

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 18, 2017

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: November 13, 2017

TO: Public Utility Commission

FROM: Kathy Zarate *KZ*

THROUGH: *Jef* Jason Eisdorfer and *Jc* John Crider

SUBJECT: PACIFICORP: (Docket No. UP 355) Requests Approval of Renewal of a Water Shares Lease Agreement with Price River Water Users Association.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) Application for Renewal of a Water Shares Lease Agreement (Agreement) with Price River Water Users Association (PRWUA), subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to this Agreement, including any material changes in price. Any changes to the Agreement terms that alter the intent and extent of activities under the Agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.
2. The Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
3. The revenue from the Agreement should be recorded in an "other revenues account.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's Application for Renewal of a Water Shares Lease Agreement (Agreement) with Price River Water Users Association (PRWUA).

Applicable Rule or Law

ORS 757.480(1) requires public utilities doing business in the Oregon to seek Commission approval prior to the sale, lease, assignment or disposal of property valued in excess of \$100,000 that is necessary or useful in the performance of its duties to the public.

OAR 860-027-0025 sets forth the information required to support a request for the approval of the lease or property. OAR 860-027-0025(1)(l) requires that the applicant show that the proposed lease will be consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" as used in this rule to require a showing of "no harm to the public." See, e.g., In the Matter of the Application of PacifiCorp, Order No. 00-112 at 6 (2000); In the Matter of the Application of Portland General Electric, Order No. 99-730 at 7 (1999).

Finally, the Commission's authority, broadly speaking, is to obtain adequate service for customers at fair and reasonable rates while at the same time balancing the interests of the utility's investors. See ORS 756.040.

Analysis

PacifiCorp filed this application on October 18, 2017, requesting approval from the Commission for a Water Share Lease between PacifiCorp and Price River Water Users Association (PRWUA). PRWUA is a non-affiliate, non-profit corporation in Utah.

PacifiCorp owns 2,121.20 shares of water rights in PRWUA, and is entitled to receive the associated water amounts at its Carbon generation facility. The amount of actual water depends on the amounts of water available each season and the PRWUA Board sets the annual allocation. If there is a full allocation, PacifiCorp's shares will be 2,121.20 acre-feet of water. The only users that can legally use the subject water shares are members of the PRWUA.

PacifiCorp intends to retain all of its water rights and shares, but lease them back to PRWUA. PRWUA will then sublease the water shares to others for beneficial use through the term of the lease. On January 5, 2016, PacifiCorp entered into a one-year lease agreement with PRWUA for the shares,¹ and in December 2016, the term was extended for an additional year.² In this case, both parties are requesting that the agreement be renewed for a term of five years, commencing January 6, 2018.

¹ UPN 13.

² UPN 31.

The anticipated revenue from the Agreement is estimated at approximately \$45,000 annually (\$225,000 over the life of the five-year agreement), with the actual annual amount to be determined within 60 days of the lessee notifying PacifiCorp of the shares to be leased and lease price in accordance with Section 3 of the Agreement. Leasing the water will allow for the continued beneficial use of the water (which assures continued ownership for potential future operations) and will provide revenue for PacifiCorp customers.

Further, as provided in the Agreement, PacifiCorp will continue the provision of reliable electric service to its customers.

In review of the Company's application, Staff issued three data requests.

Staff investigated the following issues:

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

Terms and Conditions of the Agreement

Staff's review of the Agreement did not identify any unusual or restrictive terms or conditions. The lease is effective January 6, 2018, and extends the next five years, ending on December 31, 2023. Though the lease has an effective date of January 6, 2018, the Agreement will not be executed until the Company receives approval for it from the Commission.

Transfer Pricing

PacifiCorp was not able to locate comparable contemporary lease rates for other existing water share leases. Lease pricing is determined through an open bid process with all available water users, and is outlined in detail in Section 3.1.C of the Water Shares Lease included with the Company's Application.³

The transaction has an estimated value of approximately \$45,000 annually for a total of \$225,000 over the five-year term, with the actual annual amount to be determined within 60 days of the lease notifying PacifiCorp of the shares to be leased and lease price in accordance with Section 3.C of the Agreement.

In order to determine the Leased Shares and the Leased Price, the following solicitation process is used:

³ OPUC Data Request N. 1.

- PRWUA will advertise the availability of the Water Shares through association membership mailings, local newspaper ads, annual meeting announcements and other means intended to solicit general, public interest in Subleasing the Water Shares.
- PRWUA will accept bids from interested parties, specifying the number of Water Shares each bidder proposes to Sublease, and the price each bidder is willing to pay for such shares.
- PRWUA may at its option have the right to reject any bid that violates the restrictions set forth in Price River Water Users Association bylaws, is from a bidder not current on assessments, or would violate requirements of the State Engineer. PRWUA will also restrict shares leased to no more than five shares per irrigated acre owned or leased by any bidding party.
- If all of the bidders combined propose to Sublease Water Shares equal to or greater than the number of Water Shares offered to PRWUA, then PRWUA will accept, in order, the bid(s) with the highest proposed price until the accepted bids total the number of Water Shares offered to PRWUA.
- If all of the bidders combined propose to Sublease Water Shares totaling less than the number of Water Shares offered to PRWUA, then PRWUA will accept all of the bids received. PRWUA will notify PacifiCorp in writing of any Water Shares that were not accepted for Subleasing under the foregoing process. In that case, Water Shares not accepted for Subleasing will remain with PRWUA under PacifiCorp's control and will not be considered as leased to PRWUA for the applicable calendar year.
- The Leased Price will equal the total price PRWUA will receive in exchange for Subleasing the Leased Shares in the Term, minus an administrative fee equal to either 5 percent of the gross collected, or \$3,000, whichever is greater.

Public Interest Compliance

Leasing the water rights to PRWUA will not harm customers, as it is no longer needed for Carbon Plant operations, and will not impede the Company's ability to provide safe and reliable service in the area. Furthermore, leasing the water allows PacifiCorp to retain the water rights as an asset, but allows for some benefit for property that would

otherwise provide no revenue to customers. Because customers are not harmed by this transaction, Staff concludes that the Agreement is in the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

In December 2016, these assets were transferred from FERC Account 31030 "Steam production Plant Land and Land Rights" to FERC Account 121 "Nonutility Property."

Staff further notes that the Commission retains the ability to review all property sales and lease agreements entered by the Company through general rate case filings. Staff Recommendation affords the Commission the ability to exam PacifiCorp's books and records concerning the Lease as necessary.

Treatment of Lease Revenues

In the treatment of lease revenues, Staff had some brief discussions regarding how the lease revenues should be treated. Staff had proposed that the revenues be placed in the property sales balancing account as is currently the practice with property sales. The Company stated that such treatment would be a change in practice. In numerous prior filings, the lease revenues have been recorded in "other revenues" accounts and thereby reduces overall revenue requirements when rates are set in a general rate case. The Company is correct in its feedback. However, Staff is concerned that differing treatment provides the incentive to lease excess property rather than sell it. Any additional lease revenues go to the shareholders while property sales gains go to customers. Therefore, while Staff is not recommending a change in practice for this lease, Staff intends to investigate this issue further.

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

Conclusion

Based on the review of PacifiCorp's application, Staff concludes that the Commission should approve the Agreement, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to this Agreement, including any material changes in price. Any changes to the Agreement terms that alter the intent and extent of activities under the Agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.
2. The Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.

3. The revenue from the Agreement should be recorded in an "other revenues account".

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application for Renewal of a Water Shares Lease Agreement with Price River Water Users Association, subject to Staff's recommended conditions.

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