

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction with Nevada Energy, which involves the sale of electrical switch gear equipment, subject to Staff's recommended conditions.

Applicable Law

PacifiCorp filed this application with the Commission on August 18, 2022, pursuant to ORS 757.495(1) and OAR 860-027-0040. An "affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by a corporation or person that also owns, or is part of a successive chain of ownership, five percent or more of the voting securities of a public utility.

PacifiCorp is an indirect, wholly owned subsidiary of BHE, a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). Berkshire Hathaway also wholly owns Nevada Energy. Berkshire Hathaway's ownership interest in both PacifiCorp and Nevada Energy qualifies Nevada Energy as an affiliated interest of PacifiCorp.

Application requirements for affiliated interest transactions are set forth in OAR 860-027-0040. OAR 860-027-0040(2)(g) requires that the application include the cost incurred and market value of the goods or services being provided.

The Commission reviews affiliated interest transactions to ensure they are fair and reasonable and not contrary to the public interest. ORS 757.495(3). When services or supplies (except for generation) are sold to an energy utility by an affiliate, sales in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower, unless there is an applicable rate on file with the Commission or with FERC. OAR 860-027-0048(4)(e).

The Commission may waive any Division 27 rule for good cause shown. OAR 860-027-000(2).

Analysis

Background

In its filing, the Company requests approval of the sale of some switchgear equipment to Nevada Energy. PacifiCorp states in its filing that it was able to provide equipment

needed by Nevada Energy at reasonable cost and terms comparable to other options available on the market. The sale also includes a premium to PacifiCorp's original purchase price that benefits PacifiCorp's customers.

Analysis

Staff's review included examination of the Company's current application, including a Master Contract Agreement. 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 transaction will occur through a purchase order that the Company provided in its filing. The purchase order terms and conditions are governed by the publicly available supplier standards of Nevada Energy

Staff reviewed the agreement and did not identify any unexpected or unusual terms or conditions.

Transfer Pricing

The Company provides the total and per unit original cost and sales price of the switchgear equipment under confidential cover. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL]. This is a reasonable reflection of market prices.

Public Interest

The Commission customarily applies a "no-harm" standard in determining what is "not contrary to the public interest" in matters involving affiliated interest transactions. See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Commission Order No. 01-778 at 10 (September 4, 2001). The impetus for the sale of the switchgear equipment is to provide needed equipment to its affiliate from excess supply that PacifiCorp did not have an immediate need for.¹

¹ Company response to Staff DR No. 1.

Records Availability, Audit Provisions, and Reporting Requirements

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

Conclusion

Based on Staff's review of this application, Staff concludes that the public interest is not harmed by this transaction, provided the recommended Conditions are adopted.

The Company has reviewed this memo, and agrees with its content.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's application for approval of an affiliated-interest agreement with Nevada Energy, an affiliated interest, subject to the Staff's three recommended Conditions.