

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 6, 2016**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: November 28, 2016

TO: Public Utility Commission

FROM: Scott Gibbens 

THROUGH: Jason Eisdorfer and Marc Hellman 

SUBJECT: PACIFIC POWER: (Docket No. UI 377) Request for Approval of an Affiliated Interest Agreement with Wells Fargo Bank N.A., Wells Fargo Securities, LLC, and U.S. Bank N.A.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) application (Application) for approval of a new revolving credit agreement (New Credit Agreement or Agreement) with Wells Fargo Bank N.A., Wells Fargo Securities, LLC (collectively, Wells Fargo), and with U.S. Bank N.A. (U.S. Bank), each of whom has an affiliated interest with PacifiCorp, subject to the following conditions:

1. PacifiCorp will notify the Commission of any substantive changes to the New Credit Agreement, including any material changes in price or other parameters specified in the Agreement. Any such changes shall be filed in this docket.
2. PacifiCorp will report to the Commission all transactions entered into under the New Credit Agreement with Wells Fargo Bank or with U.S. Bank as part of its annual affiliated interest report.
3. The Commission reserves judgment on the fairness and reasonableness of the New Credit Agreement for ratemaking purposes.

DISCUSSION:

Issue

Whether the Commission should allow PacifiCorp to enter into open revolving credit agreement with Wells Fargo Bank and with U.S. Bank in order to replace an expiring credit line.

Applicable Law

"Affiliated interest," as defined in ORS 757.015, includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning at least five percent of the voting securities of a public utility or by any person or corporation in any chain of successive ownership of at least five percent of voting securities of the utility. See ORS 757.015(3). ORS 757.495 requires a public utility to seek approval of contracts with affiliated interests within 90 days after 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.

Discussion and Analysis

PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway, Inc. (Berkshire). Berkshire and its various subsidiaries together hold in excess of five percent of U.S. Bancorp common stock. U.S. Bancorp is the parent company of U.S. Bank. Berkshire and its various subsidiaries together hold in excess of five percent of Wells Fargo common stock.

Berkshire's ownership interest in U.S. Bancorp and Wells Fargo creates an affiliated interest for PacifiCorp through Berkshire's ownership interest in BHE and BHE's ownership interest in PacifiCorp.

As part of a plan to replace expiring revolving credit agreements, the Company selected Wells Fargo and U.S. Bank to each be one of seven joint lead arrangers for establishing a New Credit Agreement. Wells Fargo and U.S. Bank, along with other banks, will serve as lenders in this Agreement. 21 banks in total will be lenders, which will allow PacifiCorp to borrow up to \$400 million dollars. The Agreement expires in June 2019, subject to agreed-upon extensions. PacifiCorp expects to file a similar application with the Commission for a second credit agreement sometime during the first quarter of 2017.

The selection of Wells Fargo and U.S. Bank as joint lead arrangers was based on each bank's experience in syndicating comparable facilities for utilities, knowledge of current bank market conditions, credit ratings, willingness to make significant credit commitments to PacifiCorp, knowledge of the utility industry, the Company, its operations and affiliates, successful outcomes in prior financing transactions for the Company and reasonable arrangement and other fees.

In response to Staff's request for further information regarding the uses of the revolving credit lines, PacifiCorp stated that:

"The credit agreement supports PacifiCorp's commercial paper program and certain series of pollution control revenue bonds, and provides for the issuance of letters of credit. The credit agreement will provide committed liquidity to PacifiCorp and is a critical element in rating agencies' assessment of financial risk. Liquidity is important to PacifiCorp due to large ongoing capital investments and significant exposure to volatile purchased power and fuel markets. A lack of liquidity could precipitate the default of an otherwise financially strong entity."

In addition to reviewing the Company's Application, Staff utilized the attached exhibits, 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 and Historical Trends;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions, and Reporting Requirements.

Terms and Conditions of the Agreement

Staff reviewed the New Credit Agreement between PacifiCorp, Wells Fargo, and U.S. Bank as well as the attached exhibits. Staff had no issues or concerns with the terms and conditions of the Agreement.

Transfer Pricing and Historical Trends

Staff asked five information requests to determine the reasonableness of the pricing, which consists of three fees: arrangement, upfront, and ongoing commitment fees.

The arrangement fee is paid to the seven lead arrangers and is based on total workload performed by each arranger. Staff reviewed the amount paid to all seven lead arrangers along with the associated workload performed by each. Staff also verified the process used to determine workload and appropriate compensation. In reviewing the upfront and commitment fees, Staff compared the fees paid to affiliate and non-affiliate banks. PacifiCorp states that it believes the pricing to be "at or below market rates." Staff reviewed the market analysis used to support that claim. Staff finds the amounts paid to the two affiliated interests to be fair, reasonable and at or below market rates.

Public Interest Compliance

As PacifiCorp states in its response to Staff's information requests, the Agreement provides liquidity and support for the Company and ensures operations continue to run smoothly. Without any borrowing options in the form of open credit lines, the Company would not be able to provide safe and reliable service to its customers in the long run. Due to the fact that credit lines like the one in the Application are required for Company operations, and the fact that the pricing of the New Credit Agreement is fair, Staff concludes that the Agreement is in the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff notes that the Commission retains the ability to review all affiliated transactions of the Company through both its annual affiliated interest report and in general rate case filings. Staff's recommended conditions provide for Commission examination of PacifiCorp's records concerning the Agreement as may be necessary.

Conclusion

Based on the review of the Application, Staff concludes:

1. The Application concerns an affiliated interest agreement that Staff concludes is fair and reasonable and not contrary to the public interest with inclusion of the proposed ordering conditions; and
2. Necessary records are available.

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PacifiCorp has reviewed this memo and has no objections or concerns.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application for Approval of an Affiliated Interest Agreement with U.S. Bank and Wells Fargo, subject to the conditions recommended by Staff.

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