

ORDER NO. 24-428

ENTERED Nov 27 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 508

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Affiliated
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 November 26, 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. CA5

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 26, 2024**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ **N/A**

DATE: November 14, 2024

TO: Public Utility Commission

FROM: Mitchell Moore

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

SUBJECT: PACIFICORP:
(Docket No. UI 508)
Requests approval for an Affiliated Interest transaction with BNSF
Railway.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp, PAC, or Company) application for approval of an affiliated-interest Agreement (Agreement) with BNSF Railway Company (BNSF) subject to the following Staff-proposed conditions (Conditions):

Conditions:

1. PacifiCorp shall notify the Commission of any substantive changes to the Agreement, including any material changes in price or other parameters of the Agreement. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
2. PacifiCorp shall provide the Commission, upon request, access to all books of account, as well as documents, data and records that pertain to any transaction involving Bridger Coal Company.
3. The Commission reserves the right to review, for reasonableness, all financial aspects of these transactions in any rate proceeding or alternative form of regulation.

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DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction with BNSF, which involves a permit for electric facilities to be placed in BNSF right-of-way.

Applicable Law

PacifiCorp filed this application with the Commission on September 19, 2024, 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.

Berkshire Hathaway's ownership interest in PacifiCorp through BHE, and its ownership interest in BNSF qualifies this as an affiliated interest transaction.

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 FERC. OAR 860-027-0048(4)(e).

Analysis

Background

This filing requests approval of an Agreement that enables PacifiCorp to construct and maintain an electric supply line across BNSF's rail corridor near the BNSF station of Tangent in Linn County.

Staff's review included examination of the Company's current application, including a copy of the purchase agreement. Staff analyzed the proposed transaction considering the following issues:

1. Terms and Conditions of the Agreement;

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2. Transfer Pricing;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions, and Reporting Requirements.

Terms and Conditions of the Agreement

The Agreement provides for a 25-year license to construct and maintain an electric supply line across BNSF rail line. According to the filing BNSF offers a standardized online process to apply for and obtain this license.

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

Transfer Pricing

PacifiCorp will pay BNSF a total of \$6,273 for the 25-year License, including the application fee, annual permit fee, and insurance.

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 Agreement that could be contrary to the public interest.

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 agreement.

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 has reviewed this memo and agrees with its content.

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PROPOSED COMMISSION MOTION:

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

PAC UI 508 PAC BNSF Railway