

ORDER NO. **17 509**

ENTERED DEC 18 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 354

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for Approval of the Proposed
Ownership Transfer of Longwall Coal Mining
Shearers Between Bridger Coal Company and
Joy Global Underground Mining LLC.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on December 18, 2017, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:




Michael Dougherty
Chief Operating Officer

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA 7

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

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: December 8, 2017

TO: Public Utility Commission

FROM: Scott Gibbens

THROUGH: Jason Eisdorfer and John Crider

SUBJECT: PACIFIC POWER: (Docket No. UP 354) Request for Authorization to Approve the Ownership Transfer of a Longwall Shearer.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve the ownership transfer of the Joy 7LS Longwall Shearer (BCC Shearer) by Bridger Coal Company (BCC), of which Pacific Power (PacifiCorp or Company) owns two-thirds, to Joy Global Underground Mining, LLC (Joy Global), subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive changes to the transfer of properties, 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 final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.
3. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternate form of regulation.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's transfer of its share of ownership of the BCC Shearer to Joy Global, as set forth in the ownership transfer agreement

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between Bridger Coal Company (BCC) and Joy Global.

Applicable Rule or Law

ORS 757.480(1) requires public utilities doing business in 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 a property sale. OAR 860-027-0025(1)(l) requires that the applicant show that the property sale 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 and Idaho Power together own 100 percent of Bridger Coal Company (BCC). PacifiCorp owns 66 percent and Idaho Power owns 33 percent. BCC and Joy Global have agreed in principle to exchange two longwall mining shearers. BCC owns the Joy Longwall, which was acquired to complete mining in the remaining western district of the BCC underground mine. Typical longwall operations require two shearers to support one longwall system—one shearer operates while an alternate shearer undergoes rebuilding. Because the purchase of two shearers is generally cost-prohibitive, the Original Equipment Manufacturer (OEM) provides a program in which a shearer is "loaned" while the owned shearer is being rebuilt at the expense of the mine. BCC has a lease agreement with Joy Global, the OEM of the Joy loaner shearer, that serves as the redundant shearer for the Joy longwall system.

Bridger coal mine is the primary source of coal for the Jim Bridger power plant located in southwest Wyoming. BCC mines coal from both a surface and underground mine. The underground mining operation utilizes longwall mining systems in order to extract coal. The Joy longwall mining system was abandoned underground at Bridger mine following the deterioration of geological conditions surrounding the longwall miner. Prior to abandonment, BCC removed every accessible piece of equipment. One of the pieces of equipment removed from the Joy Longwall miner was the shearer (BCC

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shearer). The shearer grinds the rock away within the coal seam in order to remove the coal. As the shearer is used, it gradually becomes dull. During the operation of the Joy Longwall miner, the dull shearer would be removed, and replaced with a different shearer (loaner shearer) loaned by Joy Global. Joy Global then goes through the process of refurbishing BCC's shearer to like new condition and the shearers would then be swapped again.

Joy Global and BCC agreed to exchange the ownership of loaner shearer and the BCC shearer. The BCC shearer needs a rebuild prior to use on a different shearer, whereas the loaner shearer has been refurbished already. BCC would be able to use the loaner shearer on their DBT longwall mining system which is also in operation at Bridger coal mine. Joy Global would continue to repair the loaner shearer periodically as needed.

ORS 757.480(1)(a) requires a public utility to seek approval prior to the sale, lease, assignment or disposal of property in excess of \$100,000. PacifiCorp filed its Application for Approval of the Sale of Property (Application) on September 20, 2017. The Application is docketed as UP 354. Idaho Power filed seeking Commission approval of the same transaction on the same day. Idaho Power's application is docketed as UP 353. The stated market value of the loaner shearer is \$1.4 million, while the stated market value of the BCC shearer is minimal scrap value as it needs refurbishment and the market for coal equipment is weak. As of July 31, 2017, the net book value of PacifiCorp's ownership share of the BCC shearer is \$414,272.77, which represents 66.66 percent of the total net book value of \$621,378.08. No cash will be exchanged as a direct result of the transaction, and the ownership transfer does not result in any increased costs to BCC or PacifiCorp's customers.

Staff investigated the following issues:

1. Scope and terms of the Property Exchange Agreement;
2. Transfer pricing and allocation of gain;
3. Public interest compliance; and
4. Records availability, audit provisions, and reporting requirements

Staff's review of these issues included an examination of the PacifiCorp's Application, the applicable laws, PacifiCorp's responses to seven information requests (IRs) from Staff. PacifiCorp was thorough in its responses and Staff has identified no unresolved issues.

Scope and Terms of the Property Exchange Agreement

PacifiCorp included the Ownership Transfer Agreement (Agreement) between BCC and Joy Global with its Application. The Agreement specifies the liabilities, property,

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contingencies, and process of the transaction. Of note, the shearers are sold as-is. The Agreement has no terms which Staff found unusual or extraordinary. Staff does not believe that the execution of the terms of the Agreement should pose any harm or risk to customers.

Transfer Pricing and Allocation of Gain

The Agreement agrees to transfer the BCC shearer to Joy Global in exchange for full ownership of the rebuilt, ready for production, Joy loaner shearer. The total book value of the BCC shearer is \$621,378.08; PacifiCorp's share is \$414,272.77. The market value of the loaner shearer is estimated to be approximately \$1.4 million, while the market value BCC shearer is estimated to be scrap value.

Determination of a market price for the BCC shearer was difficult to find. Staff was unable to independently determine the value of a used Joy 7LS longwall shearer in need of refurbishment. When asked if the Company pursued an option to sell the shearer as oppose to exchanging it, PacifiCorp stated that "depressed conditions in the coal market industry" had resulted in a used shearer having only scrap metal value. This may explain Staff's inability to find a market price for the equipment. Staff then attempted to determine the relative value of the two shearers being exchanged. Both shearers are Joy 7LS's. The approximate use of the BCC owned shearer is 16 million mined tons, while the loaner shearer has mined 13 million tons. The shearers have the same useful life. If one accepts that a used shearer in need of rebuild has only scrap metal value then the value can be determined by the cost of rebuilding a shearer. This would put the value of the loaner shearer at \$1.4 million while the BCC owned shearer holds only scrap value. Although Staff was unable to determine a market value, it can be assumed that the loaner shearer, being fully rebuilt has a greater market value than the BCC owned shearer. Having 'sold' the shearer for above market value, Staff finds the agreed upon pricing to be fair and reasonable.

Public Interest Compliance

The Commission applies a "no harm" standard with regard to the public interest compliance of property sales. Because the property being sold to Joy Global is at above market value, Staff believes there is no harm presented to the public interest. There is no further risk assumed as the two shearers are the same make and model. As a result there is no impact to the Company's ability to provide safe and reliable power, nor does the transaction result in increased costs for PacifiCorp's customers.

Finally, while there is no harm to PacifiCorp's ability to provide safe and reliable power, PacifiCorp was unclear regarding the benefit of owning a second shearer for the DBT longwall miner. In response to a Staff information request, PacifiCorp noted "the benefits associated with this exchange ensure usage of a rebuild already paid for,