

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UP 349**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Docket No. UP 349 Application for Approval  
for the Sale of Property to Columbia Pacific  
Bio-Refinery

**Reply Comments of Portland  
General Electric Company**

**I. INTRODUCTION**

Portland General Electric Company (PGE) filed this application (Application) on March 14, 2017, to sell certain PGE property to Cascade Kelly Holdings LLC, doing business as Columbia Pacific Bio-Refinery (CPBR).<sup>1</sup> This property is not necessary for providing utility service to the public. On May 17, 2017, Columbia Riverkeeper (Riverkeeper) filed comments opposing PGE's filing. Staff recommends approval of PGE's filing in their recently filed memorandum and recommendation (Staff's Recommendation), which also discusses Riverkeeper's arguments in opposition. PGE agrees with and supports Staff's Recommendation.

As discussed in the Application, PGE will sell nine fuel oil tanks (PGE Tanks) to CPBR, while simultaneously purchasing two tanks (CPBR Tanks). This transaction is in the best interests of PGE customers as it reduces PGE's future expenses, provides reliability and operational flexibility, and generates proceeds that will be returned to customers. It fulfills PGE's obligation to prudently manage utility assets and provide customers the value of investments made to deliver reliable service. PGE has reviewed

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<sup>1</sup> CPBR is owned by Global Partners LP (Global).

this transaction carefully to make sure it is compatible – from operational, regulatory and safety standpoints – with our existing generation assets at Port Westward. If the Commission rejects the Application as Riverkeeper recommends, the result will be increased costs to PGE customers, including costs to either refurbish and remediate PGE’s current tanks or decommission them entirely, as well as the direct loss of revenue for PGE customers from the sale. Riverkeeper’s arguments fall outside the Commission’s purview and are better addressed to other agencies. The Commission should adopt Staff’s Recommendation and approve the Application.

## II. REPLY TO COLUMBIA RIVERKEEPER COMMENTS

Riverkeeper argues that the transaction between PGE and CPBR is designed to increase oil-by-rail, which they argue is inconsistent with the public interest.<sup>2</sup> Riverkeeper’s arguments are not relevant in light of the Commission’s legal standard for review of the Application, which focuses on the impact on PGE’s service or customer rates. The broader oil-by-rail policy questions Riverkeeper seeks to interject in this proceeding are best answered by the appropriate policy makers and regulators, not the Commission given the legal standard for review of this Application under ORS 757.480.

In fact, the completion of this sale has no bearing on the amount of oil or other fuel product (fuel) CPBR is allowed to transport and store at the Port Westward site in Clatskanie Oregon (Port Westward). CPBR has the permits and authorizations necessary to move and store fuel at Port Westward, and it obtained these rights through the appropriate regulatory channels. For example, the Port of St. Helens, the owner of Port Westward, approved *both* CPBR’s delivery of fuel and rail traffic limits, which happened before PGE entered into the agreement to sell its tanks to CPBR, *and* agreements

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<sup>2</sup> Columbia Riverkeeper comments on Docket No. UP 349, pages 2 & 3.

necessary to close the tank sale. The Oregon Department of Environmental Quality (DEQ) (after public notice and comment) issued CPBR an air permit authorizing CPBR to construct storage tanks and transfer fuel through the facility. At the same time, the DEQ reviewed and approved CPBR's spill response plan.

The Commission has consistently held that ORS 757.480 imposes a "no harm" standard for utility property sales like this one. *See In the Matter of a Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 (Sept. 4, 2001) ("The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a 'not contrary to the public interest' standard (ORS 757.490, .495.)") (emphasis added).

As Commission Staff's recommendation makes clear, when applying the no harm standard, the Commission's inquiry focuses on utility customer impacts. For example, in Order No. 00-112, the Commission justified the no harm standard because it "provides protection to ratepayers while allowing utilities a reasonable opportunity to exercise their judgment regarding the sale of their assets." *In the Matter of the Application of PacifiCorp*, Docket No. UP 168, Order No. 00-112, at 6 (Feb. 29, 2000) (regarding the sale of the Centralia generating plant); *see also Re Portland General Electric Company*, Docket No. UP 278, Order No. 12-006 (Jan. 10, 2012) (focusing no harm standard on impact to "Oregon customers").

The Commission's review occurs within the broader context of its authority to obtain adequate utility service for utility customers at fair and reasonable rates while also balancing the interest of the utility's investors. As Staff's Recommendation explains, this

constrains the Commission ability to consider externalities, like the broader oil-by-rail issues, that do not impact customer rates.

PGE has an obligation to prudently manage utility assets and provide to customers the value of investments made to provide reliable service. The current PGE Tank Facility capacity exceeds PGE's current requirement for reliability and back-up fuel and the tanks are also in need of significant upgrades. Selling these under-utilized assets allows PGE and our customers to avoid the associated decommissioning costs and all net proceeds resulting from the sale will directly benefit PGE customers. Additionally, PGE will receive in return two fully refurbished tanks that will contribute to the Beaver Generating Plant's reliable operations, allowing Beaver to continue to provide flexibility within PGE's generation portfolio, but at a lower cost.

As Staff's Recommendation explains, PGE commissioned a study by Burns & McDonnell of the rail and hazard risk and included provisions in the transactional agreements to address and mitigate the risk associated with CPBR's operation. These significant safeguards to minimize adverse impacts on PGE operations at the site include retaining rights to review and approve certain future changes on the CPBR footprint and curtail CPBR's future operations under certain circumstances if they interfere with the safe, reliable operation of PGE's generating resources. PGE therefore believes that the transaction is compatible – from operational, regulatory and safety standpoints – with our existing generation assets at Port Westward and presents no undue risk to our customers.

### **III. SUMMARY**

The proposed Beaver Tank Farm sale and purchase is consistent with the public interest given that PGE's current tank capacity is not necessary for PGE to offer reliable

service to the public. The Application demonstrates that the transaction satisfies the Commission's "no harm" standard and, in fact, provides a benefit to customers. This transaction provides PGE customers increased reliability and operational flexibility by more appropriately sizing the required back-up fuel storage in substantially better condition compared to current storage and at a decrease in cost. Riverkeeper's arguments are outside the scope of this proceeding because they do not concern impacts of the transaction on PGE's service or customers' rates. PGE supports Staff's Recommendation for approval.

DATED this 12<sup>th</sup> day of June, 2017.

Respectfully submitted,



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