

ORDER NO. 19-181

ENTERED May 23 2019

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 394

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Amended
Lease Agreement with New Cingular Wireless
PCS, LLC dba AT&T.

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".

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 17, 2019

TO: Public Utility Commission

FROM: *Jc. KZ*
Kathy Zarate

THROUGH: *Jc.*
Jason Eisdorfer and John Crider

SUBJECT: PACIFIC POWER: (Docket No. UP 394) Requests Approval of an Amended Lease Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (or Company) Application for Approval of an Amended Lease Agreement (Agreement) with New Cingular Wireless PCS, LLC d/b/a AT&T, subject to the following conditions:

1. PacifiCorp shall notify the Commission in advance of any substantive change to this Agreement, 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 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 entries recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

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DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's Application for an Amended Lease Agreement (Agreement) with New Cingular Wireless PCS, LLC d/b/a AT&T.

Applicable Rule or Law

ORS 757.480(1) 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 the lease or property. OAR 860-027-0025(1)(l) requires that the applicant show that the proposed lease will be 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 the Matter of the Application of PacifiCorp, Order No. 00-112 at 6 (2000); In the Matter of the Application of Portland General Electric, Order No. 99-730 at 7 (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 this application on March 26, 2019, requesting approval from the Commission for an Amended Lease Agreement between PacifiCorp and New Cingular Wireless PCS, LLC d/b/a AT&T (AT&T). The lease is for a portion of distribution property located in Salt Lake County, Utah, which is associated with its Hale Substation. AT&T leases the property for the operation of communications equipment and facilities, including an antenna support structure. The property is Utah situs distribution and not included in Oregon rates.

AT&T approached PacifiCorp to request an amendment to an existing lease agreement that is scheduled to expire in December 2025, which would allow AT&T 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 in December 2060. AT&T has leased the property since 2001 without incident

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In review of the Company's application, Staff issued ten data requests.

Staff investigated the following issues:

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

Terms and Conditions of the Agreement

Staff's review of the Agreement did not identify any unusual or restrictive terms or conditions. The Agreement will not be executed until the Company receives approval for it from the Commission. PacifiCorp does not intend to sell the subject property. The Company property proposed to be leased to AT&T is classified as Utah situs distribution, meaning the Oregon allocation is zero.

Transfer Pricing

The value of the proposed Amended Lease Agreement over its initial fifteen-year term, commencing January 1, 2026, is approximately [Begin Confidential] [End Confidential] plus an additional one-time payment in the amount of [Begin Confidential] [End Confidential] payable within 60 days of the full execution of the Amended Agreement. More specifically, the 15-year extension term has a total-company estimated value of [Begin Confidential] [End Confidential].

Currently, AT&T is paying [Begin Confidential] [End Confidential] per year as set forth in the existing lease agreement. For the lease extension, [Begin Confidential] [End Confidential] as is currently in the lease. No appraisal was done because the current [Begin Confidential] [End Confidential] than the [Begin Confidential] [End Confidential] per year the company has normally charged for similar leases.¹

Public Interest Compliance

The lease area already exists and is not changing in scope or acreage. AT&T has leased the company Property since 2001 without incident. The length of the lease term will change. The lease area does not interfere with business needs. The portion of the company property occupied by AT&T does not contain PacifiCorp substation facilities or

¹ OPUC Data Request N.3.

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assets, and PacifiCorp maintains access to its substation facilities.² Because customers are not harmed by this transaction, Staff concludes that the Agreement is 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.

Treatment of Lease Revenues

In considering past leases, Staff had discussions regarding how lease revenues should be treated. Staff had at one time proposed that such revenues be placed in the property sales balancing account as is currently the practice with property sales, but the Company stated that such treatment would be a change in practice as in prior filings, such lease revenues have been recorded in "other revenues" accounts and thereby reduces overall revenue requirements when rates are set in a general rate case. Staff has had concerns that this treatment provides the incentive to lease excess property rather than sell it. Any additional lease revenues go to the shareholders while property sales gains go to customers. Therefore, while Staff does not recommend a change in practice for this lease, Staff may in the future investigate this issue further.

Conclusion

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

1. PacifiCorp shall notify the Commission in advance of any substantive change to this Agreement, 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 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.

² OPUC Data Request N. 6.

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4. The final journal entries recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application for Approval of an Amended Lease Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T, subject to Staff's recommended conditions.

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