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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP 211

In the Matter of	)	
	)	ORDER
PACIFICORP	)	
	)	
Application for Authority to Sell the	)	
Skookumchuck Hydroelectric Plant and for	)	
EWG determinations.	)	

**DISPOSITION: APPLICATION GRANTED; WITH CONDITIONS**

On February 11, 2004, the Public Utility Commission of Oregon (Commission) received an application from PacifiCorp, pursuant to ORS 757.480 and OAR 860-027-0025, requesting approval to sell its interest in a small hydroelectric generating facility and associated reservoir, the Skookumchuck Dam (Dam). PacifiCorp also requests the Commission to make the necessary determinations to qualify the Dam as an exempt wholesale generator (EWG) under section 32 of the Public Utility Holding Company Act of 1935.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on August 3, 2004, the Commission adopted Staff's recommendation to approve the sale of PacifiCorp's interest as proposed. Staff's recommendation is attached as Appendix A, and is incorporated by reference.

**OPINION**

Under ORS 757.480, an electric utility doing business in Oregon shall first obtain Commission approval for any transaction to sell, lease, assign or otherwise dispose of property.

OAR 860-027-0025 specifies the information regarding applications for authority to sell, lease, assign, mortgage, merge, consolidate or otherwise dispose of property. This application contains the necessary information.

There is no indication that the proposed sale will impair PacifiCorp's abilities to provide public utility service in Oregon. The Commission also finds the necessary determinations to qualify the Dam as an EWG.<sup>1</sup>

**ORDER**

IT IS ORDERED that

1. The application of PacifiCorp requesting approval to sell its interest in a small hydroelectric generating facility and associated reservoir, the Skookumchuck Dam, is granted, subject to the conditions described in Appendix A
2. The generating plant should qualify as an exempt wholesale generator.

Made, entered and effective \_\_\_\_\_.

BY THE COMMISSION:

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**Becky L. Beier**  
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

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<sup>1</sup> The jurisdictional commission must make a determination that, allowing the facility to become an EWG will: (1) benefit consumers; (2) be in the public interest; and (3) not violate state law.

ITEM NO. CA2

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: August 3, 2004**

**REGULAR** \_\_\_\_\_ **CONSENT**   X   **EFFECTIVE DATE** \_\_\_\_\_ **N/A**

**DATE:** July 19, 2004

**TO:** Lee Sparling through Marc Hellman and Bryan Conway

**FROM:** Thomas D. Morgan

**SUBJECT:** PACIFICORP: (Docket No. UP 211) Application for Authorization to Sell Skookumchuck Hydroelectric Plant and for EWG Determination.

**STAFF RECOMMENDATION:**

The Commission should approve the property sale by PacifiCorp subject to the following conditions:

1. PacifiCorp shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the sale of the property. All records surrounding the property and the transaction shall be maintained, for no less than 10 years after the transaction date, at PacifiCorp's offices in Portland, to facilitate any future audit.
2. A complete accounting shall be provided to Staff within 45 days after the consummation of the transaction. Such accounting will include full details on all transaction costs.
3. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
4. PacifiCorp shall notify the Commission in advance of any substantive changes to the transaction. Any material change shall be submitted in an application for a supplemental order in this docket.
5. Neither accounting losses nor transaction costs shall be borne by ratepayers.
6. Allocation of Gain - If any after-tax gain is recognized on the sale, PacifiCorp shall record the after-tax net gain of the sale in a balancing account established by

Commission Order No. 01-787 (UE 116) for later refund or recovery to customers in a supplemental tariff. The Company has agreed with Staff that it will not pass any after-tax losses to customers as a result of this transaction; no losses are anticipated.

**DISCUSSION:**

PacifiCorp filed an application on February 11, 2004, pursuant to ORS 757.480 and OAR 860-027-0025. The Company requests authority to sell its interest in a small hydroelectric generating facility and associated reservoir, the Skookumchuck Dam (Project or Dam). The Company also requests the Commission to make the necessary determinations to qualify the Project as an exempt wholesale generator (EWG) under Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA). The Project is not used and useful utility property.

Background

The Project is an earth-fill dam that was originally constructed in 1973 as a water storage facility to provide cooling water to the adjacent Centralia Steam Plant and Coal Mine. In 1991, PacifiCorp added a small one-megawatt generating plant. The plant has been producing about 3,000 megawatt-hours annually. All the power generated from the facility has been sold to Puget Sound Energy, Inc., which owns and operates the adjacent transmission and distribution system and into which the Project is interconnected.

The Project is located in Thurston County, Washington, approximately 12 miles northeast of Centralia. PacifiCorp is co-owner of the Project with the Public Utility District No. 1 of Snohomish County, Puget Sound Energy, Inc., City of Tacoma, Avista Corporation, City of Seattle, and Public Utility District No. 1 of Grays Harbor County (Owners).

Sale Details

The Owners propose to sell and transfer the Project to 2677588 Washington LLC, a limited liability Company (Washington LLC) formed by TECWA Power, Inc., which is owned by TransAlta USA Inc. (TransAlta). The Sale and Purchase Agreement was signed on November 25, 2003, and is through an option to buy that was exercised by TransAlta.

The transaction includes the land underlying and adjacent to the reservoir created by the dam, which is approximately 1,653 acres. The transaction would also include the powerhouse, water rights, land, easements, and other assets including certain fixtures, contracts and other rights. The aggregate sales price will be \$7.57 million, including adjustment to the September 30, 2003 net book value to the Closing Date. PacifiCorp's percentage share of the sale is 47.5 percent.

TransAlta purchased the adjacent generation plant in 2000 and TransAlta now owns the coal mine, through its subsidiary, TECWA Fuel, Inc., and owns the Centralia generating plant through TransAlta Centralia Generation LLC. The 2000 transaction was authorized by Commission Order 00-112.

PacifiCorp represents that the property was not sold to TransAlta when it acquired the nearby Centralia Generation Plant in 2000, because TransAlta did not desire to enter into an ownership position at that time, and it had signed an agreement providing it the necessary water supply for its generation activities. Subsequent to the sale, TransAlta added natural gas capacity to its facility. At the same time, PacifiCorp negotiated with the Flood Control Committee, a local agency that desired to purchase the Dam for its civil purpose. Because of the book value, the Committee was not able to fund the total amount.

Therefore, TransAlta created Washington LLC to take possession of the assets in a manner that will save PacifiCorp taxes. The transaction is structured, at the request of TransAlta, to allow TransAlta to avoid certain Washington State Sales Tax on the Assets. This is the same structure as the Centralia Plant Sale in which the Buyer received a Washington State Department of Revenue Ruling that confirmed this position. The deal is structured such that the Owners will transfer the assets that make up the Skookumchuck Dam and related facilities into a Washington LLC owned by the Owners. The TransAlta affiliate will then purchase the membership interests of the LLC and become the sole member.

#### Property Economics

The property is not economic and the ongoing operational and capital maintenance costs are expected to be greater than the projected price for electricity on the open market. The Project's bus-bar cost in fiscal year 2003 (12-month period ending March 31, 2003) was about \$255 per MWh.

The Company indicates that the sale of the property would decrease customers' long-term costs, although it did not create firm estimates surrounding the potential to increase the generating capacity. Based on the Company's representations, the ongoing costs and risks of

continued ownership appear to outweigh the potential value of the property. Because the property provides water to the Centralia Plant, increased hydroelectric generation capacity may interfere with the operations of TransAlta's facility. This transaction would provide TransAlta with greater control of the water flow to its generating facility, potentially facilitating greater electrical output.

#### FERC Licensing Exemption

In accordance with 16 U.S.C. §2705(d), which allows exemptions for facilities less than 5MW, the Federal Energy Regulatory Commission (FERC) has exempted the Project from licensing as a hydroelectric facility. It continues to be subject to dam safety regulations, as promulgated by FERC. In order for FERC to process the application granting the Project EWG status, it requires the jurisdictional commissions to make the three determinations required by section 32 of PUHCA. These are that, allowing the facility to become an EWG will: (1) benefit consumers, (2) be in the public interest, and (3) not violate state law.

Based on Staff's review of the record in this case, a finding of the property as an "Eligible Facility" under EWG guidelines appears reasonable. This is because selling the energy from Skookumchuck into the wholesale market could increase supply and the number of competitors in the wholesale market, thereby benefiting the public. Further, Staff is unaware of any state laws that would preclude such action.

#### Future Use of the Property

Washington LLC, a direct subsidiary of TransAlta, will initially continue operating the Project to provide cooling water to the Centralia Power Plant. The hydroelectric plant may be run as an EWG or as a qualifying facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). It is expected that another transaction granting Dam rights to the Lewis County Flood Control Committee, creating a Special Purpose District, will occur, with Washington LLC retaining necessary water rights. Although the final disposition has not been solidified, this transaction is expected to provide some tax benefits to TransAlta, as it is expected to sell the residual Dam and associated rights for a price substantially less than it is buying the property from PacifiCorp. It is expected that the generation plant may be decommissioned at that time.

Because the costs to continue the investment would be non-economic, and because customers are not likely to suffer from any loss on the sale, divestiture would benefit ratepayers and would not be contrary to the public interest. Because TransAlta would have greater control of needed water rights, its overall output may be enhanced, and its operational costs may be

lower, providing greater overall public benefits. Additionally, because the ultimate ownership will likely be to the Flood Control Committee, further public benefits may be expected.

**PROPOSED COMMISSION MOTION:**

The requested property sale of the Skookumchuck Dam by PacifiCorp be approved and a determination is made that the generating plant should qualify as an exempt wholesale generator.

UP 211 - PacifiCorp Authority to Sell Skookumchuck Plant