**ITEM NO. 2**

**PUBLIC UTILITY COMMISSION OF OREGON**
**REDACTED STAFF REPORT**[1]
**PUBLIC MEETING DATE: June 13, 2017**

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

**DATE:** June 7, 2017

**TO:** Public Utility Commission

**FROM:** Scott Gibbens NH ugg

Mr for JE

**THROUGH:** Jason Eisdorfer and Marc Hellman

**SUBJECT:** PORTLAND GENERAL ELECTRIC: (Docket No. UP 349) Requests Approval for the Sale of Property in Columbia County, Oregon to Columbia Pacific Bio-Refinery.

## STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve the sale of fuel storage tanks by Portland General Electric Company (PGE or Company) to Columbia Pacific Bio-Refinery (CPBR) subject to the following conditions:

1. Company shall notify the Commission in advance of any substantive changes to the transfer of properties, 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 docket.

2. The final journal entry recording the transaction shall be submitted to the Commission within 60 days after the transaction closes.

3. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternate form of regulation.

4. The gain on the property sale should be placed into the Property Sales Balancing Account until such time as it can be returned to customers.

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[1] Please note, this memo contains confidential information. Any party wishing to review confidential information must sign the Commission's protective order issued in this proceeding (i.e. Order No. 17-089).

**DISCUSSION:**

Issue

Whether the Commission should approve the sale of certain fuel storage tanks owned by PGE, located at the Beaver Generating Plant, as set forth in PGE's and CPBR's agreements.

Applicable Rule or Law

ORS 757.480(1) requires public utilities doing business in the Oregon to seek Commission approval prior to the sale, lease, assignment or disposal of property valued in excess of $100,000 that is necessary or useful in the performance of its duties to the public.

OAR 860-027-0025 sets forth the information required to support a request for the approval of a property sale. OAR 860-027-0025(1)(l) requires that the applicant show that the property sale will be consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" as used in this rule 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).

Finally, the Commission's authority, broadly speaking, is to obtain adequate service for customers at fair and reasonable rates while at the same time balancing the interests of the utility's investors. *See* ORS 756.040.

Analysis

PGE filed its Application for Approval of the Sale of Property (Application) on March 14, 2017, with a supplemental filing on May 18, 2017, which updated the purchase agreement. The Application was docketed as UP 349. PGE owns and operates the Beaver Generating Plant (Beaver) at the Port Westward facility. Originally, Beaver was designed to use No. 2 bunker fuel oil as the primary source of fuel at Beaver. Four years after being built, PGE changed the primary fuel source for Beaver to natural gas (NG). Nine large fuel storage tanks are located on the property which held the fuel prior to Beaver's NG conversion. Currently, five percent of the total capacity of the tanks is being used to store emergency fuel, which could be used to power the plant for approximately three days should there be an interruption to PGE's NG supply.

Cascade Kelly Holdings LLC, doing business as CPBR, operates an ethanol production and terminalling facility adjacent to Beaver. CPBR currently owns two tanks with 200,000 barrels total capacity which CPBR purchased from PGE in 2007.

In August 2014, CPBR requested PGE's approval to improve the infrastructure at its combined oil and ethanol storage and trans-loading operations at CPBR's Port Westward site. Through the negotiation process, PGE and CPBR came to a proposed agreement to exchange the storage tanks. As a part of the agreement, PGE would sell its nine storage tanks and a pipeline which connects to the Port Westward dock to CPBR, and PGE would purchase back the two storage tanks it sold to CPBR in 2007.

Staff investigated the following issues:

1. Scope and Terms of the Sale and Purchase Agreement;
2. Transfer Pricing and Allocation of Gain;
3. Public Interest Compliance; and
4. Records Availability, Audit Provisions, and Reporting Requirements

Staff's review of these issues included an examination of the Company's application, the applicable laws, the Company's responses to eight information requests (IRs) from Staff, discussions with Company representatives via phone and a meeting in person on March 16, 2017, and comments provided by Columbia Riverkeeper. Staff requested the following information in its IRs:

1. The 2007 tank sale purchase agreement;
2. All environmental reports performed on the two sites;
3. A clarification on environmental liability changes;
4. Information about the analysis performed on environmental and operational risks;
5. Historical rail usage data at the Beaver Plant;
6. Train car off-loading details;
7. An explanation on the determination of the safe harbor limit; and
8. A clarification on lease payments with Port of St. Helens (POSH)

After receipt of the requested information from PGE, Staff reviewed the prior sales purchase agreement to identify any discrepancies and similarities in the previous transaction, seven environmental reports provided by PGE which had been performed on the sites, an environmental and operational risk report, and miscellaneous data and information.

PGE was thorough in its responses and Staff has identified no unresolved issues.

*Scope and Terms of the Sale and Purchase Agreement*
PGE included the Agreement for Purchase of Storage Tanks and Real Property (Agreement) between the Company and CPBR with its Application as Exhibit I-1. The Agreement specifies the liabilities, property, contingencies, and process of the transaction. Of note, PGE's environmental liability does not change as result of the transaction. Further, the leaseback and transfer of property are well defined. The Agreement's Section 13.10: Indemnity and Insurance Product for Replacement Power Costs which describes the Safe Harbor Limit is somewhat unique to this transaction however Staff has no concerns over the terms set for within. Staff also notes that several other "Government Approvals" are required prior to closing of the transaction: ODEQ, POSH, and Columbia County among others. Exhibit E of the Agreement contains the outline of the Facilities Separation Plan. As part of its analysis, Staff reviewed the Separation Plan to ensure **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** The Burns and McDonnell report is discussed in more detail immediately below.

*Transfer Pricing and Allocation of Gain*
Determination of a market price for the property being exchanged was based on an estimation provided by FOCUS Investment Banking (FOCUS) and also by Burns & McDonnell. FOCUS is a firm which helps clients with difficult transactions. They have been in business for over 30 years with offices throughout the nation. Burns & McDonnell is a consulting firm which has been in business for over 100 years. It has a wide-range of expertise, which includes electrical generation construction and maintenance, petroleum, and environmental analysis. Staff notes that, due to the proximity of the PGE's Beaver plant and CPBR, finding other suitable or interested parties for the purchase of PGE's storage tanks could be unlikely. The transportation cost involved in delivering the storage tanks to another potential buyer would make any other deal difficult economically. In a bilateral monopoly (one buyer/one seller), the market price can be estimated using a number of different valuation methods. In this circumstance, Staff felt comfortable basing the pricing on the two reputable third-party companies PGE retained (i.e. FOCUS and Burns & McDonnell) who each performed independent valuations of the transaction. Staff also reviewed the final purchase price and subsequent $/barrel of the previous tank sale between the two parties in 2007. Below is a confidential table which shows the price comparisons between the sales and purchases of the storage tanks.

| Transaction | Final Purchase Price | Barrels | $/Barrel |
|---|---|---|---|
| 2007 2 Tanks to CPBR | $1,700,000 | 200,000 | $8.5/barrel |
| 2017 9 Tanks to CPBR | [redacted] | 1,200,000 | [redacted] |
| 2017 2 Tanks to PGE | [redacted] | 200,000 | [redacted] |

It is important to note that CPBR fully refurbished the two tanks it purchased from PGE in 2007 to "like new" condition. The cost to refurbish the nine tanks that PGE is selling to CPBR has been calculated into the $/barrel price for the tanks. Due to the state of the tanks, an investment must be made in order to achieve storage functionality.

The tanks are fully depreciated so Staff recommends that the net amount of the two proposed transactions be placed into the Property Sales Balancing Account. The funds in the balancing account totaling **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, would then be returned to rate payers once the account is cleared.

After review of the fair-market pricing estimation, Staff finds the agreed upon pricing to be fair and reasonable.

*Public Interest Compliance*
The Commission customarily applies a "no harm" standard with regard to the public interest compliance of property sales. Because the two tanks that PGE is purchasing for its use from CPBR are in "like new" condition, the delivery of safe and reliable energy to the Company's customers is not affected by its sale.

As stated earlier, for the purpose of determining to engage in this transaction, PGE commissioned a study by Burns & McDonnell. **[BEGIN CONFIDENTIAL]** [redacted]

[redacted] **[END CONFIDENTIAL]**

PGE notes in its Application that it will not be held responsible for any environmental damage that does not come from the direct result of its own operations. The material CPBR is planning to store at the site is substantially different from the oil PGE utilizes for Beaver. This will allow PGE to easily identify the responsible party in the case of contamination. Thus, PGE will continue to be responsible only for the environmental damage that it causes. A report which was provided in response to a Staff information request also discusses the soil cleanup already being completed in response to environmental studies performed between the years 2010-2015.

As a result of Staff's review of the mentioned study, and other information provided by the Company, Staff believes that the transaction results in no quantifiable change in PGE's ability to provide safe and reliable power to its customers.

Staff considered Columbia Riverkeeper's comments submitted on May 17, 2017, regarding the impact of the transaction on the public interest. In relevant brief summary, Columbia Riverkeeper requests that the Commission find the proposed sale is not in the public interest because it may increase "crude-by-rail" traffic and crude oil export.

Jim Lichatowich filed comments regarding UP 349 on June 5, 2017. Like Columbia Riverkeeper, Mr. Lichatowich expressed concern over the expansion of CPBR. He summarily stated that the public has yet to be able to weigh in on the potential increase of oil-by-rail, specifically of Bakken crude oil through populated areas. He requests that the Commission delay the approval of the sale until such time as the POSH can hold public hearings that address the long term plan for the site.

Miles Johnson, a representative of Columbia Riverkeeper, contacted Staff via email on June 7, 2017. In his email, Mr. Johnson provided copies of reports discussing the potential of expanded operations at CPBR and the implications. Staff has attached a copy of the email and articles to this report.

Staff responds as follows. First, Staff agrees that the transactions may result in an increase to the amount of oil-by-rail shipped along the Columbia River and crude oil being exported. Staff also agrees that the implications of such an increase to rail traffic carrying crude oil may have unintended consequences, the worst being a train derailment or oil spill. These are serious concerns.

However, even though Columbia Riverkeeper and Mr. Lichatowich's concerns are not without merit, Staff must observe that the Commission does not have oversight or authority over rail traffic in Oregon. As such, the post-sale rail traffic concerns raised by [redacted] **[END CONFIDENTIAL]**

PGE notes in its Application that it will not be held responsible for any environmental damage that does not come from the direct result of its own operations. The material CPBR is planning to store at the site is substantially different from the oil PGE utilizes for Beaver. This will allow PGE to easily identify the responsible party in the case of contamination. Thus, PGE will continue to be responsible only for the environmental damage that it causes. A report which was provided in response to a Staff information request also discusses the soil cleanup already being completed in response to environmental studies performed between the years 2010-2015.

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However, even though Columbia Riverkeeper, Mr. Lichatowich's and Mr. Johnson's concerns are not without merit, Staff must observe that the Commission does not have oversight or authority over rail traffic in Oregon. As such, the post-sale rail traffic concerns raised by Columbia Riverkeeper and Mr. Lichatowich are not part of the "public interest" calculus employed by the Commission. Instead, the Commission's focus is to obtain adequate service for ratepayers at fair and reasonable rates while also balancing the interests of the utility's investors. *See* ORS 756.040. Consistent with this scope of Commission authority, Staff could not identify an unaccounted-for quantifiable risk to PGE or an impact to its customers as a result of the transaction itself. The transaction itself accounts for and mitigates the impact to PGE's operations, and it will not impede on PGE's customers receiving safe and reliable power.

*Records Availability, Audit Provisions, and Reporting Requirements*
Staff notes that the Commission retains the ability to review all property sales of the Companies through general rate case filings. Staff's recommended conditions provide for documentation of this property sale. The Company has reviewed this memo and has no objections or concerns. Other than Riverkeeper and Mr. Lichatowich, Staff is not aware of objections from any other party.

Conclusion

Based on the review of this application, Staff concludes:

1. The Agreement did not contain any unusual or restrictive terms or conditions;
2. The transfer pricing and allocation of gain is fair and reasonable;
3. The transaction is in the public interest; and
4. Necessary records are available.

## PROPOSED COMMISSION MOTION:

Approve PGE's application to buy and sell certain storage tanks with Columbia Pacific Bio Refinery subject to Staff's recommended conditions.

**From:** Miles Johnson [mailto:miles@columbiariverkeeper.org]
**Sent:** Wednesday, June 07, 2017 10:17 AM
**To:** GIBBENS Scott
**Cc:** HARDIE Lisa D.; BLOOM Stephen; DECKER Megan; ruchi.sadhir@oregon.gov; lotr@critfc.org
**Subject:** Re: Crude oil storage expansion at Port Westward -- PUC Docket No. UP 349

Mr. Gibbens,

I'm writing to ensure that you, and the Commissioners, have seen some of the recent reporting about what's at stake in the PUC's upcoming decision on the PGE-Global tank sale:

http://www.sightline.org/2017/06/07/another-columbia-river-oil-trains-proposal/

http://www.opb.org/news/article/sale-of-storage-tanks-raises-concerns-about-an-oil-terminal-in-oregon/

I also wanted to point out that, according to pages 8 and 9 of the supplemental information filed by PGE on May 18, completion of the tank sale agreement between PGE and Global will result in Global being allowed to construct 72 new rail unloading stations at Port Westward (for reference, the massive Tesoro-Savage oil-by-rail terminal proposed in Vancouver would have 90 unloading stations).

The upshot of this deal between PGE and Global, should PUC approve, would be to allow Global to become a major crude-by-rail distribution hub with minimal public oversight and involvement.

Riverkeeper looks forward to discussing these issues with the Commissioners in Salem on June 13th.

Thank you, Miles Johnson

**Miles Johnson** | Clean Water Attorney | Columbia Riverkeeper | 111 3rd St. Hood River, OR 97031 | 541.490.0487 direct; 541.387.3030 office



On Wed, May 17, 2017 at 3:02 PM, Miles Johnson <miles@columbiariverkeeper.org> wrote:
Mr. Gibbens,

Attached please find Columbia Riverkeeper's comments on PUC Docket No. UP 349. Columbia Riverkeeper is deeply concerned by the proposed action, which would result in Global Partners

LP greatly expanding its crude oil or ethanol storage capacity at the Port Westward ethanol- and oil-by-rail terminal.

Thank you for your attention to this important matter,
Miles Johnson

**Miles Johnson** | Clean Water Attorney | Columbia Riverkeeper | 111 3rd St. Hood River, OR 97031 | 541.490.0487 direct; 541.387.3030 office
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# ANOTHER COLUMBIA RIVER OIL TRAINS PROPOSAL

## And a chance for the public to stop it.

Author: **Eric de Place**
(@Eric_deP) on June 7, 2017 at 6:25 am

This article is part of the series The Northwest's Pipeline on Rails

Northwest communities have been knocking down oil train development proposals as fast as they can spring up. In the last two years alone the region's opposition movement has, by various means, spiked projects all around western Washington: once in Vancouver, once in Anacortes, and three times in Hoquiam. One big proposal is still under review in Vancouver, but the odds of its approval are shrinking.

Stymied at every turn, there's reason to believe the industry is now setting its sights on Port Westward, a small industrial park in rural northwest Oregon on the Columbia River. Those tracking the region's fossil fuel export controversies may recall that Port Westward is the site of two failed coal export schemes, as well as an active proposal to build a huge petrochemical plant. It's the same place where an energy company called Global Partners runs trains loaded with ethanol to a terminal for loading onto marine vessels.

Up until January 2016, Global Partners was moving crude oil by rail to the site—initially in gross violation of its state permits—but as oil prices tanked and markets shifted, the firm switched to ethanol. Now, the company is angling to substantially expand its holdings at Port Westward, and it looks very much like an attempt to become a big player in oil-by-rail. Global Partners is on the verge of striking a deal with Portland General Electric (a utility that owns a neighboring power plant) to acquire 1.2 million gallons of storage tank capacity, a pipeline connecting those tanks to the Port Westward dock, and permission to expand its on-site rail infrastructure.

The site is already badly polluted with serious oil contamination of the soil and groundwater. A 2012 peer-reviewed paper published in 2012 found that Chinook salmon nearby were contaminated enough by polycyclic aromatic hydrocarbons, which are derived from petroleum products, to harm their immune systems and reproductive abilities.

If approved by state regulators, the transaction would position Global Partners as the Northwest's dominant oil train operator. The site is already permitted to received up to 120,000 barrels per day by rail, far more than any of the Puget Sound refineries that are allowed to handle oil trains. It's the equivalent of roughly 12 loaded trains per week, all of which would travel through the Columbia River Gorge—the site of a catastrophic oil train explosion in June 2016—as far as Portland before transferring

The Oregon Public Utility Commission is weighing approval of the project. It can deny approval of the sale if regulators deem it not in the public interest. The agency is holding a **public hearing on the project in Salem the morning of June 13**. The good folks at Columbia Riverkeeper have details about the hearing and more information about the project.

*Thanks to Alyse Nelson for research assistance.*



Tagged in: Columbia River, Global Partners, Oil Trains, Port Westward, Salmon

**Previous article in series:**

« Trains Moved Over 140,000 Barrels of Oil Daily through Washington This Winter

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# Sale Of Storage Tanks Raises Concerns About An Oil Terminal In Oregon

by **Cassandra Profita** (/contributor/cassandra-profita/) Follow OPB/EarthFix | May 23, 2017 5:45 p.m. | Updated: May 24, 2017 9:02 a.m.

A proposal by Portland General Electric to sell nine oil storage tanks on the lower Columbia River has raised concerns about a potential oil-by-rail terminal in Oregon.

PGE is proposing to sell its old oil storage tanks to the fuel distributor Global Partners LP, which runs an ethanol facility at Port Westward near Clatskanie. The company has used the existing rail line and dock to ship crude oil from the facility in the past, and the additional tanks would add more than a million barrels of storage capacity, according to documents.

When oil prices dropped, the company stopped shipping crude oil from the facility, (http://www.opb.org/news/article/low-oil-prices-hurting-northwest-oil-terminals/) which was originally built to be a biorefinery, and switched to ethanol.

Miles Johnson with the environmental group Columbia RiverKeeper said with that much storage capacity, the rail line and existing dock, the company could operate an oil terminal about half the size of the facility proposed by Tesoro Savage in Vancouver, Washington.

"To us this is a pretty clear signal they think crude oil prices could increase again," he said. "And if they did, Global Partners would be sitting on a fully permitted oil terminal they could just put into operation without the type of review that a major oil terminal like the one in Vancouver has been receiving."

The company already has the air quality permit (http://www.opb.org/news/article/local-concerns-and-a-new-permit-for-oregons-larges/) needed to operate an oil terminal, he noted.

He and other opponents of oil-by-rail terminals point to the risks of dangerous derailments and fires like the one that happened in Mosier last year.

The storage tank sale needs approval from the Oregon Public Utility Commission. Columbia Riverkeeper is asking the commission to deny the sale because shipping crude oil by rail and by barge is dangerous for people and the environment and not in the public interest.

A call to Global Partners was not immediately returned.

PGE spokesman Steve Corson said the utility had originally built the tanks to store oil as a backup fuel source for a gas-fired power plant.

But the plant has never needed that much oil as a backup fuel supply, Corson said. The utility is required to consider the value of the assets to its ratepayers in deciding what to do with them.

"They're an asset the ratepayers have paid for, and they're an asset we don't need anymore," he said. "If we leave them there they'll need to be maintained. Decommissioning them or taking them out would cost money rather than a sale that would offer ratepayers economic advantage."

oil-by-rail (/tag/oil-by-rail/)

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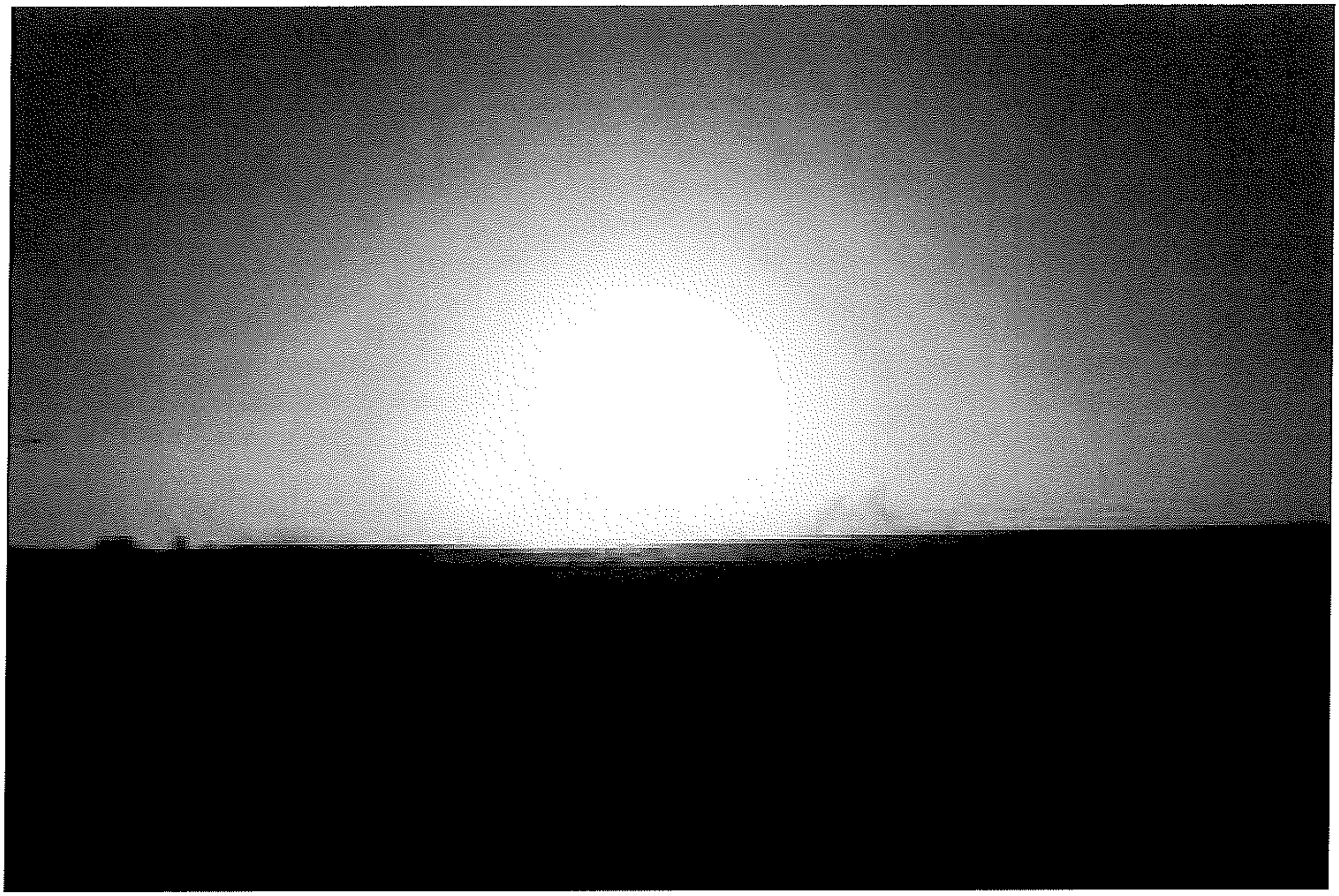

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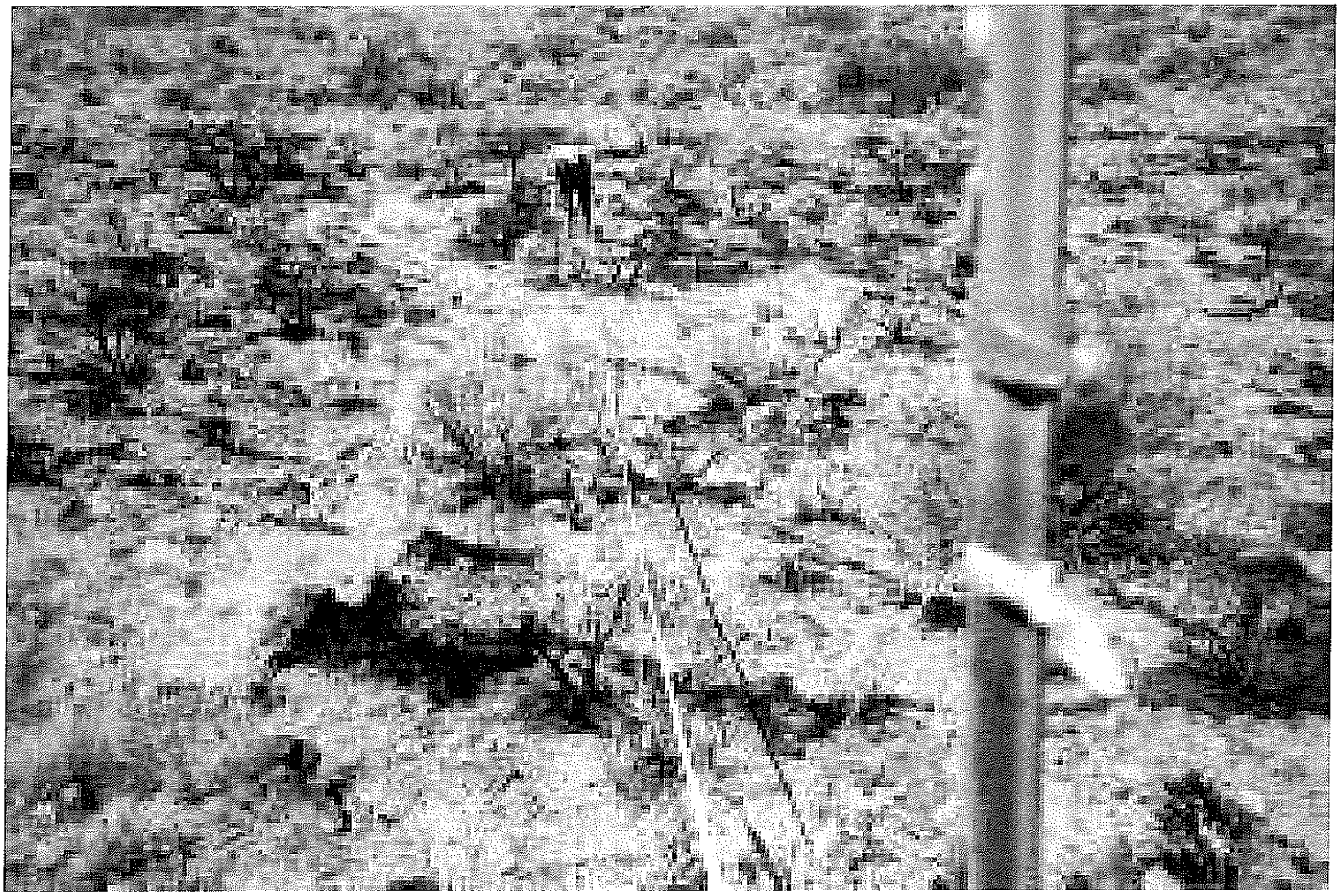

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