

ORDER NO. 13 006

ENTERED JAN 15 2013

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP 282

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

ORDER

Application for Approval to Sell Its Property.

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its Public Meeting on January 15, 2013, 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 Court of Appeals in compliance with ORS 183.480 through 183.484.

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 15, 2013

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

DATE: January 3, 2013

TO: Public Utility Commission

FROM: <sup>GM</sup>Geoffrey Moore and Linnea Wittekind <sup>LW</sup>

THROUGH: <sup>JE</sup>Jason Eisdorfer, <sup>ME</sup>Maury Galbraith, and <sup>A</sup>Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UP 282) Application for the sale of certain properties located in Portland, Oregon, to Tri-County Metropolitan Transportation District of Oregon.

**STAFF RECOMMENDATION:**

The Public Utility Commission (Commission) should approve the application by Portland General Electric (PGE or Company) to sell its Portland Service Center Corporate Shop Buildings, along with two parking areas to the north and south of the main building area, and a portion of the PGE Service Center property, to Tri-County Metropolitan Transportation District of Oregon (Tri-Met), subject to the following conditions:

1. PGE shall provide the commission access to all books of account, as well as documentation, data, and records that pertain to the sale of these properties.
2. PGE shall notify the Commission in advance of any substantive change 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 docket.
3. The gain on this sale shall be booked in to the property sales deferred account for later rate treatment, in accordance with Dockets UE 115 and UE 116, with 100 percent of the gain going to customers.
4. Any gain realized from cost to cure funds will be transferred to the property sales account and treated as a gain, subject to condition three.

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5. The final journal entry recording the transaction will be submitted to the Commission within 60 days of closing and the Company shall include the transaction with the appropriate semi-annual report.

#### DISCUSSION:

PGE filed this application on October 17, 2012, pursuant to ORS 757.480 and OAR 860-027-0025.

PGE is requesting approval from the Commission for an Order authorizing the sale of approximately 1.79 acres of its property located in Portland, Oregon, on SE 17<sup>th</sup> Avenue. The proposed sale is for the Portland Service Center Corporate Shop Buildings (Merritt building and Newton Building), along with the two parking areas to the north and south of the main building area, located at 3845 SE 17<sup>th</sup> Avenue (West Site) and portions of the Portland Service Center property located at 3700 SE 17<sup>th</sup> Avenue (East Site).

Tri-Met wishes to obtain the property for the construction of its light rail project and has the authority to acquire the property through its eminent domain purchase authority pursuant to ORS 465.255(3)(a)(B), 42 U.S.C. 9607(b)(3), and 42 U.S.C. 9601(35)(A). PGE granted a Permit of Entry to Tri-Met, effective September 14, 2012, in order to allow Tri-Met to stay on schedule for the Portland-Milwaukie Light Rail Transit Project. The Permit of Entry is effective until the close of the sale and does not constitute a sale agreement between the two parties. As part of this Permit of Entry, Tri-Met was allowed to demolish the Merritt and Newton Buildings which appears to be an unusual arrangement, but necessary given Tri-Met's timetable and the Commission has not approved the sale of the property from PGE to Tri-Met. An environmental assessment was conducted and any materials representing an environmental risk were removed and disposed of in accordance with Oregon Department of Environmental Quality (DEQ) and Environmental Protection Agency (EPA) regulations. All demolition and clean-up costs are the responsibility of Tri-Met.

According to PGE's application for sale, "the property is no longer needed for utility purposes and is no longer necessary or useful in the performance of PGE's duties to the public." Rather than engage in litigation, PGE and Tri-Met have reached an agreement to sell the property to Tri-Met and to offer a Temporary Construction Easement granting Tri-Met access to the portions of the East Site property retained by PGE. Tri-Met contracted an independent appraisal by Colliers International on August 26, 2011. At the time, PGE concurred with the appraisal and the Federal Transit Administration (FTA) concurred with the sale agreement amount. Due to the specific uses and zoning of the property, Staff finds the appraisal to still be reasonable given its

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age. Since PGE's initial filing, Staff and PGE have met to discuss changes to the sale price due to further negotiations with Tri-Met and evolving conditions. Staff encourages PGE to continue to negotiate in order to increase the gain to rate payers and cover all costs to cure. Any new sale price will be subject to FTA concurrence.

#### 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

The property at the West Site consists of approximately 1.30 acres containing the Portland Service Center Corporate Shop Buildings and two parking lots to the north and south of the main building area. The property at the East Site consists of approximately 0.49 acres containing yard storage, a fueling station, and a small portion of the entry area for the Portland Service Center Building. PGE is also granting temporary construction easements consisting of 0.11 acres on the East Site.

There does not appear to be any unusual or restrictive terms to the agreement. An appraisal of the property was conducted by Colliers International Valuation & Advisory Services for Tri-Met. The appraisal is dated August 26, 2011, and lists an "AS-IS" property sales market value of \$2,547,384 and cost to cure of \$1,125,075, for a total of \$3,672,459.<sup>1</sup> An appraisal by Epic Land Solutions, dated March 23, 2011, lists a market value of \$227,057 for the furniture, fixtures, machinery, and equipment (FFM&E) located at the West Site. The FFM&E proceeds are included in the property sales value above.

#### Allocation of Gain

Based upon appraisals provided, for which the sale price is based, the allocation of the total sale price of at least \$3,934,154 is as follows:

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<sup>1</sup> As noted earlier, PGE is engaged in ongoing negotiations that have resulted in a higher cost to cure estimate than that of the appraisal.

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**Table 1 – Sale Price Allocation**

CATEGORY:	ITEM:	PRICE:	PERCENT OF SALE PRICE:
<b>Property Sales</b>	Real Estate	\$2,530,497.00	64.75%
	Temporary Easements	\$16,887.00	
	<b>Total:</b>	<b>\$2,547,384.00</b>	
<b>Cost to Cure</b>	East Site Damages	\$84,000.00	35.25%
	Main Yard Site Work	\$433,160.00	
	ADA Ramp Replacement	\$129,135.00	
	Fueling Station Relocation	\$452,500.00	
	NW Storage Lot	\$47,295.00	
	<b>Subtotal:</b>	<b>\$1,146,090.00</b>	
	10% Contingency	\$114,609.00	
	10% Profit	\$126,070.00	
	<b>Total:</b>	<b>\$1,386,769.00</b>	
<b>TOTAL SALE PRICE</b>		<b>\$3,934,153.00<sup>2</sup></b>	<b>100.00%</b>

Information provided in attachment to DR13 response.

The current net book value as of November 14, 2012, is \$474,548 (\$194,001 land plus \$448,111 structures and improvements less \$167,564 accumulated depreciation). The realized net gain after taxes on the sale is no less than \$2,072,836 (\$2,547,384 minimum property sale price less \$474,548 net book value less \$100,000 selling expenses). The remainder of at least \$1,386,769 is the cost to cure damages to property PGE is retaining and will be used for repairs, replacement, and relocation.

#### Public Interest Compliance

PGE is selling the property "AS-IS" to Tri-Met. However, PGE remains liable for costs of environmental remediation for "pre-existing conditions" identified in the Baseline Environmental Assessment (BEA), should environmental remediation ever be required by any Governmental Authority or a third party through a judicial process. Three environmental site assessments were conducted in order to establish the BEA. The BEA did not identify any environmental conditions that required immediate action or remediation. According to PGE and the terms of the sale agreement, after the close of the sale, PGE will no longer be responsible for any environmental issues not identified as pre-existing conditions in the BEA. By engaging in this sale agreement, rather than condemnation and litigation, PGE will no longer be financially liable for environmental

<sup>2</sup> The one dollar variance between the two listed sale prices is due to rounding.

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issues associated with the property, other than those identified as pre-existing conditions in the BEA. Accordingly, PGE should have no need to recover costs related to such issues from rate payers. Staff commends PGE for securing this necessary contract commitment. Staff's recommendation to approve the proposed transaction is based in part on the limitation on PGE's liability for environmental costs. This contract sales provision helps ensure that the sale meets the "no harm" property sales standard.

Staff anticipates that if PGE is ultimately held responsible for costs for environmental issues that are not pre-existing conditions in the BEA, PGE will have to show why ratepayers should not be protected from such costs.

According to PGE, the property is no longer needed for utility purposes and no longer useful in performing PGE's duties to the public. PGE will retain property at the East Site that will be used for similar service as the property being sold. PGE will also use the cost to cure proceeds from the sale for repairs, replacement, and relocation.

The sale conforms to the "no harm" standard used by the Commission and will result in a gain of no less than \$2,072,836 being returned to customers through a credit to the property sales deferred account.

#### Records Availability, Audit Provisions, and Reporting Requirements

Condition Numbers 1 and 2 and Number 5 listed in the Staff recommendations afford the necessary Commission examination of PGE's books and records concerning the sale. Condition Number 1 and Condition Numbers 3 through 5 are post-sale conditions.

#### **PROPOSED COMMISSION MOTION:**

PGE's application for the sale of the Portland Service Center Corporate Shop Buildings, along with the two parking areas to the north and south of the main building area, and portions of the Portland Service Center property, be approved subject to the five conditions stated in Staff's recommendations in this memorandum.

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