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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UI 189

In the Matter of the Application of PACIFICORP)
for Approval of a Coal Supply Agreement with) ORDER
BRIDGER COAL COMPANY.)
)

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On January 26, 2001, PacifiCorp filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-027-0040 requesting approval of its coal supply agreement with Bridger Coal Company (BCC), an Affiliated Interest.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on May 22, 2001, the Commission adopted Staff's recommendation to approve the application with certain standard conditions. Staff's recommendation is attached as Appendix A, and is incorporated by reference.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" as anyone providing heat, light, water or power service to the public in Oregon. The Company is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract. The intent of the statute is to protect ratepayers from the abuses which may arise from less than arm's length transactions. *Portland General Electric Company*, UF 3739, Order No. 81-737 at 6. Failure to file within the 90-day time limit may preclude the utility from recovering costs incurred under the contract. See ORS 757.495.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, with conditions.

ORDER

IT IS ORDERED that the application of PacifiCorp for authority to engage in a Coal Supply Agreement with Bridger Coal Company, is granted, subject to the conditions stated in Appendix A.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: MAY 22, 2001**

REGULAR AGENDA ___ CONSENT AGENDA X EFFECTIVE DATE _____

DATE: May 16, 2001

TO: Phil Nyegaard through Marc Hellman and Mike Myers

FROM: Tom Riordan

SUBJECT: UI 189 – PacifiCorp Application for approval of a Coal Supply Agreement with Bridger Coal Company, Inc. (BCC), an Affiliated Interest

SUMMARY RECOMMENDATION:

I recommend approval of the requested agreement with the conditions noted in the detailed recommendation.

DISCUSSION:

Background:

PacifiCorp filed this application on January 26, 2001, pursuant to ORS 757.495 and OAR 860-027-0040. The company seeks a Commission order finding that since 1979, its coal supply agreement with BCC, has previously been considered and approved in its prior general rate cases. Alternatively, PacifiCorp, in an effort to eliminate any questions of compliance with statutory requirements governing affiliate transactions, seeks a Commission order approving its coal supply agreement with BCC.

PacifiCorp owns a two-thirds interest in the Jim Bridger coal-fired steam electric generating plant in Wyoming. This generating plant obtains a substantial majority of its needed coal supply from BCC, a joint venture owned one-third by an Idaho Power Company subsidiary and two-thirds by Pacific Minerals, Inc.(PMI), an indirect wholly owned subsidiary of PacifiCorp. The joint venture owns significant leases covering coal deposits located near the Jim Bridger generating plant. Affiliated interest relationships exist between PacifiCorp and BCC, and between PacifiCorp and PMI.

Currently, the PacifiCorp and BCC relationship is governed by the Third Restated and Amended Coal Sales Agreement, dated January 1, 1996 (Third Restated Agreement) and

the First Amendment thereto of January 1999. Together they are known as the Coal Supply Agreement. The agreement establishes annual base tonnages for coal purchases
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which for 2000 and 2001 are 5,232,600 on a total system basis. Coal prices are determined through establishment of component base price, consisting of several costs related to BCC coal operations, as adjusted pursuant to the price change provision in the agreement.

The company states that BCC coal provides it with advantages such as a consistently reliable coal source and a minimization of fuel transportation and handling costs. Historically, from 1990 through 1999, the average cost of coal provided by the Coal Supply Agreement ranged from \$3 to \$9 per ton less than the average market price of Southern Wyoming coal delivered to the plant.

Therefore, PacifiCorp believes that the Coal Supply Agreement provides it with a reliable, long-term source of low-cost coal for the operation of the Jim Bridger generation plant. Further, the company states that since it was limited, for ratemaking purposes, to prudently incurred coal expenses plus a reasonable return on the Company's coal investment, the Commission should determine that the Coal Supply Agreement is not contrary to the public interest. Staff believes that the appropriate standard the Commission has used and continues to use for ratemaking is its affiliate interest transfer-pricing requirements, namely that the price is the lower of cost or fair market rate. See further discussion below.

Issues

I have investigated the following issues:

1. Scope and Terms of Agreement
2. Transfer Pricing and Allocation Methods
3. Public Interest Compliance
4. Records Availability, Audit Provisions, and Reporting Requirements

Scope and Terms of Agreement – Based upon my analysis of the agreement, there appear to be no unusual or restrictive terms that would harm customers. Accordingly, I am not concerned about this issue.

Transfer Pricing and Allocation Methods – The Commission's transfer policy for goods and services purchased by a regulated electric utility from an affiliate shall be priced at the lower of cost or fair market rate. This policy likely has been met because BCC is

charging PacifiCorp a price for its coal supply based on BCC's fully distributed cost that is currently less than the market rate. The company's rate of return used in billing from BCC to PacifiCorp is at the same rate authorized by the Commission in PacifiCorp's most recent rate case. This is consistent with the Commission's affiliated interest (AI)

transfer pricing policy. Proposed ordering condition No. 4 is included to ensure that PacifiCorp adheres to the Commission's policy.

Public Interest Compliance – PacifiCorp's customers are likely not harmed by this transaction, because the company is paying, with the provision of my proposed ordering condition No. 4, a fair and reasonable price for the coal supply. Therefore, the purchase price meets the lower of cost or fair market requirement of the Commission AI transfer pricing policy. Also, Staff noted that in 2000 and estimates for 2001, the average price savings per ton to PacifiCorp from the BCC Coal Supply Agreement are trending lower. If there should be a further lowering of the savings to PacifiCorp and its customers, it may necessitate a modification to the transfer price to meet the Commission's AI policy. This would then require PacifiCorp to comply with proposed ordering condition No. 3 to protect the public's interest.

Records Availability, Audit Provisions, and Reporting Requirements – Proposed ordering condition No. 1 provides the necessary records access to BCC's relevant books and records

CONCLUSIONS:

Based on an investigation and review of the application, I conclude the following:

1. PacifiCorp is a regulated electric company, subject to the jurisdiction of the Public Utility Commission of Oregon.
2. An affiliated interest relationship exists between PacifiCorp and Bridger Coal Company.
3. The application is fair and reasonable and not contrary to the public interest.

DETAILED RECOMMENDATION:

I recommend that the Commission approve PacifiCorp's alternative request, namely, the application of PacifiCorp for a Coal Supply Agreement with Bridger Coal Company, an affiliated interest and include the following standard Commission conditions in this matter:

1. PacifiCorp shall provide the Commission access to all books of account, as well as all documents, data, and records of PacifiCorp and BCC's affiliated interests which pertain to transactions between PacifiCorp and BCC.

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2. The Commission reserves the right to review for reasonableness all financial aspects of this arrangement in any rate proceeding or alternative form of regulation.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the terms which alter the intent and extent of activities under the agreement from those approved herein shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. For accounting purposes, the return component used in calculating PacifiCorp's cost of service received from BCC shall be limited to the PacifiCorp's current authorized overall rate of return.