

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 170

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT COMPANY	)	ORDER
(dba PacifiCorp)	)	
	)	
Request for a General Rate Increase in the	)	
Company's Oregon Annual Revenues.	)	

**DISPOSITION: APPLICATION FOR RECONSIDERATION  
GRANTED**

On September 28, 2005, the Public Utility Commission of Oregon (Commission) issued Order No. 05-1050 (the "Order"), the final rate order in Docket No. UE 170. On October 28, 2005, PacifiCorp filed an application for reconsideration or rehearing of the Order, challenging our application of Senate Bill 408 (SB 408) to reduce the amount of income taxes to be included in rates. PacifiCorp enumerates various grounds explaining why the Commission should either reconsider and eliminate the \$26.6 million revenue requirement reduction made as part of the Order, or grant rehearing to provide PacifiCorp an opportunity to present evidence demonstrating the factual inaccuracy of the \$16.07 million tax adjustment, as well as the resulting financial impact of the revenue requirement reduction.

On November 14, 2005, the Industrial Customers of Northwest Utilities (ICNU) and the Citizens' Utility Board of Oregon (CUB) filed replies to PacifiCorp's application. On November 29, 2005, PacifiCorp responded to CUB's and ICNU's reply.<sup>1</sup>

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<sup>1</sup> PacifiCorp asserts that it has a right to respond to CUB and ICNU, citing OAR 860-013-0035 and OAR 860-013-0050. In the alternative, PacifiCorp asks leave to submit its response.

The rules cited by PacifiCorp in support of its request are general rules of practice regarding replies to pleadings. However, the specific rule regarding rehearing or reconsideration, OAR 860-014-0095, does not provide an opportunity for an applicant to respond, as our decision time is limited to 60 days from the filing of the application. No applicant, including PacifiCorp, has a right to file a response to the replies submitted by others.

We also deny PacifiCorp's request for leave to submit its response, which essentially is rebuttal argument to CUB's and ICNU's replies. In OAR 860-014-0095 cases, our decision is based upon the initial application and replies, if any. If the applicant meets the criteria for rehearing or reconsideration, we grant the application. In this case, the time to argue the facts and law will occur later in the proceeding.

In the challenged Order, the Commission determined that SB 408 applied to this rate proceeding. Furthermore, while acknowledging the complexity of the bill and the many difficult questions regarding its impact and implementation, we also concluded that SB 408 required abandonment of our long-standing use of the stand-alone methodology to calculate income taxes for ratemaking. Based on those decisions, we adopted a tax adjustment based on a proposal by CUB with modifications designed to more closely match taxes collected with taxes paid. In doing so, we recognized that the adjustment was imprecise, but reasonable.

In reviewing requests for reconsideration, we are guided by the requirements in OAR 860-014-0095. Section 3 of that rule states that the Commission may grant an application if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

## **Discussion**

After review of PacifiCorp's application and ICNU's and CUB's replies, we will grant PacifiCorp's application under OAR 860-014-0095(d). We reach this decision because the law relating to the income tax component of rates changed after the closure of the evidentiary record, submission of briefs, and oral argument.<sup>2</sup> Granting the application will ensure that PacifiCorp, along with the other parties, will have a full and fair opportunity to comment on the meaning and implementation of the new law.

As shown by Appendix A, SB 408 became law a mere 32 days before expiration of the suspension period for this case. While we asked the parties to address the application of then unsigned SB 408 during oral arguments, there was insufficient time for the Commission and parties to review and comprehend this complex legislation. This convergence of events required us to make a determination about the applicability of SB 408 without the ability to obtain additional input from the parties.

Since we issued the Order, the Department of Justice has compiled the legislative history of SB 408 for use in AR 499, a rulemaking docket opened to implement the new law. Clearly, this history is of use to PacifiCorp, intervenors, and us in determining the meaning of SB 408. By holding additional proceedings, the parties to

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<sup>2</sup> For the convenience of the parties, we have attached a chart, labeled as Appendix A, and incorporated herein, which sets forth the major activities that occurred in the legislature and in this docket.

this docket will have a full and fair opportunity to explain why we should, or should not, apply this new legislation to UE 170, and, if so, how we should apply it.

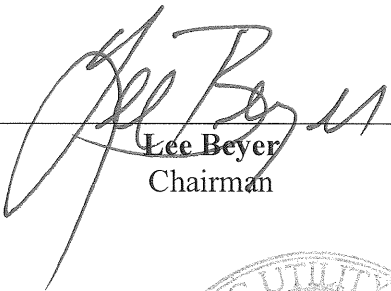
In conclusion, we will grant reconsideration so that the parties to UE 170 will have a more complete opportunity to brief the application of SB 408 to general rate cases. We also grant PacifiCorp an opportunity for hearing to determine whether the UE 170 rates fail to comport with ORS 756.040.

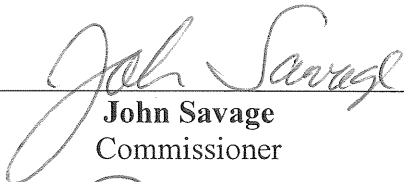
**ORDER**

IT IS ORDERED that:

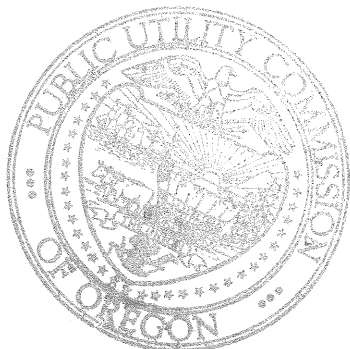
1. PacifiCorp's application for reconsideration and rehearing is granted.
2. The parties will be given an opportunity to brief whether SB 408 applies to this rate case, and, if so, how it should be applied.
3. A hearing will take place to determine if the \$16.07 million tax adjustment results in rates that are unconstitutional.
4. The Administrative Law Judge will schedule a conference to establish a procedural schedule for the docket.

Made, entered, and effective DEC 19 2005.

  
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**Lee Beyer**  
Chairman

  
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**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

**APPENDIX A**

<b>Date</b>	<b>UE 170</b>	<b>SB 408</b>
January 26, 2005		Introduction & first reading
April 18		Second reading
May 9	Staff/Intervenor testimony filed	
June 7	PacifiCorp rebuttal testimony filed	
June 8		Third reading – passed
June 9		First reading (House)
June 27	Staff/Intervenor surrebuttal testimony filed	
July 11	PacifiCorp sur-surrebuttal testimony filed	
July 20-21	Hearings	
July 29		Second reading (House)
July 30		Third reading (House) - passed
August 1		Senate passes w/House amendments
August 4	Opening briefs filed	President & Speaker signed
August 8	PacifiCorp extends initial September 11 suspension period to October 4, 2005	
August 11	Record closed; Reply briefs filed	
August 15	Oral argument	
September 2		Governor signed; bill became effective upon signing
September 28	Final Order issued	
October 4, 2005	Suspension period expired	