

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177

In the Matter of)	
)	
THE PUBLIC UTILITY COMMISSION OF)	
OREGON STAFF)	ORDER
)	
Requesting the Commission direct PACIFICORP,)	
dba PACIFIC POWER, to file tariffs establishing)	
automatic adjustment clauses under the terms of)	
Senate Bill 408.)	

**DISPOSITION: MOTION GRANTED; CLARIFICATION OF
ORDER NO. 08-201 ISSUED**

On April 11, 2008, the Public Utility Commission of Oregon (Commission) entered Order No. 08-201 in this proceeding. Order No. 08-201 contained the following Ordering Clauses:

1. The PacifiCorp 2006 Tax Report, as revised herein, is adopted.
2. A surcharge in the amount not to exceed Twenty Seven Million Dollars (\$27,000,000) shall be amortized through Schedule 102 in 2008-2009. Any remaining surcharge shall be deferred to PacifiCorp's SB [Senate Bill] 408 balancing account. Interest shall accrue on the unamortized balance and in the deferred account at Pacific Power's authorized rate of return, *subject to revision based upon the outcome of proceedings currently underway in docket UM 1147.* (Emphasis added.)

3. Tariff revision sheets filed as Advice No. 07-019, shall be amended as described herein and shall go into effect June 1, 2008.¹

In Order No. 06-507, entered in docket UM 1147 on September 6, 2006, the Commission determined that a rate other than a utility's authorized rate of return (AROR) should be applied to deferred accounts during amortization. Subsequently, in Order No. 08-263, entered in docket UM 1147 on May 22, 2008, the Commission established an alternative interest rate to be applied to amortized deferred accounts. That order established the Modified Blended Treasury Rate (an average of the one-, three- and five-year Treasury rates for a selected time period plus 100 basis points) as the interest rate to be applied to all non-expected deferred accounts in amortization, as of July 21, 2008, or any time thereafter.²

On July 16, 2008, Pacific Power filed a Motion for Clarification Re: Application of UM 1147 Orders (Motion). Pacific Power asked the Commission to clarify the application of Order Nos. 06-507 and 08-263 (UM 1147 Orders) to Pacific Power's SB 408 balancing account pursuant to Order No. 08-201. On July 21, 2008, the Industrial Customers of Northwest Utilities (ICNU) filed a Response to Pacific Power's Motion. Commission Staff (Staff) filed a Response on August 1, 2008. On August 6, 2008, Pacific Power filed a Motion for Leave to File a Reply in addition to a Reply to Staff's Response.

Pacific Power's Motion initially asks the Commission to clarify that the UM 1147 Orders change the interest rate applied to the \$27 million in Pacific Power's SB 408 balancing account, as this amount was specifically amortized in Order No. 08-201, but do not change the interest rate applied to the residual amount in the balancing account.³ Pacific Power argues that the UM 1147 Orders apply the Modified Blended Treasury Rate to deferred amounts in amortization only, and that Order No. 08-201 identified amortized and unamortized amounts in Pacific Power's SB 408 balancing account. Pacific Power also argues that it would be good policy to apply the Company's AROR to the residual amount in the Company's SB 408 balancing account. Pacific Power asserts that the risks associated with the recovery of the residual \$13 million⁴ in the Company's SB 408 balancing account are different from any risks associated with the amortized \$27 million in that account, with the Company's ability to collect the \$13 million residual balance being subject to known risks such as the appeal of the UE 177 Order or legislative changes to SB 408.⁵ Pacific Power also contends that applying the Company's AROR to the residual amount in the Company's SB 408 balancing account would encourage utilities to propose amortization schedules that mitigate rate impacts.⁶

¹ Order No. 08-201, p. 7.

² Order No. 08-263, at 15-16.

³ Motion, at 1.

⁴ As will be later discussed, the residual authorized for recovery is an amount not to exceed \$7.5 million. Pacific Power's discussion of a \$13 million residual balance assumes a certain amount of interest.

⁵ *Id.*, at 4.

⁶ *Id.*, at 4-5.

As the statutory language of SB 408 requires a utility to either refund or collect the entire amount of the difference between taxes paid and taxes collected, ICNU contends that there is little risk of non-recovery of any amount in the Company's SB 408 balancing account.⁷ To the extent there is risk, ICNU observes, that risk is non-regulatory risk created by Pacific Power itself. ICNU observes that "[a]llowing a utility to choose between collecting interest at the utility's AROR or immediate amortization would create an opportunity for a utility to game the system."⁸ In any case, ICNU asserts, the Commission authorized Pacific Power to recover all funds in the Company's SB 408 balancing account when the Commission approved the Company's tax report.⁹ For these reasons, ICNU argues that the Modified Blended Treasury Rate, as established in Order No. 08-263, should be applied to all funds in Pacific Power's SB 408 balancing account.

Staff also argues that the Modified Blended Treasury Rate should be applied to the \$13 million residual amount in Pacific Power's SB 408 balancing account.¹⁰ Staff asserts:

By adopting the \$34.5 million surcharge in Order No. 08-201, the Commission effectively approved the entire amount for amortization. Whether the amortization period is one year or two years is irrelevant because...the Commission is required by law to include these amounts in rates. Consistent with Order No. 08-263, the Modified Blended Treasury Rate should apply to Pacific Power's SB 408 balancing account because the entire \$34.5 million surcharge has been effectively approved for amortization by Order No. 08-201. In addition, Staff agrees with ICNU that applying the Modified Blended Treasury Rate will avoid potential gaming by utilities."¹¹

On August 6, 2008, PacifiCorp filed a Motion for Leave to File a Reply together with a Reply to Staff's Response to PacifiCorp's Motion for Clarification Re: Application of UM 1147 Orders (Reply). In the Reply, the Company points out a discrepancy in Order No. 08-201. Pacific Power explains:

The ordering paragraph in the UE 177 Order states that '[a] surcharge in the amount not to exceed . . . \$27,000,000 shall be amortized . . . Any remaining surcharge shall be deferred to PacifiCorp's SB 408 balancing account.' The only reasonable reading of this statement is that only \$27,000,000 of the surcharge was authorized for amortization. The remaining portion of the surcharge was authorized for deferral, not amortization.

⁷ ICNU Response, at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 3.

¹⁰ Staff Response, at 2.

¹¹ *Id.*

In another part of the UE 177 Order, the Commission states that it ‘adopts Pacific Power’s proposed amortization schedule, under which the utility will collect the surcharge over a two-year period.’ This statement can be read as implying that the entire surcharge has been amortized.¹²

Pacific Power observes that ordering paragraphs have greater weight than other statements in an order, and asserts that Order No. 08-201 authorized amortization of only \$27,000,000, and no more. Pacific Power argues that the Commission should reject Staff’s assertion that the remaining amount was “effectively” amortized. Pacific Power indicates that the bright line distinction between amounts approved for amortization to which the Modified Blended Treasury Rate applies, and amounts not amortized to which the utility’s AROR continues to apply.

Pacific Power also objects to any implication that the Company’s proposal to spread amortization of the SB 408 surcharge over a period of two years is an attempt to “game” the system by realizing a higher interest rate on a portion of the surcharge. To the contrary, Pacific Power asserts that the proposal was made to reduce the rate increase impact on customers.¹³

DISCUSSION

The opening paragraph in Order No. 08-201 aptly summarizes our intent:

In this order, we approve the 2006 Tax Report for PacifiCorp, dba Pacific Power (Pacific Power) and authorize the utility to surcharge customers, under the provisions of Senate Bill 408 (SB 408), \$34.5 million for additional federal, state and local income tax liability. We also adopt Pacific Power’s proposed amortization schedule, under which the utility will collect the surcharge over a two-year period.¹⁴

As this paragraph makes clear, we intended to authorize Pacific Power to collect \$34.5 million over a two-year period.

Had this been a standard request to amortize a deferred account, our decision authorizing Pacific Power to collect the \$34.5 million over a two-year period, there would be no doubt as to what rate would apply to the amounts during amortization. Pursuant to our decision in UM 1147, the Modified Blended Treasury Rate would be applied to the entire \$34.5 million over the two-year period.

¹² PacifiCorp’s Reply, at 3.

¹³ *Id.* at 4, citing *Re Oregon Public Utility Commission Staff Requesting the Commission Direct PacifiCorp, dba Pacific Power, to File Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket UE 177, PacifiCorp’s Post-Hearing Brief at 11 (Mar. 14, 2008).

¹⁴ Order No. 08-201, p. 1.

SB 408, however, provides for annual rate adjustments. SB 408 requires a utility to true-up, on an annual basis, any difference between the amount of income taxes authorized to be collected in rates and the amount of taxes actually paid that are “properly attributed” to the utility’s regulated operations. *See* ORS 757.268(4). Pursuant to SB 408, Pacific Power filed the Company’s next annual tax filing, its 2007 Tax Report, on October 15, 2008. If that tax filing results in a difference in the tax amounts collected and paid of more than \$100,000, we will be obligated, under SB 408, to order Pacific Power to add the differential amount to the Company’s SB 408 balancing account, with a rate adjustment for the amount ultimately amortized to be effective on June 1, 2009. As we authorized Pacific Power to amortize \$34.5 million based on the Company’s 2006 Tax Report, with not more than \$27 million to be currently amortized during the 2008-2009 period, there is a residual amount that is scheduled for amortization at a later time. Any differential amount reported in the 2007 Tax Report will be added to, or subtracted from, this residual amount. Thus, the bottom line is that the amount that will be ultimately amortized in rates under SB 408 for the next period of 2009-2010 will not be known until we have made our findings regarding the Company’s 2007 Tax Report.

In Order No. 08-263 we scheduled an amount of not more than \$7.5 million for amortization for the period of 2009-2010, but we recognized that although Pacific Power will recover that amount (plus the appropriate amount of interest) in some manner, the Company may not do so by collection in rates. Rather, we understood that Pacific Power may collect the amount by cancellation of a later amortized amount. Nevertheless, the key characteristic of this amount that we scheduled for amortization in 2009-2010 is a guarantee of recovery.

In Order No. 06-507, the order in which we determined that an interest rate other than a utility’s AROR should be applied to an amount approved for amortization, we stated:

What sets amortization apart from other aspects of ratemaking is the fact that a utility is authorized to actually recover an approved amount of costs. When we approve a utility’s revenue requirement in a general rate case, for example, we give the utility the opportunity to recover that amount. The utility’s AROR, which is part of the total revenue requirement, reflects the risks of recovery that the utility confronts in trying to collect its revenue requirement. Similarly, when we authorize a utility to set up a deferred account, we acknowledge that the utility may have the opportunity to recover the costs that were traced in that account. Once an amount in that deferred account is approved for amortization, however, we authorize the utility to recover *that specific amount*, over a given period of time, which may be as short as one year. The question in this proceeding is whether a rate of interest other than a utility’s authorized rate of return should be applied to that amount. We conclude that the answer is, yes.¹⁵

¹⁵ Order No. 06-507, p. 5.

We further stated in the same order:

After amortization of some specific amount in a deferred account is approved, however, we find that the amortized amount differs from an investment in terms of risk associated with it, and with regard to the principles of ratemaking. We find that the amortized portion of a deferred account is a short-term, fixed (as opposed to forecast) investment that will be recouped. We conclude that utilities need only be kept whole on such investments, and we resolve that a rate of return other than a utility's AROR will do so.¹⁶

In Order No. 08-201, we approved and scheduled for amortization, \$34.5 million in Pacific Power's SB 408 balancing account for amortization in the Company's rates over a two-year period. We directed that an amount of not more than \$27 million be amortized in the first year in the Company's Schedule 102 in 2008-2009. We also indicated that the residual amount would likely be amortized in the second year.

The critical characteristic of this residual amount is that we approved it for amortization in Order No. 08-201. We note that we used the same language in Order Nos. 06-507 and 08-263, referring to an amount that is "approved for amortization" in both orders. Thus, this residual amount, of not more than \$7.5 million, is a short-term, fixed investment that will definitely be recouped by Pacific Power within a period of two years. For this reason, the Modified Blended Treasury Rate should be applied to the residual amount that was identified in Order No. 08-201.

We agree with Pacific Power, however, that ordering paragraph number two does not adequately reflect our intent in Order No. 08-201 to approve and schedule the full amount of \$34.5 million in Pacific Power's SB 408 balancing account for amortization. Consequently, we hereby revise that ordering paragraph, as follows:

2. The amount of Thirty-Four Million and Five Hundred Thousand Dollars (\$34,500,000) is approved and scheduled for amortization. A surcharge not to exceed Twenty Seven Million Dollars (\$27,000,000) shall be amortized through Schedule 102 in 2008-2009. The residual amount is scheduled for amortization through Schedule 102 in 2009-2010, but shall remain, until then, in Pacific Power's Senate Bill 408 balancing account to be addressed when Pacific Power files the Company's 2007 Tax Report. Interest shall accrue on the entire amount that is approved and scheduled for amortization, regardless of the division of the amount into two accounts, at the Modified Blended Treasury Rate.

¹⁶ *Id.* at p. 6.

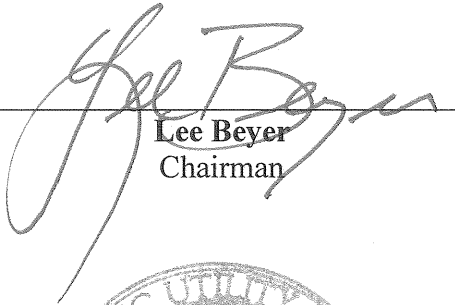
ORDER

IT IS ORDERED that ordering paragraph number two in Order No. 08-201 is replaced with the following paragraph:

- 2. The amount of Thirty-Four Million and Five Hundred Thousand Dollars (\$34,500,000) is approved and scheduled for amortization. A surcharge not to exceed Twenty Seven Million Dollars (\$27,000,000) shall be amortized through Schedule 102 in 2008-2009. The residual amount is scheduled for amortization through Schedule 102 in 2009-2010, but shall remain, until then, in Pacific Power's Senate Bill 408 balancing account to be addressed when Pacific Power files the Company's 2007 Tax Report. Interest shall accrue on the entire amount that is approved and scheduled for amortization, regardless of the division of the amount into two accounts, at the Modified Blended Treasury Rate.

The remainder of Order No. 08-201 remains unchanged.

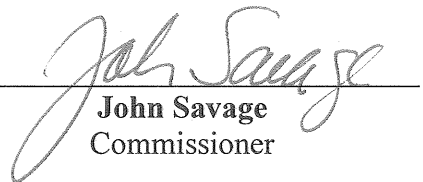
Made, entered and effective JAN 21 2009



Lee Beyer
 Chairman



Ray Baum
 Commissioner



John Savage
 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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.