

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of PacifiCorp (U-901-E) For
Approval of the Sale of the Upper Beaver
Hydroelectric Project to the City of Beaver, Utah.

Application 06-09-003
(Filed September 1, 2006)

**OPINION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTIONS 377 AND 851 FOR SALE OF PACIFICORP'S UPPER BEAVER
HYDROELECTRIC PROJECT TO THE CITY OF BEAVER, UTAH****I. Summary**

This decision grants the application of PacifiCorp for Commission authorization under Pub. Util. Code § 851¹ to sell its Upper Beaver Hydroelectric Project (the Facility), located in Beaver County, Utah, to the City of Beaver (City).² We find that under Section 377.2, this transaction is exempt from the requirement of Section 377 that that the Facility remain dedicated to serve for the benefit of California ratepayers, because the Facility is located outside of California, serves less than 60,000 customers, and is not necessary to provide electricity to California customers. In addition, pursuant to Section 362, we find since the Facility serves only approximately 0.03 percent of total peak load in PacifiCorp's California service area, continued operation of the Facility by

¹ All statutory references are to the Public Utilities Code unless otherwise stated.

² The application was filed on September 1, 2006. In Resolution ALJ 176-3178, dated September 7, 2006, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary.

PacifiCorp is not necessary to maintain the reliability of the electric supply in this state.

II. Background

A. The Transaction

PacifiCorp requests authorization pursuant to Section 851 to sell the Facility to City for \$2 million.

PacifiCorp, an Oregon corporation, is a public utility operating in the State of California. PacifiCorp provides electric service to approximately 43,000 customers across a narrow band of extreme northern California.

PacifiCorp operates the Facility, which is located on the Beaver River, in southwestern Utah, in Beaver County. The Facility resides entirely on United States Forest Service Land in the Fish Lake National Forest, pursuant to a special use permit. The Facility is approximately 90 years old and generates an average of 8,964 megawatt hours (MWh) per year. According to the application, the Federal Energy Regulatory Commission (FERC) granted an exemption from licensing the Facility as a hydropower facility pursuant to a provision of federal law that permits exemptions for facilities of less than 5 MWh. The Facility is, however, subject to dam safety regulation by FERC and the State of Utah.

The facility includes the 25-foot high Merchant Valley Dam, a powerhouse containing one 1.2-MW and one 1.3 MW horizontal Pelton runner electric generating unit, approximately 2 miles of main flow line, 3 connecting diversion pipelines, a surge tank, a penstock that is approximately 1 mile in length, other personal property, inventory, water rights, contracts, authorizations, and easements.

PacifiCorp decided to sell the Facility to City because this option results in significantly lower costs for PacifiCorp and its customers than either

continuing to operate the Facility, which would require major new investment for the replacement of a 350-foot section of main flow just below the Merchant Valley Dam, or decommissioning the Facility. Based on a 30-year present value economic analysis, PacifiCorp concluded that selling the Facility would save its customers between \$2.25 and \$2.39 million in comparison to either decommissioning the Facility or continuing to operate the Facility.

The City wishes to purchase the Facility because it currently operates the Lower Beaver Hydroelectric Project, located immediately downstream from the Upper Beaver Hydroelectric Project, and has an immediate need for an additional 2MW of electric capacity. When the sale is completed, City will wheel the Facility's energy output across PacifiCorp's existing transmission system to City's existing municipal service territory to serve its retail customers. Neither PacifiCorp nor City anticipates any changes to the Facility's operations as a result of the sale.

B. The Proposed Agreement

Under the agreement, City has agreed to pay PacifiCorp \$2 million for the Facility. City will deposit \$100,000 into escrow and pay the balance at closing.

The parties have agreed that PacifiCorp is selling the Facilities on an "as is" basis, and that City has had an opportunity to inspect the Facility and related property.

City shall use its best efforts to have acquired a Special Use Permit (Permit), authorizing City to operate the Facility within the Fish Lake National Forest, by the closing date. However, City is not required to fulfill this obligation if it reasonably determines that the Permit application process will delay the

latest closing date at least 6 months or will reduce the net value of the Facility to City by at least \$50,000.

City is also required to obtain all required approvals from public agencies and other third parties as necessary to carry out the agreement.

PacifiCorp will construct at its own cost all facilities, equipment, controls, and related work necessary to transfer the Facility to City (the Separation Facilities), as described in the System Impact and Facilities Study Report, published by PacifiCorp Transmission Services on August 8, 2005 (System Impact and Facilities Study Report). However, PacifiCorp has no obligation to construct the Separation Facilities until City has obtained the Permit and has given PacifiCorp a notice to proceed.

PacifiCorp will also make certain modifications to the substation at the Facility and to the PacifiCorp system, as required by the System Impact and Facilities Study Report, and has agreed to paint the surge tank at the Facility. PacifiCorp will replace the existing stop logs at Merchant Valley Dam with one or more slide gates in accordance with a final design approved by the U. S. Forest Service.

Between the date of execution of the agreement and closing, PacifiCorp will continue to operate the Facility in accordance with prudent electrical practices and will make reasonable efforts to maintain business relationships with its suppliers and customers.

PacifiCorp will provide training in the operation of the Facility to City as requested for up to 6 months after the date of transfer, at the same cost that PacifiCorp would pay the employee to provide training for PacifiCorp personnel. City has agreed that appropriate personnel will participate in operations training given by PacifiCorp.

City will enter into a Generation Interconnection Agreement with PacifiCorp Transmission Services³ or its successor (the Transmission Provider), to provide for the interconnection of the Facility with the PacifiCorp system.

City will also cooperate with PacifiCorp and the Transmission Provider to separate the Facility from the electric transmission substation and the transmission and distribution facilities owned, operated, or maintained by the Transmission Provider. City's obligations include making available a 125 volt, 3-amp DC power supply in the Upper Beaver Powerhouse in order to provide power to the Upper Beaver Powerhouse telemetry and related sensors as necessary to wheel power across the PacifiCorp's system, for so long as the Facility remains in operation.

City will also request that the Utah Associated Municipal Power Systems (UAMPS) designate the Facility as a network resource, under the UAMPS Agreement for Joint and Cooperative Action.

City will not seek to require PacifiCorp to purchase power generated by the Facility for a period of at least 30 years. If PacifiCorp is required by law to enter in to a long-term agreement with City to purchase power generated by the Facility, the rate charged by City for this power shall equal PacifiCorp's cost of production at the Facility at the time of closing, adjusted for inflation.

City has agreed to indemnify and hold harmless PacifiCorp for any claims, liability, or expenses resulting from City's ownership and operation of the Facility; any breach of the agreement or default by City; any breach of

³ PacifiCorp Transmission Services means PacifiCorp, an Oregon corporation, acting in its transmission capacity. (*Agreement, Section 2.16.*) Under the agreement, City acknowledges that PacifiCorp, acting as the seller of the Facility, has no responsibility for or control over PacifiCorp Transmission. (*Agreement, Section 2.29.*)

warranty or representation made by City in the agreement; or any liability or obligation resulting from the Facility being listed on any state or federal historic register.⁴

Neither PacifiCorp nor City may assign its rights under the agreement without the written consent of the other party. However, PacifiCorp may assign the agreement to an exchange accommodator as necessary to enable PacifiCorp to acquire replacement property pursuant to a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (Section 1031).

The parties may amend the agreement only in writing. The agreement is to be construed under the laws of Utah.

C. Environmental Review

CEQA⁵ applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.”⁶ Since the Commission must act on PacifiCorp’s Section 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead Agency or Responsible Agency under CEQA.

⁴ As an exception, the agreement does not require City to indemnify PacifiCorp for any third party claim not previously disclosed by PacifiCorp in Schedules D and I to the agreement, which is brought against the owner of the Facility within 10 years of closing, or in which the alleged events occurred before closing.

⁵ Public Resources Code Section 21000, *et seq.*, (the California Environmental Quality Act).

⁶ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

PacifiCorp has entered into a contract, executed on March 29, 2006, to sell the Facility to City. CEQA requires the Commission to consider the environmental documents and findings before acting upon or approving this project.⁷ PacifiCorp's application includes a Proponent's Environmental Assessment (PEA) pursuant to Rule 2.4(b).⁸ The PEA states that neither this application, nor the transaction for which approval is sought, has any potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment within the meaning of State CEQA Guideline 15378, because neither PacifiCorp nor City seeks authority from the Commission to change the existing uses of the Facility. Therefore in accordance with Rule 2.4(b), this PEA is limited to the foregoing information and the statement that it can be seen with certainty that there is no possibility that the project may have a significant adverse effect on the environment.

We have reviewed PacifiCorp's PEA and find it to be adequate for our decision-making purposes.

⁷ CEQA Guidelines Section 15051(b).

⁸ All subsequent Rule citations are to the Commission Rules of Practice and Procedure.

Therefore, for purposes of our project approval, we adopt PacifiCorp's statement that it can be seen with certainty that there is no possibility that the project may have a significant adverse effect on the environment, and find that the project is exempt from CEQA pursuant to State California CEQA Guidelines 15061(b)(3).

D. Ratemaking Considerations

According to the application, the original cost of PacifiCorp's current investment in the Facility in electric plant-in-service (FERC account 101) is \$3,314,145. For the purposes of estimating the accounting transactions related to this sale, PacifiCorp assumed a closing date of March 31, 2007. The accumulated depreciation reserve (FERC account 108) on that date will be \$1,693,257 for a net book value of \$1,620,888. PacifiCorp anticipates that the gain on sale will be approximately \$24,000, which is computed as the \$2 million gross revenue from the sale minus \$355,000 estimate costs to get the Facility ready to sell minus approximately \$1.62 million of remaining net book value of the Facility on PacifiCorp's books.

Upon receiving all necessary regulatory approvals, PacifiCorp proposes the following accounting treatment for the sale of the Facility: The net book value of \$1,620,888 will be transferred to Electric Plant Purchased or Sold (FERC Account 102) by crediting Electric Plant-in-Service (FERC Account 101) for \$3,314,145, debiting the accumulated depreciation reserve (FERC Account 108) for \$1,693,257 (which will eliminate the balances in those accounts), and then debiting Electric Plant Purchased or Sold (FERC Account 102) for the difference, which is the net book value of \$1,620,888. The balance in Electric Plant Purchased or Sold will remain in FERC Account 102 until PacifiCorp receives all regulatory approvals. Any expenses related to the sale of the Facility will also be

recorded in FERC Account 102, for an estimated total balance in Electric Plant Purchased or Sold of \$1,975,589. When the City pays for the Facility, PacifiCorp will debit the Cash Account for \$2 million, credit Electric Plant Purchased or Sold (FERC Account 102) for \$1,975,589, and credit the book Gain on Disposition of Property for the currently estimated gain of \$24,411.

PacifiCorp has estimated California's net share of the gain on sale as approximately \$500, based on the allocation factors applied in PacifiCorp's most recent general rate case, A. 05-11-022, I.06-03-022. PacifiCorp states that no special regulatory treatment is necessary to reflect this sale in rates charged to California customers because the net proceeds of the sale are minimal. However, pursuant to D.06-05-041, PacifiCorp proposes to allocate the entire net gain of approximately \$500 to California ratepayers.

PacifiCorp's proposed ratemaking treatment of the gain on sale is unopposed.

E. Discussion

Since this application involves the sale of electric generation facilities, we must determine whether PacifiCorp's conveyance of the Facility to City is permissible under Sections 377 and 362, as well as Section 851.

1. Section 377

Section 377 states:

The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal.

Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public

utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers. (Emphasis added.)

Here, although the sale of the Facility by PacifiCorp is not barred by Section 377 because PacifiCorp has initiated this transaction after January 1, 2006, City will use the Facility to provide energy only to its retail customers in Utah. As a result, the Facility will no longer be dedicated to service for the benefit of California ratepayers.

However, under Section 377.2, the sale of the Facility is exempt from the requirements of Section 377 because the Facility is located outside of California, serves less than 60,000 customers, and is not needed to provide electricity to California's customers.⁹ As noted in the application, the Facility serves only approximately 0.03% of total peak load of PacifiCorp's service territory in this state. The sale of the Facility will therefore have only a *de minimis* effect on the availability of electricity for California.

2. Section 362

Section 362 states in pertinent part:

(a) In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining

⁹ Section 377.2 states:

Notwithstanding Section 377, a facility for the generation of electricity, or an interest in a facility for the generation of electricity, that is located outside of this state, is owned by a public utility that serves 60,000 or fewer customer accounts in this state, and is not necessary to serve that public utility's customers in this state, may be disposed of upon approval of the commission pursuant to Section 851 or upon exemption by the commission pursuant to Section 853.

open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Electricity Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria. (Emphasis added).

Here, since the Facility currently serves only 0.03 percent of total peak load in PacifiCorp's California service territory, the continued operation of the Facility to serve California customers is not necessary to maintain the reliability of the electric supply in this state. We therefore find that that PacifiCorp's sale of the Facility to City is permissible under Section 362.

3. Section 851

Section 851 provides that no public utility shall sell all or any part of its line, plant, system, or other property necessary or useful in the performance of its duties to the public, without first having obtained authorization from the Commission.

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."¹⁰ The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.¹¹

¹⁰ D.3320, 10 CRRC 56, 63.

¹¹ D.00-07-010, at p. 6.

Here, PacifiCorp's sale of the Facility to City is in the public interest because the transaction will not adversely affect the availability of a reliable supply of electricity at fair and reasonable rates for California ratepayers. The sale of the Facility will also save PacifiCorp's customers between \$2.25 million and \$2.39 million, as compared to the costs of either repairing and continuing to operate the Facility or decommissioning the Facility. In addition, the sale of the Facility will give City access to an additional source of electric energy to meet the needs of its retail customers.

We also approve the proposed ratemaking treatment for this transaction.

III. Conclusion

For all of the forgoing reasons, the application is granted.

IV. Waiver of Public Review and Comment

This is an uncontested matter, in which the decision which grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2) and Rule 14.6(c)(2) of the Commission Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

V. Categorization and Need for Hearings/ Public Review and Comment

Based on our review of this application, we affirm the preliminary determinations made as to categorization and the need for a hearing made in Resolution ALJ 176-3178, dated September 7, 2006.

VI. Assignment of Proceeding

Dian Grueneich is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Facility is located on the Beaver River in southwestern Utah on U. S. Forest Service Land in the Fish Lake National Forest.
2. The Facility serves 43,000 California customers in extreme Northern California.
3. The Facility serves only 0.03% of the total peak load in PacifiCorp's California service territory.
4. Continued operation of the Facility by PacifiCorp is not necessary to maintain the reliability of the electric supply in California.
5. In order to continue to operate the Facility, PacifiCorp would need to make a significant investment in the replacement of the 350-foot section main flow line just below the Merchant Valley Dam.
6. Selling the Facility to City will save PacifiCorp ratepayers between \$2.25 and \$2.39 million, as compared with the costs of either repairing and continuing to operate the Facility or decommissioning the Facility.
7. City will utilize the Facility to serve its retail customers in Utah.
8. PacifiCorp submitted a PEA with the application, as required by Rule 2.4(b).
9. The PEA states that since the project will not involve any change in the use of the Facility, there is no possibility that the project will have significant adverse impacts on the environment.
10. The PEA is adequate for the Commission's decision-making purposes under CEQA.
11. We concur with the statements in the PEA that there is no possibility that the project will have a significant adverse impact on the environment.
12. The proposed ratemaking treatment is unopposed.

13. California's estimated net share of the gain on sale is \$500, based on PacifiCorp's most recent general rate case.

14. PacifiCorp proposes to allocate the entire net gain on sale of approximately \$500 to California ratepayers.

Conclusions of Law

1. Under Section 377.2, the sale of the Facility to City is exempt from Section 377's requirement that the Facility remain dedicated to serve California ratepayers, because the Facility is located outside of this state, serves less than 60,000 customers, and is not needed to provide electricity to California customers.

2. The sale of the Facility to City is permissible under Section 362, because the Facility is not needed to maintain the reliability of the electric supply in this state.

3. Section 851 requires prior Commission approval of any transfer of utility property that is used or useful in the provision of utility services.

4. The sale of the Facility to City is in the public interest, pursuant to Section 851, and should be approved.

5. The project, as described in the PEA, is exempt from the requirements of CEQA pursuant to State CEQA Guideline 15061(b)(3).

6. The proposed ratemaking treatment for this transaction should be approved.

7. This decision should be effective today in order to allow the sale of the Facility to City to proceed expeditiously.

O R D E R

IT IS ORDERED that:

1. PacifiCorp is authorized to sell the Upper Beaver Hydroelectric Project, as described in the application (the Facility), to the City of Beaver (City), Utah, according to the terms stated in the application, pursuant to Section 851.

2. The Facility shall be removed from electric generation service according to the procedures established by the Federal Energy Regulatory Commission.

3. PacifiCorp shall notify the Commission by advice letter no later than 45 days after the closing of the transaction and transfer of the Facility to City. The advice letter shall include PacifiCorp's final calculation of California's share of the gain on sale, with supporting figures.

4. PacifiCorp shall allocate California's share of the net gain on sale entirely to ratepayers pursuant to Decision 06-05-041.

5. Application 06-09-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.