

ORDER NO. 20-238

ENTERED Jul 30 2020

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 438

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for Approval of an Affiliated
Interest Agreement with HomeServices
Relocation, LLC.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 28, 2020, 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
REDACTED STAFF REPORT
PUBLIC MEETING DATE: July 28, 2020**

REGULAR **CONSENT** X **EFFECTIVE DATE** July 28, 2020

DATE: July 20, 2020

TO: Public Utility Commission

FROM: Moya Enright

THROUGH: Bryan Conway, John Crider, and Matt Muldoon **SIGNED**

SUBJECT: PACIFIC POWER:
(Docket No. UI 438)
Requests approval of an Affiliate Interest Agreement with HomeServices Relocation, LLC.

STAFF RECOMMENDATION:

Approve Pacific Power's (PacifiCorp or Company) application requesting approval of an Affiliated Interest (AI) transaction with HomeServices Relocation, LLC (HomeServices), involving entering into a Master Professional Services Contract for Employee Relocation Services (Contract), subject to the following four conditions (Staff Conditions):

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

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DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction with HomeServices, which involves entering into a Contract for the provision of relocation management services.

Applicable Rule

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.

The ORS 757.015(3) definition of an "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(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.

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, per Commission Order No. 11-071.

Analysis

Background

On May 11, 2020, PacifiCorp filed its Application pursuant to ORS 757.495 and in accordance with OAR 860-027-0040, requesting approval for an affiliate interest transaction with HomeServices.

PacifiCorp is a wholly owned indirect subsidiary of Berkshire Hathaway Energy Company (BHE), while Homeservices is a wholly-owned subsidiary of BHE, making HomeServices an affiliated interest of PacifiCorp.

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The Contract relates to the provision of relocation management services, specifically the assistance of new and existing PacifiCorp employees when relocating to a new position within the Company. The services provided by HomeServices under the Contract include residential realty services, mortgage services, household goods moving and storage, and temporary living arrangements.

The Commission approved PacifiCorp entering into similar Contracts for the provision of relocation services with HomeServices in 2007, 2010, and 2016.¹

In addition to reviewing PacifiCorp's Application, the accompanying exhibits, and responses to Staff's 20 multi-part information requests, Staff investigated the following issues in considering whether the agreement is fair, reasonable, and not contrary to the public interest:

- a) Selection Process;
- b) Terms and Conditions of the Agreements;
- c) Transfer Pricing;
- d) Public Interest Compliance; and
- e) Records Availability, Audit Provisions, and Reporting Requirements.

a) Selection Process

A Request for Proposals (RFP) was carried out jointly by a group of BHE affiliates including PacifiCorp in early 2020, and resulted in the BHE affiliates creating a panel of three pre-contracted suppliers which could provide relocation services. Each individual relocation needed by PacifiCorp is separately auctioned among the panel, and awarded to the lowest-cost bidder.²

A total of fifteen Relocation Management Companies (RMC) were invited to participate in the RFP,³ and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** responses were received.⁴ The BHE affiliates contracted with three of the respondents, with one contract failing due to supplier unresponsiveness,⁵ and another respondent not meeting the Company's technical criteria relating to the reimbursement of employee expenses.⁶

¹ See Docket Nos. UI 264, UI 304, and UI 369. Also see Order Nos. 07-269, 11-055, and 16-163.

² See PacifiCorp's response to Staff Information Request 9.

³ See PacifiCorp's response to Staff Information Request 17.

⁴ See confidential attachment 5-2 to PacifiCorp's response to Staff Information Request 5d(i).

⁵ See PacifiCorp's response to Staff Information Request 5.

⁶ Id.

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Given that the purchase of services from the affiliate is decided in two stages 1) the contracting stage occurring through an RFP, and 2) the pricing stage in the ensuing auction, Staff investigated both aspects of the Company's transactions.

Staff first investigated which RMCs were invited to participate in the RFP. By querying the process by which invitees were identified, Staff learned that they were drawn from a number of sources: existing suppliers, suppliers that had requested to be included on future bids, and suppliers that had previously participated in bids for similar services were included. Further, Google searching and the feedback of technical teams informed the process.⁷

Staff then investigated whether an adequate range of RMCs were invited to participate in the RFP, to ensure that the resulting auctions would be competitive. Staff consulted the "Relocation Provider Directory 2020" published by HRO Today, ranking the 13 top performing RMCs in the nation. Staff observed that nine of the 13 top ranked RMCs had been extended invitations to participate in the RFP.⁸

Staff considered the evaluation criteria used to evaluate responses to the RFP, and noted that although there were three criteria at the outset (pricing, technical Go/No-Go criteria, and acceptability of proposed contract terms),⁹ the Company **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] However, since all relocations would be individually auctioned and awarded to the lowest cost bidder, Staff deems this approach appropriate, as it serves to increase competitiveness by expanding the panel of RMCs bidding at each auction.

Staff next focused its analysis on the results of auctions for relocation services. To date, PacifiCorp has conducted 13 individual auctions. Having reviewed the details of each auction, Staff is satisfied that in each case the lowest cost bidder was awarded the relocation.¹⁰

⁷ See PacifiCorp's response to Staff Information Request 17.

⁸ See "Relocation Provider Directory 2020", page 13, by HRO Today. Accessible at: <https://blue-soho.mydigitalpublication.com/publication/?m=32792&i=656371&p=12>.

⁹ See PacifiCorp's response to Staff Information Request 5.

¹⁰ **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** See confidential attachment 18-1 to PacifiCorp's response to Staff Information Request 18a.

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[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]¹¹

b) Terms and Conditions of the Contract

Staff reviewed the Contract and did not observe any unusual terms and conditions. The Agreements appears to have been negotiated between the parties at arm's-length, and it contains broadly similar terms to the Contract entered into between the companies in 2016, with the addition of terms relating to cyber security.

Staff is satisfied that the terms and conditions of the Contract are not contrary to the public interest.

c) Transfer Pricing

Staff reviewed the cost of relocation services provided to verify that the agreement meets the requirements set forth in OAR 860-027-0048(4)(e), specifically, that when services or supplies (except for generation) are sold to an energy utility by an affiliate, and are not pursuant to an approved rate, those sales shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower.

The process outlined above, by which a panel of contracted RMCs are solicited for bids for each individual relocation, ensures that the lowest cost provider is selected in each instance. The competitive nature of the auction ensures that the selected price represents an up-to-date market rate. Consequently, Staff deems the requirements of OAR 860-027-0048(4)(e) satisfied.

Staff notes that this filing is not a ratemaking proceeding. Staff will therefore investigate the appropriate ratemaking treatment, including application of the affiliate's costs and the market rate, in such a future case.

¹¹ See the Confidential attachment to PacifiCorp's response to Staff Information Request 18a.

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d) 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."¹²

Staff analyzed the affiliate transaction to ensure that it is fair, reasonable, and not contrary to the public interest.

Staff finds that the overall cost of relocation services is minimized by the inclusion of HomeServices on its panel of pre-contracted RMCs and awarding relocations to HomeServices when it is the most competitive bidder. Consequently, Staff finds the new Contract will not harm customers.

e) Records Availability, Audit Provisions, and Reporting Requirements

The Commission retains the ability to review all of PacifiCorp's affiliate transactions through both its annual affiliated interest report and in general rate case filings.

Furthermore, Staff's Conditions Nos. 1 and 4, listed in Staff's recommendation above, allow for adequate Commission examination of PacifiCorp's records relating to the Custodian Agreements.

Conclusion

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

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

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's Application requesting approval of an Affiliated Interest Transaction with HomeServices, subject to Staff's four conditions.

¹² See, e.g. in the Matter of a Legal Standard for Approval of Mergers, Order No. 01-778 (Docket No. UM 1011).