

ORDER NO. 12 108

ENTERED MAR 27 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 279

In the Matter of

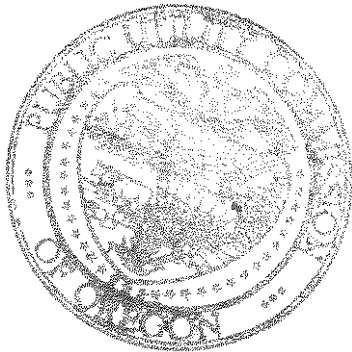
PACIFICORP, dba PACIFIC POWER,

Application requesting approval of
conveyance of Powerdale Property.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its Public Meeting on March 27, 2012, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter, attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Becky L. Beier", is written over a horizontal line.

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 Court of Appeals in compliance with ORS 183.480 through 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 27, 2012**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: March 8, 2012

TO: Public Utility Commission

FROM: Brian Bahr ^{BB}
_{MB}

THROUGH: Bryan Conway and Marc Hellman ^A

SUBJECT: PACIFICORP: (Docket No. UP 279) Requests approval of conveyance of property associated with the Powerdale Hydroelectric Project Decommissioning Settlement Agreement to Hood River County, Columbia Land Trust, and the State of Oregon, acting by and through its Department of Fish and Wildlife.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission (Commission) approve the application by PacifiCorp dba Pacific Power (PacifiCorp or Company) to convey to Hood River County, Columbia Land Trust, and the State of Oregon, acting by and through its Department of Fish and Wildlife (Grantees), certain property (the Property) associated with the Powerdale Hydroelectric Project (Project) Decommissioning Settlement Agreement (Settlement Agreement), subject to the following conditions:

1. PacifiCorp shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to the transfer of properties.
2. PacifiCorp 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 or 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.

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3. In any public statements regarding the conveyance of the Property, PacifiCorp shall note that the Property is being conveyed by PacifiCorp and its customers, and PacifiCorp will make good faith efforts to have other parties also acknowledge the role of PacifiCorp's customers.

And subject to the following conditions applicable subsequent to the date of transaction:¹

4. The Commission may review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternative form of regulation.
5. PacifiCorp shall submit the final journal entry recording the transaction to the Commission with the appropriate semiannual report.

DISCUSSION:

This application was filed on January 24, 2012, pursuant to ORS 757.480 and OAR 860-027-0025.

PacifiCorp owns 404.77 acres of land in Hood River, Oregon, which supported the Powerdale Hydroelectric Project prior to its decommissioning.² The Project (FERC License No. 2659) was a run-of-river project, and consisted of a concrete diversion dam and a water conveyance system, powerhouse, and a turbine generator along with appurtenant facilities. The Property also contains various improvements, including a caretaker house, a powerhouse, an outhouse and a flowline. The average annual generation of the Project was approximately 40,333,000 kWh.³

In 1995, the Company applied to the Federal Energy Regulatory Commission (FERC) for relicensing of the Project. The FERC issued an Environmental Assessment in 1998 detailing steps PacifiCorp must take to mitigate the effects of the Project to support relicensing. PacifiCorp determined that such steps would not be cost effective for the Company or its customers and subsequently requested a surrender order. PacifiCorp

¹ The sanctions for violating a condition subsequent to the sale will be determined by the Commission; however, such sanctions will not include revocation of the Commission's approval of the sale.

² The Company's application incorrectly states the amount of land as 395.24 acres; this was corrected in the Company's response to Staff Data Request No. 4.

³ See Section I on page 1 of FERC's Environmental Assessment included in the Company's response to Staff Data Request No. 10.

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also began negotiating with nine other interested parties to the relicensing proceeding to develop interim operating and decommissioning plans.

The parties reached a settlement and filed the Settlement Agreement with the FERC pursuant to FERC Rule 602, 18 C.F.R. 385.602. The FERC approved the Settlement Agreement and issued a surrender order in 2005. The plan originally called for the decommissioning of the Project to begin in April 2010, but following severe damages caused by flooding in 2006, the Company and FERC worked quickly to accelerate the decommissioning. The decommissioning of the Project was approved by the Commission by Order No. 07-375, entered on August 23, 2007, as part of Docket No. UM 1298.⁴

As part of the Settlement Agreement, PacifiCorp must convey title to the 404.77 acres of land to the Grantees for conservation and public recreation purposes. PacifiCorp will reserve from the Property non-exclusive, perpetual easements to enable PacifiCorp and its successor and assignees to access, operate, maintain and upgrade its associated electrical assets and transmission and distribution facilities.

PacifiCorp and the Grantees are in the process of finalizing the land conveyance agreements (Conveyance Agreements). The Company will enter into an agreement with each Grantee, with identical terms and conditions, except that the identification and description of each parcel conveyed will be specific to each Grantee. The Company does not anticipate material changes to the terms and conditions, particularly the value and specifications of the property.⁵

According to the Company's application, the Grantees will place a conservation easement on the Property to achieve the following: (i) protect existing fish and wildlife habitat while allowing for habitat restoration and enhancement; (ii) retain existing recreational uses while allowing improvement commensurate with those uses, provided such uses and improvement are consistent with protection, restoration and enhancement of fish and wildlife habitat; (iii) expand recreational and educational opportunities, provided such uses are consistent with protection, restoration and enhancement of fish and wildlife habitat; and (iv) acknowledge and preserve the right of Confederated Tribes of the Warm Springs Reservation of Oregon tribal members to exercise their Treaty-secured off-reservation fishing rights on the Property by utilizing the land to access usual and accustomed fishing sites.

⁴ Commission Order No. 07-375 addresses only PacifiCorp's application for an accounting order regarding the retirement of the Powerdale Project, not of the Decommissioning Settlement Agreement.

⁵ See the Company's response to Staff Data Request No. 9.

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In analyzing this application, Staff made 18 detailed Data Requests, discussed the application several times via phone call with Company representatives, and met with Company representatives to review certain analyses performed by the Company. Staff notes that this application seeks approval only of the conveyance of the Property, not approval of the decommissioning of the Project or of the Settlement Agreement between PacifiCorp and the other parties of the FERC relicensing proceeding.

Issues

Staff investigated the following issues:

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

Scope and Terms of the Asset Purchase Agreement

As stated in the Discussion section of this memo, the Company is requesting approval of only the conveyance of the Property to Grantees, not of the Settlement Agreement. Staff has thoroughly reviewed draft copies of the Conveyance Agreements to be used to convey the Property to the Grantees, and concludes that there do not appear to be any unusual or restrictive terms to the agreement.

The Property, described more specifically in the Conveyance Agreement, will be conveyed to the Grantees "AS IS without any representation or warranty as to the condition of title..." As previously stated, PacifiCorp will retain a perpetual easement. Taxes on the real estate will be prorated between the Company and the Grantees for the current tax year, and most transfer and closing costs will be borne by the Grantees.⁶ Though still in draft status, PacifiCorp represents that no material changes are expected to be made to the Conveyance Agreement.⁷ However, as stated in Condition 2 of this memo, PacifiCorp shall notify the Commission in advance of any substantive changes.

Allocation of Gain

There will be no proceeds or gains or losses on this transaction, nor any cash exchanged.⁸ The net book value (cost) of the Property included in FERC account 101, Electric Plant in Service, is \$54,124. This amount will be deducted from the Property sub-account and transferred to a utility easement sub-account. These easements are being retained by the Company in order that it may operate its transmission and

⁶ See page 4 of Land Conveyance Agreement, included by Company as Attachment A of application.

⁷ See the Company's response to Staff Data Request No. 9.

⁸ See PacifiCorp's response to Staff Data Request No. 6.

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distribution lines and associated appurtenances. Because both property and easement sub-accounts are within the same FERC account (Electric Plant in Service), the transfer results in a net change to the account of zero.

FERC Account	Asset	Debit	Credit
101 – Electric Plant in Service	Powerdale Property		\$54,124
101 – Electric Plant in Service	Powerdale Easement	\$54,124	
101 – Electric Plant in Service	NET CHANGE	\$0	

This accounting treatment of transferring the recorded value of the Property being conveyed to the easements being received is in accordance with Financial Accounting Standards Board Accounting Standards Codification 845, Nonmonetary Transactions (ASC 845). ASC 845 states that a nonmonetary exchange should be recorded at book value rather than market value if the transaction lacks commercial substance. A transaction lacks commercial substance if there is no significant anticipated change in cash flows. As the Project has already been decommissioned and is not generating revenues, there would be no anticipated future change in cash flows for the transaction.⁹

Because the net amount of electric plant in service remains unchanged, the annual property tax expense will not change as a result of the conveyance.¹⁰ In a telephone conversation on March 7, 2012, the Company verbally confirmed that the net value of the easements would still be subject to taxes in accordance with applicable tax laws concerning real property.

The total annual Oregon Revenue Requirement of the Powerdale Property, including the effect of taxes, both before and after the conveyance is \$1,847.¹¹ Staff affirms it is appropriate that the value of the easements remain in rates as the easements are essential for PacifiCorp to access and operate its transmission and distribution lines on the Property. This treatment is consistent with the Commission's "used and useful" standard used to determine if property should be included in ratebase.¹²

⁹ The Company's internal market value estimate of the easements is \$55,821. However, only the book value of \$54,124 is relevant according to the applicable accounting guidance. See PacifiCorp's responses to Staff Data Requests No. 6 and No. 11.

¹⁰ See the Company's response to Staff Data Request No. 7.

¹¹ See Company's response to Staff Data Request No. 8.

¹² See ORS 757.355.

Public Interest Compliance

Pursuant to ORS 757.480, the Commission customarily applies a “no harm” standard when reviewing property sale applications. As is noted already, the Commission is requested to approve only the conveyance of the Property, not the decommissioning of the Project or the Settlement Agreement. However, in order to determine whether the conveyance is in the interest of the public, Staff analyzed whether the conveyance was a necessity of the Settlement Agreement, and whether the Settlement Agreement is in the best interest of customers.

According to the Company’s response to Staff Data Request No. 3, the Settlement Agreement, and representations made by Company representatives during Staff’s meeting with them, the primary interest of several parties to the Settlement Agreement was the protection and conservation of the Property. The Settlement Agreement resulted from a lengthy, complicated negotiation process intended to resolve all issues associated with the decommissioning of the Powerdale Project. In order for all parties to agree to the Settlement Agreement, the conveyance was a necessity.

During the meeting with Company representatives, Staff also reviewed the economic analyses performed by the Company for the purpose of determining whether the decommissioning of the Project was in the best interest of customers. The model used assumptions and inputs such as price curves for replacement power, estimated cost of decommissioning the Project, estimated cost of making the improvements necessary for relicensing, and approved rates of return to calculate the net present value of both options (relicensing or decommissioning) for the Powerdale Project. Following the model’s calculations, the decommissioning alternative was the least-cost option for customers.

Staff also notes that a condition of the Settlement Agreement is that the Property is to be conveyed “as is.” This was a key factor in the Company agreeing to convey the land rather than sell it, as the cost of removing and decommissioning the currently existing structures would be greater than the value of the Property itself. Finally, in addition to not being harmed financially, the public also will benefit from the environmental conservation efforts of the Grantees and public recreation areas created. PacifiCorp has stated that it is amenable to recognizing in all public statements regarding the conveyance that the Property is being transferred by PacifiCorp and its customers, thus recognizing customers’ role and allowing them to share in the potential positive publicity generated by the conveyance.¹³

¹³ See the Company’s response to Staff Data Request No. 17.

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Because the conveyance of the Property was a necessity of the decommissioning Settlement Agreement, and because decommissioning was the least-cost alternative to relicensing the Project, Staff concludes the conveyance causes no harm to customers and is consistent with the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Order Conditions Numbers 1 through 5, listed in Staff's recommendations, afford the Commission necessary examination of PacifiCorp's books and records concerning the conveyance. PacifiCorp has reviewed this memo and has no objections or concerns.

PROPOSED COMMISSION MOTION:

PacifiCorp's application be approved subject to the five conditions stated in Staff's recommendations in this memorandum.

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