

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 180/UE 184

In the Matters of)
)
 PORTLAND GENERAL ELECTRIC)
 COMPANY)
)
 Request for a General Rate Revision; (UE 180))
)
 Request for a General Rate Revision relating to)
 to the Port Westward Plant. (UE 184))

ORDER

DISPOSITION: MOTION FOR RECONSIDERATION OF ORDER
NO. 07-454 DENIED

INTRODUCTION

On December 18, 2007, the Citizens’ Utility Board of Oregon (CUB) filed a motion for reconsideration of Order No. 07-454. CUB argues that the Public Utility Commission of Oregon (Commission) should reconsider its denial of CUB’s request to update the rates approved in Order No. 07-015 to reflect a reduction in Portland General Electric Company’s state income tax rate.¹ Portland General Electric Company (PGE) filed a reply to CUB’s Motion on January 9, 2008.²

APPLICABLE LAW

An application for reconsideration may be made within 60 days of the service of an order.³ The Commission may grant an application for reconsideration if there is new evidence which was previously unavailable, a change in law or policy since the original order was issued, an error of law or fact that was essential to the decision, or for other “good cause.”⁴

¹ *Motion for Reconsideration of the Citizens’ Utility Board of Oregon* (December 19, 2007).

² *Reply of Portland General Electric to Motion for Reconsideration* (January 9, 2008).

³ ORS 756.561.

⁴ OAR 860-014-0095(3)

BACKGROUND

On June 14, 2007, the Commission allowed PGE to include costs associated with its Port Westward generating facility in rates.⁵ We previously reviewed and approved the plant's costs in a general rate proceeding concluding on January 12, 2007.⁶ Due to the delay in the plant's operational date, we implemented the rates subject to refund and subject to a 15-day review period for Staff and any intervenors to establish whether good cause exists for a reexamination of PGE's costs in rates.⁷

CUB timely filed a motion to reopen the proceedings. CUB sought a reexamination of PGE's rates, identifying three areas where CUB believed PGE's costs and revenues significantly deviated from the test-year forecast: (1) state tax rate; (2) Port Westward costs; and (3) increased revenues. In its motion for reconsideration, CUB is seeking reconsideration only of the Commission's denial of CUB's request to update rates to reflect PGE's reduced state tax rate.

In its request to reexamine PGE's rates, CUB noted that, since the rates were approved in Order No. 07-015, the State of Oregon lowered PGE's state income tax rate from 6.617 percent to 5.120 percent. CUB contended that this reduction to tax expense, which is estimated to be approximately \$2.8 million annually, is an identifiable reduction in PGE's costs that the Commission should use to partially offset the Port Westward rate increase. CUB placed heightened emphasis on this proposed adjustment, pointing out that the legislature identified utility income taxes as one "of special interest to this state" when enacting Senate Bill 408.⁸ Thus, CUB concluded, the failure of the Commission to reduce PGE's rates by \$2.8 million to reflect the company's current state tax rate would result in rates that are not fair, just, and reasonable under ORS 757.210.

In response to CUB's arguments regarding the reduction in PGE's state tax rate, the Commission found:

We have also adopted an automatic adjustment mechanism to address instances where a utility's income tax liability deviates from forecasted amounts. This mechanism, adopted pursuant to Senate Bill 408, will adjust rates, with interest, should the reduction of the state tax rate result in a lower income tax liability for PGE. Moreover, as we have stated, a determination of whether rates are "fair, just and reasonable" must be based on a review of all revenues and costs rather than a single cost element. For these reasons, an adjustment to base rates is not required by law.⁹

⁵ See Order No. 07-273.

⁶ See Order No. 07-015.

⁷ See Order No. 07-273 at 5.

⁸ See ORS 757.267(1)(a).

⁹ Order No. 07-454 at 6 (footnote omitted).

The Commission also rejected CUB's other arguments and declined to reexamine the rates established in Order No. 07-015. The rates were therefore allowed to go into effect permanently.¹⁰

PARTIES' POSITIONS

CUB argues that the Commission's failure to update the state tax rate used in setting PGE's rates in Order No. 07-015 "has an unintended negative effect on PGE's customers." Specifically, CUB asserts that the failure to update the tax rate results in PGE earning \$2.8 million more in revenues than it would otherwise earn. Because PGE's net revenues are thus increased by \$2.8 million, PGE's tax liability is correspondingly increased. CUB argues that this increase in PGE's tax liability results in approximately \$1.1 million in additional taxes per year.

CUB further argues that the Commission's finding that the automatic adjustment clause established in compliance with Senate Bill 408 will address instances where a utility's income tax liability deviates from forecasted amounts is flawed. CUB argues that the automatic adjustment clause addresses the difference between actual income taxes paid and forecasted income taxes, but does not address the fact that the failure to update the state tax rate results in increased revenues, and thus an increase in actual taxes paid. CUB asserts that "in adopting this reasoning, the Commission mistakenly assumed that the automatic adjustment clause will resolve any problem relative to the wrong tax rate to the benefit of customers."¹¹

PGE responds that CUB's request is inconsistent with basic ratemaking principles. PGE argues that CUB focuses on only one basis for the Commission's decision—the effect of the automatic adjustment clause—and ignores the Commission's other basis. Specifically, PGE asserts that it is a basic principle of utility ratemaking that the Commission must consider all revenues and costs in setting rates, and cannot consider one rate element in isolation. PGE notes that CUB did not address this ratemaking principle despite the fact that the Commission cited it as one reason to deny CUB's request.

DISCUSSION

We do not find CUB's arguments persuasive. We agree with PGE that CUB ignored an essential basis for our decision in Order No. 07-454. By advocating that the Commission should adjust the forecast of state income taxes used in setting PGE's rates in Order No. 07-015 to reflect PGE's reduced state income tax rate, CUB is asking us to consider a single rate element in isolation. As discussed in Order No. 07-454, the process of examining whether to reevaluate and adjust the rates adopted in Order No. 07-015 was fundamentally an exercise of the Commission's ratemaking authority. We therefore applied

¹⁰ *Id.* at 5-7.

¹¹ CUB's Motion at 3.

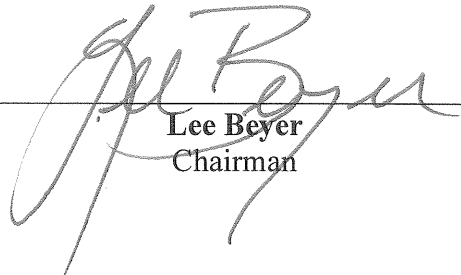
traditional ratemaking principles, including the general policy against single-issue ratemaking, which discourages focusing on one cost element while ignoring others. As noted in the order, a change in one cost element does not, by itself, require an adjustment to rates because increases elsewhere may offset decreases.¹² In fact, Staff presented a persuasive analysis that considered the change in the state tax rate, as well as other changes in PGE's projected costs and revenues. Staff's analysis showed that lowering the state tax rate would have decreased PGE's projected tax liability (and therefore PGE's revenue requirement) by \$2.8 million, but lower projected revenues and increased expenses in other areas would have more than offset this decrease, resulting in an *increased* revenue requirement.

Because CUB again asks us to consider the state tax rate in isolation, without considering other changes to PGE's costs, we adhere to our prior decision and deny CUB's Motion.

ORDER

IT IS ORDERED that the Citizens' Utility Board of Oregon's Motion for Reconsideration of Order No. 07-454 is denied.

Made, entered, and effective FEB 14 2008.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



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.

¹² Order No. 07-454 at 5.