

May 23, 2011

Governor John Kitzhaber
State Capitol
Salem, OR 97301



Dear Governor Kitzhaber:

The Independent Party of Oregon requests that you veto SB 967, which would repeal a 2005 law that prohibits regulated utilities from charging ratepayers for federal, state, and local "income taxes" that in fact were not paid to any unit of government by the utility.

SB 967 removes language that was adopted under SB 408 (2005) that directed the Oregon Public Utility Commission (OPUC) not to allow utilities to charge ratepayers more for "income taxes" than the utilities actually pay to governments. SB 967 expressly repeals that prohibition, re-opening the door to charging ratepayers for "income taxes" based upon completely hypothetical calculations of what the utilities might possibly pay, whether or not they actually do.

David Cay Johnston, the Pulitzer Prize-winning former tax reporter for the New York Times, described SB 967 in State Tax Notes (February 28, 2011) as "the Warren Buffett and friends personal tax relief act. Let's call it the Tax Heists Enriching Financial Titans Act, or THEFT for short."

The 2005 law, SB 408 (2005), received 54-6 support in the House and 30-0 support in the Senate. Senator Vicki Walker (D Eugene), the primary sponsor of SB 408 (2005), stated at its enactment:

"For several years, the large electricity and gas utilities regulated by the Oregon Public Utility Commission have been charging to Oregon ratepayers hundreds of millions of dollars for "state income taxes" and "federal income taxes" that in fact have not been paid to any government. Currently, the best available estimate of these charges to Oregon ratepayers is \$150 million per year."

Between 1998 and 2006, Portland General Electric (PGE) charged Oregon ratepayers over \$750 million for such never-paid income taxes. The OPUC Commissioners fully supported this practice and forcefully opposed the adoption of SB 408. Since 2005, SB 408 has required PGE to refund \$40 million to ratepayers, a number that will nearly double if Utility Reform Project and Ken Lewis (Chair of the Oregon Government Ethics Commission) prevail in a lawsuit now before the Oregon Court of Appeals to require PGE to return the unpaid taxes it charged ratepayers during the last 3 months of 2005. Another important result of SB 408 (2005) is that PGE has since 2006 has actually been paying income taxes to the State of Oregon (averaging over \$10 million per year), because SB 408 (2005) removed the incentive to avoid paying.

As for PacifiCorp, the OPUC has used SB 408 (2005) to increase PacifiCorp's rates by adopting a fundamentally flawed method for attributing income taxes paid by parent corporations (such as Berkshire Hathaway) to the subsidiary utility (such as PacifiCorp) so that the subsidiary utility receives credit for the income taxes paid by the parent corporation (the consolidated filer), even if the utility pays zero. The OPUC's method is absurdly complex and relies on confidential information about the worldwide operations of the parent corporation and all of its other subsidiaries (such as worldwide sales revenue, worldwide payroll, and worldwide value of property owned) -- information that no party in any Oregon rate proceeding can check for accuracy. It is this methodology that has allowed PacifiCorp to impose \$53.5 million in surcharges on Oregon customers. David Cay Johnston noted:

"Customers had to pay \$53.5 million in surcharges for taxes not collected [from ratepayers]. The problem is that no one really know if that is reality or just gifts to [Warren] Buffet and friends . . ."

The appropriate response of the Legislature is not to repeal SB 408 (2005) but to simplify the OPUC's implementation of it by specifying in law adoption of the Pennsylvania methodology for attributing some part of the income taxes paid by a parent corporation to its subsidiary utility. HB 3462, introduced by Representative Gene Whisnant (Central Oregon) does that and should be adopted instead of SB 967.

Additional reasons to veto SB 967 are presented in the attached Testimony of Daniel Meek to the House Committee on Business and Labor, along with the exhibits to that testimony.

We urge that you veto SB 967.

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