

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 180

In the Matter of)
)
)
PORTLAND GENERAL ELECTRIC,)
)
Request for a General Rate Revision.)

)

MOTION FOR RECONSIDERATION
OF THE
CITIZENS' UTILITY BOARD OF OREGON
ORS 756.561 & OAR 860-014-0095

December 19, 2007



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OF OREGON**

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I. Introduction

On October 22, 2007, the Public Utility Commission issued Order No. 07-454 which allows costs associated with PGE's Port Westward generating facility to go into rates on a permanent basis. The Citizens' Utility Board believes that one aspect of that order suffers from a technical infirmity which has an unintended negative effect on PGE's customers. The Commission denied CUB's request to update the state tax rate, and the failure to update the state tax rate applied to PGE's net earnings has the effect of increasing PGE's net earnings and increasing its tax liability. Essentially, this increases the amount of income taxes that customers pay to the state and federal governments and this increase will cost customers approximately \$1.1 million in additional taxes per year. Therefore, pursuant to ORS 756.561 and OAR 860-014-0095, CUB seeks a reconsideration of this issue and an order correcting the problem.

OAR 860-014-0095 sets out four potential grounds for reconsideration of a Commission order. In this case, CUB relies on two of those potential grounds, found in OAR 860-014-0095(3):

- (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.

In addition to the grounds supporting reconsideration stated above, OAR 860-014-0095(2) states that the application for reconsideration must specify the portion of the challenged order, the part of the record, laws, rules or policy relied upon to support the application, the change in the order we request, and how the requested change will affect the outcome. We address these below.

II. Argument and Grounds Supporting Reconsideration

A. Grounds for Reconsideration

In Order No. 07-454 the Commission denied CUB's recommendation to update PGE's revenue require for a known and measurable change to PGE's state income tax rate. The Commission's stated reason for denying the request was that it had previously:

... 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.

UE 180 OPUC Order No. 07-454, page 6.

This analysis fails to account for the fact that allowing PGE to overcharge customers for taxes has the effect of increasing net income thereby also increasing taxes and the automatic adjustment clause will then reflect these higher taxes. This will cause customers to pay \$1.1 million more for taxes every year than they would otherwise have had to if the actual tax rate were applied. We believe that here is where the Commission

made an error of fact that constitutes grounds for reconsideration under OAR 860-014-0095(3)(c). We will show below 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. Additionally, a finding that causes rates to include \$1.1 million in new additional taxes, which provide no additional benefit to customers as customers, is good cause for reconsideration under OAR 860-014-0095(3)(d).

It is essentially this finding within the order that CUB challenges and of which we seek reconsideration. As suggested in OAR 860-014-0095(2), we point to the elements of the record that support the application. CUB raised and discussed the state tax issue in its Motion to Reopen. CUB's Motion, p. 3-5, June 26, 2007. In its Motion for an Order Allowing Rates to Go Into Effect Permanently, Staff briefly referred to the issue, but only in the context of how the reduction of customers' rates due to the use of the correct tax rate would be lost as all other costs were netted out. Staff's Motion, p. 4, June 26, 2007. Similarly, PGE, in its reply to Staff's motion, briefly touched on the state tax issue, but only as the effect of the change would be washed away when all other costs were netted out. PGE Reply to Motion for Order Allowing Rates to Go Into Effect Permanently, p. 4, July 11, 2007. As we are indicating here, this issue and the \$1.1 million in new additional taxes charged to customers do not get resolved through the automatic adjustment clause and are not a part of the netting-out of costs. The \$1.1 million is additional money that customers are paying to the state and federal governments as a result of using the wrong state tax rate.

In this motion, CUB requests that the Commission reconsider its finding regarding the state tax rate, apply the correct and current tax rate, and reduce customers'

rates by \$2.8 million on an annual basis. This is the adjustment needed to account for the new lower state tax rate and to avoid the additional and unnecessary \$1.1 million tax liability charged to customers annually.

B. Argument

i. PGE's State Tax Rate Declined

It was not disputed in UE 180 that the State of Oregon reduced the income tax rate applied to PGE's net income from 6.617% to 5.120% and that the first phase of UE 180 failed to incorporate this change. The effect of this change is that rates charged to customers include \$2.8 million more for state income taxes than PGE will be charged based on the normalized test year. Order No. 07-454, page 2.

ii. Left Alone, This Will Increase State & Federal Taxes

By allowing PGE to charge customers a state tax rate of 6.6% rather than its actual tax rate of 5.1%, PGE's net income increases by amount of the difference, which in the test year is \$2.8 million. However, because federal and state income taxes are applied to net income, this \$2.8 million increase in net income is itself subject to federal and state taxes. The federal rate is 35% and the state is 5.1%. The result is that 40% of this increase in net income ($40\% \times \$2.8 \text{ million} = \1.1 million) will simply be given over to the state and federal government as taxes.

The automatic adjustment clause will refund or surcharge to customers the difference between taxes collected and taxes paid, but because we have increased PGE's tax liability by \$1.1 million, this amount is not refunded to customers.

The result of this is that if we systematically allow PGE to overcharge customers for state income taxes by applying an out-of-date tax rate, 40% this overcharge will be

lost (in taxes unnecessarily paid to the state) and will not be refunded through the automatic adjustment clause.

iii. It Doesn't Matter Whether There is a SB 408 Refund or Surcharge

The effect of increasing PGE's revenue requirement by using an out-of-date tax rate will result in higher taxes regardless of whether PGE is in a refund or surcharge in its SB 408 accounting. The effect of applying this higher tax rate is to increase rates, increase net income, and increase tax liability.

In Order 07-454, the Commission states "we note that PGE's increased earnings the first four months of the year might actually increase the utility's tax liability." Order No. 07-454, page 6, footnote 2. CUB recognizes that PGE is having a good year. PGE's net earnings may be more than forecast and the Company's tax liability may well be higher than forecast. However, allowing it to charge customers this additional \$2.8 million further increases its net earnings by an additional \$2.8 million and increases its tax liability by \$1.1 million, on top of the Company's current earnings situation. Here is a simple example that shows what happens if the utility is assumed to be over-earning by \$10 million.

	Update Tax Rate	Do Not Update Tax Rate
State tax rate base rates	5.12%	6.62%
Over-collection in base rates	\$0	\$2.8 million
Over-earning above base rates	\$10 million	\$10 million
Increase in net income	\$10 million	\$12.8 million
Increase in taxes	\$4 million	\$5.1 million
SB 408 surcharge	\$4 million	\$2.2 million
Taxes charged to customers	\$4 million	\$5.1 million

This example shows that, while allowing the utility to overcharge customers on taxes today does have the effect of reducing any SB 408 surcharge that will later be applied to customers, the combination of the initial overcharge and the SB 408 surcharge

will be greater than the SB 408 surcharge if we do not overcharge customer for taxes to begin with. This is because the overcharge is subject to a tax rate of 40% which increases the utilities tax liability and increases the amount of taxes charged to customers.

iv. PGE Should be Indifferent to This

Finally, we note that PGE should be indifferent to this adjustment. While the rejection of our adjustment increases the utility's net income, it increases it with money that is set aside for taxes and subject to the SB 408 automatic adjustment clause. It does not affect PGE's actual earnings. PGE should be indifferent. It does, however, affect the amount of taxes the utility pays, and it does affect the rates charge to customers.

Customers are not indifferent.

III. Conclusion

For these reasons, and in accordance with ORS 756.561 and OAR 860-014-0095, CUB requests that the Commission reconsider its finding regarding the state tax rate, apply the correct and current tax rate, and reduce customers' rates by \$2.8 million on an annual basis. This is the adjustment needed to account for the new lower state tax rate and to avoid the additional and unnecessary \$1.1 million tax liability charged to customers annually.

Respectfully Submitted,
December 18, 2007

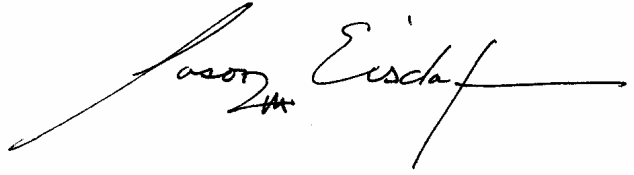
A handwritten signature in black ink that reads "Jason Eisdorfer". The signature is written in a cursive style with a long horizontal stroke at the end.

Jason Eisdorfer #92292
Attorney for the Citizens' Utility Board of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2007, I served the foregoing Motion for Reconsideration of the Citizens' Utility Board of Oregon in docket UE 180 upon each party listed below, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 2 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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W=Waive Paper service, C=Confidential, HC=Highly Confidential

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