

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177(1)

In the Matter of

PACIFICORP, dba PACIFIC POWER

SB 408 Tax Report for Calendar Year 2007

ORDER

DISPOSITION: STIPULATION ADOPTED; AUTOMATIC
ADJUSTMENT CLAUSE ESTABLISHED

I. INTRODUCTION

In this order, the Public Utility Commission of Oregon (Commission) approves a stipulation that resolves all issues relating to the tax report for calendar year 2007 filed by PacifiCorp, dba Pacific Power (Pacific Power), in compliance with Senate Bill 408 (SB 408). The stipulation authorizes Pacific Power to implement a \$5.0 million rate surcharge for state and federal taxes, and a \$147,844 surcharge for local taxes.

SB 408, primarily codified at ORS 757.268, requires utilities to true-up any differences between income taxes authorized to be collected in rates from customers and income taxes actually paid to units of government that are “properly attributed” to utilities’ regulated operations.¹ Utilities must make annual tax filings reporting these amounts on October 15 of each year. If amounts collected and amounts paid differ by more than \$100,000, the Commission must order the utility to establish an automatic adjustment clause to account for the difference, with a rate adjustment effective June 1 of each year.²

II. PROCEDURAL HISTORY

On October 15, 2008, Pacific Power filed its annual tax report for calendar year 2007 (2007 Tax Report) and tariff revision sheets filed as Advice No. 08-012.³ In the 2007 Tax Report, Pacific Power states that the amount of state, federal, and local taxes paid and properly attributed to its regulated Oregon operations was \$3.9 million more than the amount of taxes Pacific Power collected in rates. Pacific Power seeks to collect this difference, plus

¹ ORS 757.268(4).

² See ORS 757.268(4), (6)(a); OAR 860-022-0041(8).

³ Official notice is taken of the highly confidential information contained in Pacific Power’s 2007 Tax Report. Any party may object within 15 days of this order. OAR 860-014-0050(2).

interest, as a surcharge to customers through an automatic adjustment clause under ORS 757.268(6).

Through established procedures, the Commission Staff (Staff) reviewed Pacific Power's 2007 Tax Report for compliance with ORS 757.268 and OAR 860-022-0041. Following workshops and settlement conferences to which all parties were invited, Pacific Power and Staff reached a comprehensive settlement in this case. On February 25, 2009, Pacific Power and Staff (jointly referred to as Stipulating Parties) filed a Stipulation and an explanatory brief. A copy of the Stipulation, which is incorporated by reference, is attached as Appendix A. Pacific Power also filed a Revised 2007 Tax Report that contains revisions agreed to in the Stipulation.

On February 25, 2009, the Industrial Customers of Northwest Utilities (ICNU) filed an objection to the Stipulation. ICNU also filed testimony of Ellen Blumenthal in support of its opposition to the Stipulation (ICNU/100-101).⁴ On March 6, 2009, the Stipulating Parties filed a response to ICNU's objections. ICNU and the Stipulating Parties agreed that no hearing was necessary and the matter could be submitted to the Commission based on the written record.

III. DISCUSSION

The Stipulating Parties agree to two revisions to Pacific Power's 2007 Tax Report. First, they agree that the interest expense used for calculating Pacific Power's tax expense under ORS 757.268(12)(a) should be calculated using a five-quarter average capital structure and debt costs, instead of a point estimate of capital structure and costs. This change increases Pacific Power's state and federal tax expense by approximately \$560,000. Second, the Stipulating Parties agree that Pacific Power local taxes should reflect the utility's unitary tax group for state and local taxes. This correction increases Pacific Power's local tax expense by approximately \$5,800.

With these corrections, the Stipulating Parties conclude that amount of state, federal, and local taxes paid and properly attributed to Pacific Power's regulated Oregon operations was \$4.3 million more than the amount of taxes Pacific Power collected in rates. The Stipulating Parties conclude that this amount, combined with estimated accumulated interest through May 2009, produces a 2007 SB 408 tax surcharge amount for state and federal taxes of approximately \$5.0 million, plus interest that will accrue during amortization. They also conclude that Pacific Power's 2007 SB 408 surcharge for local taxes should be \$147,844, plus interest.

The Stipulation recommends that these amounts be amortized over a one-year period through Pacific Power's Schedules 102 and 103, effective June 1, 2009. Combined with the residual 2006 SB 408 tax surcharge of approximately \$15.0 million,⁵ the total surcharge will be approximately \$20.25 million for federal, state, and local taxes.

⁴ On March 27, 2009, ICNU filed a motion to admit the testimony of Ms. Blumenthal. That motion is granted.

⁵ In Order No. 08-201, the Commission authorized Pacific Power to surcharge customers \$42 million for excess income taxes paid in 2006. The Commission allowed Pacific Power to amortize the amount over a two-year

ICNU objects to the Stipulation. ICNU does not address the Stipulating Parties' calculation of the 2007 SB 408 surcharge, but rather attacks the Commission's rule upon which the Stipulation is based. ICNU also contends it lacked the ability to meaningfully review Pacific Power's 2007 Tax Report because of the "safe room" procedures used to allow parties to review tax information designated as highly confidential. We address each issue separately, followed by our resolution of the Stipulation.

A. OAR 860-022-0041

1. Positions of the Parties

ICNU complains that OAR 860-022-0041, our rule governing annual tax reports, circumvents SB 408's requirement that a utility may collect in rates only amounts for taxes "actually paid" to units of government. ICNU explains that SB 408 requires that ratepayers be charged only for the amount of taxes that the "utility pays to units of government," and defines "taxes paid" as "amounts received by units of government from the utility."⁶ Despite these provisions, ICNU argues, our rule aligns rates with *hypothetical* amounts of taxes paid instead of *actual* taxes paid.⁷ ICNU points to several sections of the rule it claims requires the use of "hypothetical" rather than "actual" taxes paid, such as the rule's use of a pro forma tax return with its treatment of interest synchronization and depreciation.⁸ Because the rule does not comply with SB 408, ICNU argues, Pacific Power's tax report based on that rule provides no basis for ordering a surcharge to customers.

In response, the Stipulating Parties assert that the Commission should conclude, as it did in last year's tax docket, that ICNU's challenge to OAR 860-022-0041 is outside the scope of the proceeding and better addressed in a separate rulemaking proceeding. They also rely on the Commission's decision last year in this docket finding that the calculation of Pacific Power's surcharge complied with both OAR 860-022-0041 and SB 408.⁹

period, with \$27 million of the 2006 SB 408 surcharge collected from June 1, 2008 to May 31, 2009. The \$15 million residual amount is comprised of the unamortized SB 408 2006 balance as of June 1, 2009, plus interest projected to accrue through May 2010.

⁶ ORS 757.268(6).

⁷ Citing OAR 860-022-0041(3).

⁸ See OAR 860-022-0041(3)(b) and (d).

⁹ See Order No. 08-201 at 4.

2. *Commission Resolution*

In resolving ICNU's challenge, our task is to determine whether we exceeded our statutory authority in adopting OAR 860-022-0041. For the purposes of that inquiry, we examine the wording of the rule itself and the statutory provisions authorizing the rule.¹⁰

ICNU's challenge to OAR 860-022-0041 is premised on the theory that SB 408 requires rates be adjusted using amounts of "actual taxes paid." ICNU primarily relies on language contained in ORS 757.268(6), which requires an adjustment to rates "so that ratepayers are not charged for more tax than: (a) the utility pays to units of government* * *." ICNU appears to believe that this language mandates the Commission to use amounts actually contained in the utilities' tax returns to calculate "taxes paid."

There are at least two problems with ICNU's theory. First, ICNU relies on language from ORS 757.268(6) that is taken out of context. A full reading of the statute makes clear that SB 408 requires the Commission to adjust rates based not on the total amounts the utility "actually paid" in taxes, but rather how much the utility or its affiliated group paid in taxes that are "properly attributed to the regulated operations of the utility." ORS 757.268(6) provides, in its entirety:

The automatic adjustment clause shall account for all taxes paid to units of government by the public utility that are properly attributed to the regulated operations of the utility, or by the affiliated group that are properly attributed to the regulated operations of the utility, and all taxes that are authorized to be collected through rates, *so that ratepayers are not charged for more tax than:*

(a) The utility pays to units of government and *that is properly attributed to the regulated operations of the utility;* or

(b) In the case of an affiliated group, the affiliated group pays to units of government and that is *properly attributed to the regulated operations of the utility.* (Emphasis added.)

Second, ICNU's apparent belief that the Commission may only use amounts contained in the utilities' actual tax returns to adjust rates ignores the reality that utilities generally pay taxes as part of an affiliated group. These affiliated groups include unregulated affiliates of a parent company that files taxes on a consolidated basis. Consequently, none of the utilities subject to SB 408 files a separate tax return reflecting its regulated operations that could be used for purposes of adjusting rates. Thus, as expressly recognized by the Legislative Assembly, the amounts contained in the tax returns must be adjusted to reflect only those amounts that are "properly attributed" to the regulated operations of the utility.

Read correctly, SB 408 requires the Commission to adjust rates to match amounts of taxes actually paid, by either the utility or the affiliated group, that are "properly

¹⁰ See *Wolf v. Oregon Lottery Commission*, 344 Or 345, 355, 182 P3d 180 (2008). We consider our role to be similar to that of the Court of Appeals in determining the validity of a rule under ORS 183.400.

attributed” to the regulated operations of the utility. The question presented, therefore, is whether OAR 860-022-0041 is consistent with this mandate.

The Legislative Assembly did not define the term “properly attributed.” The Assembly did, however, limit the amount of taxes paid that could be properly attributed to the regulated operations of the utility. ORS 757.268(12) provides:

For purposes of this section, taxes paid that are properly attributed to the regulated operations of the public utility may not exceed the lesser of:

- (a) That portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility; or
- (b) The total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies.

The Attorney General concluded that “properly attributed” was a delegative term that must be interpreted and applied by the Commission, consistent with the limits imposed by ORS 757.268(12)¹¹ In OAR 860-022-0041, the Commission defined “properly attributed” by requiring that the amount of “taxes paid” and “properly attributed” to the utility be calculated by using the three-factor Apportionment Method used by Oregon and other states to determine the state tax liability for multistate corporations.¹² In a nutshell, the Apportionment Method starts with the amount of taxes actually paid by the utility or its affiliated group, as required by statute, and apportions those tax payments by calculating the utility’s amounts of payroll, property, and sales compared to the consolidated group’s amounts for the same items. A combination of the three ratios is multiplied by the amount of taxes paid by the affiliated group to units of government, yielding the utility’s attributed portion.¹³

The Commission established both a floor and ceiling to the results calculated under the Apportionment Method in order to fairly allocate tax benefits and to comply with limits imposed by SB 408. First, OAR 860-022-0041(3)(b) and (d) impose a floor on the results derived from the Apportionment Method to ensure that ratepayers do not receive more than 100 percent of the tax benefits from losses within the taxpaying group.¹⁴ Second, OAR 860-022-0041(4)(d) requires the amount calculated under the Apportionment Method be capped at the lesser of the utility’s stand-alone tax liability or the total amount paid by the consolidated group—limitations found in SB 408 itself.¹⁵ Thus, the range of amounts

¹¹ Letter of Advice dated Dec. 27, 2005, to Chairman Lee Beyer.

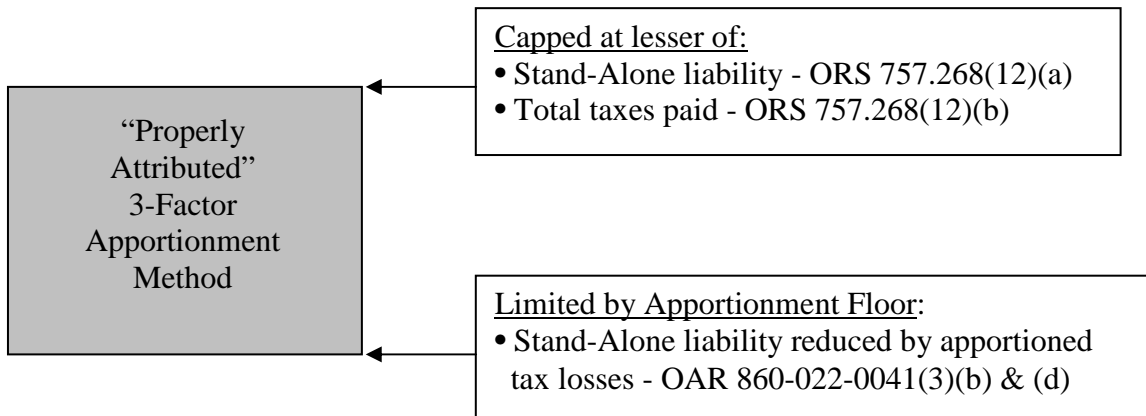
¹² See Orders No. 06-532, 06-400.

¹³ Order No. 06-532 at 2.

¹⁴ See Order No. 06-532 at 8-9; OAR 860-022-0041(3).

¹⁵ See ORS 757.268(12)(b),(a); OAR 860-022-0041(4).

“properly attributed” under OAR 860-022-0041, bound by a statutorily imposed ceiling and a pragmatic floor, is limited as follows:



ICNU does not appear to attack our use of the Apportionment Method directly, nor does it appear to challenge the inclusion of a floor or ceiling to limit the results derived thereunder. Rather, ICNU contends that the rule impermissibly uses hypothetical amounts by requiring the use of a pro forma tax return, and objects to the treatment of interest synchronization and depreciation that is part of that pro forma return. ICNU asserts that “[a] pro forma tax return is unnecessary since the period in question [in these SB 408 proceedings] is a historical period. An actual tax return already exists for the utility even if the utility is included in a consolidated tax return.”¹⁶ Based on that assertion, ICNU argues that this “actual tax return” should be used, rather than the pro forma return.

Again, ICNU misunderstands how utilities file taxes. As noted, the utilities subject to SB 408 file taxes as part of an affiliated group. The actual tax returns, therefore, will contain tax information for the affiliated groups as a whole, but will not include separate tax returns reflecting only the utilities’ regulated operations. Due to this fact, OAR 860-022-0041(2)(p) requires a utility to report its “stand-alone” tax liability, defined as:

the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility’s results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates.

The pro forma return is used for two calculations under the rule. First, it is directly used to establish the cap of taxes paid and properly attributed under ORS 757.268(12)(a). Second, it is used as the starting point to calculate the Apportionment Method floor under OAR 860-022-0041(3)(b) and (d).

¹⁶ ICNU/100, Blumenthal/5.

Contrary to ICNU's assertions, then, the use of a pro forma return is not improperly used as a proxy for the amount of taxes "actually paid to units of government." The amount of taxes paid that is properly attributed to the regulated operations is first determined using the Apportionment Method (with a floor, if appropriate). This amount is then compared to the amounts calculated under the two statutory caps (the stand-alone liability and the total amount paid by the affiliated group to units of government). The rule requires the use of the *lowest* of those three amounts for the utility's tax report.¹⁷ Consequently, the resulting number will always be equal to or less than the maximum amounts established by the Legislative Assembly for taxes paid that are properly attributed to regulated operations of the utility. The use of the pro forma tax return is well within the Commission's discretion in implementing SB 408.

ICNU has failed to demonstrate that the provisions of OAR 860-022-0041 yield amounts "properly attributed" to the regulated operations of the utility that exceed the scope of our discretion under SB 408. Accordingly, we conclude that we acted within the authority delegated to us by the Legislative Assembly and that OAR 860-022-0041 is valid.

B. Safe Room Procedures

1. Parties' Positions

ICNU objects to the "safe room" discovery protocol we established for the review and use of highly confidential tax information contained in Pacific Power's annual tax report. As a signatory to Protective Order No. 06-033, ICNU was entitled to review the highly confidential tax data contained in the 2007 Tax Report in a safe room in Portland. ICNU was permitted to take limited, non-verbatim notes on the highly confidential materials, but was not allowed to make and remove copies of the documents. Pacific Power was allowed to provide a monitor on site in the safe room during review, but was required to provide an adjacent private conference room for discussions among counsel and consultants.

ICNU contends that the safe room protocol precludes intervenors from a meaningful review of Pacific Power's 2007 Tax Report. ICNU introduced testimony from its expert consultant from Texas, who opined that "it is impossible to write testimony addressing the specifics of the case without having the documents on hand," and that it is "equally impossible to draft testimony in the safe room with a company representative present."¹⁸ She added that the safe room procedures fail to acknowledge that very few consultants with expertise on income tax matters reside in Portland, requiring expert witnesses to travel to Portland to review the highly confidential portions of the tax reports and responses to requests for information. She concludes that the safe room requirements are extreme, explaining that she is routinely allowed to possess copies of highly confidential tax information in utility proceedings held in other jurisdictions.

The Stipulating Parties respond that the Commission has previously addressed ICNU's safe room challenges and rejected them. They add that ICNU has offered no new

¹⁷ OAR 860-022-0041(4)(d).

¹⁸ ICNU/100, Blumenthal/7, lines 9-11 (Feb 25, 2009).

justification to amend the measures adopted to protect the highly confidential tax information.

2. *Resolution*

This Commission has frequently addressed the issue of access to the highly confidential information contained in SB 408 tax reports. In enacting SB 408, the Legislative Assembly expressly recognized the sensitivity of the information contained in the utilities' tax reports.¹⁹ Consequently, the legislature allowed intervenors access to the tax information only upon signing a protective order:

An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.²⁰

Over the objection of ICNU and another intervenor, we adopted Protective Order No. 06-033, which imposed heightened restrictions governing the use of and access to tax information designated as “highly confidential.” Given the sensitivity of the information, as well as a recent leak of confidential information in another docket that cast doubt on the efficacy of our standard protective order, we concluded that we had no choice but to limit intervenors' review of documents containing highly confidential information to a safe room.

In Protective Order No. 06-033, we acknowledged the inconvenience imposed by the use of a safe room. We concluded, however, that the potential harm of the public release of the highly confidential information outweighed the inconvenience to parties. We incorporated provisions to ensure the intervenors' ability to participate and contribute in the review and auditing of the tax reports. Among other things, we recognized the difficulties presented by the use of an out-of-state consultant, and indicated that we would entertain a request for increased intervenor funding to cover additional travel expenses.²¹

In this docket last year, ICNU filed a motion to amend Protective Order No. 06-033, renewing many of its arguments raised earlier in its objection to the safe room discovery protocol. We denied ICNU's motion in Order No. 08-002. In addition to reaffirming our earlier conclusions, we found that Pacific Power's inclusion in Berkshire Hathaway's consolidated tax group increased the risk of disclosure. We noted that Pacific Power's tax reports now contain sensitive tax information from the hundreds of unregulated companies that are included in Berkshire Hathaway's consolidated filing.²²

¹⁹ “Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.” ORS 757.267(1)(g).

²⁰ ORS 757.268(11)

²¹ Protective Order No. 06-033 at 5.

²² Order No. 08-002 at 5.

This year, ICNU again renews its objection to the Safe Room procedures. We find no need to readdress the arguments previously raised, and instead incorporate by reference our decisions in Protective Order No. 06-033 and Order No. 08-002. We do, however, glean an argument raised by ICNU that we have not previously addressed. ICNU appears to argue that the Protective Order violates the provisions of ORS 757.268(11), because it denies intervenors the right to possess the highly confidential tax documents filed by Pacific Power. ICNU's reliance on ORS 757.268(11) is misplaced. That provision allows an intervenor to "obtain and use the information" contained in the tax report upon signing a protective order. The phrase "obtain and use the information" means the intervenors are given permissive access to the documents, not to "possess" them. The safe room procedures provide that access to ICNU and other intervenors, enabling them to "obtain and use the information" provided in the tax reports for use in these proceedings.

Although ICNU had access to the highly confidential information as a signatory to the Protective Order, it chose not to avail itself of that access in this proceeding. ICNU concedes in its testimony in opposition to the Stipulation that it did not actively participate in the review of Pacific Power's 2007 Tax Report.²³ According to the Stipulating Parties, ICNU did not participate in any of the workshops or settlement conferences held in this docket, and did not review Pacific Power's 2007 Tax Report.²⁴ By failing to make any reasonable effort to work within the terms of the Protective Order, ICNU cannot claim that the terms of that Protective Order prevented it from meaningful participation in this proceeding.

We uphold the safe room procedures as an appropriate mechanism to govern the review and use of highly confidential tax information contained in Pacific Power's 2007 Tax Report. Consequently, we reaffirm our decisions in Protective Order No. 06-033 and Order No. 08-002.

C. Stipulation

The Stipulating Parties assert that the Stipulation resolves all issues in this proceeding and request that the Commission issue an order adopting the Stipulation in its entirety. The Commission encourages parties to resolve issues and narrow the scope of the proceedings to the extent that such actions further the public interest.

Based on our conclusions above and review of the Stipulation and supporting documents, we agree with the Stipulating Parties that Pacific Power's Revised 2007 Tax Report is consistent with ORS 757.268 and OAR 860-022-0041. We conclude that the Stipulation should be adopted in its entirety.

²³ ICNU/100, Blumenthal/6, lines 7-12 (Feb 25, 2009).

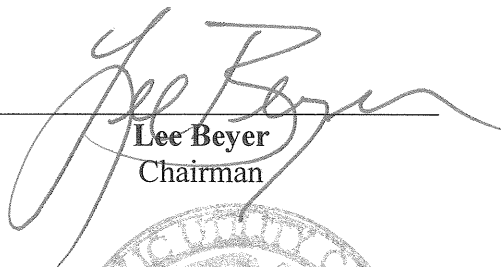
²⁴ Staff and PacifiCorp's Response to ICNU's Objection to the Stipulation at 1 (Mar 6, 2009).

IV. ORDER

IT IS ORDERED that:

1. The Revised 2007 Tax Report filed by PacifiCorp, dba Pacific Power, is adopted.
2. PacifiCorp, dba Pacific Power, may amortize a surcharge in an amount not to exceed \$20,250,000 over a one-year period through its Schedules 102 and 103. Interest will accrue on the unamortized balance as set forth in the Stipulation.
3. PacifiCorp, dba Pacific Power, must amend the tariff revision sheets filed as Advice No. 08-012 as described in this order. The amended tariff sheets must go into effect June 1, 2009.


Made, entered and effective APR 10 2009.



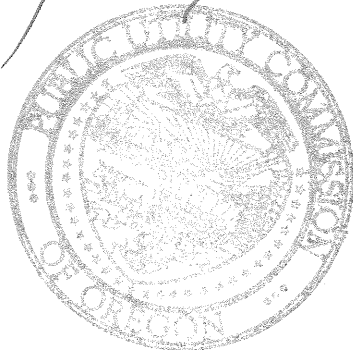
Lee Beyer
Chairman



Ray Baum
Commissioner



John Savage
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). 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.

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 177(2)

In the Matter of:

PACIFICORP, dba PACIFIC POWER

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

STIPULATION

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

PARTIES

1. The parties to this Stipulation are Staff of the Public Utility Commission of Oregon ("Staff") and Pacific Power (the "Company") (together, the "Parties"). Staff and the Company were the only parties that attended the settlement conference in this case, 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.

BACKGROUND

2. SB 408 requires most Oregon public utilities to file an annual tax report with the Public Utility Commission of Oregon ("Commission") that provides information on: (1) the amount of taxes paid by the utility to units of government or that was paid by affiliated groups and that is properly attributed to the utility's regulated operations; and (2) the amount of taxes authorized to be collected in rates. ORS 757.268(1). The law requires the Commission to review the tax report to determine whether the amount of taxes paid differs from the amount of 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
26 balancing account for its 2006 SB 408 state and federal tax surcharge, described in footnote 1 and
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
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1 rights provided in OAR 860-014-0085 and shall be entitled to seek reconsideration or appeal
2 of the Commission's Order.

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

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

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

Signature page follows.

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STAFF

PACIFIC POWER

By: 

By: Andrea Kelly

Date: 2/5/09

Date: 5 February 2009

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

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		<u>\$ 5,057,334.00</u>
Beginning balance (Amortization)			
4	June 09 - May 10		\$ 5,057,334.00
5	Estimated Interest	June 09 - May 10	<u>\$ 51,969.00</u>
6	Total projected 2007 tax period surcharge amortization, including estimated interest		<u>\$ 5,109,303.00</u>
	Or:		
7	Total 2007 surcharge (per the tax report)		\$ 4,330,980.00
8	Add: Total estimated interest		\$ 778,323.00
9	Total		<u>\$ 5,109,303.00</u>

APPENDIX 17
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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		<u>\$ 20,145,435.52</u>