

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 SB 408

**JOINT EXPLANATORY BRIEF**

8 This brief ("Explanatory Brief") explains and supports the Stipulation dated February 5,  
9 2009, in this proceeding between PacifiCorp dba Pacific Power (the "Company") and Staff of  
10 the Public Utility Commission of Oregon ("Staff") (together, the "Parties").<sup>1</sup> The Stipulation  
11 resolves all issues among the Parties related to Pacific Power's 2007 Tax Report and Advice  
12 Filing 08-012, filed in UE 177 pursuant to Senate Bill 408 ("SB 408").<sup>2</sup>

13 **BACKGROUND**

14 SB 408 requires most Oregon public utilities to file an annual tax report with the Public  
15 Utility Commission of Oregon ("Commission") that provides information on: (1) the amount of  
16 taxes paid by the utility to units of government or that was paid by an affiliated groups and that  
17 is properly attributed to the utility's regulated operations; and (2) the amount of taxes  
18 authorized to be collected in rates. ORS 757.268(1). The law requires the Commission to  
19 review the tax report to determine whether the amount of taxes paid differs from the amount of  
20 taxes included in rates by more than \$100,000. ORS 757.268(4). If so, the Commission must  
21 require the public utility to establish an automatic adjustment clause to account for the  
22 difference. *Id.* The Commission must complete its review of the tax report and order an  
23 automatic adjustment clause ("AAC") if necessary within 180 days after the tax report is filed.  
24

25 <sup>1</sup> Staff and the Company were the only parties that attended the settlement conference in this case,  
26 which was open to all parties. This Stipulation will be made available to other parties to this docket,  
who may participate by signing and filing a copy of the Stipulation.

<sup>2</sup> SB 408 is codified in ORS 757.267, 757.268, and 757.210.

1 ORS 757.268(4); OAR 860-022-0041(7). The Commission has discretion to set the  
2 amortization period for a refund or surcharge under the AAC. OAR 860-022-0041(8)(c).

3 As required by SB 408, on October 15, 2008, Pacific Power filed its tax report for  
4 calendar year 2007 ("2007 Tax Report"). Pacific Power used the tax template developed by  
5 Staff to produce the 2007 Tax Report, as it did with its 2006 Tax Report. Pacific Power's 2007  
6 Tax Report reflected a difference of approximately \$3.7 million of state and federal taxes paid  
7 and \$142,000 in local taxes paid above taxes authorized to be collected in rates. In total, the  
8 2007 Tax Report showed that Pacific Power paid \$3.9 million more in taxes than it collected in  
9 rates in 2007.

10 In Advice No. 08-012, Pacific Power proposed to collect the 2007 SB 408 state and  
11 federal tax surcharge of \$4.5 million—the \$3.9 million calculated in the 2007 Tax Report plus  
12 interest that will accrue from June 1, 2007 to June 1, 2009—through Schedule 102 over one  
13 year beginning on June 1, 2009. The surcharge related to local taxes of approximately  
14 \$142,000 plus interest would be collected through Schedule 103. Pacific Power proposed to  
15 file a revised Schedule 103 in compliance with the Commission's final order in this docket.

16 In Advice No. 08-012, Pacific Power also addressed amortization of the residual 2006  
17 SB 408 surcharge related to the Company's 2006 Tax Report. In 2008, the Commission  
18 approved a surcharge of approximately \$42 million, including interest through the period of  
19 amortization, related to Pacific Power's 2006 Tax Report. *Re PacifiCorp Filing of Tariffs*  
20 *Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket UE 177,  
21 Order No. 08-201 (2008). At Pacific Power's request, the Commission authorized  
22 amortization of \$27 million of the 2006 SB 408 surcharge from June 1, 2008 to June 1, 2009.  
23 The residual amount currently in Pacific Power's SB 408 balancing account for its 2006 SB  
24 408 state and federal tax surcharge is approximately \$14.7 million. Pacific Power proposed to  
25 amortize the residual 2006 SB 408 tax surcharge over one year beginning on June 1, 2009,  
26 concurrently with the amortization of the 2007 SB 408 state and federal tax surcharge.

1 Staff served discovery and convened a workshop on November 20, 2008 to review  
2 issues raised by the 2007 Tax Report. All parties were invited to participate and a  
3 representative from the Citizens' Utility Board attended.

4 Staff performed a thorough review of the Company's filing, serving many data requests  
5 and hosting workshops to discuss the details of the Company's responses to data requests.

6 Staff raised issues related to the review of Pacific Power's:

- 7 • General Business Revenues;
- 8 • Actual Annual Average Capital Structure;
- 9 • Calculations related to the State Income Tax Reported;
- 10 • Oregon Allocated pre-tax book income;
- 11 • Application of production tax credits;
- 12 • Total Company tax depreciation ;
- 13 • Tax depreciation related to a subsidiary;
- 14 • Deferred Tax Adjustments;
- 15 • Deferred Tax Adjustments related to flow-through; and
- 16 • Copies of Tax Returns signed by Officers of the Company.

17 Staff required the Company to provide further documentation and explanations of each  
18 issue identified above. On December 4, 2008, Staff met with Pacific Power to review  
19 responses to data requests. At the commencement of the settlement conference on  
20 December 8, 2008, Staff and the Company addressed additional substantive issues on which  
21 Staff had outstanding questions. The Company was able to demonstrate to Staff's  
22 satisfaction that it had properly performed the necessary adjustments in order to resolve  
23 Staff's concerns related to all of the substantive issues raised during Staff's review, with the  
24 exception of a few methodology changes described in Sections A and B below.

25 After the settlement conference, Staff and Pacific Power continued to have informal  
26 discussions regarding calculation of surcharge amounts, specifically the proper interest rates

1 to be applied to amounts during amortization. In 2008, the Commission clarified that the  
2 appropriate interest rate for the period beginning July 21, 2008, is the Modified Blended  
3 Treasury Rate. *Re Pub. Util. Comm'n of Oregon Investigation Related to Deferred*  
4 *Accounting*, Docket UM 1147, Order No. 08-263 (May 22, 2008). Pacific Power, however, has  
5 a Motion for Clarification pending before the Commission requesting clarification on whether  
6 the Modified Blended Treasury Rate in effect at the time the Commission orders amortization  
7 is applied during the entire period of amortization, or if the rate changes when the Commission  
8 annually updates the Modified Blended Treasury Rate. *Re Pub. Util. Comm'n of Oregon*  
9 *Investigation Related to Deferred Accounting, Docket UM 1147*, PacifiCorp's Motion for  
10 Clarification (June 25, 2008).

## 11 DISCUSSION

12 The terms of the Stipulation reflect the Parties' agreements on (1) revisions to Pacific  
13 Power's 2007 Tax Report; (2) the amount and amortization of the 2007 SB 408 tax surcharge;  
14 and (3) amortization of the residual 2006 SB 408 surcharge.

### 15 A. Revisions to the 2007 Tax Report.

16 Pacific Power filed a revised 2007 Tax Report ("Revised 2007 Tax Report")  
17 concurrently with the Stipulation. Stipulation ¶ 10. The Parties agree that the Revised 2007  
18 Tax Report, filed pursuant to this Stipulation, complies with SB 408 and OAR 860-022-0041.  
19 Stipulation ¶ 10. The Revised 2007 Tax Report contains the revisions recommended by Staff  
20 as a result of Staff's audit. The Company agreed to Staff's proposed changes and revised the  
21 2007 Tax Report as follows:

- 22 • Calculates the interest expense for Pacific Power's taxes paid under the stand-  
23 alone method using a five-quarter average capital structure and debt costs, instead of  
24 a point estimate of capital structure and debt costs. This change increased Pacific  
25 Power's state and federal taxes paid, and the total state and federal SB 408  
26 surcharge, by approximately \$560,000. Stipulation ¶ 11.

- 1           •     Recalculates local taxes to correctly reflect Pacific Power's unitary tax group for  
2           state and local taxes in 2007. This correction increases Pacific Power's local taxes  
3           paid by approximately \$5,800. Stipulation ¶¶ 12.

4     **B.     Calculation and Amortization of the 2007 SB 408 Surcharge.**

5           The Stipulation also reflects the Parties' agreement that the 2007 SB 408 tax  
6           surcharge amount and associated interest for state and federal taxes should be approximately  
7           \$5.0 million. Stipulation ¶¶ 13. The Parties agreed to this amount because it was the  
8           surcharge that resulted from Staff's recommended recalculations contained in the 2007  
9           Revised Tax Report. See Stipulation, Attachment A at 2. In addition, the Parties agree that  
10          2007 SB 408 tax surcharge will include additional interest of approximately \$52,000 that will  
11          accrue during amortization.<sup>3</sup> Stipulation ¶¶ 13. The Parties agree that the surcharge for local  
12          taxes should be \$147,844, plus interest. Stipulation ¶¶ 13. The Parties agree that the 2009  
13          Modified Blended Treasury Rate of 2.05 percent will be used to calculate the 2007 SB 408  
14          surcharges, beginning on the date the Commission approves amortization. Stipulation ¶¶ 6.  
15          The surcharges will be revised as necessary to reflect the Commission's ruling on the  
16          Company's Motion for Clarification pending in Docket UM 1147. Stipulation ¶¶ 16. The  
17          surcharges should be amortized over one year. Stipulation ¶¶ 13.

18     **C.     Amortization of the Residual 2006 SB 408 Surcharge.**

19          In addition, the Stipulation addresses amortization of the residual 2006 SB 408  
20          surcharge that was approved by the Commission, but not yet amortized. The Parties agree  
21          that the residual 2006 SB 408 tax surcharge of approximately \$15.0 million, including interest,  
22          should be amortized concurrently with the 2007 SB 408 tax surcharge. Stipulation ¶¶ 14. The  
23          Parties agree that the 2008 Modified Blended Treasury Rate of 4.27 percent will be used to  
24          calculate the 2006 residual SB 408 surcharge. Stipulation ¶¶ 6. The surcharge will be revised  
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26          <sup>3</sup> The amounts discussed in this Explanatory Brief and in the Stipulation are calculated as shown in  
Attachment A to the Stipulation.

1 as necessary to reflect the Commission's ruling on the Company's Motion for Clarification  
2 pending in Docket UM 1147. Stipulation ¶ 16.

3 **D. Total SB 408 Surcharge.**

4 The total surcharge, including both the residual 2006 and total 2007 SB 408 state and  
5 federal tax surcharge, will be approximately \$20.2 million or 2.2 percent. Stipulation ¶ 15.  
6 The SB 408 local tax surcharge will be \$147,844, plus interest. Stipulation ¶ 15. The 2006  
7 and 2007 SB 408 surcharges for state and federal taxes will be implemented through  
8 Schedule 102, Pacific Power's Income Tax Adjustment tariff. Stipulation ¶ 15. The proposed  
9 surcharge will be allocated by customer rate schedule on an equal cents per kilowatt-hour  
10 basis, as required by OAR 860-022-0041(8)(d). Stipulation ¶ 15. The local tax adjustment  
11 reflected in the Revised 2007 Tax Report will be implemented through Schedule 103, Pacific  
12 Power's Multnomah County Business Income Tax tariff. Stipulation ¶ 15. Upon approval of  
13 the Stipulation, Pacific Power will make a compliance filing to reflect revised Schedules 102  
14 and 103 with an effective date of June 1, 2009. Stipulation ¶ 15.

15 **E. The Stipulation Will Result in Just and Reasonable Rates.**

16 The Stipulation represents a reasonable compromise of positions among the Parties  
17 and will result in just and reasonable rates. Staff conducted a thorough audit of Pacific  
18 Power's 2007 Tax Report, convened a workshop and conducted discovery on the tax report,  
19 and had many informal discussions with PacifiCorp regarding the tax report. Staff's audit  
20 resulted in proposed recalculations to which Pacific Power agreed and performed in the  
21 Revised 2007 Tax Report. The 2007 SB 408 surcharge contained in the Stipulation was  
22 calculated in the Revised 2007 Tax Report. As a result, the 2007 SB 408 surcharge falls  
23 within a "range of reasonableness" for resolution of the 2007 Tax Report. *See Re US West,*  
24 *Docket UM 773, Order No. 96-284 at 31 (Nov. 1, 1999).*

25 In addition, the surcharge is consistent with SB 408, OAR 860-022-0041, and  
26 Commission precedent on utility tax reports. First, the surcharge fulfills SB 408's intent that

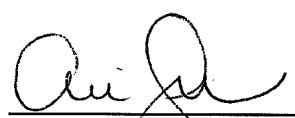
1 rates reflect taxes paid to units of government to be considered fair, just, and reasonable.  
2 See ORS 757.267(1)(f). Second, Staff explicitly found that the Revised 2007 Tax Report  
3 complies with both SB 408 and OAR 860-022-0041. Finally, the Revised 2007 Tax Report  
4 uses the same tax template and calculations that the Commission found to be "consistent with  
5 and in compliance with both OAR 860-022-0041 and ORS 757.268" when it approved the  
6 Company's 2006 SB 408 surcharge. See re *PacifiCorp Filing of Tariffs Establishing Automatic*  
7 *Adjustment Clauses Under the Terms of SB 408*, Docket UE 177, Order No. 08-201 at 5 (Apr.  
8 11, 2008). For these reasons, the rates resulting from the Stipulation will be just and  
9 reasonable.

10 **CONCLUSION**

11 For the reasons set forth above, the Parties respectfully request that the Commission  
12 approve the Stipulation.

13  
14 DATED: February 5, 2009.

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