

ORDER NO. 16 184

ENTERED MAY 20 2016

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 370

In the Matter of

PACIFICORP, dba PACIFIC POWER,

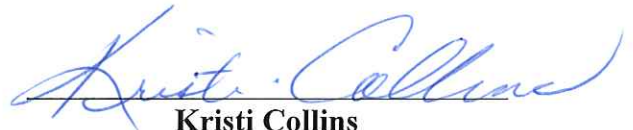
Request for Approval of an Affiliated Interest  
Transaction with U.S. Bank National  
Association.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 17, 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 Circuit Court for Marion County in compliance with ORS 183.484.

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ITEM NO. CA12

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 17, 2016

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

DATE: May 9, 2016

TO: Public Utility Commission

FROM: Brian Bahr <sup>BB</sup>  
<sub>E</sub>

*MA*

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UI 370) Requests Approval of Affiliated Interest Agreement with U.S. Bank National Association.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (Company) application for approval of affiliated interest agreement (Agreement) with U.S. Bank National Association (U.S. Bank), an affiliated interest, subject to the following conditions:

1. PacifiCorp shall notify the Commission of any substantive changes to the Agreement, including any material changes in price or other parameters of the transaction. 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 U.S. Bank.
3. The Commission reserves judgment on the fairness and reasonableness of the Agreement for ratemaking purposes.

**ISSUE:**

Whether the Commission should approve PacifiCorp's request to enter into an affiliated interest agreement with U.S. Bank.

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### **APPLICABLE RULES AND LAWS:**

PacifiCorp filed this application with the Commission on February 18, 2016, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly-owned subsidiary of BHE, a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). Warren E. Buffet (an individual who may be deemed to control Berkshire Hathaway), Berkshire Hathaway, various subsidiaries of Berkshire Hathaway, and various employee benefit plans of Berkshire Hathaway subsidiaries together hold in excess of five percent of U.S. Bancorp common stock. U.S. Bancorp is the parent company of U.S. Bank National Association.

An "affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by a corporation or person that also owns, or is part of a successive chain of ownership, five percent or more of the voting securities of a public utility. Berkshire Hathaway's ownership interest in both PacifiCorp and U.S. Bank qualifies U.S. Bank as an affiliated interest of PacifiCorp.

Transactions between affiliated interests must be recorded at the lower of cost or market rate. OAR 860-027-0048(4)(e). OAR 860-027-0040 provides the Commission's application requirements for transactions between affiliated interests. However, these application requirements can potentially be waived if the transaction amount is less than 0.1 percent of the utility's previous calendar year's Oregon operating revenues. OAR 860-027-0043. Further, the Commission may waive any rule for good cause shown. OAR 860-001-000(2).

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

PacifiCorp requires escrow accounts from time to time in connection with its commercial contracts with various counterparties, and occasionally in connection with commercial contract dispute resolution. U.S. Bank is a national financial services company that provides routine banking services to PacifiCorp from time to time, including the provision of escrow services. The Company proposes with this application to engage U.S. Bank from time to time for the provision of escrow agent services in accordance with the terms of the Agreement.

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#### Analysis

Staff's review included examination of the Company's current application, including the Agreement, and responses from the Company to 15 requests for information from Staff. 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.

#### *Terms and Conditions of the Agreements*

The Agreement, included as Attachment A of the Company's application, includes standard terms and conditions. Staff reviewed the Agreement and did not identify any unexpected or unusual terms or conditions.

#### *Transfer Pricing*

The Company's need for escrow account services in the past has been infrequent; the last escrow account prior to the current one was in 2008. Historically, prior to U.S. Bank becoming an affiliate of PacifiCorp, the Company paid annually to U.S. Bank amounts ranging from \$1,500 to \$3,800 for escrow agent services, and estimates average annual payments to U.S. Bank in the future of approximately \$1,000. U.S. Bank's fees are based on its standard rates, typically between \$1,000 and \$2,000 per transaction. A schedule of fees for services as an escrow agent was included as part of the Company's application and was reviewed by Staff.

In response to a request from Staff, the Company provided a confidential attachment demonstrating that U.S. Bank's standard rates are lower than other similar financial institutions providing escrow agent services.

OAR 860-027-0048(4)(e) requires that the utility record the affiliated interest transaction at the lower of the affiliate's cost or market rate. Because U.S. Bank is a competitive business, Staff can assume that U.S. Bank's standard rates reasonably represent market rates. However, the cost to U.S. Bank of providing escrow agent services is not available to either the Company or Staff. Given that U.S. Bank's fees are lower than other available alternatives, the Company's history of using U.S. Bank prior to an affiliated interest relationship, and other reasons discussed in the Public Interest section of this memo, Staff recommends a waiver of the affiliated interest transaction rule pursuant to OAR 860-027-0000(2).

#### *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,

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e.g. *In the Matter of a Legal Standard for Approval of Mergers*, OPUC Docket No. UM 1011, Order No. 01-778 at 10 (Sept. 4, 2001). In response to a request from Staff, the Company provided the following reasons why US Bank is well-suited to provide escrow agent services:

- *PacifiCorp's experience with U.S. Bank in similar, pre-affiliate escrow accounts;*
- *U.S. Bank's knowledgeable and accessible escrow account personnel and local presence in Oregon;*
- *PacifiCorp's familiarity and experience with U.S. Bank Escrow Agreements;*
- *U.S. Bank's strong financial profile including credit ratings; and,*
- *Counterparties' acceptance of U.S. Bank as an escrow agent.*

In addition, as discussed in the Transfer Pricing section of this memo, U.S. Bank is the least cost alternative.

*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 Agreement.

Conclusion

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

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

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's application for approval of an affiliated interest agreement with U.S. Bank, subject to Staff's recommended conditions.