

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 170

In the Matter of

PACIFIC POWER & LIGHT COMPANY

**Request for a General Rate Increase
in the Company's Oregon Annual
Revenues**

**BRIEF REGARDING
RECONSIDERATION BY:**

**UTILITY REFORM PROJECT
AND NANCY NEWELL**

The Utility Reform Project and Nancy Newell [hereinafter URP] oppose the PacifiCorp petition for reconsideration.

As PacifiCorp concedes, the effective date of SB 408 was September 2, 2005. The final rate order in this case was issued on October 5, 2005. The Commission is required to make a decision according to the law in effect at the time of the decision. The mere filing of a rate increase request by a utility does not freeze the law as of the date of the rate filing or on any other date prior to the issuance of the Commission's decision.

As of September 2, 2005, SB 408 established that "Utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable." Section 2(1)(f). The fact that this express guidance to the Commission is contained Section 2 of the bill and not in Section 3 of the bill is immaterial. The Commission correctly concluded it was express guidance from the Legislature.

When someone challenges PacifiCorp's desire to keep all tax information secret, no doubt PacifiCorp will cite Section 2(1)(g) as express guidance from the Legislature that the information should remain secret.

PacifiCorp's references to legislative history are ineffective. Rep. Boquist's statement about "not change the original ratemaking process" is immaterial to changing the legal standards applicable to ratemaking. Changing the legal standards is not a change in process.

All the discussion about "fair" is also irrelevant, because Section 2(1)(f) also refers to "just and reasonable."

PacifiCorp incorrectly states (p. 6) that all "parties to the SB 408 rulemaking, AR 499, all agreed that the SB 408 tax reports filed in 2005 and 21006 * * * 'are for the sole purpose of determining whether there is a trigger for the automatic adjustment clause, not to support a rate change.'" URP did not agree to that and most certainly did not agree that there would be no "rate changes until after the 2007 tax report," which is absurd on its face. Further, it is also irrelevant, because the Commission did not use PacifiCorp's required annual report under SB 408 in making its rate adjustment in this case.

And, of course, SB 408 nowhere states that the Commission should continue to allow phony taxes in rates during any period at all. It mandates that

the automatic adjustment clause remove such phony taxes as of January 1, 21006, but the Commission has not implemented that.

As for the alleged requirement that the Commission first adopt rules before applying a statute, the Oregon Supreme Court has repeatedly rejected that contention. Also, there was no preexisting rule that was contradicted by SB 408.

PacifiCorp offers a misleading review of cases on whether an agency must engage in rulemaking before implementing a particular statutory provision.¹ In ***Forelaws on Board v. Energy Facility Siting Council***, 306 OR 205, 760 P2d 212 (1988), for example, the Court approved the agency's application of a statute without prior rulemaking.

So long as the parties had an opportunity to present evidence that addressed ORS 469.300(17)(a) as interpreted by EFSC, EFSC did not act unlawfully by interpreting the statute in its order rather than through rulemaking proceedings.

Id., 306 OR at 216. Here, the parties were allowed to present evidence pertaining to PacifiCorp's non-payment of the income taxes it desired to charge to Oregon ratepayers. There is nothing in Oregon law that required the Commission to first conduct a rulemaking.

Further, the rulemaking mandate in SB 408, Section 3(4), applies to implementation of the automatic adjustment clause. And all of the adjustment

1. Undersigned counsel argued several of the cases that PacifiCorp cites.

PacifiCorp now demands in the calculations of taxes paid, etc., are also expressly applicable only to the automatic adjustment clause and not to the determination of "fair, just and reasonable."

Dated: May 15, 2006

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing OPENING BRIEF OF: UTILITY REFORM PROJECT AND NANCY NEWELL by mailing a copy properly addressed with first class postage, and by electronic mail pursuant to OAR 860-013-0070 to the list maintained as of this day on the Commission's web site, to the following parties or attorneys of parties.

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