

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 28, 2014**

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

**DATE:** October 9, 2014

**TO:** Public Utility Commission

**FROM:** Linnea Wittekind *LW*

**THROUGH:** Jason Eisdorfer and Marc Hellman *JH*

**SUBJECT:** PACIFICORP: (Docket No. UI 350) Requests Approval of Affiliated Interest Transaction with Shaw Environmental Inc.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) application for approval of an affiliated transaction under the General Services Contract<sup>1</sup> (Contract) between PacifiCorp and Shaw Environmental Inc. (Shaw Environmental), subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive changes to the contracts, 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, all transactions entered into under the affiliated interest agreements with Shaw Environmental.

**DISCUSSION:**

PacifiCorp filed this application with the Commission on August 8, 2014, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHEC). BHEC is a subsidiary of

<sup>1</sup>A copy of the General Service Contract was provided by the Company and reviewed by Staff.

Berkshire Hathaway, Inc. (Berkshire). In May 2013, Berkshire announced it had acquired an 8.90 percent common stock interest in Chicago Bridge & Iron during the first quarter of 2013. The Shaw Group, of which Shaw Environmental is a part, is a wholly-owned subsidiary of Chicago Bridge & Iron.

"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. Berkshire's ownership interest in PacifiCorp and Wells Fargo qualifies as an affiliated interest.

Shaw Environmental provides comprehensive air measurement services. PacifiCorp needs maintenance services for continuous emissions monitoring systems at various generation plants.

PacifiCorp is required by federal and state regulations to monitor and report emissions from coal- and natural gas-fueled facilities. PacifiCorp uses continuous emission monitors (CEM) to meet these requirements. According to the Company, it could be subject to regulatory enforcement action if the availability of the CEM falls below a certain threshold. As part of the CEM, coal-fueled plants are also required to have a mercury monitor. Quarterly auditing of the calibrator for the mercury monitor is required and provided under the Contract.

As requested by Staff, the Company explained that it currently uses Company personnel to perform routine work on environmental monitoring equipment. Contracting with Shaw Environmental will provide additional maintenance support, reduce downtime during emergency conditions and assist Company personnel with troubleshooting beyond their expertise. The external maintenance as outlined in the Contract will provide PacifiCorp with a contracted technician with specific training and expertise related to environmental monitoring equipment. According to the Company, with this expertise the technician plays a significant role in diagnosing and troubleshooting monitoring equipment problems across the entire fleet of 33 units. In addition, the technician provides PacifiCorp with access to specialized equipment.

In addition to reviewing the application, Staff sent four follow up data 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 did not observe any unusual terms or conditions in the Contract; it appears to have been negotiated at arm's-length. PacifiCorp selected Shaw Environmental through a request for proposal process to provide environmental monitoring equipment maintenance at thermal plants. Shaw Environmental submitted the lowest price bid and is able to meet all of PacifiCorp's requirements.

### Transfer Pricing

For this transaction, PacifiCorp anticipates spending \$534,337 over a three-year period for the services provided under the Contract by Shaw Environmental.

Staff believes the pricing for the transaction is fair and reasonable based on negotiated arm's-length nature of the Contract. Using the Company's standard Request For Proposal process of a weighted evaluation matrix, including technical and commercial questions, PacifiCorp's sourcing team proposed using Shaw Environmental.

According to OAR 860-027-0043, the Commission may, for good cause, waive the affiliated interest transaction requirements of OAR 860-027-0040. The rule provides:

*Upon petition by a utility and approval by the Commission for good cause, the requirements of OARs 860-027-0040 and 860-027-0041 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of showing that the transaction is fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.*

As part of MEHC's acquisition of PacifiCorp, however, the Company agreed to file affiliated interest applications for all transactions between MEHC affiliates, regardless of the monetary amount involved.

Public Interest

Selecting Shaw Environmental to perform environmental monitoring equipment maintenance at its facilities is in the public interest as Shaw Environmental is a qualified provider of such services and offers the lowest cost option for PacifiCorp to comply with federal and state regulations. Not approving this transaction could result in PacifiCorp falling out of compliance.

Records Availability, Audit Provisions, and Reporting Requirements

Order Conditions numbers 1 and 2, listed above in the Staff recommendations afford the necessary Commission examination of PacifiCorp's records concerning the transaction with Shaw Environmental.

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.

**PROPOSED COMMISSION MOTION:**

PacifiCorp's application for approval of affiliated interest transaction with Shaw Environmental be approved subject to the four recommended conditions.