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VIA EMAIL (puc.sb408@state.or.us)

Judy Johnson
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PO Box 2148
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Re: *PacifiCorp's Responses to Staff's Questions*

Attached is PacifiCorp's response to Staff's questions from the August 12, 2005 letter regarding implementation of Senate Bill 408.

Very truly yours,

A handwritten signature in black ink, appearing to read "SJA", written over a horizontal line.

Sarah J. Adams Lien

SJL:knp
Enclosures

1. In Section 3(1), does “determined without regard to the tax year for which taxes were paid” mean that, for example, 2006 taxes paid equal net cash payments during calendar or fiscal year 2006?

The phrase “determined without regard to the tax year for which taxes were paid” means that the amount of “taxes that was paid” is the total cash payments for taxes made by the utility or its affiliated group to all units of government during the fiscal year being reported and properly attributed to the utility, including tax settlement payments and associated interest that was paid by the utility or its affiliated group during the reporting year, plus the following three additions provided by Section 3(13)(f)(A), (B) and (C):

- o the amount of tax savings from charitable contributions by the utility;
- o the amount of tax savings associated with utility expenditures in regulated operations to the extent the expenditures were not taken into account by the Commission in the utility’s last general ratemaking proceeding; and,
- o deferred taxes related to the regulated operations of the utility.

The amount of “taxes that was paid” is offset by the amount of any tax refunds received during the fiscal year being reported, including any interest component.

Computation of the “tax savings” is addressed in response to Questions 19-21.

The amount of “taxes that was paid” is reported on a fiscal year basis pursuant to Section 3(13)(g), which defines “Three preceding fiscal years” as the three most recent consecutive fiscal years preceding the date the tax report is required to be filed. For consistency, the amount of the three adjustments provided by Section 3(13)(f)(A), (B) and (C) should also be based upon the fiscal year being reported.

2. In Section 3(1), what provision should be made for a utility whose fiscal year ends close enough to October 15 that not all the pertinent data is available for the tax report?

The bill requires utilities to annually file tax reports on or before October 15. The bill requires the tax report to contain information about the “amount of taxes that was paid by the utility in the three preceding years, or that was paid by the affiliated group . . .” The bill defines the “Three preceding years” as the three most recent consecutive fiscal years preceding the date the tax report is required to be filed. The Commission is not granted authority to postpone the reporting deadline. Consequently, for utilities whose fiscal year ends close enough to October 15 that not all the pertinent data is available for the tax report, the Commission should recognize that the tax report will not contain actual data for the preceding fiscal year sufficient to calculate the amount of an automatic adjustment.

3. In Section 3(3), what does “directly or indirectly” mean with respect to taxes collected as part of rates?

As used in Section 3(3), “the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers” should be computed in the same way as the amount of “taxes authorized to be collected in rates”.

Pursuant to Section 3(13)(e), the amount of “taxes authorized to be collected in rates” is the product of multiplying:

- o revenues collected from ratepayers in Oregon adjusted for any rate adjustment under Section 3;
- o the ratio of net revenues from regulated operations to gross revenues from regulated operations, as determined by the Commission in establishing rates, and
- o the effective tax rate resulting from the utility’s last general rate case.

4. In Section 3(3), is disclosure limited to a difference based on the entire amount paid by the affiliated group with no attribution to regulated operations?

Yes, the public disclosure amount is based on the amount paid by the affiliated group. The amount subject to public disclosure is the difference between the amount reported for “taxes that was paid” in Section 3(1)(a) (called “Total Taxes paid by Utility or Affiliated Group” on the proposed Utility Tax Report) and the amount reported for “taxes authorized to be collected in rates” in Section 3(1)(b) (line (d) of the proposed Utility Tax Report).

As discussed in response to Question 1 above, the amount reported for “taxes that was paid” is the total cash payments for taxes made by the utility or its affiliated group during the fiscal year being reported plus the three additions provided by Section 3(13)(f)(A), (B) and (C). The calculation of the amount “authorized to be collected in rates” is discussed in response to Questions 3.

5. **Do the following phrases all have the same meaning: “amount of taxes authorized to be collected in rates” (3(1) and 3(13)(e)); “amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers” (3(3)); “amount of taxes assumed in rates or otherwise collected from ratepayers” (3(4)); and “taxes that are authorized to be collected through rates” (3(6))?**

Yes. The phrases “amount of taxes authorized to be collected in rates” (Sect. 3(1) and 3(13)(e)) and “taxes that are authorized to be collected through rates” (Sect. 3(6)) are substantively identical. There is no principled basis for distinguishing them.

Although the phrases “amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers” (Sect. 3(3)) and “amount of taxes assumed in rates or otherwise collected from ratepayers” (Sect. 3(4)) differ from the phrases used in Sections 3(1), (6) and (13)(e), the bill defines the phrases used in Sections 3(1), (6) and (13)(e) and provides no guidance on the calculation or meaning of “amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers” or “amount of taxes assumed in rates or otherwise collected from ratepayers”. Furthermore, the definition of taxes authorized to be collected in rates apparently includes all taxes and fees included in rates that are not based on value, units sold or a fixed dollar amount. There is therefore no principled basis for distinguishing the phrases in Sections 3(3) and (4) from the phrases in Sections 3(1), (6) and (13)(e).

6. In Section 3(6), how should “properly attributed to the regulated operations of the utility” be defined and calculated?

“Properly attributed to the regulated operations of the utility” means the portion of taxes paid to all units of government by a utility or its affiliated group equal to the tax expense associated with regulated operations calculated on a standalone basis.

7. In Section 3(7), how should “properly attributed to any unregulated affiliate” be defined and calculated?

“Properly attributed to any unregulated affiliate” means the portion of taxes paid to all units of government by a utility’s affiliated group that is greater than the tax expense associated with regulated operations calculated on a standalone basis.

8. **In Section 3(9), does the use of the term “establishing” mean that any determination of material adverse impact should be made when the Commission considers requiring a utility to set up an automatic adjustment clause?**

Pursuant to the August 24, 2005, letter from Jason Jones, PacifiCorp is not answering this question at this time.

9. In Section 3(12)(a), how should “portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” be defined and calculated? Also explain how this section works in combination with 3(12)(b).

The “portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” (Sect. 3(12)(a)) means:

- (1) the total cash payments for taxes received by all units of government from the utility or its affiliated group
- (2) that are based on the net taxable income generated from regulated operations alone with no adjustments based on the tax savings or liabilities of other members of the consolidated group or the utilities non-regulated operations (the “utility’s standalone tax expense”), plus
- (3) the amount of tax savings from charitable contributions by the utility, the amount of tax savings associated with utility expenditures in regulated operations to the extent the expenditures were not taken into account by the Commission in the last general ratemaking proceeding, and deferred taxes related to the regulated operations of the utility (the “tax savings”).

Computation of the “tax savings” is addressed in response to Questions 19 through 21.

In contrast, the “total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies” (Sect. 3(12)(b)) means (1) the total cash payments for taxes received by all units of government from the utility or its affiliated group without regard to whether those payments relate to regulated operations plus (2) the tax savings.

Hypothetical A

If the utility or affiliated group paid \$125, and the utility’s standalone tax expense was \$40, and the tax savings totaled \$30, the “portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” would be \$70 (lesser of affiliated group \$125 or utility standalone \$40, plus \$30). The “total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies” would be \$155 (\$125 plus \$30). The lesser of (a) and (b) is \$70. Pursuant to subsection 12, the amount of taxes paid that are properly attributed to the regulated operations of the utility may not exceed \$70.

Hypothetical B

If the utility or affiliated group paid \$5, and the utility’s standalone tax expense was \$40, and the tax savings totaled \$30, the “portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” would be \$35 (lesser of affiliated group \$5 or utility standalone \$40, plus \$30). The “total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies” would be \$35 (\$5 plus \$30). The lesser of (a) and (b) is \$35. Pursuant to subsection 12, the amount of taxes paid that are properly attributed to the regulated operations of the utility may not exceed \$35.

- 10. Assume that an automatic adjustment clause is established. Show each step of the calculation required by, in particular, Sections 3(6), 3(12) and 3(13), identifying all information that must be available in the tax report to perform the calculation.**

Pursuant to the August 24, 2005, letter from Jason Jones, PacifiCorp is not answering this question at this time.

11. Assume the following tax data for three different utilities and their affiliates for a particular year:

	<u>Utility A</u>	<u>Utility B</u>	<u>Utility C</u>
Regulated Utility Operations (tax liability)	130	130	130
Affiliate X (tax liability)	130	65	-20
Affiliate Y (tax liability)	-60	-95	-60
Tax Payment to Governments	200	100	50

For each utility, what is the amount of:

(a) “taxes paid. . .that are properly attributed to regulated operations of the utility” under Section 3(6); and

(b) “portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” under Section 3(12)(a)?

(Assume no adjustments are required under Section 3(13)(f).)

- (a) The “taxes paid. . .that are properly attributed to regulated operations of the utility” under Section 3(6), assuming no adjustments are required under Section 3(13)(f), are as follows:

Utility A = 130
Utility B = 100
Utility C = 50

- (b) The “portion[s] of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility” under Section 3(12)(a), assuming no adjustments are required under Section 3(13)(f), are as follows:

Utility A = 130
Utility B = 100
Utility C = 50

12. Should adjustments to rates under the automatic adjustment clause be prospective (an estimate for the next year), retroactive (a “true up” based on actual known results), or both?

Insofar as “retroactive” means reaching back to adjust for taxes paid and taxes in rates before January 1, 2006, the bill expressly prohibits such adjustments under Section 4(2).

The bill provides for an adjustment to rates based on actual tax data. Specifically, the bill provides that the automatic adjustment clause shall account for and apply to “taxes paid” and rates “collected” on or after January 1, 2006. (Sect. 3(6) and 4(2).) The bill defines “taxes paid” as taxes “received” by government. The bill requires the Commission to use actual tax data to assess whether an adjustment is required.

13. If the automatic adjustment clause includes a retroactive true-up feature, does that require authorization under ORS 757.259?

Pursuant to the August 24, 2005, letter from Jason Jones, PacifiCorp is not answering this question at this time.

14. **If the automatic adjustment clause includes a deferred or balancing account, at what date are amounts added to the account? Does the account accrue interest, and if so, from what point in time?**

Pursuant to the August 24, 2005, letter from Jason Jones, PacifiCorp is not answering this question at this time.

- 15. In Section 3(13)(d)(A), does income in “federal, state or local tax or fee that is imposed on or measured by income” mean (a) gross income; (b) net income; (c) revenues/receipts, gross or net; or (d) all of the above? Also, provide a list of taxes and fees that would be subject to the legislation.**

The reference to “income” in the phrase “federal, state or local tax or fee that is imposed on or measured by income” in Section 3(13)(d)(A) means any tax or fee that is not based on value, units sold or a fixed dollar amount.

PacifiCorp is currently compiling a list of taxes and fees subject to this legislation.

16. What is the definition of “revenues the utility collects from ratepayers in Oregon” in Section 3(13)(e)(A)? Does it include sales for resale?

“Revenues” should be defined as the non-temperature normalized Type 1 revenues as used in the Company’s Results of Operations report to the Commission. In this way, the definition of actual revenues is consistent with the definition of revenues used in setting rates.

Consistent with the definition of revenues that the utility collects from ratepayers in Oregon, the definition of revenues in Section 3(13)(e)(A) should not include sales for resale. This is also consistent with the definition of revenues in ORS 757.612(2)(a) (setting the public purpose charge at three percent of the total revenues collected by the electric company).

17. What is the definition of “effective tax rate” in Section 3(13)(e)(C)?

The “effective tax rate” is a calculated rate using the total income tax expense as a percentage of net income. From a regulatory perspective, the effective tax rate is the total income tax expense used by the Commission in establishing rates in the last general rate case, including both the current and deferred income tax expenses, as a percentage of net income established in the last general rate case.

18. How should local income taxes, which are collected as a line item in the bill rather than in a utility's base rates, be considered under Section 3(13)(e)?

Local income taxes are based on income and paid to a local unit of government. The Commission, state statute and administrative rules authorize electric utilities to collect these taxes from Oregon ratepayers. Local income taxes are "imposed on or measured by income" and are therefore included in the definition of "tax" (Sect. 3(13)(d)). Accordingly, local income taxes should be included in the calculation of both "taxes authorized to be collected in rates" (Sect. 3(13)(e)) and "taxes paid" (Sect. 3(13)(f)).

19. For the adjustments to taxes paid described in 3(13)(f), what tax rate (e.g., statutory, effective) should be used to calculate the “tax savings?”

Deferred tax liability is already computed pursuant to the statutory tax rate.

The statutory tax rate should also be applied to charitable contribution deductions (Sect. 3(13)(f)(A)) and deductions associated with expenditures by the utility in regulated operations to the extent the expenditures were not taken into account by the Commission in the last general ratemaking proceeding (Sect. 3(13)(f)(B)).

No “tax rate” needs to be applied to tax credits because the amount is already stated in tax-effected dollars. The tax associated with tax credits from expenditures associated with investment by the utility in regulated operations (Sect. 3(13)(f)(B)) is the actual dollar amount of the credit.

20. Does “charitable contributions made by the utility” in Section 3(13)(f)(A) require any allocation between the regulated operations of the utility, and the unregulated operations of the utility? If so, on what basis would the allocation be done?

No allocation is required or appropriate. The Commission should look at the actual cash contributions by the utility and apply the statutory tax rate as described in response to Question 19. No objective basis exists for determining whether a charitable contribution was made on behalf of a utility’s regulated or unregulated operations.

21. Does “tax savings realized as a result of tax credits associated with investment by the utility” in Section 3(13)(f)(B) mean only direct tax credits, or alternatively, any tax savings (deductions) related to investment that is new, previously disallowed, or otherwise not included in the utility’s most recent general rate case?

“Tax savings” in Section 3(13)(f)(B) means tax benefits and includes deductions associated with investment by the utility in the regulated operations that is new, previously disallowed, or otherwise not included in the utility’s most recent general rate case. This interpretation is consistent with the SEC Staff’s application of PUHCA Rule 45(c), which uses interchangeably the terms “tax credits”, “tax benefits” and “tax savings”.

Additionally, “realized” in Section 3(13)(f)(B) should be defined to mean generated or earned such that when the utility makes an expenditure in the regulated operations of the utility and that expenditure generates tax credits (*e.g.*, Production Tax Credits from investment in wind generation) or other tax savings, the amount of “taxes paid” is increased by the amount of those tax savings to the extent the expenditures giving rise to the tax savings have not been taken into account by the Commission in the utility’s last general ratemaking proceeding.

- 22. How much time should the Commission use under Section 3(4) to “make the determinations described in this section” and “require the utility to establish an automatic adjustment clause,” respectively?**

Pursuant to the August 24, 2005, letter from Jason Jones, PacifiCorp is not answering this question at this time.

23. **If you wish, provide comments on any questions or other sections of the bill that you believe the Commission needs to consider in its temporary rulemaking.**

24. **If you wish, provide proposed temporary rules that address information that should be provided in the tax report and how the automatic adjustment clause should be calculated.**

Please see PacifiCorp's proposed temporary rules (860-027-0006 Utility Tax Reports) and proposed Utility Tax Report, submitted earlier today.