

Decision 12-05-031 May 24, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the matter of the Application of PacifiCorp (U901E) for an Exemption to California Public Utilities Code Section 851 for Colstrip Township Property Sales.

Application 11-10-022  
(Filed October 19, 2011)

**DECISION APPROVING REQUEST FOR EXEMPTION  
FROM CALIFORNIA PUBLIC UTILITIES CODE SECTION 851**

**Summary**

This decision grants the unopposed application of PacifiCorp for an exemption from the requirements of Public Utilities Code Section 851<sup>1</sup> as applied to certain transfers of property located in the Colstrip Township in Montana, pursuant to Section 853(b).

**Background**

PacifiCorp is a multi-jurisdictional utility that provides retail electric service to customers in California, Idaho, Oregon, Utah, Washington and Wyoming. According to the application, PacifiCorp serves approximately 45,000 customers in Del Norte, Modoc, Shasta, and Siskiyou counties in California.

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<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

PacifiCorp owns 10 percent of units three and four of the Colstrip generation plant located in Montana. The remainder of the Colstrip generation plant is owned by PPL-Montana, Puget Sound Energy, Avista, Northwestern Energy, and Portland General. Due to limited housing in the area for employees of the plant, the Colstrip township was developed. The owners of the plant, including PacifiCorp, own or owned many of the parcels of property located in the Colstrip Township. Most of these parcels are zoned for residential use, but a few parcels are zoned for commercial use, and one parcel is zoned for light industrial use. PacifiCorp and the other owners of the plant occasionally sell these parcels to individuals or businesses.

According to the application, approximately 85 residential lots, three commercial lots, and one light industrial lot are currently available for sale in the Colstrip Township. The application states that the value of the sale of individual lots ranges from approximately \$5,000 to \$100,000, with most transactions valued below \$20,000. As a minority shareholder, PacifiCorp's share of the proceeds from these sales is approximately 10 percent.

PacifiCorp requests an exemption from Section 851's requirement for advance Commission approval of the sales of these properties. PacifiCorp states that unless an exemption is granted, PacifiCorp would need to file approximately 89 individual advice letters pursuant to Resolution ALJ-244 (as extended by Resolution ALJ-272) to request advance Commission approval of these sales pursuant to Section 851.<sup>2</sup>

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<sup>2</sup> Since the value of each sale will be less than \$5 million, these transactions could generally be approved pursuant to the Commission's advice letter review process

*Footnote continued on next page*

In addition, according to the application, PacifiCorp found, upon review of its records, that between 1981 and the present, a number of parcels in the Colstrip Township were sold without prior Commission approval as required by Section 851. These sales occurred through a real estate broker, and PacifiCorp did not become aware of the sales until the closing process when, as an owner, PacifiCorp was required to sign the deeds. PacifiCorp is therefore also asking the Commission to exempt these past sales from the requirements of Section 851 pursuant to Section 853(b).

In support of the application for an exemption pursuant to Section 853(b), PacifiCorp explains that, as a minority owner of Colstrip units three and four, PacifiCorp does not actively negotiate the sales of these properties and usually is not notified of a sale until after the transaction closes, when PacifiCorp's signature on the deed is required to transfer title. PacifiCorp states that it does not control the sales, because the transactions can be approved by the other owners of the Colstrip plant without PacifiCorp's consent. Under these circumstances, PacifiCorp finds it difficult to comply with Section 851 by applying for advance Commission approval of these sales of property in the Colstrip Township.

According to the application, none of the properties which may be sold house PacifiCorp facilities used for the generation, transmission, or distribution of electric services, and these properties are not necessary for PacifiCorp to provide reliable utility service at reasonable rates to the public. All of these

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pursuant to Resolution ALJ-244 (as extended by Resolution ALJ-272), rather than through formal Section 851 applications.

properties are located within the Colstrip Township and are intended to be used for Township development purposes.

PacifiCorp states that the sale of these properties has a minimal impact on its ratebase and does not require environmental review under the California Environmental Quality Act (CEQA).

### **Discussion**

Section 851 provides that no public utility shall sell, lease, mortgage, or otherwise encumber the whole or any part of property necessary or useful in the performance of its duties to the public, without first having obtained Commission approval.<sup>3</sup> The purpose of Section 851 review by the Commission is to ensure that the proposed transaction is not adverse to the public interest. 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.<sup>4</sup>

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<sup>3</sup> Section 851 states in pertinent part:

A public utility, other than a common carrier by railroad subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its ... property necessary or useful in the performance of its duties to the public ... without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so ...

<sup>4</sup> D.00-07-010 at 6.

However, under some circumstances, pursuant to Section 853(b), the Commission may exempt certain transactions, or certain classes of transactions, from the requirements of Section 851 when advance Commission review and approval of the transaction(s) is not necessary to serve the public interest.<sup>5</sup>

Here, since PacifiCorp owns only a 10 percent interest in the properties, and the properties are not necessary for PacifiCorp to continue to provide utility service to the public, the sales will not adversely impact either PacifiCorp's ratebase or its ability to serve the public. Therefore, we do not believe that review of these transactions pursuant to Section 851 is needed in order to protect the public interest. Further, requiring PacifiCorp to file a large number of advice letters pursuant to Resolution ALJ-244 (as extended by Resolution ALJ-272) or formal Section 851 applications for individual sales of property as these transactions arise would cause PacifiCorp and its ratepayers unnecessary expense and would consume valuable Commission time and resources.

As a result, we exempt the sale of properties in the Colstrip Township, in which PacifiCorp holds a 10 percent interest, from the requirements of Section 851 pursuant to Section 853(b). Based on the unique circumstances of

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<sup>5</sup> Section 853 states in pertinent part:

(b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

this case, this exemption shall apply both to future sales of properties in the Colstrip properties and to the past sales of properties in the Colstrip Township in which PacifiCorp holds an ownership interest. The Commission generally does not grant exemptions under Section 853(b) for transactions that have already occurred without Commission approval. However, here, since PacifiCorp did not control the sales of these properties, and generally did not know about the sales until after the transactions had already closed, it is reasonable to excuse PacifiCorp's failure to obtain Section 851 approval of the past sales and to exempt the past sales from the requirements of Section 851 pursuant to Section 853(b).

This decision shall not be a precedent in any future cases in which utilities apply for exemption from the requirements of Section 851 pursuant to Section 853(b) after a transfer of utility property has already occurred. PacifiCorp and other utilities are cautioned to apply for Commission authorization pursuant to Section 851 or for an exemption pursuant to Section 853(b) before transferring interests in utility property that are necessary or useful in providing service to the public. Violations of Section 851 may result in the imposition of sanctions pursuant to Sections 2107 and 2108.

### **Categorization and Need for Hearing**

In Resolution ALJ 176-3284 dated November 10, 2011, the Commission preliminary categorized this Application as ratesetting, and preliminary determined that hearings were not necessary. No protests have been received. There is no apparent reason why the Application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Waiver of Comment Period**

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

### **Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. PacifiCorp is a multi-state jurisdictional utility that provides electric service to customers in Del Norte, Modoc, Shasta, and Siskiyou counties in California.
2. PacifiCorp owns 10 percent of units 3 and 4 of the Colstrip generation plant located in Montana.
3. The remainder of the Colstrip generation plant is owned by PPL-Montana, Puget Sound Energy, Avista, Northwestern Energy, and Portland General.
4. The Colstrip Township was developed because of a lack of housing in the area for employees of the Colstrip generation plant.
5. PacifiCorp and the other owners of the Colstrip generation plant own many parcels of land in the Colstrip Township.
6. Most of the parcels of land in the Colstrip Township are zoned for residential use, but a few parcels are zoned for commercial use, and one parcel is zoned for a light industrial use.
7. In the past, a number of properties in the Colstrip Township have been sold.

8. According to the application, at present, approximately 85 residential lots, three commercial lots, and one light industrial lot are currently available for sale in the Colstrip Township.

9. According to the application, the value of the sale of individual lots ranges from approximately \$5,000 to \$100,000, with most transactions valued below \$20,000.

10. As a minority shareholder, PacifiCorp's share of the proceeds from these sales is approximately ten percent.

11. According to the application, unless an exemption from Section 851 is granted, PacifiCorp would need to file approximately 89 individual advice letters pursuant to Resolution ALJ-244 (as extended by Resolution ALJ-272) to request advance Commission approval of these sales pursuant to Section 851 as the transactions arise.

12. Upon review of its past records, PacifiCorp found that between 1981 and the present, a number of parcels in the Colstrip Township were sold without prior Commission approval pursuant to Section 851.

13. The past sales of properties in the Colstrip Township without Commission authorization pursuant to Section 851 occurred through a real estate broker, and PacifiCorp did not become aware of the sales until the closing process when, as an owner, PacifiCorp was required to sign the deeds.

14. As a minority owner of Colstrip units three and four, PacifiCorp does not actively negotiate the sales of these properties and usually is only notified of a sale after the transaction closes, when Pacificorp's signature on the deed is required to transfer title.

15. PacifiCorp does not control the sale of properties in the Colstrip Township.

16. The sale of properties in the Colstrip Township can be approved by the other owners of the Colstrip plant without PacifiCorp's consent.

17. Since PacifiCorp does not control the sales of Colstrip Township properties and often does not learn of the sales until the closing of the transactions, it is difficult for PacifiCorp to apply for advance Commission approval of these sales as required by Section 851.

18. None of the properties in the Colstrip Township that may be sold house PacifiCorp facilities used for the generation, transmission, or distribution of electric services.

19. None of the properties in the Colstrip Township that may be sold are necessary for PacifiCorp to provide reliable utility service at reasonable rates to the public.

20. All of these properties that may be sold are located within the Colstrip Township and are intended to be used for Township development purposes.

21. Since PacifiCorp owns only a 10 percent interest in the Colstrip Township properties, and the value of the sales of individual lots is relatively low, the sale of these properties will have a minimal impact on PacifiCorp's ratebase.

22. Requiring PacifiCorp to file approximately 89 advice letters pursuant to Resolution ALJ-244 (as extended by Resolution ALJ-272) or formal applications in order to obtain Section 851 approval of each sale as the transaction arises would cause PacifiCorp and its ratepayers unnecessary expense and would consume valuable Commission time and resources.

23. Under the circumstances of this case, Commission review and approval of the sale of the Colstrip Township properties is not necessary to protect the public interest.

24. The Commission does not generally grant exemptions from the requirements of Section 851 for transfers of utility property that occurred in the past.

25. Since the Commission is granting PacifiCorp an exemption from Section 851 pursuant to Section 853(b), we will not be reviewing or approving the sales of the Colstrip Township Properties and therefore will not be making a discretionary decision on a project that may trigger CEQA review.

### **Conclusions of Law**

1. Section 851 requires advance Commission approval of transfers of utility property that is necessary or useful in providing service to the public.

2. The purpose of Section 851 review is to ensure that the transfer of utility property will not be adverse to the public interest.

3. In some circumstances, the Commission may grant an exemption pursuant to Section 853(b) for a particular transaction or class of transactions when applying the requirements of Section 851 to the transaction(s) is not necessary to protect the public interest.

4. Under the unique circumstances of this case, it is appropriate to grant PacifiCorp's application for an exemption from Section 851 pursuant to Section 853(b) for both past and future sales of properties in the Colstrip Township.

5. This decision shall not be used as precedent in any other proceeding in which a utility applies for an exemption from the requirements of Section 851 for a transfer of utility property that occurred in the past pursuant to Section 853(b).

6. Except as otherwise permitted by law or Commission order, public utilities are required to comply with Section 851.

7. Except as provided in this decision, PacifiCorp is required to either seek prior Commission approval pursuant to Section 851 or apply for an exemption pursuant to Section 853(b) before transferring property that is necessary or useful in providing utility service to the public.

8. Since the Commission has found that the sales of the Colstrip Township properties are exempt from Section 851 review, environmental review of the transactions pursuant to CEQA is not required.

## **O R D E R**

### **IT IS ORDERED** that:

1. The application of PacifiCorp, pursuant to Public Utilities Code (Pub. Util. Code) Section 853(b), for an exemption from the requirements of Pub. Util. Code Section 851, for the past and future sales of properties located in the Colstrip Township in Montana, as described in the application, is granted.

2. PacifiCorp is authorized, without seeking Commission approval under Public Utilities Code Section 851, to implement the sales of properties in the Colstrip Township, Montana, as described in the application.

3. The exemption granted in this order is limited to the sale of PacifiCorp's minority interest in properties located in the Colstrip Township in Montana, as described in the application.

4. Except as otherwise permitted by law or Commission order, PacifiCorp shall either comply with Public Utilities Code (Pub. Util. Code) Section 851 or apply for an exemption pursuant to Pub. Util. Code Section 853(b) before engaging in any other transfers of utility property that is necessary or useful in the provision of service to the public.

5. This order shall not be precedent in other cases in which a public utility applies for an exemption from the requirements of Public Utilities Code Section 851 for a transfer of utility property that occurred in the past.

6. Application 11-10-022 is closed.

This order is effective today.

Dated May 24, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners