

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

AR 541

In the Matter of Amendments to
OAR 860-022-0041(2)(p), (2)(s)(B),
and (5)(a)(B).

ORDER

DISPOSITION: RULE AMENDMENTS ADOPTED

I. INTRODUCTION

In this order, we adopt amendments to the administrative rules implementing Senate Bill (SB) 408. The 2005 Legislative Assembly passed SB 408 to establish a new method for the rate treatment of utility income taxes. SB 408 requires certain public utilities to provide information about the amount of taxes paid by the utility and the amount of taxes authorized to be collected in rates during specific time periods. If the Public Utility Commission of Oregon (Commission) determines that the amount of taxes assumed in rates differs by at least \$100,000 from the amount of taxes paid to units of government, then the utility must implement a rate schedule with an automatic adjustment clause accounting for the difference.

The Commission adopted rules implementing SB 408 in September 2006.¹ In auditing tax reports filed since that time, Commission Staff discovered some provisions in the implementing rules that were unclear and subject to differing interpretations, which had a significant effect on the calculation of “taxes paid” and “taxes collected” in rates. Staff opened this rulemaking docket to propose clarifying amendments to these provisions.

The Notice of Proposed Rulemaking Hearing and Statement of Need was published in the Secretary of State’s February 2010 Bulletin. Participants in this docket included Staff; the Citizens’ Utility Board of Oregon (CUB); Portland General Electric Company (PGE); Northwest Natural Gas Company; PacifiCorp, dba Pacific Power (Pacific Power); Avista Corp., dba Avista Utilities (Avista); the Industrial Customers of Northwest Utilities (ICNU); and the Northwest Industrial Gas Users (NWIGU). Participants were given the opportunity to attend workshops, submit written comments, and participate in the hearing held on March 3, 2010. The public comment period closed at the end of the hearing.

¹ *In the Matter of Adoption of Permanent Rules to Implement SB 408 Relating to Utility Taxes*, Docket No. AR 499, Order No. 06-532 (Sept 14, 2006).

II. DISCUSSION

A. **OAR 860-022-0041(2)(p): What is the appropriate method to calculate interest expense for the purpose of determining a utility’s stand-alone tax liability?**

Staff’s proposed amendment to OAR 860-022-0041(2)(p) is the most contentious issue in this rulemaking. This rule defines “stand-alone tax liability” for the purpose of determining “taxes paid” under SB 408. If “taxes paid” differs by \$100,000 or more from “taxes collected,” then the utility must implement a rate schedule with an automatic adjustment clause accounting for the difference. Under the current rule, stand-alone tax liability is calculated by

using a pro forma tax return and revenue and expenses in the utility’s results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effect from investment tax credits, and calculating interest expense *in the manner used by the Commission in establishing rates.*²

Staff interprets the italicized language in the current rule as requiring use of the *method* used by the Commission to calculate interest expense in a rate case. But Staff believes the current rule is silent regarding the vintage of the data to be used in the calculation.

Staff states, and all of the rulemaking participants agree, that the Commission uses the interest synchronization method to determine interest expense in rate cases, and that the same method should be used in SB 408 tax reports. The interest synchronization method calculates interest expense by multiplying the value of rate base by the weighted cost of debt. The weighted cost of debt is calculated by multiplying a utility’s capital structure by the cost of debt.

Under the current rule, rate base is calculated by using the utility’s results of operations report for the applicable tax year. The question is whether the components used to calculate the weighted cost of debt should also be derived from the utility’s actual results of operations for the applicable tax year or should be based upon data from the utility’s most recent rate case. Staff believes that using the utility’s actual results of operations appropriately aligns the timing of the valuation of the weighted cost of debt and capital structure with the applicable tax period and results in the best estimate of “taxes paid.” Staff therefore proposed the following changes to OAR 860-022-0041(2)(p):

“Stand-alone tax liability” means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility’s results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and

² OAR 860-022-0041(2)(p) (emphasis added).

calculating interest expense ~~in the manner used by the Commission in establishing rates~~ **using actual annual average weighted cost of debt derived from the actual annual average capital structure for the tax period multiplied by the annual average rate base for the tax period.**

CUB, ICNU, and NWIGU support Staff's proposed changes. PGE, Pacific Power, and Avista oppose Staff's changes. PGE argues that the Commission should not adopt a single method for calculating interest expense for "taxes paid" when the utilities use different methods to calculate interest expense for "taxes collected." PGE states that the proposed rule change "would create SB 408 adjustments based solely on different methods of calculating interest expense under 'taxes collected' and 'taxes paid.'"³

Pacific Power's arguments are similar to PGE's. Pacific Power does not object to using actual results of operations to calculate interest expense for "taxes paid." Pacific Power does, however, object to Staff's simultaneous proposal to use averages to determine capital structure, cost of debt, and rate base. Pacific Power states that the goal of SB 408 is to align taxes collected and taxes paid, and that using the same method for determining weighted cost of debt and rate base for calculating interest expense better aligns taxes paid with taxes collected.

Avista echoes Pacific Power's and PGE's objections to the proposed rule changes. Avista also notes that the rule does not include a definition of "annual average," which could lead to confusion in future SB 408 dockets.

Staff responds that the goal of SB 408 is to true-up the amount of taxes collected in rates with the amount of taxes paid to taxing authorities. Thus, the goal in SB 408 dockets is to calculate the actual amount of "taxes paid" to taxing authorities as accurately as possible. Staff argues that using actual annual averages to determine weighted cost of debt and rate base results in the most accurate calculation of taxes paid. Staff asserts that the goal of SB 408 is not to align taxes paid with taxes collected by using the same method of calculation. Instead, the goal is to determine, as accurately as possible, the utility's stand-alone tax liability ("taxes paid"), then to compare that liability to taxes collected in rates. According to Staff, its proposed changes result in the most accurate determination of "taxes paid."

SB 408 is meant to ensure that utility customers are charged only for the taxes that a utility pays to the taxing authorities. It is therefore important for the rules implementing SB 408 to determine "taxes paid" as accurately as possible. We agree with Staff that its proposed changes to OAR 860-022-0041(2)(p) result in a more accurate calculation of taxes paid and adopt those changes.

³ PGE's Comments at 3 (Feb 26, 2010).

B. OAR 860-022-0041(2)(s)(B): What is the appropriate method of calculating “taxes authorized to be collected in rates” for a tax period that includes a rate change?

Under the current version of OAR 860-022-0041(2)(s)(B), if customer rates change during a tax period, then “taxes authorized to be collected in rates” are calculated by using a weighted average of months. For example, if rates changed on April 1, then revenue for the utility would be calculated under the current rule based solely on the fact that certain rates were in effect during 25 percent of the year and new rates were in effect during 75 percent of the year. Staff’s proposed changes to this section are intended to “more closely capture the actual revenues that would have been generated” during the period that the rates were in effect “by considering the percentage of energy sold during the time the rates were in effect as a percentage of energy sold during the entire period.”⁴ Staff proposes the following changes:

For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues, or effective tax rate, **then** the amount of taxes authorized to be collected in rates will be calculated ~~using a weighted average of months~~ **by weighting the amount of energy sold during the period that the rates were in effect as a percentage of the total energy sold during the tax year.**

Avista is the only rulemaking participant that objects to Staff’s proposed changes. Avista’s objections are not based upon the substance of Staff’s proposal. Instead, Avista argues that this amendment is not necessary for clarification because there is no dispute regarding the application of the current rule. Avista also asserts that Staff is “cherry-picking” certain rules to amend while ignoring others.

Staff responds that the appropriate method of calculating taxes collected when there is a rate change during the tax period was an issue in Avista’s most recent SB 408 filing. During its audit of Avista’s filing, Staff noticed that the current rule did not reflect the fact that 35 to 40 percent of a utility’s revenue may be generated during the coldest months, so simply calculating revenues using a weighted average of months did not result in the best estimate of taxes collected. Staff believes its proposed changes to the rule will produce more accurate results.

We agree with Staff that the proposed changes will result in a more accurate calculation of “taxes authorized to be collected in rates” when there is a rate change during the tax period. We therefore adopt Staff’s proposed changes to OAR 860-022-0041(2)(s)(B).

⁴ Staff’s Comments at 5 (Feb 26, 2010).

C. OAR 860-022-0041(5)(a)(B): In what tax period should a utility report adjustments made to a previously filed federal, state, or local tax return?

During the review of previous tax reports, confusion arose regarding when adjustments to a previously filed tax return, such as an amendment resulting from an audit, should be included in a utility's SB 408 tax report. Staff proposes the following changes to OAR 860-022-0041(5)(a)(B) to diminish this confusion:

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, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes.~~ **the utility shall include the tax liability or tax refund in the first tax report filed subsequent to the satisfaction of the following conditions: the tax liability or tax refund has been filed and paid, or filed and received; and the final determination has been made by the taxing authority;**

Pacific Power generally agrees with Staff's proposed amendment because it resolves ambiguity by establishing a cash standard for inclusion of an adjustment in a utility's SB 408 tax report. Pacific Power suggests some additional changes to further refine and clarify the rule, including a definition for "final determination":

For each ~~tax liability or tax adjustment shown on an amended tax return or made~~ **to an originally filed federal, state, or local tax return,** 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, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes.~~ **the utility shall include the related tax liability or tax refund in the first tax report filed subsequent to the satisfaction of the following conditions: the tax liability or tax refund has been paid or received; and the final determination has been made by the taxing authority with respect to the adjustments. Final determination occurs as the result of (1) the execution of an agreement by the taxpayer and the federal, state, or local taxing authority that provides for no additional rights of administrative or judicial appeal or adjustment by either party (taxpayer or government) with respect to the adjustments included in said agreement; (2) a court decision with respect to the adjustments which is no longer subject to appeal or further reconsideration by either party; or (3) the expiration of the statute of limitations pertaining to the tax period.**⁵

⁵ Comments of PacifiCorp at 8-9 (Feb 26, 2010).

Avista supports Pacific Power's version of the amended rule. PGE does not support or oppose Staff's proposed amendment, but does object to Pacific Power's definition of "final determination." Staff also objects to Pacific Power's definition as too prescriptive. Staff does not, however, object to Pacific Power's minor, non-substantive changes. Both Staff and PGE note that Pacific Power's definition of "final determination" could result in lengthy delays before an adjustment is included in an SB 408 tax report, which could result in unintended consequences. CUB, ICNU, and NWIGU support Staff's proposed changes.

We agree with Staff and PGE that Pacific Power's proposed definition of "final determination" is too prescriptive and would likely result in lengthy delays before a tax adjustment would be reflected in a utility's SB 408 tax report. Thus, we decline to adopt Pacific Power's proposed definition. We agree, however, with some of the clarifying amendments proposed by Pacific Power and find that further refinement and simplification is possible. We therefore adopt the following amendment to OAR 860-022-0041(5)(a)(B):

(B) For each ~~tax liability or tax~~ adjustment ~~shown on an amended tax return or~~ made to an originally filed federal, state, or local tax return, including adjustments resulting from an audit, 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, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes; the utility must include the related tax liability or tax refund in the first tax report filed after the tax liability or tax refund has been paid or received and the taxing authority has made a final determination regarding the adjustment;

III. ORDER

IT IS ORDERED that:

- 1. The amendments to Oregon Administrative Rule 860-022-0041(2)(p), (2)(s)(B), and (5)(a)(B) set forth in Appendix A are adopted.
- 2. The amended rule becomes effective upon filing with the Secretary of State.


Made, entered, and effective JUN 24 2010.



Ray Baum
 Chairman



John Savage
 Commissioner



Susan K. Ackerman
 Commissioner



A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

APPENDIX A

860-022-0041

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" has the meaning given to "affiliated group" in ORS 757.268(13)(a).

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility's results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment.

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

(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property.

(e) "IRC" means Internal Revenue Code.

(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers.

(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment.

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

(i) "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.

(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g), and (4)(h) of this rule.

(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10).

(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c).

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

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule.

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

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense ~~in the manner used by the Commission in establishing rates~~ using actual annual average weighted cost of debt derived from the actual annual average capital structure for the tax period multiplied by the annual average rate base for the tax period.;

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions that are subject to rate regulation by any state commission.

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d).

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in 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 or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues, or effective tax rate, then the amount of taxes authorized to be collected in rates will be calculated ~~using a weighted average of months~~ by weighting the amount of energy sold during the period that rates were in effect as a percentage of the total energy sold during the tax year.;

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f).

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

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268.

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return.

(x) "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 is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator.

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator.

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator.

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility.

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable 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, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

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

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and 469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) 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 operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

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

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

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

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

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability 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 to an originally filed federal, state, or local tax return, including adjustments resulting from an audit, 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, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes; the utility must include the related tax liability or tax refund in the first tax report filed after the tax liability or tax refund has been paid or received and the taxing authority has made a final determination regarding the adjustment;~~

(C) Taxes paid must include 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 must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

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

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order.

(a) Within 20 days following the 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 that contains 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 is properly attributed to the 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 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 regulated operations of the utility and the amount of local taxes collected in rates; and

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

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006.

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment.

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must 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 must be

calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule.

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission.

(d) Any rate adjustment must 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 must 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 July 1 of the tax year.

(f) The automatic adjustment clause must 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) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. 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 subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition 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 denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

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

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