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July 31, 2006

PUBLIC UTILITY COMM. OF OREGON
ATTN: FILING CENTER
PO BOX 2148
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Re: AR 499 – In the Matter of the Adoption of Permanent
Rules Implementing SB 408 Relating to Utility Taxes

Enclosed for filing is the City of Portland's Opening Comments on Staff's Revised SB 408 Rules. Electronic copies were served on the Service List and hard copies will be made available upon request.

Very truly yours,

Benjamin Walters
Senior Deputy City Attorney

BW:pd
Enclosure
c. Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 499

In the Matter of the Adoption)	City of Portland's Opening
of Permanent Rules Implementing)	Comments on Staff's Revised
SB 408 Relating to Utility Taxes)	SB 408 Rules

The City of Portland ("Portland" or "the City") submits the following comments with respect to the Draft Rules proposed by Staff and distributed on July 25, 2006.

The collection and payment of taxes by utilities is of critical importance to Portland and its residents. On the whole, the Commission's use of the multi-state tax allocation method, as established in Order No. 06-400 (July 14, 2006), is a reasonable interpretation of the phrase "properly attributed" as employed within SB 408. The term was intended to establish a balance between the portion of utility taxes paid by utility customers within rates established by the Commission, with the appropriate tax burden to be borne by the utility's parent entity, and ultimately the shareholders.

The Commission's election of an apportionment methodology based upon equally weighted property/payroll/sales factors is an appropriate and reasonable exercise of its statutory discretion, as discussed in the letter from Attorney General Hardy Myers, dated December 27, 2005. Portland is familiar with this apportionment methodology, as the Portland business license fee is also measured by net income. The City's business license fee relies upon the net income as reported by businesses to the State of Oregon. The City Council has directed that Portland's business license law is to be "construed in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income". Portland City Code 7.02.020. As a tax-administrating jurisdiction, the City agrees with the Commission's description of the three-factor allocation formula as a "widely established methodology used by Oregon and other states to apportion income for multistate corporations' state tax liability." Continuing with the themes of consistency, uniformity and administrative efficiency, the definitions of property, payroll and sales should appropriately follow the legislative definitions as provided in ORS Chapter 314.

Staff's most recent revisions to the proposed administrative rules reasonably reflect the Commission's determination of the meaning of the term, "properly attributable." However, additional consideration is required to address areas of potential confusion.

First, there is a potential disconnect between the allocation methodology, which recognizes the division of property, payroll and sales as determined by geographical state borders, and what comprises “regulated utility operations,” which is not determined by geographical borders. If the disconnect remains, there is potential for unintended results and gaming by the utilities. While the multi-state compact provides an overarching formula for the allocation, it may be better to apply *the approach* (as opposed to using the formula exactly) to what the Commission determines is the total regulated utility operations for each utility instead of limiting the consideration to those assets and operations that occur solely within the geographical boundary of the state. Using such an approach would sweep in all assets held by the utility that predominantly serve the utility retail customers. There may also be other issues such as a lack of anti-stuffing provisions and an apparent conflict with the federal normalization rules.

Portland is separately concerned in a clarification as to the application of the allocation methodology in the amount of taxes paid to the taxing jurisdiction, whether the City or the State of Oregon. Whatever methodology is eventually selected and implemented by the Commission, it cannot set, modify, or amend the total amount of taxes due to the taxing jurisdiction. The Commission does not have legal authority to make such determinations. It is important that the administrative rules are clear that this is not inadvertently intended as a result. Portland is entitled to set taxes, consistent with its statutory authority, and to receive the total amount due, subject to only to those offsets specifically allowed by the City under its taxing authority.

Whatever allocation methodology is adopted, the Commission should clearly indicate that the administrative rules are merely for determining what percentage of actual taxes paid is applicable to the regulated utility portion of the taxpaying business entity. Whatever the eventual allocation methodology, the customers should pay no more than their “properly attributed” share. The remaining balance of the taxes due will be paid by the parent entity. Nothing in the application of an allocation methodology should be interpreted as modifying the amounts due to taxing jurisdiction. Rather, the methodology only serves to identify the sources of those funds, and whether some funds collected by the utility must be returned to its ratepayers.

Portland remains committed to assisting the Commission in developing an appropriate allocation methodology to ensure that utility customers pay no more in taxes as is reasonable and appropriate, while assuring taxing jurisdictions

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receive all of the taxes due. Portland reserves further discussion for its Reply Comments on the Proposed Rules.

Dated this 31 day of July, 2006.

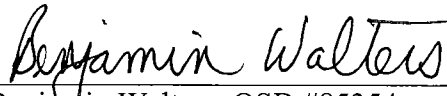
Respectfully submitted,

by Ann L. Fisher ^{BEW}
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing City of Portland's Opening Comments on Staff's Revised SB 408 Rules on the individuals on the attached Service List by electronic mail on said day.

DATED this 31st day of July, 2006

A handwritten signature in black ink that reads "Benjamin Walters". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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