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**VIA E-MAIL (jason.w.jones@state.or.us)**

Jason W. Jones  
Assistant Attorney General  
Department of Justice  
Regulated Utilities & Business Section  
1162 Court St. NE  
Salem, OR 97301

Dear Jason:

I am writing on behalf of PacifiCorp in regard to Staff's letter to interested parties dated August 12, 2005. Staff's letter states that "Staff will be proposing the Commission adopt temporary rules for the report to be filed by utilities by October 15, 2005." Some of the questions Staff proposes in its letter, however, go beyond SB 408's reporting requirement and address SB 408's proposed automatic adjustment clause. As explained in more detail below, to avoid confusion about the scope of the temporary rulemaking and focus the parties' responses to Staff's questions, PacifiCorp proposes that Staff verify that the temporary rulemaking pertains only to SB 408's reporting requirement and ask that parties limit their comments and proposed temporary rule language at this point to that issue.

ORS 183.335(5) provides that in order to adopt temporary rules, the Commission must first find that its failure to do so will "result in serious prejudice to the public interest or the interest of parties concerned". This requirement protects the public interest by assuring that, absent exigent circumstances, administrative rules are adopted in an orderly manner that allows for broad public input. *See Multnomah County v. Davis*, 35 Or App 521, 527-528, 581 P2d 968 (1978) (rulemaking procedures assure broad public input into agency decisions).

The only aspects of SB 408 that might justify the requisite finding under ORS 183.335 are those related to the annual reporting requirement that commences on October 15, 2005.

Subsection 4(2) of SB 408 provides that any "automatic adjustment clause shall apply only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006". Taxes paid in 2006 will not be reported until October of 2007 and will not be subject to an automatic adjustment clause until late 2007 or early 2008. As a consequence, there is ample time

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to engage in a standard rulemaking process regarding issues associated with an automatic adjustment clause well before one would be implemented.

Legal requirements aside, PacifiCorp believes that it is not realistic to expect that all of the issues described in Staff's August 12 letter can be appropriately considered prior to the proposed September 14 public meeting. Just resolving the issues related to reporting will be a monumental undertaking. The process should not be distracted by debate over issues that do not need to be resolved in the next month.

While PacifiCorp acknowledges that it is not entirely clear which of the issues in Staff's August 12 letter must be resolved in order to satisfy the October 15 reporting requirements, we suggest that the following list of questions be grouped in the first tier for treatment in the temporary rulemaking process: questions 1, 2, 9, 11b, and 15-21; as well as question 5, except the parts related to the meaning of phrases in Sections 3(3) and (6) of the bill; question 6 to the extent that it defines "properly attributed to the regulated operations of the utility", which is a phrase used in Section 3(1) of the bill (which pertains to the reporting requirement); and question 24 to the extent that it calls for proposed temporary rules relating to the reporting requirement.

PacifiCorp suggests that parties address the other, second tier questions raised in Staff's August 12 letter after completion of the temporary rulemaking. In this regard, PacifiCorp believes that holding a series of workshops on the general issues raised by SB 408's automatic adjustment clause might be helpful before parties prepare written responses to Staff's second tier questions.

In light of the foregoing, PacifiCorp respectfully suggests that Staff: a) confirm that the temporary rules will only relate to SB 408's reporting requirement; and b) clarify that the parties' August 30 responses to the Staff's letter should address only the designated questions relating to SB 408's reporting requirements.

Very truly yours,

Sarah J. Adams Lien

cc: Judy Johnson (via e-mail)  
Laura Beane (via e-mail)