



State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE A. GIANI
Executive Director

JASON P. PERRY
Deputy Director

CONSTANCE B. WHITE
Director, Division of Public Utilities

JON M. HUNTSMAN Jr.
Governor

GARY R. HERBERT
Lieutenant Governor

Memorandum

TO: Public Service Commission

FROM: Division of Public Utilities
Constance White, Director,
Artie Powell, Energy Section Manager
Charles Peterson, Utility Analyst

DATE: March 20, 2006

RE: Docket No. 06-035-28.¹ Application of PacifiCorp for Authority to enter into an Umbrella Loan Agreement with its wholly owned subsidiaries and to issue promissory notes as evidence of short-term indebtedness.

I. ISSUE

Pursuant to Commitment U12 in the matter of the Acquisition of PacifiCorp by MidAmerican Energy Holdings Company, Docket No. 05-035-54, PacifiCorp (the Company) is seeking Commission approval to enter into an Umbrella Loan Agreement (the Agreement) with its wholly owned subsidiaries. The Agreement would issue securities under Utah Code § 54-4-31. Specifically, PacifiCorp is seeking approval to borrow without limit from the Company's subsidiaries, or alternatively, the subsidiaries of PacifiCorp could borrow without limit from the Company.² Promissory notes would be issued as evidence of indebtedness in any case.

The Company currently has authority to loan up to \$10 million to Pacific Minerals, Inc. (Pacific Minerals), its only subsidiary currently a party to this Agreement. The Company wants to expand this authority to loan up to \$30 million to Pacific Minerals. The interest rate on such borrowings would bear interest at rates that did not exceed the interest rates that the Company would otherwise incur externally. The Commission's previous exemption of such securities issues from Commission review becomes void at the closing of the Acquisition.

¹ PacifiCorp filed this application under Docket No. 88-2035-03, the docket number of the original application for approval of an umbrella loan agreement. The Commission has issued this application its own Docket No. 06-035-28. The Division will refer to this new docket number in this memorandum.

² Originally the Agreement capped the borrowings at \$200 million. However, the Company's Application indicates that in 1997 the Agreement was amended to allow the Company or its subsidiaries to borrow "without limitation."

II. RECOMMENDATION

The Division investigation indicates that the requested authority to issue short-term promissory notes to a subsidiary, or for the subsidiary to similarly lend to PacifiCorp, is consistent with previous practice. The only subsidiary that is a party of this Agreement with the Company is Pacific Minerals. This Agreement will provide the Company with flexibility in financing its subsidiary, Pacific Minerals, and provide the Company with limited short-term funding as the need, and availability of funds, arises. The Division recommends approval of the Application as being in the public interest with the following changes and condition to PacifiCorp's proposed Commission Order:

1. Update the Order docket number to reflect the new docket number issued by the Commission.
2. At the present time Pacific Minerals is the only subsidiary of PacifiCorp that is a party to the Umbrella Loan Agreement. The Division recommends that should PacifiCorp desire to add an additional subsidiary to this Agreement, that the Company be required to apply to the Commission for review and approval to do so. Approval to add subsidiaries to the Agreement should be independent of whether or not the Company applies for and is granted an exemption of this Agreement under U.C.A. § 54-4-31, that is, exempting the Company from filing for approval to enter into the funding transactions themselves.
3. The Order should explicitly authorize the Company to amend Amendment No. 1, Section 3 to the Agreement to increase the amount of outstanding loans available to Pacific Minerals up to \$30 million.
4. On page 2 in the Company's proposed Order, under Findings of Fact and Conclusions of Law, the Division recommends that paragraph two be amended to read "The Company represents that the proposed issuance of securities...."

III. DISCUSSION

The Division has reviewed the documents provided with this application. The Division has also met and had telephone discussions with Bruce N. Williams, PacifiCorp Treasurer, and Dan Peterson of PacifiCorp.

Documents provided by the Company include copies of the original 1988 filing and the original Agreement dated April 4, 1983, along with Amendment No. 1 dated December 18, 1997. In 1983, several former affiliates were parties to the agreement with Pacific Power & Light Company, a predecessor to PacifiCorp. Amendment No. 1 in 1997 only includes Pacific Minerals as a subsidiary to PacifiCorp.

Pacific Minerals is the only subsidiary of PacifiCorp currently a party to the Agreement. The Company represents that at the present time there is a loan balance to PacifiCorp amounting to about \$3 million. Pacific Minerals operates a coal mine in Wyoming as part of a joint venture

with Idaho Power. Previously, this mine was operated as an open pit “strip” mine. However, the commercial coal seam is trending deeper requiring that the mining operation convert to underground mining. Pursuant to Amendment No. 1, Section 3 of the Agreement, PacifiCorp wants to increase the amount of the possible loans to Pacific Minerals up to \$30 million. The purpose of the increase is to assist funding Pacific Minerals as it pursues its underground mining operations.

Mr. Williams indicated to the Division that over the past years there have been net loan balances both to Pacific Minerals and to PacifiCorp. Usually any given loan is outstanding for a relatively short period of time. It appears to the Division that this Umbrella Loan Agreement is used in part as a cash management tool. That is, when there are excess cash balances at Pacific Minerals, and PacifiCorp needs funds, PacifiCorp can efficiently borrow short-term funds from its subsidiary rather than getting a loan from a bank or issuing commercial paper or some other debt instrument. Given that there is already a significant history with this loan Agreement, without notable problems; the Division sees no particular problem with the continuance of the Agreement in terms of auditing and rate case issues.

There is an inconsistency in the Company’s Application documentation. The Company indicates in its Application letter that in 1997 the Agreement was amended with Commission approval to eliminate a \$200 million cap on the total amount of borrowings allowable under the Agreement³. Amendment No. 1 to the Umbrella Loan Agreement which is attached with the Application with an indicated effective date of December 18, 1997, makes no such reference to an elimination of the cap, but rather, indicates that the cap is \$200 million (see Sections 2 and 3). Since the primary purpose of this Application is to obtain approval to loan up to \$30 million to Pacific Minerals, this discrepancy does not need to be addressed at this time, but may need to be addressed in the future if or when the Company applies to add a subsidiary to the Agreement, or to seek an exemption under Utah Code § 54-4-31.

The Division believes that this on-going borrowing arrangement assists the Company’s efficiency in its cash management and funding of its subsidiary. Therefore the Division’s analysis indicates the Application to be reasonable and in the public interest and recommends that the Commission approves the Application with the changes previously identified.

³ See Application, page 2, first full paragraph.