

ORDER NO. 25-444

ENTERED Nov 14 2025

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 522

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Affiliated
Transaction with BNSF Railway Company.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on November 13, 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:



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: November 13, 2025**

REGULAR _____ CONSENT X EFFECTIVE DATE Upon Approval

DATE: October 30, 2025

TO: Public Utility Commission

FROM: Dustin Ball

THROUGH: Scott Gibbens and Matt Muldoon **SIGNED**

SUBJECT: PACIFIC POWER:
(Docket No. UI 522)
Application for an Affiliated Interest Agreement with BNSF Railway Company.

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission of Oregon (Commission) approve PacifiCorp's (Pacific Power, PAC, or Company) affiliated-interest agreement (Agreement) with Burlington Northern Santa Fe (BNSF) Railway Company subject to the following Staff conditions (Conditions):

1. 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 BNSF;
2. The Commission reserves the right to review for reasonableness all financial aspects of these transactions in any rate proceedings or alternative form of regulation;
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the agreement, including any material change in price, within 30 days. Any such change shall be submitted in an application for supplemental order (or other appropriate format) in this docket; and
4. PacifiCorp shall report to the Commission, as part of its annual affiliated interest report, all transactions entered into involving BNSF.

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 rate.

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DISCUSSION:

Issue

Whether the Commission should approve PacifiCorp's affiliated interest contract agreement with BSNF Railway, which involves a license agreement to place Company facilities within BNSF Right of Way.

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 757.015(2) 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 such public utility.

ORS 757.495(3) provides that the Commission may approve an affiliated interest agreement if it is "fair and reasonable and not contrary to the public interest".

Application requirements for affiliated interest transactions are set forth in OAR 860-027-0040. According to ORS 757.495 and OAR 860-027-0040, any utility must ask permission from the Commission 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.

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

Per Commission Order No. 11-071 in Docket No. UI 306, The Commission need not determine the reasonableness of all financial aspects of the contract for ratemaking purposes, as the Commission reserves that issue for a subsequent proceeding.

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

Analysis

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Background

PacifiCorp filed this application with the Commission on September 12, 2025, pursuant to ORS 757.495(1) and OAR 860-027-0040. PacifiCorp is an indirect, wholly owned subsidiary of Berkshire Hathaway Energy Company (BHE). Through Berkshire Hathaway's ownership in BNSF Railway, this qualifies as an affiliated interest of PacifiCorp.

In its filing, PacifiCorp requests approval of a license agreement with BNSF Railway to enable the company to construct and maintain electrical facilities on BNSF Railway property at or near the Redmond station in Deschutes County. The existing overhead conductor was originally placed into service in 1943 and replaced in 1992. The Company states that obtaining this Agreement is necessary to replace an overhead conductor that crosses BNSF tracks. Further, the filing represents that without this license Agreement the Company would not be able to meet its obligation to provide safe and reliable electric service.

Staff's review included examination of the Company's current application, including a copy of the agreement. Staff investigated the following issues:

1. Terms and Conditions of the Agreement;
2. Transfer Pricing;
3. Records Availability, Audit Provisions, and Reporting Requirements; and
4. Public Interest Compliance.

Terms and Conditions of the Agreement

The terms of the agreement enable PacifiCorp to construct and maintain an electric supply line on BNSF property for a period of 25 years. Under the terms of the agreement, PacifiCorp will pay BNSF a total of \$6,443 as shown in the table below. There is no additional annual permit fees associated with this filing.¹

Table 1: Breakdown of Agreement Cost²

Application Fee (including associated banking fee)	\$2,067
License Fee	\$3,700
Railroad Protective Liability Insurance	\$506
Banking fee associated with permit fee and insurance	\$170
Total	\$6,443

Transfer Pricing

¹ PacifiCorp response to Staff Information Request 2.

² PacifiCorp response to Staff Information Request 1.

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In response to Staff discovery regarding how the license pricing was calculated, PacifiCorp stated: “the 25-year license fee of \$3,700 is for a standard Burlington Northern Sante Fe Railway Company (BNSF) crossing, defined as 200 feet or less.”³ The Company stated that pricing is standardized by BNSF and that BNSF has declined to provide additional details on its pricing. PacifiCorp relied on the BNSF standard pricing and not a competitive procurement process because the construction of the electric supply line is necessary on BNSF property in order to serve customers. Staff finds the pricing terms to Agreement is fair and reasonable.

Staff is unaware of the cost to BNSF of supplying the license, but finds that the transacted total may exceed the affiliate’s cost. However, in light of the standardized 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.

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 with BNSF.

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.⁴ Staff does not find any provisions in the Agreement that are contrary to the public interest.

Conclusion

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

1. The application involves an affiliated interest agreement that is fair, reasonable, and not contrary to the public interest, with the inclusion of proposed conditions.
2. Necessary records are available.
3. There is good cause to waive the “lower of cost or market” requirement found in

³ PacifiCorp response to Staff Information Request 3.

⁴ See, e.g., In the Matter of a Legal Standard for Approval of Mergers, Commission Order No. 01-778 at 10, September 4, 2001.

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

PROPOSED COMMISSION MOTION:

Approve PacifiCorp's application requesting approval of an affiliated interest agreement with BNSF, 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.

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