

The Skookumchuck Project (Project) is an earth-filled dam and a small, 1 MW hydroelectric facility located in the vicinity of Centralia, Washington on property adjacent to the Centralia Power Plant, a large coal-fired generating facility. The Skookumchuck Dam was constructed in 1973 as a water storage facility for the Centralia Power Plant. In 1991, a generating plant with a capacity of approximately 1 MW was constructed at the dam.

PacifiCorp has entered into a Purchase and Sale Agreement to sell the Skookumchuck Hydroelectric Plant to 2677588 Washington, LLC, a Washington Limited Liability Company and a direct wholly-owned subsidiary of TransAlta USA, Inc. (TransAlta). TransAlta is the indirect owner of the Centralia Power Plant and the Centralia Coal Mine. In 2000, the Owners sold the Centralia Power Plant to a direct wholly-owned subsidiary of TransAlta, TECWA Power, Inc., and PacifiCorp sold the Centralia coal mine to another direct wholly-owned subsidiary of TransAlta, TECWA Fuel, Inc. The Commission approved the sale of PacifiCorp's share of the Centralia Power Plant and Coal Mine in Order No. 28296. TransAlta Centralia Generation LLC, a direct wholly-owned subsidiary of TECWA Power, Inc., now owns and operates the Centralia Power Plant as an Exempt Wholesale Generator (EWG).

PacifiCorp proposes to sell and transfer to Washington LLC the dam, powerhouse water rights, land, easements and other assets of the Project, including certain fixtures, contracts and other rights. Washington LLC intends to operate the Skookumchuck Project as an EWG within the meaning of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA). To qualify as an EWG, Washington LLC must be engaged exclusively in the business of owning or operating an "eligible facility" and selling electric energy at wholesale. If the costs of a generation facility were included in the rates of a regulated utility on October 24, 1992 (the date of enactment of Section 32 of PUHCA), then in order for the facility to be considered an "eligible facility," every state Commission having jurisdiction over such rates must specifically determine that allowing the facility to become an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. 15 USC. § 79z-5a(c). Washington LLC, PacifiCorp contends, cannot process its EWG Application with the FERC until all of the Company's regulatory commissions have made the three determinations required by Section 32 of PUHCA.

STAFF ANALYSIS

Compliance with State Law

PacifiCorp contends that the sale of the Skookumchuck Project to Washington, LLC and allowing the generating facilities to become an “eligible facility” will not violate Idaho state law. Because the Project assets are located in the state of Washington, the Company contends that Idaho’s property transfer statute *Idaho Code* §61-328 is not applicable to the contemplated sale. *Idaho Code* §61-328 states in part:

No electric public utility ... owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public shall merge, sell, lease, assign or transfer ... any such property or interest therein, or the operation, management or control thereof ... except when authorized to do so by order of the public utilities commission. (Emphasis added.)

Commission Staff has reviewed the referenced U.S. Code language regarding Exempt Wholesale Generators (see Attachment A, 15 USCA § 79z-5a). The ownership interest of PacifiCorp in the Skookumchuck facilities are a part of the utility’s rate base in Idaho on which PacifiCorp receives a return on investment and is now and has been included in the rate base of PacifiCorp since or prior to October 24, 1992. Based on Staff’s review of the Idaho Code, Staff represents that it has discovered no Idaho laws that address the issues raised by this request, and none prohibit or limit the authority of Washington, LLC as an EWG to operate Skookumchuck as a wholesale facility.

As discussed in these comments, Staff notes further that although the Project is located in Washington, this transaction complies with the intent and meets the standards of *Idaho Code* § 61-328. In compliance therewith, Staff represents that:

- (a) That the transaction is consistent with the public interest;
- (b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and
- (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service.

Benefits to Customers

The aggregate sale price of the transaction is approximately \$7.57 million, adjusted for changes in PacifiCorp’s net book value of the facilities from September 30, 2003 to the closing

date. See Section 2.3(a) of the Sale Agreement. PacifiCorp's share of this amount is 47.5%. The sale price is determined in such a manner that PacifiCorp will receive its net book value of the assets being transferred. After taxes and closing costs, PacifiCorp estimates a net loss from the sale of \$68,613.

Despite the relatively small projected financial loss on the sale, Staff believes there are other factors that should also be considered. First, as one of the Owners, PacifiCorp must pay its proportionate share of the ongoing costs of the Project. The Company's analysis and market price forecast predicts that ratepayers will see lower costs if the Project is sold because the projected cost of power from the Project substantially exceeds the projected cost of market power. According to PacifiCorp, the Project's bus-bar cost in fiscal year 2003 (12 months ending March 31, 2003) was approximately \$255 per MWh. Market prices are not forecast to approach that level for any extended period of time in the near future. According to PacifiCorp, the expected impact of the sale is to lower the Company's future revenue requirement by removing the Project from the Company's rate base and revenue requirement. The Company calculates the expected present value of the future reduction in Idaho revenue requirement is approximately \$700,000 on a present value basis. Staff accepts these calculations for the sale analysis.

Second, PacifiCorp notes that the proposed transaction eliminates the risk that the Company will be required to fund its share of expenditures for ensuring the structural integrity of the Skookumchuck Dam. The Company believes it is likely that the FERC will mandate dam modifications to meet stability criteria. PacifiCorp's share of this investment is estimated to be \$4 million.

Third, the Skookumchuck Project has an electrical capacity of only 1 MW. Moreover, because the Project is operated for purposes of supplying cooling water to the Centralia Power Plant, PacifiCorp states that it has relatively low energy output. Over the last eight years, the average annual production has been approximately 3,000 MWh per year, and over the last four years the output has been limited to about 1,000 MWh/year. This represents a very low capacity factor for a hydroelectric plant. PacifiCorp's share of the Plant's output is extremely small in comparison to the Company's other generating resources.

Finally, the Project no longer represents "core business" assets to any of the current Owners because they no longer have any ownership interest in the Centralia Steam Plant. Operation of such a small plant located so far from any other PacifiCorp facilities is problematic.

In summary, PacifiCorp contends that the benefits from the proposed sale outweigh the risks of rising costs of continuing to own and operate the Project. Continued operation of the Project as a hydroelectric project, the Company contends, would be uneconomic, and such operation would not be in the public interest. Staff agrees. All things considered, Staff believes that selling the Project is a lower cost long-term option than continuing to invest in and operate and maintain the Project.

PacifiCorp states that it is informed that Washington LLC will continue operation of the Project to provide cooling water supply to the Centralia Power Plant and that it will produce power from the Project either as an EWG or as a Qualifying Facility under PURPA. None of the electrical output of the Project will be used to serve PacifiCorp's retail customers, except perhaps indirectly through the wholesale power markets. The facility is interconnected with the distribution system of Puget Sound Energy, Inc. (PSE) and historically all of the power from the Project has been sold to PSE.

Public Interest Standard

PacifiCorp contends that the transfer of the Skookumchuck Project to Washington LLC is in the public interest because it will benefit PacifiCorp's customers by lowering the Company's cost of providing electrical service. In addition, PacifiCorp states the transfer will give TransAlta greater control of the water flows in the Skookumchuck River for providing cooling water to the Centralia Power Plant, thus increasing the electrical output of the Centralia Power Plant for the benefit of all electricity consumers.

As always, the public interest standard can be rather difficult to define, but in this case Staff believes the appropriate measure of whether the public interest standard is met is the effect of the sale on PacifiCorp's ratepayers. Staff agrees that the Company's ratepayers will not be harmed by the sale, thus Staff believes that the sale does, in fact, meet the public interest standard.

Ratemaking Treatment

PacifiCorp, as co-owner of the Project with a 47.5% interest has been one of the primary parties in the sales negotiation. Negotiation costs and all other costs of the sale are being directly assigned to a work order associated with the sale. Labor costs for legal and technical services represent the largest component of the sales cost for PacifiCorp.

Because the Project is being sold at PacifiCorp's book value, the gain or loss on the sale of the Project is determined by the sales cost and any reimbursement offsets. PacifiCorp does not propose to recover any of the costs of sale, i.e. loss on the sale, from customers. If a test year includes these costs, they will be normalized out of the results. PacifiCorp states that if a gain should occur on the sale, that it will be passed 100% to customers.

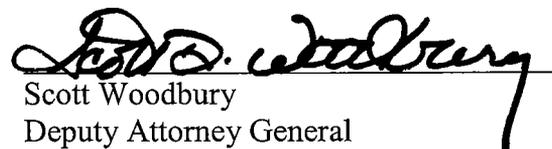
Staff recommends PacifiCorp be directed to file the final accounting entries associated with the sale within 45 days of closing. PacifiCorp accepts this recommendation. Any revenue requirement reduction from not operating the Project will be reflected in PacifiCorp's results of operation. As such, Staff represents that this change will be reflected in a future PacifiCorp rate proceeding.

STAFF RECOMMENDATION

Staff recommends approval of the Company's Application to transfer the Skookumchuck Project to Washington LLC. In addition, to allow the Project to become an "eligible facility" within the meaning of Section 32 of PUHCA, Staff recommends that the Commission's Order specifically state that the proposed sale (1) will benefit consumers, (2) is in the public interest, and (3) does not violate Idaho state law. Staff also recommends the final accounting entries be filed with the Commission within 45 days of closing.

Respectfully submitted this

11th day of March 2004.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling
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Citation
15 USCA s 79z-5a
15 U.S.C.A. § 79z-5a

Found Document

Rank 1 of 1

Database
USCA

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER 2C--PUBLIC UTILITY HOLDING COMPANIES

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Current through P.L. 106-20. approved 4-9-99

§ 79z-5a. Exempt wholesale generators

(a) Definitions

For purposes of this section--

(1) Exempt wholesale generator

The term "exempt wholesale generator" means any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in section 79b(a)(11)(B) of this title, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. No person shall be deemed to be an exempt wholesale generator under this section unless such person has applied to the Federal Energy Regulatory Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt wholesale generator under this section, with all of the exemptions provided by this section, until the Federal Energy Regulatory Commission makes such determination. The Federal Energy Regulatory Commission shall make such determination within 60 days of its receipt of such application and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt wholesale generator. Not later than 12 months after October 24, 1992, the Federal Energy Regulatory Commission shall promulgate rules implementing the provisions of this paragraph. Applications for determination filed after the effective date of such rules shall be subject thereto.

(2) Eligible facility

The term "eligible facility" means a facility, wherever located, which is either--

(A) used for the generation of electric energy exclusively for sale at wholesale, or

(B) used for the generation of electric energy and leased to one or more public utility companies: Provided, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 824e of Title 16.

Such term shall not include any facility for which consent is required under subsection (c) of this section if such consent has not been obtained. Such term includes interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale. For purposes of this paragraph, the term "facility" may include a portion of a facility subject to the limitations of subsection (d) of this section and shall include a facility the construction of which has not been commenced or completed.

(3) Sale of electric energy at wholesale

The term "sale of electric energy at wholesale" shall have the same meaning as provided in section 824(d) of

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Title 16.

(4) Retail rates and charges

The term "retail rates and charges" means rates and charges for the sale of electric energy directly to consumers.

(b) Foreign retail sales

Notwithstanding paragraphs (1) and (2) of subsection (a) of this section, retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being an exempt wholesale generator if none of the electric energy generated by such facility is sold to consumers in the United States.

(c) State consent for existing rate-based facilities

If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, 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; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and

(B) the approval of the Commission under this chapter shall not be required for the transfer of the facility to an exempt wholesale generator.

(d) Hybrids

(1) No exempt wholesale generator may own or operate a portion of any facility if any other portion of the facility is owned or operated by an electric utility company that is an affiliate or associate company of such exempt wholesale generator.

(2) Eligible facility

Notwithstanding paragraph (1), an exempt wholesale generator may own or operate a portion of a facility identified in paragraph (1) if such portion has become an eligible facility as a result of the operation of subsection (c) of this section.

(e) Exemption of EWGS

An exempt wholesale generator shall not be considered an electric utility company under section 79b(a)(3) of this title and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, an exempt wholesale generator shall be exempt from all provisions of this chapter.

(f) Ownership of EWGS by exempt holding companies

Notwithstanding any provision of this chapter, a holding company that is exempt under section 79c of this title shall be permitted, without condition or limitation under this chapter, to acquire and maintain an interest in the business of one or more exempt wholesale generators.

(g) Ownership of EWGS by registered holding companies

Notwithstanding any provision of this chapter and the Commission's jurisdiction as provided under subsection (h) of this section, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this chapter) to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

(h) Financing and other relationships between EWGS and registered holding companies

The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (g) of this section between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this chapter: Provided, That--

(1) section 79k of this title shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee; and

(6) the Commission shall promulgate regulations with respect to the actions which would be considered, for purposes of this subsection, to have a substantial adverse impact on the financial integrity of the registered holding company system; such regulations shall ensure that the action has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers, and shall take into account the amount and type of capital invested in exempt wholesale generators, the ratio of such capital to the total capital invested in utility operations, the availability of books and records, and the financial and operating

experience of the registered holding company and the exempt wholesale generator; the Commission shall promulgate such regulations within 6 months after October 24, 1992; after such 6-month period the Commission shall not approve any actions under paragraph (3), (4) or (5) except in accordance with such issued regulations.

(i) Application of chapter to other eligible facilities

In the case of any person engaged directly and exclusively in the business of owning or operating (or both owning and operating) all or part of one or more eligible facilities, an advisory letter issued by the Commission staff under this chapter after October 24, 1992, or an order issued by the Commission under this chapter after October 24, 1992, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 79b(a)(3) of this title or exempting such person from any provision of this chapter.

(j) Ownership of exempt wholesale generators and qualifying facilities

The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 796(17)(C)(ii) and 796(18)(B)(ii) of Title 16.

(k) Protection against abusive affiliate transactions

(1) Prohibition

After October 24, 1992, an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

(2) State authority to exempt from prohibition

Notwithstanding paragraph (1), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company--

(A) if every State commission having jurisdiction over the retail rates of such electric utility company makes each of the following specific determinations in advance of the electric utility company entering into such contract:

(i) A determination that such commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under this subparagraph.

(ii) A determination that the transaction--

(I) will benefit consumers,

(II) does not violate any State law (including where applicable, least cost planning),

(III) would not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with the electric utility company, and

(IV) is in the public interest; or

(B) if such electric utility company is not subject to State commission retail rate regulation and the purchased electric energy:

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- (i) would not be resold to any affiliate or associate company, or
- (ii) the purchased electric energy would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes each of the determinations provided under subparagraph (A), including the determination concerning a State commission's duties.

(l) Reciprocal arrangements prohibited

Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

CREDIT(S)

1997 Main Volume

(Aug. 26, 1935, c. 687, Title I, § 32, as added Oct. 24, 1992, Pub.L. 102-486,

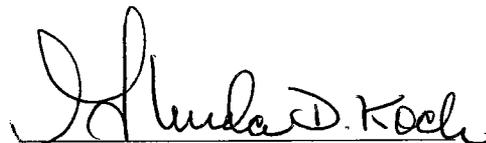
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 11TH DAY OF MARCH 2004, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-04-1, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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