

ENTERED JUL 05 2016

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 337

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of a Purchase and
Transfer Agreement Between PacifiCorp and
the Navajo Tribal Authority.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 5, 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.

ORDER NO. 16 241

ITEM NO. CA10

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 5, 2016**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: June 1, 2016

TO: Public Utility Commission

FROM: Scott Gibbens SG

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFIC POWER: (Docket No. UP 337) Requests approval of a Purchase and Transfer Agreement between PacifiCorp and the Navajo Tribal Authority.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve the sale of transmission assets by PacifiCorp (Company) to the Navajo Tribal Utility Authority (NTUA) subject to the following conditions:

1. Company shall notify the Commission in advance of any substantive changes to the transfer of properties, 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 final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.
3. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternate form of regulation.

ISSUE:

Whether the Commission should approve the sale of transmission assets located on tribal land in Utah to NTUA following the stipulations outlined in the Purchase and Transfer Agreement between PacifiCorp and the NTUA.

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APPLICABLE LAW:

Under ORS 757.480(1):

A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

- (a) Except as provided in subsection (5) of this section, sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$100,000, [. . .].

In support of a request for approval of a property sale, the utility must provide the information and documentation listed in OAR 860-027-0025. OAR 860-027-0025(1)(l) states that the applicant must show that the property sale will be consistent with the public interest.

The Commission has interpreted the phrase "consistent with the public interest" to require a showing of "no harm." *See, e.g. In the Matter of Portland General Electric Company*, Docket No. UP 292, Order No. 13-372 (2013).

The Commission has reserved the right to review any or all financial aspects of a transaction in a general rate case or other proceeding, and may condition approval of a sale on receiving notice in advance of any substantive changes to the sale and transfer of the property including any material change in price. *See* Docket No. UP 235, Order No. 06-651; and Docket No. UP 57, Order No. 90-433.

DISCUSSION & ANALYSIS:

PacifiCorp has provided service to certain customers located within a portion of the Navajo Nation (the Nation) in San Juan County, Utah, for many years. This service was provided with the consent of the Nation and pursuant to applicable tariffs and regulations. The Company currently serves 1,045 customers located within the Nation, utilizing 29.79 miles of transmission lines, 335 miles of distribution lines and four substations. Only the transmission assets, for which the Company will receive approximately \$145,864 under the Purchase and Transfer Agreement, are system allocated (\$37,242 on an Oregon-allocated basis).

In 1959, the Company obtained easements from the Nation to provide service to its members. At the same time, the Nation created NTUA, a tribal enterprise, and authorized it to provide utility services throughout the Nation with the understanding that

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the NTUA could eventually provide all electric service for customers within the Nation. PacifiCorp agreed that the Nation would have an option to purchase certain facilities serving these customers and negotiate to purchase other facilities. In its application, the Company explains that this agreement is memorialized in three letters exchanged between the Company and the Nation's Council in 1959 ("1959 Letter Agreement").

The assets to be transferred include the San Juan-Red Rock 69KV line, San Juan-Montezuma 69KV, Anneth Tap 69KV, White Mesa Tap 69 KV, Superior Oil Tap 69KV, Tap to McElmo and Anneth Switch rack. These power line assets are currently used by the Company to provide retail electric service to customers within the Nation, including a single large industrial customer, and a small number of customers on adjacent land. After the sale, the assets will be used by NTUA to serve the same customers that the assets are currently serving. The Company states the sale of these assets will not interfere with PacifiCorp's ability to provide reliable service to its customers after the effective date of the transaction.

Staff reviewed the utility filings, including the Purchase and Transfer Agreement, exhibits and attachments, and the First, Second and Third Amendments to the Purchase and Transfer Agreement, previous Commission decisions on property sale filings, as well as responses to five information requests in order to conduct the analysis. Staff finds the proposed property sale meets the criteria set forth in OAR 860-027-0025.

Staff was concerned with the use of net book value to determine the sales price of the power line assets. In response to Staff's information requests, PacifiCorp states that the Company did not pursue any other valuation method due to the specific stipulation to use that methodology in the 1959 Letter Agreement. This methodology is therefore consistent with the confidential agreement entered into when the Company originally began serving the area with the consent of the Nation. NTUA and PacifiCorp have negotiated the sale of these assets over a number of years. Further, NTUA will pay for all costs associated with the sale, including items such as transaction costs, transfer costs associated with separating facilities, and reimbursement to the Company for any tax effects. Using net book value to establish price under these circumstances ensures other PacifiCorp customers will not be harmed in the transaction.

Staff was further concerned that a change in customer allocation in another state could result in increased allocation costs for Oregon ratepayers. In response to Staff's information request, PacifiCorp states that "there is no anticipated change in Oregon cost allocation percentages. [Certain customers] transferred to the NTUA will be serviced through a wholesale contract and situs assigned to Utah."

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For all of the foregoing reasons, Staff finds the valuation and terms of the property sale reasonable.

CONCLUSION:

Staff finds that the sale of the power line assets from PacifiCorp to NTUA is in the public interest. This sale will not affect PacifiCorp's ability to serve customers in a safe and reliable manner.

The Company was provided a draft copy of this memo and has no concerns.

PROPOSED COMMISSION MOTION:

Approve the Purchase and Transfer Agreement between PacifiCorp and the Navajo Tribal Utility Authority subject to Staff's recommended conditions.

Advice No. UP 337