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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 173

In the Matter of the Application of)	
PORTLAND GENERAL ELECTRIC)	ORDER
COMPANY for Approval to Sell Property)	
at Coyote Springs and an Associated)	
Contract with an Affiliate.)	

DISPOSITION: APPLICATION GRANTED

Introduction and Background

On December 23, 1999, Portland General Electric (PGE) submitted an application requesting approval to enter into certain agreements with respect to the development of a second unit at PGE’s Coyote Springs Generating Facility. The first unit at Coyote Springs was completed in 1995 and was designed with facilities capable for a second unit to be built and jointly operated adjacent to Unit 1. In 1993, when Unit 1 was being constructed, PGE decided against developing the second unit at that time. The application was docketed as UP 173.

In the Application, PGE seeks approval to enter into two agreements - the Project Implementation Agreement and the Asset Transfer Agreement. In combination, these agreements: (1) provide that PGE will transfer 50 percent of certain equipment, real property, licenses and permits currently part of Coyote Springs (Transferred Facilities); and (2) allow Enron/North America (ENA) to provide its expertise and to commit capital to develop those Transferred Facilities for the purposes of selling the development as a “packaged plant.” A packaged plant is a plant that is sold before construction and operation with all permits, agreements, and equipment necessary for construction and operation either in process or complete.

According to the application, the second site at Coyote Springs will be more attractive to potential buyers if the site were sold as a packaged plant. PGE notes that existing permits are near expiration and so immediate construction reduces any risk that those permits may either be more costly or unavailable in the future. The proposed sale

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would provide sufficient revenues to allow for the Transferred Facilities to be removed from rate base and to establish a gain for later distribution as determined by the Commission. In addition, PGE customers would benefit from Operations and Maintenance (O&M) savings that PGE projected to have a net present value of \$435,000 per year.

As proposed in the application, PGE's rights, title, and interest in the undeveloped Coyote Springs site, as well as the Transferred Facilities, will be transferred to Coyote Springs 2 L.L.C. (CS2), a subsidiary of ENA. ENA will then sell CS2 to the final buyer, with that buyer being responsible for construction of the facility. The final owner of the site will not be an affiliate of Enron. Further, all of the assets to be transferred to CS2 revert to PGE if a sales agreement is not completed by April 15, 2000.

Also as proposed in the application, PGE and ENA would jointly develop the second unit at Coyote Springs. PGE has obtained transmission interconnection rights to allow the plant's power to enter the grid. In exchange for developing the plant and taking certain development risks, ENA and PGE proposed a disbursement mechanism for the proceeds of a sale of CS2.¹

Since PGE made its application, Staff, representatives of ENA, and PGE have met, either in person or through conference call, to discuss a framework that would allow the project to be completed and meet the statutory tests for property sales and affiliate transactions. In addition, a prehearing conference was held on February 1, 2000, where interested parties had a chance to discuss the issues of the filing and allow for exploration of a settlement on the issues. The Citizen's Utility Board (CUB) was present at the prehearing conference and agreed to monitor progress in the case. At CUB's request at the prehearing conference, Staff kept CUB apprised of the status and discussions among Staff, ENA and PGE. CUB has not expressed any objections to the Application as modified by the Stipulation discussed below.

Stipulation

On February 14, Staff, PGE and ENA reached a settlement through stipulated changes to the Project Implementation Agreement and additional conditions that would be placed on the application. Key provisions of the Stipulation are addressed below.

The Parties agreed that the compensation structure should be altered. Disbursement of the sales price proceeds shall be calculated using the following formula: (1) First, PGE receives its net book value in the property and its development costs; (2) ENA receives its development costs; (3) From the remaining net value, PGE receives \$6.5 million; (4) If available, ENA receives a management fee equal to the sum of (a) \$1.75 million and (b) 40 percent of any remaining net value; and (5) PGE receives the

¹ We note that to complete the sale, ENA retained a consulting firm, Donaldson Lufkin & Jenrette, to manage the competitive bidding process. As part of this process, ENA received final binding bids on February 8, 2000. ENA also managed the construction bids to Unit 2, which will result in an Engineering, Procurement, and Construction (EPC) contract. At this time, it appears that ENA has identified a winning EPC bidder and is evaluating final purchase bids.

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remaining net value after the payment of the management fee. The projected Operations and Maintenance (O&M) savings to PGE that will arise from joint operations at the plant will average approximately \$435,000 per year net present value. The development costs of both PGE and ENA are subject to Commission audit and approval. The Parties agree that this disbursement plan is in the public interest.

The Parties further agreed as follows:

(a) Upon sale of the property, PGE shall make accounting entries consistent with the approach described in paragraph 3. In its next rate proceeding, PGE shall, unless otherwise agreed to by Staff, request rate treatment of the proceeds in accordance with these accounting entries. Staff will support PGE's request for rate treatment consistent with those accounting entries and this Stipulation. Attachment 1 to the Stipulation provides a listing of accounting entries.

(b) PGE agreed to defer and flow through to customers any and all savings in O&M resulting from the development of a second unit at Coyote Springs. To this end, PGE will develop a mechanism to track the actual total O&M costs for Coyote Springs and the second unit starting with commercial operation of the second unit. PGE will establish a deferral account for any O&M savings that accrue prior to the effective date for the rate proceeding discussed in paragraph (a). The Parties recognized that the expected timing of commercial operation of the new plant and PGE's next rate case filing make it perhaps unlikely any O&M savings will actually be deferred.

(c) PGE agreed to reflect any forecast savings projected to result from the commercial operation of the second unit at Coyote Springs in the test year used for the general rate case required by implementation of SB 1149.

(d) PGE and ENA agreed to submit their development costs for Commission audit and review. Development costs shall include, but not are limited to: (i) fees and costs for outside counsel, consultants, Donaldson Lufkin & Jenrette; (ii) loaded internal labor costs charged to the project; and (iii) survey costs and interconnection study costs. PGE, Staff, and ENA agreed that Staff's audit of development costs can begin within one week of financial closing for CS2 and that Staff will finish its audit within three months. PGE and ENA agreed to furnish Staff on a timely basis with all necessary information and documentation for their audit.

(e) ENA agreed to provide Staff with copies of all final bids within five days of execution of a securities purchase agreement with the winning bidder.

Commission Analysis

In the course of reviewing this application, Staff concluded that the relevant question was to compare two alternative options. One option is to go forward with a sure sale today. The other option is to sell the second site at a later date. This latter option had different on-line dates, dependent, in part, on the availability of a turbine. In weighing these alternatives, one benefit that would be forgone if PGE sells the assets later is the O&M savings that result from joint operation with another generator. These savings would be lost

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during the interim period between the current sale and the future sale. The longer the delay in building the second unit, the greater the lost O&M savings.

Staff's analysis identified another benefit of the current application; i.e., that a power plant is built sooner which increases available generation to meet loads. There have been regional discussions and studies identifying the need for additional resources to meet load requirements. Also, this plant will be a merchant plant thereby increasing the competition in the bulk power markets. These qualitative considerations provide benefits to PGE customers and the region.

Potential benefits to PGE and its customers of developing the project at a later time are that perhaps a better price may be available, or that some of the monies currently shared with ENA would all accrue to PGE. We find, however, that there is considerable uncertainty about when, or even if, PGE would develop the project. This is especially so given that the Commission is currently developing policies to implement SB 1149, and utilities will need to assess their impact on company business risk.

We also agree with Staff's analysis of the disbursement plan presented in the Stipulation. Staff found that the industry standard management fee for projects similar to Coyote Springs 2 is between four and eight percent of the total project value. Total project value includes not just the sales price of the undeveloped project, but also the cost to construct and complete the facility. The management fee that ENA agreed to is reasonable given the industry standard management fee for a project of this size.

Staff's comparison of the disbursement of revenues under the plan originally proposed in PGE's application and the disbursement plan in the Stipulation also leads us to conclude that the disbursement plan is reasonable. Assuming a sales price of \$16 million, ENA's original proposal had ENA receiving approximately \$5.8 million and PGE receiving approximately \$1.5 million. The application as modified by the Stipulation has PGE receiving \$6.5 million and ENA receiving approximately \$1.7 million. PGE also receives the net book value, its project development costs, and the O&M cost savings in both cases.

ENA faces various risks during the development of this project. Project development requires that ENA devote staff resources and funds to arranging for the auction process, meetings with Staff and interested parties, renegotiating contracts, discussions with the project bidders and EPC bidders, and seeking PUC and Oregon Office of Energy (OOE) approval. If the project sale is not completed, ENA can not recover its development costs. The project sale could fail for any number of reasons, such as the Commission rejecting the application, the OOE rejecting the siting permit, or insufficient interest in the project by bidders. As such, ENA faces the risk of spending money to develop the project without knowing whether it will be able to recover its development costs. Accordingly, it is reasonable for ENA to be compensated for its risk in developing the second unit at Coyote Springs and in selling CS2.

Need for an Evidentiary Hearing

During the course of processing PGE's application, a prehearing conference was scheduled and held by the Administrative Law Judge. We note that the prehearing conference resulted in no formal interventions, and that only PGE, ENA and Commission Staff entered formal appearances.

We further note that the Commission Staff, PGE, and ENA resolved all outstanding issues in this docket through the Stipulation and that CUB, the only other party that attended the prehearing conference, has expressed no opposition to the application given the Stipulation.

Finally we note that neither ORS 757.480 nor ORS 757.495 provide for evidentiary hearings, given a finding that matters submitted for Commission review pursuant to those statutes are found to be in the public interest. As discussed further below, we find today that the Application, as well as the Project Implementation Agreement and the Asset Transfer Agreement, as modified by the Stipulation, are in the public interest and satisfy the statutory standards of ORS 757.480 and ORS 757.485.

CONCLUSIONS

1. If ENA is successful in developing and selling the second unit at Coyote Springs, PGE customers will enjoy the benefits of a reduction in the rate base associated with Coyote Springs equal to the net book value of the Transferred Assets transferred to the new owner of the second unit.
2. If ENA is successful in selling CS2 as a packaged plant, PGE will retain O&M responsibilities over the entire Coyote Springs facility. Thus, PGE customers will also enjoy the benefits of an allocation of operational savings when the O&M costs for the Coyote Springs are shared with the new owners of the second unit at Coyote Springs.
3. Accordingly, we find that the Transferred Assets can be transferred to an as-yet undetermined third party, consistent with the requirements of ORS 757.480, although actual transfer remains subject to (a) the sale of CS2 meeting certain conditions acceptable to ENA and PGE and (b) the sale reaching financial close.
4. The Project Development Agreement meets the standards and requirements of ORS 757.495.
5. The Application, as modified by the Stipulation, is reasonable and in the public interest.
6. No evidentiary hearing is necessary in this docket.
7. The terms of the Stipulation shall not apply if the sale to a third party does not close.

ORDER

IT IS ORDERED that:

1. Portland General Electric Company account for the sale proceeds and the deferred O&M savings as specified in the Stipulation. This order is for accounting purposes only, and ultimate ratemaking will be determined in a ratemaking proceeding;
2. The Project Implementation Agreement is approved as modified by the Stipulation; and
3. PGE may transfer the Transferred Facilities to a party, unknown at this time, upon consummation of the sale of CS2, subject to the terms of the Application and Stipulation.

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 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.