

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 536

In the Matter of the Adoption of  
Temporary Amendment to  
OAR 860-022-0041(10).

ORDER

**DISPOSITION: TEMPORARY RULE AMENDMENT ADOPTED**

On September 2, 2005, Governor Theodore Kulongoski signed into law Chapter 757, OR Laws 2005 (SB 408), codified primarily at ORS 757.268. SB 408 requires certain public utilities to file annual tax reports and other tax information with the Public Utility Commission of Oregon (Commission). The law requires the report to provide information concerning the amount of taxes paid by the utility and the amount of taxes authorized to be collected in rates during specified time periods. Further, the law requires the Commission to review the report and determine if the amount of taxes assumed in rates differed by at least \$100,000 from the amount of taxes paid by the public utility to units of government. SB 408 directs the Commission, upon finding that difference in amounts, to require the public utility to implement a rate schedule with an automatic adjustment clause accounting for the difference.

The Commission adopted permanent rules implementing SB 408 in Order No. 06-532 on September 14, 2006. These rules included OAR 860-022-0041(10), which provides:

At any time, a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040 or other applicable law. In making a determination regarding a potential violation of 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year.

This rule requires that the Commission perform an earnings review using the utility's results of operations "for the applicable tax year." While reviewing the utilities' tax reports filed in compliance with SB 408 for calendar year 2007, we discovered that this part of section (10) conflicts with ORS 757.268. Under SB 408, we should determine whether a rate adjustment under an automatic adjustment clause would violate ORS 756.040, or would otherwise have a "material adverse effect on customers,"<sup>1</sup> by examining the utility's rates during the period the automatic adjustment clause is in

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<sup>1</sup> ORS 757.268(9).

effect, not during the applicable tax year. Failure to correct the discrepancy between ORS 757.268 and OAR 860-022-0041(10) by immediately adopting a temporary rule will result in serious prejudice to the public interest.<sup>2</sup>

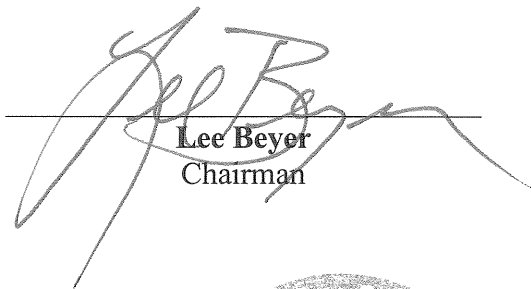
The temporary rule amendment in Appendix A corrects the discrepancy by changing the time period used for the earnings review from the applicable tax year to the period during which the automatic adjustment clause would be in effect. In addition, the temporary rule clarifies that a claim under OAR 860-022-0041(10) should be made after the tariffs establishing the automatic adjustment clause have been filed, consistent with ORS 757.268(4), (9), and (10).

**ORDER**

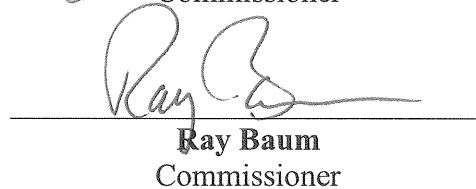
IT IS ORDERED that:

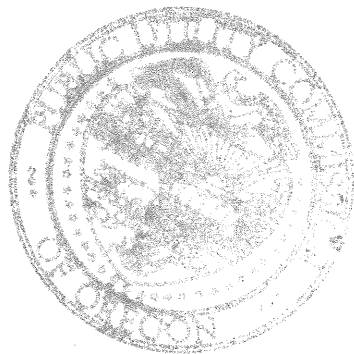
1. The temporary rule amendment attached as Appendix A is adopted.
2. The temporary rule amendment shall be effective for a maximum of 180 days beginning upon filing with the Secretary of State.

Made, entered, and effective APR 14 2009.

  
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**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner



A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

<sup>2</sup> See ORS 183.335(5).

**OAR 860-022-0041(10):**

At any time, after filing a tariff implementing an automatic adjustment clause a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040 or other applicable law. In making a determination regarding a potential violation of 756.040, the Commission will ~~perform an earnings review using the utility's results of operations report for the applicable tax year~~ examine the utility's projected earnings during the period the automatic adjustment clause would be in effect.