

ORDER NO. 16 366

ENTERED SEP 27 2016

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 375

In the Matter of

PACIFICORP, dba PACIFIC POWER,

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

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on September 27, 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. CA10

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 27, 2016

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

DATE: August 31, 2016

TO: Public Utility Commission

FROM: Scott Gibbens *SG*  
*I* *for* *MA*

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UI 375) Requests approval of an Affiliated Interest Agreement with U.S. Bank National Association.

**STAFF RECOMMENDATION:**

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

1. PacifiCorp shall notify the Commission of any substantive changes to the contract, including any material changes in price or other parameters specified in the Agreement. Any such changes shall be filed in this docket.
2. PacifiCorp shall report to the Commission all transactions entered into under the contract with US Bank as part of its annual affiliated interest report.
3. The Commission reserves judgment on the fairness and reasonableness of the contract for ratemaking purposes.

**DISCUSSION:**

Issue

Whether the Commission should allow PacifiCorp to enter into an Easement Agreement with US Bank, an affiliated interest, in order to install a utility pole on US Bank property.

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Applicable Law

"Affiliated interest," as defined in ORS 757.015, includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning at least five percent of the voting securities of a public utility or by any person or corporation in any chain of successive ownership of at least five percent of voting securities of the utility. See ORS 757.015(3). ORS 757.495 requires a public utility to seek approval of contracts with affiliated interests within 90 days after execution of the contract. The required process for submitting an agreement for review by the Commission is set forth in ORS 757.015(2) and OAR 860-027-0040.

ORS 757.495(3) provides that the Commission may approve an affiliated interest agreement if the agreement is fair and reasonable and not contrary to the public interest. Under OAR 860-027-0048(4)(g), for cost allocation purposes, "when services or supplies are sold to an energy utility by an affiliate under contract, the transfer price shall be based upon the tariff or terms of the contract approved by the Commission Order under ORS 757.495." The Commission need not determine the reasonableness of all financial aspects of the contract for ratemaking purposes, but, rather, may reserve that issue for subsequent proceedings. See Commission Order No. 11-071.

Discussion and Analysis

PacifiCorp is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway, Inc. (Berkshire). Berkshire and its various subsidiaries together hold in excess of five percent of U.S. Bancorp common stock. U.S. Bancorp is the parent company of US Bank.

Berkshire's ownership interest in U.S. Bancorp creates an affiliated interest for PacifiCorp through Berkshire's ownership interest in BHE and BHE's ownership interest in PacifiCorp.

US Bank has a facility located at 619 SE Main Street, Roseburg, Oregon (facility). The local district is in need of placing a utility pole near the SW corner of the lot on which the facility resides. The district requires a five foot by five foot area in which to install the pole. There is no publicly owned property suitable in the area, necessitating an easement with US Bank for a pole installation. PacifiCorp has agreed to pay US Bank a one-time fee of \$750 for the nonexclusive perpetual easement. The easement allows the installation, maintenance, and continued use of the pole. Staff's review of this application included examination of the Company's current application and the contract. No Staff information requests were submitted due to the relatively small dollar value and the company's ability to provide all necessary information in its application.

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Staff investigated the following issues in considering whether the agreement is fair, reasonable, and not contrary to the public interest:

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

#### Terms and Conditions of the Agreement

Staff reviewed the Easement Agreement between PacifiCorp and US Bank as well as the attached exhibits. Staff had no issues or concerns with the terms and conditions of the agreement.

#### Transfer Pricing and Historical Trends

At \$750, the risk of harm to rate payers in the form of over-payment for the easement is relatively small. On a cost per square foot basis, the easement is potentially in the higher range of prices, however due to the small total area required, this amount is reasonable and expected. The market value of easements is generally based on the estimated difference between the total property value before and after the easement (and subsequent utility equipment) are completed. Empirical studies suggest that there is a fixed cost to the value of property associated with electrical transmission or distribution equipment, meaning that smaller easements will indeed have a higher cost per square foot than larger ones. Given this, the price is deemed reasonable and fair by Staff.

#### Public Interest Compliance

PacifiCorp requires continual expansion and adjustment to their electrical network based on load changes and trends over time. The agreement and subsequent power pole installation will allow them to continue to provide safe and reliable power to rate payers. PacifiCorp's ability to site the pole in a suitable location for a fair price ensures reliable electricity at a reasonable price. Staff believes that the contract is consistent with 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 Commission examination of PacifiCorp's records concerning the Agreement as may be necessary.

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Conclusion

Based on the review of this application, Staff concludes:

1. The application concerns an affiliated interest agreement that Staff concludes is fair and reasonable and not contrary to the public interest with inclusion of the proposed ordering conditions; and
2. Necessary records are available.

PacifiCorp has reviewed this memo and has no objections or concerns.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's Affiliated Interest Agreement with US Bank subject to the conditions recommended by Staff.

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