

ORDER NO. **18 256**

ENTERED **JUL 03 2018**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 371

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of a Lease
Agreement with Draper Square, LC.


ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 3, 2018, 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 Grant
Chief Administrative Law Judge

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.

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ITEM NO. CA5

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 03, 2018

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: June 12, 2018

TO: Public Utility Commission

FROM: Kathy Zarate KZ

THROUGH: Jason Eisdorfer JE and John Crider

SUBJECT: PACIFICORP: (Docket No. UP 371) Requests Approval of a Lease Agreement with Draper Square, LC.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) Application for Approval of a Lease Agreement (Agreement) with Draper Square, LC, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to the 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 final journal entries recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's Application for a Lease Agreement (Agreement) with Draper Square, LC.

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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 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 its Application on May 3, 2018, requesting approval from the Commission for a lease between PacifiCorp and Draper Square, LC, which is a non-affiliate, non-profit corporation in Utah.

PacifiCorp proposes leasing a certain 6.02-acre portion of the Camp Williams Property (the Leased Property) to Draper Square. Draper Square is developing vacant land into office buildings and parking lots. Draper Square intends to use the real property for temporary parking for tenants, guests, customers, and employee vehicles, as well as for landscaping and drainage. This land is on property adjacent to a portion of PacifiCorp's 90th – Camp Williams transmission corridor property (Camp Williams Property).

PacifiCorp and Draper Square have negotiated a proposed lease of the leased property with 40-year term (Lease) commencing January 1, 2019. 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 five data requests.

Staff investigated the following issues:

1. Terms and Conditions of the Agreement

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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 1, 2019, and extends the next forty years, ending on December 31, 2059. Though the lease has an effective date of January 1, 2019, the Agreement will not be executed until the Company receives approval from the Commission¹.

Transfer Pricing

To determine the fair market value of the property subject to the lease, PacifiCorp used an appraisal from Van Drimmelen and Associates, Inc., which estimated the fair market value to be \$826,028.28. Based on this appraisal, the lease payments were calculated to be \$4,800 per month or \$57,600 per year. PacifiCorp will collect \$3,063,370 (total-Company) over the life of the 40-year lease.

The Leased Property is classified as transmission property and is system allocated. The value of the lease to Oregon will be approximately \$798,000 over the 40- year term of the Lease.

Public Interest Compliance

Leasing with Draper Square, LC will not harm customers, and will not impede the Company's ability to provide safe and reliable service in the area. Draper Square must obtain prior written consent from PacifiCorp prior to making improvements or changes to the premises, including changing existing ground elevation, excavating, constructing any structure or lighting structure, or landscaping to the premises. Therefore, PacifiCorp's ability to continue to provide safe and reliable service to its customers will not be affected by the Agreement.

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

The Commission retains the ability to review all property sales and lease agreements entered by the Company through general rate case filings. Staff's recommendation affords the Commission the ability to examine PacifiCorp's books and records concerning the Agreement as necessary.

¹ UP 371 – PacifiCorp's response to OPUC Data Request No. 1.

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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 final journal entries recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application for Approval of a Lease Agreement with Draper Square, LC, subject to Staff's recommended conditions.

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