

ORDER NO. 19-121

ENTERED Apr 11 2019

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 413

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of a Right of Way
Easement Agreement with Apple, Inc.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on April 9, 2019, 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:



A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

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.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April, 9 2019

REGULAR _____ CONSENT X EFFECTIVE DATE April 10, 2019

DATE: April, 2 2019

TO: Public Utility Commission

FROM: ^{SS} Sabrina Soldavini

THROUGH: ^{EC} Jason Eisdorfer, ^{MG} John Crider, and ^{JC} Marianne Gardner ^{MG}

SUBJECT: Pacific Power: (Docket No. UI 413) Requests approval for an affiliate interest transaction with Apple Inc.

STAFF RECOMMENDATION:

Approve PacifiCorp's Application Requesting Approval of an Affiliate Interest Transaction with Apple Inc., involving a right of way easement agreement (Easement) between PacifiCorp (or Company) and Apple, Inc. (Apple), allowing PacifiCorp to install a 230 kV transmission line across Apple's property in Prineville, Oregon, subject to the following conditions:

1. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data and records that pertain to any transaction involving Apple.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of these transactions in any rate proceedings or alternative form of regulation.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the contracts, including any material change in price. Any such change shall be submitted in an application for supplemental order (or other appropriate format) in this docket.
4. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into involving Apple.

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DISCUSSION:

Issue

Whether the Oregon Public Utility Commission should approve PacifiCorp's affiliate transaction with Apple, which involves entering into a right of way Easement of the affiliate's property.

Rule

As defined in ORS 757.015(3), "affiliated interest" includes "every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility."

ORS 757.495 requires a public utility to seek approval of contracts involving the direct or indirect payment to any person or corporation having an affiliated interest 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.

Analysis

Background

On February 19, 2019, PacifiCorp filed this Application pursuant with ORS 757.495 and in accordance with OAR 860-027-0040. PacifiCorp is a wholly-owned indirect subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway, Inc. (Berkshire). Berkshire holds a 5.33 percent interest in Apple, making Apple an affiliated interest of PacifiCorp.

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ORS 757.495(1) requires approval of contracts where indirect payments will be made to affiliates. PacifiCorp paying for the Easement of Apple property may qualify as an indirect payment, requiring an affiliate interest transaction filing. Accordingly, PacifiCorp is requesting approval of a \$27,555 Easement on Apple property to install, maintain, and use facilities for electric service across established Apple property. The Company plans to use the Easement for the installation of a 230 kV transmission line across Apple's property in Prineville, Oregon. The Easement will allow for the adjoining of existing easements the Company has with Apple.

In addition to reviewing the Company's Application, including attachments, as well as PacifiCorp's responses to two Staff information requests, Staff investigates 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;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions and Reporting Requirements.

Terms and Conditions of the Agreement

Staff reviewed the Easement and did not observe any unusual terms and conditions. The Easement appears to have been negotiated at arm's-length. The terms and conditions of the Easement are not contrary to the public interest.

Transfer Pricing

The total payment from PacifiCorp to Apple for the Easement is \$27,555. PacifiCorp notes that this is a one-time payment and that the Company does not anticipate making annual payments to Apple under the Easement. In its application the Company states that the value of the transfer payment was determined by a Broker's Opinion of Value. Staff asked for, and received a copy of the Broker's Opinion of Value. The Company also notes that the Easement may only be granted from the property owner, in this case Apple.

Additionally, in response to a Staff information request, the Company attests that while alternate routes were considered, because of existing transmission lines, and the fact that Apple owns both tax lots 102 and 312 between SW Baldwin Road and the edge of rim rock, it was impossible to avoid its property. Staff finds the transfer price to be fair and reasonable, and believes the Broker's Opinion of value is a reasonable estimate of fair market value in this instance.

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Public Interest Compliance

Staff finds the Easement to be in the public interest (customarily a no harm standard applied by the Commission) as the value of the Easement was determined via a Broker's Opinion of value, which Staff believes is a reasonable proxy for the property's market value, and appears to have been negotiated at arm's length. Therefore, Staff finds the transaction under the Easement will not harm customers.

Records Availability, Audit Provisions, and Reporting Requirements

Order Conditions Number 1 and Number 4, listed above in the Staff recommendations, afford the necessary Commission examination of PacifiCorp's records concerning PacifiCorp and the Easement. Staff notes the Commission retains the ability to review all affiliate transactions of the Company through both its annual affiliated interest report and in general rate case filings.

Conclusion

Based on the review of this application, Staff concludes the following:

1. The application involves an affiliated interest transaction that is fair and reasonable and not contrary to the public interest, with the inclusion of proposed ordering conditions.
2. Necessary records are available.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application Requesting Approval of an Affiliate Interest Transaction with Apple, Inc., subject to the aforementioned conditions.

PacifiCorp UI 413