ORDER NO. 15 151

ENTERED MAY 19 2015

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 325

In the Matter of PACIFICORP, dba PACIFIC POWER, Application for an Order Authorizing the Sale of Certain Assets to Georgia-Pacific Consumer Products LLC.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 19, 2015, 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:

Becky L. Beier

Becky L. Beier
Commission Secretary

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. CA5

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 19, 2015

REGULAR ____ **CONSENT** X **EFFECTIVE DATE** N/A

DATE: May 12, 2015

TO: Public Utility Commission

FROM: Matt Muldoon

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UP 325) Requests authority to sell an on-site generation unit and a 69 kilovolt transmission line to Georgia-Pacific.

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission (Commission) approve the application by PacifiCorp, dba Pacific Power (PacifiCorp or Company) (Application) to sell an on-site generation unit (Co-Generation Facilities) and a 69 kilovolt transmission line (Transmission Facilities) to Georgia-Pacific Consumer Products (Camas, Washington) LLC (Georgia-Pacific or GP Camas), subject to the five following conditions.

1. PacifiCorp shall provide the Commission access to all books of account, as well as documentation, data, and records that pertain to the sale of this property.
2. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or in any earnings review under an alternative form of regulation.
3. PacifiCorp shall notify the Commission in advance of any substantive changes to this sale, including any material changes in price. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this proceeding.
4. Oregon's allocated share of the loss described herein will be passed through to PacifiCorp's Oregon ratepayers via Schedule 96, the property sales balancing account adjustment.
5. The final journal entries recording the transaction (reflecting true-ups at time of sale) will be submitted to the Commission within 30 days of closing. The Company shall include the transaction in the appropriate results of operations report.

Applicable Law and Standards of Review:

PacifiCorp's Application is reviewed pursuant to ORS 757.480 and OAR 860-027-0025. These are the laws governing the sale of utility property. ORS 757.480 provides, in relevant part, that a utility shall obtain the Commission's approval prior to selling property used to provide utility service. OAR 860-027-0025(1)(l) requires the applicant to show that the property sale will be consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" to require a showing of "no harm" to the public. *See, e.g. In the Matter of the Application of PacifiCorp*, Order No. 00-112 at 6 (2000); *In the Matter of the Application of Portland General Electric,* Order No. 99-730 at 7 (1999).

However, as will be discussed in greater detail below, the review of this matter is further governed by a prior Commission directive. Briefly stated, PacifiCorp and GP Camas' predecessor James River Paper Company, Inc. (James River) entered into a long-term (minimum of 20-years) Camas Development Construction, Operation and Steam Supply Agreement (Contract) on January 13, 1993, for service occurring after October of that year. In relevant part, certain terms of the Contract (Contract Options) allow GP Camas to purchase the Co-Generation Facilities for restricted fair market value[1] no later than six months after termination of the Contract. Another Contract Option allows GP Camas to purchase the Transmission Facilities at the net book value as of the Contract termination date (December 31, 2015). Accordingly, the Commission should consider the proposed sale of the Facilities under the Contract Options it originally approved in 1993.

Issues:

On April 7, 2015, pursuant to ORS 757.480 and OAR 860-027-0025, PacifiCorp filed a request for authorization to sell certain facilities to GP Camas consistent with understandings next described. Staff investigated the following issues:

1. Were the Contract and Contract Options previously approved by the Commission?

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[1] Restricted Fair Market Value: Contract Exhibit H – Project Improvements shows how a substantial portion of the book value for the Co-Gen Facility consists of site preparation, labor and process materials, as well as supporting structures. Most of that value is lost in salvage. Because the Contract restricts consideration of market value to the off-site sale of materials to an entity other than GP Camas, 23 year old boilers, and saleable equipment incur refurbishing costs on top of disassembly, transport and storage. Staff finds that web sales of fully refurbished boilers are advertised at 50 to 70 percent off list price while providing limited warranties. As PacifiCorp is not normally in the used boiler market, the Company would not be in a position to offer warranties or to substitute like equipment, further eroding the market value. The key Contract provision in Section 13.2 Option to Purchase on page 12 of the Lease Agreement in PacifiCorp's application is market value **to a third party**, not to GP Camas.

2. Is the sale reasonable and consistent with the public interest, and does it do no harm to the public?
3. Are the purchasers financially able and willing to take over and operate the facilities?
4. Is PacifiCorp still able to perform its public duties after the sale?
5. Are records availability, audit provisions, and reporting requirements adequate?

DISCUSSION:

1. Contract and Contract Options were previously approved by the Commission

PacifiCorp and GP Camas' predecessor James River entered into a long-term (minimum of 20-years) Camas Development Construction, Operation and Steam Supply Agreement (Contract) on January 13, 1993, for service occurring after October of that year. In relevant part, the Contract Options allow GP Camas to purchase the Co-Generation Facilities for restricted fair market value no later than six months after termination of the Contract. The Contract Options also allow GP Camas to purchase the Transmission Facilities at the net book value as of the Contract termination date (December 31, 2015).

Dr. Lee Sparling, a former member of Staff, reviewed the Contract in PacifiCorp Advice No. 93-107. Dr. Sparling concluded in his public meeting memo (as shown in Attachment A) that the terms and conditions of the Contract were unusual, but not unreasonable given the required 20-year commitment.

Pursuant to the authorizing decision of the Commission in the Public Meeting of August 31, 1993, the Contract as now summarized in the Company's Oregon Schedule 400 – Special Contract (1) Georgia Pacific – Camas calls for service at rates in PacifiCorp's standard large industrial tariff, Schedule 48T. As shown in Attachment B, the Commission approved Advice No. 93-107 at its public meeting of August 31, 1993. On September 2, 1993, Mike Kane, Assistant Commissioner notified the Company by letter (as shown in Attachment B) that the Contract was approved.

2. Sale is Consistent with Public Interest and Contract Options Terms

In considering the Application at hand, the Commission's rule concerning property sales, OAR 860-027-0025(1)(l), setting a standard of review as "consistent with the public interest," should be read in conjunction with the Contract Options terms the Commission previously approved in 1993. In other words, it is reasonable to conclude that if the proposed sale meets the terms of the Contract Options that the Commission previously approved (and it does not otherwise cause harm to the public), it would be "consistent with the public interest" to approve it.[2] As stated previously, the Contract Options restrict PacifiCorp to selling the Transmission Facilities at net book value as of the Contract termination date. Similarly, the Contract Options also limit PacifiCorp to selling the Co-Generation Facilities to restricted fair market value no later than six months after termination of the Contract.

a. Fair Market Value for Co-Generation Facilities

The Contract Options transaction price for the Co-Generation Facilities is the contract-restricted fair market value, when consideration is given to the costs of dismantling the unit, and residual salvage thereof, as of no later than the termination of the Contract. PacifiCorp and GP Camas set this value at $350,000. As discussed in Footnote 1, PacifiCorp is restricted to determining value of the removed Co-Generation Facility to third parties off-site and cannot consider the value of the intact Facility to GP Camas. Moreover, no third party is permitted by the Contract to operate the intact Co-Generation Facility on GP Camas property. Section 13.2 Option to Purchase precludes consideration of the best and highest use of the collection of equipment, site preparation, supporting materials and covering structures as the Co-Generation Facility stands now ready to operate to intended purpose.

Staff notes that websites offer refurbished boilers at 50 to 70 percent off list price with warranties substituting a like unit if the sold unit fails. PacifiCorp negotiated a fair market value of 1/3 of book value. At face, this is somewhat better than PacifiCorp could expect selling the boilers and key components to a refurbishing firm that must presumably make a profit. PacifiCorp also avoided demolition, site restoration, scouring, refurbishing, painting, crating, preparation for transport, heavy lift, transport and marketing costs of selling salvaged components. PacifiCorp preserved some embedded labor, installation and site preparation value, which in a sale to a remote third party would be sunk, or of no value at all. PacifiCorp would face difficulty in selling used valves, pipe and wire as other than metal scrap, Buyers are reasonably reluctant to install over 20-year old salvage scrap articles without warranty, while steel, structural steel, copper, and aluminum new components are closely tracking 12-year low metals prices in a moment of global oversupply.[3] Staff concludes this value satisfies the Contract Option terms and that PacifiCorp cannot reasonably sell more favorably elsewhere or to another party.

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[2] Staff notes that, over the years, the Commission has had multiple opportunities in subsequent general rate cases to revisit the prudence of the Contract and its termination options, and has not changed the application of these terms. *See* Docket Nos. UE 94, UE 111, UE 116, UE 147, UE 170, UE 179, UE 210, UE 217, UE 246, and UE 263.

[3] "Why Chinese Steel Exports are Stirring Protests, China's Mills Sell Excess Abroad" by Biman Mukherji, John W. Miller, and Chuin-Wei Yap of the Wall Street Journal on March 15, 2015, is just one of many recent articles discussing how the landed cost of new exported metal goods from China are creating challenges for U.S. domestic sellers of comparable metals and metal articles.

b. Book Value for Transmission Facilities

Staff provisionally accepts PacifiCorp's statement on page 3 of its application that $135,967.76 is the book value of the Transmission Facility assets matched with depreciation as of December 31, 2015. This value will be trued up in the Company's final journal entries as required by Condition 5 herein. The Company's journal entries will be provided to Staff.

Staff is not confirming that the sale price is the highest value that the Transmission Facility could generate in a sale to that party who could put these fully-sited operational transmission lines across the Columbia River to best use as energized now or as may be reconductored to a higher voltage. Rather, Staff will confirm that this book value is accurate in PacifiCorp's next general rate case. If the value is not accurate, Staff will then propose adjustment for any discrepancy. The Contract specifies the book value and not the market or best opportunity value for the Transmission Facility.

3. GP Camas Has the Ability to Take Over and Operate the Facilities

Georgia-Pacific Corporation acquired James River operations in Camas in 2000. Koch Industries, Inc. (Koch) purchased Georgia-Pacific in 2005 and continues to manufacture tissue paper, paper towels and office paper at the GP Camas mill. GP Camas is primarily an owner and operator of manufacturing facilities. Its parent, Koch, America's second largest privately held company, does not release financial statements or data to the public. But Forbes estimated Koch's 2013 revenues at approximately $115 billion. GP Camas is large enough, directly or in conjunction with its parent company, Koch, to own and operate transmission directly or to contract for qualified third party operation and balancing resources.

Staff finds GP Camas can meet this standard.

4. PacifiCorp Continues to be Able to Perform Its Public Utility Functions

Dr. Sparling pointed out in 1993 that an 85 MW predictable load is attractive, but is insufficient to create or alleviate uncertainty on the PacifiCorp system. PacifiCorp notes that it has been preparing for years for the sale. On page 8 of the Company's application, PacifiCorp states that it does not need the Co-Generation Facilities or Transmission Facilities to provide safe, reliable electric service to its customers.

5. Records Availability and Reporting

Staff-recommended Conditions 1, 2, and 5 afford the necessary Commission examination of PacifiCorp's books and records concerning the sale. Furthermore, Condition 5 captures the final actual cost values and clarifies other currently estimated costs.

CONCLUSION:

Prior to final true up, the total risk-adjusted Option sale price for Co-Generation and Transmission Facilities is $485,967, rounded to the nearest dollar. This is the sum of the Co-Generation Facilities sales price of $350,000, and the sales price of the Transmission Facilities of $135,967. Staff has reviewed PacifiCorp's Application as described above and finds the Company's proposal complies with the plain reading of the governing Contract actively reviewed by Staff and the Commission in prior authorizing proceedings.

Staff notes differences from usual practices, but reiterates Dr. Sparling's finding that the certainty and benefits of a 20-year contract made the Contract and its Options reasonable in aggregate and sufficient to support granting the Company's request, subject to the general conditions listed above. Staff finds that the Contract delivered the intended benefits for 23 years and that there is now no basis for deviating from its provisions. PacifiCorp has reviewed and does not disagree with this memo.

PROPOSED COMMISSION MOTION:

PacifiCorp's request for authority to sell an on-site co-generation facility and a 69 kilovolt transmission facility to Georgia-Pacific be approved.

UP 325

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 31, 1993

REGULAR AGENDA X CONSENT AGENDA ___ EFFECTIVE DATE As Noted

DATE: August 23, 1993

TO: Mike Kane MK through Bill Warren WW

FROM: Lee Sparling LS

SUBJECT: PacifiCorp, Advice No. 93-107
Requests authorization to transfer the James River Paper Company's Camas WA mill from pulp and paper Schedule 42T to standard industrial Schedule 48T

SUMMARY RECOMMENDATION:

I recommend that the Commission authorize service to James River Paper Company's Camas WA mill under PacifiCorp's standard large industrial tariff Schedule 48T, effective upon commencement of construction of the new generating unit at the site, but no earlier than October 1, 1993.

DISCUSSION:

On February 24, 1993, PacifiCorp (Pacific) applied for authorization to transfer the Camas WA mill of the James River Paper Company (James River) from pulp and paper Schedule 42T to standard large industrial Schedule 48T. The Camas facility is one of four mills served under the pulp and paper tariffs that were allowed to go into effect in 1987. James River's current Schedule 42T rate exceeds the standard rate. All four customers selected contract terms that specified rates through September 30, 1994. The applicable rates after that time are to be negotiated, based on the services provided by Pacific, the level and extent of the customer's commitment to purchase from Pacific, the cost of alternative electricity supplies available to the customer, and Pacific's marginal energy and capacity costs. The customers explicitly waived their right to service at standard rates. Any rate negotiated for service after September 30, 1994 would be subject to Commission approval.

The pulp and paper contracts also gave Pacific the right to call for the installation and operation of new on-site generation and to participate in the development of any such resource. Earlier this year, Pacific and James River signed a contract to build and operate a 50 megawatt high efficiency steam turbine generator at the Camas mill. Steam for the generator will be provided from existing boilers fired with natural gas, black liquor, and hog fuel. The existing boilers, piping, and paper machine drives will be upgraded to make more efficient use of the steam, and a short connection to Northwest Pipeline will be built for additional gas supply. The projected cost of the steam generator and necessary improvements is $59 million.

Under the agreement, Pacific will pay all capital costs up to $64 million; James River will pay any excess. James River will provide fuel for the boilers and steam for the generator, and it will operate and perform routine maintenance on the generator. Pacific will pay for periodic major overhauls. It will also pay James River steam royalties designed so that the overall cost of power to Pacific is somewhat less than its avoided costs.

The royalty calculation starts with a stream of annual payments per kWh that has a present value over 20 years equal to 95 percent of Pacific's avoided costs. The calculated payment for kWh generated in any year is then offset by Pacific's investment carrying costs and an allowance for the major maintenance. The net royalty payment cannot be negative in any year, but Pacific's unrecovered costs can be carried over to subsequent years. Pacific also has the right to operate the facility even if James River shuts down its pulp and paper operations.

The steam royalty calculation also contains a provision that protects James River from unexpected fluctuations in the retail rates it would pay under Schedule 48T. If actual rates (and bills) under Schedule 48T are higher or lower than specified bounds, then the steam royalty payments will be increased or decreased to compensate. The bounds are set at about eight percent above and below a base forecast of Schedule 48T rates that increases at an annual rate of four percent (projected inflation).

The cogeneration development agreement also gives Pacific a right of first refusal on construction of a combined cycle combustion turbine at Camas. Furthermore, James River commits to service from Pacific from the date of its transfer to Schedule 48T until at least 20 years after the new steam turbine generator begins operating. As a result, Pacific argues that James River has given up its service options and is entitled to the same protections afforded other captive customers.

Most of our discussions about Pacific's request have focused on the appropriate standards to apply. I believe (and our legal counsel agrees) that Pacific's application should be treated like a special contract filing, for two reasons. First, the terms of the pulp and paper tariffs do not allow participating customers to switch rate schedules as easily as other customers can: the pulp and paper customers signed up for seven-year terms and waived their right to return to standard tariffs. Second, service to the Camas mill will not strictly adhere to the terms and conditions of Schedule 48T: James River is agreeing to make a 20-year service commitment not required of other customers, and it is somewhat insulated from fluctuations in rates through adjustments in the steam royalty payments.

The usual standards for Commission review of special contracts are set forth in ORS 757.230 and Order 87-402. The former lists issues to be considered when customers are classified on the basis of available supply options, and the latter identifies rate classification criteria and other legal requirements for discounts. Generally, these standards require that: 1) other customers benefit from the offer of a special contract, 2) the contract rate is no lower than necessary, and 3) the offer is not unduly discriminatory. Each of these general standards is addressed below.

1. Will other customers benefit?

The usual analysis of a special contract compares the discounted rates to the utility's avoided costs over the term of the contract. Pacific expects that Schedule 48T rates (which are based on average costs) will be less than its avoided costs over the next 20 years (in present value terms). The company believes that generation at the Camas site will provide benefits that more than offset the net cost of providing retail service to the mill, but I disagree. Assuming for the sake of argument that the generation benefits do not offset the net cost of service at standard rates, other Pacific customers in Oregon would be better off if the Commission denied the request to transfer the Camas mill to Schedule 48T.

I do not believe that the Commission should apply this net benefits analysis, however. Any new customer or a customer returning to the system after taking advantage of alternative supplies would qualify for service at standard rates. The returning customer would be eligible even if its alternative supply costs had skyrocketed. As noted above, retail service to these customers under Schedule 48T would have a net cost to other Pacific customers over 20 years. Requiring special contract customers to demonstrate net benefits in order to return to standard rates at some point would discourage customers with supply options from staying on the system--at a discount--and making some contribution to fixed costs.

In this case, I think the appropriate standard should instead be that returning the Camas mill to standard rates will provide more benefits to other Pacific customers in Oregon than service to either a new or returning customer. This condition may seem severe in light of the fact that a returning customer would not need to make such a showing, but I believe it is fair, for two reasons. First, James River found the pulp and paper rates sufficiently more attractive than its supply alternatives to offset any uncertainty about rates after the contract term. Second, the pulp and paper contract allowed James River to avoid commitments to new generating resources; any customer that instead builds its own generating unit and leaves the system would be saddled with the fixed costs and would not find a return to standard rates attractive until operations and maintenance costs (not total costs) rise above Pacific's standard rates.

I believe that conditioning the transfer of the Camas mill to Schedule 48T on the agreement to develop generation at the site meets this modified benefits test. Pacific estimates that the steam turbine generator will provide benefits with a present value of $6.7 million, based on an overall cost equal to 95 percent of its avoided costs. Pacific notes that James River bears both the construction cost risk (because Pacific's investment costs are subtracted from the gross steam royalty payment and because James River pays all construction costs exceeding $64 million) and the fuel price risk. The company expects that the combined-cycle unit will be developed at a lower cost (because some facilities will be used in common with the steam turbine generator); at 85 percent of avoided cost, the present value of the unit is $21.6 million. The value of the first unit alone exceeds the loss in revenues (up to $2.8 million) associated with the shift from Schedule 42T rates to Schedule 48T rates through September 30, 1994. Location of the generating units west of the Cascades will also reduce the exposure of the transmission system to voltage collapse. Pacific claims some planning benefit from the 20-year commitment by James River, but the load is not large enough (85 megawatts) to reduce uncertainty in Pacific's system.

Benefits to other customers could also be affected by adjustment of the steam royalty payments to protect James River from Schedule 48T rates increasing substantially more or less than a four percent rate of inflation. We proposed that Pacific bear the risk that the steam royalty payments will be adjusted; that is, for the purpose of estimating revenues and costs in a rate case, the Camas mill will always be assumed to pay Schedule 48T rates, with no adjustment of steam royalty payments. Pacific has agreed to take the risk (it will benefit if Schedule 48T rates are below the lower bound in the steam royalty formula), and so other customers will not be affected by this provision.

2. Is the rate lower than necessary?

We usually answer this question by comparing the contract rate to the customer's alternative costs. Pacific estimates that James River's alternative costs--based on the costs of the cogeneration unit and additional service from Clark County PUD--are only slightly higher (about one percent) than projected Schedule 48T rates over 20 years. I conclude that the rate offered to James River is not lower than necessary, particularly in light of the benefits provided to Pacific under the agreement.

3. Is the offer discriminatory?

No. Any other pulp and paper contract customer seeking service under Schedule 48T would need to give Pacific the right to develop its generation potential, make a long-term commitment to service from Pacific, and otherwise meet the modified benefits test described above.

STAFF RECOMMENDATION:

I have reviewed Pacific's application, and I recommend that the Commission authorize service to James River's Camas WA mill under Pacific's standard large industrial tariff Schedule 48T, effective upon commencement of construction of the new generating unit at the site, but no earlier than October 1, 1993.

ls/8456H

Oregon

PUBLIC
UTILITY
COMMISSION

RECEIVED
SEP 10 1993
Pricing & Regulatory Affairs

September 2, 1993

ROBERT V SIRVAITIS
DIRECTOR PRICING
PACIFIC POWER AND LIGHT COMPANY
920 SW SIXTH AVENUE
PORTLAND OR 97204

RE: Advice No. 93-107

On February 24, 1993, Pacific Power and Light Company filed a request to provide service to James River Paper Company's Camas WA mill under the utility's standard large industrial tariff Schedule 48T, effective upon commencement of construction of the new generating unit at the site, but no earlier than October 1, 1993.

Pursuant to the decision of the Commission in the Public Meeting of August 31, 1993, the request is approved.

Mike Kane

Mike Kane
Assistant Commissioner
Utility Program
(503) 373-7133

lm/8524HH
Enclosure

Barbara Roberts
Governor

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