

ITEM NO. CA10

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 13, 2016

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

DATE: August 24, 2016

TO: Public Utility Commission

FROM: Kathy Zarate KZ

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UI 373) Requests Approval of Affiliated Interest Transaction with Cottonwood Creek Consolidated Irrigation Company.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) Application for Approval of an Affiliated Interest Transaction with Cottonwood Creek Consolidated Irrigation Company (CCCIC), an affiliated interest, subject to the following conditions:

1. The Commission reserves the right to review, for reasonableness, all financial aspects of these transactions in any rate proceedings or alternative form of regulation.
2. 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.
3. PacifiCorp shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to any transactions involving CCCIC.

## **DISCUSSION:**

### Issue:

Whether PacifiCorp's 2016 Water Use Letter Agreement (Agreement) with Cottonwood Creek Consolidated Irrigation Company (CCCIC), an affiliated interest, should be approved.

### Applicable Law:

PacifiCorp filed its Application for Approval of an Affiliated Interest Transaction with CCCIC, seeking approval of 2016 Water Use Letter Agreement, with the Commission on June 24, 2016, pursuant to ORS 757.495(1) and OAR 860-027-0040.

An "affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by a corporation or person that also owns, or is part of a successive chain of ownership, five percent or more of the voting securities of a public utility. PacifiCorp holds approximately 26 percent of the outstanding water stock in CCCIC. Therefore, CCCIC could be deemed an "affiliated interest" of PacifiCorp.

The Commission reviews affiliated interest transactions to ensure that they are fair and reasonable and not contrary to the public interest. ORS 757.495(3). Under the relevant portion of OAR 860-027-0048(4)(d), "sales shall be recorded in the energy utility's accounts at the energy utility's cost or the market rate, whichever is higher." The Commission may waive any rule for good cause shown. OAR 860-027-0000(2). The Commission need not determine the reasonableness of all financial aspects of the contract for ratemaking purposes at this time, but rather, may reserve that issue for subsequent proceedings. See Commission Order No. 11-071.

### Discussion and Analysis

CCCIC is a non-profit mutual irrigation company, located in Castle Dale, Utah. PacifiCorp holds approximately 26 percent of the outstanding water stock in CCCIC, and pays annual assessment fees to CCCIC in exchange for receiving access to water for its Hunter generating facility. PacifiCorp also previously made a capital investment in CCCIC, called the Cottonwood Project, in the interest of long-term secure water supply for Hunter.<sup>1</sup>

For 2016, PacifiCorp determined that it did not need its 2016 CCCIC water share allocation, which puts the Company at risk of losing 16,000 acre-feet of water that has been carried over in the Joes Valley Reservoir. If the reservoir spills, PacifiCorp will

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<sup>1</sup> PacifiCorp Application at 1-2, referring to *In re PacifiCorp*, OPUC Docket No. UI 312, which was approved by the Commission in OPUC Order No. 11-332.

lose its carry-over water. To reduce this risk, PacifiCorp negotiated with CCCIC for the 2016 irrigation season to lease back to CCCIC its water share allocation in exchange for CCCIC beginning its irrigation season two weeks earlier than normal. In return, CCCIC agreed to pay PacifiCorp \$.50 per acre-foot of water that it receives under the Agreement. There is no option to renew this Agreement. PacifiCorp estimates that it will receive an aggregate \$4,000 under the Agreement.

According to PacifiCorp, CCCIC is the only other water user in the Cottonwood Creek Drainage that could utilize PacifiCorp's water. As a result, there were no other bids available for the water.

Staff has reviewed the Company's 2016 Water Use Letter Agreement and the Company's responses to eleven data requests. 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 Agreement is between PacifiCorp and CCCIC. Provides that PacifiCorp will lease its water share allocation back to CCCIC for the 2016 irrigation season, and in consideration of this, CCCIC will start its irrigation season approximately two weeks earlier than usual and will pay PacifiCorp \$.50 per acre-foot of water it receives. Staff reviewed the Agreement and did not find any unexpected or unusual terms or conditions.

#### Transfer Pricing

As a result of negotiations between CCCIC and PacifiCorp, CCCIC agreed to pay \$0.50 per acre foot of water. It is estimated that PacifiCorp will receive an aggregate amount of \$4,000 in exchange for the water CCCIC receives under the Agreement. PacifiCorp proposes to use the proceeds from the Agreement as a credit to its November 2016 CCCIC annual share assessment. Because the assessment is in November, PacifiCorp does not know its 2016 assessment at this time. PacifiCorp's 2015 cost of CCCIC water was \$321,832.31.

OAR 860-027-0048(4)(d) requires that the utility record the transaction at the higher of its cost or market. In this particular transaction, the cost to PacifiCorp of its water for 2016 is unknown at this time. However, because PacifiCorp was unable to secure any other bids for use of its water, Staff can assume that the negotiated price reasonably represents a market rate. Given the lack of alternative options available to PacifiCorp, and the public interest considerations below, Staff recommends a waiver, pursuant to

OAR 860-027-0000(2), of the requirement that PacifiCorp record the transaction at the higher of its cost or market rate.

#### Public Interest

The Commission customarily provides 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 Legal Standard for Approval of Mergers*, OPUC Docket No. UM 1011, Order No. 01-778 at 10 (Sept. 4, 2001).

According to the Company, entering into the Agreement is in the public interest because PacifiCorp’s effective use of water resources will maximize water availability at its Hunter generating facility in the future, ensuring a long-term firm water supply that is necessary to meet its obligation to provide safe and reliable electric service. Additionally, PacifiCorp estimates that it will receive an aggregate amount of \$4,000 in exchange for the water CCCIC receives under the agreement, which the Company has stated will benefit customers as a reduction to operating expenses.

#### 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 rate filings. Staff’s recommended Conditions provide for all necessary Commission examination of PacifiCorp’s records concerning the Agreement with CCCIC. PacifiCorp has reviewed this memo and has not communicated any objections or concerns.

#### Conclusion

Based on the review of this Agreement and PacifiCorp’s responses to Staff’s data requests, Staff concludes:

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

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**PROPOSED COMMISSION MOTION:**

Grant PacifiCorp's application for approval of an affiliated interest transaction with CCCIC, subject to Staff's recommended conditions, and waiver of the requirement that the transaction be recorded at the higher of PacifiCorp's cost or market.

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