

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 288

In the Matter of
PACIFICORP dba PACIFIC POWER

Application for Approval of a Licensing
Agreement with BNSF Railway Company, an
affiliated interest.

ORDER

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On October 8, 2009, PacifiCorp, dba Pacific Power & Light Company (PacifiCorp) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.015, ORS 757.495, and OAR 860-027-0040, for approval of a licensing agreement with BNSF Railway Company. Pacific Power is a wholly-owned subsidiary of MidAmerican Energy Holdings Company (MEHC). MEHC is a subsidiary of Berkshire Hathaway, Inc., which owns approximately 20 percent of the BNSF common equity. This organizational chain establishes the statutory affiliated relationship. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its public meeting on December 22, 2009, the Commission adopted Staff's recommendation.

OPINION

Affiliation

An affiliated interest relationship exists under ORS 757.015.

Applicable Law

ORS 757.495 requires a public utility to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission reserves that issue for a subsequent proceeding.

CONCLUSIONS

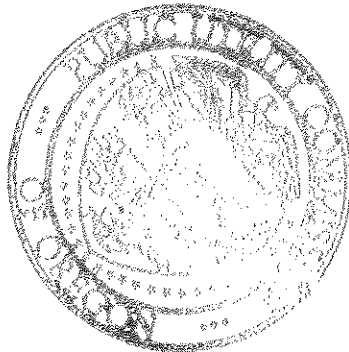
1. An affiliated interest relationship exists.
2. The agreement is fair, reasonable, and not contrary to the public interest.
3. The application should be approved, with certain conditions.

ORDER

IT IS ORDERED that the contract between PacifiCorp, dba Pacific Power, and BNSF Railway Company is approved, subject to the conditions stated in the Staff Report attached as Appendix A.

Made, entered, and effective DEC 28 2009.

BY THE COMMISSION:



Becky L. Beier

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 22, 2009

REGULAR _____ CONSENT X EFFECTIVE DATE _____ NA _____

DATE: December 8, 2009

TO: Public Utility Commission

FROM: Marion Anderson 

THROUGH:  Lee Sparling,  Marc Hellman, and  Michael Dougherty

SUBJECT: PACIFICORP dba PACIFIC POWER & LIGHT: (Docket No. UI 288)
Application for approval of a licensing agreement with BNSF Railway Company, an affiliated interest.

STAFF RECOMMENDATION:

The Public Utility Commission (Commission) should approve the application of PacifiCorp for an affiliated interest agreement with BNSF Railway Company (BNSF) under the following conditions:

1. PacifiCorp shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any transactions with affiliates.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. 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 format) in this docket.

DISCUSSION:

This application was filed on October 8, 2009, pursuant to ORS 757.015 and 757.495, and OAR 860-027-0040. PacifiCorp is a wholly-owned subsidiary of MidAmerican Energy Holdings Company (MEHC). MEHC is a subsidiary of Berkshire Hathaway, Inc.,

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which owns approximately 20 percent of the BNSF common equity. This organizational chain establishes the statutory affiliated relationship.

This filing is made under the Commission's requirements set for MEHC's acquisition of PacifiCorp in Order No. 06-121. The normal financial materiality threshold is therefore set aside.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Agreement

The contract covers a "License for Electric Supply Line Across or Along Railway Property" for PacifiCorp's construction and maintenance of facilities for electric service provision on BNSF property.

Transfer Pricing

The contract cost consisted of three one-time fees for processing, the license, and liability insurance. The total was \$9,194.

Determination of Public Interest Compliance

This agreement is fair and reasonable and not contrary to the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

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

1. The agreement's scope is reasonable.
2. The contract will not harm customers and is not contrary to the public interest with the recommended conditions.
3. Necessary records are available.

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PROPOSED COMMISSION MOTION:

The contract between PacifiCorp and BNSF Railway Company be approved with the three Staff recommended conditions.

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