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 UTILITY REFORM PROJECT AND KEN LEWIS**

The Utility Reform Project (URP) and Ken Lewis file these reply comments. Our position is that the temporary rules adopted by the Commission embody the proper definition and implementation of "properly attributed." We are shocked that Staff now agrees with the proposal of PacifiCorp, which is a fundamentally flawed approach.

The "with and without" method is fundamentally flawed for many reasons. The most obvious is that it allows a utility to count the same tax payment many times. It would allow any utility operating in Oregon to double-count, triple-count, or quadruple-count the same tax payment. In fact, there would be no limit on the number of times the utility could count the same tax payment. This contradicts the meaning of the term "property attributed." A tax payment is properly attributed if it is divided up and allocated on a rational basis. There cannot be a rational basis for attributing the same tax payment to several entities at the same time.

Say there is a group of consolidated corporations that includes 3 utilities. Each earns taxable net income of $100 million in a year. The other corporations in the group, as a whole, lose $200 million. Thus, the conglomerate's consolidated taxable net income is $100 million, and it pays $34 million in federal income tax. Under the PacifiCorp approach, each of the 3 utilities can fully count, as their own, all of the $34 million tax payment, because removing any of the 3 utilities from the consolidated tax return causes the tax liability to go down by $34 million. Thus, the PP&L approach allows a payment of $34 million to be counted as if it were a payment of $102 million.

This perfectly fits PacifiCorp's current situation. Under the "with and without" approach, the same federal income tax payment by MidAmerican Holding would be counted as if it were made by PacifiCorp and as if it were made by MidAmerican Energy (serving customers in Iowa).[1] PacifiCorp could easily use this approach to triple-count the same tax payment, merely by designating Utah Power & Light Co. as a sibling to Pacific Power & Light Company (PP&L) and a sibling to MidAmerican Energy in Iowa. The more sibling utilities, the more the same tax payment can multiply.

The same math would appear applicable to any payments of state income taxes. In the above example, removing any of the 3 utilities (the "without" calculation) would reduce the consolidated tax filer's state income tax liability also to zero (by lowering its taxable net income to zero). Thus, each utility would get full credit for any payments

---

1. The Iowa Utilities Board currently allows MidAmerican Energy to charge ratepayers for income taxes, without regard for actual payment of those income taxes.

of state income taxes. Various complications arise here.

Dated: May 19, 2006

Respectfully Submitted,

DANIEL W. MEEK
OSB No. 79124
10949 S.W. 4th Avenue
Portland, OR 97219
(503) 293-9021   fax 293-9099
dan@meek.net

Attorney for Complainants

CERTIFICATE OF SERVICE

I hereby certify that I filed served for foregoing REPLY COMMENTS OF UTILITY REFORM PROJECT AND KEN LEWIS by email to the current email service list on the Oregon Public Utility Commission (OPUC) web site and by first class mail to the service list:

Dated: May 19, 2006

____

Daniel W. Meek