

PUBLIC UTILITY COMMISSION OF OREGON  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: October 4, 2022

REGULAR  CONSENT  EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: September 22, 2022

TO: Public Utility Commission

FROM: Kathy Zarate

THROUGH: Bryan Conway, Marc Hellman, and Matt Muldoon **SIGNED**

SUBJECT: PACIFIC POWER:  
Docket No. UI 477  
Notice of Affiliated Interest Transaction with BNSF Railway Company.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve Pacific Power’s (PacifiCorp or Company) Application Requesting Approval of Affiliate Interest Transactions with BNSF Railway Company (Application), an affiliated interest, subject to the following Staff proposed conditions (Conditions):

1. PacifiCorp shall notify the Commission in advance of any substantive changes to the two license agreements (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, a summary of the Company’s transactions with BNSF.
3. The Commission reserves the right to review, for reasonableness, 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 transactions involving BNSF.

## **DISCUSSION:**

### Issue

Whether the Commission should approve PacifiCorp's Application requesting approval to enter into a license agreement (Agreement) with Burlington Northern Santa Fe Railway Company (BNSF), related to electric supply line and fiber optic line access across BNSF property in Klamath Falls, Oregon.

### Applicable Law

As defined in ORS 757.015(3), "affiliated interest" 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, reasonable, and not contrary to the public interest.

### Analysis

PacifiCorp filed this application with the Commission on July 6, 2022, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is a wholly owned, indirect subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). BNSF is also a subsidiary of Berkshire Hathaway.

Berkshire Hathaway's ownership interest in PacifiCorp through BHE, and ownership interest in BNSF, qualifies BNSF as an affiliated interest of PacifiCorp.

The Electric supply line license involves an **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]  
**[END CONFIDENTIAL].**

The Company selected site, which was selected at the customer's request, for feasibility and system impact. The Company did not consider other sites for this request since its feasibility and system impact study indicated that the site chosen by the customer was feasible.

Staff's review of this Application included examination of the Company's current Application and other recent affiliated interest application dockets involving PacifiCorp with BNSF. Staff also reviewed PacifiCorp's responses to Staff information requests. Staff investigated the following issues in considering whether the license agreements are fair, reasonable, and not contrary to the public interest:

Staff investigated the following issues:

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*

The Agreement is between PacifiCorp and BNSF Railway Company for the license agreements. The license is for electric supply line across or along railway property (permit#21W-12340) (License).

#### *Transfer Pricing*

For this transaction, BNSF charges standardized fees for these types of licenses. For this transaction, PacifiCorp will pay **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL].<sup>1</sup>**

Staff finds the pricing to be fair and reasonable and recommends that the fees charged to PacifiCorp by BNSF for arranger services as part of the Agreements be approved.

#### *Public Interest*

Entering into the Agreement allows the Company to install and maintain facilities necessary to provide electric service and to meet its obligation to provide safe and reliable electric service. Without the licenses, PacifiCorp would not have the required access and accordingly would not be able to meet its obligation. BNSF, as the relevant property owner, is the only entity that can provide the required licenses to

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<sup>1</sup> Confidential Attachment A of PacifiCorp filing, License for electric Supply Line Across or Along Railway Property.

the Company.

Staff finds the Agreement to be in the public interest as the transactions under the Agreement will not harm customers.

*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 all necessary Commission examination of PacifiCorp's records concerning the Agreement with BNSF.

PacifiCorp has reviewed this memo and has not communicated any objections or concerns.

Conclusion

Based on the review of this Application, Staff concludes:

1. With inclusion of Staff's four proposed conditions, the affiliated interest agreement is fair, reasonable, and not contrary to the public interest; and,
2. Necessary records are available.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's Application Requesting Approval of Affiliate Interest Transactions with BNSF Railway Company, an affiliated interest, subject to Staff's recommended conditions.