

2017-012023

Klamath County, Oregon



00211978201700120230090095

10/20/2017 09:27:21 AM

Fee: \$82.00

When recorded Return to:  
PacifiCorp  
825 NE Multnomah Street, Suite 1700  
Portland, OR 97232  
Attn: Right-of-Way Department

**Name of Transaction:** Power Line Easement Agreement

**Grantor:** Union Pacific Railroad Company, a Delaware corporation

**Grantee:** PacifiCorp, an Oregon corporation

**Consideration:** n/a

When recorded return to:  
PacifiCorp  
825 NE Multnomah St, Ste 1700  
Portland, OR 97232  
Attn:

RW#: 20160212  
CC#: 11176  
WO#: 6085039

### **POWER LINE EASEMENT AGREEMENT**

This Power Line Easement Agreement (the "Agreement") is entered into this <sup>5<sup>th</sup></sup> day of <sup>October</sup>, 2017 by and between Union Pacific Railroad Company, a Delaware Corporation, whose address is 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Grantor") and PacifiCorp, and Oregon Corporation, doing business as Pacific Power, its successors and assigns, whose address is 825 NE Multnomah Street, Suite 1700, Portland, Oregon 97232 ("Grantee").

#### **RECITALS**

A. Grantor operates a certain rail line and related facilities and equipment (collectively, the "Grantor's Facilities") in or near Klamath Falls, County of Klamath, State of Oregon. In order to more effectively operate Grantor's Facilities, Grantor requires electrical services from Grantee for its switches, communication devices and other equipment.

B. Grantee has agreed to provide electrical service to Grantor and to install electrical power lines in accordance with Grantee's Line Extension tariffs. Grantor and Grantee have agreed that this Agreement satisfies Grantor's obligation to provide an easement necessary for the installation of the Power Line as required by Grantee's tariffs.

NOW THEREFORE, in exchange of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Easement Grant. Subject to the terms and conditions of this Agreement, Grantor hereby grants and conveys to Grantee an easement (the "Easement") for a right-of-way 10 feet in width and 15 feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, and removal of electric power lines and appurtenant facilities (collectively the "Power Line") to provide electric power to Grantor's Facilities. The appurtenant facilities are all accessories and appurtenances to the Power Line, including without limitation, poles, conductors and wires, guy-wires and anchors, transformers, switches, vaults, and cabinets, as reasonably deemed necessary for the safe and efficient delivery of electrical service to Grantor.

2. Location of Easement. The Easement is located on, over or under the surface of the real property of Grantor in Klamath County, State of Oregon as more particularly described and/or shown on Exhibit "A" and Exhibit "B" attached hereto and by this reference made a part hereof (the "Easement Area").

3. Access. Grantor shall provide Grantee with sufficient access to the Easement Area for Grantee's use of Easement including ingress and egress by Grantee's vehicles and equipment, consistent with Grantee's rights and obligations under this Agreement and for the safe and continuous operation of Grantor's Facilities across such locations on Grantor's property as are designated by Grantor.

4. Clearance. Grantor shall not place within the Easement Area any brush, trees, timber, structures, buildings and other hazards that may interfere with or endanger the Power Line or impair Grantee's ability to safely and adequately maintain the Power Line. Grantor may not place, use or permit to be placed or used, any equipment or material of any kind within the Easement Area that exceeds twelve (12) feet in height, light any fires, or place or store any flammable materials within the Easement Area. Subject to the foregoing limitations, the Easement Area may be used by Grantor and its assigns for any other purpose that is not inconsistent with Grantee's rights hereunder.

5. Power Line Design and Construction. Prior to commencing the construction of the Power Line or any modifications to the Power Line after construction, Grantee shall obtain Grantor's approval of Grantee's construction plans, which approval Grantor shall not unreasonably withhold. Grantor and Grantee agree to meet and agree on the construction design, location of facilities, clearance distances, construction and safety practices, suitable precautions to avoid inductive interference or undesirable electrostatic effects, access locations and other matters before Grantor begins construction or modification of the Power Line. Grantee shall construct or modify the Power Line in substantial conformity with the plans as approved by Grantor, and all references in this Agreement to the Power Line are deemed to be references only to the Power Line as so constructed or modified in conformity with the approved plans. Grantee shall promptly correct any nonconforming construction or nonconforming modification at Grantee's expense. It is the intention of the parties that: a) the powerline shall be designed to clear and otherwise accommodate existing railroad tracks (including service tracks belonging to third parties under permit from Grantor) in accordance with Grantor's engineering standards; b) the Power Line may be reconstructed and/or relocated, at Grantor's expense, to meet Grantor's requirements to accommodate any such future facilities, and; c) if normal operations of Grantor's Facilities would violate the provisions of paragraph 4, then the parties may choose another location for the Easement Area subject to the terms of paragraph 8, or, at Grantor's sole cost and expense, Grantee may re-design the Power Line with taller poles and adjust the specific height limitation in paragraph 4 in a recorded amendment to this Easement.

6. Notice of Entry. Grantee shall provide as much notice as reasonably practicable before Grantee or its contractor enters upon the Easement Area, but in no event less than ten (10) days notice except in emergency situations. Upon receipt of such notice, Grantor will determine and inform Grantee whether a flagman need be present and whether Grantee need implement any special protective safety measures. If any flagman or other special protective or safety measures are performed by Grantor, such services will be provided at no expense to Grantee. Grantee and its contractors shall comply with all safety measures required by Grantor.

7. Interference of Line. If, at any time, the construction, operation or maintenance of the Power Line results in any electrostatic effects which Grantor deems undesirable or harmful, or causes interference with the operation of a signal, communication line, or other installations of Grantor's Facilities, now existing or which may hereafter be installed by Grantor or its tenants, Grantee shall, at Grantor's expense (except in situations where Grantee has failed to take the precautions agreed upon pursuant to paragraph 5 above, wherein Grantee shall bear the expense), take action as may be necessary to eliminate such interference.

8. Relocation or Removal of the Power Line. Grantee agrees to remove or relocate the Power Line in the event Grantor determines that it interferes with Grantor's existing or future use of Grantor's property for rail operations, provided, however, that such relocation or removal shall be done at Grantor's expense and in compliance with Grantee's tariffs. In such relocation event, Grantor shall provide Grantee with a replacement location reasonably acceptable to Grantee on Grantor's property. Grantor shall exercise this right by giving Grantee written notice. In such event, Grantee shall execute a recordable document releasing this Easement Agreement as to the abandoned portion of the Easement Area, and Grantor shall grant Grantee an easement on the land upon which the relocated line is to be constructed on, at no cost to Grantee and under the terms and conditions similar to those contained in this Power Line Easement Agreement.

9. Safety and Noninterference. Both parties acknowledge that the safety and continuous operation of Grantor's Facilities as well as Grantee's Power Line is of paramount importance, and both parties shall exercise their rights and obligations under this Agreement in such manner as not to damage or interfere with the safe and continuous operation of Grantor's Facilities or Power Line, and in a safe manner and in conformity with all applicable laws, rules and regulations.

10. Removal of Debris. Grantee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property (including, without limitation, the Easement Area) or facilities of Grantor; and any such material and debris shall be promptly removed from Grantor's property.

11. Explosives. Grantee shall not discharge any explosives on or in the vicinity of the Grantor's property (including, without limitation, the Easement Area).

12. Claims and Liens for Labor and Material. Grantee shall keep the Easement Area and Grantor's property free from mechanics' lien claims or similar liens arising on account of any act by or on behalf of Grantee. In the event any mechanics' lien is recorded with respect to the Easement Area or Grantor's property on account of any activity of Grantee or any use of the Easement Area or Grantor's land by or on behalf of Grantee, Grantee shall, within thirty (30) days of notice by Grantor (or, if earlier, within 30 days of a complaint being filed to enforce such mechanics' lien), cause such mechanics' lien to be removed by posting a bond with the district court as permitted by statute.

13. Restoration after Construction. Within a reasonable time after installation of the Power Line, Grantee will reasonably restore Grantor's property directly impacted by work performed by Grantee or Grantee's representatives to its preconstruction condition.

14. Attorneys' Fees. In the event any action to enforce the provisions of this instrument, the prevailing party shall be entitled to receive its costs and attorneys' fees, in an amount determined by the court, not by a jury.

15. Notices. Notices required herein shall be in writing and shall be given by personal delivery or by deposit in the United States mail, Certified Mail, Return Receipt Requested (which receipt shall be preserved as evidence of delivery), postage prepaid, addressed to Grantor and Grantee at the addresses set forth in the introductory paragraph hereof, or to such other addresses as may be designated by notice given by one party to the other.

16. Choice of Law. This instrument shall be construed in accordance with the laws of the State of Oregon.

17. Successors and Assigns. The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns.

18. Amendments. This Agreement may be amended only by recording, in the office of the applicable county recorded, an instrument in writing reciting such amendment, bearing the acknowledged signatures of all parties hereto, or their successors and assigns.

19. Abandonment. In the event Grantor desires to have the Power Line removed and complies with paragraph 8, Grantee shall execute a release to abandon the Easement within thirty (30) days after completion of removal. After recordation of the abandonment, all rights and obligations of Grantee hereunder shall cease.

20. Counterpart Execution. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

21. Jury-Waiver Language. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

[Remainder of Page Intentionally Left Blank]

DATED effective as of the date first written above.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed as of the 5<sup>th</sup> day of October, 2017.

UNION PACIFIC RAILROAD COMPANY

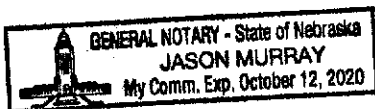
By: Renay Johnson  
Title: Sr. Manager - Real Estate

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Nebraska )  
 ) ss.  
County of Douglas )

On this 5<sup>th</sup> day of October, 2017, before me, the undersigned Notary Public in and for said State, personally appeared Renay Johnson (name), known or identified to me (or proved to me on the oath of Sr. MGR - Real Estate) to be the (president / vice-president / secretary / assistant secretary) of the corporation, or the (manager / member) of the limited liability company, or a partner of the partnership that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that said entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature] (notary signature)  
NOTARY PUBLIC FOR Nebraska (state)  
Residing at: Omaha, NE (city, state)  
My Commission Expires: 10/12/2020 (d/m/y)

PACIFICORP

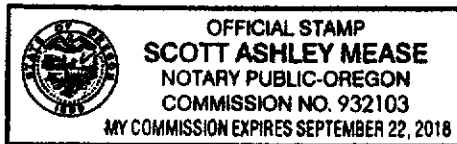
By: Jana Mejdell  
Jana Mejdell

Title: Director, Real Estate Management

**REPRESENTATIVE ACKNOWLEDGEMENT**

State of Oregon )  
County of Multnomah ) ss.

This instrument was acknowledged before me on this 11<sup>th</sup> day of OCTOBER, 2017,  
by Jana Mejdell, as Director, Real Estate Management, of PacifiCorp.



[Signature]  
Notary Public  
My commission expires: 22 SEPTEMBER MMXVIII

**EXHIBIT A**

**Easement Area**

An easement being a portion of the Northwest Quarter of the Northwest Quarter of Section 33, Township 39 South Range 9 East, Willamette Meridian, Oregon, the centerline of said easement described as follows:

BEGINNING at a point, said point being the Northwest Section Corner of said Section, thence South 53°01'30" East 1575.64 feet, to the TRUE POINT OF BEGINNING of this description, thence along the centerline of a strip of land 10 feet in width, North 75°58'26" East 15.00 feet to the terminus of this description, which also bears North 67°51'59" West 4382.98 feet from the Quarter Corner common to said Section and Section 34.

The basis of bearing for this description is the Oregon Coordinate Reference System, Bend – Klamath Falls Zone.

# EXHIBIT B

