

ORDER NO. 99-752

ENTERED DEC 12 1999

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 955

[Related Docket: UP 168]

In the Matter of the Request by PacifiCorp for Exempt)
Wholesale Generator Determinations.) ORDER

**DISPOSITION: STAFF RECOMMENDATION ADOPTED;
REQUESTED DETERMINATIONS ISSUED**

In Docket No. UP 168, PacifiCorp seeks approval of the sale of its interest in the Centralia generating plant to TECWA. TECWA is also purchasing all other shares of the Centralia generating facilities as part of the same transaction, and, upon closing, TECWA plans to operate all the generation as an exempt wholesale generator (EWG).

EWG is a Federal Energy Regulatory Commission (FERC) classification created by the Energy Policy Act of 1992 to help promote wholesale generation competition. An EWG is exempt from the provisions of the Public Utilities Holding Company Act of 1935. Congress, in providing this significant exemption, hoped to open the wholesale generation market to many more participants.

Federal statute and regulation require that this Commission must make certain determinations regarding PacifiCorp's share of the Centralia plant so that TECWA can file a FERC application to become an EWG. The determinations are "that allowing the facility [PacifiCorp's share of the Centralia plant] to be an eligible facility [i.e., to be owned by an EWG]: (1) Will benefit consumers, (2) Is in the public interest, and (3) Does not violate State law." Section 4 of PacifiCorp's UP 168 application.

PacifiCorp and TECWA ask the Commission to make the required determinations before the hearing and decision in UP 168, to make closing the transaction easier. PacifiCorp has stated in its motion that proceeding on the EWG determination before the hearing will not prejudice Staff or the Commission. If the Commission approves the UP 168 application, then TECWA will already have its EWG application underway. If the Commission does not approve the UP 168 application, TECWA's EWG application will be moot because it cannot operate PacifiCorp's share of Centralia as an EWG if TECWA does not own the facility.

PacifiCorp maintains that its application meets the three federal requirements and that the Commission should issue the determinations. The first two requirements are that allowing the plant to be a wholesale facility operated by an EWG (1) will benefit consumers and (2) is in the public interest. PacifiCorp states that if the Commission approves the proposed sale of PacifiCorp's share of the Centralia generating facility, it will no longer be in PacifiCorp's rate base. The plant output will then be in the hands of a new supplier, increasing supply competition in the region and thereby benefiting Oregon consumers. Moreover, because it will no longer be in PacifiCorp rate base, if the plant were ever to become noncompetitive, PacifiCorp's customers would not have to pay for it. For all these reasons, allowing TECWA to operate the plant as an EWG will benefit Oregon consumers and be in the public interest.

The third requirement is that allowing the plant to be a wholesale facility operated by an EWG does not violate State law. PacifiCorp contends that no Oregon laws address the issues raised by this request, and none prohibit or limit the authority of TECWA to operate the plant as a wholesale facility. Therefore, allowing an EWG to operate Centralia as a wholesale facility does not violate State law.

Commission Staff reviewed PacifiCorp's filing and recommended that the Commission issue an order making the determinations required by federal law and include a statement, set out below, to FERC about the EWG issue. At its November 30, 1999, public meeting, the Commission adopted Staff's recommendation, including the following paragraph:

While the Commission has not yet had the opportunity to determine whether the sale of Centralia should be approved under ORS 757.480, the Commission makes the following determinations pursuant to Federal law. The Commission determines that, upon the closing of the sale of the Centralia facilities (including Commission approval of the sale pursuant to ORS 757.480) from PacifiCorp to the buyer of the facilities, allowing the facility [PacifiCorp's share of the Centralia generating facility] to be an eligible facility [i.e., to be owned by an EWG]: (1) will benefit consumers; (2) is in the public interest, and (3) does not violate State law. The Commission consents to these facilities being considered eligible for FERC's determination of exempt wholesale generator status of the buyer at the completion of PacifiCorp's sale to the buyer (including Commission approval of the sale pursuant to ORS 757.480).

ORDER

IT IS ORDERED that the Commission makes the following determinations:

1. Upon closing the sale of PacifiCorp's Centralia facilities, including Commission approval of the sale under ORS 757.480, allowing PacifiCorp's share of the Centralia plant to be a facility owned by an EWG
 - A. will benefit consumers;
 - B. is in the public interest, and
 - C. does not violate state law.

2. The Commission consents to PacifiCorp's share of the Centralia plant being considered eligible for FERC's determination of exempt wholesale generator status of the buyer at completion (including Commission approval) of PacifiCorp's sale to the buyer.

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 in 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(2). A party may appeal this order to a court pursuant to applicable law.

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