


PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 12, 2014

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: October 28, 2014

TO: Public Utility Commission

FROM: Brian Bahr ^{BB}
_{IF}

THROUGH: Jason Eisdorfer and Marc Hellman 

SUBJECT: PACIFICORP: (Docket No. UI 351) Requests approval of Affiliated Interest Agreement with Wells Fargo Bank, N.A.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) application for approval of an affiliated interest agreement with Wells Fargo Bank, N.A. (Wells Fargo), an affiliated interest, and the waiver of filing requirements in OAR 860-027-0040 for individual transactions under the Agreement, subject to the following conditions:

1. PacifiCorp shall notify the Commission of any substantive changes to the Agreement, including any material changes in price or other parameters specified in the Agreement. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
2. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into under the Agreement with Wells Fargo.

DISCUSSION:

PacifiCorp filed this application with the Commission on August 14, 2014, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company, a subsidiary of Berkshire Hathaway, Inc., which is controlled by Warren Buffet. Buffet, Berkshire Hathaway, and Berkshire Hathaway's subsidiaries and employee benefit plans together hold over five percent in Wells Fargo & Company common stock. Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo & Company.

"Affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning five percent of the voting securities of a public utility or in any successive chain of ownership of a public utility. Berkshire Hathaway's ownership interest in PacifiCorp and Wells Fargo qualifies as an affiliated interest.

In 2004, prior to an affiliated interest relationship with Wells Fargo, PacifiCorp entered into the International Swap Dealers Association (ISDA) Master Agreement (Agreement). The Agreement, and its various amendments and supplements, allows PacifiCorp and Wells Fargo to enter into commodity derivative transactions with each other (eg. natural gas financial hedge transactions to mitigate potential increase in natural gas prices).

As part of its ongoing process of reviewing affiliated transactions, the Company discovered that, although transactions between the Company and Wells Fargo under the Agreement were reported as part of the Company's annual affiliated interest report (transactions occurred in 2009 and 2012), the original Agreement was not filed as an application for approval of an affiliated interest with the Commission, as an affiliate relationship did not exist at the time the Agreement was entered.

The Company is now requesting approval of the Agreement, including its subsequent supplements and amendments, under which the Company may enter into commodity derivative transactions with Wells Fargo. The Company also requests a waiver of the requirement to file for approval for individual transaction between the Company and Wells Fargo under the Agreement. Staff's review of this application included examination of the Company's current application, including the corresponding confidential exhibits, as well as the Company's responses to eleven data requests.

Issues

Staff investigated the following issues:

1. Terms and Conditions of the Agreement;
2. Transfer Pricing;
3. Public Interest Compliance;
4. Request for waiver of OAR 860-027-0040; and
5. Records Availability, Audit Provisions, and Reporting Requirements.

Terms and Conditions of the Agreement

The Agreement consists of the original ISDA Agreement, as well as the First Amendment to the ISDA Master Agreement, the Amendment Adopting, Incorporating and Amending the ISDA August 2012 Dodd-Frank Supplement, and the Amendment Adopting, Incorporating and Amending the ISDA March 2013 Dodd-Frank Supplement.

The Agreement, included as confidential with the Company's application filing, designates dollar thresholds associated with credit agency ratings, sets forth protocols, and contains definitions and clauses relating to customary legal matters. The Agreement allows the Company's transactions to be governed by one master agreement, rather than as individual transactions. Staff reviewed the original Agreement and the supplements and amendments and did not find any unexpected or unusual terms or conditions.

Transfer Pricing

Transactions between the Company and Wells Fargo under the Agreement occurred only in the years 2009 and 2012, and both times were reported to the Commission as part of the Company's annual affiliated interest report. The Commission standard for affiliate transactions is that they be priced at the lower of cost or market.

In this application, all trades made by traders are based on competitive bids and market prices. All trades are subject to a market test, and any trade at a significant deviation in price from the market must be reconciled and explained. These explanations are reviewed and archived. Trades above an additional deviation threshold, whether an advantage or disadvantage, are reported by the director of risk management to the senior vice president and managing director of finance. Additionally, there are caps on the amount of credit exposure with Wells Fargo, as there are with other of the Company's counterparties.

In making trades, traders are concerned solely with finding the best price and have no incentive to favor any specific counterparty. Based on these circumstances, Staff finds the method of ensuring prices are fair and reasonable is adequate.

Public Interest

Using an Agreement to govern certain transactions between the Company and Wells Fargo results in decreased administrative costs to the Company, and passed on to ratepayers, as individual transactions do not require individual governing documents. Conducting transactions with Wells Fargo under the Agreement allows the Company to manage risk by engaging in hedges of against the price of its natural gas purchases. Without such hedges, the Company's purchases of gas would be the equivalent of price speculation. Thus, customers are less exposed to the volatility of natural gas market price changes.

Staff finds the Agreement to be in the public interest (customarily a no harm standard applied by the Commission) as the Agreement allows the Company to engage in transactions that reduce the risk of price volatility, which is a benefit to customers.

Waiver of OAR 860-027-0040

The Company has requested that the Commission waive the requirement found in OAR 860-0027-0040 that each individual transaction with Wells Fargo under the Agreement receive approval from the Commission. As described above in the Transfer Pricing section, the nature of the timing of an individual transaction makes it impossible for the Company to first request approval from the Commission. The Commission maintains the ability to review the transactions through their inclusion in the Company's annual affiliated interest report and in general ratemaking proceedings. Staff therefore recommends the waiver of OAR 860-027-0040 for transactions with Wells Fargo under the Agreement be granted.

Records Availability, Audit Provisions, and Reporting Requirements

Staff notes that the Commission retains the ability to review all affiliated transactions of the Company through both its annual affiliated interest report and in general rate case filings. Staff's recommended conditions provide for all necessary Commission examination of PacifiCorp's records concerning the Agreement.

PacifiCorp has reviewed this memo and has not communicated any objections or concerns.

Based on the review of this application, Staff concludes:

1. The application regards an affiliated interest agreement that is fair and reasonable and not contrary to the public interest with inclusion of the proposed ordering conditions; and
2. Necessary records are available.

PROPOSED COMMISSION MOTION:

PacifiCorp's application for approval of the Agreement with Wells Fargo, an affiliated interest, and request for waiver of filing requirements of OAR 860-027-0040 for transactions with Wells Fargo under the Agreement, be approved subject to Staff's recommended conditions.