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January 4, 2006

Gail Kinsey Hill, Reporter
The Oregonian
1320 SW Broadway
Portland, OR 97201-3499

Re: Petition for Public Records Disclosure Order:
Public Utility Commission Records

Dear Ms. Hill:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on December 29, 2005, asks the Attorney General to order the Public Utility Commission (Commission) to disclose "the Tax Report and supporting materials required of certain utilities under Senate Bill 408." For the reasons that follow, we respectfully deny your petition.

Section 3(1) of Senate Bill 408, which was enacted as Oregon Laws 2005, chapter 845, requires certain utilities to file annual tax reports that show the amount of income taxes that they were authorized to collect in rates and the amount of income taxes that they paid to units of government. If a utility is part of an affiliated group that paid taxes on behalf of the utility, then the report must show the amount that the affiliated group paid. Under section 3(4), if a report shows that, for any of the three preceding years, the collection and payment differed by $100,000 or more, then the Commission must adopt an automatic adjustment clause to match up collections with payments.

In a letter dated November 18, 2005, the Commission denied your request for copies of the tax reports. The Commission's denial specifies that the reports you seek were submitted by Portland General Electric Company, Pacific Power and Light, NW Natural Gas Company and Avista Utilities. It concludes that the information in the requested reports, other than that disclosed by the utilities, was "privileged" under SB 408 and therefore exempt under ORS

192.502(9).[1] We have analyzed SB 408 to determine whether it makes the tax reports privileged or confidential so as to qualify them for exemption from disclosure.

The salient provision of SB 408 in relation to the question of disclosure is section 3(11). It restricts the Commission's use of information in the submitted tax reports:

> The commission may not use the tax information obtained by the commission under this section for any purpose other than those described in subsections (1) to (10) of this section. An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

Out of the 10 subsections referenced in section 3(11), only section 3(3) provides for public disclosure of tax information. It authorizes the Commission to disclose the difference between taxes a utility collected and paid:

> The commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the public 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.

Your petition states that SB 408 does not prohibit disclosure of the tax reports because "[t]here is not a single line that explicitly bars public disclosure of this information." As an example, your petition cites the fact that "[n]owhere in the lengthy text of SB 408 do the words 'confidential' or 'prohibit' appear." However, section 3(11) expressly restricts the Commission's *use* of the tax report information to fulfill only those purposes described in the 10 subsections that precede it, raising the question of whether the legislature intended this restriction on "use" to be a restriction on "disclosure."[2]

The fact that section 3(3) is concerned solely with disclosure of tax report information supports the idea that the legislature intended the term "use" in section 3(11) to encompass "disclosure." Section 3(3) authorizes, but does not require,[3] the Commission to disclose the difference between taxes collected and paid by a reporting utility. Providing the Commission with this limited authority, and specifying in section 3(11) that additional information may be

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[1] ORS 192.502(9) exempts from disclosure records and information "the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

[2] The definitions of "use" most germane to the text of section 3(11) are: "to carry out a purpose or action by means of: make instrumental to an end or process: apply to advantage: turn to account: UTILIZE" and "to put into action or service: have recourse to or enjoyment of: EMPLOY * * * EXERCISE." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED (2002) 2523-2524.

[3] Although section 3(11) makes reference to tax report information "required to be made publicly available" under section 3, no provision of that section requires disclosure by the Commission.

disclosed to an intervenor only pursuant to a protective order, would serve no purpose unless the legislature intended to restrict the Commission from disclosing information contained in the tax reports through the restriction on "use" in section 3(11).

A second provision of SB 408 provides additional support for this reading of section 3(11). Section 2(1)(g) states a legislative finding:

> Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.

This generally worded declaration does not impose any restriction on the actions of the Commission. However, the statement is consistent with, and provides a justification for what we interpret the legislature to have intended in section 3(11), namely to greatly restrict the Commission's authority to disclose information in the tax reports.

Reading section 3(11) within the context provided by sections 3(3) and 2(1)(g), we conclude that section 3(11)'s restriction on "use" should be read to restrict "disclosure" of the tax reports, so that the only information the Commission may publicly disclose without regard to whether such disclosure is for a purpose described in subsections (1), (2), or (4)-(10) of section 3 is the difference between the amount of taxes collected and paid. The Commission's denial states that this information has already been disclosed by the reporting utilities and that your request was for "the balance of the tax report information." Because disclosing any additional information to you would not be for a purpose described in the relevant provisions of SB 408, such disclosure is prohibited, making the information exempt from disclosure under ORS 192.502(9). For this reason, we deny your petition.[4]

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS16804
cc: Rick Willis, Exec. Director PUC

[4] Because we conclude that the requested information is exempt under ORS 192.502(9), we do not address the portions of your petition pertaining to the federal law and trade secrets exemptions.