

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 518

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for an Affiliated Interest  
Transaction with BNSF Railway Company.

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on March 27, 2025, 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 "Alison Lackey".

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**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. CA7

PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT
PUBLIC MEETING DATE: March 27, 2025

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

DATE: March 13, 2025

TO: Public Utility Commission

FROM: Mitchell Moore

THROUGH: Scott Gibbens and Matt Muldoon SIGNED

SUBJECT: PACIFIC POWER:
(Docket No. UI 518)
Requests Approval of an Affiliated Interest Transaction with BNSF
Railway.

STAFF RECOMMENDATION:

Approve Pacific Power's (PacifiCorp, PAC, or Company) affiliated interest transaction between PacifiCorp and Burlington Northern Santa Fe Railway Company (BNSF) wherein PacifiCorp pays for coal transportation services, subject to the following Staff conditions (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 OAR 860-027-0048(4)(e), the requirement that PacifiCorp book the transaction at the lower of the affiliate's cost or market.

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## **DISCUSSION:**

### Issue

Whether the Commission should approve PacifiCorp's affiliated interest transaction with BNSF in order to allow PacifiCorp to pay for coal transportation services and waive OAR 860-027-048(4)(a).

### Applicable Law

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.

"Affiliated interest," 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(3) provides that the Commission may approve an affiliated interest contract if it is "fair and reasonable and not contrary to the public interest."

OAR 860-027-0040(2) sets forth information to be included in an application to the Commission regarding an affiliate interest transaction. According to ORS 757.495 and OAR 860-027-0040, any utility must ask permission from the Oregon PUC to engage in an affiliated interest transaction and provide information on the value of the transaction, the companies involved, any pecuniary interests shared by the companies, and a copy of the contract.

When an energy utility is receiving services involving one of its affiliates, OAR 860-027-0048(4)(e) requires sales to be recorded in the energy utility's accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies (except for generation) are not sold pursuant to an approved rate, sales must be recorded in the energy 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 Administrative Rules for good cause shown.

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## Analysis

### *Background*

PacifiCorp filed this application on January 28, 2025. PacifiCorp is a wholly owned indirect subsidiary of Berkshire Hathaway Energy (BHE), and BHE is a subsidiary of Berkshire Hathaway, Inc. BNSF is also a subsidiary of Berkshire Hathaway, Inc., which makes any transactions between PacifiCorp and BNSF an affiliated-interest transaction.

PacifiCorp requests to continue to engage in business transactions with BNSF to transport coal from mines in the Wyoming Powder River Basin to the Dave Johnston Generating Station (Dave Johnston) near Glenrock, Wyoming. The Commission previously approved an application for coal transportation for the Dave Johnston plant in Order No. 22-202. This agreement expired on December 31, 2024. The new agreement is for a three-year term for January 1, 2025 through December 31, 2027.

Staff reviewed the following issues in considering whether the Agreement is fair, 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*

PacifiCorp provides a copy of the BNSF Railway Common Carrier Pricing Authority 90068, Coal Unit Train Commitment Certificate Number BNSF 90068-0100 (Rail Agreement).

PacifiCorp is required under the Rail Agreement to maintain the confidentiality of the entire agreement. In addition, the Rail Agreement contains terms and conditions resulting from negotiations between the parties, the disclosure of which could erode PacifiCorp's bargaining power in the future.

Staff reviewed the Agreement between PacifiCorp and BNSF, provided as highly confidential in accordance with OAR 860-001-0070, and concluded that it did not include any unusual terms and conditions.

### *Transfer Pricing*

The new Rail Agreement has been negotiated with a condition that the parties and the value will vary depending on the source mine for the coal. PacifiCorp's aggregate cost

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is estimated to **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** for the three-year rail agreement through December 31, 2027.

#### *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.

Entering into this licensing agreement with BNSF is in the public interest because it allows PacifiCorp to install and maintain facilities necessary to provide safe and reliable electric service. Staff finds that the agreement does not harm the public interest if Staff’s proposed conditions are approved.

#### *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.

Additionally, Staff Conditions Nos. 1 and 4, listed in Staff’s recommendation above, provide for adequate Commission examination of PacifiCorp’s records relating to the Agreement.

When an energy utility is receiving services involving one of its affiliates, OAR 860-027-0048(4)(e) requires sales to be recorded in the energy utility’s accounts at the approved rate if an applicable rate is on file with the Commission or with FERC, or if not sold pursuant to a FERC approved rate, sales must be recorded in the energy utility’s accounts at the affiliate’s cost or the market rate, whichever is lower. A waiver of OAR 860-027-0048(4)(e) is warranted because, as PacifiCorp explains in its application, “[t]he Dave Johnston plant is “captive” to the BNSF Railroad with respect to rail service.”<sup>1</sup> PacifiCorp has no other options for rail delivery service, and the distance between the mines and plant makes shipping coal by truck cost prohibitive and logistically impractical.

#### Conclusion

Staff concludes, based on its review, that PacifiCorp’s Application involves an affiliated interest transaction that is fair and reasonable and not contrary to the public interest, subject to Staff’s recommended Conditions.

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<sup>1</sup> PacifiCorp Application at 3.

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**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's affiliated interest transactions between PacifiCorp and BNSF Railway Company, subject to Staff's proposed Conditions, and waive the OAR 860-027-0048(4)(e) requirement that PacifiCorp book the transaction at the lower of the affiliate's cost or market.

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