

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

3 UE 177

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER,  
6 (UE 177)

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

STAFF’S RESPONSE BRIEF

9 INTRODUCTION

10 Consistent with the schedule in this docket, the Public Utility Commission of Oregon  
11 Staff (Staff) files this response brief. PacifiCorp’s Amended Tax Report is consistent with the  
12 applicable Senate Bill 408 statutes and rules. Because PacifiCorp’s Amended Tax Report is  
13 consistent with the applicable statutes and rules and to the extent that the Industrial Customers of  
14 the Northwest Utilities (ICNU) believes that the rules should be changed, the proper forum to  
15 discuss any changes is in a rulemaking and not within this docket.

16 DISCUSSION

17 **1. PacifiCorp’s Amended Tax Report complies with OAR 860-022-0041.**

18 ICNU’s asserts that “because an actual tax return has been prepared for the 2006 tax year,  
19 the tax return and PacifiCorp’s taxable income should be the starting point for an actual taxes  
20 paid calculation.” See ICNU Opening Brief at 7. ICNU then argues that OAR 860-022-0041 is  
21 violated because the rules require a “hypothetical” calculation that does not produce an “actual”  
22 taxes paid result. See Id.

23 In order to comply with all of the tests in OAR 860-022-0041, hypothetical calculations  
24 must be performed to determine the amount of taxes properly attributable to the regulated  
25 operations. Because none of the utilities subject to SB 408 actually file as stand-alone entities,  
26 hypothetical calculations are necessary to determine the amount properly attributable to the

1 regulated operations. While OAR 860-022-0041 requires “hypothetical” calculations, the  
2 calculations are consistent with SB 408 because the calculations determine the amount of taxes  
3 properly attributable to the regulated operations of the utility.

4 **2. PacifiCorp’s Amended Tax Report complies with the interest synchronization**  
5 **method outlined in OAR 860-022-0041(2)(p)<sup>1</sup>.**

6 While PacifiCorp originally used its actual interest deduction to calculate its interest  
7 expense, it switched to the interest synchronization method at Staff’s request. Staff’s requested  
8 change resulted in an increase of \$2.4 million. However, Staff’s requested change was based  
9 upon the requirement of the rules and was not bottom line result oriented. ICNU correctly notes  
10 that Staff believes that the actual interest calculation produces a more accurate reflection of tax  
11 liability. *See* ICNU Opening Brief at 19 *citing* Staff/200, Owings-Ball/6, lines 8-20.

12 Nonetheless, Staff requested and PacifiCorp performed this change to be consistent with the  
13 rules as currently written. As Staff testified, the proper forum for changes to the rule is in a  
14 rulemaking proceeding.

15 **3. Customers are given the benefit of depreciation.**

16 ICNU states that it is unclear whether customers are given the benefit of depreciation.  
17 *See* ICNU Opening Brief at 10-11. In the Staff Template on pages 5 and 6 (the utility will use  
18 either page 5 or 6) the tax benefit depreciation related to public utility property is deducted from  
19 the tax liability once the stand-alone tax liability has been calculated. Therefore, customers are  
20 given the benefit of depreciation.

21 **4. PacifiCorp’s Amortization to surcharge \$27 million and place the remaining**  
22 **surcharge in a balancing account to accrue interest at the Company’s authorized**  
23 **rate of return.**

24 PacifiCorp proposes to surcharge all but \$7.5 million of the \$34.5 million owed to it by  
25 ratepayers. *See* PacifiCorp’s Post-Hearing Brief at 11. PacifiCorp further proposes to apply

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26 <sup>1</sup> Interest shall be calculated in a manner used by the Commission in establishing rates.

1 interest calculated at its currently authorized rate of return or 8.16%. PacifiCorp states that the  
2 entire surcharge of \$34.5 million plus interest of approximately \$5.8 million, totaling  
3 approximately \$40.3 million will create a rate impact of nearly 4 percent increase. *See* Id at  
4 11-12. Staff supports PacifiCorp’s proposal to limit the rate impact to three percent by  
5 amortizing only \$27 million of the surcharge in the first year. Staff believes that the benefits of  
6 limiting the rate impact another 1 percent out-weighs the additional interest accrual of  
7 approximately \$1 million on the remaining surcharge.

8 OAR 860-022-0041(8)(e) requires that the balancing account “accrue interest at the  
9 Commission-authorized rate for deferred accounts.” Staff expects that PacifiCorp will calculate  
10 interest consistent with the Commission's policies regarding deferred amounts after amortization  
11 is authorized, including any set forth in a final order in Docket UM 1147.

12 CONCLUSION

13 For the foregoing reasons, Staff respectfully urges the Commission to issue an order  
14 finding that PacifiCorp’s Amended Tax Report is consistent with applicable statutes and rules.

15 DATED this 19<sup>th</sup> day of March 2008.

16 Respectfully submitted,

17 HARDY MYERS  
18 Attorney General

19 s/ Jason W. Jones  
20 Jason W. Jones, #00059  
21 Assistant Attorney General  
22 Of Attorneys for the Public Utility Commission  
23 of Oregon

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25  
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1 **CERTIFICATE OF SERVICE**

2  
3 I certify that on March 19, 2008, I served the foregoing upon all parties of record in this  
4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid  
5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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