

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 17, 2006

RE: AR 499 draft rule revisions

Dear AR 499 Participants,

Consistent with the schedule in this docket, Staff submits the following draft rule revisions. For the convenience of the parties, Staff has also included a redline version that tracks changes from the draft the group last discussed. While Staff provides the redline version for convenience, it requests that the participants use the clean version for the discussion at the workshop on July 21st. In addition to these two documents, Staff is also submitting an example of its understanding of the properly attributed calculation required by the Commission's Order No. 06-400.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason W. Jones".

Jason W. Jones
Assistant Attorney General
Regulated Utility & Business Section

cc: Service List

JWJ:jwj/DOCUMENT2

Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" means the group of corporations, of which the utility is a member, which files a consolidated federal income tax return.

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations as reported in the FERC deferred tax expense accounts that relate to the year being reported in the utility's results of operations report or tax returns.

(c) "Income" means taxable income as determined by the applicable taxing authority or regulatory taxable income when reporting or computing the standalone tax liability resulting from a utility's regulated operations.

(d) "Investment" means capital outlays for utility property used to provide regulated service to customers.

(e) "Local taxes collected in rates" means the total amount collected from customers under the local tax line-item of customers' bills calculated on a separate city or county basis.

(f) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding.

(g) "Properly attributed" means the share of taxes paid that is apportioned to the Oregon regulated operations as calculated in section (3) of this rule.

(h) "Regulated operations of the utility" means those activities of a utility that are subject to rate regulation by the Commission.

(i) "Results of operations report" means the utility's annual results of operations report filed with the Commission.

(j) "Revenue" means retail revenues from ratepayers in Oregon as defined by FERC, excluding other operating revenues as defined by FERC and supplemental schedules not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule.

(k) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210.

(l) "Tax" means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to a unit of government, but does not include a franchise fee or privilege tax.

(m) "Taxes authorized to be collected in rates" means the following:

(A) The amount is calculated as the product determined by multiplying the following three values:

(i) The revenue the utility collects, using information from the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of section (2)(m)(A), when the Commission has authorized a change during the tax year for gross revenues, net revenues or effective tax rate, the amount will be calculated using a weighted average of months in effect.

(n) "Taxes paid" means net amounts received by units of government from the utility or from the affiliated group and properly attributed to regulated operations of the utility, adjusted as follows:

(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed because of the charitable contributions made by the utility;

(B) Increased by the amount of tax credits on the tax return that are associated with investment by the utility in the regulated operations of the utility, which may include, but are not limited to, tax credits associated with renewable electricity production, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the Commission in the utility's most recent general ratemaking proceeding; and

(C) Adjusted by deferred taxes related to the regulated operations of the utility. The utility must initially use its results of operations report to establish the amount of deferred taxes. If the utility does not believe that the results of operations report sufficiently reflects the amount of the utility's deferred taxes for the applicable tax year, the utility may also use its tax returns for the tax year as a supplemental source for calculating the deferred taxes adjustment as a separate submission. Deferred taxes do not include deferred tax items related to an adjustment under section (9) of this rule.

(o) "Taxpayer" means the utility or the affiliated group, whichever files income tax returns with units of government.

(p) "Units of government" means federal, state and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility will be calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures:

(A) The total amount of federal income taxes paid by the taxpayer; and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in Oregon in the numerator and amounts for the taxpayer in the denominator.

(b) The amount of state income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures:

(A) The total amount of Oregon income taxes that is paid by the taxpayer; and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in Oregon in the numerator and amounts for the taxpayer in the denominator.

(c) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority; and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in the local taxing authority in the numerator and amounts for the taxpayer in the local taxing authority in the denominator.

(4) By October 15 of each year, each utility will file a tax report with the Commission. The tax report will contain the following information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer;

(b) The amount of the federal and state income taxes paid that is incurred as a result of income generated by the Oregon regulated operations of the utility, calculated as the difference between the taxpayer's tax liability computed with and without the regulated operations of the utility;

- (c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the Oregon regulated operations of the utility, as calculated in section (3) of this rule;
- (d) The amount of federal and state income taxes authorized to be collected in rates for the Oregon regulated operations of the utility;
- (e) The amount of the difference between the amount in section 4(d) of this rule and the lowest of the amounts in sections (4)(a), (4)(b) and (4)(c), after making the adjustments defined in section (2)(n) of this rule;
- (f) The amount of local income taxes paid to units of government by the taxpayer, by local taxing authority;
- (g) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated Oregon operations of the utility, calculated as the difference between the taxpayer's tax liability computed with and without the regulated operations of the utility, by local taxing authority;
- (h) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to Oregon regulated operations of the utility, as calculated in section (3) of this rule, by local taxing authority.
- (i) The amount of local income taxes collected from Oregon customers, by local taxing authority;
- (j) The amount of the difference between the amount in sections 4(i) of this rule and the lowest of the amounts in sections (4)(f), (4)(g) and (4)(h) after making the adjustments defined in section (2)(n) of this rule, by local taxing authority; and
- (k) the proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in sections (4)(e) and (4)(j) of this rule.

(5) In calculating the amount of taxes paid under section (4) of this rule:

(a) "Taxes paid" shall be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For each tax liability shown on an initial or amended tax return for the immediately preceding tax year, which return is filed on or before the date the tax report is due for such tax year, to the tax year for which such return is filed.

(B) For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, to the tax year in which the related tax liability or tax adjustment is recognized by the utility for accounting purposes.

(C) Taxes paid shall be inclusive of any interest paid to or interest received from units of government with respect to tax liabilities.

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid will be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the taxes paid amount will reflect a weighted average of the months in effect related to each filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations. Each utility must obtain and provide any information requested by the Commission to implement and administer this rule.

(7) The Commission will establish a rolling docket for each of the October 15th tax report filings. If a party is granted intervention and becomes a party to the docket, they will have access to all such tax report filings at the time they are filed with the Commission, subject to any protective order that may be in place.

(a) Within 20 days following the October 15 tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule.

(b) Within 180 days of the tax report filings, the Commission will issue an order making the findings in section 8 of this rule.

(8) The Commission's order in section 7(b) of this rule will contain the following findings:

(a) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that are properly attributed to the Oregon regulated operations of the utility;

(b) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the Oregon regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(c) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the Oregon regulated operations of the utility and the amount of local taxes collected in rates; and

(d) Any other finding or determination necessary to implement the automatic adjustment clause.

(9) Upon entry of an order finding a difference of \$100,000 or more in section (8) of this rule, the utility must file an amendment to its automatic adjustment clause tariff to be effective each June 1, unless otherwise authorized by the Commission. The amended tariff will implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning 2006.

(a) The utility will establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in section (8)(b) of this rule through a surcharge or surcredit rate adjustment.

(b) A utility that is assessed a local income tax shall establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility will apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit will be calculated to recover or refund the difference determined by the Commission in section (8)(c) of this rule.

(c) Any rate adjustment will be calculated to amortize the difference determined by the Commission in sections (8)(b) and (8)(c) of this rule over a period authorized by the Commission.

(d) Any rate adjustment will be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission.

(e) Each balancing account will accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on January 1 of the year following the tax year.

(f) The automatic adjustment clause shall not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law.

(g) By October 15, 2006, each utility will seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with Senate Bill 408, this rule, or any other relevant guidance or authorities would cause the utility to fail to comply with federal normalization requirements or other requirements of federal tax law. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to section 9(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to sections 8(b) and 8(c) of this rule.

(10) No later than 30 days following the Commission's findings in section 8 of this rule, any person may file to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable

rate adjustment will not be implemented until the Commission makes its determination. If the Commission decides against termination, interest will accrue according to section 9(e) of this rule on the final amount of the rate adjustment. The person filing the claim will bear the burden of proof to substantiate the claim.

(11) At any time, a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040. In making a determination regarding a potential violation of ORS 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year. The utility filing the claim will bear the burden of proof to substantiate the claim.

(12) The Commission may disclose, or any intervenor in a utility tax report proceeding may obtain and disclose, the amount by which the amount of taxes that units of government received from the utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative. The Commission will not disclose or authorize disclosure of any information that is exempt from disclosure under the Public Records Law (ORS 192.410-192.505).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268

[Hist.: PUC 5-2005(Temp), f. & cert. ef. 9-15-05 thru 3-13-06]

AR 499 permanent rule 706 draft.doc

AR 499: Properly Attributed
Three-factor allocation method

(Properly attributed amount calculated prior to 12(a) cap and 13(f) adjustments)
 Example Assumes Taxpayer is the Affiliated Group

Step 1: Determine Amount of FEDERAL Tax Paid Properly Attributed to Regulated Operations

	Oregon Regulated Operations	Affiliated Group	Ratio
Property	\$ 2,500	\$ 20,000	12.5%
Payroll	\$ 600	\$ 6,000	10.0%
Sales	\$ 1,500	\$ 15,000	10.0%
		Average	10.8%
Federal Tax Paid by Taxpayer			\$ 2,500
Properly Attributed to Oregon Regulated Operations			\$ 271

Step 2 - Determine Amount of STATE Tax Paid Properly Attributed to Regulated Operations

	Oregon Regulated Operations	Affiliated Group (Oregon)	Ratio
Property	\$ 2,500	\$ 4,500	55.6%
Payroll	\$ 600	\$ 1,200	50.0%
Sales	\$ 1,500	\$ 6,000	25.0%
		Average	43.5%
Oregon State Income (Excise) Tax Paid by Taxpayer			\$ 250
Properly Attributed to Oregon Regulated Operations			\$ 109

Step 3 - Determine Amount of LOCAL Tax Paid Properly Attributed to Regulated Operations

	Regulated Operations (in local taxing authority)	Affiliated Group (in local taxing authority)	Average
Property	\$ 1,500	\$ 2,750	54.5%
Payroll	\$ 450	\$ 950	47.4%
Sales	\$ 1,200	\$ 3,500	34.3%
		Average	45.4%
Local Tax Paid by Taxpayer			\$ 100
Properly Attributed to Oregon Regulated Operations			\$ 45

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 17, 2006, I served the foregoing upon the parties in this proceeding
3 hereto by electronic mail and sending a true, exact and full copy by regular mail, postage prepaid
4 or by shuttle mail/hand deliver to the parties accepting paper service.

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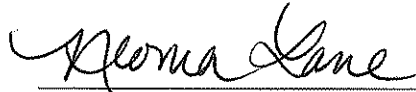
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Department of Justice
Regulated Utility & Business Section

860-022-0041

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(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003-Avista Corporation, Northwest Natural Gas Company, PacifiCorp, and Portland General Electric Company, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

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(A) The amount is calculated as the product determined by multiplying the following three values:

(iA) The revenue the utility collects, using information from the utility's results of operations report;

(~~iiB~~) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement, ~~with revenue weighted by months when revenue requirement is reauthorized during the year;~~ and

(~~iiiC~~) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as ~~set forth~~ found in the most recent last general rate order, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of section (2)(m)(A), when the Commission has authorized a change during the tax year for gross revenues, net revenues or effective tax rate, the amount will be calculated using a weighted average of months in effect.

(~~nm~~) "Taxes paid" means net amounts received by units of government from the utility or from the affiliated group and properly attributed to regulated operations of the utility, adjusted as follows:

(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed ~~in the tax return~~ because of the charitable contributions made by the utility;

(B) Increased by the amount of tax credits on the tax return that are associated with investment by the utility in the regulated operations of the utility, which may include, but are not limited to, tax credits associated with renewable electricity production, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the Commission in the utility's most recent last general ratemaking proceeding; and

(C) Adjusted by deferred taxes related to the regulated operations of the utility. The utility must initially use its results of operations report to establish the amount of deferred taxes.

If the utility does not believe that the results of operations report sufficiently reflects the amount of the utility's deferred taxes for the applicable tax year, the utility may also use its tax returns for the tax year as a supplemental source for calculating the deferred taxes adjustment as a separate submission. Deferred taxes do not include deferred tax items related to an adjustment under section (940) of this rule.

(o) "Taxpayer" means the utility or the affiliated group, whichever files income tax returns with units of government.

(pn) "Units of government" means federal, state and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility will be calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures:

(A) The total amount of federal income taxes paid by the taxpayer; and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in Oregon in the numerator and amounts for the taxpayer in the denominator.

(b) The amount of state income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures:

(A) The total amount of Oregon income taxes that is paid by the taxpayer; and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in Oregon in the numerator and amounts for the taxpayer in the denominator.

(c) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility will be the product of the following two figures for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority;
and

(B) The average of the ratios calculated for the utility's property, payroll and sales, as defined in ORS 314.650 through 314.675, using amounts for regulated operations of the utility in the local taxing authority in the numerator and amounts for the taxpayer in the local taxing authority in the denominator.

~~(43)~~ By October 15 of each year, each utility will file a tax report with the Commission. ~~Any person may request to be placed on a list to receive all such tax report filings at the time they are submitted to the Commission or may request a copy of individual filings. Any person wishing to participate as a party shall so notify the Commission and other parties.~~ The tax report will contain the following information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer utility or its affiliated group;

(b) The amount of the federal and state income taxes paid that is incurred as a result of income generated by the Oregon regulated operations of the utility, calculated as the difference between the taxpayer's tax liability computed with and without the regulated operations of the utility, using a pro forma tax return and including a reconciliation with revenues and expenses in the utility's results of operations report for the year;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer utility or its affiliated group that is properly attributed to the Oregon regulated operations of the utility, as calculated in section (3) of this rule;

(d) The amount of federal and state income taxes authorized to be collected in rates for the Oregon regulated operations of the utility;

(e) The amount of the difference between the amount in section ~~43~~(d) of this rule and the lowest of the amounts in sections ~~(4)3~~(a), ~~(4)3~~(b) and ~~(4)3~~(c), after making the adjustments defined in section (2)(n) of this rule;

(f) The amount of local income taxes paid to units of government by the taxpayer, by local taxing authority;

~~(gf)~~ The amount of local income taxes paid to units of government by the taxpayer utility or its affiliated group that is incurred as a result of income generated by the regulated Oregon operations of the utility, calculated as the difference between the taxpayer's tax liability computed with and without the regulated operations of the utility, by county local taxing authority;

(h) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to Oregon regulated operations of the utility, as calculated in section (3) of this rule, by local taxing authority.

(ig) The amount of local income taxes collected from Oregon customers, by county local taxing authority;

(j*h*) The amount of the difference between the amounts in sections ~~43~~(i*f*) and ~~3~~(g) of this rule and the lowest of the amounts in sections (4)(f), (4)(g) and (4)(h) after making the adjustments defined in section (2)(n) of this rule, by local taxing authority; and

(k*i*) the proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in sections (4)3(e) and (4)3(j*h*) of this rule.

(~~5~~4) In calculating the amount of taxes paid under section (~~4~~3) of this rule:

(a) "Taxes paid" shall be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For each ~~positive or negative~~ tax liability shown on an initial or amended tax return for the immediately preceding tax year, which return is filed on or before the date the tax report is due for such tax year, to the tax year for which such return is filed.

(B) For each ~~positive or negative~~ tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, to the tax year in which the related tax liability or tax adjustment is recognized by the utility for accounting purposes.

(C) Taxes paid shall be inclusive of any interest paid to or interest received from units of government with respect to tax liabilities.

~~(b) A multi-state jurisdictional utility will determine the portion of state and federal taxes allocated to its Oregon jurisdictional operations using the allocation methodology approved for use in setting the utility's rates. The utility will apply this methodology to the utility's total taxes paid on a multi-state basis, including any tax settlement payments and refunds, adjusted to include the utility's total deferred taxes on a multi-state basis.~~

(be) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, -an affiliated group/sub-group changes during the year, taxes paid will be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the taxes paid amount will reflect a weighted average of the months in effect related to each filing.-

~~(5) A utility with a fiscal year other than a calendar year will also provide the information requested in section (3) of this rule for each calendar year beginning 2006.~~

(66) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations.

(7) Each utility must obtain and provide any information requested by the Commission to implement and administer this rule.

(78) The Commission will establish a rolling docket for each of the October 15th tax report filings. If a party is granted intervention and becomes a party to the docket, they will have access to all such tax report filings at the time they are filed with the Commission, subject to any protective order that may be in place.

(a) –Within 20 days following the October 15 tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule, that includes the following events for each utility: (a) On the second Monday in January, discovery completed and Commission staff issue its initial recommendations regarding the findings in section 9 of this rule;

(b) During the second to fourth weeks in January, a settlement conference;

(c) One week following the settlement conference, Commission staff and intervenor testimony;

(d) Two weeks following Commission staff and intervenor testimony, utility rebuttal testimony;

(e) Two weeks following utility rebuttal testimony, a hearing;

(f) Two weeks following the hearing, simultaneous briefs; and

(be) Within 180 days of the tax report filings, the Commission will issue an order making the findings in section 89 of this rule.

(89) The Commission's order in section 78(be) of this rule will contain the following findings:

(a) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that are properly attributed to the Oregon regulated operations of the utility;

(b) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the Oregon

regulated operations of the utility and the amount of taxes authorized to be collected in rates;
amount in section 3(e) of this rule for federal and state income taxes;

(c) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the Oregon regulated operations of the utility and the amount of local taxes collected in rates; ~~amount in section 3(h) of this rule for local income taxes; and~~

(d) Any other finding or determination necessary to implement the automatic adjustment clause ~~the amount of the surcharge or surcredit rate adjustments to charge or refund customers the amounts in sections 9(b) and 9(c) of this rule.~~

(940) Upon entry of an order finding a difference of \$100,000 or more in section (89) of this rule, the utility must file an amendment to its automatic adjustment clause tariff to be effective each June 1, unless otherwise authorized by the Commission. The amended tariff will implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal ~~calendar~~ year beginning 2006.

(a) The utility will establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in section (89)(b) of this rule through a surcharge or surcredit rate adjustment.

(b) A utility that is assessed a local income tax shall establish a separate balancing account and automatic adjustment clause tariff for each county-local taxing authority assessing such tax. The utility will apply a surcharge or surcredit on the bills of customers within the county-local taxing authority assessing the tax. The amount of the surcharge or surcredit will be calculated to recover or refund the difference determined by the Commission in section (89)(c) of this rule.

(c) Any rate adjustment will be calculated to amortize the difference determined by the Commission in sections (8)(b) and (8)(c) of this rule over a one-year period, ~~unless otherwise~~ authorized by the Commission.

(d) Any rate adjustment will be allocated by customer rate schedule ~~class~~ according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission.

(e) Each balancing account will accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on January 1 of in the year following the tax year ~~report filing~~.

(f) -The automatic adjustment clause shall not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law.

(g)- ~~By October 15, 2006, Prior to initial implementation of the automatic adjustment clause,~~ each utility will seek ~~and obtain a~~ Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with Senate Bill 408, this rule, or any other relevant guidance or authorities would cause the utility to fail to comply with federal normalization requirements or other requirements of federal tax law. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to section 9(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to sections 8(b) and 8(c) of this rule.

~~(1011) No later than 30 days following the Commission's findings in section 89 of this rule, any person may file to terminate the automatic adjustment clause on the basis that it would result in a claim that a rate adjustment under the automatic adjustment clause will have a material adverse effect on customers, or potential violation of ORS 756.040. The Commission will hold a hearing to make a determination within 120 days following the filing. In the event of a filing claim under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission decides against termination, but interest will accrue according to section 910(e) of this rule on the final amount of the rate adjustment. The person filing the claim will bear the burden of proof to substantiate the claim.~~

(11) At any time, a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040. -In making a determination regarding a potential violation of ORS 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year. The utility filing the claim will bear the burden of proof to substantiate the claim.

(12) The Commission may disclose, or any intervenor in a utility tax report proceeding may obtain and disclose, the amount by which the amount of taxes that units of government received from the utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative. ~~An intervenor may not disclose any further information unless the Commission allows the disclosure.~~ The Commission will not disclose or authorize disclosure of any information that is exempt from disclosure under the Public Records Law (ORS 192.410-192.505).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268

[Hist.: PUC 5-2005(Temp), f. & cert. ef. 9-15-05 thru 3-13-06]

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