

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 9, 2015**

REGULAR \_\_\_\_\_ CONSENT  X  EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: May 12, 2015

TO: Public Utility Commission

FROM: Brian Bahr <sup>BB</sup>  
*[Signature]*

THROUGH: Jason Eisdorfer and Marc Hellman *[Signature]*

SUBJECT: PACIFICORP: (Docket No. UI 356) 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 (Company) application for approval of an affiliated interest agreement with Wells Fargo Bank, N.A. (Wells Fargo), an affiliated interest, 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:**

Issues

Prior to 2015, Berkshire Hathaway Energy Company (BHE) provided a Long Term Incentive Plan (LTIP) for its subsidiaries, including PacifiCorp. However, in 2015, PacifiCorp withdrew from BHE's LTIP and began administering its own plan. PacifiCorp selected Wells Fargo to serve as the custodian to hold the LTIP assets.

With this application, the Company is requesting approval of the LTIP Custody Agreement between PacifiCorp and Wells Fargo, an affiliated interest agreement. Staff's review included examination of the Company's current application, including the

corresponding confidential exhibit, as well as the Company's responses to 12 data requests.

### Applicable Laws

PacifiCorp filed this application with the Commission on March 4, 2015, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly-owned subsidiary of BHE, a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway), 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.

For transactions between affiliated interests, OAR 860-027-0048(4)(e) requires utilities to record the transaction at the lower of cost or market. OAR 860-027-0043 provides for the potential waiver of the affiliated interest rules if the transaction amount is less than 0.1 percent of the utility's annual Oregon revenues.

The Commission reviews affiliated interest transactions to ensure they are fair and reasonable and not contrary to the public interest. ORS 757.495(3).

### Analysis

Staff investigated the following issues:

1. Terms and Conditions of the Agreement;
2. Transfer Pricing;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions, and Reporting Requirements.

### *Terms and Conditions of the Agreement*

The Custody Agreement, included with the Company's application as a confidential exhibit, includes descriptions of the rights and obligations both of the Company and Wells Fargo, as well as standard clauses relating to principles such as indemnification, waivers, and severability. Staff reviewed the Custody Agreement and did not identify any unexpected or unusual terms or conditions.

### *Transfer Pricing*

Staff reviewed fees charged by Wells Fargo for other administrative custodial agreements and found those charged to PacifiCorp to be comparable with these market rates and the same as what Wells Fargo charges to other Berkshire Hathaway subsidiaries for LTIP custody services. The Company anticipates paying custodial fees of less than \$2,500 in the first year, and the fee will rise in the future incrementally as the asset balance grows larger.

The annual fee amount would normally qualify for a waiver of the affiliated interest transaction requirements as the expense is significantly less than 0.1 percent of PacifiCorp's annual Oregon revenue. Because the LTIP custodial expense is significantly less than 0.1 percent of PacifiCorp's Oregon revenue, the effect of the contract on Oregon customers is minimal. In addition, the costs of the LTIP are currently not being recovered by the Company from customers in Oregon.

### *Public Interest*

The Commission customarily applies a "no harm" standard in determining what is "not contrary to the public interest" in matters involving affiliated interest transactions. See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Order No. 01-778 (Docket No. UM 1011). By managing its own LTIP, the Company will be able to take advantage of administrative efficiencies, as it already administers its own employee benefit plans. By designing and administering the LTIP program at the subsidiary level, it allows the Company to be responsive to its own business needs. And, as previously noted, the LTIP costs are not in current Oregon rates.

### *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 Custody Agreement.

### Conclusion

PacifiCorp has reviewed this memo and has not communicated any objections or concerns. Based on the review of this application, Staff concludes:

1. The Custody Agreement did not appear to contain any unexpected or unusual terms or conditions;
2. The transfer pricing is fair and reasonable;
3. The transaction is in the public interest; and,
4. Necessary records are available.

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**PROPOSED COMMISSION MOTION:**

PacifiCorp's application for approval of an affiliated interest agreement with Wells Fargo be approved subject to Staff's recommended conditions.

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