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 agree with the opening comments filed by Citizens Utility Board and by Industrial Customers of Northwest Utilities (ICNU).

The comments of the utilities are designed to defend their "October 15" tax report filings. Because none of them have made the content of those filings available to parties or participants in this docket (or any other docket), the significance (and even the meaning) of their legal arguments cannot be evaluated. Thus, URP and Lewis will offer their detailed comments, after the content of the "October 15" tax filings becomes available to those who have requested it, including URP.

I. UTILITY ARGUMENTS ABOUT "PROPERLY ATTRIBUTED."

In general, however, it appears that a main argument of the utilities is that SB 408 allows them to retain "income taxes" charged to ratepayers, as long as each utility's entire corporate family has paid in "income taxes" to some government an amount at least equal to what the utility alone has charged to Oregon ratepayers. This is absurd, as shown by merely reading SB 408 alone or by examining its

legislative history (including the comments of undersigned counsel on several occasions).

The utilities merely ignore the fact that the statute, in at least 8 places, refers specifically to the "taxes paid to units of government . . . by the affiliated group that are properly attributed to the regulated operations of the utility." If all of the taxes paid by the affiliated group, no matter where or to what government, count as somehow having been paid by the utility, then all of the language about "properly attributed" becomes meaningless--because the allocation is always 100%, under the utility-advocated approach. Interpreting statutory language as meaningless is strongly disfavored in Oregon law.

Further, the utilities of course fail to address my comments at the Senate Business and Economic Development Committee on May 31, 2005, where I presented the example of a conglomerate owning both PacifiCorp and MidAmerica, the Iowa utility. My detailed example about avoiding the double-counting of the taxes paid by the consolidated filer is necessarily inconsistent with the position of the utilities. No one stated to the Committee (or to any other committee) that my example was not an illustration of both the purpose and the operation of SB 408.

The other main argument of the utilities appears to be that the taxes paid by the consolidated filer should be allocated among its components in ways that maximize the amount allocated to the Oregon-regulated utility. It is clear that the OPUC has considerable latitude in interpreting the delegative term "properly attributed," and URP often disagrees with the Commission's exercise of its latitude.

In this instance, however, the Commission certainly has latitude to adopt the interpretation set forth in the temporary rule, and that interpretation is consistent with both the language of SB 408 and with my comments at the Senate hearing:

> I think what you are trying to accomplish here is that amounts that are paid by the parent or by the consolidated group to government are not to be double counted, and that in fact **the tax liability of the group is to be assigned to or allocated to the individual members of the group in some reasonable way. States that have done these adjustments, for example, often use the, often allocate the tax liability to members of the group based upon each member of the group's contribution to the net taxable income of the group.** That would be a reasonable way to do it, and I think that is what you are trying to get at here.

I referred "each member of the group's contribution to the net taxable income of the group." I did not refer to the calculation urged by the utilities of separating the group only into "the group" and "the utility."

II. "MATERIAL ADVERSE EFFECT" CLEARLY REFERS TO CUSTOMERS, NOT TO UTILITIES.

This question is frivolous. SB 408 refers twice to "material adverse effect on customers" and never once mentions material adverse effect on a utility.

Dated: November 10, 2005 Respectfully Submitted,

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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 list below:

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