

McDowell & Rackner PC



AMIE JAMIESON
Direct (503) 595-3927
amie@mcd-law.com

February 5, 2009

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UE 177(2)

Enclosed for filing in Docket UE 177 (2) are an original and five copies of the Stipulation between Commission Staff and Pacific Power. Also enclosed are an original and five copies of the Joint Explanatory Brief in support of the Stipulation. A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed service list.

The Stipulation is being filed concurrently with the Revised 2007 Tax Report and associated workpapers, which have been sent to the Salem Safe Room and the Portland Safe Room.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amie Jamieson".

Amie Jamieson

Enclosure

cc: Service List

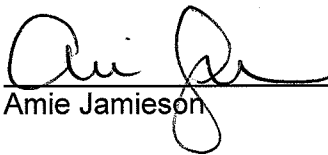
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 177 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

| | |
|---|--|
| CUB – OPUC Dockets Citizens' Utility Board Of Oregon 610 SW Broadway Ste 308 Portland OR, 7205 <u>Dockets@oregoncub.org</u> | Robert Jenks Citizens' Utility Board 610 SW Broadway Ste 308 Portland OR, 7205 bob@oregoncub.org |
| G. Catriona McCracken Citizens' Utility Board 610 SW Broadway Ste 308 Portland OR, 7205 Catriona@oregoncub.org | Gordon R. Feighner Citizens' Utility Board 610 SW Broadway Ste 308 Portland OR, 7205 Gordon@oregoncub.org |
| Daniel W. Meek Daniel W. Meek Attorney at Law 10949 SW 4th Ave Portland OR 97219 dan@meek.net | Melinda J. Davison Davison Van Cleve, PC 333 SW Taylor, Suite 400 Portland, OR 97204 mail@dvclaw.com |
| Linda K. Williams Kafoury & McDougal 10266 SW Lancaster Rd. Portland, OR 97219-6305 Linda@lindawilliams.net | Jason W. Jones Department of Justice Regulated & Utility Business Section 1162 Court Street NE Salem, OR 97301-4096 jason.w.jones@state.or.us |

DATED: February 5, 2009


Amie Jamieson

Of Attorneys for PacifiCorp

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UE 177(2)**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER

6 Filing of tariffs establishing automatic
7 adjustment clauses under the terms of
8 SB 408

STIPULATION

9 This Stipulation resolves all issues among the parties to this Stipulation related to
10 PacifiCorp's, dba Pacific Power's 2007 Tax Report and Advice Filing 08-012, filed in UE 177
11 pursuant to Senate Bill 408 ("SB 408"). SB 408 is codified in ORS 757.267, 757.268 and
12 757.210.

13 **PARTIES**

14 1. The parties to this Stipulation are Staff of the Public Utility Commission of Oregon
15 ("Staff") and Pacific Power (the "Company") (together, the "Parties"). Staff and the Company
16 were the only parties that attended the settlement conference in this case, which was open to
17 all parties. This Stipulation will be made available to other parties to this docket, who may
18 participate by signing and filing a copy of the Stipulation.

19 **BACKGROUND**

20 2. SB 408 requires most Oregon public utilities to file an annual tax report with the
21 Public Utility Commission of Oregon ("Commission") that provides information on: (1) the
22 amount of taxes paid by the utility to units of government or that was paid by affiliated groups
23 and that is properly attributed to the utility's regulated operations; and (2) the amount of taxes
24 authorized to be collected in rates. ORS 757.268(1). The law requires the Commission to
25 review the tax report to determine whether the amount of taxes paid differs from the amount of
26 taxes included in rates by more than \$100,000. ORS 757.268(4). If so, the Commission must

1 require the public utility to establish an automatic adjustment clause to account for the
2 difference. *Id.* The Commission must complete its review of the tax report and order an
3 automatic adjustment clause ("AAC") if necessary within 180 days after the tax report is filed.
4 ORS 757.268(4); OAR 860-022-0041(7).

5 3. As required by SB 408, on October 15, 2008, Pacific Power filed its tax report for
6 calendar year 2007 ("2007 Tax Report"). Pacific Power's 2007 Tax Report reflected a
7 difference of approximately \$3.7 million of state and federal taxes paid above taxes authorized
8 to be collected in rates. Additionally, Pacific Power reported that it paid approximately
9 \$142,000 more in local taxes than collected in rates. In total, the 2007 Tax Report showed
10 that Pacific Power paid approximately \$3.9 million more in taxes than it collected in rates in
11 2007.

12 4. Under SB 408, this difference, plus interest, is to be collected as a surcharge
13 through an AAC. ORS 757.268(6). In Advice No. 08-012, Pacific Power proposed to collect
14 the 2007 SB 408 state and federal tax surcharge of \$4.5 million¹ and interest that will accrue
15 during collection, through Schedule 102 over one year beginning on June 1, 2009. The
16 Company proposed to collect the surcharge related to local taxes of approximately \$142,000
17 plus interest through Schedule 103. The Commission has discretion to set the amortization
18 period for a refund or surcharge under the AAC. OAR 860-022-0041(8)(c). Pacific Power
19 proposed to file a revised Schedule 103 in compliance with the Commission's final order in
20 this docket.

21 5. In *Re PacifiCorp's Automatic Adjustment Clause under SB 408*, Order No. 08-
22 201, UE 177 (2008), the Commission approved a surcharge related to Pacific Power's 2006
23 tax report of approximately \$34.5 million, plus interest of approximately \$5.8 million accrued
24 during the period of July 2006 through May 2008. Additional interest of approximately \$1.7
25

26 ¹ This amount consists of the 2007 Tax Report surcharge of \$3.7 million plus the estimated interest that
will accrue from June 1, 2007 to June 1, 2009.

1 million is estimated to accrue during the period of June 2008 through May 2010. This results
2 in a total 2006 SB 408 surcharge amount of approximately \$42.0 million. At Pacific Power's
3 request, in Order No. 08-201, the Commission authorized amortization of \$27 million of the
4 2006 SB 408 surcharge from June 1, 2008 to June 1, 2009. The residual amount in Pacific
5 Power's SB 408 balancing account for its 2006 SB 408 state and federal tax surcharge is
6 approximately \$14.7 million, as calculated on page 1 of Attachment A to this Stipulation.²

7 6. The Company originally calculated the interest on the residual 2006 SB 408 tax
8 surcharge for the period between June 1, 2008 and June 1, 2009 using its authorized rate of
9 return of 8.16 percent as the interest rate for unamortized deferred accounts. Pacific Power
10 filed a Motion for Clarification to confirm the application of the 8.16 percent interest rate for
11 this period, rather than the Modified Blended Treasury Rate adopted in Commission Order No.
12 08-263 for amortizing deferred accounts. In response to this Motion, the Commission issued
13 Order No. 09-018 in which it confirmed the appropriate interest rate for the period beginning
14 July 21, 2008, to be the Modified Blended Treasury Rate. Pacific Power has another Motion
15 for Clarification pending before the Commission requesting clarification on whether the
16 Modified Blended Treasury Rate in effect at the time the Commission orders amortization is
17 applied during the entire period of amortization, or if the rate changes when the Commission
18 annually updates the Modified Blended Treasury Rate. *Re Pub. Util. Comm'n of Oregon*
19 *Investigation Related to Deferred Accounting*, Docket UM 1147, PacifiCorp's Motion for
20 Clarification (June 25, 2008). For purposes of this Stipulation, the Parties calculated the
21 residual 2006 SB 408 surcharge currently in amortization using the 2008 Modified Blended
22 Treasury Rate of 4.27 percent. The Parties calculated the 2007 SB 408 state and federal tax
23 surcharge of approximately \$4.5 million using the 2009 Modified Blended Treasury Rate of

24 ² The \$14.7 million consists of: (1) the estimated interest accrued on the \$27 million 2006 SB 408
25 surcharge for the period of June 2008 through May 2009; (2) the residual 2006 SB 408 surcharge of
26 \$13.3 million, which includes interest through May 2008 at the Modified Blended Treasury Rate of 4.27
percent; and (3) the estimated interest accrued on the residual amount from June 2008 through May 2009
at the Modified Blended Treasury Rate of 4.27 percent.

1 2.05 percent beginning on the estimated date the Commission approves amortization³ and
2 continuing until the amount has been fully recovered, estimated to be May 31, 2010.

3 7. In Advice No. 08-012, Pacific Power proposed to amortize the residual 2006 SB
4 408 tax surcharge and associated interest of approximately \$15.5 million, based on the 8.16
5 percent interest rate over one year beginning on June 1, 2009, concurrent with the
6 amortization of the 2007 SB 408 state and federal tax surcharge. The Company stated that
7 applying the Modified Blended Treasury Rate would result in a residual 2006 SB 408 tax
8 surcharge and associated interest of approximately \$15.0 million.

9 8. The Commission held a prehearing conference on November 3, 2008, at which
10 Administrative Law Judge Grant adopted a full procedural schedule for this docket, including
11 testimony, a hearing, and briefing.

12 9. Staff served discovery and convened a workshop on November 20, 2008 to
13 review issues raised by the 2007 Tax Report. All parties were invited to participate and a
14 representative from the Citizens' Utility Board attended. On December 4, 2008, Staff met with
15 Pacific Power to review responses to data requests. At the commencement of the settlement
16 conference on December 8, 2008, Staff and the Company addressed additional substantive
17 issues on which Staff had outstanding questions. Through this process, Staff audited
18 numerous issues based on information contained in the filing. Staff's findings support this
19 Stipulation.

20 AGREEMENT

21 10. Pacific Power will file a revised 2007 Tax Report concurrent with the filing of this
22 Stipulation. The Parties agree that the Revised 2007 Tax Report, filed pursuant to this
23 Stipulation, complies with SB 408 and OAR 860-022-0041.

24 11. The Parties agree that the Revised 2007 Tax Report will calculate interest
25 expense for Pacific Power's taxes paid under the stand-alone method using a five-quarter

26 ³ See Order No. 08-263.

1 average capital structure and debt costs, instead of a point estimate of capital structure and
2 debt costs. This change increased Pacific Power's state and federal taxes paid, and the total
3 state and federal SB 408 surcharge, by approximately \$560,000.

4 12. The Parties agree that Pacific Power's Revised 2007 Tax Report will recalculate
5 local taxes to correctly reflect Pacific Power's unitary tax group for state and local taxes in
6 2007. This correction increases Pacific Power's local taxes paid by approximately \$5,800.

7 13. The Parties agree that the 2007 SB 408 tax surcharge amount for state and
8 federal taxes should be approximately \$5.0 million,⁴ plus interest of approximately \$52,000
9 that will accrue during amortization, as calculated on page 2 of Attachment A to this
10 Stipulation. The surcharge for local taxes should be \$147,844, plus interest. The Parties
11 agree that these amounts should be amortized over one year.

12 14. The Parties agree that the residual 2006 SB 408 tax surcharge of approximately
13 \$15.0 million, including interest, as calculated on page 1 of Attachment A to this Stipulation,⁵
14 should be amortized concurrently with the 2007 SB 408 tax surcharge.

15 15. The 2006 and 2007 SB 408 surcharges for state and federal taxes will be
16 implemented through Schedule 102, Pacific Power's Income Tax Adjustment tariff. The
17 proposed surcharge will be allocated by customer rate schedule on an equal cents per
18 kilowatt-hour basis, as required by OAR 860-022-0041(8)(d). The local tax adjustment
19 reflected in the Revised 2007 Tax Report will be implemented through Schedule 103, Pacific
20 Power's Multnomah County Business Income Tax tariff. Upon approval of this Stipulation,
21 Pacific Power will make a compliance filing to reflect (1) the residual 2006 and total 2007 SB
22 408 state and federal tax surcharge of \$20.1 million or 2.0 percent, as calculated on page 3 of
23

24 ⁴ The \$5.0 million balance consists of the \$4.3 million 2007 SB 408 surcharge and estimated accumulated
interest from July 2006 through May 2009.

25 ⁵ The \$15.0 million balance consists of the \$14.7 million residual amount in Pacific Power's SB 408
balancing account for its 2006 SB 408 state and federal tax surcharge, described in footnote 1 and
26 calculated on page 1 of Attachment A to this Stipulation, along with the interest projected to accrue on
that amount from June 2009 through May 2010 at the Modified Blended Treasury Rate of 4.27 percent.

1 Attachment A to this Stipulation, in Schedule 102 and (2) the SB 408 local tax surcharge of
2 \$147,844, plus interest, in Schedule 103. The tariff schedules will reflect an effective date of
3 June 1, 2009. The net change on June 1, 2009, will reflect the difference between the
4 currently effective Schedule 102 surcharge implemented effective June 1, 2008 and the
5 surcharge filed in the compliance filing in this docket. The resulting rate impact will be an
6 overall decrease to net revenues of approximately 0.8 percent.

7 16. The 2006 and 2007 SB 408 surcharges for federal, state, and local taxes will be
8 revised as necessary to reflect the Commission's ruling on the Company's Motion for
9 Clarification pending in Docket UM 1147.

10 17. The Parties agree to submit this Stipulation to the Commission and request that
11 the Commission approve the Stipulation as presented. The Parties agree that the
12 adjustments and the rates resulting from the Stipulation are fair, just, and reasonable.

13 18. This Stipulation will be offered into the record of this proceeding as evidence
14 pursuant to OAR 860-014-0085. The Parties agree to support this Stipulation throughout this
15 proceeding and any appeal, (if necessary) provide witnesses to sponsor this Stipulation at the
16 hearing, and recommend that the Commission issue an order adopting the settlements
17 contained herein.

18 19. If this Stipulation is challenged by any other party to this proceeding, the Parties
19 agree that they will continue to support the Commission's adoption of the terms of this
20 Stipulation. The Parties agree to cooperate in cross-examination and put on such a case as
21 they deem appropriate to respond fully to the issues presented, which may include raising
22 issues that are incorporated in the settlements embodied in this Stipulation.

23 20. The Parties have negotiated this Stipulation as an integrated document. If the
24 Commission rejects all or any material portion of this Stipulation or imposes additional material
25 conditions in approving this Stipulation, any Party disadvantaged by such action shall have the
26

rights provided in OAR 860-014-0085 and shall be entitled to seek reconsideration or appeal of the Commission's Order.

21. By entering into this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed by any other Party in arriving at the terms of this Stipulation, other than those specifically identified in the body of this Stipulation. No Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except as specifically identified in this Stipulation.

22. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

This Stipulation is entered into by each party on the date entered below such Party's signature.

Signature page follows.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STAFF

By: 

Date: 2/5/09

PACIFIC POWER

By: Andrea Kelly

Date: 5 February 2009

UE 177(2)
Attachment A
to
Stipulation

2006 Tax Period Surcharge Interest & Amortization Summary

| Line | | Interest period | |
|------|---|------------------|-------------------------|
| 1 | Actual 2006 surcharge (tax report) | | \$ 34,473,938.00 |
| 2 | Actual Interest | July 06 - May 08 | \$ 5,814,891.90 |
| 3 | Total 2006 surcharge | | <u>\$ 40,288,829.90</u> |
| | 1st year beginning balance (Amortization June 08 - June 09) | | \$ 27,000,000.00 |
| 4 | Estimated Interest | June 08 - May 09 | <u>\$ 778,912.99</u> |
| 5 | Projected 1st year undercollection carried forward to 2nd year amortization period (June 09 - May 10) | | \$ 778,912.99 |
| | Original 2nd year beginning balance (Amortization June 09 - May 10) | | \$ 13,288,829.90 |
| 7 | Estimated interest accrued during Year 1 | June 08 - May 09 | \$ 652,458.34 |
| 8 | Projected Year 1 Residual Balance (Undercollection) | | <u>\$ 778,912.99</u> |
| | Corrected Projected Beginning Balance of 2nd year Amortization | | \$ 14,720,201.23 |
| 10 | Estimated interest | June 09 - May 10 | <u>\$ 315,931.29</u> |
| 11 | Total Projected 2nd year Amortization | | <u>\$ 15,036,132.52</u> |
| 12 | Total projected 2006 tax period surcharge amortization, including estimated interest (2-year amortization) | | <u>\$ 42,036,132.52</u> |
| | Or: | | |
| 13 | Actual Total 2006 surcharge (per the tax report) | | \$ 34,473,938.00 |
| 14 | Add: Total estimated interest | | \$ 7,562,194.52 |
| 15 | Total | | <u>\$ 42,036,132.52</u> |

2007 Tax Period Surcharge Interest & Amortization Summary

| Line | | Interest period | |
|---|--|------------------|-----------------|
| 1 | Actual 2007 surcharge (tax report) | | 4,330,980.00 |
| 2 | Estimated Interest | July 06 - May 09 | \$ 726,354.00 |
| 3 | Total projected 2007 surcharge | | \$ 5,057,334.00 |
| Beginning balance (Amortization) | | | |
| 4 | June 09 - May 10 | | \$ 5,057,334.00 |
| 5 | Estimated Interest | June 09 - May 10 | \$ 51,969.00 |
| 6 | Total projected 2007 tax period surcharge amortization, including estimated interest | | \$ 5,109,303.00 |
| | Or: | | |
| 7 | Total 2007 surcharge (per the tax report) | | \$ 4,330,980.00 |
| 8 | Add: Total estimated interest | | \$ 778,323.00 |
| 9 | Total | | \$ 5,109,303.00 |

2009-10 Tax Surcharge Amortization

| | | | |
|-------------|--|------------------|-------------------------|
| <u>Line</u> | | | |
| 1 | 2006 Tax period residual balance (inc. previously accrued interest) | | \$ 14,720,201.23 |
| 2 | 2007 Tax Period surcharge (inc. previously accrued estimated interest) | | <u>\$ 5,057,334.00</u> |
| | Beginning balance (Amortization) | | |
| 3 | June 09 - May 10 | | \$ 19,777,535.23 |
| 4 | Estimated Interest | June 09 - May 10 | <u>\$ 367,900.29</u> |
| 5 | Total Projected 2009-10 Surcharge Amortization | | \$ 20,145,435.52 |