

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: November 3, 2015

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

DATE: October 8, 2015

TO: Public Utility Commission

FROM: Scott Gibbens 

THROUGH: Jason Eisdorfer and Marc Hellman  

SUBJECT: PACIFICORP: (Docket No. UI 359) Requests approval of an Affiliated Interest Agreement with BNSF Railway Company.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) application for approval of an Affiliated Interest Agreement (Agreement) with BNSF Railway Company (BNSF), an affiliated interest, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive changes to the Agreement, including any material change in price. 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, a summary of the Company's transactions with BNSF.

**ISSUE:**

PacifiCorp requests to enter into an affiliated interest agreement with BNSF for the purposes of extending neutral wire across railroad lines.

**RULE:**

"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. ORS 757.495(3) and OAR 860-027-0040 provide that

the Commission may allow a regulated utility to enter into an affiliated interest agreement if the Commission determines that the agreement is fair and reasonable and not contrary to the public interest.

### **ANALYSIS:**

PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway, Inc. (Berkshire). BNSF is also a subsidiary of Berkshire.

Berkshire's ownership interest in BNSF creates an affiliated interest for PacifiCorp through Berkshire's ownership interest in BHE and BHE's ownership interest in PacifiCorp.

PacifiCorp is reconfiguring certain portions of its system to extend neutral wire, which will require crossing BNSF's real property in three places.

Staff's review of this application included examination of the Company's current application, the three license agreements with BNSF which includes common carrier pricing, as well as two Staff information requests.

### Issues

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

Staff reviewed the three "License for Electric Supply Line Across or Along Railway Property Agreement" between the Company and BNSF and did not observe any unusual terms or conditions in the Agreement.

### Transfer Pricing

BNSF charges standardized fees for its licenses, which are \$3,500 for the license, \$750 for the application fee, and \$460 to a non-affiliated company for insurance fees, all on a one-time basis. These fees match other license agreements available to view online as well as information available on BNSF's website. Staff believes that the transfer pricing is fair and reasonable.

Public Interest Compliance

PacifiCorp is extending the neutral wire along existing distribution poles in order to ensure compliance with National Electric Safety Code (NESC) part 96C. This will help ensure that customers continue to receive safe and reliable power.

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 with BNSF.

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.

PacifiCorp has reviewed this memo and has no objections or concerns.

**PROPOSED COMMISSION MOTION:**

PacifiCorp's application for approval of the Affiliated Interest Agreement with BNSF, an affiliated interest, be approved subject to the two conditions recommended by Staff.