

ORDER NO. 24-219

ENTERED Jul 10 2024

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 503

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Affiliated  
Interest Transaction with BNSF Railway  
Company (License for Electric Supply  
Line Across or Along Railway Property).

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on July 9, 2024, 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:



**Alison Lackey**

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.

ITEM NO. CA3

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: July 9, 2024**

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

DATE: June 26, 2024

TO: Public Utility Commission

FROM: Luz Mondragon

THROUGH: Bryan Conway and Matt Muldoon **SIGNED**

SUBJECT: PACIFIC POWER:  
(Docket No. UI 503)  
Requests Approval of an Affiliated Interest Transaction with the BNSF  
Railway Company.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve Pacific Power's (PacifiCorp or Company) affiliated interest (AI) transaction to secure a License for Electric Supply Line Across or Along Railway Property from BNSF Railway Company (BNSF), subject to the following conditions:

1. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into involving BNSF.
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 BNSF.
3. PacifiCorp shall notify the Commission in advance of any substantive change to the license, including any material change in price or other parameter. Any such change must be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceedings or alternative form of regulation.

Staff further recommends the Commission waive the OAR 860-027-0048(4)(a) requirement that PacifiCorp book the transaction at the lower of the affiliate's cost or market.

Docket No. UI 503  
June 27, 2024  
Page 2

## **DISCUSSION:**

### Issue

Whether the Commission should approve PacifiCorp's request to enter into an affiliated interest transaction with BNSF to construct and maintain an electric supply line in Deschutes County.

### Applicable Rule or Law

"Affiliated interest" with a public utility, as defined in ORS 757.015(3), includes "[e]very 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 Commission 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 757.495 and OAR 860-027-0040.

Pursuant to ORS 757.495(3), the Commission will approve affiliated interest agreements if the terms are fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all financial aspects of the agreement for ratemaking purposes and may reserve that issue for subsequent proceedings.<sup>1</sup>

Pursuant to OAR 860-027-0048(4)(e), when services or supplies (except for generation) are sold to an energy utility by an affiliate and no applicable rate is on file with the Commission or FERC, sales must be recorded in the utility's accounts at the affiliate's cost or the market rate, whichever is lower.

OAR 860-027-0000(2) provides that the Commission may waive any of the Division 27 rules for good cause shown.

---

<sup>1</sup> See Order No. 11-071 in Docket No. UI 306.

Docket No. UI 503  
June 27, 2024  
Page 3

## Analysis

### *Background*

PacifiCorp is a wholly-owned indirect subsidiary of Berkshire Hathaway Energy Company, which is a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway). BNSF is also a subsidiary of Berkshire Hathaway. Due to its shared ownership under Berkshire Hathaway, BNSF qualifies as an affiliated interest of PacifiCorp pursuant to ORS 757.015(3).

With this filing, PacifiCorp seeks approval to enter into an affiliated interest agreement (Agreement) with BNSF. The Agreement would grant PacifiCorp a license to allow the Company to construct and maintain an electric supply line containing a maximum of three (3) conductors and one (1) neutral wireline, together with its supporting or containing structures (collectively, the "Electric Supply Line"), across or along BNSF's rail corridor at or near the station of Bend, County of Deschutes, State of Oregon, Line Segment 0053, Mile Post 149.17. The work is necessary to facilitate construction over BNSF tracks that will provide primary electrical service to new customers. Without the License, PacifiCorp cannot meet its obligation to provide safe and reliable electrical service.

The total cost of the license is \$13,506 for the 25-year License, the application fee, annual permit fee, insurance, and a rush charge. The effective date of the Agreement is May 9, 2024, and the filing was submitted on June 6, 2024, in compliance with the 90-day filing requirement.

Staff reviewed the following issues in considering whether the Agreement is fair and 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 Agreement between PacifiCorp and BNSF and noted no unusual terms or conditions. Under the Agreement, PacifiCorp is granted a License for Electric Supply Line Across or Along Railway Property under Permit #24W-20269.

### *Transfer Pricing*

The total cost of the license is \$13,506 for the 25-year License, the application fee,

Docket No. UI 503  
June 27, 2024  
Page 4

annual permit fee, insurance, and a rush charge. The Company states that BNSF offers a standardized online process to apply for and obtain licenses of this type, and that the Company used this online process to obtain the license. The Company also notes that, as the owner of the railway property, BNSF is the only entity that can provide such a license to PacifiCorp.

Staff is unaware of the cost to BNSF of supplying the license but finds it likely that the transacted total of \$13,506 exceeds the affiliate's cost. However, in light of the standardized online purchasing process, Staff is satisfied that the transacted total represents the market rate for the license. Consequently, Staff finds it appropriate for the Commission to waive the requirement that PacifiCorp book the transaction at the lower of the affiliate's cost or the market rate, allowing the Company to book the cost at the market rate.

#### *Public Interest Compliance*

The Commission typically applies a "no harm" standard in determining public interest compliance for affiliated interest transactions.<sup>2</sup> In its filing, PacifiCorp explains that the license agreement is required for the Company to install and maintain necessary facilities at or near the Bend station. The Company further states that, without the license, it would be unable to perform the necessary work, and consequently unable to meet its obligation to customers.

#### *Records Availability, Audit Provisions, and Reporting Requirements*

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

PacifiCorp has reviewed this memo and has not communicated any objections or concerns.

#### Conclusion

Based on its review of the Company's filing, Staff concludes that the proposed affiliated interest transaction is fair and reasonable and not contrary to the public interest. Staff also finds that there is good cause to waive the "lower of cost or market" requirement found in OAR 860-027-0048(4)(e). Therefore, PacifiCorp's application should be approved subject to Staff's four recommended conditions.

---

<sup>2</sup> See, e.g., In the Matter of a Legal Standard for Approval of Mergers, Commission Order No. 01-778 at 10 (September 4, 2001).

Docket No. UI 503  
June 27, 2024  
Page 5

**PROPOSED COMMISSION MOTION:**

Approve the affiliated interest transaction between PacifiCorp and BNSF for a License for Electric Supply Line Across or Along Railway Property, subject to Staff's proposed conditions, and waive the requirement that PacifiCorp book the transaction at the lower of the affiliate's cost or the market rate.

PAC UI 503 AI BNSF