

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 26, 2017

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: September 09, 2017

TO: Public Utility Commission

FROM: Kathy Zarate *KZ*

THROUGH: *Jo for SE* Jason Eisdorfer and Marc Hellman ***

SUBJECT: PACIFIC POWER: (Docket No. UI 386) Requests Approval of Affiliated Interest Agreement with Wells Fargo Securities, LLC and U.S. Bank N.A.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve Pacific Power's (PacifiCorp or Company) application for approval of an Underwriting Agreement (Agreement) with Wells Fargo Securities, LLC (Wells Fargo) and U.S. Bank N.A. (U.S. Bank), both of which are affiliated interests, subject to the following conditions:

1. PacifiCorp shall notify the Commission of any substantive changes to the 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, all transactions entered into under the Agreement with Wells Fargo and U.S. Bank.
3. The Commission reserves the right to review, for reasonableness, all 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 payments to or from the affiliates.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's application requesting approval to enter into several agreements (Agreement) with Wells Fargo Bank, N.A. or Wells Fargo Securities (collectively, Wells Fargo) and U.S. Bank, N.A. (U.S. Bank) related to a revolving credit agreement necessary to replace an expiring credit line.

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 and reasonable and not contrary to the public interest. Under OAR 860-027-0048(4)(g), for cost allocation purposes, "when services or supplies are sold to an energy utility by an affiliate under contract, the transfer price shall be based upon the tariff or terms of the contract approved by the Commission Order under ORS 757.495." The Commission need not determine the reasonableness of all financial aspects of the contract for ratemaking purposes, but, rather, may reserve that issue for subsequent proceedings. See Commission Order No. 11-071.

Analysis

PacifiCorp filed this application with the Commission on July 20, 2017, 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 Berkshire Hathaway, Inc. (Berkshire). Berkshire (and its various affiliates and subsidiaries) holds a five percent or more interest in Wells Fargo and U.S. Bank common stock. Therefore, Wells Fargo and U.S. Bank are each an "affiliated interest" of the Company as set forth in ORS 757.015(3).

As part of a plan to replace expiring revolving credit agreements, the Company selected Wells Fargo and U.S. Bank, along with other banks, to serve as lenders. To facilitate this arrangement, the Company entered into a Confidential Commitment Letter, to which both Wells Fargo and U.S. Bank are a party, a Confidential Active Arranger Fee Letter, to which Wells Fargo is a party, a Confidential Passive Arranger Fee Letter, to which U.S. Bank is a party (collectively, Agreement). These agreements will allow PacifiCorp to borrow up to \$600 million dollars in aggregate with the amounts split among the banks. The Agreement expires in June 2020, subject to agreed-upon extensions and PacifiCorp do not plan to file another agreement.

Staff's review of this Application included examination of the Company's current application and other recent affiliated interest application dockets involving PacifiCorp Wells Fargo and U.S. Bank, including the related Commission Orders approving prior revolving credit agreements.

In addition to reviewing the Company's Application, Staff utilized the attached exhibits to the application, as well as PacifiCorp's responses to six Staff information requests. Staff investigated the following issues in considering whether the Agreement is fair, reasonable, and not contrary to the public interest:

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 find any terms or conditions in the Agreement that would be unexpected or unusual.

Transfer Pricing

Twenty-one others Banks were invited by companies to participate in the bidding event. Wells Fargo Bank and US Bank were among those selected because they received the highest evaluation scores, which were based on price, ease of use of their booking tool, their process to offer the initial purchase costs and the day-to-day operational cost. Therefore, PacifiCorp prefers to include Wells Fargo and US Bank among the banks selected for the credit agreement.¹ There are many other banks participating in this credit agreement that are not affiliated with PacifiCorp.

Staff asked six information requests to determine the reasonableness of the pricing. The credit agreement has only been place since June 2017. PacifiCorp has had other

¹ See Company's response to Staff Data Request No. 1

Credit agreements in the last ten years, but they have varied in amounts and tenors. The aggregate amount (\$400M, \$600M, or \$800M) and length (three year versus five year) of the Credit Agreement will determine the commitment fee the bank will pay which is the total amount for every credit agreement with each bank on the list.² Also specific to each Credit Agreement is the number of lending banks and the commitment amount of each bank. Commitment fees paid annually to each bank will reflect the total amount of the credit agreement and the amount each bank has committed to lend.³

Staff finds the pricing to be fair and reasonable, market based, and recommends that the fees charged to PacifiCorp by Wells Fargo and U.S. Bank for arranger services as part of the Agreement be approved. The basis for this view is twofold: 1) the banks were selected through a RFP process; and, 2) the pricing for Wells Fargo and US Bank is identical to the pricing of the non-affiliated banks. Therefore it is clear that the affiliates of PacifiCorp are not receiving preferential pricing.

Public Interest

The Agreement between PacifiCorp and the arrangers, Wells Fargo and U.S. Bank, are part of a program to finance PacifiCorp's facilities and for general corporate purposes taking into consideration prudent capital ratios, earnings coverage tests and market uncertainties as to the relative merits of the various types of securities the Company could sell.

Staff finds the Agreement to be in the public interest (customarily a no harm standard applied by the Commission) as the transactions under the Agreement will not harm customers.

Records Availability, Audit Provisions, and Reporting Requirements

Staff's recommended conditions provide for all necessary Commission examination of PacifiCorp's records concerning the Agreement with Wells Fargo and U.S. Bank.

PacifiCorp has reviewed a draft of this memo and had one comment that Staff has incorporated.

Conclusion

Based on the review of this application, Staff concludes:

² See Company's response to Staff Data Request No. 2

³ See Company's response to Staff Data Request Confidential Attachment No. 2

1. The Agreement 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:

Approve PacifiCorp's application of the Agreement with Wells Fargo and U.S. Bank, and affiliated interests, subject to Staff's recommended conditions.