

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

COMMENTS OF NORTHWEST
NATURAL GAS COMPANY
RE SECTION 3(13)(E)(B) AND (C)
OF SB 408

Administrative Law Judge Kathryn A. Logan, in her Memorandum in this docket
issued November 3, 2005, designated an additional question for comment by the parties on or
before November 10, 2005. The additional question is:

“Does SB 408 require that the Commission, in determining the
amounts identified in 3(13)(e)(B) and (C), use the numbers
calculated from test year data that the Commission has
previously authorized?”

Northwest Natural Gas Company (“NW Natural”) addresses this additional question in these
comments.

**I. Section 3(13)(e) does not require that prior test year data be used in computing
the “taxes authorized to be collected in rates.”**

Section 3(13)(e) of Senate Bill (“SB”) 408 states:

“‘Taxes authorized to be collected in rates’ means the product
determined by multiplying the following three values:

“(A) The revenues the utility collects from ratepayers in
Oregon, adjusted for any rate adjustment imposed under this
section;

“(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.”

1 The above language does not specify which proceeding for establishing rates is to be
2 used for the above calculation. One option would be for the Oregon Public Utility
3 Commission (the “Commission”) to use the net revenues and effective tax rate from a prior
4 rate proceeding. This approach, however, could produce serious anomalies. For example,
5 the ratio of net revenues to gross revenues in the prior rate case might differ radically from
6 the same ratio in the year the adjustment was made. As a result, the Commission might find
7 itself in the position of ordering a rate increase for a utility that was substantially overearning
8 its allowed return, or might find itself having to defend on appeal its ordering of a rate refund
9 by a utility that was substantially underearning its allowed return.

10 Another option would be for the Commission to recognize that implementation of an
11 SB 408 rate adjustment itself constitutes establishing rates. Thus the applicable calculations
12 could be made for the period to which the SB 408 rate adjustment applied. This approach
13 would require a relatively small additional administrative effort by the Commission.
14 However, such an approach would allow the use of a ratio of net revenues to gross revenues
15 that matched those of the year for which the tax adjustment was to be made.

16 **II. Whether by interpretation of section 3(13)(e)(B) and (C), or by other means**
17 **available to the Commission, the workshop parties should be instructed to draft**
18 **a proposed permanent rule that does not cause SB 408 to have perverse rate**
effects.

19 The interpretation of section 3(13) is one, but not the only, way in which the
20 Commission can address the “elephant in the room” with respect to SB 408. The “elephant”
21 is what NW Natural refers to as the potential “double whammy” effect of SB 408. Unless the
22 Commission carefully drafts the implementing rules, this statute could have the perverse
23 effect of producing a rate increase solely because the utility has overearned its allowed
24 return, or a rate refund solely because the utility has underearned its allowed return.

25 The non-utility parties appear reluctant to address this issue. This reluctance is a little
26 puzzling, as neither customers nor utilities are benefited by ratemaking that moves rates in a

1 direction precisely opposite from that needed to produce a reasonable return on utility
2 service. Moreover, to the extent that SB 408 is applied in a manner that amplifies both utility
3 overearnings and underearnings, the resulting increased volatility in earnings should increase
4 utility equity return requirements. NW Natural doubts that any legislator enacted SB 408
5 with the thought: "I favor SB 408 because it would increase rates when the utility is
6 overearning and force refunds when the utility is not recovering its costs."

7 Perhaps the concern of the non-utility intervenors is that any action by the
8 Commission to apply SB 408 in a manner that meshes with other utility ratemaking
9 principles may threaten the entire statutory scheme. However, for example, an interpretation
10 of section 3(13)(e)(B) and (C) that allowed the applicable ratio of net revenues to gross
11 revenues to be calculated as of the year for which the SB 408 rate adjustment was calculated
12 would cure the double whammy problem without impairing the implementation of the statute
13 as intended. Alternatively, the Commission would broaden its use of automatic adjustment
14 clauses to allow adjustment for utility expense increases or decreases, but only to the extent
15 needed to prevent perverse impacts from SB 408.¹

16 NW Natural urges the Commission to use its expertise to prevent implementation of
17 SB 408 in a perverse manner that cannot have been the intent of any legislator.

18 DATED: November 10, 2005.

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25 ¹ To assure clarity, NW Natural is not suggesting a balancing account to true-up for
26 all variations between its general rate case expenses and its actual expenses. NW Natural
only is pointing out that the Commission might elect to use a balancing account to true-up
such expense overruns or underruns, but only to the extent of the tax impacts of such
overruns or underruns.