

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com  
Suite 400  
333 S.W. Taylor  
Portland, OR 97204

April 24, 2006

***Via Electronic and U.S. Mail***

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem OR 97308-2148

Re: In the Matter of the Adoption of Permanent Rules Implementing SB 408  
Relating to Matching Utility Taxes Paid with Taxes Collected  
**Docket No. AR 499**

Dear Filing Center:

Enclosed please find an original and two (2) copies of the Revised Straw Proposals of the Industrial Customers of Northwest Utilities and Northwest Industrial Gas Users in the above-captioned Docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely yours,

/s/ Anna E. Studenny  
Anna E. Studenny

Enclosures

cc: Service List

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a copy of the foregoing Revised Straw Proposals of the Industrial Customers of Northwest Utilities and the Northwest Industrial Gas Users, upon the parties, on the official service list for AR 499, by causing the same to be electronically served, to those parties with an email address, as well as mailed, postage-prepaid, through the U.S. Mail.

Dated at Portland, Oregon, this 24th day of April, 2006.

/s/ Anna E. Studenny  
Anna E. Studenny

R TOM BUTLER  
tom@butlert.com

REP TOM BUTLER  
H-289 STATE CAPITOL  
SALEM OR 97310  
cpatom@fmtc.com

JIM DEASON  
ATTORNEY AT LAW  
521 SW CLAY ST STE 107  
PORTLAND OR 97201-5407  
jimdeason@comcast.net

KEN LEWIS  
PO BOX 29140  
PORTLAND OR 97296  
kl04@mailstation.com

PORTLAND GENERAL ELECTRIC CO. RATES &  
REGULATORY AFFAIRS  
PORTLAND GENERAL ELECTRIC COMPANY  
121 SW SALMON ST 1WTC0702  
PORTLAND OR 97204  
pge.opuc.filings@pgn.com

**AF LEGAL & CONSULTING SERVICES**  
ANN L FISHER  
ATTORNEY AT LAW  
2005 SW 71ST AVE  
PORTLAND OR 97225-3705  
energlaw@aol.com

**ASSOCIATED OREGON INDUSTRIES**  
JULIE BRANDIS  
1149 COURT ST NE  
SALEM OR 97301-4030  
jbrandis@aol.org

**ATER WYNNE LLP**  
LISA F RACKNER  
ATTORNEY  
222 SW COLUMBIA ST STE 1800  
PORTLAND OR 97201-6618  
lfr@aterwynne.com

**AVISTA CORPORATION**  
DAVID J MEYER  
SR VICE PRESIDENT & GENERAL COUNSEL  
PO BOX 3727  
SPOKANE WA 99220-3727  
david.meyer@avistacorp.com

**AVISTA CORPORATION**  
THOMAS R PAINE  
1411 EAST MISSION  
SPOKANE WA 99202  
tom.paine@avistacorp.com

**AVISTA UTILITIES**

DON M FALKNER  
MANAGER REVENUE REQUIREMENTS  
PO BOX 3727  
SPOKANE WA 99220-3727  
don.falkner@avistacorp.com

**AVISTA UTILITIES**

KELLY O NORWOOD  
VICE PRESIDENT, RATES & REGULATORY AFFAIRS  
PO BOX 3727  
SPOKANE WA 99220-3727  
kelly.norwood@avistacorp.com

**CITIZENS' UTILITY BOARD OF OREGON**

LOWREY R BROWN  
610 SW BROADWAY - STE 308  
PORTLAND OR 97205  
lowrey@oregoncub.org

**CITIZENS' UTILITY BOARD OF OREGON**

ROBERT JENKS  
610 SW BROADWAY STE 308  
PORTLAND OR 97205  
bob@oregoncub.org

**DEPARTMENT OF JUSTICE**

PAUL GRAHAM  
ASSISTANT ATTORNEY GENERAL  
REGULATED UTILITY & BUSINESS SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
paul.graham@state.or.us

**ENERGY STRATEGIES**

KELLY FRANCONI  
CONSULTANT  
215 SOUTH STATE ST - STE 200  
SALT LAKE CITY UT 84111  
kfranconi@energystrat.com

**KAFOURY & MCDUGAL**

LINDA K WILLIAMS  
ATTORNEY AT LAW  
10266 SW LANCASTER RD  
PORTLAND OR 97219-6305  
linda@lindawilliams.net

**MIDAMERICAN ENERGY HOLDINGS COMPANY**

RICK TUNNING  
666 GRAND AVENUE  
DES MOINES IA 50303  
rrtunning@midamerican.com

**AVISTA UTILITIES**

RON MCKENZIE  
MANAGER, REGULATORY ACCOUNTING  
PO BOX 3727  
SPOKANE WA 99220-3727  
ron.mckenzie@avistacorp.com

**CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP**

EDWARD A FINKLEA  
1001 SW 5TH - STE 2000  
PORTLAND OR 97204  
efinklea@chbh.com

**CITIZENS' UTILITY BOARD OF OREGON**

JASON EISDORFER  
610 SW BROADWAY STE 308  
PORTLAND OR 97205  
dockets@oregoncub.org

**DANIEL W MEEK ATTORNEY AT LAW**

DANIEL W MEEK  
ATTORNEY AT LAW  
10949 SW 4TH AVE  
PORTLAND OR 97219  
dan@meek.net

**DEPARTMENT OF JUSTICE**

JASON W JONES  
ASSISTANT ATTORNEY GENERAL  
REGULATED UTILITY & BUSINESS SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
jason.w.jones@state.or.us

**IDAHO PUBLIC UTILITY COMMISSION**

DAN PFEIFFER  
472 WEST WASHINGTON ST  
BOISE ID 83720  
dan.pfeiffer@puc.idaho.gov

**LEAGUE OF OREGON CITIES**

ANDREA FOGUE  
SENIOR STAFF ASSOCIATE  
PO BOX 928  
1201 COURT ST NE STE 200  
SALEM OR 97308  
afogue@orcities.org

**MIDAMERICAN ENERGY HOLDINGS COMPANY**

STEVE EVANS  
666 GRAND AVE  
DES MOINES IA 50303  
srevans@midamerican.com

**NORTHWEST INDUSTRIAL GAS USERS**

PAULA E PYRON  
EXECUTIVE DIRECTOR  
4113 WOLF BERRY COURT  
LAKE OSWEGO OR 97035-1827  
ppyron@nwigu.org

**NORTHWEST NATURAL**

GREGG KANTOR  
220 NW SECOND  
PORTLAND OR 97209  
gsk@nwnatural.com

**NORTHWEST NATURAL**

ELISA M LARSON  
ASSOCIATE COUNSEL  
220 NW 2ND AVE  
PORTLAND OR 97209  
elisa.larson@nwnatural.com

**PACIFIC POWER & LIGHT**

JAN MITCHELL  
825 NE MULTNOMAH - STE 2000  
PORTLAND OR 97232  
jan.mitchell@pacificorp.com

**PACIFICORP**

LAURA BEANE  
MANAGER, REGULATION  
825 MULTNOMAH STE 800  
PORTLAND OR 97232-2153  
laura.beane@pacificorp.com

**PACIFICORP**

BLAIR LOFTIS  
825 NE MULTNOMAH  
PORTLAND OR 97232  
blair.loftis@pacificorp.com

**PACIFICORP**

RICHARD PEACH  
825 NE MULTNOMAH  
PORTLAND OR 97232  
richard.peach@pacificorp.com

**PORTLAND CITY OF - OFFICE OF CITY ATTORNEY**

BENJAMIN WALTERS  
DEPUTY CITY ATTORNEY  
1221 SW 4TH AVE - RM 430  
PORTLAND OR 97204  
bwalters@ci.portland.or.us

**NORTHWEST NATURAL**

GARY BAUER  
220 NW 2ND AVE  
PORTLAND OR 97209  
gary.bauer@nwnatural.com

**NORTHWEST NATURAL**

MARGARET D KIRKPATRICK  
INTERIM GENERAL COUNSEL.  
220 NW 2ND AVE  
PORTLAND OR 97209  
margaret.kirkpatrick@nwnatural.com

**PACIFIC POWER & LIGHT**

LARRY O MARTIN  
825 NE MULTNOMAH STE 800  
PORTLAND OR 97232  
larry.martin@pacificorp.com

**PACIFIC POWER & LIGHT**

PAUL M WRIGLEY  
MANAGER – REGULATION  
825 NE MULTNOMAH STE 800  
PORTLAND OR 97232  
paul.wrigley@pacificorp.com

**PACIFICORP**

SCOTT BOLTON  
825 NE MULTNOMAH  
PORTLAND OR 97232  
scott.bolton@pacificorp.com

**PACIFICORP**

CHRISTY OMOHUNDRO  
DIRECTOR REGULATORY POLICY  
825 NE MULTNOMAH BLVD STE 800  
PORTLAND OR 97232  
christy.omohundro@pacificorp.com

**PAINE, HAMBLIN, COFFIN, BROOKE & MILLER  
LLP**

AUSEY H ROBNETT III  
PO BOX E  
COEUR D'ALENE ID 83816-0328

**PORTLAND GENERAL ELECTRIC**

RANDALL DAHLGREN  
121 SW SALMON ST 1WTC 0702  
PORTLAND OR 97204  
randy.dahlgren@pgn.com

**PORTLAND GENERAL ELECTRIC**  
PAMELA G LESH  
VP RATES & REGULATORY AFFAIRS  
121 SW SALMON ST 1 WTC 1703  
PORTLAND OR 97204  
pamela.lesh@pgn.com

**PORTLAND GENERAL ELECTRIC**  
DAVE ROBERTSON  
121 SW SALMON ST  
PORTLAND OR 97204  
dave.robertson@pgn.com

**PORTLAND GENERAL ELECTRIC**  
BOB TAMLYN  
121 SW SALMON ST  
PORTLAND OR 97204  
bob.tamlyn@pgn.com

**PORTLAND GENERAL ELECTRIC**  
JAY TINKER  
PROJECT MANAGER  
PORTLAND GENERAL ELECTRIC COMPANY  
121 SW SALMON ST 1WTC-0702  
PORTLAND OR 97204  
jay.tinker@pgn.com

**PUBLIC UTILITY COMMISSION**  
KATHRYN LOGAN  
ADMINISTRATIVE HEARINGS DIVISION  
PO BOX 2148  
SALEM OR 97308-2148  
kathryn.logan@state.or.us

**STATE CAPITOL**  
SENATOR RICK METSGER  
900 COURT ST NE S-307  
SALEM OR 97301  
sen.rickmetsger@state.or.us

**STOEL RIVES LLP**  
KATHERINE A MCDOWELL  
900 SW FIFTH AVE STE 1600  
PORTLAND OR 97204-1268  
kamcdowell@stoel.com

**PORTLAND GENERAL ELECTRIC**  
RAUL MADARANG  
121 SW SALMON ST  
PORTLAND OR 97204  
raul.madarang@pgn.com

**PORTLAND GENERAL ELECTRIC**  
INARA K SCOTT  
ASSISTANT GENERAL COUNSEL  
121 SW SALMON ST  
PORTLAND OR 97204  
inara.scott@pgn.com

**PORTLAND GENERAL ELECTRIC**  
DOUGLAS C TINGEY  
ASST GENERAL COUNSEL  
121 SW SALMON 1WTC13  
PORTLAND OR 97204  
doug.tingey@pgn.com

**PUBLIC UTILITY COMMISSION**  
JUDY JOHNSON  
PO BOX 2148  
SALEM OR 97308-2148  
judy.johnson@state.or.us

**PUBLIC UTILITY COMMISSION OF OREGON**  
ED BUSCH  
PO BOX 2148  
SALEM OR 97308-2148  
ed.busch@state.or.us

**STATE CAPITOL**  
SENATOR VICKI L WALKER  
900 COURT ST NE S-210  
SALEM OR 97301  
sen.vickiwalker@state.or.us

**STOEL RIVES LLP**  
MARCUS A WOOD  
900 SW FIFTH AVE - STE 2600  
PORTLAND OR 97204  
mwood@stoel.com

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 499**

|  |   |                                 |
|--|---|---------------------------------|
|  | ) |                                 |
| In the Matter of the Adoption of Permanent | ) | STRAW PROPOSALS OF THE          |
| Rules Implementing SB 408 Relating to      | ) | INDUSTRIAL CUSTOMERS OF         |
| Utility Taxes.                             | ) | NORTHWEST UTILITIES AND         |
|  | ) | NORTHWEST INDUSTRIAL GAS USERS: |
|  | ) | PROPERLY ATTRIBUTED (REVISED)   |
|  | ) | AND TAXES COLLECTED/EARNINGS    |
|  | ) | TEST                            |

---

**I. Properly Attributed Straw Proposal**

**A. Summary of Proposal**

Industrial Customers of Northwest Utilities (“ICNU”) and Northwest Industrial Gas Users (“NWIGU”) propose that the Public Utility Commission of Oregon (“OPUC” or the “Commission”) determine the amount of “taxes paid” that is properly attributed to the regulated operations of the utility by implementing the §§ 3(12)(a) and (b) caps and by applying the “proportionate share” attribution methodology to the consolidated tax group.

**B. Detailed Explanation of Proposal**

SB 408 requires that the Commission determine the total “taxes paid” to units of government that is “properly attributed to the regulated operations of the utility.” The Commission rules implementing SB 408 should reflect both a legally correct interpretation and sound policy that effectuates the legislature’s intent. ICNU and NWIGU continue to believe that the Commission’s temporary rule applied the legally correct interpretation of “properly attributed” by allocating to the utility and each affiliate its proportionate share of “taxes paid” in a consistent manner. As a compromise, however, ICNU and NWIGU propose to apply the “proportionate share” attribution method to a sub-group of the entire corporate family. This method is described in more detail below.

The taxes paid properly attributed to the utility is the lesser of the following three amounts:

**1. Section 3(12)(b) Cap**

Section 3(12)(b) provides that the taxes paid properly attributed to the utility may not exceed the taxes actually paid by the “parent of the consolidated group” filing the tax return. If the parent of the consolidated group pays little or no tax due to losses incurred in unregulated businesses, then the taxes paid properly attributed to the utility cannot exceed this amount.

Section 3(12)(b) addresses the “Enron problem,” but also stands for the general legislative principle that losses incurred by unregulated affiliates will be considered in determining the amount of taxes paid that are properly attributed to the utility.

## **2. Section 3(12)(a) Cap**

Section 3(12)(a) provides that the taxes paid properly attributed to the utility cannot exceed “that portion of total taxes paid that is incurred as a result of income generated by the regulated operations of the utility.” This cap is the amount of taxes paid by the parent of the consolidated group that are supported by income collected by the utility. This includes the taxes on “stand-alone” regulated utility operations of the Oregon utility plus any tax liabilities or credits supported, directly or indirectly, by the utility’s regulated revenues. For example, this would include:

- a) Tax deductions arising from interest payments on debt held by an affiliate/parent when the payments are supported by utility revenues; and
- b) Income tax credits on generating resources held by an affiliate when the generation costs are supported by a power sale to the utility; but
- c) Would exclude tax credits that are not supported by the utility’s regulated revenues (e.g., Business Energy Tax Credits from shareholder investments).

While this debt and these utility functions are within the stand-alone tax liability of an affiliate, they remain supported by utility revenues and, thus, the tax benefits belong to the utility and to ratepayers. The §3(12)(a) cap will require identification of such transactions or financial arrangements. With regard to transactions, the Commission must determine whether the price charged by the affiliate includes the associated income tax benefits. This should be addressed case-by-case when the transaction is reviewed, but there should be a presumption that tax benefits are not included when the affiliate has a net tax loss and tax liabilities are included when the affiliate has a net positive tax liability (i.e., the “cost” basis of the transaction price includes the tax liability).

In the case of a parent (or sub-parent) with multiple subsidiaries supporting the parent’s debt, the interest deduction needs to be allocated based on net income (the utility’s share of the parent’s interest deduction is the utility’s net income divided by the net income of the parent and all subsidiaries of the parent.) In practice, to determine whether tax benefits associated with debt held by any affiliate/parent should to be properly attributed to the utility, the Commission must determine whether each affiliate/parent directly above the Oregon utility, up to and including the group parent, holds debt that is supported, in whole or in part, by Oregon ratepayers.

### 3. Sections 3(6) and (7)

Option A: Sections 3(6) and (7) require total taxes paid to be allocated among the utility and each affiliate in a manner that treats the utility and an affiliate with the same income/tax circumstances consistently. This is achieved by a proportionate share methodology applied to the entire corporate family, as set forth in the temporary rule.

Option B: As a compromise, we propose to determine taxes paid properly attributed to the utility by applying the proportionate share method to a sub-group of the corporate family. The sub-group is determined as follows:

- a) All subsidiaries of the utility are included.
- b) All “sister” affiliates of the utility (any affiliate that shares the same immediate parent with the utility) are included.
- c) All affiliates that have a nexus with the utility are included. A nexus includes:
  - i. All affiliates that buy or sell services or products to the utility, directly or indirectly, with the following exceptions:
    - Total annual value of the affiliated transaction is less than \$100,000.
    - The service or product sold by the affiliate is purchased by the utility at a price subject to rate regulation by FERC (not a market-based rate), the price is regulated, and the service and price is generally available (not a special contract or a tariff of limited applicability).
    - Service agreements that are subject to a cap approved by the OPUC.
  - ii. The immediate parent of the utility and all affiliates that have debt supported by utility revenues, directly or indirectly.
- d) All affiliates upstream from the utility and all affiliates identified in subpart (c) up to and including the common parent of the utility and such affiliates.

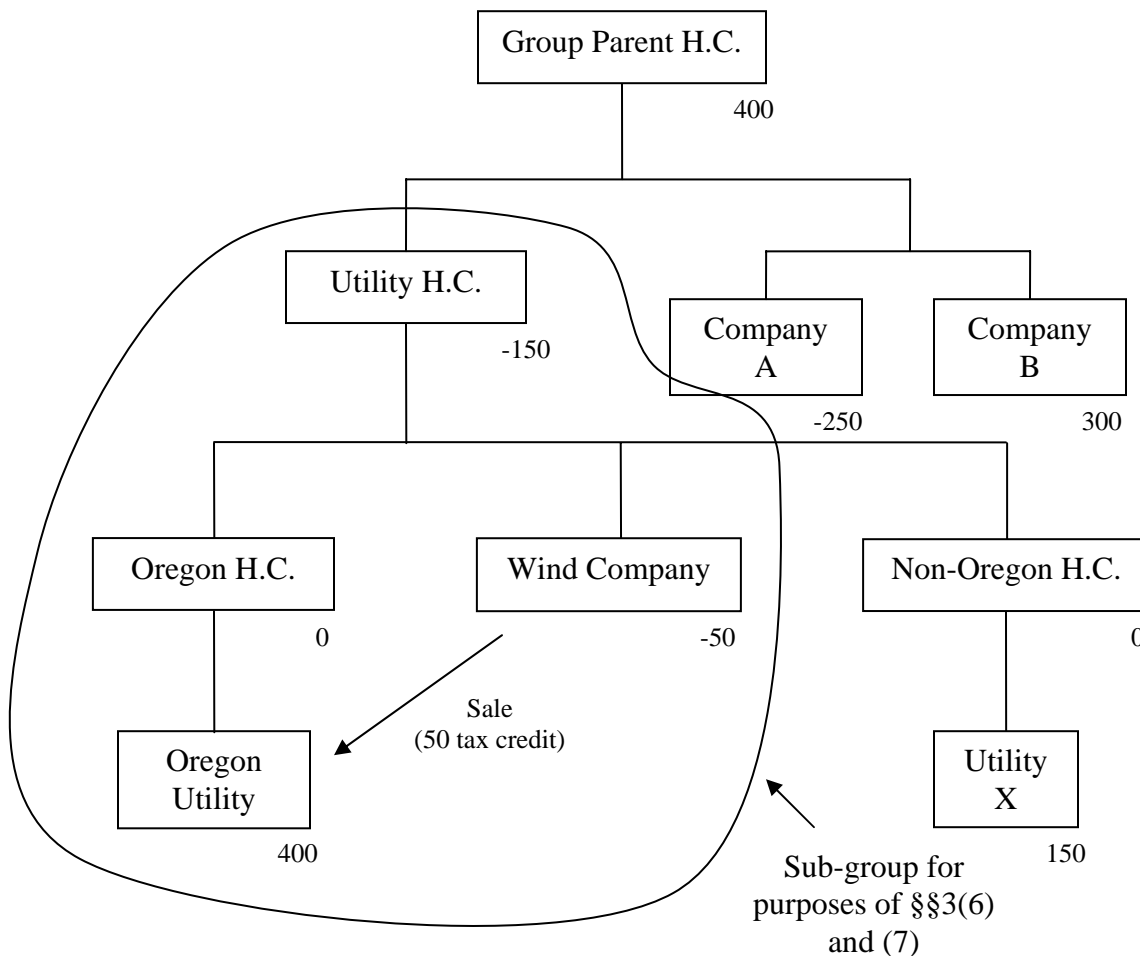
The method for determining taxes paid properly attributed to the utility is as follows:

Total taxes paid is determined as if the sub-group was separated from the rest of the holding company, i.e., the last common parent is assumed to file and pay on a consolidated basis. This surrogate total taxes paid is allocated among all affiliates, including the utility, within the

sub-group with positive net taxable income, as in the temporary rule, to determine taxes paid properly attributed to the utility.

An example of ICNU's and NWIGU's proposal is below.

**Example 1 – Industrial Customers of Northwest Utilities and Northwest Industrial Gas Users' Straw Proposal**



The numbers represent “stand-alone” tax, i.e., the tax liability of the entity without regard to corporate affiliates. The “holding companies” have no function except to hold equity and, in one case, to hold debt: the Oregon H.C. holds the equity of the Oregon Utility; the Utility H.C. holds the equity of its subsidiaries and also holds debt in its own name; the Group H.C. holds the equity of its subsidiaries, including unregulated Companies A and B, and holds no debt. The Utility Holding Company’s debt is supported by income from its subsidiaries and this debt produces an interest deduction of \$150. The Wind Company makes a power sale to the Oregon Utility and the price does not include a \$50 income tax credit associated with the resource.

### Calculation of the §§ 3(12)(b), 3(12)(a) and 3(6) & (7) Amounts

- a.     §3(12)(b):     The Group Parent pays taxes of \$400.
- b.     §3(12)(a):      $\$400 - \$50 + [-150 \times \frac{400}{(400 + 150 - 50)}] = \$230$

The Oregon Utility “stand-alone” is \$400. This is reduced by (1) the \$50 tax credit on the wind power sale and (2) a portion of the \$150 interest deduction of the Utility H.C., i.e. \$150 times the ratio of the Oregon Utility stand-alone to the sum of the stand-alone amounts (a) the Oregon Utility; (b) Utility X; and (c) the Wind Company. (This determines the Oregon Utility’s share of the \$150 interest tax deduction, using a stand-alone tax ratio as a surrogate for net income ratio.)

- c.     §§3(6) & (7):

Option A     The Proportionate Share Rule applied to the entire corporate group:

$$400 \times \left( \frac{400}{400 + 150 + 300} \right) = \$188.23$$

The Oregon Utility’s proportionate share of the \$400 Group H.C. tax liability is \$400 times the ratio of the Oregon Utility’s stand-alone tax liability to the sum of the stand-alone tax liabilities of all affiliates with positive stand-alone tax liability: the Oregon Utility, Utility X, and Company B.

Option B

The sub-group includes the Utility H.C. and the Wind Company. Total taxes paid by the Utility H.C. for the sub-group is the sum of the stand-alone tax liabilities of the Oregon Utility (400), Oregon H.C. (0), Utility H.C. (-150), and Wind Company (-50). This is multiplied by the ratio of the stand-alone taxes of the Oregon Utility to the sum of the stand-alone taxes of all affiliates within the sub-group with positive tax liability. (This ratio is one because only the Oregon Utility has a positive tax liability within the sub-group.)

$$(\$400 - 150 - 50) \times \frac{(400)}{400} = \$200$$

Having done the three calculations, the taxes paid properly attributed to the Oregon Utility is the lesser of these three amounts, which is \$188.23 (under Option A) or \$200 (under Option B). Note that the §§3(6) and (7) test will not always produce the lowest result; it will depend on whether there are losses and the size of the losses in the Unregulated Companies.

## II. Taxes Collected/Earnings Test Straw Proposal

A. Proposal on Taxes Collected: Taxes collected should not be adjusted for actual costs, except when the Commission does a true-up of specific costs on which the utility does not earn a return.

Section 3(13)(e) defines taxes authorized to be collected as:

‘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.

The Attorney General’s opinion reaffirms that the net to gross revenues ratio and the effective tax rate must be values that the Commission previously determined in establishing rates.

From the customers’ perspective, the mechanics are straightforward. The Commission establishes rates that provide the utility with an opportunity to recover its forecasted costs, including its income tax expense, and a return on its investment. For example, a rate of \$10 could include \$8 for forecasted costs (excluding taxes) with a before taxes profit of \$2 divided into \$1 for taxes and \$1 for after-tax profit. If the utility fails to control its costs and they rise to \$8.50, then its before-tax profit is reduced to \$1.50 but the tax component of the rate was fixed at \$1 and is not “reduced” from \$1 to maintain the utility’s after-tax profit at \$1. Because the utility failed to control costs, its before-tax profit is reduced and, thus, its tax payment is reduced. This does not affect the amount collected from customers for taxes in the \$10 rate. To allow taxes collected to be adjusted downward to comport with the actual, lower tax payments caused by the cost overruns would undercut the statute, would diminish the value of reliable cost forecasts in rate cases, and would diminish the incentive for utilities to control costs.

An RVM or TAM provides no exception to this rule. The RVM and TAM adjusts a limited group of costs prospectively for the following year, while the taxes component of the rate established in the general rate case remains unchanged. The §3(13)(e) formula will be applied with the increased rate and updated load forecast as a result of the RVM or TAM process producing greater actual revenues and an updated ratio of forecasted net and gross revenues. RVM and TAM costs are not excluded from the §3(13)(e) calculation of taxes collected.

In contrast, an actual true-up of defined costs on which the utility does not make a return is treated differently. The purchased gas costs incurred by a natural gas local distribution company (“LDC”) is a defined cost on which the utility earns no return, and thus, warrants different treatment than an operating cost such as salary and pension costs, which are estimated when general rates are set, but not otherwise adjusted between general rate cases. These types of

costs that are tracked through to customers without impacting the utility's profits and are known when "tax collected" is determined. That determination should exclude any consideration of these costs, i.e., the rate component for taxes was unaffected by the forecast of these costs and the calculation of taxes collected should be unaffected by either forecasted or actual costs subject to the true-up.

B. Proposal for Earnings Test. An earnings test is not required or appropriate.

Neither SB 408 nor an automatic adjustment clause under ORS 757.210 requires an earnings test. The earnings tests proposed by certain utilities would circumvent how "taxes collected" is implemented, i.e., the earnings test would allow the utility to retain amounts collected under the tax component of its rates to offset cost increases above forecasted levels in other aspects of its business. This approach would significantly undermine the intent of SB 408 and should be rejected.

For many years natural gas LDC have passed through to their customers the actual cost of natural gas supplies through annual tracking adjustment filings. The LDCs true up through annual filings "gas costs collected" from customers with "gas costs actually paid." While changes in other cost categories are not adjusted upward or downward as part of those filings, an overall earnings test is applied by rule only to assure that an upward rate adjustment for gas costs does not cause the LDC to earn more than 300 basis points above its authorized return.

Certain utilities propose to include a deferred account in implementing SB 408 and, thereby, trigger an earnings test. While a deferred account requires an earnings review "unless subject to an automatic adjustment clause under ORS 757.210," SB 408 specifically requires an automatic adjustment clause under ORS 757.210. ORS 757.259(5). Moreover, it is unclear what amounts such a deferred account would include because the amount is unknown until the tax report is filed some ten months after the end of the relevant period. Finally, the suggestion that the tax effect of disallowed expenses should be deferred should be rejected. SB 408 is clear that ratepayers do not pay these costs—either directly in rates or indirectly by allowing the utility to retain monies collected as a tax expense which is not incurred due to these disallowed costs.

The earnings tests proposed by certain utilities are not needed to satisfy Hope. A refund of monies collected to pay taxes that exceeded the utility's actual taxes is not confiscatory even if it results in the utility earning less than its authorized return. There is simply no Hope guarantee that a utility will achieve its authorized return. Hope protects against confiscatory rates and simply earning less than the authorized return falls far short of demonstrating that the rate is confiscatory.

Nor does this result produce a rate that is not "fair." The utility has the opportunity to earn its authorized return. It failed to control its costs and consequently its before tax earnings fell short and its tax payment exceeded the amount collected for its tax expense. Simply returning the tax overcollection to customers is fair. Allowing the utility to collect and retain money from ratepayers for a tax expense which is never incurred would be unfair and is prohibited under SB 408. The Commission has not allowed LDCs in the gas cost true-up to

reflect expenses above rate case assumptions in unrelated cost items. It would be similarly unfair to allow for such adjustments in implementing SB 408.

Dated this 24th day of April, 2006.

Respectfully submitted,

/s/ Melinda J. Davison

Melinda J. Davison

Matthew Perkins

Davison Van Cleve, P.C.

333 S.W. Taylor Street, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mail@dvclaw.com

Of Attorneys for Industrial Customers  
of Northwest Utilities

/s/ Ed Finklea

Ed Finklea

Chad Stokes

Cable, Huston, Benedict, Haagensen & Lloyd LLP

1001 S.W. Fifth Avenue, Suite 2000

Portland, Oregon 97204

(503) 224-3092 phone

cstokes@chbh.com

Of Attorney for Northwest Industrial Gas Users