

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 483

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Affiliated
Transaction with U.S. Bank National
Association.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 7, 2023, 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:



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.

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DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction with U.S. Bank, which involves a contract agreement for corporate card payment services.

Applicable Law

PacifiCorp filed this application with the Commission on December 14, 2022, pursuant to ORS 757.495(1) and OAR 860-027-0040. An "affiliated interest," as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by a corporation or person that also owns, or is part of a successive chain of ownership, five percent or more of the voting securities of a public utility.

PacifiCorp is an indirect, wholly owned subsidiary of Berkshire Hathaway Energy Company (BHE), which is a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). U.S. Bank is a wholly-owned subsidiary of U.S. Bancorp. Berkshire Hathaway owns approximately 6.42 percent voting owner interest in U.S. Bancorp. Berkshire Hathaway's ownership interest in both PacifiCorp and U.S. Bancorp qualifies U.S. Bank as an affiliated interest of PacifiCorp.

Application requirements for affiliated interest transactions are set forth in OAR 860-027-0040. OAR 860-027-0040(2)(g) requires that the application include the cost incurred and market value of the goods or services being provided.

The Commission reviews affiliated interest transactions to ensure they are fair and reasonable and not contrary to the public interest. ORS 757.495(3). When services or supplies (except for generation) are sold to an energy utility by an affiliate, sales shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower, unless there is an applicable rate on file with the Commission or with the Federal Energy Regulatory Commission (FERC). OAR 860-027-0048(4)(e).

The Commission may waive any Division 27 rule for good cause shown. OAR 860-027-000(2).

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Analysis

Background

In its filing the Company states it signed a Master Professional Services Contract (Contract) with its affiliate, U.S. Bank, for card payment and virtual payment services. The Company performed a competitive bid for the Contract and found that U.S. Bank could provide the needed services with the most beneficial terms to PacifiCorp.

Analysis

Staff's review included examination of the Company's current application, including a copy of the Contract. 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

The Contract between PacifiCorp and U.S. Bank provides virtual payment processing and payment card services for an initial period of three years, with the option to extend an additional five years after the initial term has ended.

Staff reviewed the Contract and did not identify any unexpected or unusual terms or conditions.

Transfer Pricing

The Contract was awarded to U.S. Bank as the result of a competitive bidding process, in which eight companies submitted bids. Staff conducted discovery into the bid structuring and scoring. After reviewing the Company's response to data requests, Staff is satisfied that the contract pricing terms are a reasonable reflection of market prices.

Public Interest

The Commission customarily applies a "no-harm" standard in determining what is "not contrary to the public interest" in matters involving affiliated interest transactions. See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Commission Order No. 01-778 at 10 (Sept. 4, 2001). Staff does not find any provisions in the Contract that would be contrary to the public interest.

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Records Availability, Audit Provisions, and Reporting Requirements

Staff notes that the Commission retains the ability to review all affiliated-interest transactions of the Company through both its annual affiliated-interest report, in general rate case filings, and its auditing capability. Staff's recommended conditions provide for all necessary Commission examination of PacifiCorp's records concerning the easement.

Conclusion

Based on Staff's review of this application, Staff concludes that the public interest is not harmed by this transaction, provided the recommended Conditions are adopted. The Company selected U.S. Bank through a competitive Request for Proposal (RFP) process.

The Company has reviewed this memo and agrees with its content.

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's application for approval of an affiliated-interest Agreement with U.S. Bank, subject to the Staff's three recommended Conditions.

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