

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

**REGULAR**  **CONSENT**  **EFFECTIVE DATE** October 5, 2022

**DATE:** September 26, 2022

**TO:** Public Utility Commission

**FROM:** Rose Pileggi

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

**SUBJECT:** PACIFIC POWER:  
Docket No. UI 478  
Application Requesting Approval for an Affiliate Interest Transaction with  
Huntington-Cleveland Irrigation Company.

**STAFF RECOMMENDATION:**

The Oregon Public Utility Commission (Commission) should approve Pacific Power's (PacifiCorp, PAC, or Company) application (Application) for approval to enter into two lease and management agreements for shares of water (Agreements) with Huntington-Cleveland Irrigation Company (HCIC), subject to Staff's recommended conditions (Conditions) as well as normal reporting requirements.

Conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive changes to the Agreements, including any material changes in price or other parameters specified in the Agreements. 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 HCIC.
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 HCIC.

## **DISCUSSION:**

### Issue

Whether the Commission should grant the Company's request to enter into an Agreement with HCIC for the lease and management of water shares from HCIC to PacifiCorp.

### Applicable Rule or Law

"Affiliated interest," (AI) as defined in ORS 757.015(3), 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. PacifiCorp currently owns approximately one-third of the ownership shares of HCIC, a non-profit mutual irrigation corporation, and receives an allocation of water from HCIC based on its one-third ownership. PacifiCorp's ownership interest in HCIC qualifies as an affiliated interest. See ORS 757.015(3); ORS 757.015(6).

OAR 860-027-0040 provides the Commission's application requirements for transactions between affiliated interests. The Commission reviews affiliated interest transactions to ensure that they are fair and reasonable and not contrary to the public interest ORS 757.495(3). Transactions in which services or supplies are sold to a utility by an affiliate, if no applicable approved rate is on file with the Commission or FERC, must be recorded at the lower of the affiliate's cost or market rate. See OAR 860-027-0048(4)(e).

### Analysis

#### *Background*

On July 14, 2022, PacifiCorp filed an application for approval of a transaction with HCIC, an affiliated interest. PacifiCorp is a wholly owned, indirect subsidiary of Berkshire Hathaway Energy Company (BHE). HCIC is a non-profit mutual irrigation corporation that holds water rights in the Huntington Creek Drainage Basin in Emery County, Utah. PacifiCorp holds a 34.1 percent voting shareholder interest in HCIC and receives an allocation of water through HCIC based upon such ownership. HCIC provides the primary water supply for PacifiCorp's Huntington Plant.

PacifiCorp filed its Application for approval of the Agreement on July 14, 2022. The Agreement shows a retroactive effective date of May 10, 2022. ORS 757.495(2) and OAR 860-036-2210(2) require contracts with affiliated interests to be filed with the

Commission no later than 90 calendar days after the date of execution of the contract. Pursuant to that requirement, this Application was filed within the appropriate time.

Staff issued an information request, investigated the affiliate status, reviewed the Agreement, its terms and conditions, transfer pricing, public interest compliance, and records availability as described below.

#### *Affiliate Status*

HCIC is a non-profit mutual irrigation corporation. PacifiCorp is a wholly-owned, indirect subsidiary of BHE. PacifiCorp holds over one-third of the voting shareholder interest in HCIC. All of these entities (collectively, Affiliates) are considered to have affiliated interest relationships with HCIC pursuant to ORS 757.015 by PacifiCorp owning five or more percent of HCI.<sup>1</sup>

#### *Terms and Conditions*

The Agreement allows for certain supplies and services to be provided to PacifiCorp by the Affiliate. The services to be provided under the Agreement to PacifiCorp include the administration and delivery of the leased water.<sup>2</sup> The supplies to be provided to PacifiCorp by the Affiliate include additional volumes of leased water.<sup>3</sup>

Pursuant to pages two of the Agreements, PacifiCorp may incur two types of costs from the Affiliate: costs for administration and delivery and costs of the leased water itself. Administration and delivery costs are those incurred for services rendered by the Affiliate to PacifiCorp and are directly attributable to PacifiCorp. Leased water costs are those incurred for the additional supply of waters rendered by the Affiliate to PacifiCorp.

Staff reviewed the Agreement and has not identified any unusual or restrictive terms or conditions at this time.

#### *Transfer Pricing*

The Agreements specify that supplies and services rendered to PacifiCorp by the Affiliate will be provided through “an internal solicitation process with all its shareholders.”<sup>4</sup> Because OAR 860-027-0048(4)(e) requires affiliated interest transactions to be recorded in the utility’s accounts at the lower of the affiliate’s cost or the market rate, if the Company intends to record these transactions using the affiliate’s cost, the affiliate’s cost must be lower than the equivalent market rate for the supplies and services to be transacted.

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<sup>1</sup> See application, Page 1.

<sup>2</sup> See Application Exhibit A, Agreement, Page 2.

<sup>3</sup> See Application Exhibit A, Agreement, Page 2 and Application Exhibit B, Agreement, Page 2.

<sup>4</sup> See Application Exhibit A, Agreement, Page 2.

In its Application, the Company states, “Because of a period of extended drought PacifiCorp requires additional water be made available to supplement its owned water rights and shares to safely operate its Huntington Plant.”<sup>5</sup> Upon reviewing the response to IR 04, Staff agrees that, because of drought and reduced run-off, PacifiCorp has a need to lease some additional waters for the operations of their Huntington Plant.<sup>6</sup>

Staff reviewed the affiliate cost and, as the price of additional waters was negotiated with shareholders and no other suitable source of waters exist, Staff agrees that the affiliate cost and market value are the same.<sup>7</sup> With this information, the estimated cost is the lower of Affiliate cost or market value as they are the same, as required by OAR 860-027-0048. However, ratemaking treatment for these items will be determined in the Company’s next general rate case proceeding. If a waiver of OAR 860-027-0048 is determined to be necessary at that time, the Commission may grant it for good cause shown in that proceeding.

#### *Public Interest Compliance*

In its response to the Application’s Filing Requirements (I), the Company states that: “Entering into the Agreements with HCIC is in the public interest because the allotments of water will sustain the operation of the Huntington Plant...” and “...the additional water mitigates the risk of disruption or impairment of PacifiCorp’s services to its customers...”<sup>8</sup> The Company, in the recitals of the Agreements, includes that: “...PacifiCorp requires water in addition to its owned water rights and Shares to operate the Huntington Plant due to a period of extended drought...”<sup>9</sup>

The Agreements and response to IRs make clear that PacifiCorp must acquire the additional waters, including the administration and delivery services, from HCIC, as there are no other water sources. Staff generally agrees that the Agreements can benefit the Company by providing access to the resources required to continue operations of the plant.

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<sup>5</sup> See Application, Page 3.

<sup>6</sup> See confidential response to IR 04.

<sup>7</sup> See confidential response to IRs 01-02.

<sup>8</sup> See Application Page 4, Shared Services Agreement, Page 1.

<sup>9</sup> See Application Exhibit A, Agreement, Page 1 and Application Exhibit B, Agreement, Page 1.

Conclusion

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

1. The proposed affiliated interest agreement is fair, reasonable, and not contrary to the public interest, and
2. Necessary records are available.

The Company has reviewed a draft of this memo.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's application for approval to enter into two lease and management agreements for shares of water with HCIC, subject to Staff's four conditions and normal reporting requirements: