

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 293

In the Matter of

PACIFICORP dba PACIFIC POWER

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

ORDER

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On January 6, 2010, 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 22 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 March 9, 2010, 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

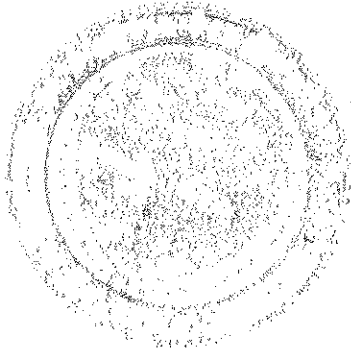
1. An affiliated interest relationship exists.
2. The agreement is fair, reasonable, and not contrary to the public interest.
3. The application should be approved, with certain conditions.

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 MAR 11 2010.

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: March 9, 2010

REGULAR _____ CONSENT X EFFECTIVE DATE _____ NA _____

DATE: February 23, 2010

TO: Public Utility Commission

FROM: Marion Anderson *MSA*

THROUGH: *li* Lee Sparling, *st* Marc Hellman, and Michael Dougherty *in*

SUBJECT: PACIFICORP dba PACIFIC POWER & LIGHT: (Docket No. UI 293)
Application for approval of a permit and 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 filing was made on January 6, 2010, 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., which

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owns approximately 22 percent of the BNSF common equity. This organizational chain establishes the statutory affiliated relationship.

The application involves initial transactions totaling \$7,754 with a continuing \$5,154 charge per annum. Given this low value, the Commission's administrative rules would not require a review. However, since the filing is required pursuant to Commission Order No. 06-121, which covers MEHC's acquisition of PacifiCorp, Staff reviewed the filing.

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 contracts are numbered 09-38495 and 09-37908 covering a Temporary Occupancy Permit (allowing three months of access) and a License for Electric Supply Line Across or Along Railway Property, respectively, for PacifiCorp's construction and maintenance of facilities for electric service provision on BNSF property. The license has a term of twenty-five years.

These contracts allow the completion of a project, named Hunter's Circle, near Bend for the installation of additional distribution circuits requiring taller poles on existing facilities.

Transfer Pricing

There are four one-time fees covering processing, the permit, and liability insurance for a total of \$2,600. There is also an annual licensing fee of \$5,154. These are the standard rates and fees BNSF charges for applications of this type.

Determination of Public Interest Compliance

As noted above, this agreement would qualify for waiver under the provisions of OAR 860-027-0043. Staff concurs that the 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.

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

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

PROPOSED COMMISSION MOTION:

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

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