

ORDER NO. 14 037

ENTERED FEB 04 2014

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 296

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Notice of Disposition of a 250,000 Gallon
Water Tank to Black Hills Power, Inc.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on February 4, 2014, 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: February 4, 2014**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: January 14, 2014

TO: Public Utility Commission

FROM: Marianne Gardner *MEG*

THROUGH: *Jason Mc* Jason Eisdorfer, *MA G/MEC* Maury Galbraith, and *A* Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UP 296) Notice of Disposition of a 250,000 Gallon Water Tank to Black Hills Power, Inc.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve the sale of the 250,000 gallon water tank located at PacifiCorp's Wyodak plant in Gillette, Wyoming.

DISCUSSION:

Preliminary Issue: application of ORS 757.480 and past Staff practice

The property for sale is a water tank (Tank) that was sold by PacifiCorp dba Pacific Power (Company) to Black Hills on April 22, 2013, for the sum of \$100,000. The sales transaction is consistent with the terms of a contract PacifiCorp entered into with Black Hills roughly ten years ago as discussed later in this memorandum. PacifiCorp views the \$100,000 value set forth in ORS 757.480(1)(a)¹ as an Oregon-allocated amount. As such, PacifiCorp filed its notice of the sale on June 20, 2013, in accordance with

¹See ORS 757.480(1)(a). Approval needed prior to disposal, mortgage or encumbrance of certain operative utility property of consolidation with another public utility; exceptions. (1) A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

- (a) Except as provided in subsection (5) of this section, sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility.

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ORS 757.480(2).² To clarify, if the sale is viewed on an Oregon-allocated basis, ORS 757.480(2) applies rather than the Commission pre-approval of sales of utility property requirement set forth in ORS 757.480(1)(a). In considering PacifiCorp's present filing, Staff counsel advises that the \$100,000 value set forth in ORS 757.480 is a company total, not an Oregon-allocated, value. As such, under ORS 757.480(1)(a), PacifiCorp should have filed its notice prior to execution of the sale. However, in reviewing its past practices, Staff acknowledges that it has not used a consistent approach in applying ORS 757.480. For some utilities, such as Idaho Power, Staff used a total company \$100,000 threshold value. For PacifiCorp, it appears that Staff interpreted the \$100,000 value as an Oregon-allocated amount and so PacifiCorp's current filing under ORS 757.480(2), rather than ORS 757.480(1)(a), was consistent with that practice.

One other issue under ORS 757.480(1)(a) also requires explanation. The statute requires Commission pre-approval of a sale of utility property if the value of the property is in excess of \$100,000. As a standard Staff practice, utility-proposed property sales prices are reviewed to determine if the sales prices reasonably reflect market value. As discussed later in this memorandum, Staff's review shows that the estimated value of the Tank is in excess of \$100,000.

In conclusion, because Staff counsel advises the value of the utility property is viewed on total company, non-Oregon allocated basis, and because the market value of the Tank is in excess of \$100,000, Staff finds that the PacifiCorp application should be reviewed pursuant to ORS 757.480(1)(a).³

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

²See ORS 757.480(2). A public utility that sells, leases, assigns or otherwise disposes of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$25,000 but less than \$100,000, shall notify the commission of the sale within 60 days following the date of the sale.

³ PacifiCorp filed a petition for declaratory ruling regarding ORS 757.480 on January 21, 2014. PacifiCorp in their petition requests the Commission find that PacifiCorp may use the Oregon-allocated value of property to determine whether a filing is required under ORS 757.480.

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Scope and Terms of the Asset Purchase Agreement

PacifiCorp owns and operates the Wyodak generation plant (Wyodak plant) in Gillette, Wyoming, which is adjacent to the Wygen generation plant (Wygen plant) owned by Black Hills Power, Inc. (Black Hills). In August 2002, PacifiCorp entered into the Demineralized Water Supply Agreement (the Water Agreement) with Black Hills to deliver demineralized water to the Wygen plant. Pursuant to the Water Agreement, PacifiCorp built a 250,000 gallon water storage tank at the Wyodak plant. According to the Water Agreement, PacifiCorp would provide demineralized water to the Wygen plant for ten years. At the end of the ten-year term, the agreement would expire and ownership of the Tank would transfer to Black Hills for the sum of \$100,000.

According to PacifiCorp, the purpose of the contract was to provide emergency demineralized water to Black Hills, which owns 20 percent of the Wyodak Plant. Concurrently, the Tank supplied PacifiCorp's Wyodak plant with demineralized water. In addition, PacifiCorp viewed this as an opportunity to build and strengthen the relationship between the two companies. Therefore, the contract was designed to cover the overhead and variable costs associated with Tank maintenance, plus make and provide water to Black Hills. Profit was not factored into the contract.

The total construction cost of the Tank was \$200,617, which PacifiCorp included in its regulated rate base. The revenue stream received by PacifiCorp from Black Hills during the 10 years of the contract totaled \$1.897 million and was recorded as an offset to regulated operational expense and reflected in rates.

After the expiration of the Water Agreement in August 2012, a Quitclaim Bill of Sale was executed on April 22, 2013. In accordance with the terms of the Water Agreement, PacifiCorp transferred ownership of the Tank along with those water conveyance facilities constructed or installed in support of the operation and maintenance of the Tank to Black Hills for the transfer price of \$100,000, as set in the Water Agreement.

Allocation of Gain

At the time of transfer, according to PacifiCorp's accounting records, salvage value of the asset equaled the transfer price of \$100,000; therefore no book gain or loss was recognized.

In its filed notice, the Company had erroneously stated that the Oregon-allocated share of \$25,930 would be placed in the Company's property sales balancing account. Staff confirmed with PacifiCorp that this was a misstatement; there was no gain or loss to allocate, and the asset and related accumulated depreciation had been removed from rate base. The \$25,930 Oregon-allocated amount referenced in the Company's notice represents the Oregon portion of the transfer price.

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PacifiCorp did not seek a professional valuation of the market value at the time of disposition. Subsequently, in response to Staff's data request, PacifiCorp obtained the following verbal estimates from local contractors:

1. Selling price ~ \$25,000 (Buyer bears disassembly, relocation and reconstruction costs),
2. Site purchased ~ \$125,000-\$150,000 (On-site in good condition), and
3. Newly constructed ~ \$170,000 (Tank only).

Based on these estimates, Staff views the sale of the Tank as representing value somewhat in excess of \$100,000. However, Staff is not proposing making a finding of a gain as noted in the next section.

Public Interest Compliance

According to PacifiCorp, the transfer is in the public interest because the Tank no longer serves an operational need for PacifiCorp. Additionally, the transfer to Black Hills releases PacifiCorp from the responsibility of operating and maintaining the Tank. Based on Staff's review of the information provided by PacifiCorp, Staff agrees that customers are not harmed by this transaction. In the context of the transaction, Staff views the totality of the contract for which one aspect was the transfer of the water tank. Other aspects of the transaction include the sale of water for which PacifiCorp received in excess of \$1 million and such revenues were included in the utility overall cost of providing service. When viewing the water revenues as well as the sale of the Tank as compared to the original cost of the Tank itself, Staff concludes that the sale of the Tank is in the public interest, including the provision of the contract to convey the tank at a price of \$100,000 as reasonable.

Records Availability, Audit Provisions, and Reporting Requirements

Staff notes that the Commission retains the ability to review all property sales of the Company through a general rate case.

PROPOSED COMMISSION MOTION:

PacifiCorp's notice of the sale of property located in Gillette, Wyoming, filed by the Company under ORS 757.480(2), should be treated as an application for approval of sale under ORS 757.480(1)(a), and it should be approved.

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