

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 21, 2017

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: September 25, 2017

TO: Public Utility Commission

FROM: Kathy Zarate *KZ*

THROUGH: Jason Eisdorfer *JE* and John Crider *JC*

SUBJECT: PACIFICORP: (Docket No. UI 387) Notice of Affiliated Interest Transaction 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 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 two license agreements (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, a summary of the Company's transactions with BNSF.
3. The Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
4. The Company shall provide the Commission access to all books of account, as well as all documents, data and records that pertain to any transactions involving BNSF.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's Application requesting approval to enter into two license agreements (Agreement) with Burlington Northern Santa Fe Railway Company (BNSF), related to electric supply line and fiber optic line access across BNSF property in Klamath Falls, Oregon.

Applicable Law

"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 requires a public utility to seek approval of contracts with affiliated interests within 90 days of the execution of the contract. The required process for submitting an agreement for review by the Commission is set forth in ORS 757.015(2) and OAR 860-027-0040.

ORS 757.495(3) provides that the Commission may approve an affiliated interest agreement if the agreement is fair, reasonable, and not contrary to the public interest.

Analysis

PacifiCorp filed this application with the Commission on August 14, 2017 pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is a wholly owned, indirect subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). BNSF is also a subsidiary of Berkshire Hathaway.

Berkshire Hathaway's ownership interest in PacifiCorp through BHE, and ownership interest in BNSF, qualifies BNSF as an affiliated interest of PacifiCorp.

In Klamath County, Oregon, the Company is doing work to interconnect the Ewauna Solar project to the Company's Texum Substation, which will require crossing BNSF's real property. With this Application, the Company requests Commission authorization to engage in business transactions with BNSF under the terms and conditions of two license agreements.

The licenses allow the Company to cross the BNSF railroad corridor with electric service and fiber optic lines as required to interconnect the Ewauna Solar project with the Company's Texum Substation located in Klamath Falls, Oregon. The Electric supply line license involves two transmission lines and one distribution line. The transmission and distribution lines crossing the BNSF railroad property are existing, but nevertheless require modification such as moving poles and power lines.

The Company studied the selected site, which was selected at the customer's request, for feasibility and system impact. The Company did not consider other sites for this request since its feasibility and system impact study indicated that the site chosen by the customer was feasible.¹

Staff's review of this Application included examination of the Company's current Application and other recent affiliated interest application dockets involving PacifiCorp with BNSF. Staff also reviewed PacifiCorp's responses to four Staff information requests. Staff investigated the following issues in considering whether the license agreements are fair, reasonable, and not contrary to the public interest:

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 BNSF Railway Company for two license agreements. The first is a license for electric supply line across or along railway property, tracking #16-55721. The second is a license for communication line, television cable, and/or fiber optic line across or along Railway property, tracking #16-55722. Staff reviewed the two license agreements and did not find any unexpected or unusual terms or conditions.

Transfer Pricing

BNSF charges standardized fees for these types of licenses. For this transaction, PacifiCorp paid \$1,550 in processing fees (\$775 per license), \$13,875 in permit fees (\$8,025 and \$5,850), and \$920 for railroad protective liability insure purchased from a

¹ OPUC Data Request N. 1.

non-affiliate company (\$460 per license). The total amount paid for the two license agreements is \$16,345. BNSF prices are subject to change.²

Staff finds the pricing to be fair and reasonable, and recommends that the fees charged to PacifiCorp by BNSF for arranger services as part of the Agreements be approved.

Public Interest

Entering into the Agreement allows the Company to install and maintain facilities necessary to provide electric service and to meet its obligation to provide safe and reliable electric service. Without the licenses, PacifiCorp would not have the required access and accordingly would not be able to meet its obligation. BNSF, as the relevant property owner, is the only entity that can provide the required licenses to the Company.

Staff finds the Agreement to be in the public interest as the transactions under the Agreement will not harm customers.

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.

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

Conclusion

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.

² PacifiCorp's response to OPUC Information Request 3. At Staff's request, PacifiCorp obtained updated pricing from BNSF for Staff to compare. The differences in pricing were slightly increased from amounts PacifiCorp paid. PacifiCorp Application at 4.

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PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application Requesting Approval of Affiliate Interest Transactions with BNSF Railway Company, an affiliated interest, subject to Staff's recommended conditions.

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