

ORDER NO. 16 099

ENTERED MAR 08 2016

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 361

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for Approval of an Affiliated Interest
Agreement with Kern River Gas Transmission
Company.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 8, 2016, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:




Kristi Collins
Commission Secretary

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 8, 2016**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: February 22, 2016

TO: Public Utility Commission

FROM: Brian Bahr *BB*

THROUGH: *JE* Jason Eisdorfer and *AA* Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UI 361) Requests Approval of Affiliated Interest Agreements with Kern River Gas Transmission Company.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (Company) application for approval of Real Estate Agreements (Agreements) with Kern River Gas Transmission Company (Kern River), an affiliated interest, subject to the following conditions:

1. PacifiCorp shall notify the Commission of any substantive changes to the Agreements, including any material changes in price or other parameters specified in the Agreements. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
2. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into under the Agreement with Kern River.

ISSUE:

With this application, the Company is requesting approval of a Temporary Construction Workspace Agreement (TCW Agreement), two amended easements (Amended Easements), and two new easements (New Easements) with Kern River, an affiliated interest.

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APPLICABLE LAW:

PacifiCorp filed this application with the Commission on December 8, 2015, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company, a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). Kern River is also a subsidiary of Berkshire Hathaway, and therefore, an affiliated interest of PacifiCorp.

"Affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning five percent of the voting securities of a public utility or in any successive chain of ownership of a public utility. Berkshire Hathaway's ownership interest in PacifiCorp and Kern River qualifies as an affiliated interest.

For transactions between affiliated interests, OAR 860-027-0048(4)(d) requires utilities to record the transaction at the higher of cost or market. OAR 860-027-0043 provides for the potential waiver of the affiliated interest rules if the transaction amount is less than 0.1 percent of the utility's annual Oregon revenues.

The Commission reviews affiliated interest transactions to ensure they are fair and reasonable and not contrary to the public interest. ORS 757.495(3).

DISCUSSION AND ANALYSIS:

Background

Kern River has two pipelines that currently encumber PacifiCorp rights of way by virtue of existing permanent easement agreements entered into by PacifiCorp and Kern River in 1991 and 2002. Utah Department of Transportation (UDOT) is requiring Kern River to relocate portions of the pipelines to accommodate the Mountain View Corridor, a freeway, transit, and trail project. To allow Kern River to accommodate UDOT's directive, PacifiCorp executed the TCW Agreement and amendments to the permanent easement agreements to reflect the relocation alignment. The Company also executed two new easement agreements with respect to adjacent PacifiCorp parcels that have not been previously encumbered.

Analysis

Staff's review included examination of the Company's responses to three requests for information as well as its application, including the TCW Agreement, Amended Easements, and New Easements.

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Staff investigated the following issues:

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

Terms and Conditions of the Agreements

The TCW Agreement, included as Attachment A of the Company's application, in addition to including standard terms and conditions, specifies certain protections of PacifiCorp's operations and ability to continue providing safe and reliable service. For example, Article 4 of the TCW Agreement includes the following sentence, "At no time shall Kern River operate any equipment or vehicle exceeding fourteen (14) feet in height under or adjacent to any overhead power line..." The TCW Agreement also specifies that PacifiCorp will not be responsible for any costs incurred. The Amended Easements allow Kern River to access the Pipelines for installment and maintenance once relocated. The New Easements similarly allow Kern River to access the relocated Pipelines. Staff reviewed the TCW Agreement, Amended Easements, and New Easements and did not identify any unexpected or unusual terms or conditions.

Transfer Pricing

The net encumbrance of the Pipelines on PacifiCorp property will decrease from 6.6 acres to 5.1 acres with the Agreements. Because the net encumbrance is a decrease, there is no additional real estate charge associated with the Agreements. However, in order to compensate PacifiCorp for the construction access and relocation impact, Kern River is paying the Company \$28,822. According to the TCW Agreement, the price is calculated as follows:

TCW Agreement Price Calculation

| | |
|--------------|-----------------------------|
| 4.83 acres | Construction Workspace |
| + 0.66 acres | Access Road |
| = 5.49 acres | |
| * \$105,000 | Value per Acre ¹ |
| = \$576,450 | |
| * 5% | Annual Lease Rate |
| = \$28,822 | |

The value per acre was determined by a formal professional appraisal and represents fair market value of the property. Staff received the appraisal from the Company in

¹ Calculated as \$2.41 value per square foot (per independent appraisal) multiplied by 43,560 square feet per acre.

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response to a request for information and is satisfied the Value per Acre was determined by an independent third party and represents fair market value.

Per the Company's response to Staff's request for information, the lease rate of five percent was determined through a series of several negotiations between the Company and Kern River. The two pipelines were constructed ten years apart (in 1991 and 2002) and are governed by two separate easement agreements. The 1991 easement agreement allows Kern River the right to relocate the pipelines at no additional cost. However, the 2002 agreement specifies that relocation requires a separate agreement. Through negotiation, the Company and Kern River agreed to split the standard industry annual lease rate of ten percent, resulting in the five percent annual lease rate specified in the Agreements.

Because the amount paid to PacifiCorp by Kern River qualifies the Agreements as a property sale, PacifiCorp also provided notice to the Commission, docketed as UPN 8.² Staff addressed the property sale aspects of the Agreements in that docket rather than in this memo.

The Agreements would normally qualify for a waiver of the affiliated interest transaction requirements as the amount paid PacifiCorp is significantly less than 0.1 percent of PacifiCorp's annual Oregon revenue. Because the payment is significantly less than 0.1 percent of PacifiCorp's Oregon revenue, the effect of the contract on Oregon customers is minimal.

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*, Order No. 01-778 (Docket No. UM 1011). The impetus of the Agreements was a directive by UDOT to Kern River. The Agreements are subject to terms, conditions, and restrictions to protect PacifiCorp's ability to provide safe and reliable service. Additionally, the net amount of property encumbered by the Pipelines was reduced through this transaction.

Records Availability, Audit Provisions, and Reporting Requirements

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

² Property sales are governed by ORS 757.480 and OAR 860-027-0025.

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CONCLUSION:

PacifiCorp has reviewed this memo and has not communicated any objections or concerns. Based on the review of this application, Staff concludes:

1. The Agreements do not appear to contain any unexpected or unusual terms or conditions;
2. The transfer pricing is fair and reasonable;
3. The Agreements are in the public interest; and,
4. Necessary records are available.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Agreements with Kern River, an affiliated interest, subject to Staff's recommended conditions.

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