

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 7, 2019

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: April 18, 2019

TO: Public Utility Commission

FROM: Scott Gibbens ^{SB} and Moya Enright ^{ME}

THROUGH: Jason Eisdorfer ^{JE} and John Crider ^{JCB for JC}

SUBJECT: PACIFICORP: (Docket No. UP 393) Request PacifiCorp's application for approval of the sale of property related to certain agreements with DJ Clean Fuels, LLC.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) Application for Approval of Certain Agreements with DJ Clean Fuels, LCC (DJCF), subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to any agreement filed in this proceeding, including any material changes in price. Any changes to the terms that alter the intent and extent of activities under the agreements from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.
2. The Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
3. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the sale or agreement of the property with DJCF. In addition, PacifiCorp shall seek prior Commission approval for any future property transactions pursuant to ORS 757.480.
4. The final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's Application for an Approval of Certain Agreements with DJ Clean Fuels, LCC.

Applicable Rule or Law

ORS 757.480(1) requires public utilities doing business in Oregon to seek Commission approval prior to the sale, lease, assignment or disposal of property valued in excess of \$100,000 that is necessary or useful in the performance of its duties to the public.

OAR 860-027-0025 sets forth the information required to support a request for the approval of sale, lease, assignment or disposal of utility property.

OAR 860-027-0025(1)(l) requires that the applicant show that the proposed transaction is consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" as used in this rule to require a showing of "no harm to the public." See, e.g., *In re PacifiCorp*, OPUC Docket No. UP 168, Order No. 00-112 at 6 (Feb. 20, 2000); *In re Portland General Electric*, OPUC Docket No. UP 165, Order No. 99-730 at 7 (Nov. 29, 1999).

Finally, the Commission's authority, broadly speaking, is to obtain adequate service for customers at fair and reasonable rates while at the same time balancing the interests of the utility's investors. See ORS 756.040.

Analysis

PacifiCorp filed its Application on March 4, 2019, requesting approval from the Commission for certain agreements with DJ Clean Fuels, LCC. PacifiCorp and DJCF intend to enter into a Pre-Closing Coal Inventory Purchase Agreement, a Coal Feedstock Purchase Agreement, a Refined Coal Supply Agreement, a Coal Handling and Consulting Agreement, and a License and Services Agreement (collectively, Agreements). The Agreements relate to a refined coal production facility, owned by DJCF, and is qualified to generate tax credits under Section 45 of the U.S. Internal Revenue Code, to be installed at PacifiCorp's Dave Johnston power plant, and the sale and purchase of untreated and treated coal within that facility. PacifiCorp will receive benefits through the Coal Handling Agreement and the License Agreement for hosting DJCF's facilities at Dave Johnston.

PacifiCorp and DJCF identified an opportunity to install refined coal facilities on the Dave Johnston property. DJCF intends to install a refined coal treatment facility that would “straddle” approximately 6 feet of the moving incoming coal feedstock conveyor belt at the Dave Johnston plant; so that a treatment can be applied as the coal is transported to the plant on the coal conveyor belt. DJCF would also install a small service building to support the refining equipment, which would also house tanks on the proprietary refined coal chemical treatment facility.

Pursuant to the Agreements, PacifiCorp would sell DJCF an initial amount of coal to establish a refined coal processing “stockpile,” under the Pre-Closing Coal Inventory Purchase Agreement. Thereafter, PacifiCorp would sell to DJCF, from time to time, additional feedstock coal to allow DJCF to produce refined coal for the Dave Johnston plant. Title to the feedstock coal would pass from PacifiCorp to DJCF, during which period DJCF would treat the coal by spraying it with its proprietary coal chemical processes as the coal travels on the conveyor belt, and then after treatment, DJCF would sell the refined coal back to PacifiCorp. The price for the feedstock coal sale to DJCF and refined coal purchase from DJCF will be nearly identical.

If approved, the agreements will be in effect until the end of 2021. PacifiCorp forecast that approximately 8.9 million tons of coal will be treated and used at the plant during this period. The treatment will reduce nitrogen oxide emissions by at least 20 percent, and reduce either sulfur dioxide or mercury emissions by at least 40 percent¹.

A similar transaction at PacifiCorp’s Hunter plant was approved by the Commission in May 2018². There have been no unexpected operational impacts resulting from the agreement³.

This transaction will not impair PacifiCorp’s ability to continue the provision of reliable electric service to its customers.

In review of the Company’s Application, Staff issued twenty data requests.

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.

¹ See standards set out in section 45 of the Internal Revenue Code.

² See Order 18-193.

³ PacifiCorp’s response to Staff Information Request 16.

Terms and Conditions of the Agreement

Staff's review of the Agreement did not identify any unusual or restrictive terms or conditions.

The refined coal pricing was established via a bi-lateral negotiation with DJCF, and was compared against similar pro-forma information provided by an alternative refined coal provider, and was reviewed in light of a refined coal facility commercial engagement at PacifiCorp's sister company in Iowa and a similar agreement entered into by PacifiCorp at its Hunter generating facility.⁴ The monthly differences in price under the transaction will be netted to zero at the end of the term of the Agreement when DJCF resells the purchased coal back to PacifiCorp.⁵

Furthermore, the terms and conditions of the Agreements incorporate provisions to address unexpected operational impacts, should they arise.⁶

Transfer Pricing

As described in the Agreements, PacifiCorp will sell feedstock coal at cost to DJCF, and DJCF will sell refined coal to PacifiCorp at its weighted average price per ton for feedstock coal, resulting in a near-zero difference in price, which will net to zero at the conclusion of the Agreement.⁷ The benefit to DJCF is the ability to take advantage of a \$7.03 per ton refined coal tax credit, which has no impact on PacifiCorp's customer's rates.⁸

In exchange for allowing DJCF to locate facilities on its property and for providing coal yard and support services to DJCF, PacifiCorp will be compensated pursuant to the Coal Handling Agreement and the License Agreement, which will result in a net reduction in PacifiCorp's cost of fuel for the Dave Johnston plant. The contracted amounts for these payments from DJCF to PacifiCorp are confidential, but will be passed through to customers as a reduction to the Company's net power costs.

Public Interest Compliance

Staff finds that the transaction will not affect PacifiCorp's ability to perform its public duties, will not harm customers, and is consistent with the public interest. Moreover, customers will benefit from a reduction in fuel expense included in the Company's net

⁴ PacifiCorp's response to Staff Information Request 1.

⁵ PacifiCorp's response to Staff Information Request 6.

⁶ PacifiCorp's response to Staff Information Request 4.

⁷ PacifiCorp's response to Staff Information Request 6.

⁸ PacifiCorp's response to Staff Information Request 3. This is the amount in 2018. As of the Company's response to IR 3, the IRS has not yet released the adjusted refined coal credit amount for 2019.

power costs related to revenue from the Coal Handling Agreement and the License Agreement.

Staff also confirmed that there is no change to the coal quality that results from the application of emissions reduction reagents during treatment, and there is no expected operational impact at Dave Johnston resulting from the operation of DJCF's refined coal facility.⁹ If there is an unexpected operational impact, those issues are addressed by the Agreement. Staff sees this as being unlikely, given the lack of issues following the implementation of a similar process at Hunter.¹⁰ PacifiCorp is also not responsible for the installation or cost of any infrastructure or other modifications to Dave Johnston related to the Agreement.¹¹ PacifiCorp is not aware of any operational issues or negative impacts at any of its other operating refined coal locations.¹²

Records Availability, Audit Provisions, and Reporting Requirements

Staff further notes that the Commission retains the ability to review all property sales and lease agreements entered by the Company through general rate case filings. Staff Recommendation affords the Commission the ability to exam PacifiCorp's books and records concerning the Asset Exchange Agreement as necessary.

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

Conclusion

Based on the review of PacifiCorp's Application, Staff concludes that certain agreements between the Company and DJCF, LLC, in accordance with terms of the agreement price, are reasonable. The public is not harmed because the Company will continue to be able to fulfill its obligation to provide safe and reliable electric service, and customers are benefitted by reduced net power costs at Dave Johnston. The Commission should approve the Agreement, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to this Agreement, including any material changes in price. Any changes to the Agreement terms that alter the intent and extent of activities under the Agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.

⁹ PacifiCorp's response to Staff Information Requests 4 and 5.

¹⁰ PacifiCorp's response to Staff Information Request 14.

¹¹ PacifiCorp's response to Staff Information Request 10.

¹² PacifiCorp response to Staff Information Request 5.

2. The Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
3. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the sale or agreement of the property with DJCF. In addition, PacifiCorp shall seek prior Commission approval for any future property transactions pursuant to ORS 757.480.
4. The final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application for an Approval of Certain Agreements, with DJ Clean Fuels, LCC, subject to Staff's recommended conditions.