIAL GAS USERS 4113 WOLF BERRY COURT LAKE OSWEGO OR 97035-1827 ppyron@nwigu.org	LISA F RACKNER ATER WYNNE LLP 222 SW COLUMBIA ST STE 1800 PORTLAND OR 97201-6618 lfr@aterwynne.com
DAVE ROBERTSON PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 dave.robertson@pgn.com	AUSEY H ROBNETT III PAINE, HAMBLIN, COFFIN, BROOKE & MILLER LLP PO BOX E COEUR D'ALENE ID 83816-0328
INARA SCOTT PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 inara.scott@pgn.com	BOB TAMLYN PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 bob.tamlyn@pgn.com
DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com	JAY TINKER PORTLAND GENERAL ELECTRIC PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON STREET, 1WTC-0702 PORTLAND OR 97204 jay.tinker@pgn.com

<p>RICK TUNNING MIDAMERICAN ENERGY HOLDINGS COMPANY 666 GRAND AVENUE DES MOINES IA 50303 rrtunning@midamerican.com</p>	<p>SENATOR VICKI L WALKER STATE CAPITOL PO BOX 10314 EUGENE OR 97440 sen.vickiwalker@state.or.us</p>
<p>BENJAMIN WALTERS CITY OF PORTAND - OFFICE OF CITY ATTORNEY 1221 SW 4TH AVE - RM 430 PORTLAND OR 97204 bwalters@ci.portland.or.us</p>	<p>LINDA K WILLIAMS KAFOURY & MCDUGAL 10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net</p>
<p>MARCUS A WOOD STOEL RIVES LLP 900 SW FIFTH AVENUE, SUITE 2600 PORTLAND OR 97204 mwood@stoel.com</p>	<p>PAUL M WRIGLEY PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificorp.com</p>