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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UA 82/83

UP 174/175

In the Matter of the Applications of	)	
PORTLAND GENERAL ELECTRIC	)	
COMPANY (PGE), COLUMBIA RIVER	)	
PEOPLE'S UTILITY DISTRICT (CRPUD),	)	ORDER
and CLATSKANIE PEOPLE'S UTILITY	)	
DISTRICT (CPUD) for Approval of the	)	
Transfer of Allocated Service Territory and	)	
the Sale of Electric Utility Assets.	)	

**DISPOSITION: APPLICATION FOR TRANSFER OF SERVICE  
TERRITORY AND CONTRACT OF SALE OF  
ASSETS APPROVED**

On February 24, 2000, Portland General Electric (PGE), Columbia River People's Utility District (CRPUD) and Clatskanie People's Utility District (CPUD), jointly filed an application to transfer PGE's allocated service territory (docket UA 82/83). Notice was properly given by publication. On March 24, 2000, Mr. James Huffman filed a request for a hearing in this matter.

On April 10, 2000, PGE, CRPUD, and CPUD filed a joint application for approval of the sale of electric utility assets (docket UP 174/175). All four dockets were consolidated for processing and hearing.

A pre-hearing conference took place on April 17, 2000 before Administrative Law Judge (ALJ) Kathryn A. Logan. The parties entered appearances, along with Mr. Huffman who appeared and represented himself. During the conference, the parties and Mr. Huffman agreed upon a schedule which allowed Mr. Huffman an opportunity to present his list of issues and which gave the parties an opportunity to respond to those issues prior to hearing.

On April 26, 2000, West Oregon Electric Coop (WOEC) filed a petition to intervene. The petition was granted, but WOEC was limited to addressing issues that may arise regarding its settlement with PGE. On April 26, 2000, PGE filed a petition for

a protective order, which was issued by the Commission as Protective Order No. 00-229 on May 1, 2000.

Mr. Huffman filed his list of issues on April 27, 2000. The parties moved for dismissal of the hearings request. They claimed Mr. Huffman lacked standing to request a hearing and that the issues presented were outside the jurisdiction of the Commission. Further, the reply claimed a hearing was not required for the Commission to approve the applications. Mr. Huffman responded on May 9, 2000.

On May 22, 2000, ALJ Logan ruled that only issues related to statutory criteria were relevant and that issues regarding the contract sale price were limited to the adequacy of the sale price. The ruling further stated that the Commission does not have jurisdiction over matters regarding current employees of PGE. The ruling continued by stating that Mr. Huffman, as a CRPUD customer, could request a hearing, but to be granted status as an intervenor he must file his petition, along with his testimony, no later than Friday, May 26, 2000.

Mr. Huffman's petition to intervene, in conjunction with a motion to dismiss WOEC's intervention, arrived on May 26, 2000, along with his initial intervenor testimony.

Mr. Huffman was granted intervenor status on June 13, 2000. However, as Mr. Huffman's intervenor testimony filing did not comply with Commission rules (OAR 860-014-060), it would be considered a brief, and Mr. Huffman from precluded from testifying in this matter. In addition, ALJ Logan denied Mr. Huffman's motion to dismiss intervenor status to WOEC as limited intervenor status had previously been granted.

A hearing, presided over by ALJ Logan, was held on June 19, 2000, at 9:30 a.m. in Salem, Oregon. At the conclusion of the hearing, the parties and Mr. Huffman agreed to filed initial briefs by June 30, 2000, and reply briefs by July 10, 2000.

On June 23, 2000, Paul Graham, Assistant Attorney General and counsel to Commission staff (Staff), notified the ALJ by letter that Staff did not intend to file an initial brief but reserved its rights to file a reply brief.

Timely initial briefs were filed by Mr. Huffman, PGE, and jointly by CRPUD and CPUD. Timely reply briefs were filed by Staff, PGE, and jointly by CRPUD and CPUD.

Based on the preponderance of evidence in the record, the Commission makes the following:

## **FINDINGS OF FACT**

### **Background**

PGE and WOEC initially reached an agreement regarding the transfer of territory and sale of assets that are the subject of this case. They filed for Commission approval on July 12, 1999.

Residents in the affected areas were hesitant to be served by WOEC. In September of 1999, annexation elections were held in Rainier, Columbia City, St. Helens, and Scappoose. Voters in Rainier approved annexation by CPUD by a 90% margin. Voters in Columbia City, St. Helens, and Scappoose approved annexation by CRPUD by a similarly significant margin.

On October 8, 1999, Administrative Law Judge Ruth Crowley granted Staff's motion to hold the application for approval of the sale between PGE and WOEC in abeyance and asked Staff to convene a settlement conference between PGE, WOEC, CRPUD, and CPUD. These conferences resulted in the matter currently before us.

### **This case**

Both CPUD and CRPUD have the resources to provide the necessary service to the PGE customers,

The settlement agreement reached in the conference is an alternative to a full condemnation proceeding. If the Commission did not approve the settlement, PGE would face a condemnation proceeding or seek to sell the property to WOEC under the original sale agreement. Given these options, the settlement agreement appeared to provide the most benefit to existing ratepayers and is in the public interest. The settlement agreement appears to be fair to PGE's remaining customers, avoids costly litigation, and reflects the desires of most customers in the four cities.

The service territories that PGE now wishes to transfer to CRPUD and CPUD are described in [Appendix A].

After having an opportunity to review the parties' application in this matter, Jack P. Breen III of the Commission Staff offered testimony recommending approval of the transfer of service territory and sale of assets subject to conditions on PGE. Those conditions are as follows:

- Establish an interest bearing account to return the revenue requirement equivalent of the net after-tax gain from the sale in rates to its remaining ratepayers over a one-year period beginning October 1, 2000. The current estimate of the revenue requirement equivalent of the gain is

\$4,057,042.<sup>1</sup> PGE must establish the account based on the actual information available after the consummation of the transaction.

- Establish an interest bearing deferred account to recover the \$2,045,000 payments to a trust for the benefit of WOEC in rates from its remaining ratepayers over a one-year period beginning October 1, 2000.
- Apply IRS Section 1033 to postpone recognition of the gain.
- Not include the payment to the trust for benefit of WOEC customers in the test period of any general rate case filing.
- In addition, PGE will flow through excess deferred taxes and post Economic Recovery Tax Act investment tax credits to shareholders.

James J. Piro, field reply testimony in this matter in which he stated he had reviewed Staff's testimony and agreed and supported it.

### **Applicable Law**

As per ORS 757.480, PGE shall not sell any portion of its assets of a value in excess of \$100,000 without first obtaining Commission approval.

ORS 758.410 provides that any person providing utility service may contract with another person providing a similar utility service for the purpose of allocating service territory; and that the contracting parties may contract for the sale, exchange, transfer, or lease of equipment or facilities located within the subject territory. Both the allocation and sale are subject to Commission approval. The Commission must review and approve the application for transfer of certain allocated service territory from PGE to CRPUD and CPUD, and review and approve the sale of electric utility assets from PGE to CRPUD and CPUD.

The review by the Commission is set forth in ORS 758.415:

[T]he commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract *will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation . . . while providing adequate and reasonable service to all territories and customers affected thereby.* (Emphasis added.)

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<sup>1</sup> Includes:

4,252,452	Book Gain on Sale of Property
(270,572)	Reversal of Prior Deferred Taxes
<u>2,059,994</u>	Deferred Tax on Gain (resulting in savings on reinvestment)
2,463,030	Net Income (Net Gain)
4,057,042	Grossed-up Net Gain

## OPINION

In his argument, Mr. Huffman contends the payment WOEC will receive upon approval of the transfer of service territory and sale of assets is illegal. In arguing that the payment to WOEC is illegal, Mr. Huffman does not offer any citation or reference to demonstrate its illegality. Although the legality of the contract is always an issue for the Commission, the issue of pricing is limited to issues of the adequacy of the sale price. Order No. 86-1012; UA 11/UP 19 (October 1, 1986) at page 3.

Testimony in this docket revealed that it would be unexpected for the market price of the service territory and assets to exceed the \$10 million sale price agreed upon by the parties. Staff/1, Breen/6 at lines 12–15. This testimony was uncontroverted.

Mr. Huffman further argued that an antitrust violation occurred during the negotiations. The Commission does not have proper jurisdiction to consider the arguments under the Sherman Antitrust Act or similar Oregon laws. Moreover, the Commission will not review the negotiations that took place in reaching the sale price agreed upon in this matter.

Mr. Huffman also asserts that the settlement agreement contains illegal tax structuring by WOEC. It is customary practice for both businesses and individuals to structure payment terms in consideration of tax consequences. Mr. Huffman has not presented evidence demonstrating that the agreement will violate any tax codes of this country, or any tax laws or regulations of the State of Oregon. Moreover, the Commission does not have proper jurisdiction to consider arguments under the tax code of this country or the State of Oregon.

In addition to the above mentioned arguments, Mr. Huffman argued in his brief that a non-profit corporation has no right to claim lost profits on an investment due to its non-profit status. This argument is again outside the jurisdiction of the Commission.

In his brief, Mr. Huffman discussed CRPUD's methodology for financing this transaction. Again, this argument is outside the jurisdiction of the Commission. The issues properly before the Commission are limited to the statutory criteria laid out above.

Based on the statutory criteria laid out above and the uncontroverted testimony presented in this docket, we have determined that an adequate price is being paid, that this transaction will avoid unnecessary duplicating facilities, and that this transaction will promote the efficient and economic use and development and the safety of operation of the utility system.

**ORDER**

IT IS ORDERED that the applications for the transfer of service territory and the contract of sale of assets between Portland General Electric, Columbia River People's Utility District, and Clatskanie People's Utility District are approved.

Made, entered, and effective \_\_\_\_\_.

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**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.

PGE Service Territory to be Transferred to CRPUD

The Transfer Service Territory can generally be described as PGE's allocated service territory located in Columbia County excluding:

- i.) the territory within the 1940 political boundaries of the city of Rainier;
- ii.) the portion of Sauvie Island located within Columbia County;
- iii.) the Trojan nuclear power plant; and
- iv.) the territory on which Boise Cascade is located, as that term is defined in the 1984 Acquisition Agreement between PGE and CRPUD.

The Transfer Service Territory also includes a small portion of PGE's allocated service territory in Multnomah County that is served from PGE's Scappoose substation. Maps showing the Transfer Service Territory have been labeled as Exhibit Maps 2-1, 2-2, 2-3, and 2-4.

PGE Service Territory to be Transferred to CPUD

The Transfer Service Territory can generally be described as PGE's allocated service territory within the 1940 political boundaries of the City of Rainier, Oregon. A map showing the Transfer Service Territory has been labeled as Exhibit Map 1.