

ORDER NO. 00-152

ENTERED MAR 16 2000

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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).)

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).)

**ORDER ON
RECONSIDERATION**

DISPOSITION: APPLICATION DENIED

INTRODUCTION

On January 18, 2000, the Industrial Customers of Northwest Utilities (ICNU) filed an application for reconsideration of Public Utility Commission (Commission) Order No. 99-730 (November 29, 1999).¹ That order approves Portland General Electric's (PGE) application to sell its 2.5 percent ownership interest in the Centralia Steam Electric Generating Plant (Centralia) to Avista Corporation. On February 2, 2000, PGE filed a response. Staff filed a response on February 3, 2000.

¹ OAR 860-014-0095(3) provides: The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

ICNU asks the Commission to reconsider the portion of the order that adopts a standard for approval of the application. In the order, the Commission interpreted the phrase “will be consistent with the public interest”² to imply a “no harm” standard for approval. *See* Order No. 99-730 at 7. The Commission limited its conclusion on the standard to this particular case.

DISCUSSION

ICNU’s Grounds for Reconsideration

ICNU does not oppose the Commission's approval of PGE's application to sell its interest in Centralia. However, it does challenge the portion of the Commission's order basing its decision on a no harm test. ICNU first argues that an interpretation of the public interest standard is unnecessary and inappropriate in this proceeding. ICNU notes that, in the past, the Commission has avoided interpreting the public interest standard as requiring either a showing of “no harm” or “net benefits.” Further, ICNU asserts that a statement of the standard is unnecessary because the transaction would meet either test.

Second, ICNU claims that adopting a no harm standard may have unintended consequences for other types of regulatory actions that are also covered by a public interest standard. ICNU notes that a public interest standard also appears in the statutes governing Commission review of mergers under ORS 757.511(3), applications for transfer of allocated territory under ORS 759.560, and transition credits or charges during electric restructuring under ORS 757.607(2). ICNU cautions that parties may argue that the no harm test applied in Order No. 99-730 must be applied in these other types of actions.

Third, ICNU claims that the approval of the proposed sale in this proceeding should be based on the net benefits standard. ICNU points out that the Commission has broad flexibility to choose an appropriate standard to review sales of property. It notes that the statute governing the transaction, ORS 757.480, does not mention a standard. Furthermore, ICNU believes the Commission's administrative rule does not set a standard. It merely states the information that the utility must provide to show the transaction will be in the public interest.³ Consequently, ICNU claims that the Commission can adopt any reasonable standard, including the net benefits test, and is not held by what may be implied by the phrase “consistent with the public interest.”

² OAR 860-027-025 provides, in part:

(1) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information, which should, to the extent possible, be furnished for each person, firm, or corporation involved.

(I) The facts relied upon by applicants to show that the proposed sale, lease, assignment, or consolidation of facilities, mortgage or encumbrance of property, or acquisition of stock, bonds, or property of another utility *will be consistent with the public interest; (Emphasis added.)*

³ See note 2.

ICNU notes that, in the past, the Commission has applied the public interest standard in a flexible manner that reflects the unique circumstances of each case. ICNU expresses concern that under a strict no harm standard, the ratepayers may not receive the same protection from risk and may not enjoy the same allocation of benefits that the Commission has historically required.

ICNU also points out that under federal law, for PGE to obtain EWG status for Centralia,⁴ the Commission must make a specific determination that customers will benefit from the removal of the plant from rate base.⁵ ICNU argues that the requirement that the transaction “will benefit customers” implies that a net benefits standard should also be applied in this case.

Finally, ICNU states that if the Commission decides to depart from the case-by-case approach, it should vacate the discussion of the standard and initiate a rulemaking to determine the appropriate interpretation of public interest. This would allow all interested parties, not just those involved in this proceeding, an opportunity to comment and assist the Commission in making this determination.

Responses from PGE and Staff

PGE asks the Commission to deny ICNU’s application for reconsideration. It argues that if the Commission believes it necessary to clarify the standard, a more appropriate procedure would be through a rulemaking to further define the public interest standard set forth in the Commission's rules. PGE notes that a rulemaking proceeding is a more appropriate forum for making decisions on policy issues that may affect future transactions.

PGE also argues that the application should be dismissed because it does not meet the criteria for reconsideration set forth in the Commission's rules.⁶ PGE states that the application does not specify how the requested change in the order is essential to the decision. PGE notes that ICNU does not oppose the Commission's decision to approve the sale. Rather, ICNU is only concerned about how language in the order might affect other cases.

Staff responds that the Commission was correct in applying the no harm standard in this proceeding. Staff notes that the Commission has used the no harm

⁴ A grant of exempt wholesale generator (EWG) status allows the new owner to remove a generating asset from rate base and to sell the power on the open market. *See* Order No. 99-534.

⁵ Energy Policy Act of 1992, 15 USC § 79z-5a(c) (1992), provides:

In order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law....

⁶ See note 1.

standard in numerous past decisions.⁷ Reviewing these cases, Staff found that the Commission has interpreted the public interest standard not to generally require a positive public benefit but merely a showing that no public detriment will result. This determination is made on a case-by-case basis. Staff also found, however, that where customers face potential harm from a proposed transaction, the customers may be entitled to benefits that compensate them for that potential harm.

Conclusion

The Commission agrees with PGE that ICNU has not met the standard for an application for reconsideration. ICNU has not challenged a provision of the order that is essential to the decision. As ICNU admits, the proposed transaction meets both the no harm and net benefits tests. There is no reason for us to reevaluate the standard applied in this proceeding.

ORDER

IT IS ORDERED that the application for reconsideration filed by the Industrial Customers of Northwest Utilities is denied.

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

⁷ PacifiCorp/Utah Power & Light merger under ORS 757.480, Order No. 88-767 (UF 4000) at 9. Idaho Power, UP 82, Order No. 93-405; PacifiCorp and PGE, UP 90, Order No. 93-1421; PacifiCorp and PGE, UP 91, Order No. 93-1422; and PacifiCorp, UP 92, Order No. 93-1423.

00-152

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.