

ITEM NO. CA6

PUBLIC UTILITY COMMISSION OF OREGON  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: June 6, 2019

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

DATE: May 18, 2019

TO: Public Utility Commission

FROM: Kathy Zarate *KZ*

*JE* *JC*  
THROUGH: Jason Eisdorfer and John Crider

SUBJECT: PACIFIC POWER: (Docket No. UP 396) Approval of an Amended Lease Agreement between PacifiCorp and STC Five, LLC.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) Application for Approval of an Amended Lease Agreement with STC Five, LLC (STC) 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.
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 lease or agreement.
4. The final journal entries 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 Approval of an Amended Lease Agreement with STC Five, LLC (STC).

### 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 the lease or property. OAR 860-027-0025(1)(l) requires that the applicant show that the proposed lease will be 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 this application on March 26, 2019, requesting approval from the Commission for an approval of an amended lease agreement (Amended Agreement) with STC Five, LLC.

The property leased under the Amended Agreement is certain transmission substation real property associated with its Taylorsville Substation in Taylorsville, Utah.

STC, which is a successor lessee to the original lessee Sprint Spectrum L.P. (Sprint), intends to use the Company property for the operation of certain communication equipment and facilities used in the connection with its business operations and to add a carrier to the existing pole. The original agreement with Sprint has been amended as between STC and PacifiCorp several times to increase rent, allow for additional equipment be installed on the property, and extend the term.

The original agreement had an initial term of five years from the commencement date of June 19, 2001, and expired June 18, 2006. The second amendment to that agreement, with STC as the successive lessee, provided four additional five-year terms, extending the term to June 2026. STC proposed this Amended Agreement to allow it to extend the lease for eight additional five-year renewal terms, under which the lease would expire in June 2066.

The purpose of this application is to satisfy ORS 757.480 and OAR 860-027-0025. The value of the proposed Amended Agreement over its initial five-year term, commencing June 18, 2026, is approximately [Begin Confidential] [Redacted] [End Confidential] plus an additional one-time payment in the amount of [Begin Confidential] [Redacted] [End Confidential] payable within 60 days of the full execution of the Amended Agreement. The Company Property proposed is classified as transmission property and is system-allocated. The value of the Amended Agreement to Oregon will be approximately [Begin Confidential] [Redacted] [End Confidential] over the initial five-year extension term.

This transaction will not impair PacifiCorp's ability to continue the provision of reliable electric service to its customers. STC has leased the property since 2006 without incident.

In review of the Company's application, Staff issued 10 data requests.

Staff investigated the following issues:

1. Terms and Conditions of the Agreement
2. Transfer Pricing
3. Public Interest Compliance
4. Records Availability, Audit Provisions, and Reporting Requirements

*Terms and Conditions of the Agreement*

Staff's review of the Agreement did not identify any unusual or restrictive terms or conditions. The Agreement will not be fully executed until the Company receives approval for it from the Commission. PacifiCorp requests Commission approval by June 18, 2019.

The location of this property does not interfere with the business needs of PacifiCorp. Rather, under this agreement, PacifiCorp receives revenue from and eliminates the need to provide weed maintenance on the property.<sup>1</sup>

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<sup>1</sup> Company Response to OPUC Staff Data Request No. 6.

*Transfer Pricing*

The original lease agreement started in 2001 at [Begin Confidential] [Redacted] [End Confidential]. As of 2017, that rent payment would have been [Begin Confidential] [Redacted] [End Confidential]. Under the proposed Amended Agreement, in consideration of allowing the lessee to extend the lease term, the rent would increase to [Begin Confidential] [Redacted] [End Confidential]. The increase in rent was negotiated and would be on the high end of rent being charged for similar wireless leases in the area. Following such increase, the annual base rent shall continue to adjust pursuant to the terms of the original lease. Thus, the value of the proposed Amended Agreement over its initial five-year lease term commencing June 18, 2026, is approximately [Begin Confidential] [Redacted] [End Confidential] on a total company basis.<sup>2</sup>

*Public Interest Compliance*

Staff has reviewed the terms of the confidential agreement and is satisfied that its terms adequately protect against potential interference or other operational risks. This transaction will not affect PacifiCorp's ability to perform its public duties, will not harm customers, and is consistent with the public interest.

*Records Availability, Audit Provisions, and Reporting Requirements*

The property at issue is included in Oregon rates. Transmission properties are allocated to Oregon on a SG (System Generation) factor. The total amount allocated in Oregon will be [Begin Confidential] [Redacted] [End Confidential].

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's Recommendation affords the Commission the ability to examine PacifiCorp's books and records concerning the Amended Agreement as necessary.

Conclusion

Based on the review of PacifiCorp's application, Staff concludes that the Amended Lease Agreement with STC Five, LLC, is reasonable. The public will not be harmed because the Company will continue to be able to fulfill its obligation to provide safe, reliable electric service. 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

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<sup>2</sup> Company Response to OPUC Staff Data Request No. 2.

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.

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 lease or agreement.
4. The final journal entries recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's Application for Approval of an Asset Exchange Agreement with STC Five, LLC (STC), subject to Staff's recommended conditions.

