

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 177

In the Matter of:	)	
	)	
PACIFIC POWER & LIGHT, dba	)	
PACIFICORP,	)	ORDER
	)	
Filing of tariffs establishing automatic	)	
adjustment clauses under the terms of SB 408.	)	

**DISPOSITION: PETITION TO COMPEL DENIED**

The Industrial Customers of Northwest Utilities (ICNU) seeks disclosure of the net operating loss deductions and special deductions for the approximately 600 entities reported in the Scottish Power Holdings Inc. (SPHI) and Berkshire Hathaway Inc. tax returns for 2006. PacifiCorp has provided this information on a total taxpayer basis, but not on an affiliate by affiliate basis as requested by ICNU.

ICNU seeks expedited treatment of its request, noting that its opening testimony in this docket is due January 22, 2008. To preclude the possibility of delay caused by an appeal of an Administrative Law Judge (ALJ) ruling, the ALJ has certified this motion for the Public Utility Commission of Oregon’s (Commission’s) consideration.

For the reasons that follow, we conclude that PacifiCorp is not required to produce the requested information and deny ICNU’s motion.

**INTRODUCTION**

ICNU contends its request for information is within the scope of discovery, as it seeks to produce information relevant to this proceeding. According to ICNU, “the information sought goes to the essence of why SB 408 was passed, which is to ensure that unregulated affiliate losses are properly reflected and accounted for in calculating the income tax liability of the regulated utility.” ICNU motion at 7.

PacifiCorp counters that the information is not required for a review and verification of its tax report in this proceeding. First, PacifiCorp notes that it has provided the information on a total taxpayer basis to allow verification of its report. It contends that individual affiliate loss information is unnecessary to this verification process, as it relates only to whether the taxable income included on the underlying tax returns—as distinguished from the tax report—is correct.

Second, PacifiCorp adds that, under the Commission’s apportionment method, tax liability—not taxable income—is used to determine amounts “properly attributed to the regulated operations of the utility.” PacifiCorp states that the requested information might impact the calculation of the floor under the apportionment method. However, PacifiCorp explains that, because the floor was not implicated in its 2006 tax report, taxable income is not part of any calculation necessary to verify the tax report.

Third, PacifiCorp disputes ICNU’s assertion that SB 408 was passed “to ensure that unregulated affiliate losses are properly reflected and accounted for in calculating the income tax liability of the regulated utility.” PacifiCorp notes that ICNU advocated the same position in the AR 499 rulemaking but that the Commission rejected it in favor of the apportionment method. PacifiCorp adds that one of the reasons cited by the Commission in favor of the apportionment method was to avoid the need to audit taxable income and loss data on an affiliate by affiliate basis, providing “for an automatic adjustment clause that is actually automatic.” Order No. 06-400 at 7.

## DISCUSSION

“Discovery is a right afforded to parties in a legal proceeding by our rules and the Oregon Rules of Civil Procedure, which we follow except where our rules differ.” *In re PGE*, Order No. 98-294 at 3; *See also* OAR 860-011-0000(3). “Matter is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence, whether or not it would itself be inadmissible.” *In re Portland EAS*, Order No. 91-958 at 5. *See also* ORCP 36(B)(1).

The question presented is whether the affiliate loss information is reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Pursuant to SB 408 and the Commission rules, PacifiCorp has filed its tax report containing information necessary to compare the amount of income taxes authorized to be collected in rates and the amount of income taxes paid by the utility’s consolidated tax group.

ICNU is entitled to discovery of any information that may assist in determining whether the information contained in PacifiCorp’s tax report is accurate. Specifically, this requires access to supporting documents and information PacifiCorp used to apply the apportionment method for determining the amount of taxes paid.

PacifiCorp is correct that tax liability—not taxable income—is used to determine amounts “properly attributed to the regulated operations of the utility.” *See* OAR 860-022-0041(3). Accordingly, to allow verification of its application of the apportionment method, PacifiCorp need only produce information to confirm its reported net operating loss deductions and special deductions information on a total taxpayer basis. PacifiCorp has provided such information, as reported in the redacted SPHI and Berkshire Hathaway tax returns. It need not produce the information requested by ICNU on an affiliate by affiliate basis, because there is no need to audit the underlying tax returns or propose general consolidated tax adjustments.

As PacifiCorp notes, the requested information might be useful in verifying the calculation of the apportionment method floor. During the SB 408 rulemaking, the utilities expressed concern that the apportionment method could yield a result in which customers receive more than 100 percent of the tax benefits from losses within the taxpaying group. To avoid that result, the Commission established a “floor” for the attributed amount: the utility’s stand-alone tax liability minus the total amount of negative tax liabilities of affiliates in the applicable federal or state tax filing. *See* OAR 860-022-0041(3)(b) (federal taxes), OAR 860-022-0041(3)(d) (state taxes). The floor calculation, therefore, was designed to protect utilities by limiting the potential amount of tax benefits—and potential refunds—received by customers.

In PacifiCorp’s 2006 tax report, however, the reported amount of taxes paid, as calculated under the apportionment method, is not less than the company’s stand-alone tax liability, which would be reduced by losses in establishing the floor. Accordingly, because the apportionment method floor is not implicated, there is no need for PacifiCorp to provide the requested tax information to verify the floor calculation.

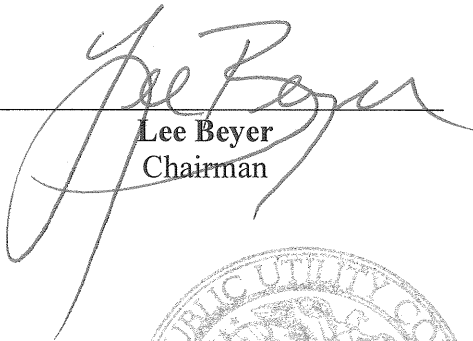
### CONCLUSION

PacifiCorp is not required to produce the net operating loss deductions and special deductions for the approximately 600 entities reported in the Scottish Power Holdings Inc. and Berkshire Hathaway Inc. tax returns for 2006. ICNU’s motion to compel should be dismissed.

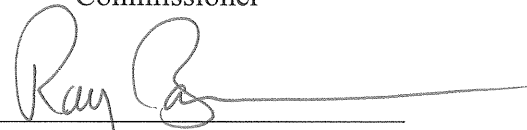
**ORDER**

IT IS ORDERED that the motion to compel, filed by the Industrial Customers of Northwest Utilities, is denied.

Made, entered, and effective JAN 04 2008.

  
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**Lee Beyer**  
Chairman

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

  
\_\_\_\_\_  
**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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.