

**PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT
PUBLIC MEETING DATE: August 11, 2020**

REGULAR CONSENT EFFECTIVE DATE August 11, 2020

DATE: July 30, 2020

TO: Public Utility Commission

FROM: Moya Enright

THROUGH: Bryan Conway, John Crider, and Matt Muldoon **SIGNED**

SUBJECT: PACIFIC POWER:
(Docket No. UI 439)
Application for approval of an Affiliated Interest Agreement with US Bancorp Investments, Inc.

STAFF RECOMMENDATION:

Approve Pacific Power's (PacifiCorp or Company) application requesting approval of an affiliated interest transaction with US Bancorp Investments, Inc. (US Bank), involving entering into an Underwriting Agreement (Agreement) between PacifiCorp and a group of underwriters, including US Bank, subject to the following four conditions (Staff Conditions):

1. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into involving US Bank.
2. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to any transaction involving US Bank.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the Agreement, including any material change in price. Any such change must be submitted in an application for supplemental order (or other appropriate format) in this docket.
4. The Commission reserves the right to review, for reasonableness, all financial aspects of these transactions in any rate proceedings or alternative form of regulation.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction, involving entering into an Underwriting Agreement between PacifiCorp and a group of underwriters including its affiliate, US Bank.

Applicable Law

ORS 757.495 requires a public utility to seek approval of contracts involving the direct or indirect payment to any person or corporation having an affiliated interest 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.

The ORS 757.015(3) definition of an "affiliated interest" includes "every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility."

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.

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, per Commission Order No. 11-071.

Analysis

Background

On May 20, 2020, PacifiCorp filed its Application pursuant to ORS 757.495 and in accordance with OAR 860-027-0040, requesting approval for an affiliated interest transaction with US Bank.

PacifiCorp is a wholly owned indirect subsidiary of Berkshire Hathaway Energy Company (BHE), while Berkshire Hathaway, its subsidiaries, and the employee benefit plans of its subsidiaries, together hold a larger than five percent interest in US Bank, making US Bank an affiliated interest of PacifiCorp.

On April 6, 2020, PacifiCorp completed a first mortgage bond offering with an aggregate principal amount of \$1,000,000,000, as authorized by Commission in Docket No. UF 4304, Order No. 18-452.¹ The Agreement under consideration in this filing relates to US Bank acting as an active book-runner for the April 2020 issuance,² jointly with four other banks.

US Bank was paid a one-time underwriting fee of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**. US Bank's fee was determined using the same underwriting fee rate as the other joint active book-runners, and was **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**.

Staff's review included examining the Company's current application, and other recent affiliated interest transactions involving PacifiCorp and US Bank. Staff reviewed Commission Order No. 18-452 in Docket No. UF 4304, as well as the related compliance reports.

In addition to reviewing PacifiCorp's Application, the accompanying exhibits, and responses to Staff's four multi-part information requests, Staff investigated the following issues in considering whether the agreement is fair, reasonable, and not contrary to the public interest:

- a. Selection Process;
- b. Terms and Conditions of the Agreements;
- c. Transfer Pricing;
- d. Public Interest Compliance; and
- e. Records Availability, Audit Provisions, and Reporting Requirements.

a. *Selection Process*

In advance of the issuance, PacifiCorp received information from several banks including indicative credit spreads, market conditions, credit analysis, marketing plans, and underwriting fees. As a result of this process, PacifiCorp chose US Bank as one of five active lead underwriters for its bond offering, along with a further six passive book-runners and co-managers. US Bank was the Company's **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** chosen to participate in the debt issuance.

¹ Specific details of the bond offering can be found in PacifiCorp's compliance report in Docket No. UF 4304 docket, filed on April 14, 2020.

² "Active book-runners" hold the leading role in bond underwriting. Their responsibilities include maintaining the investor order book, determining final assignments to each investor, maintaining documentation, and organizing calls with investors.

Factors that influenced PacifiCorp's selection of US Bank as an underwriting partner included the favorable indicative credit spreads it provided, the bank's industry knowledge, and its successful prior outcomes. US Bank's status as an affiliated interest of does not appear to have played a role in its being chosen as a partner.

Staff is satisfied that the process followed by the Company was competitive. Further, Staff recognizes that the Company using a diverse group of banks for its underwriting requirements is beneficial, as this approach avoids becoming overly dependent on any single partner.

b. Terms and Conditions of the Contract

Staff reviewed the Agreement, and did not observe any unusual terms and conditions. The Agreement appears to have been negotiated between the parties at arm's-length.

The Agreement applies to each of the five active book-runners jointly, and therefore it does not appear that US Bank, was shown any preferential treatment compared to the other underwriters.

Consequently, Staff is satisfied that the terms and conditions of the Contract are not contrary to the public interest.

c. Transfer Pricing

In response to Staff discovery, PacifiCorp demonstrated that the fee paid to US Bank was [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to the fees paid to each of the eight active and passive book-runners. Furthermore, the fee paid is in line with Staff's expectations for like debt issuances.

Consequently, Staff is satisfied that the underwriting fee paid to US Bank represents the market rate.

d. Public Interest Compliance

The Commission customarily applies a "no harm" standard in determining what is, "not contrary to the public interest in matters involving affiliated interest transactions."³

Staff analyzed the affiliate transaction to ensure that it is fair, reasonable, and not contrary to the public interest. Staff determined that because each of the eight active and passive book-runners were paid the [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] the overall

³ See, e.g. in the Matter of a Legal Standard for Approval of Mergers, Order No. 01-778 (Docket No. UM 1011).

cost of underwriting for the debt issuance would be no higher than if US Bank had not been chosen as a partner.

Consequently, Staff finds the new Contract will not harm customers.

e. Records Availability, Audit Provisions, and Reporting Requirements

The Commission retains the ability to review all of PacifiCorp's affiliate transactions through both its annual affiliated interest report and in general rate case filings.

Furthermore, Staff's Conditions Nos. 1 and 4, listed in Staff's recommendation above, allow for adequate Commission examination of PacifiCorp's records relating to the Custodian Agreements.

Conclusion

Based on the review of this Application, Staff concludes the following:

1. The application involves an affiliated interest transaction that is fair and reasonable, and not contrary to the public interest, with the inclusion of proposed ordering conditions.
2. The necessary records are available.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application requesting approval of an affiliated interest Transaction with US Bank, subject to Staff's four conditions.