

ORDER NO. 16 344

ENTERED SEP 13 2016

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 374

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for Approval of an Affiliated Interest  
Transaction with Huntington Cleveland  
Irrigation Company.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on September 13, 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. CA9

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 13, 2016

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

DATE: August 30, 2016

TO: Public Utility Commission

FROM: Kathy Zarate KZ

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UI 374) Requests Approval of Affiliated Interest Agreement with Huntington Cleveland Irrigation Company.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (Company) application for approval of a Non-Exclusive Pipeline Easement Agreement (Agreement) with Huntington Cleveland Irrigation Company (HCIC), 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 specified in the Agreement. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of the transaction in any rate proceeding or alternative form of regulation.
3. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into under the Agreement with HCIC.

**DISCUSSION:**

Issue

Whether the Commission should approve PacifiCorp's application to enter into a transaction with HCIC, an affiliated interest, for a Non-Exclusive Pipeline Easement Agreement (Agreement) that allows HCIC access to a small portion of PacifiCorp

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property so that HCIC may complete a project to enclose open irrigation trenches in Emery County, Utah.

Applicable Law

"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. PacifiCorp currently owns approximately one-third of the ownership shares of HCIC, a non-profit mutual irrigation corporation, and receives an allocation of water from HCIC based on its one-third ownership. PacifiCorp's ownership interest in HCIC qualifies as an affiliated interest. See ORS 757.015(3); ORS 757.015(6).

OAR 860-027-0040 provides the Commission's application requirements for transactions between affiliated interests. The Commission reviews affiliated interest transactions to ensure that they are fair and reasonable and not contrary to the public interest. ORS 757.495(3). Transactions in which a utility sells services or supplies to an affiliate must be recorded at the higher of cost or market rate if no applicable approved rate is on file with the Commission or FERC. OAR 860-027-0048(4)(d).

Discussion and Analysis

Background

PacifiCorp filed this application on July 11, 2016, pursuant to ORS 757.495(1) and OAR 860-027-0040, for approval of a transaction with HCIC, an affiliated interest. HCIC is a non-profit mutual irrigation corporation that holds water rights in the Huntington Creek Drainage Basin in Emery County, Utah.<sup>1</sup> PacifiCorp owns approximately one-third of the ownership shares of HCIC and receives an allocation of water through HCIC based on such ownership. HCIC provides the primary water supply for PacifiCorp's Huntington Plant and the secondary water supply for PacifiCorp's Hunter Plant.

PacifiCorp seeks approval of an Agreement granting HCIC a non-exclusive permanent pipeline easement across approximately 0.5171 acres of PacifiCorp property, and a temporary construction easement across approximately 0.667 acres of PacifiCorp property, so that HCIC may complete a project of enclosing existing open irrigation trenches that provide water to PacifiCorp's Huntington and Hunter Plants, and install new pressurized pipes.

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<sup>1</sup> The Commission approved a previous affiliated interest agreement between PacifiCorp and HCIC in Docket No. UI 300, Order No. 10-353.

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Staff's review of the Company's application included review of the Agreement and the Company's responses to three information requests.

#### Analysis

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 Agreement

The Agreement is between PacifiCorp and HCIC. Staff reviewed the Agreement and did not find any unexpected or unusual terms or conditions. The terms and conditions of the Agreement do not appear to be contrary to the public interest.

#### Transfer Pricing

The Agreement involves PacifiCorp providing services to HCIC through the grant of a non-exclusive pipeline easement from PacifiCorp to HCIC, the market value of which has been internally estimated by PacifiCorp to be \$320. PacifiCorp's valuation is based on recent appraisals in the area for similar parcels. Determining the cost of the easement is much more difficult as the easement is for a portion of the property configured differently than the property itself. Given that market value of land typically rises over time, the book value of the easement should be much smaller than the market value of the parcel.

Additionally, HCIC requested and obtained no-cost easements for the enclosure project from both HCIC shareholders and non-shareholders, which reduced the total cost of the project. Thus, PacifiCorp will not charge HCIC for the \$320 easement. As a shareholder of HCIC, PacifiCorp bears responsibility for a share of the total project costs and therefore benefits from the no-cost approach for easements for the enclosure project. In this particular case, Staff finds that PacifiCorp's decision to forego charging HCIC \$320 is reasonable given that the easement fees would have been passed back to PacifiCorp as an HCIC shareholder and result in lowering the cost of the enclosure project. Given the minimal value involved and the specific circumstances of this case, Staff supports the no-charge approach and recommends waiver of the higher of cost versus market rule pursuant to OAR 860-001-0000(2).

#### Public Interest Compliance

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*, Docket No. UM 1011, Order No. 01-778. According to the Company, PacifiCorp continues to rely on the water supply from HCIC for effective operation of the Huntington and Hunter Plant and to provide safe and reliable electric service. The granting of the easement is in the public interest because it will allow for enclosure of existing open irrigation trenches, which reduces waste by decreasing water loss associated with open trench irrigation, decreases water quality loss, promotes the effective use of PacifiCorp's water resources, and increases the value of HCIC water rights, of which PacifiCorp owns a one-third share. Further, the easement encumbers PacifiCorp property that is not used for power generation or delivery purposes.

Based on Staff's review, Staff finds that the Agreement is in the public interest.

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 with HCIC. PacifiCorp has reviewed this memo and has not communicated any objections or concerns.

Conclusion

Based on the review of PacifiCorp's application, Staff concludes:

1. The application involves an affiliated interest agreement that contains no unreasonable terms, the pricing is fair and reasonable, and the transaction is not contrary to the public interest, with the inclusion of Staff's recommended ordering conditions; and
2. Necessary records are available.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's application for approval of the Agreement with HCIC, an affiliated interest, subject to Staff's recommended conditions.

PacifiCorp UI 374