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March 4, 2005

**COMMENTS OF THE NORTHWEST INDUSTRIAL GAS USERS
ON DEPARTMENT OF JUSTICE MEMORANDUM**

The Northwest Industrial Gas Users (“NWIGU”) appreciates this opportunity to comment upon the Department of Justice's February 18, 2005 Memorandum (“DOJ Memorandum”) on the legality of setting utility rates based upon the tax liability of its parent.

As recognized in the DOJ Memorandum, the Oregon Public Utility Commission (“OPUC”) has the discretion under existing law to address alternatives to the current stand-alone utility policy to ensure that customer rates are fair, just and reasonable when determining the level of estimated taxes to be included in customers' rates. NWIGU wholly agrees that the Commission has this authority under ORS Section 756.040. As pointed out in the DOJ Memorandum, NWIGU also agrees that the Commission's policy must be rational, including taking into account the benefits and burdens of its policy and that the Commission's policy must meet minimum constitutional requirements under the Hope standard (Federal Power Commission v. Hope Natural Gas Pipeline, 320 U.S. 591 (1944)). The rational application of this policy in any given context will depend upon the circumstances presented under a particular consolidated tax structure, the history of actual taxes paid and the forecast of taxes to be actually paid by the utility or the utility's parent. A treatment of taxes other than the OPUC's current stand-alone utility policy can be contemplated under numerous alternative structures that are constitutionally sufficient as the Hope case only requires that the end result is fair (not a review of each expense or cost item).

NWIGU is not advocating that the Commission adopt a new generic policy at this time. The Commission need only clarify that it has the discretion to examine all appropriate alternatives to a stand-alone utility model and that in any rate case or other proceeding in which the Commission is reviewing such issues, the parties may advocate appropriate resolutions to the treatment of taxes as an operating expense. Appropriate resolutions may include an actual taxes-paid approach, a cost of capital adjustment in the return authorized with a stand-alone utility approach to estimated taxes, an offset to estimated tax liability of the utility for measurable tax deductions at the parent company that are related to the regulated utility in a modified stand-alone utility approach or some other adjustment that gives the benefits of consolidated tax savings to ratepayers if the customers bore any of the burden of paying the deductible expenses that generated the savings under the City of Charlottesville v. FERC, 249 U.S. App. D.C. 236, 774 F2d 1205 (1985), analysis.

For example, NWIGU finds merit in CUB's suggestion in this proceeding that the Commission should attempt to more accurately forecast taxes by including known and measurable tax deductions at the parent company that are related to the regulated utility and are properly allocated with nexus to the regulated utility. This includes the tax deduction from debt at the utility holding company which has a nexus to the cost of capital for the utility.

The Commission should at this time find that it has the discretion, whether through expense or rate of return adjustments or some other mechanism, to address issues concerning the proper treatment of tax expenses under the circumstances of the particular facts presented in each rate case or other proceeding where such issues are before the Commission.

If you have any questions about these comments, please do not hesitate to call me at 503.224.3092 or Paula Pyron, Executive Director of NWIGU, at 503.636.2580.

Very truly yours,



Edward A. Finklea

On behalf of the Northwest Industrial Gas Users

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