

ORDER NO. 19-180

ENTERED May 23 2019

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP 395

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Amended  
Lease Agreement with T-Mobile West  
Tower LLC.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on May 21, 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".

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**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: May 21, 2019

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

DATE: April 22, 2019

TO: Public Utility Commission

FROM: Kathy Zarate *KZ*

THROUGH: Jason Eisdorfer and John Crider *JE*

SUBJECT: PACIFIC POWER: (Docket No. UP 395) PacifiCorp's Application for Approval of First Amended Lease Agreement with T- Mobile West Tower LLC.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) application for approval of the first amended lease agreement between PacifiCorp and T-Mobile West Tower LLC (T-Mobile) (the Application), subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to any agreement filed in this proceeding, including any material changes in price. Any changes to the terms that alter the intent and extent of activities under the agreements 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 Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
3. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to sale.
4. The final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

Docket No. UP 395  
April 22, 2019  
Page 2

## DISCUSSION:

### Issue

Whether the Commission should approve PacifiCorp's Application for Approval of a First Amended Lease Agreement (Agreement) that would extend an existing lease with T-Mobile for one 15-year renewal term and four additional 5-year renewal terms.

### Applicable Rule or Law

ORS 757.480 requires public utilities doing business in Oregon to seek Commission approval prior to the sale, lease, assignment or disposal of property valued in excess of \$100,000 that is necessary or useful in the performance of its duties to the public.

OAR 860-027-0025 sets forth the information required to support a request for the approval of sale, lease, assignment or disposal of utility property.

OAR 860-027-0025(1)(l) requires that the applicant show that the proposed transaction is consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" as used in this rule to require a showing of "no harm to the public." See, e.g., *In re PacifiCorp*, OPUC Docket No. UP 168, Order No. 00-112 at 6 (Feb. 20, 2000); *In re Portland General Electric*, OPUC Docket No. UP 165, Order No. 99-730 at 7 (Nov. 29, 1999).

Finally, the Commission's authority, broadly speaking, is to obtain adequate service for customers at fair and reasonable rates while at the same time balancing the interests of the utility's investors. See ORS 756.040.

### Analysis

PacifiCorp filed its Application on March 26, 2019, requesting approval from the Commission for the Agreement with T-Mobile. The relevant distribution property is located in Salt Lake County, Utah at 87 West 3900 South, Millcreek, Utah, and is associated with PacifiCorp's Valley Center Substation. T-Mobile uses the leased property to operate communications equipment and facilities and to add a carrier to the existing pole, which the Application states will not interfere with provision of service.

T-Mobile approached PacifiCorp to request an amendment to an existing lease agreement that is scheduled to expire in September 2028, which would allow T-Mobile the option to extend the lease for one additional 15-year renewal term and four five-year renewal terms. With the additional renewal terms, the lease would expire on

Docket No. UP 395  
April 22, 2019  
Page 3

September 7, 2063. T-Mobile has leased the Company Property since September 1998 without incident.

PacifiCorp provided the original lease agreement and the proposed amended agreement as confidential in accordance with OAR 860-001-0070 as Confidential Attachment A and Confidential Attachment B, respectively.

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*

Under the Agreement, the 15-year extension term (from 2028 through 2042) has an estimated value of [CONFIDENTIAL BEGINS] [CONFIDENTIAL ENDS] The Agreement also includes [CONFIDENTIAL BEGINS] [CONFIDENTIAL ENDS] Under the terms of the Agreement, [CONFIDENTIAL BEGINS] [CONFIDENTIAL ENDS].

Staff did not identify any unusual or restrictive terms or conditions in the Agreement.

*Transfer Pricing*

The pricing terms described above that is associated with this amendment increase the rent to the higher end of the range of other wireless agreements entered into this year.<sup>1</sup>

At the time of invoicing for the rent due under the lease, PacifiCorp will debit the Lessee's Accounts Receivable account (FERC Account 1720000 Rents Receivable Current Asset) for the appropriate rental amount and credit to Rent Revenue Distribution Lands (FERC Account 4540000 Rent from electric property) the same amount. After PacifiCorp receives payment, the Lessee's Accounts Receivable account will be credited the payment amount and a debit will be made to Main Depository-Deposit Clearing Account (FERC Account 1310000 Cash Current Asset) in the same amount.

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<sup>1</sup> OPUC Data request No. 2.

Docket No. UP 395  
April 22, 2019  
Page 4

*Public Interest Compliance*

The leased area does not interfere with the business needs of the property. Rather, it provides additional income. T-Mobile has leased the company Property since September 1998 without incident. Continuing to lease the company property to T-Mobile under the Amended Agreement will not interfere with PacifiCorp's ability to provide reliable service to its customers after the effective date of the transaction.

Thus, Staff finds that the transaction will not affect PacifiCorp's ability to perform its public duties, will not harm customers, and will not impede the Company's ability to provide safe and reliable service in the area consistent with the public interest

*Records Availability, Audit Provisions, and Reporting Requirements*

The Commission retains the ability to review all property sales and lease agreements entered by the Company through general rate case filings. Staff's recommendation affords the Commission the ability to examine PacifiCorp's books and records concerning the Lease as necessary, and, as stated on pages one and two of the application, the property proposed to be leased is classified as Utah situs distribution and not included in Oregon rates.

Conclusion

Based on the review of PacifiCorp's Application, Staff concludes the Commission should approve the Agreement, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to any agreement filed in this proceeding, including any material changes in price. Any changes to the terms that alter the intent and extent of activities under the agreements 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 Commission reserves the right to review, for reasonableness, financial aspects of this arrangement in any rate proceeding.
3. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the sale.
4. The final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

Docket No. UP 395  
April 22, 2019  
Page 5

**PROPOSED COMMISSION MOTION:**

Approve the Agreement, as proposed, for one additional 15-year renewal term and four 5-year renewal terms with T-Mobile Company, subject to Staff's recommended conditions.

UP 395