ORDER NO. 99-730

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 165/UP 170

In the Matter of the Application of Portland General Electric Company for Approval to Sell Its 2.5 Percent Ownership Share of the Centralia Steam Electric Generating Plant to Avista Corporation. (UP 165).	)	
	)	ORDER
In the Matter of the Application of Portland General Electric Company for Approval to Sell Its 2.5 Percent Ownership Share of the Centralia Steam Electric Generating Plant to TECWA Corporation. (UP 170).	)	

DISPOSITION: SALE TO AVISTA APPROVED; SALE TO TECWA DENIED

BACKGROUND

On June 3, 1999, Portland General Electric Company (PGE) filed an application with the Commission in docket UP 165 seeking approval for the sale of its 2.5 percent interest in the Centralia Steam Electric Generating Plant and transmission facilities (Centralia) to Avista Corporation (Avista).[1] On August 19, 1999, PGE submitted another application for approval to sell its interest in Centralia. The second application docketed as UP 170 seeks authorization to sell PGE's interest to TECWA Power, Inc. (TECWA). PGE supports the sale to Avista in UP 165. If the Commission does not approve that sale, PGE requests the Commission approve the sale to TECWA.

On July 26, 1999, the Citizens' Utility Board (CUB) filed a notice of its intervention in the proceeding as a matter of right. ORS 774.180. On July 27, 1999, the Industrial Customers of Northwest Utilities (ICNU) filed a petition to intervene. The ICNU petition was granted.

[1] October 20, 1999, PGE submitted an amendment to the UP 165 application.

On September 14, 1999, PGE, the Commission Staff (Staff), ICNU, and CUB filed a stipulation on procedural matters, including an agreement that UP 165 and UP 170 should be consolidated.[2] The stipulation recites Staff's recommendation that the Commission approve the sale to Avista unless the Commission finds that the sale to TECWA better meets the statutory public interest test. The parties agreed to keep the Commission informed regarding developments in the two sales through November 24, 1999.[3] Finally, the stipulation asked the Commission to issue an order by November 30, 1999. On September 23, 1999, Thomas G. Barkin, Administrative Law Judge, approved the schedule in the stipulation.

THE APPLICATIONS

PGE’s proposed sale is part of a larger agreement by the eight co-owners[4] of Centralia to sell the generating asset. According to PGE, a significant factor precipitating the sale was a decision in 1996 by the Southwest Washington Pollution Control Authority (SWPCA). SWPCA ordered Centralia’s owners to remove 90 percent of the sulfur emissions from the plant by the end of 2002. Compliance with this order requires the installation of scrubbers and low-Nox burners. The order is currently on appeal in King County, Washington. Because of the cost of compliance, the diverse ownership of the plant, and the appeal, the co-owners decided that a single owner emerging from an auction could deal most effectively with the legal and environmental issues facing the plant.

The co-owners put the plant and associated assets up for auction in October 1998. On May 10, 1999, the co-owners announced that TECWA won the bid, with an offer of $354/kw, or $11.3 million for PGE's share.

TECWA placed two important conditions on its offer. First, the co-owners must immediately begin installation of scrubbers. Second, the entire sale, including five state and FERC regulatory approvals of the sale and FERC grant of exempt wholesale generator status, must close by May 5, 2000.

PGE believes the TECWA purchase has considerable risk of not closing. PGE lists following as factors that create risks that the TECWA sale might not close:

1. There are eight sellers and 21 regulatory bodies, Boards, and Commissions that must approve the sale. Any seller or regulator could stop the sale. Appendix B shows each co-owner and the regulatory approvals each co-owner must obtain for TECWA to own 100 percent of the plant.

2. All approvals must be in place by May 5, 2000.

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[2] The stipulation is attached as Appendix A.
[3] The status report was filed November 24,1999.
[4] The Centralia co-owners (and ownership shares) are set forth in Appendix B.

3. TECWA may reconsider its decision and delay the closing until the contract expires. Conditions that could cause TECWA to reconsider are the high cost of coal at Centralia together with the high cost of building and operating a scrubber to meet the SWPCA requirement. Another factor is that TECWA is a Canadian buyer with limited experience in the United States with markets and regulations. With further experience, TECWA may determine that the sale is not viable.

4. The SWPCA order is on appeal in King County Superior Court and is expected to go to the Washington Court of Appeals. Reversal of the order could have significant effects on the economics of Centralia.

5. One of the co-owners may reconsider because it is dissatisfied with the treatment of the regulatory body approving the sale.

PGE provided no documentation or analysis to accompany its list of factors.

As described below, PGE has considerable potential liability if the TECWA sale does not close. To avoid the possible liability, PGE entered into its agreement with Avista. While TECWA is willing to pay PGE $11.3 million for the generating asset, Avista's offer is only $3.5 million, with an additional payment by Avista of $1.1 million, if the sale to TECWA closes. The Avista offer is contingent on Commission issuing an order approving the sale by November 30, 1999.[5]

PGE supports the UP 165 application as a prudent decision because of the significant costs that would accrue if the sale to TECWA does not close. In the event, the Commission does not approve the Avista sale, PGE asks the Commission to approve the sale to TECWA. In either sale, PGE also asks the Commission to approve amortization of any capital loss or gain associated with the sale over a period of five years.

Financial Impact

PGE has identified the financial implications of the various scenarios associated with a sale to either TECWA or Avista. The implications vary with the buyer of PGE's share, whether the TECWA sale closes, and whether Centralia continues to operate. PGE proposes a strategy that minimizes the risk of loss to the customers. If the plant is sold to Avista, capital losses paid by the customers could range from $0.136 million to $1.152 million. If the plant is sold to TECWA, customers could receive a capital gain of as much as $6.1 million or a capital loss as much as $12.1 million. PGE reasoned that the potential liabilities associated with ownership were too great to risk not selling its interest at all.

[5] Avista intends to resell PGE's interest to TECWA. Avista’s offer to PGE is not contingent on the other owners successfully completing their sales to TECWA. In fact, Avista is offering to purchase PGE's share and assume the risk of the TECWA sale successfully closing.

Scenario	Revenue Requirement Effect (in millions)	Capital Gain or Loss to PGE (in millions)
PGE sells to Avista		
• TECWA sale does not close	$0.105 decrease	$1.152 loss
• TECWA sale closes	$0.105 decrease	$0.136 loss
PGE sells to TECWA		
• TECWA sale closes	$0.105 decrease	$6.1 gain
• TECWA sale does not close and the plant continues to operate	$0.888 increase	$4.7 loss
• TECWA sale does not close and the plant is shut down	$0.105 decrease	$12.1 loss

Positions of the Parties

Commission Staff. Staff believes the Commission should choose the sale which best benefits the customers. Staff explains that the Commission should consider all available information to evaluate the risks of whether the TECWA sale will close compared to the opportunity for the larger gains in the sale to TECWA.

Staff sees no difference in the revenue requirement effects from approval of either UP 165 or UP 170, with the sale closing and Centralia removed from rate base. The sale results in an inconsequential revenue requirement reduction of $0.105 million.[6] The revenue requirement reduction (from removing the plant from rate base and purchasing replacement power) is the same because Staff separates the revenue requirement effect from the capital gains or loss effects.

Staff notes that PGE proposes no sharing of capital gains or losses with shareholders. As a result, with either sale, customers bear most of the risk while the company will receive its net book investment.[7]

Staff's analysis then focuses on the potential capital gains or losses under scenarios in which PGE sells to either TECWA or Avista. In Staff's view, the proposed sale to TECWA provides higher benefits to customers but it is more risky in the sense that the sale is uncertain. The proposed sale to Avista requires customers to pay for

[6] If PGE sells to TECWA, the sale does not close, and Centralia continues to operate, the revenue requirement increase is $0.888 million.
[7] Staff recommends that the Commission not follow the policy for sharing capital gains and losses set forth in *Application of PGE for Approval of the Customer Choice Plan*, Order No. 99-033 (UE 102). The proposed sale to TECWA occurred before the UE 102 order.

capital losses but avoids the potentially higher costs of continued ownership. Specifically, Staff weighs the likelihood of the more risky $6.1 million capital gain from a sale to TECWA against the likelihood of the less risky, and much smaller capital loss if PGE sells to Avista.

In Staff's view, the primary risk facing the TECWA sale is that the co-owners will not receive all the regulatory approvals necessary to close the sale. As noted, the eight co-owners must obtain 21 approvals from various regulatory and governing bodies. *See* Appendix B. The only approvals that PGE must obtain to sell its interest to Avista are from the Oregon Commission and the Federal Energy Regulatory Commission (FERC).

To assess the relative risk of granting one of the applications, Staff calculated a breakeven point at which the sale to Avista and the sale to TECWA produce equivalent benefits or losses to customers on an expected value basis. For the purposes of the analysis, Staff assumed the case where the losses to customers would be the greatest; that is, if the sales do not close and Centralia will not operate. According to Staff's analysis, if the probability of the proposed sale to TECWA closing is greater than 64 percent, then the customers are better off with the TECWA sale on an expected value basis.[8] If the probability is less than 64 percent, the customers are better off with a sale to Avista.[9]

Staff notes that the probability of the sale closing cannot be precisely calculated. The Commission will have to estimate the probability of the TECWA sale closing based on its experience and information that is available at the time the record closes. The stipulation between the parties provides that Staff may file reports up to November 24, 1999. The reports would contain information on the status of regulatory approvals.

Staff recommends that the Commission approve the sale to TECWA, because Staff can find no persuasive evidence in the record showing that the TECWA sale is unlikely to close. Staff acknowledges that the numerous owners and required approvals create some uncertainty, but notes that the co-owners have self-interest in consummating a deal that provides them with above-book value. Further, Staff states that PGE has not indicated any specific issue before a regulatory body that suggests that approval will not be forthcoming.

[8] *See* PGE's Responsive Brief at 3.

[9] In Staff's view, the point at which the customers will be better off with a sale to TECWA drops below 64 percent if the sale fails to close and Centralia continues to operate. Staff believes it more likely that the plant will continue to operate if the sale fails to close.

Citizens' Utility Board

CUB points out that PGE's application offers little or no guidance on why the various factors listed in the application might cause the TECWA sale to not close, nor does it describe the effect these factors may have on the likelihood that the sale would not close. CUB agrees with PGE and Staff that either option (sale to Avista or TECWA) has risks and unknowns.

CUB concludes that, while it is possible to assess the risks of the TECWA sale not closing, there is no clear preferred option. CUB does not believe that the number of sellers or the short approval times are significant factors. It believes that the sellers and regulatory bodies have an incentive to approve the sale in the form of an offer of an above-book value. Similarly, CUB dismisses the concern that TECWA will reconsider. TECWA would have to act in bad faith, and CUB believes that all indications are that TECWA continues to be enthusiastic about the sale. CUB is also unconcerned about an adverse court ruling in the SWPCA suit in King County. CUB believes that the parties contemplated this case as they negotiated the contract. While the economics of the sale may be affected by an adverse ruling, CUB does not believe that the suit threatens the sale.

CUB is concerned, however, that PacifiCorp has an application pending to sell its 47.5 percent share of Centralia. *Application of PacifiCorp for Approval of its Share of Centralia*, UP 168. PacifiCorp is proposing that shareholders keep 36 percent of the above-market proceeds of its share of the plant.[10] CUB notes that one of PacifiCorp's options is to back out of the sale if it does not receive the regulatory treatment that it is proposing. CUB states that this "possibility, however small," makes it difficult to choose from among the options in the PGE sale of Centralia.

CUB emphasizes that the Commission should apply public policy principles regarding the disposition of the gains or losses from the sale consistently between the PGE and PacifiCorp regarding their respective shares of Centralia.

DECISION

Applicable Law

PGE is an electric utility subject to the Commission's jurisdiction pursuant to ORS 757.005(1)(a) and 757.480. Centralia is a generating resource in PGE's rate base. As a result, PGE must obtain Commission approval to sell the facility to either Avista or TECWA. ORS 757.480.

[10] In contrast, PGE is proposing that the customers be responsible for the difference between the market value and book value. In other words, PGE proposes that customers absorb the entire cost if the plant sells for less than book value and keep the entire gain if the plant sells for more than book value.

Standard for Approval

OAR 860-027-0025(1)(L) requires PGE to show that the proposed sale of Centralia “will be consistent with the public interest.”

Staff interprets the phrase “consistent with the public interest” to imply a “no harm” standard in asset sale cases. Based on PGE's cost-benefit analysis, Staff concludes that the sale to either TECWA or Avista meets the standard. Staff asserts, however, that the Commission's authority to determine whether a particular sale is consistent with the public interest also authorizes it to determine which alternative proposal best meets the standard.

We agree with Staff that the no harm standard should apply in this case.

Decision

PGE, Staff, and CUB agreed, either implicitly or explicitly, that both sales are consistent with the public interest. We agree.

After reviewing all the information from the parties, we conclude that the sale to Avista should be approved. PGE has made clear that it desires to avoid the risk of the sale not closing by selling to Avista. PGE seeks to avoid any further investment in the plant and to avoid contingencies associated with the plant closing down.

Based on the information before us, we cannot conclude that we should override PGE's preferred option. First, PGE's decision appears to be a prudent business decision based on a reasonable assessment of the risks and rewards of the two sales. Second, none of the parties questioned the reasonableness of the sale price to Avista. Third, the record provides no clear choice as to which transaction would be better for the customers. Fourth, under either sale, the revenue requirement impact, including rate base effects, is of a minor magnitude. We agree that PGE should go forward with the sale to Avista.

We also wish to make clear that we are not approving any particular rate treatment of the gain or loss in this order. This filing is limited to PGE's application for approval of the sale. Ratemaking decisions must be left to rate cases under ORS 757.210 et seq. or proceedings authorized for that purpose under SB 1149.

ORDER

IT IS ORDERED that:

1. Portland General Electric Company's application to sell its ownership interest in the Centralia Generating facility to Avista Corporation is approved.

2. Portland General Electric Company's application to sell its ownership interest in the Centralia Generating facility to TECWA Power, Inc., is denied.

3. The rate base effects of the sale to Avista Corporation shall be addressed in PGE's next material rate change. The amount of the capital gain or loss should be included in a separate balancing account for later disposition by the Commission.

4. The stipulation set forth in Appendix A is adopted.

Made, entered, and effective ______________________________.

Ron Eachus Chairman	**Roger Hamilton** Commissioner
	Joan H. Smith Commissioner

A party may request rehearing or reconsideration of this order pursuant to 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 of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070. A party may appeal this order to a court pursuant to ORS 756.580.

APPENDIX B

Ownership Shares and Approvals Necessary for TECWA to Own 100 Percent of Centralia

Co-owner	Percentage Ownership	Regulatory Bodies Which Must Approve the Sale
PacifiCorp	47.5	State Commissions for Washington, Oregon, California, Utah, Idaho, and Wyoming; Federal Energy Regulatory Commission (FERC), and Federal Trade Commission (FTC).
Avista	15.0	State Commissions for Washington and Idaho, FERC, and FTC.
Snohomish County PUD	8.0	Snohomish County PUD Board of Commissioners
City of Seattle	8.0	City Council
City of Tacoma	8.0	City Board of Public Utilities and Tacoma City Council
Puget Sound Energy	7.0	State Commission for Washington, FERC, and FTC
Grays Harbor PUD	4.0	Commission of Grays Harbor County PUD
PGE	2.5	State Commission for Oregon and FERC