

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 11, 2008**

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

**DATE:** February 26, 2008

**TO:** Public Utility Commission

**FROM:** Dustin Ball

**THROUGH:** Lee Sparling, Marc Hellman, and Michael Dougherty

**SUBJECT:** PACIFICORP: (Docket No. UI 279) Application of PacifiCorp requesting approval of affiliated interest agreements with NetJets, Inc.

**STAFF RECOMMENDATION:**

The Commission should approve PacifiCorp's (PacifiCorp or Company) application for approval of affiliated interest agreements with NetJets, Inc, an affiliated interest, subject to the following conditions:

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

**DISCUSSION:**

PacifiCorp filed this application on January 17, 2008, pursuant to ORS 757.495, OAR 860-027-0040, and OAR 860-027-0041. PacifiCorp is an indirect wholly-owned subsidiary of MidAmerican Energy Holding Company (MEHC). MEHC and NetJets are

both direct wholly-owned subsidiaries of Berkshire Hathaway. Therefore PacifiCorp and NetJets are affiliated interests pursuant to ORS 757.015.

PacifiCorp requests approval of the agreements entered into by MEHC and NetJets on March 15, 2007. Pursuant to a Fractional Interest Purchase Agreement, MEHC purchased an undivided 12.5 percent fractional jet ownership interest in a Cessna Citation XLS aircraft from NetJets for a price of \$1,437,190. As part of the Fractional Interest Purchase Agreement, MEHC also entered into a Fractional Ownership Owners Agreement, a Fractional Ownership Program Management Services Agreement, and a Master Dry-Lease Aircraft Exchange Agreement, collectively referred to as the "NetJets Agreement."

The Fractional Ownership Owners Agreement outlines the terms and conditions that all owners of this same aircraft must agree to in order to ensure fair use of the aircraft. In addition to selling the aircraft, NetJets also manages, operates, and maintains the aircraft on behalf of the owners as outlined in the Fractional Ownership Program Management Services Agreement. The Master Dry-Lease Aircraft Exchange Agreement ensures that all fractional owners will have access to an aircraft in the event that the owned-aircraft is already in use.

Aside from the initial purchase price of the fractional aircraft ownership, MEHC will also incur various fixed and variable costs associated with the aircraft. Included in these fixed and variable costs is a monthly management fee of \$16,774, as well as an hourly charge for aircraft usage of \$2,096 per occupied hour. Both amounts are subject to an annual escalation equal to the Consumer Price Index (CPI) or 3.75 percent, whichever is greater. In addition to the annual escalation clause, the occupied hourly rate of aircraft usage is also subject to a fuel cost adjustment. For each \$.01 that NetJets' average cost for a gallon of fuel exceeds \$1.60, the occupied hourly rate will be increased by \$4.20.

MEHC entered into the NetJets Agreement to provide private jet service to a small number of its officers. Although it is not intended that PacifiCorp will use the NetJets Agreement, emergency situations may arise where PacifiCorp may need to transport an emergency repair part or crew to a location that is otherwise unavailable on a timely basis by other transportation, which may justify its use. If such use does take place, the associated cost to PacifiCorp may ultimately be passed through to ratepayers.

### Issues

Staff investigated the following issues:

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

### Terms and Conditions of the Agreement

Staff did not observe any unusual terms and conditions of the Agreements. MEHC negotiated the Agreements with NetJets and the terms and conditions do not appear to be contrary to the public interest.

Under the NetJets Agreement, MEHC is allotted 100 hours of use annually (not to exceed 500 hours in a 5-year period). If the annual allotment of aircraft usage is not used during a given year, the unused hours are carried forward and added to the next year's allotment; along the same lines, if additional hours of aircraft usage are needed during a given year, MEHC has the option of having the additional hours deducted from the following year's allotment (as long as it is not in the last year of the management agreement). Additional aircraft usage is also available in excess of the allotted amount; however, the hourly rate for the excess usage is charged at a rate that is approximately three times the original hourly rate.

Prior to flight departures, MEHC is required to provide NetJets with a minimum of 8 hours telephonic notice (48 hours on peak days) prior to the flight departure time. NetJets will provide pilots, crew, maintenance, etc. for the plane, all of which are provided under the Fractional Ownership Program Management Services Agreement.

### Transfer Pricing

As previously mentioned, it is not intended that PacifiCorp will use the NetJets Agreement. However, situations may arise when PacifiCorp may need to transport emergency repair parts or crew to a location that is otherwise unavailable on a timely basis. In such an event, the amount PacifiCorp will pay for such services will be calculated based on estimated annual fixed cost for the aircraft and estimated annual hours in addition to the variable costs incurred for such aircraft usage. Fixed costs include, but are not limited to annual management fees, depreciation, and insurance, while variable costs include, but are not limited to, fuel, aircraft usage charge per flight hour, taxes, and other costs directly associated with actual aircraft usage.

Although Staff is unable to calculate the exact amount of all fixed and variable costs that would be considered in determining the charge to PacifiCorp for aircraft usage, Staff is

able to estimate some of these costs. The fixed cost associated with annual management fees is estimated at \$2,013<sup>1</sup> (not including any escalation for CPI) per flight hour; the variable costs associated with the aircraft usage charge per flight hour is estimated at \$2,096 (not including any escalation for CPI), and the fuel surcharge is estimated at \$487<sup>2</sup> per flight hour.

While the total cost of using the NetJets Agreement on an hourly basis is not expressly identified, the method of calculating this cost is. Additionally the overall cost will be compared to the market rate of a comparable aircraft charter in order to determine the cost effectiveness of using the NetJets Agreement. For any use of the NetJets Agreement, MEHC will submit an invoice to PacifiCorp for the lower of the NetJets cost or the market rate. This cost allocation method is consistent with OAR 860-027-0048(3)(e).

“When services or supplies (except for generation) are transferred or provided to a regulated activity by a nonregulated activity, transfers shall be recorded in regulated accounts at the nonregulated activity’s cost or the market rate, whichever is lower.”

With eight hour minimum telephonic notice required for flights under the NetJets Agreement, Staff will be critical in its review of such flights to ensure that, given the emergency nature of the situation, the use of the NetJets Agreement was prudent.

#### Public Interest Compliance

Because the NetJets Agreement will only be used by PacifiCorp if the need arises to transport emergency parts or crew to a location that is otherwise unavailable on a timely basis with other transportation methods, core customers would benefit from PacifiCorp’s ability to quickly address the emergency situation and to maintain safe, adequate, and reliable service.

Additionally, the cost of using the NetJets Agreements by PacifiCorp will be compared to the cost of a comparable aircraft charter and will be billed at the lower of the NetJets cost or the market rate.

Staff finds that the terms and conditions to the contract appear to be just and reasonable.

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<sup>1</sup> Monthly fee of \$16,774 multiplied by twelve months then divided by 100 hours of allotted annual usage.

<sup>2</sup> Based on an average fuel cost of \$2.76 per gallon, as reported by the International Air Transport Association (IATA) Jet Fuel Price Monitor as of February 15, 2008.

Records Availability, Audit Provisions, and Reporting Requirements

Order Condition Number 1, listed above in the Staff Recommendations, affords the necessary Commission examination of PacifiCorp's records concerning the NetJets Agreements.

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

1. The application involves an affiliated interest transaction that is fair and reasonable and not contrary to the public interest, with the inclusion of proposed ordering conditions.
2. Necessary records are available.

**PROPOSED COMMISSION MOTION:**

PacifiCorp's application for approval of affiliated interest agreements with NetJets, Inc, be approved subject to the three recommended conditions.