Bear Facts

The Winter/Spring 2011 newsletter of the Citizens' Utility Board of Oregon and the CUB Policy Center.

Why Oregon Needs Utility Tax Reform Still

CUB members probably all remember the battles around "phantom taxes" from a few years ago. "Phantom taxes" built into utility rates happen because some utilities are not stand-alone companies and file taxes as part of the larger affiliated group. Rather than pay taxes to the government, these utilities pay "taxes" to their parent company, which, after working internal company magic has in some cases been able to retain the "tax payment" as an increase to earnings instead of paying it to the government. Thus the tax bill, which is built into utility rates, can become a "phantom tax" existing only on paper and not paid in reality. Legislation seemed the only route to fix the problem.

The legislative fight in 2005 was difficult. All of the Oregon utilities fought the legislation. CUB, with other customer organizations, led the fight to pass SB 408. Ultimately, we prevailed and SB 408 passed. Under that legislation, for any given year, the PUC is required to true up the difference between taxes paid by customers and taxes the utility (or its parent company) pays to the government. If there is an imbalance and customers paid too much, then there is a refund. If customers paid too little, then there is a surcharge.

Implementing the law proved difficult, to put it mildly. One of the big problems we've encountered is what has been called "the double whammy." When a utility has higher costs than we forecast, lower revenues than we forecast or a combination of the two, it is going to have lower profits than forecast. Lower profits also means lower taxes. Under the true up provision of SB 408, a utility that has a bad year and earns less than its rate of return has to refund tax payments to its customers, thus making its already bad year worse. But, when a utility has lower costs than forecast, greater revenues or a combination of both, it also has higher profits than forecast and should pay higher taxes than forecast. Under SB 408, this utility gets to surcharge its customers for its higher taxes, making its good year even better.

Now, after a couple of years in place, one thing we find when evaluating SB 408 is that the results vary by utility. On the gas side, customers of NW Natural are being hit with a surcharge every year, while customers of Avista are receiving refunds every year. In both cases, the surcharges and refunds are the results of the double-whammy and not the result of consolidated companies or affiliates.

On the electric side, Enron and ScottishPower, two companies that inspired part of the work we did on SB 408, are gone, replaced by an independent PGE and the enormous Berkshire Hathaway owned PacifiCorp. PGE customers have benefited from SB 408 refunds. PGE has had a series of higher costs caused by problems at its Boardman plant, the requirement to refund to customer dollars associated with the Trojan nuclear power plant, and broken equipment at its Pelton/Round Butte hydro facility. These issues have led to the company having lower earnings than forecast, and thus to them also having lower taxes. Under SB 408, PGE customers have received refunds. PacifiCorp, on the other hand, hit its customers mostly with surcharges.

A wonderful side effect of SB 408 has been the elimination of a tool that holding companies have used to purchase utilities. By prohibiting a holding company from using debt at its parent level to purchase a utility and hide a tax deduction from the utility's customers, SB 408 takes away an important means by which utility purchases are financed. Because that tax deduction will be passed through to customers, purchasing an Oregon utility is not as lucrative as purchasing utilities in other states. None of the four utilities that are affected by SB 408 have changed hands since the law passed, even though there has been a large number of utility mergers around the country. (The change in ownership of PGE and PacifiCorp happened before SB 408 was law.) CUB believes this is a huge and powerful benefit to SB 408.

But problems with how the law is working do persist. NW Natural and PGE offer a good contrast. After Enron left town PGE became an independently owned utility. Now both NWN and PGE are independent utilities with the bulk of their

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Letter from Executive Director

We get a lot of phone calls here at CUB from members and customers who want to understand what's going on with their utility bills. And sometimes we get ones like the one our utility analyst Gordon received: a man who worked out on the coast who was appalled and horrified that their local fire department had found a man suffering from hypothermia in his own home. The man, a customer of Pacific Power had seen his rates increase by more than 50% in recent years and couldn't afford to pay his electricity bill during the coldest winter out on the coast in years.

This is real and is happening to Oregon families today. People are being forced to make a choice: utility bills versus medical bills versus food versus child care versus rent. And some are being forced to survive after their power has been shut off.

You would think the utilities would notice that families can no longer afford the product they are selling. But utility after utility comes to the PUC and asks for even higher rates. It's like they don't get it at all.

Stories like the one above can help. They put a human face on the issue of increasing utility bills. If you are struggling to pay your bills, or if you know folks who are, send me your story. We will make sure these stories are heard by the utilities and the PUC which determines the rates utilities can charge.

We've heard enough of these stories to know that many Oregon households are having trouble paying their utility bills. We tell these stories and ask the hard questions to the utilities, pouring over their filings to find every saving for you we can. Over the last 26 years, we've saved customers more than 4.8 billion dollars. But we know that in these difficult times, that is not enough.

Send me your story about how hard it is to manage rising utility bills and I will make sure your voice is heard.

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Utility Tax Reform continued:

operations dedicated to providing utility service in Oregon. Both have experienced the double whammy, but both have been nearly exclusively on one side of the double whammy – PGE paying refunds and NW Natural charging surcharges. While NW Natural has earned more than its allowed rate of return – CUB thinks it is over-earning – and has had to pay additional taxes as a result, it has, nevertheless been able to bill those excess taxes to customers, thus creating additional earnings for its shareholders. PGE, on the other hand, has earned less than its allowed rate of return, has paid less in taxes, and has still had to refund money to customers, further reducing its earnings. Five years ago, when we were developing the rules for SB 408, NW Natural's stock price was $33.4/share. Today, its stock price has increased by about 33% to $47.39. Five years ago, PGE's stock price was $28.5/share. Today it has declined 18% to $23.5/share.

Finally, we note that in order to deal with its under-earning, PGE has filed three rate cases during this period of time to increase its rates. NW Natural, on the other hand, has been able to avoid a rate case that could cut its rates. One poor consequence of SB 408 is that it actually has made it harder to reduce the rates of a utility like NW Natural that is over-earning. NW Natural's customers pay too much. If a utility is chronically over-earning, it is a sign that rates are too high. Initiating a rate case to reduce rates is a tremendous amount of work. It requires the PUC staff to go in and audit the books of the company in order to prove that rates should be reduced. Because of the burden SB 408 puts on the PUC staff – from October through March, SB 408 true up proceedings for each of the energy utilities, dominates the workload – SB 408 is actually is making it harder for the PUC to do the necessary work to gain rate relief for NW Natural customers. So instead of a rate reduction, NW Natural customers continue to see annual surcharges. Sadly, it seems that justice is not to be had even with the advent of SB 408. Something has to be done.

Which brings us to the need to reform SB 408. Can we remove the burden of the annual true-up proceedings, while at the same time preventing a new set of utility mergers? Repealing SB 408 and returning to the days when the PUC charged customers hundreds of millions of dollars for taxes, regardless of whether the utility's parent company actually paid taxes, is unacceptable. For all its flaws, SB 408 is preferable to what came before it. But from our experience with SB 408, we know we need a different fix. CUB, having learned from the SB 408 experiencethinks we now have the knowledge to design a new and improved system that is fair to customers while being simpler and eliminating surcharges associated with over-earning utilities. CUB believes this can be done if we require the following:

1. We get rid of the SB 408 requirement of an annual true up. Outside of SB 408, other utility costs can also subject to true-ups but only where it make sense. If the SB 408 annual true up is repealed, we will still be able to true up taxes. But we can do it on a case-by-case basis, not as a legal requirement. This will reduce the burden of SB 408 and still allow us to true up taxes if another Enron shows up.

2. We provide clear direction in the law that the PUC must look at the corporate structure, and consider the actual tax payments that are made to government when determining customer rates. We believe the Commission could have done this before SB 408, and we advocated that in the ScottishPower/PacifiCorp rate case which came before SB 408. However, because the PUC staff historically opposed such adjustment to utility taxes, any reform of SB 408 must ensure that the PUC is required to protect customers from overpaying utility taxes.

3. Explicit direction for the PUC to consider true ups and holding company equity when a utility merger is being considered. We want to send a message to holding companies that Oregon is not going to encourage you to purchase our utilities by giving you tax breaks to do so.

If we require these things, we can create a regulatory structure that does not allow Enrons and ScottishPowers to turn tax payments made by customers into profits for themselves, while at the same time ending the practice of over-earning utilities placing additional costs onto customers.

WARM Tariff Explanation for NW Natural Customers

A CUB member recently called with some questions about her NW Natural bill. As usual, her questions sparked some interest among the CUB staff. The CUB member was specifically asking about two adjustments on her monthly bill - the Billing Factor and the WARM Tariff. CUB Utility Analyst Gordon Feighner researched these two fees, which impact the majority of NW Natural customers, and explains them here, in plain English.

Both of these adjustments are somewhat complicated calculations that don't have very thorough explanations anywhere on the average customer's bill. With these types of adjustments and all of the other taxes and fees that comprise a utility bill, it's no wonder that most customers only look at the bottom line and the due date, and then write a check. Several weeks ago Gordon sat down with Gary Dye, NW Natural's Field Supervisor for Gas Measurement, to get a handle on the Billing Factor. This is referred to on the bill, unsurprisingly, as "Billing Factor". It is a number in the form of 1.XXX that is multiplied by the units of gas a customer uses each month to calculate the total therms (units) that are eligible for billing. You can find this about four or five lines down in the "Usage Summary" section of the bill. The Billing Factor consists of four sub-factors: temperature, pressure, BTU (British Thermal Unit --a measure of heat) factor, and meter multiplier. For most residential customers, the meter multiplier and temperature factors are irrelevant, as there is only one meter on a home and the majority of NW Natural's meters auto-correct for temperature. This leaves pressure and the BTU factor to make up the bulk of the Billing Factor.

Pressure is largely a function of altitude. NW Natural has mapped out its service territory into 1/2 square mile "plats" and calculated the average altitude in each plat. Put simply, atmospheric pressure decreases as altitude increases. Gas becomes less dense at lower pressure, so the higher a property is, the larger the pressure factor will be to compensate for lower gas density. Barometric pressure is also considered in the pressure factor, and is based on the National Weather Service's records at Portland International Airport. The combined pressure factor of barometric pressure and altitude is usually between 0.95 and 1.03 in NW Natural's service territory.

The BTU factor is based on the heat content of the gas that is flowing through NW Natural's system at a given time. Natural gas, being a natural resource, is not uniformly consistent. The composition of the mixture of gases in the system -- methane, propane, butane, and ethane -- can change slightly from day to day and month to month, affecting the heating value of the gas that eventually arrives at homes and businesses. The BTU factor is usually between 1.01 and 1.04 for NW Natural customers.

Taken as a whole, the Billing Factor for most customers is in the range of 2-3% each month. Extreme cases (usually in areas that are at high altitudes) may have a billing factor as large as 6-7%. For all customers, though, this adjustment is meant to improve the accuracy of gas meters by accounting for external factors.

The WARM (Weather Adjusted Rate Mechanism) tariff is the default for NW Natural's residential customers, meaning that customers who are not interested in participating must opt out of the program. WARM provides an adjustment to bills from December 1 through May 15 to help smooth variations in bills that result from weather being colder or warmer than normal. This means that when temperatures are colder than expected, bills will be a bit lower, but when temperatures are warmer than expected, bills will be a bit higher. This adjustment is limited to $12 per month, or 25% of a customer's monthly bill, whichever is less.

The extent to which WARM alters a bill in a given month is based on the total difference between the expected and actual temperatures in a billing cycle. This difference is measured in Heating Degree Days (HDD), which is a complicated calculation that is laid out in the official tariff notice located here.

So there you have it, an explanation of two seemingly mysterious factors that affect your monthly gas bill. CUB has supported the WARM tariff since its inception in 2003, and approved of its renewal in 2007. For customers who are not interested in participating in the program, there is a simple opt-out form available on NW Natural's website after you've logged on. The Billing Factor is also approved by both CUB and the Public Utility Commission, and CUB views it as a way to make billing more equitable for all customers.

Congratulations from everyone at CUB to Organizing Director Jeff Bissonnette and his wife Melanie Bissonnette on the birth of their son, Elijah Roy.

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