

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: February 27, 2018

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

DATE: February 14, 2018

TO: Public Utility Commission

FROM: Ming Peng *mp.*

THROUGH: *J* Jason Eisdorfer and *Je* John Crider

SUBJECT: PACIFIC POWER: (Docket No. UP 360) Requests Approval of Non-Exclusive Pipeline License and Right-of-Way Agreement with Pine Ridge Midstream, LLC.

**STAFF RECOMMENDATION:**

I recommend the Commission approve Pacific Power's (PacifiCorp or Company) application for approval of Non-Exclusive Pipeline License and Right-of-Way Agreement with Pine Ridge Midstream, LLC.

**DISCUSSION:**

Issue

Whether the Commission should approve PacifiCorp's application for approval of Non-Exclusive Pipeline License and Right-of-Way Agreement with Pine Ridge Midstream, LLC, which would allow Pine Ridge to construct and maintain a natural gas pipeline on PacifiCorp property in Wyoming.

Applicable Rule or Law

ORS 757.480(1)(a) requires Commission approval for sales of property necessary and useful in the performance of public service with a value in excess of \$100,000.

OAR 860-027-0025(1)(l) requires that the utility show that such a proposed sale is "consistent with the public interest."

OAR 860-001-0070 Confidential Information. "This rule applies to information submitted under a claim of confidentiality under the Public Records Law,"

## Analysis

### *Background*

On January 3, 2018, PacifiCorp filed application for Approval of Non-Exclusive Pipeline License and Right-of-Way Agreement with Pine Ridge Midstream, LLC.

The purpose of this application is to satisfy ORS 757.480 and OAR 860-027-0025. PacifiCorp is not selling any real property in this transaction. Rather, in order to help assure compliance, PacifiCorp is interpreting the license and right-of-way grant in this transaction as constituting a "disposition" under the applicable statutes. Under the Agreement, Pine Ridge Midstream wishes to construct and maintain a natural gas pipeline on PacifiCorp lands in Converse County, Wyoming.

The property is associated with PacifiCorp's Glenrock Wind project. The real estate interest owned by PacifiCorp is part of a split-estate<sup>1</sup>, whereby PacifiCorp owns and controls the surface rights, however the subsurface mineral estate is owned by a variety of third party entities. Because these subsurface rights for mineral exploration are considered dominant (over surface rights) in Wyoming, PacifiCorp cannot prohibit the mineral interest owners from developing and exploring. In this case the mineral rights holder, Wold Energy, the parent company of Pine Ridge Midstream, is exploring and developing its mineral estate (as governed by the 2014 agreement between Wold Energy and PacifiCorp).

The anticipated compensation received by PacifiCorp for this agreement is estimated to be \$139,877 over the life of the 15-year agreement, which includes a one-time payment of \$24,750 (\$30 per rod of usage) with annual payments of \$7.50 per rod, with an annual escalation of 3 percent. PacifiCorp files this application to obtain Commission approval of the Agreement.

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<sup>1</sup> Wyoming split estate law – "where one party owns the surface land and another party owns the mineral rights below that land - are common in parts of Wyoming and the West." Under Wyoming split-estate law, a mineral rights holder (in this case Wold Energy Partners, LLC, the grantee's parent company) has the right to explore and develop its assets and bring the extracted product to market. There are no reasonable alternatives to a natural gas pipeline. Transporting the gas using pipelines is the only safe method (temporary storage and trucking the product is not feasible for natural gas). Underground pipeline, as opposed to surface-laid, has the added benefit of reducing the impact to PacifiCorp operations. Additionally, the State of Wyoming prohibits the 'flaring' of natural gas, meaning the gas must be taken off-site instead of burning the natural gas onsite.

The Agreement contains standard provisions related to Pine Ridge Midstream's use and maintenance of the property. The Agreement also contains specific provisions related to the protection and additional liability of working near the existing wind turbine generators. The term of the Agreement is 15 years. In accordance with the terms of the Agreement, Pine Ridge Midstream will make a one-time initial payment of \$24,750, and annual rent payments to PacifiCorp, starting at \$6,190 the first year, with a three percent (3%) increase each year, for a total of \$139,877 over the 15-year term, or as long as the pipeline is used and maintained. The Company Property is classified as Other Production Land and is system- allocated. The value of the Agreement to Oregon will be approximately \$36,442 over the 15-year term. As more fully explained below, this transaction will not affect PacifiCorp's ability to perform its public duties.

#### *Use of Proceeds*

PacifiCorp states that "The revenue received from this lease agreement will be credited to FERC account 454, Rent from Electric Property. As described in the FERC Code of Federal Regulations, "this account shall include rents received for the use by others of land, ...." Internally, the account used is 301874, "Rent Revenue – General."

#### *Operational Risks*

PacifiCorp states that "The rights granted under this agreement allow for one underground natural gas pipeline, buried at a depth sufficient to protect PacifiCorp's wind facilities. Issuing this agreement will not interfere with PacifiCorp's ability to provide reliable service to its customers after the effective date of the transaction." "The terms of the Agreement protect PacifiCorp's right to access and use the Company Property in its provision of reliable electric service to its customers."

#### *Not Contrary To the Public Interest Standard*

OAR 860-027-0025(1)(l) requires that the utility show that such a proposed lease agreement is "consistent with the public interest." PacifiCorp states that "The terms of the Agreement protect PacifiCorp's assets and right to access and use the Company Property in its provision of reliable electric service to its customers. Issuing this agreement will not harm customers."

#### *Safety Standards Compliance*

PacifiCorp states that "The grantee acknowledges this use and is obligated to abide by all safety standards, codes, laws, regulations and rules related to operating near and around PacifiCorp's equipment. Additionally, the agreement addresses liability, damages, restrictions of use, relocations (at grantee's expense should there be any interference), and indemnification. This agreement compels the grantee to make PacifiCorp and its customers' interests whole."

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### Conclusion

Based on the review of this application, Staff concludes that the Lease Agreement will not harm PacifiCorp's customers and is consistent with the public interest. Notably, the Commission's approval of this sale under ORS 757.480(1)(a) does not relieve the Commission of its authority to review use of proceeds in tariff schedule, amortization or depreciation book reserve in rate base, and other financial records for reasonableness of this sale in the next rate proceeding.

### **PROPOSED COMMISSION MOTION:**

Approve Pacific Power's application for approval of Non-Exclusive Pipeline License and Right-of-Way Agreement with Pine Ridge Midstream, LLC.

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