

Exhibit No. 6  
Docket No. UE-06\_\_\_\_\_

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

**PACIFICORP,**

For an Order Authorizing the Sale of Its  
Interest in the Centralia Transmission Line

Docket No. UE-06\_\_\_\_\_

**APPLICATION**

**PACIFICORP**

**APPLICATION EXHIBIT NO. 6**

**TransAlta's FERC Application**

**January 2006**

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**FEDERAL ENERGY  
REGULATORY COMMISSION**

January 14, 2005

**BY HAND DELIVERY**

Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Docket No. EG05-31-000  
TransAlta Centralia Generation LLC

Dear Ms. Salas:

Enclosed for filing are one original and fourteen copies of an Application of TransAlta Centralia Generation LLC for Redetermination of Exempt Wholesale Generator Status. Also enclosed is a diskette containing the Notice of Filing suitable for publication in the *Federal Register*. Pursuant to Section 381.801 of the Commission's regulations, no filing fee is required because TransAlta Centralia Generation LLC is a public utility.

Respectfully submitted,



David G. Tewksbury  
Natasha Gianvecchio  
LATHAM & WATKINS LLP  
555 11<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20004

Enclosures

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**TransAlta Centralia Generation LLC**

)  
) **Docket No. EG05-31-000**  
)

**APPLICATION OF TRANSALTA CENTRALIA GENERATION LLC FOR  
REDETERMINATION OF EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. § 79z-5a(a)(1) (2000), and Part 365 of the Commission's Regulations, 18 C.F.R. Part 365 (2004), TransAlta Centralia Generation LLC ("TACG") hereby applies for a redetermination of exempt wholesale generator ("EWG") status, confirming that TACG will continue to be an EWG upon the acquisition of certain ancillary facilities described below. The Commission has previously granted EWG status to TACG with respect to its ownership and operation of certain electric generation facilities and associated facilities located in Centralia, Washington (the "Centralia Facility").

**I. SERVICE**

In accordance with Section 365.3(a) of the Commission's Regulations, copies of this application are being served on the Securities and Exchange Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the California Public Utilities Commission, the Wyoming Public Service Commission, the Idaho Public Utility Commission, and the Utah Public Service Commission (together, the "State Commissions"). TACG has also included in this filing a draft notice of application suitable for publication in the Federal Register, along with a diskette containing an electronic version of the notice of application.

## II. COMMUNICATIONS

TACG requests that all service and correspondence concerning this Application be sent to:

Son Tran\*  
Corporate Counsel  
TransAlta  
110-12th Ave. S.W.  
Calgary, Alberta  
T2P 2M1  
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\* Designated for service.

## III. DESCRIPTION OF APPLICANT AND FACILITY

TACG is a direct, wholly-owned subsidiary of TECWA Power, Inc. ("TECWA"), which, in turn, is an indirect, wholly-owned subsidiary of TransAlta Corporation ("TransAlta"). TransAlta is a Canadian corporation engaged, through various subsidiaries and affiliates, in generation, power marketing and other energy-related activities in Canada, the United States, Mexico and Australia.

The exact name, address, and principal office of TACG is:

TransAlta Centralia Generation LLC  
913 Big Hanaford Road  
Centralia, Washington 98531

The Centralia Facility consists of the 1,405-MW coal-fired Centralia Steam Electric Generating Plant (the "Centralia Steam Plant"), a 248-MW combined-cycle, natural gas turbine generating facility (the "Big Hanaford Plant") and associated facilities. TACG acquired the Centralia Steam Plant (which then had an aggregate generating capacity of 1,340-MW) and associated facilities, including interconnecting transmission facilities, from PacifiCorp, Portland General Electric Company ("PGE"), Puget Sounds Energy Inc. ("Puget"), Avista Corporation

("Avista") and various non-jurisdictional utilities<sup>1</sup> (together with PacifiCorp, PGE, Puget and Avista, the "Former Owners") through a series of transactions that occurred in 2000 (the "2000 Transfer"). In connection with the 2000 Transfer, TACG's affiliate, TransAlta Centralia Mining LLC ("TACM"), acquired from the Former Owners a coal mine used to supply fuel to the Centralia Steam Plant (the "Centralia Coal Mine"), and PacifiCorp acquired the interests of the other Former Owners in a 230-kV transmission line (the "230-kV Line") between the Bonneville Power Administration ("BPA") transmission grid and the Centralia Coal Mine that it used to provide retail service to both the Centralia Steam Plant and the Centralia Coal Mine.<sup>2</sup> Among other things, TACM and PacifiCorp also entered into an agreement pursuant to which TACM has an option to purchase the 230-kV Line from PacifiCorp for the lesser of book value or \$120,000 (the "Option Agreement").

In anticipation of the 2000 Transfer, on December 13, 1999, as amended on January 24, 2000, TACG filed with the Commission an application for determination of EWG status upon its acquisition of 52.5% of the ownership interests from the Former Owners other than PacifiCorp of the Centralia Steam Plant and associated facilities, including interconnecting transmission facilities.<sup>3</sup> On February 25, 2000, the Commission found TACG to be an EWG.<sup>4</sup>

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<sup>1</sup> The non-jurisdictional utility owners included the City of Seattle, Washington; the City of Tacoma, Washington; Public Utility District No. 1 of Snohomish County, Washington; and Public Utility District No. 1 of Grays Harbor County, Washington.

<sup>2</sup> The Commission reviewed and approved the disposition of jurisdictional assets associated with the transfer of the interests in the Centralia Steam Plant by PacifiCorp, PGE, Puget and Avista and PacifiCorp's acquisition of the 230-kV Line pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. 824b (2000). *PacifiCorp, et al.*, 90 FERC ¶ 62,018 (2000).

<sup>3</sup> Application of TransAlta Centralia Generation LLC for Determination of Exempt Wholesale Generator Status, Docket No. EG00-49-000 (Dec. 13, 1999); Amendment to the Application of TransAlta Centralia Generation LLC for Determination of Exempt Wholesale Generator Status, Docket No. EG00-49-000 (Jan. 24, 2000).

<sup>4</sup> *TransAlta Centralia Generation LLC*, 90 FERC ¶ 62,134 (2000).

On April 12, 2000, TACG filed with the Commission a notification of material change in fact stating that TACG intended to acquire the remaining 47.5% ownership interests in the Centralia Steam Plant from PacifiCorp, bringing its total ownership interests in the Centralia Steam Plant to 100%.<sup>5</sup> On May 17, 2000, the Commission found TACG to be an EWG.<sup>6</sup>

After acquiring the Centralia Steam Plant, TACG made performance improvements that increased the generating capacity of the plant from 1,340 MW to 1,405 MW and installed the Big Hanaford Plant on the same site. TACG filed a notification of nonmaterial change in fact in connection with these developments on January 23, 2003.<sup>7</sup>

Currently, TACG is considering acquiring and exercising TACM's rights under the Option Agreement. If TACG exercises such rights, it will acquire the 230-kV Line used to supply retail service to the Centralia Steam Plant and the Centralia Coal Plant.<sup>8</sup>

#### **IV. STATUS OF TACG AS AN EWG PURSUANT TO SECTION 32(A) OF PUHCA AND PART 365 OF THE COMMISSION'S REGULATIONS**

The following information is provided to comply with Section 365.3 of the Commission's Regulations:

1. Attachment A to this filing is a sworn statement by a representative legally authorized to bind TACG, attesting to the facts and representations in this Application to demonstrate that, upon closing of the Transaction, TACG will be eligible for EWG status.
2. TACG will be engaged directly, or indirectly through one or more "affiliates" as defined in Section 2(a)(11)(B) of PUHCA, 15 U.S.C. § 79b(a)(11) (2000), and

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<sup>5</sup> Notification of Material Change in Fact of TransAlta Centralia Generation LLC, Docket No. EG00-131-000 (Apr. 12, 2000).

<sup>6</sup> *TransAlta Centralia Generation LLC*, 92 FERC ¶ 62,116 (2000).

<sup>7</sup> Notice of Nonmaterial Factual Change for Exempt Wholesale Generator, Docket No. EG00-131-000 (Jan. 23, 2003).

<sup>8</sup> TACG will seek Commission approval under Section 203 of the FPA (and any other applicable approvals) prior to acquiring the 230-kV Line.

exclusively in the business of owning and/or operating all or part of one or more eligible facilities and selling electric energy at wholesale. Upon closing of the asset sale contemplated by the Option Agreement, TACG would own and operate the 230-kV Line in addition to the facilities described in TACG's prior EWG filings with the Commission. As discussed below, the 230-kV Line is an ancillary facility whose ownership and operation is reasonably incidental to the exclusive ownership and operation of the Centralia Facility and the sale of electric energy at wholesale.

3. TACG does not make foreign retail sales of electric energy and would not engage in such sales upon acquiring the 230-kV Line.

4. The circumstances described in Section 365.3(a)(1)(iii) of the Commission's Regulations do not, and will not upon TACG's acquisition of the 230-kV Line, apply.

5. TACG's eligible facilities include the Centralia Steam Plant, the Big Hanaford Plant and the interconnecting transmission facilities used to effect wholesale sales from those generating facilities. As discussed below, the 230-kV Line will not be an eligible facility or a part of the eligible facility.

6. There are no lease arrangements involving the Centralia Facility.

7. No "electric utility company" is an "affiliate" or "associate company" of TACG or will become an "affiliate" or "associate company" by virtue of TACG's acquisition of the 230-kV Line, as each of those terms is defined in PUHCA.

8. Pursuant to Section 365.3(b) of the Commission's Regulations, Attachment B to this filing contains orders issued by each of the State Commissions making the findings, required under Section 32(c) of PUHCA, that allow the Centralia Steam Plant and associated interconnecting facilities because such allowing such facilities to be eligible facilities

(a) will benefit consumers; (b) are in the public interest; and (c) do not violate any State law. As discussed below, no such findings are required with respect to the 230-kV Line that may be acquired from PacifiCorp because the 230-kV Line will not be an eligible facility.

## V. CHANGE IN FACTS FROM PRIOR EWG FILINGS

The single change in facts from TACG's prior EWG filings is TACG's possible acquisition of the 230-kV Line. TACG submits that, under Commission precedent, (i) the ownership and operation of the 230-kV Line would not run afoul of the EWG exclusivity requirement and (ii) no State consents under Section 32(c) of PUHCA should be required for TACG to own and to operate the 230-kV Line. Accordingly, TACG asks that the Commission determine that TACG would continue to be an EWG if it were to acquire the 230-kV Line.

### A. TACG's Ownership of the 230-kV Line Is Incidental to its Operation and Ownership of its Eligible Facilities

Section 32(a)(1) of PUHCA requires that an EWG must be "exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electricity at wholesale." 15 U.S.C. § 79z-5a(a)(1) (2000). The Commission has interpreted this provision as allowing an applicant for EWG status "to undertake activities incidental to its operation and ownership of its eligible facilities."<sup>9</sup> In reviewing such activities the Commission considers whether the activities are incidental to the primary EWG activities such that it can find that the applicant meets the requirement that an EWG be engaged exclusively in the business of owning and operating all or part of an eligible facility and selling electric energy at wholesale.<sup>10</sup>

As historically used by PacifiCorp and as it would continue to be used by TACG if it exercised its rights under the Option Agreement, the 230-kV Line is used to effect retail

<sup>9</sup> *PP&L Colstrip III, LLC and PP&L Montana, LLC*, 88 FERC ¶ 61,281 at 61,868 (1999) ("*Colstrip*").

<sup>10</sup> *Id.*



deliveries from the BPA transmission grid to the Centralia Facility and the Centralia Coal Mine.<sup>11</sup> Specifically, the 230-kV Line is used to provide (i) back-up power to the Centralia Facility and (ii) energy consumed at the Centralia Coal Mine.<sup>12</sup> If TACG were to acquire and exercise TACM's option, then, the 230-kV Line would be an ancillary facility, the ownership and operation of which would be reasonably incidental to TACG's primary EWG activities.

With respect to the provision of back-up power to the Centralia Facility, the Commission has previously found that the activity of providing back-up service to generating facilities, whether owned by the EWG or others, is incidental to the ownership and operation of eligible facilities, and thus, entirely consistent with EWG status.<sup>13</sup> As such, TACG's ownership of a transmission line that provides back-up power service to its own facility would clearly be incidental to its primary business of owning and operating eligible facilities and selling electric energy at wholesale.

Similarly, the provision of electric energy to the Centralia Coal Mine, which is used exclusively for purposes of providing coal consumed by the Centralia Steam Plant, is incidental to the ownership and operation of eligible facilities and thus entirely consistent with EWG status. TACG would use the 230-kV Line to deliver power to the Centralia Coal Mine so

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<sup>11</sup> Upon TACG's acquisition of the 230-kV Line, the point of delivery of the power will change from the Centralia Facility and the Centralia Coal Mine to the interconnection point with the BPA transmission grid.

<sup>12</sup> As indicated in the original application seeking the Commission's approval under Section 203 of the FPA for the 2000 Transfer, the 230-kV Line is not used by any other party and it appears highly unlikely that any other party will ever seek to use it. See Joint Application of PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Avista Corporation, TransAlta Centralia Generation LLC and TECWA Power, Inc. at Seeking Authorization for the Transfer of Jurisdictional Facilities at 11, Docket No. EC00-17-000 (Nov. 1, 1999). However, if an eligible entity requests service over the 230-kV Line, TACG will file with the Commission a *pro forma* tariff within 60 days of such request and will comply with any additional requirements that are effective on the date of the request.

<sup>13</sup> *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 at 62,256 (2002); *Erie Boulevard Hydropower, L.P.*, 87 FERC ¶ 61,378 at 62,407 (1999); *Zond Systems, Inc.*, 81 FERC ¶ 61,001 at 61,002 (1997).

that the Centralia Coal Mine can provide the fuel that the Centralia Steam Plant needs to generate electric energy for sale at wholesale.<sup>14</sup> The Commission has previously recognized activities which facilitate the provision of fuel used to generate electric energy as reasonably incidental to primary EWG activities and thus as consistent with EWG status.<sup>15</sup> Such incidental activities can include transmission activities that, like those associated with the 230-kV Line, are not strictly related to effecting delivery of electric energy from eligible generating facilities for sale at wholesale.<sup>16</sup>

**B. The 230-kV Line Is Not an Eligible Facility or a Part of an Eligible Facility, so No Section 32(c) Findings Should Be Required**

Section 32(c) of PUHCA requires State consent before any facility previously included in retail rate base may "be considered an eligible facility." 15 U.S.C. § 79z-5a (2000). Section 32(c) determinations are required only for a facility, or portion thereof, which will be an eligible facility.<sup>17</sup> Because the 230-kV Line will not be an eligible facility, no Section 32(c) determinations should be required in order to allow TACG to retain EWG status if it acquires the 230-kV Line.<sup>18</sup>

Section 32(a)(1) of PUHCA defines the term "eligible facility" as a facility "used for the generation of electric energy exclusively for sale at wholesale" or "for the generation of electric energy and leased to one or more public utility companies" and further provides that the

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<sup>14</sup> The Centralia Steam Plant receives most of its coal from the Centralia Coal Mine and the remainder from other sources.

<sup>15</sup> See, e.g., *FPL Energy Wyman LLC*, 86 FERC ¶ 61,182 at 61,633 (1999) (finding ownership and leasing of lighthouse incidental to primary EWG activities as the lighthouse is part of the existing navigation system that ships rely on to transport and deliver necessary fuel supplies to eligible facility in a safe and reliable manner).

<sup>16</sup> *Colstrip*, 88 FERC at 61,869. See also *Redbud Energy LP*, 107 FERC ¶ 61,101 at P 16 (2004).

<sup>17</sup> *FTM Energy Inc.*, 74 FERC ¶ 61,312 at 61,988-89 (1996).

<sup>18</sup> TACG assumes for purposes of this application that (i) the 230-kV Line was previously included in retail rate base; and (ii) the Section 32(c) determinations previously obtained in connection with TACG's acquisition of the Centralia Steam Plant do not cover the 230-kV Line.

term encompasses "interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale." 15 U.S.C. § 79z-5a(a)(1) (2000). Consistent with the statutory definition of the term, the Commission has recognized that the typical eligible facility is a "facility that actually generates electricity"<sup>19</sup> but has also acknowledged that interconnecting transmission facilities used to effect wholesale sales from an eligible generating facility may be eligible facilities.<sup>20</sup>

Commission precedent clearly delineates, however, between eligible facilities the exclusive ownership and/or operation of which provides a basis for seeking EWG status, and ancillary facilities that may be owned and/or operated by an EWG but whose ownership and/or operation does not alone provide a basis for obtaining EWG status.<sup>21</sup> As explained by the Commission, "Congress intended that there would be an owner/operator of a generating facility who may also own additional ancillary facilities without violating the exclusivity requirement," but "Congress only specified one instance in which non-generating facilities may could be part of an eligible facility, namely, 'interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale.'"<sup>22</sup>

The line between eligible and ancillary facilities is no less bright where transmission facilities are concerned. In other words, a transmission line may be either an eligible facility or an ancillary facility depending on its function. If, as in *Termoelectrica* and

<sup>19</sup> *Desarollo Petacalco, S. De R. L. De C.V.*, 67 FERC ¶ 61,070 at 61,199 (1994) ("*Desarollo I*"), reconsideration denied, 67 FERC ¶ 61,403 (1994) ("*Desarollo II*").

<sup>20</sup> See *Katahdin Transmission, LLC*, 104 FERC ¶ 61,195 (2003); *Sagebrush*, 103 FERC ¶ 61,332 (2003) ("*Katahdin*"); *Termoelectrica de Mexicali, S. de R.L. de C.V.*, 102 FERC ¶ 61,019 (2002) ("*Termoelectrica*"). But see *FPL Energy New England Transmission, LLC*, 103 FERC ¶ 61,194 (2003) ("*FPLE-NET*") (declining to extend *Termoelectrica* to circumstances involving transmission facilities not used solely to effect wholesale sales from an eligible generating facility).

<sup>21</sup> See *Desarollo I*, 67 FERC at 61,199.

<sup>22</sup> *Desarollo II*, 67 FERC at 62,369-70.

*Katahdin*, the transmission line is an interconnecting transmission facilities used to effect wholesale sales from an eligible generating facility, the line itself will be an eligible facility.<sup>23</sup> By contrast, if, as in *FPLE-NET*, the transmission line serves some other purpose, the line will not be an eligible facility<sup>24</sup> but may be an ancillary facility if that other purpose is reasonably incidental to the business of owning and/or operating one or more eligible facilities and selling electric energy at wholesale.<sup>25</sup>

Unlike the transmission facilities at issue in *Termoelectrica* and *Katahdin* and like the transmission facilities at issue in *FPLE-NET*, the 230-kV Line is *not* used to effect sales at wholesale. Sales at wholesale from TACG's eligible generating facilities are effected using two 500-kV transmission lines and associated facilities that interconnect the Centralia Facility with the BPA transmission grid. The 230-kV Line is used exclusively to effect retail sales to TACG and TACM. In other words, energy flows in through the 230-kV Line for ultimate consumption at the Centralia Facility and the Centralia Coal Mine but does not flow out into the wholesale market. Thus, as discussed above in Section V.A., the purpose of the 230-kV is reasonably incidental to the business of owning and operating TACG's eligible facilities and selling electric energy at wholesale. That purpose, however, is clearly inconsistent with the statutory definition of an "eligible facility."

From a policy perspective, no useful purpose would be served by requiring PacifiCorp (and, possibly, the other Former Owners of the 230-kV Line) to seek Section 32(c)

<sup>23</sup> See *Katahdin*, 104 FERC ¶ 61,195 at P 8 (explaining that the transmission facilities at issue are "necessary for purposes of effecting [another EWG's] delivery of electric energy to wholesale markets"); *Termoelectrica*, 102 FERC ¶ 61,019 at P 9 (describing the transmission line at issue as necessary "[t]o sell the electric energy generated at [another EWG]'s facility to the wholesale markets").

<sup>24</sup> See *FPLE-NET*, 103 FERC ¶ 61,194 at PP 12-13.

<sup>25</sup> See, e.g., *Sagebrush & Euros ToyoWest Mgmt. LLC*, 103 FERC ¶ 61,332 at P 19 (2003) (finding that two EWGs' "ownership and operation of interconnecting transmission facilities indirectly owned and used for wholesale sales by [certain] non- EWG QFs is incidental to [the EWGs'] activities as EWGs").

determinations from at least six State commissions with respect to the 230-kV Line. The Commission has long recognized that Section 32 of PUHCA must be construed "consistent with practical and commercial realities" facing developers and with the understanding that "one of the purposes of section 32 was to remove regulatory obstacles to the development of the independent power industry. . . ." In this instance, the practical reality is that, even assuming that no specific Section 32(c) determinations were made with respect to the 230-kV Line itself, the State Commissions made the Section 32(c) determinations contained in Attachment B in the context of the divestiture by PacifiCorp and the other Former Owners of their interests in the Centralia Steam Plant and the Centralia Coal Mine, and the Option Agreement was an integral part of that broader transaction. The commercial reality is that the burden of trying to obtain further Section 32(c) determinations with respect to the 230-kV Line would be entirely disproportionate to the value of that facility to either PacifiCorp or TACG and would create a significant obstacle to a mutually beneficial transfer of ownership and responsibility for the 230-kV.<sup>26</sup> Finally, and perhaps most importantly, a Commission order holding that a transmission line used exclusively to effect retail sales is an eligible facility would be irreconcilable with *FPLE-NET* and would invite further proposals of the very sort that the Commission rejected in that order.

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<sup>26</sup> As noted above, the purchase price in the Option Agreement is the lesser of book value or \$120,000.

**VI. CONCLUSION**

For the reasons stated above, TACG respectfully requests that the Commission determine that TACG will continue to be an EWG pursuant to Section 32(a)(1) of PUHCA if it acquires the 230-kV Line.

Respectfully submitted,



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Washington, D.C. 20004

Joel H. Mack  
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San Diego, CA 92101-3375

*Counsel for TransAlta Centralia Generation LLC*

Dated: January 14, 2005

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

TransAlta Centralia Generation LLC )  
 ) Docket No. EG05-\_\_\_\_  
 )

**NOTICE OF APPLICATION FOR COMMISSION DETERMINATION  
OF EXEMPT WHOLESALE GENERATOR STATUS**

(\_\_\_\_\_, 2005)

On January 14, 2005, TransAlta Centralia Generation LLC ("TACG") filed with the Commission an application for redetermination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

TACG states that copies of the application were sent to the Securities and Exchange Commission and the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the California Public Utilities Commission, the Wyoming Public Service Commission, the Idaho Public Utility Commission, and the Utah Public Service Commission.


Any person desiring to be heard concerning Washington LLC's application for EWG status should file a motion to intervene or comments with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions or comments should be filed on or before \_\_\_\_\_, 2005 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Magalie Salas  
Secretary**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the Securities and Exchange Commission and upon the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the California Public Utilities Commission, the Wyoming Public Service Commission, the Idaho Public Utility Commission, and the Utah Public Service Commission.

Dated at Washington, D.C. this 14th day of January, 2005.



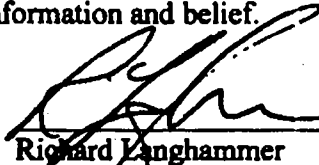
David G. Tewksbury  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004



# ATTACHMENT A


**VERIFICATION**

Richard Langhammer, first being duly sworn, attests that he is President of TransAlta Centralia Generation LLC ("TACG") and that he has authority with respect thereto; that he has knowledge with respect to the matters set forth in the foregoing Application; that he is a representative legally authorized to bind TACG; that the attached Application was prepared under his supervision; and that the facts and representations set forth in the attached Application are true and correct to the best of his knowledge, information and belief.



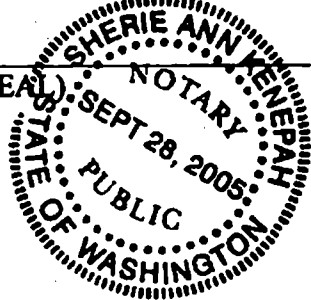
Richard Langhammer  
President  
TransAlta Centralia Generation LLC

Subscribed and sworn before me this 12 day of January, 2005.

  
Notary Public

My Commission Expires: 9.28.05

(NOTARIAL SEAL)



# **ATTACHMENT B**

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
AVISTA CORPORATION FOR AUTHORITY ) CASE NO. AVU-E-99-6  
TO SELL ITS INTEREST IN THE COAL- )  
FIRED CENTRALIA POWER PLANT )**

**IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP FOR AN ORDER APPROVING ) CASE NO. PAC-E-99-2  
THE SALE OF ITS INTEREST IN (1) THE )  
CENTRALIA STEAM ELECTRIC )  
GENERATING PLANT, (2) THE RATE BASED )  
PORTION OF THE CENTRALIA COAL MINE, )  
AND (3) RELATED FACILITIES; FOR A )  
DETERMINATION OF THE AMOUNT OF AND )  
THE PROPER RATEMAKING TREATMENT ) ORDER NO. 28186  
OF THE GAIN ASSOCIATED WITH THE )  
SALE; AND FOR AN EWG DETERMINATION )**

On August 10, 1999, Avista Corporation dba Avista Utilities—Washington Water Power Division (Avista) filed an Application with the Idaho Public Utilities Commission regarding the proposed sale by Avista of its 15% ownership interest in the coal-fired Centralia Power Plant, a 1340 megawatt generation facility located in the state of Washington. The facility is co-owned by Avista (15%), PacifiCorp (47.5%), City of Seattle (8%), City of Tacoma (8%), Snohomish PUD (8%), Puget Sound Energy (7%), Grays Harbor County PUD (4%) and Portland General Electric (2.5%).

On August 12, 1999, PacifiCorp dba Utah Power & Light Company (PacifiCorp) filed an Application with the Commission regarding the proposed sale by PacifiCorp of its 47.5% ownership interest in the Centralia Power Plant (and related facilities) and the rate based portion of its ownership interest in the adjacent Centralia Coal Mine. PacifiCorp is the sole owner of the Centralia Mine.

The purchaser of the Centralia generating unit is TECWA Power, Inc. (TECWA Power) and the purchaser of the Centralia Coal Mine is TECWA Fuel, Inc. (TECWA Fuel), both Washington corporations and both wholly-owned subsidiaries of TransAlta Corp., a Canadian energy corporation.

ORDER NO. 28186

As represented in their respective Applications, the owners of the Centralia facilities decided to sell the assets due principally to the possible need for additional capital expenditures (sulfur dioxide scrubbers and low nitrogen burners) to meet air emission requirements and the potential impact of U.S. electric utility industry deregulation trends on the prospect for recovery of utility plant-in-service investment. The purchase price of the generating facility as reflected in the Centralia Plant Purchase and Sale Agreement is \$452,598,000. The purchase price of the coal mine as reflected in the Centralia Coal Mine Purchase and Sale Agreement is \$101,400,000. The gross purchase prices are subject to certain adjustments which must be incorporated in any calculation of net gain.

PacifiCorp and Avista seek a Commission ruling pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 (PUCHA) (codified at 15 U.S.C. § 79z-5a(c)) classifying the Centralia Power Plant as an "eligible facility," thus allowing the purchaser to operate the plant as an Exempt Wholesale Generator (EWG) under federal law. An EWG is exempt from the provisions of PUCHA. Specifically, the utilities seek a Commission determination that operation of Centralia as an "eligible facility" [i.e., to be owned by an EWG] upon sale (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The utilities request expedited processing of the EWG determination. Expedited processing, they state, is important from a timing standpoint. TransAlta, it is explained, cannot commence processing its application with the Federal Energy Regulatory Commission (FERC) in order to obtain FERC's qualification of these generation assets as "eligible facilities" and TECWA Power as an "Exempt Wholesale Generator" until the Commission has made the three determinations required by federal statute. The utilities ask that their requested determination be made prior to and contingent upon the required regulatory approvals of the sale. As completion of sale cannot take place without the relevant state regulatory approvals, it is represented that this assures making these determinations will not prejudice the merits of the proposed sale under Idaho statutory standards.

The Applications filed by PacifiCorp and Avista include copies of the Centralia Power Plant Purchase and Sale Agreement, Centralia Coal Mine Purchase and Sale Agreement, other transactional documents and prefiled testimonies of company witnesses.

On August 31, 1999, the Commission in Case Nos. AVU-E-99-6 and PAC-E-99-2 issued a consolidated Notice of Request for Determination of EWG "eligible facility" status and

**Modified Procedure.** In its Notice the Commission found that the issue presented regarding the classification of the Centralia generation facility as an "eligible facility" for purpose of subsequent operation by an Exempt Wholesale Generator (EWG) under federal law was an issue that could be addressed by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. The deadline for filing written comments regarding EWG determination and proposed use of Modified Procedure was September 24,

1999. Commission Staff was the only party to file comments.

In its comments Staff states the following:

Commission Staff has reviewed the referenced U.S. Code language regarding Exempt Wholesale Generators (15 U.S.C.A § 79z-5a). The ownership interests of Avista and PacifiCorp in the Centralia coal-fired generation facilities are a part of each utility's rate base in Idaho on which each receives a return on investment and are now and have been included in the rate base of each utility since or prior to October 24, 1992.

...

For Centralia to be considered as an eligible facility by FERC for EWG status, this Commission is required to make a specific determination that allowing such a facility to be an "eligible facility" (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The third requested determination is perhaps the most straight forward. Based on its 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 TECWA Power as an EWG to operate the plant as a wholesale facility.

The remaining requested determinations (1) and (2) are more problematic. Staff is in the midst of its investigation, has outstanding production requests, has yet to decide whether it supports the proposed sale and has yet to assess the benefits to customers and the public interest inherent in a completed sale. ... Staff represents to the Commission, to Avista and to PacifiCorp that should Staff ultimately conclude that the proposed sale should be approved, such recommendation will be supported by a belief that qualifying the presently rate based generation facilities after the sale as "eligible facilities" for EWG status determination will both benefit the consumer and be in the public interest.

### **Commission Findings**

As set forth in the Application, TransAlta intends to seek FERC approval to own and operate the Centralia facilities with Exempt Wholesale Generator status. Because the Centralia facilities are currently in the rate bases of PacifiCorp and Avista for their jurisdictional sales of electricity in this state, 15 U.S.C. § 79z-5a(c) requires that TransAlta include in its EWG application to FERC a statement that this Commission has determined that allowing the plant to be a wholesale facility operated by an EWG "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law." Issuing the requested EWG determination, we find, will not preclude any party from raising, addressing or resolving any other issues including, without limitation, the standard to be applied in resolving whether to approve the proposed sale or the appropriate regulatory treatment for any gain realized as a result of the sale. The requested EWG determination, we find, can be conditioned upon final approval of the proposed sale. We find that an EWG determination will have no precedential effect with respect to approval of the proposed sale, the standard to be applied in resolving whether to approve the proposed sale, or any issue other than EWG determination. Should we decline to ultimately approve the proposed sale, the EWG determination will become null and void.

The Commission continues to find Modified Procedure regarding the issue of EWG "eligible facility" status to be reasonable. Reference IDAPA 31.01.01.201-204. The Commission has jurisdiction over the Idaho rates and charges of Avista and PacifiCorp. A portion of the respective rates and charges for each utility represents recovery of rate based investment in Centralia generation and/or mine facilities. Based on the filings of record in Case Nos. AVU-E-99-6 and PAC-E-99-2 the Commission finds it reasonable to issue the determination required under 15 U.S.C. § 79z-5a(c) conditioned upon our final and/or ultimate approval of the proposed sale of the Centralia facilities.

### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over the Applications of Avista Corporation dba Avista Utilities-Washington Water Power Division and PacifiCorp dba Utah Power & Light Company, electric utilities, and the issues presented therein pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER NO. 28186

**ORDER**

In consideration of the foregoing and as more particularly described above. IT IS HEREBY ORDERED and the Commission does hereby make the following determinations:

1. Avista and PacifiCorp's Applications for a determination under 15 U.S.C. § 79z-5a(c) are granted conditioned upon a Commission Order approving the proposed sale of the Centralia facilities. If the Commission does not ultimately issue an Order in these cases approving the proposed sale, this EWG determination will be null and void.

2. The Commission retains jurisdiction over the subject matter and Avista and PacifiCorp to effectuate the provisions of this Order.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 25<sup>th</sup> day of October 1999.

  
DENNIS S. HANSEN, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
PAUL KJELLANDER, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

blz/O:avuc996\_pacc992\_sw

ORDER NO. 28186



**SERVICE**

**OCT 14 1999**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

*In the Matter of the Application of*

**AVISTA CORPORATION**

**for Authority to Sell its Interest in the Coal-Fired  
Centralia Power Plant.**

**Docket No. UE-991255**

**ORDER**

**RE: EXEMPT WHOLESALE  
GENERATOR STATUS**

**MEMORANDUM**

On August 6, 1999, Avista Corporation (Avista or the Company) filed an Application for "Authority to Sell its Interest in the Coal-Fired Centralia Power Plant." Avista's application seeks an Order under chapter 80.12 RCW authorizing the sale of its 15 percent ownership interest in the 1340-megawatt Centralia Power Plant (Centralia) to TECWA Power, Inc. The Application also seeks authorization to defer treatment of the gain on the sale to a future rate proceeding.

TECWA is a Washington corporation and a subsidiary of TransAlta Corporation, headquartered in Calgary, Alberta, Canada. The parent company, TransAlta, is a Canadian energy company with \$5 billion (Canadian) in assets and is the leading producer of independent power in Canada. TECWA has agreed to purchase Centralia for \$425,598,000 and the adjacent Centralia Mine for \$101,400,000.

As set forth in Avista's application, TECWA Power, Inc., intends to seek Federal Energy Regulatory Commission ("FERC") approval to own and operate the Centralia facilities with exempt wholesale generator status. Because the Centralia Power Plant is currently in Avista's rate base for its jurisdictional sales of electricity in this state, 15 U.S.C. § 79z-5a(c) requires that TECWA include with its EWG application to FERC a statement that the Washington Utilities and Transportation Commission has determined that allowing the facility to be a wholesale facility operated by an EWG: "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law."

**FINDINGS**

**THE COMMISSION FINDS:**

1. Avista is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company, and is subject to the jurisdiction of this Commission.
2. Avista filed an Application on August 6, 1999, for an order under chapter 80.12 RCW authorizing the sale of Avista's ownership interests in the Centralia Power Plant to

DOCKET UE-991255

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TECWA Power, Inc. The Application also sought a determination from the Commission that allowing these facilities to be operated by an exempt wholesale generator meets the requirements of 15 U.S.C. § 79z-5a(c).

3. If the Commission eventually approves the sale of the Centralia Power Plant, allowing the purchaser to operate the Centralia Power Plant as an EWG will benefit consumers and is in the public interest. Under these conditions, allowing the purchaser to operate the Centralia Power Plant as an EWG would not violate state law.

**ORDER**

WHEREFORE, THE COMMISSION HEREBY ORDERS:

1. Avista's application for a determination under 15 U.S.C. § 79z-5a(c) is granted, conditioned upon a Commission order approving the proposed sale of the Centralia Power Plant. If the Commission does not ultimately issue an order approving the proposed sale, this EWG determination will be null and void.
2. This order shall in no way affect the authority of this Commission over rates, services, accounts, evaluations, estimates, or determination of cost or any matters whatsoever that may come before it, nor shall anything herein be construed as an acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.
3. The Commission retains jurisdiction over the subject matter and Avista Corporation to effect the provisions of this order.

DATED at Olympia, Washington, and effective this 14<sup>th</sup> day of October, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
WILLIAM R. GILLIS, Commissioner

**SERVICE DATE****OCT 13 1999****BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

**PUGET SOUND ENERGY, INC.**

for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Facilities, and (2) Authorization to Amortize the Gain Over a Five-Year Period.

Docket No. UE-991409

**ORDER****RE: EXEMPT WHOLESALE  
GENERATOR STATUS****MEMORANDUM**

On September 13, 1999, Puget Sound Energy, Inc., ("PSE") filed an Application "for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Facilities, and (2) Authorization to Amortize the Gain Over a Five-Year Period." PSE's application seeks an order authorizing the sale of its 7.0 percent ownership interest in the 1340-megawatt Centralia Power Plant (Centralia) to TECWA Power, Inc. The Application also seeks a determination that TECWA Power, Inc., should be allowed to operate the Centralia Power Plant as an Exempt Wholesale Generator (EWG).

TECWA is a Washington corporation and a subsidiary of TransAlta Corporation, headquartered in Calgary, Alberta, Canada. The parent company, TransAlta, is a Canadian energy company with \$5 billion (Canadian) in assets and is the leading producer of independent power in Canada. TECWA has agreed to purchase Centralia for \$425,598,000 and the adjacent Centralia Mine for \$101,400,000.

As set forth in PSE's application, TECWA Power, Inc., intends to seek Federal Energy Regulatory Commission ("FERC") approval to own and operate the Centralia facilities with exempt wholesale generator status. Because the Centralia Power Plant is currently in PSE's rate base for its jurisdictional sales of electricity in this state, 15 U.S.C. § 79z-5a(c) requires that TECWA include with its EWG application to FERC a statement that the Washington Utilities and Transportation Commission has determined that allowing the facility to be a wholesale facility operated by an EWG: "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law."

DOCKET UE-991409

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**FINDINGS****THE COMMISSION FINDS:**

1. PSE is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company, and is subject to the jurisdiction of this Commission.
2. PSE filed an Application on September 13, 1999, for an order under chapter 80.12 RCW authorizing the sale of PSE's ownership interests in the Centralia Power Plant to TECWA Power, Inc. The Application also sought a determination from the Commission that allowing these facilities to be operated by an exempt wholesale generator meets the requirements of 15 U.S.C. § 79z-5a(c).
3. If the Commission eventually approves the sale of the Centralia Power Plant, allowing the purchaser to operate the Centralia Power Plant as an EWG will benefit consumers and is in the public interest. Under these conditions, allowing the purchaser to operate the Centralia Power Plant as an EWG would not violate state law.

**ORDER****WHEREFORE, THE COMMISSION HEREBY ORDERS:**

1. PSE's application for a determination under 15 U.S.C. § 79z-5a(c) is granted, conditioned upon a Commission order approving the proposed sale of the Centralia Power Plant. If the Commission does not ultimately issue an order approving the proposed sale, this EWG determination will be null and void.
2. This order shall in no way affect the authority of this Commission over rates, services, accounts, evaluations, estimates, or determination of cost or any matters whatsoever that may come before it, nor shall anything herein be construed as an acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.
3. The Commission retains jurisdiction over the subject matter and Puget Sound Energy to effect the provisions of this order.

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DATED at Olympia, Washington, and effective this 13<sup>th</sup> day of October, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
WILLIAM R. GILLIS, Commissioner

**PUBLIC UTILITY COMMISSION  
OF OREGON**

*State of Oregon*            )  
                                  )  
*County of Marion*        )

*I, Diane Davis, Administrative Specialist of the Administrative Hearings Division for the Public Utility Commission of the State of Oregon, do hereby certify that the enclosed copy of*

**ORDER NO. 99-730**

*has been compared by me with the original thereof on file and of record in my custody, and that the same is a true and correct copy of said original.*

*IN WITNESS WHEREOF I have hereunto set my hand and the Commission Seal this 3<sup>rd</sup> day of December, 1999.*



**PUBLIC UTILITY COMMISSION**

*Diane Davis*  
\_\_\_\_\_  
**Diane Davis**  
**Administrative Specialist**  
**Administrative Hearings Division**

**C:certify**

ORDER NO. 99-130

ENTERED NOV 29 1999

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UP 165/UP 170

TRUE COPY OF ORIGINAL  
D. Davis  
ADMINISTRATIVE HEARINGS

In the Matter of the Application of Portland )  
General Electric Company for Approval to )  
Sell Its 2.5 Percent Ownership Share of the )  
Centralia Steam Electric Generating Plant )  
to Avista Corporation. (UP 165). )

ORDER

In the Matter of the Application of Portland )  
General Electric Company for Approval to )  
Sell Its 2.5 Percent Ownership Share of the )  
Centralia Steam Electric Generating Plant )  
to TECWA Corporation. (UP 170). )

**DISPOSITION: SALE TO AVISTA APPROVED; SALE TO TECWA DENIED**

**BACKGROUND**

On June 3, 1999, Portland General Electric Company (PGE) filed an application with the Commission in docket UP 165 seeking approval for the sale of its 2.5 percent interest in the Centralia Steam Electric Generating Plant and transmission facilities (Centralia) to Avista Corporation (Avista).<sup>1</sup> On August 19, 1999, PGE submitted another application for approval to sell its interest in Centralia. The second application docketed as UP 170 seeks authorization to sell PGE's interest to TECWA Power, Inc. (TECWA). PGE supports the sale to Avista in UP 165. If the Commission does not approve that sale, PGE requests the Commission approve the sale to TECWA.

On July 26, 1999, the Citizens' Utility Board (CUB) filed a notice of its intervention in the proceeding as a matter of right. ORS 774.180. On July 27, 1999, the Industrial Customers of Northwest Utilities (ICNU) filed a petition to intervene. The ICNU petition was granted.

<sup>1</sup> October 20, 1999, PGE submitted an amendment to the UP 165 application.

**ORDER NO. 99-730**

On September 14, 1999, PGE, the Commission Staff (Staff), ICNU, and CUB filed a stipulation on procedural matters, including an agreement that UP 165 and UP 170 should be consolidated.<sup>2</sup> The stipulation recites Staff's recommendation that the Commission approve the sale to Avista unless the Commission finds that the sale to TECWA better meets the statutory public interest test. The parties agreed to keep the Commission informed regarding developments in the two sales through November 24, 1999.<sup>3</sup> Finally, the stipulation asked the Commission to issue an order by November 30, 1999. On September 23, 1999, Thomas G. Barkin, Administrative Law Judge, approved the schedule in the stipulation.

**THE APPLICATIONS**

PGE's proposed sale is part of a larger agreement by the eight co-owners<sup>4</sup> of Centralia to sell the generating asset. According to PGE, a significant factor precipitating the sale was a decision in 1996 by the Southwest Washington Pollution Control Authority (SWPCA). SWPCA ordered Centralia's owners to remove 90 percent of the sulfur emissions from the plant by the end of 2002. Compliance with this order requires the installation of scrubbers and low-Nox burners. The order is currently on appeal in King County, Washington. Because of the cost of compliance, the diverse ownership of the plant, and the appeal, the co-owners decided that a single owner emerging from an auction could deal most effectively with the legal and environmental issues facing the plant.

The co-owners put the plant and associated assets up for auction in October 1998. On May 10, 1999, the co-owners announced that TECWA won the bid, with an offer of \$354/kw, or \$11.3 million for PGE's share.

TECWA placed two important conditions on its offer. First, the co-owners must immediately begin installation of scrubbers. Second, the entire sale, including five state and FERC regulatory approvals of the sale and FERC grant of exempt wholesale generator status, must close by May 5, 2000.

PGE believes the TECWA purchase has considerable risk of not closing. PGE lists following as factors that create risks that the TECWA sale might not close:

1. There are eight sellers and 21 regulatory bodies, Boards, and Commissions that must approve the sale. Any seller or regulator could stop the sale. Appendix B shows each co-owner and the regulatory approvals each co-owner must obtain for TECWA to own 100 percent of the plant.

2. All approvals must be in place by May 5, 2000.

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<sup>2</sup> The stipulation is attached as Appendix A.

<sup>3</sup> The status report was filed November 24, 1999.

<sup>4</sup> The Centralia co-owners (and ownership shares) are set forth in Appendix B.



**ORDER NO. 99-730**

3. TECWA may reconsider its decision and delay the closing until the contract expires. Conditions that could cause TECWA to reconsider are the high cost of coal at Centralia together with the high cost of building and operating a scrubber to meet the SWPCA requirement. Another factor is that TECWA is a Canadian buyer with limited experience in the United States with markets and regulations. With further experience, TECWA may determine that the sale is not viable.

4. The SWPCA order is on appeal in King County Superior Court and is expected to go to the Washington Court of Appeals. Reversal of the order could have significant effects on the economics of Centralia.

5. One of the co-owners may reconsider because it is dissatisfied with the treatment of the regulatory body approving the sale.

PGE provided no documentation or analysis to accompany its list of factors.

As described below, PGE has considerable potential liability if the TECWA sale does not close. To avoid the possible liability, PGE entered into its agreement with Avista. While TECWA is willing to pay PGE \$11.3 million for the generating asset, Avista's offer is only \$3.5 million, with an additional payment by Avista of \$1.1 million, if the sale to TECWA closes. The Avista offer is contingent on Commission issuing an order approving the sale by November 30, 1999.<sup>5</sup>

PGE supports the UP 165 application as a prudent decision because of the significant costs that would accrue if the sale to TECWA does not close. In the event, the Commission does not approve the Avista sale, PGE asks the Commission to approve the sale to TECWA. In either sale, PGE also asks the Commission to approve amortization of any capital loss or gain associated with the sale over a period of five years.

**Financial Impact**

PGE has identified the financial implications of the various scenarios associated with a sale to either TECWA or Avista. The implications vary with the buyer of PGE's share, whether the TECWA sale closes, and whether Centralia continues to operate. PGE proposes a strategy that minimizes the risk of loss to the customers. If the plant is sold to Avista, capital losses paid by the customers could range from \$0.136 million to \$1.152 million. If the plant is sold to TECWA, customers could receive a capital gain of as much as \$6.1 million or a capital loss as much as \$12.1 million. PGE reasoned that the potential liabilities associated with ownership were too great to risk not selling its interest at all.

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<sup>5</sup> Avista intends to resell PGE's interest to TECWA. Avista's offer to PGE is not contingent on the other owners successfully completing their sales to TECWA. In fact, Avista is offering to purchase PGE's share and assume the risk of the TECWA sale successfully closing.

## ORDER NO. 99-730

Scenario	Revenue Requirement Effect (in millions)	Capital Gain or Loss to PGE (in millions)
<b>PGE sells to Avista</b>		
• TECWA sale does not close	\$0.105 decrease	\$1.152 loss
• TECWA sale closes	\$0.105 decrease	\$0.136 loss
<b>PGE sells to TECWA</b>		
• TECWA sale closes	\$0.105 decrease	\$6.1 gain
• TECWA sale does not close and the plant continues to operate	\$0.888 increase	\$4.7 loss
• TECWA sale does not close and the plant is shut down	\$0.105 decrease	\$12.1 loss

**Positions of the Parties**

**Commission Staff.** Staff believes the Commission should choose the sale which best benefits the customers. Staff explains that the Commission should consider all available information to evaluate the risks of whether the TECWA sale will close compared to the opportunity for the larger gains in the sale to TECWA.

Staff sees no difference in the revenue requirement effects from approval of either UP 165 or UP 170, with the sale closing and Centralia removed from rate base. The sale results in an inconsequential revenue requirement reduction of \$0.105 million.<sup>6</sup> The revenue requirement reduction (from removing the plant from rate base and purchasing replacement power) is the same because Staff separates the revenue requirement effect from the capital gains or loss effects.

Staff notes that PGE proposes no sharing of capital gains or losses with shareholders. As a result, with either sale, customers bear most of the risk while the company will receive its net book investment.<sup>7</sup>

Staff's analysis then focuses on the potential capital gains or losses under scenarios in which PGE sells to either TECWA or Avista. In Staff's view, the proposed sale to TECWA provides higher benefits to customers but it is more risky in the sense that the sale is uncertain. The proposed sale to Avista requires customers to pay for

<sup>6</sup> If PGE sells to TECWA, the sale does not close, and Centralia continues to operate, the revenue requirement increase is \$0.888 million.

<sup>7</sup> Staff recommends that the Commission not follow the policy for sharing capital gains and losses set forth in *Application of PGE for Approval of the Customer Choice Plan*, Order No. 99-033 (UE 102). The proposed sale to TECWA occurred before the UE 102 order.

## ORDER NO. 99-730

capital losses but avoids the potentially higher costs of continued ownership. Specifically, Staff weighs the likelihood of the more risky \$6.1 million capital gain from a sale to TECWA against the likelihood of the less risky, and much smaller capital loss if PGE sells to Avista.

In Staff's view, the primary risk facing the TECWA sale is that the co-owners will not receive all the regulatory approvals necessary to close the sale. As noted, the eight co-owners must obtain 21 approvals from various regulatory and governing bodies. See Appendix B. The only approvals that PGE must obtain to sell its interest to Avista are from the Oregon Commission and the Federal Energy Regulatory Commission (FERC).

To assess the relative risk of granting one of the applications, Staff calculated a breakeven point at which the sale to Avista and the sale to TECWA produce equivalent benefits or losses to customers on an expected value basis. For the purposes of the analysis, Staff assumed the case where the losses to customers would be the greatest; that is, if the sales do not close and Centralia will not operate. According to Staff's analysis, if the probability of the proposed sale to TECWA closing is greater than 64 percent, then the customers are better off with the TECWA sale on an expected value basis.<sup>8</sup> If the probability is less than 64 percent, the customers are better off with a sale to Avista.<sup>9</sup>

Staff notes that the probability of the sale closing cannot be precisely calculated. The Commission will have to estimate the probability of the TECWA sale closing based on its experience and information that is available at the time the record closes. The stipulation between the parties provides that Staff may file reports up to November 24, 1999. The reports would contain information on the status of regulatory approvals.

Staff recommends that the Commission approve the sale to TECWA, because Staff can find no persuasive evidence in the record showing that the TECWA sale is unlikely to close. Staff acknowledges that the numerous owners and required approvals create some uncertainty, but notes that the co-owners have self-interest in consummating a deal that provides them with above-book value. Further, Staff states that PGE has not indicated any specific issue before a regulatory body that suggests that approval will not be forthcoming.

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<sup>8</sup> See PGE's Responsive Brief at 3.

<sup>9</sup> In Staff's view, the point at which the customers will be better off with a sale to TECWA drops below 64 percent if the sale fails to close and Centralia continues to operate. Staff believes it more likely that the plant will continue to operate if the sale fails to close.

**ORDER NO. 99-730*****Citizens' Utility Board***

CUB points out that PGE's application offers little or no guidance on why the various factors listed in the application might cause the TECWA sale to not close, nor does it describe the effect these factors may have on the likelihood that the sale would not close. CUB agrees with PGE and Staff that either option (sale to Avista or TECWA) has risks and unknowns.

CUB concludes that, while it is possible to assess the risks of the TECWA sale not closing, there is no clear preferred option. CUB does not believe that the number of sellers or the short approval times are significant factors. It believes that the sellers and regulatory bodies have an incentive to approve the sale in the form of an offer of an above-book value. Similarly, CUB dismisses the concern that TECWA will reconsider. TECWA would have to act in bad faith, and CUB believes that all indications are that TECWA continues to be enthusiastic about the sale. CUB is also unconcerned about an adverse court ruling in the SWPCA suit in King County. CUB believes that the parties contemplated this case as they negotiated the contract. While the economics of the sale may be affected by an adverse ruling, CUB does not believe that the suit threatens the sale.

CUB is concerned, however, that PacifiCorp has an application pending to sell its 47.5 percent share of Centralia. *Application of PacifiCorp for Approval of its Share of Centralia*, UP 168. PacifiCorp is proposing that shareholders keep 36 percent of the above-market proceeds of its share of the plant.<sup>10</sup> CUB notes that one of PacifiCorp's options is to back out of the sale if it does not receive the regulatory treatment that it is proposing. CUB states that this "possibility, however small," makes it difficult to choose from among the options in the PGE sale of Centralia.

CUB emphasizes that the Commission should apply public policy principles regarding the disposition of the gains or losses from the sale consistently between the PGE and PacifiCorp regarding their respective shares of Centralia.

**DECISION****Applicable Law**

PGE is an electric utility subject to the Commission's jurisdiction pursuant to ORS 757.005(1)(a) and 757.480. Centralia is a generating resource in PGE's rate base. As a result, PGE must obtain Commission approval to sell the facility to either Avista or TECWA. ORS 757.480.

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<sup>10</sup> In contrast, PGE is proposing that the customers be responsible for the difference between the market value and book value. In other words, PGE proposes that customers absorb the entire cost if the plant sells for less than book value and keep the entire gain if the plant sells for more than book value.

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**Standard for Approval**

OAR 860-027-0025(1)(L) requires PGE to show that the proposed sale of Centralia "will be consistent with the public interest."

Staff interprets the phrase "consistent with the public interest" to imply a "no harm" standard in asset sale cases. Based on PGE's cost-benefit analysis, Staff concludes that the sale to either TECWA or Avista meets the standard. Staff asserts, however, that the Commission's authority to determine whether a particular sale is consistent with the public interest also authorizes it to determine which alternative proposal best meets the standard.

We agree with Staff that the no harm standard should apply in this case.

**Decision**

PGE, Staff, and CUB agreed, either implicitly or explicitly, that both sales are consistent with the public interest. We agree.

After reviewing all the information from the parties, we conclude that the sale to Avista should be approved. PGE has made clear that it desires to avoid the risk of the sale not closing by selling to Avista. PGE seeks to avoid any further investment in the plant and to avoid contingencies associated with the plant closing down.

Based on the information before us, we cannot conclude that we should override PGE's preferred option. First, PGE's decision appears to be a prudent business decision based on a reasonable assessment of the risks and rewards of the two sales. Second, none of the parties questioned the reasonableness of the sale price to Avista. Third, the record provides no clear choice as to which transaction would be better for the customers. Fourth, under either sale, the revenue requirement impact, including rate base effects, is of a minor magnitude. We agree that PGE should go forward with the sale to Avista.

We also wish to make clear that we are not approving any particular rate treatment of the gain or loss in this order. This filing is limited to PGE's application for approval of the sale. Ratemaking decisions must be left to rate cases under ORS 757.210 et seq. or proceedings authorized for that purpose under SB 1149.

ORDER NO. 99-730

**ORDER**

**IT IS ORDERED that:**

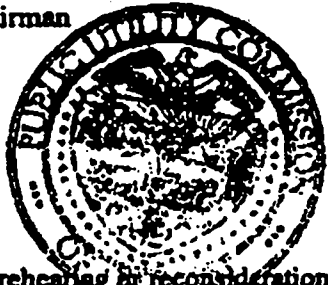
1. Portland General Electric Company's application to sell its ownership interest in the Centralia Generating facility to Avista Corporation is approved.
2. Portland General Electric Company's application to sell its ownership interest in the Centralia Generating facility to TECWA Power, Inc., is denied.
3. The rate base effects of the sale to Avista Corporation shall be addressed in PGE's next material rate change. The amount of the capital gain or loss should be included in a separate balancing account for later disposition by the Commission.
4. The stipulation set forth in Appendix A is adopted.

Made, entered, and effective

**NOV 29 1999**

**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.

**BEFORE THE PUBLIC UTILITY COMMISSION**

**SEP 16 1999**

**STATE OF OREGON**

Public Utility Commission of Oregon  
Administrative Hearing Office

**UP 165**

In the Matter of the Application of  
Portland General Electric Company  
for the Approval to Sell Its 2.5 Percent  
Ownership Share of the Centralia Generating  
Plant to Avista Corporation

**JOINT MOTION OF STAFF, PGE, CUB  
AND ICNU TO CONSOLIDATE UP 165  
AND UP 170, ADOPT PROCEDURAL  
SCHEDULE AND STIPULATION**

Staff of the Oregon Public Utility Commission (Staff), Portland General Electric  
Company (PGE), Citizens Utility Board of Oregon (CUB), and Industrial Customers of  
Northwest Utilities (ICNU) hereinafter jointly referred to as the "Parties", jointly move that  
docket numbers UP 165 and UP 170 be consolidated; that the Commission adopt the procedural  
schedule set forth in Attachment 1, and adopt the stipulation of the parties contained herein.

In support of this motion, the Parties state: In docket number UP 165, PGE seeks  
approval from the Public Utility Commission of Oregon (Commission) for the sale of PGE's  
2.5% interest in the Centralia Steam Electric Generating Plant (Centralia) to Avista Corporation  
(Avista). In docket number UP 170, PGE seeks approval from the Commission for the sale of  
PGE's 2.5% interest in Centralia to TECWA Power, Inc. (TECWA). Because these proposed  
transactions both involve the sale of PGE's interest in Centralia, the Parties believe that docket  
numbers UP 165 and UP 170 should be consolidated. The parties have also settled certain issues  
and hereby stipulate as follows:

1. The Parties agree that docket numbers UP 165 and UP 170 should be consolidated.
2. The Parties agree not to request a hearing in these consolidated dockets.
3. The Parties agree to the procedural schedule set forth in Attachment 1.
4. Written testimony of the Parties will be received in evidence pursuant to this stipulation.

**Page 1 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
AND UP 170, ADOPT PROCEDURAL SCHEDULE AND STIPULATION**

DBH/rws/GEN29397

Department of Justice  
1162 Court Street NE  
Salem, OR 97310  
(503) 378-4620

**APPENDIX A**

1           5.    Staff recommends at this time conditional approval of the sale of PGE's share of  
2    Centralia to Avista as proposed in UP 165. Staff notes for Commission consideration that  
3    another offer for PGE's share of Centralia is outstanding from TECWA. The condition is that  
4    the Commission not find the sale to TECWA better meets the statutory public interest standard.  
5    The Parties understand that PGE supports the Commission approving the sale to Avista.

6           6.    If the Commission approves the application in docket number UP 165, no Party  
7    may raise in docket numbers UP 168 or UP 170 the issue of whether PGE's sale to TECWA  
8    better meets the statutory public interest standard.

9           7.    The Parties signing this Stipulation agree that nothing in docket numbers UP 165 or  
10   UP 170, including testimony of the Parties signing this Stipulation, shall: (1) be cited or  
11   construed as precedent or indicative of the Parties' positions on an issue; or (2) be binding on  
12   Parties in any other proceeding, including those before the Commission, the State of Oregon, or  
13   the federal courts of the United States of America. This limitation on the use of this Stipulation  
14   shall not apply to any proceeding to enforce the terms of any Commission Order arising from  
15   docket numbers UP 165 or UP 170.

16          8.    The Parties understand that PGE is contractually bound to close the sale to Avista if  
17   the Commission approves the present application no later than November 30, 1999. If the  
18   Commission issues such an approval order, the Parties agree not to oppose PGE's withdrawal of  
19   its application to sell its share of Centralia to TECWA.

20          9.    The Parties agree that in order to provide the Commission with the most current  
21   information regarding the status of the sale of PGE's ownership share of Centralia to Avista and  
22   the sale of all ownership shares of Centralia to TECWA, Staff may file periodic written reports  
23   with the Commission regarding developments in such sales that occur after the filing of its  
24   testimony on October 1, 1999. Such reports may be filed until November 24, 1999. Such  
25   reports will be factual in nature and shall contain no opinion or argument. Staff will provide all  
26

Page 2 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
AND UP 170, ADOPT PROCEDURAL SCHEDULE AND STIPULATION

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APPENDIX A



1 Parties with a copy of a report three business days prior to submitting it to the Commission. If  
2 all Parties agree to the report, it may be filed with the Commission immediately. Any Party  
3 objecting to any report may concurrently file its objection with the Commission.

4 10. Such objections will be limited to the inclusion, omission, accuracy or  
5 characterization of any information contained in the report, unless the Staff report is inconsistent  
6 with the requirements of paragraph 9.

7 11. The Parties agree that this Motion may be executed in counterparts.

8 12. The Parties respectfully request approval of this Motion.

9 RESPECTFULLY submitted this 14<sup>th</sup> day of September, 1999.

10  
11  
12 David B. Hatton

13 David B. Hatton, OSB #75151  
14 Assistant Attorney General  
15 Regulated Utility & Business Section  
16 Oregon Department of Justice  
1162 Court Street NE, Room 100  
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Assistant General Counsel  
Legal Department  
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20 Citizens' Utility Board of Oregon  
21 921 SW Morrison, Suite 511  
22 Portland, Oregon 97205  
Of Attorneys for CUB

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26 Page 3 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
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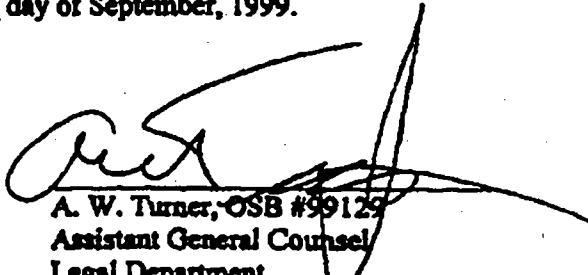
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Of Attorneys for ICNU

**RECEIVED**  
SEP 11 1999  
GENERAL COUNSEL  
DEPT. OF JUSTICE  
SALEM, OREGON

Page 3 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
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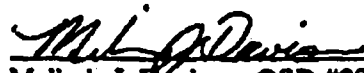
9 RESPECTFULLY submitted this 10<sup>th</sup> day of September, 1999.

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Page 3 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
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09/10/99 FRI 13:14 FAX 503 378 3784

Post-It Fax Note	7871	Date	9/14	15
To	David Hatton	From	Jason Eri	
Co./Dept	DOJ	Co.	CUB	
Phone #		Phone #		
Fax #		Fax #		

Application Exhibit No. 6  
Page 43

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9 RESPECTFULLY submitted this 14 day of September, 1999.

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Page 3 -JOINT MOTION OF STAFF, PGE, CUB AND ICNU TO CONSOLIDATE UP 165  
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Department of Justice  
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APPENDIX A

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**ATTACHMENT 1**

**PROCEDURAL SCHEDULE FOR CONSOLIDATED PROCEEDINGS  
IN DOCKET NUMBERS UP 165 AND UP 170**

September 24, 1999	Petitions to intervene due
October 1, 1999	Staff and Intervenor testimony due
October 13, 1999	PGE rebuttal testimony due and in-hand service date for all parties. PGE response to data requests due within three business days.
October 22, 1999	Opening briefs due and in-hand service date for all parties.
November 2, 1999	Reply briefs for all parties due.

ALJ/WRI/avs \*

Mailed 4/6/2000

Decision 00-04-031 April 6, 2000

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

In the Matter of the Application of PACIFICORP (U 901-E) for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Ratebased Portion of the Centralia Coal Mine, and (3) related facilities, and for an EWG Determination.

Application 99-08-054  
(Filed August 30, 1999)

**OPINION****I. Summary**

This order grants the Joint Motion of Pacificorp (Seller), TransAlta Corporation (on behalf of the Buyers), and the Office of Ratepayer Advocates (ORA) for Adoption of Settlement Agreement which approves the sale of Seller's Centralia Steam Electric Generating Plant and ratebased portion of its Centralia Coal Mine located in Washington State to Buyers. The agreement provides that the Seller shall provide a gross amount of \$1.5 million of the net gain realized from the sale to its northern California customers.

**II. Background**

In Application (A.) 99-08-054, filed August 30, 1999 pursuant to Pub. Util. Code § 851, the Seller and Buyers seek a Commission order approving the sale of Seller's interest in: (a) the Centralia Steam Electric Generating Plant consisting of two generating units, each with 650 megawatt nameplate rating, and other related facilities (Centralia Plant), and (b) the ratebased portion (47.5%) of the Centralia Coal Mine located in Lewis and Thurston Counties, Washington State (Mine). The purchaser of the Centralia Plant is TECWA Power, Inc. The

**A.99-08-054 ALJ/WRI/avs**

purchaser of the Mine is TECWA Fuel, Inc. Both purchasers are indirect wholly-owned subsidiaries of TransAlta Corporation, a Canadian Business Corporation Act Corporation. (TransAlta.) This application was filed on August 30, 1999, and noticed on the Daily Calendar of September 10, 1999. ORA filed the only protest to the Application, but its protest was focused upon the Seller's proposal to retain all gain realized from the sale. ORA suggested that California ratepayers should share in the gain. There were no protests to the sale itself.

Following a prehearing conference held in San Francisco on October 26, 1999, extensive discussions between the Seller and ORA were held, leading to a duly noticed settlement conference held on January 13, 2000. The settlement conference was reconvened on several occasions until the proposed Settlement Agreement was effectuated.

The parties to the Settlement Agreement are the Seller, TransAlta and ORA. The only party appearing in this proceeding not signing the Settlement Agreement is the Coalition of California Utility Employers (CCUE). CCUE, however, expressly states that it does not object to the agreement.

The Settlement Agreement, including four attachments, is appended to this decision as Exhibit 1. It is the product of extensive negotiations between ORA, Seller and Buyer, and it conforms with the requirements of Articles 13.5 of our Rules of Practice and Procedure. All active parties support the settlement. No party opposes it. The settlement meets the tests we outlined in San Diego Gas & Electric Co. (1992) 46 CPUC2d 538 (Decision 92-12-019) in that: each party is adequately represented; the interests of ratepayers have been asserted by ORA; no terms of the settlement contravene any statutory provision or any decision of this Commission; and the settlement, together with the record in this proceeding, conveys sufficient information to permit us to make an informed evaluation. The

**A.99-08-054 ALJ/WRI/avs.**

settlement should be adopted and the motion for approval of the settlement should be granted.

### **III. Exempt Wholesale Generator**

In addition to the issues resolved in the Settlement Agreement, the application requests that the Commission issue the findings required for TECWA Power, Inc. to qualify as an Exempt Wholesale Generator (EWG) pursuant to Section 32 of the Public Utility Holding Company Act. (15 U.S.C. § 792-5a(c).)

EWG is a Federal Energy Regulatory Commission (FERC) classification created by the Energy Policy Act of 1992 to help promote wholesale generation competition. An EWG is exempt from the provisions of the Public Utilities Holding Company Act of 1935. Congress, in providing this significant exemption, hoped to open the wholesale generation market to many more participants.

Federal statute and regulation require that this Commission must make certain determinations regarding the Seller's share of the Centralia Plant so that TransAlta can file FERC application to become an EWG. The determinations are "that allowing the facility (Seller's share of the Centralia Plant) to be an eligible facility: (1) Will benefit consumers, (2) Is in the public interest, and (3) Does not violate State law." (15 U.S.C. § 792-5a(c).)

The Seller maintains that its application meets the three federal requirements and that the Commission should issue the determinations. The first two requirements are that allowing the Centralia Plant to be a wholesale facility operated by an EWG (1) will benefit consumers and (2) is in the public interest. Seller states that if the Commission approves the proposed sale of Seller's share of the Centralia Plant, it will no longer be in the Seller's rate base. The plant output will then be in the hands of a new supplier, increasing supply



**A.99-08-054 ALJ/WRI/avs**

competition in the region and thereby benefiting California consumers.

Allowing TransAlta to operate the Centralia Plant as an EWG will benefit California consumers and will be in the public interest.

The third requirement is that allowing the Centralia Plant to be an EWG does not violate State law. Seller contends that no California laws address the issues raised by this request, and none prohibit or limit the authority of TransAlta to operate the Centralia Plant as a wholesale facility. If the Centralia Plant received EWG classification, no California State law would be violated.

The record in this case is sufficient to support the findings sought by applicants.

#### **IV. Environmental Matters**

The application alleges that the proposed sale transaction to TransAlta is not subject to the California Environmental Quality Act (CEQA) (Sections 21000 *et seq.*, California Public Resources Code). The facilities being sold are located in the State of Washington, and our Energy Division, upon investigation concurs in applicant's assessment of CEQA's inapplicability.

#### **V. Hearings**

Pursuant to Rule 6.1, the Commission preliminarily determined in Resolution ALJ 176-3022, September 2, 1999, that this is a ratesetting proceeding that was expected to go to hearing. As the Settlement Agreement presented by the parties disposes of all issues in this proceeding, we change the preliminary determination on need for hearing to now provide that hearings are not required. (Rule 6.5(b).)

**A.99-08-054 ALJ/WRI/avs**

## **VI. Waiver of 30-Day Comment Period**

The parties to the Settlement Agreement have waived the 30-day comment period pursuant to Pub. Util. Code § 311(g)(2).

### **Findings of Fact**

1. As set forth in Exhibit 1, the parties have reached settlement on all issues in this proceeding.
2. The settlement is supported by the Seller, TransAlta and ORA.
3. No party opposes the settlement.
4. The settlement is not dispositive of any issue in A.99-08-036.
5. In the event of the closing of the sale of the Centralia Plant (including Commission approval for Exempt Wholesale Generator status of the sale pursuant to Pub. Util. Code § 851 from the Seller to TransAlta, allowing Seller's share of the Centralia Plant to be eligible facility: (a) will benefit consumers; (b) is in the public interest, and (c) does not violate State law.

### **Conclusions of Law**

1. The settlement conforms to Article 13.5 and meets the tests outlined in San Diego Gas & Electric Co., supra.
2. The settlement should be adopted and the motion for approval of the settlement should be granted.
3. The requested EWG findings requested by applicant should be made.

**A.99-08-054 ALJ/WRI/avs**

**ORDER**

**IT IS ORDERED that:**

1. The Settlement Agreement appended hereto as Exhibit 1 and agreed to by Pacificorp (Seller), TransAlta Corporation and the Office of Ratepayer Advocates is approved.
2. The motion for approval of the Settlement Agreement is granted.
3. In the event of the closing the sale of Seller's share of the Centralia Plant, including Commission approval of the sale under Pub. Util. Code § 851, allowing the Centralia Plant to be afforded Exempt Wholesale Generator status by Federal Energy Regulatory Commission: (a) will benefit customers; (b) is in the public interest; and (c) does not violate State law.
4. Hearings are not required.
5. Pacificorp shall distribute \$1.5 million to customers in accordance with Section 111.C.2 of the Settlement Agreement.
6. Application 99-08-054 is closed.

**This order is effective today.**

**Dated April 6, 2000, at San Francisco, California.**

**LORETTA M. LYNCH**  
President  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
**RICHARD A. BILAS**  
**CARL W. WOOD**  
Commissioners



On August 12, 1999, PacifiCorp dba Utah Power & Light Company (PacifiCorp) filed an Application with the Commission regarding the proposed sale by PacifiCorp of its 47.5% ownership interest in the Centralia Power Plant (and related facilities) and the rate based portion of its ownership interest in the adjacent Centralia Coal Mine. PacifiCorp is the sole owner of the Centralia Mine.

The purchaser of the Centralia generating unit is TECWA Power, Inc. (TECWA Power) and the purchaser of the Centralia Coal Mine is TECWA Fuel, Inc. (TECWA Fuel), both Washington corporations and both wholly-owned subsidiaries of TransAlta Corp., a Canadian energy corporation.

As represented in their respective Applications, the owners of the Centralia facilities decided to sell the assets due principally to the possible need for additional capital expenditures (sulfur dioxide scrubbers and low nitrogen burners) to meet air emission requirements and the potential impact of U.S. electric utility industry deregulation trends on the prospect for recovery of utility plant-in-service investment. The purchase price of the generating facility as reflected in the Centralia Plant Purchase and Sale Agreement is \$452,598,000. The purchase price of the coal mine as reflected in the Centralia Coal Mine Purchase and Sale Agreement is \$101,400,000. The gross purchase prices are subject to certain adjustments which must be incorporated in any calculation of net gain.

PacifiCorp and Avista seek a Commission ruling pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 (PUCHA) (codified at 15 U.S.C. § 79z-5a(c)) classifying the Centralia Power Plant as an "eligible facility," thus allowing the purchaser to operate the plant as an Exempt Wholesale Generator (EWG) under federal law. An EWG is exempt from the provisions of PUCHA. Specifically, the utilities seek a Commission determination that operation of Centralia as an "eligible facility" [i.e., to be owned by an EWG] upon sale (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The utilities request expedited processing of the EWG determination. Expedited processing, they state, is important from a timing standpoint. TransAlta, it is explained, cannot commence processing its application with the Federal Energy Regulatory Commission (FERC) in order to obtain FERC's qualification of these generation assets as "eligible facilities" and TECWA Power as an "Exempt Wholesale Generator" until the Commission has made the three determinations required by federal statute. The utilities ask that their requested determination be made prior to and contingent upon the required regulatory approvals of the sale. As completion of sale cannot take place without the relevant state regulatory approvals, it is represented that this assures making these determinations will not prejudice the merits of the proposed sale under Idaho statutory standards.

The Applications filed by PacifiCorp and Avista include copies of the Centralia Power Plant Purchase and Sale Agreement, Centralia Coal Mine Purchase and Sale Agreement, other transactional documents and prefiled testimonies of company witnesses.

On August 31, 1999, the Commission in Case Nos. AVU-E-99-6 and PAC-E-99-2 issued a consolidated Notice of Request for Determination of EWG "eligible facility" status and Modified Procedure. In its Notice the Commission found that the issue presented regarding the classification of the Centralia generation facility as an "eligible facility" for purpose of subsequent operation by an Exempt Wholesale Generator (EWG) under federal law was an issue that could be addressed by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. The deadline for filing written comments regarding EWG determination and proposed use of Modified Procedure was September 24, 1999. Commission Staff was the only party to file comments.

In its comments Staff states the following:

Commission Staff has reviewed the referenced U.S. Code language regarding Exempt Wholesale Generators (15 U.S.C.A. § 79z-5a). The ownership interests of Avista and PacifiCorp in the Centralia coal-fired generation facilities are a part of

each utility's rate base in Idaho on which each receives a return on investment and are now and have been included in the rate base of each utility since or prior to October 24, 1992.

For Centralia to be considered as an eligible facility by FERC for EWG status, this Commission is required to make a specific determination that allowing such a facility to be an "eligible facility" (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The third requested determination is perhaps the most straight forward. Based on its 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 TECWA Power as an EWG to operate the plant as a wholesale facility.

The remaining requested determinations (1) and (2) are more problematic. Staff is in the midst of its investigation, has outstanding production requests, has yet to decide whether it supports the proposed sale and has yet to assess the benefits to customers and the public interest inherent in a completed sale. ... Staff represents to the Commission, to Avista and to PacifiCorp that should Staff ultimately conclude that the proposed sale should be approved, such recommendation will be supported by a belief that qualifying the presently rate based generation facilities after the sale as "eligible facilities" for EWG status determination will both benefit the consumer and be in the public interest.

### **Commission Findings**

As set forth in the Application, TransAlta intends to seek FERC approval to own and operate the Centralia facilities with Exempt Wholesale Generator status. Because the Centralia facilities are currently in the rate bases of PacifiCorp and Avista for their jurisdictional sales of electricity in this state, 15 U.S.C. § 792-5a(c) requires that TransAlta include in its EWG application to FERC a statement that this Commission has determined that allowing the plant to be a wholesale facility operated by an EWG "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law." Issuing the requested EWG determination, we find, will not preclude any party from raising, addressing or resolving any other issues including, without limitation, the standard to be applied in resolving whether to approve the proposed sale or the appropriate regulatory treatment for any gain realized as a result of the sale. The requested EWG determination, we find, can be conditioned upon final approval of the proposed sale. We find that an EWG determination will have no precedential effect with respect to approval of the proposed sale, the standard to be applied in resolving whether to approve the proposed sale, or any issue other than EWG determination. Should we decline to ultimately approve the proposed sale, the EWG determination will become null and void.

The Commission continues to find Modified Procedure regarding the issue of EWG "eligible facility" status to be reasonable. Reference IDAPA 31.01.01.201-204. The Commission has jurisdiction over the Idaho rates and charges of Avista and PacifiCorp. A portion of the respective rates and charges for each utility represents recovery of rate based investment in Centralia generation and/or mine

facilities. Based on the filings of record in Case Nos. AVU-E-99-6 and PAC-E-99-2 the Commission finds it reasonable to issue the determination required under 15 U.S.C. § 79z-5a(c) conditioned upon our final and/or ultimate approval of the proposed sale of the Centralia facilities.

### CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over the Applications of Avista Corporation dba Avista Utilities-Washington Water Power Division and PacifiCorp dba Utah Power & Light Company, electric utilities, and the issues presented therein pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby make the following determinations:

1. Avista and PacifiCorp's Applications for a determination under 15 U.S.C. § 79z-5a(c) are granted conditioned upon a Commission Order approving the proposed sale of the Centralia facilities. If the Commission does not ultimately issue an Order in these cases approving the proposed sale, this EWG determination will be null and void.
2. The Commission retains jurisdiction over the subject matter and Avista and PacifiCorp to effectuate the provisions of this Order.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this  
day of November 1999.

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

**PAUL KJELLANDER, COMMISSIONER**

**ATTEST:**

**Myrna J. Walters**

**Commission Secretary**

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF )</b>	
<b>PACIFICORP FOR AN ORDER APPROVING )</b>	<b>CASE NO. PAC-E-99-2</b>
<b>THE SALE OF ITS INTEREST IN (1) THE )</b>	
<b>CENTRALIA STEAM ELECTRIC )</b>	
<b>GENERATING PLANT, (2) THE RATE BASED )</b>	
<b>PORTION OF ITS CENTRALIA COAL MINE, )</b>	
<b>AND (3) RELATED FACILITIES; FOR A )</b>	
<b>DETERMINATION OF THE AMOUNT OF AND )</b>	
<b>THE PROPER RATEMAKING TREATMENT )</b>	
<b>OF THE GAIN ASSOCIATED WITH THE SALE; )</b>	<b>ORDER NO. 28296</b>
<b>AND (4) AN EWG DETERMINATION. )</b>	

On August 12, 1999, PacifiCorp (Company) filed an Application with the Idaho Public Utilities Commission (Commission) regarding the proposed sale by the Company of its 47.5% ownership interest in the Centralia steam generating plant (and related facilities) and the 47.5% rate based portion of its ownership interest in the Centralia Coal Mine. The purchaser of the Centralia generating unit is TECWA Power, Inc. (TECWA Power) and the purchaser of the Centralia Coal Mine is TECWA Fuel, Inc. (TECWA Fuel), both Washington corporations and both wholly-owned subsidiaries of TransAlta Corp., a Canadian energy corporation with \$5 billion (Canadian) in assets and guarantor of certain obligations and duties undertaken by TECWA Power and TECWA Fuel. TransAlta is the leading producer of independent power in Canada. TransAlta generates about 4,500 megawatts of electricity annually. About 95% of its production is thermal (coal) and the remainder is hydroelectric.

The Company's Application includes copies of the Centralia power plant Purchase and Sale Agreement and Centralia coal mine Purchase and Sale Agreement, other transactional documents and the prefiled testimony of company witnesses C. Alex Miller, Managing Director of Planning; Dr. Roger Weaver, Director, Regulatory and Strategy Support; and Ann E. Eakin, Vice President Regulation.

PacifiCorp seeks a Commission Order approving the sale of the Company's interest in the Centralia steam generating plant and the rate based portion of the Centralia coal mine. Citing *Idaho Code* § 61-523--Valuation. PacifiCorp also seeks a Commission Order adopting

ORDER NO. 28296

the Company's methodology to calculate the gain associated with the sale and the proposed ratemaking treatment of the gain.

## APPLICATION—BACKGROUND

### *Description of Plant and Mine*

The Centralia plant is coal-fired and has a generation capacity of 1,340 megawatts. The plant which is located near Centralia, Washington entered service in 1972 and consists of two steam units that consume between 5.0 to 6.0 million tons of coal annually at an average capacity factor of approximately 70%.

PacifiCorp owns a 47.5% interest in the power plant. The other seven co-owners of the power plant and their ownership shares are: Avista 15%, City of Seattle 8%, City of Tacoma 8%, Snohomish PUD 8%, Puget Sound Energy 7%, Grays Harbor County PUD 4%, and Portland General Electric (PGE) 2.5%.

The plant's primary source of coal is the mine located adjacent to the plant site. The mine is owned by PacifiCorp and operated by its wholly-owned subsidiary. Over the last 10 years, 75 to 100 percent of the coal burned at the plant has come from the mine, with the remaining coal imported by rail from the Powder River Basin in Montana and Wyoming. The coal produced by the mine has had an average heating value of approximately 8,000 BTU/lb., moisture content of approximately 20%, ash content of approximately 16% and a sulfur content of approximately 0.7%.

### *Plant Environmental Requirements*

Pursuant to plant operation agreements, capital budgets, including capital expenditures required to meet environmental requirements, require unanimous approval of the owners. The Centralia plant operates under the jurisdiction of the Southwest Air Pollution Control Authority, a regional air quality agency established under Washington law. The plant is required to apply Reasonable Available Control Technology (RACT) to limit the emission of air contaminants. PacifiCorp has been advised that the plant SO<sub>2</sub> and NO<sub>x</sub> emissions exceed acceptable emission levels. To reduce emission levels the plant must implement control measures and install control equipment by December 31, 2001.

Because the plant owners were unable to reach consensus regarding the capital investment required to comply with the RACT order, Centralia was put up for sale. If the sale to TransAlta does not close, the Centralia owners will need to vote to determine whether to continue operation and comply with emission reduction requirements or close the plant.

#### *Mine Reclamation*

The Centralia coal mine is operated under the regulatory authority of the federal Office of Surface Mining (OSM). Every mine permit, including Centralia's, has an approved reclamation plan. Reclamation is a process of returning land that has been mined to approximately its pre-mined state. There are situations, however, in which the regulator will permit the creation of lakes or other land contours not present in the pre-mined state. The Centralia mine is considering applying to the regulators for approval to create lakes.

Current and final reclamation costs are generally included as a cost of mining coal. These costs are either accrued on a company's financial books (as PacifiCorp does), or funds are put in a trust. The ultimate cost of final reclamation for the Centralia mine depends on many factors and is uncertain. A study was commissioned to determine the potential costs, which study determined could vary widely depending on the reclamation method used. Reference Miller testimony Table 1. The Office of Surface Mining has the final say on what reclamation methods are acceptable. Should the plant be sold to TransAlta the reclamation liability and the accrued reclamation balances transfer to the new owner.

As represented in the Application, the owners of the Centralia facilities decided to sell the assets due principally to the need for additional capital expenditures to meet new emission requirements and the potential impact of US electric utility industry deregulation trends on the prospect for recovery of utility plant-in-service investment. The gross proceeds from the sale of the generating facility and the mine were allocated between the generating plant price of \$452,598,000 and coal mine price of \$101,400,000.

#### *Sale Proceeds—Gain on Sale*

The gross purchase prices are subject to certain adjustments which must be incorporated in any calculation of net gain. PacifiCorp's share of the gain associated with the sale is estimated to be approximately \$83 million on a system-wide basis. (Exhibit Miller 1.7)

The actual dollar value of the net gain on the sale will not be finalized until the close of the transaction.

As reflected in the Application, PacifiCorp will receive its book break-even value for the mine. This will remove the mine from PacifiCorp's books with no earnings impact, and no gain on sale of the mine. The book break-even value was estimated at about \$101 million at the time the Agreements were signed, and is the value used in the mine Sale Agreement. The break-even value will be trued-up and audited at the time of closing.

The remaining proceeds will be split among the owners based on their plant ownership percentages. PacifiCorp will receive approximately \$215 million for its portion of the plant. Total proceeds to PacifiCorp will be about \$316 million for the mine and its share of the plant.

#### ***Replacement Power Strategy***

Centralia was originally conceived as a seasonal-use generating station. However, as reflected in the Application, the plant has been dispatched as a base load facility over most of its service life. Capacity factors have averaged 70% over the past five years, with a high of 84% in 1994. Availability over the last five years has averaged 88%. The plant produces about four million megawatt hours annually for PacifiCorp. Without Centralia, PacifiCorp intends to balance its loads and resources with market purchases.

#### ***Financial Impacts of Sale***

The Company's analysis shows the net present value of the revenue requirement associated with selling the plant is lower than the net present value of the revenue requirement associated with keeping the plant over the short, medium and long term. Sale of the plant and mine, the Company contends, provides greater certainty of benefits to customers, because keeping the resource exposes customers to significant risks of additional cost increases in the future.

If plant ownership is retained, the Company assumes that the plant will be retrofitted with scrubbers to meet pollution control requirements and continue to run through its remaining life till 2023. If the sale closes, the Company forecasts that replacement power will be purchased from the wholesale market under medium, low and high market prices over the remaining life of the plant. The customer portion of the gain is reflected in the studies as a revenue requirement reduction.

Under the Company's medium market price forecasts, customers are better off if the plant is sold. The Company contends that its analysis is conservative and does not incorporate all the significant cost exposures and uncertainties related to continued ownership and operation of the plant and mine—joint ownership issues, additional reclamation costs, additional pollution control mitigation costs and temporary or permanent closure of the plant and/or mine. In addition, the Company contends, continued ownership could be impacted by potential future CO<sub>2</sub> taxes, potential increased force outage rates and higher maintenance costs for an older facility.

As with any forecast, the Company recognizes that the longer forecast period tends to exacerbate forecast inaccuracies. Accordingly, there is less certainty with data in the later years of analysis. Recognizing the uncertainty of long term forecasting the Company also estimated a net present value revenue requirement benefit of selling versus keeping the plant using the medium market prices over a ten-year period. The results project that there are \$39 million of net present value revenue requirement reductions in the sell case when compared to the keep case.

Under the Company's analyses the first year to show that keeping the plant is less expensive than the medium market replacement purchases is 2010. The Company also assessed the ramifications of the sale on the BPA Residential Exchange Program and concluded that it is unlikely that the effects would lead to a different realized level of benefits.

#### *Proposed Disposition of Gain*

As stated above, PacifiCorp will not realize any gain related to sale of the mine.

PacifiCorp estimates that it will realize an estimated gain of approximately \$83 million on a system-wide basis associated with its 47.5% ownership share of the plant. The actual dollar value of the net gain on the sale of the plant will not be finalized until the close of the transaction.

PacifiCorp proposes the following disposition of the net gain proceeds related to the proposed sale of the plant:

- ◆ The total net gain would be shared between customers and shareholders consistent with the depreciation reserve method
- ◆ This methodology results in customers receiving 64.17% of the net gain, and the shareholders receiving 35.83% of the net gain.

### ***Depreciation Reserve Methodology***

The depreciation reserve methodology is based on the relationship between net plant and gross plant. This relationship establishes the percentage of the capital costs of the plant that have been recovered over time through customers' prices and the percentage of these costs that remain on the Company's books. These percentages are then multiplied by the overall gain to establish the sharing ratio. (Exhibit Eakin 3.1)

The rationale behind this methodology, the Company contends, is straightforward and balances the interests of customers and shareholders. The Company's proposal acknowledges that over time customers have repaid shareholders for a portion of the up-front capital through their electricity prices. The methodology also recognizes that shareholders continue to bear the risk of recovering the undepreciated portion of the generating facility.

### ***Proposed Ratemaking Treatment of Gain***

PacifiCorp proposes to use the customer portion of the net proceeds of the sale to write off generation-related regulatory assets, thereby reducing the Company's rate base. The Company proposes to record this write off in the year that the transaction closes.

This proposed ratemaking treatment, the Company contends, benefits customers by immediately reducing the Company's rate base and, by extension, the Company's revenue requirement. This reduction to revenue requirement, the Company contends, will be reflected in its future results of operations, and will mitigate the upward pressure in customer prices. In future rate cases, the reduction in revenue requirement will be flowed through to customers.

## **PROCEDURE**

On September 7, 1999, the Commission issued a Notice of Application and established a September 17 deadline for intervention. No Petitions for Intervention were filed. The Commission in its Notice also solicited comment on the Company's proposal to process its Application pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. The deadline for filing written comments regarding the Company's proposed use of Modified Procedure was September 30, 1999. The Commission Staff was the only party to file written comments. Based on its preliminary review Staff supported the Company's request to process its Application pursuant to Modified Procedure.

The Commission Notice of Modified Procedure was issued on October 26, 1999. A December 3, 1999, deadline was established for filing written comments regarding issues presented in the Company's filing pertaining to the sale of its Centralia facilities, calculation of the associated gain, and related ratemaking treatment. The Company was permitted to file reply comments by December 30, 1999.

In its findings the Commission noted that the Company in this case also requested a Commission determination regarding classification of its Centralia generation facility upon sale as an "eligible facility" for purpose of subsequent operation by an exempt wholesale generator (EWG). This matter was handled by separate notice issued August 31, 1999, and was not the subject of further comment. The Commission's Order No. 28186 regarding "eligible facility" status issued on October 26, 1999.

#### STAFF COMMENTS

The Commission Staff was the only party to file comments in this case. In its comments Staff addressed: (a) prudence of sale—reclamation risk, multiple-owner risk, economics (cost of replacement power, etc.); (b) gain—dollar calculation and regulatory treatment.

##### *Economic Analysis*

Staff notes that according to PacifiCorp's 1997 Integrated Resource Plan (IRP) the Centralia coal-fired power plant represents approximately 6.4% of the Company's existing summertime capacity. The IRP further states that the Company also plans for a 10% capacity reserve margin. The loss of Centralia, Staff contends, represents a significant portion of the Company's reserves and must be replaced. To that end, Staff notes that it is the Company's stated intention to balance its loads and resources with market purchases. The Company utilized its power supply model to estimate the economic impact of removing Centralia from the Company's resource stack. The change in power supply revenue requirement with and without Centralia is then projected through the year 2023 and combined with the capital recovery revenue requirement for the same period. The net present value of the stream of revenue requirements with and without the Centralia power plant and coal mine are then calculated. Staff concludes that the Company's analysis methodology demonstrates a sensitivity and potential for inaccurately projecting the economic impact of the sale. In fact, Staff contends that selection of just a few critical variables can determine whether the Company's net present value economic

analysis results in sale benefits or expenses. A comparison of the power supply revenue requirement with and without Centralia shows that six components included in total power supply revenue requirement change when Centralia is replaced. They are (1) secondary sales, (2) secondary purchases, (3) wheeling costs, (4) other thermal plant fuel expenses, (5) Centralia fuel expenses, and (6) Centralia energy and capacity purchases. All of these components entail assumptions. Changes in any of the assumptions affect not only the long-term economic impact of the sale but the short-term economic impact as well.

#### *Qualitative Analysis*

Staff notes that in addition to economic reasons advanced by the Company, the Company also describes qualitative benefits to be derived from the sale. These are potential benefits that result from eliminating the uncertainties surrounding multiple owners of Centralia and elimination of the cost risk associated with mine reclamation. Staff recognizes the potential risk associated with both of these issues but, like the Company, has no way of determining how serious these problems might actually be.

Staff believes that by making assumptions within a reasonable range, a net present value economic analysis can either justify or preclude the sale of Centralia. Although the Company has definitively chosen to replace generation with market purchases, Staff contends that the impact on customers is still uncertain given the broad range of possible market prices, coal escalation rates and capital investment scenarios. The qualitative sale benefits described by the Company, Staff states, are simply not quantifiable at this time. Ultimately, however, Staff concludes that the decision to sell Centralia must be based on judgment regarding future conditions. Staff believes that the Company should be allowed to exercise its business judgment regarding the significance of the economic projections and in addressing the qualitative issues. Staff recommends that the sale be allowed to proceed.

#### *Accounting Rules and Regulations—Treatment of Gain*

Staff in its comments details accounting rules and regulations for the treatment of gain on the sale of a utility asset setting out applicable sections from the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts prescribed for public utilities.

The accounting entries for the sale of depreciable property in textbook terms, Staff contends, would be to debit the cash account for the purchase or sale price of the property; credit the property asset account for the original cost of the asset; debit the accumulated depreciation



account for the amount of the accumulated depreciation associated with the property; and credit gain on disposal of the property. If the sale resulted in a loss, loss on the disposition of property would be debited. The appropriate regulatory commission, Staff states, would determine the ratemaking treatment of any gain or loss.

The Company, Staff notes, has provided workpapers and assumptions used in calculation of the regulatory gain on sale of the Centralia facility. Staff has reviewed the supplied documents and agrees with the Company's calculation of the gain. The Company determined the customer portion of the gain, Staff states, using the depreciation reserve methodology. This methodology is based on a ratio of the depreciated plant to the total plant, and Staff contends is consistent with the Commission's prior Orders that speak to the distribution on the gain on the sale of a utility plant asset. The percentage allocated to customers is the percentage of depreciated plant to gross plant. The percentage allocated to shareholders is the remaining ratio based on undepreciated plant. Idaho customers will receive 64.17% of the gain, and shareholders the remaining 35.83% of the gain. While the total customer portion of gain is \$53,042,987, the Idaho jurisdictional portion is 0.291%, or \$154,373 using the phased-in full rolled-in interstate allocation method, with two years (as of December 31, 1999) of the five year phase-in included in the calculation of the Idaho jurisdictional gain. The Idaho jurisdictional portion is relatively small since the Centralia plant and mine were not included in Idaho's rate base until 1990 following the PacifiCorp/Utah Power & Light merger.

PacifiCorp has proposed that the customer portion from the gain of the sale be used to write off generation-related regulatory assets. The Company in its Application does not specify which accounts would be charged. The Commission, Staff notes, has utilized gains on the sale of utility assets in various ways: return to ratepayers through a bill credit, offset expenses, make special contributions to other accounts (i.e., the Idaho Universal Service Fund), amortize the gain over a period of years, or charge (increase) accumulated depreciation or offset plant investment as proposed by PacifiCorp.

In this case, Staff recommends that the gain from the sale of the Centralia facility be used to offset steam generation assets. The accumulated depreciation account associated with steam generation should be charged. This, Staff contends, will reduce the rate base and the associated revenue requirement. This reduced revenue requirement will be reflected in the annual Idaho jurisdictional reports required in the merger that Staff will audit.

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## PACIFICORP REPLY COMMENTS

PacifiCorp's reply comments focus on two specific recommendations of Staff:

1. That "firm purchases made by the Company be monitored on an annual basis in conjunction with the required merger reports until the Company's next general rate case"
2. That the gain from the sale of the Centralia facility be used to write off steam generation assets by charging the "accumulated depreciation" account associated with steam generation. This would reduce the rate base and the associated revenue requirement.

### *Difficulties in Monitoring Future Market Purchases*

To the extent that a future firm market purchase is specifically tied to the replacement of Centralia Power, PacifiCorp admits that Staff's requirement is straight forward. However, the Company states that it is important to recognize that loads and resources will be balanced through the redispatch of its system as well as through market purchases. Further activities may also affect the Company's future need for resources. As such, Centralia, PacifiCorp notes, is not likely to be replaced with in-kind purchases of similar size and shape.

### *Recommendation for Treatment of Gain*

PacifiCorp does not believe that "accumulated depreciation" Account 108 is the proper account to use. PacifiCorp believes that it will be administratively easier to track the return of a gain to customers through reduced steam generation rate base by crediting Account 114.5 "Electric Plant Acquisition Adjustments," Yampa Project.

Consistent with Staff's proposal, the Company's proposal to credit Account 114, it states, will result in an immediate reduction of steam generation rate base, and will reduce the amortization over the 22 1/3 year remaining life (of Yampa), which is equivalent to the Centralia life. According to FERC regulations, Account 114, "Electric Plant Acquisition Adjustments," is used for the difference between cost to the utility of electric plant acquired by purchase, merger, consolidation, liquidation, or otherwise and the book value of the property. PacifiCorp requests that the Commission authorize the Company to reduce rate base by writing off from Account 114 an amount equal to the customer's share of the gain from the sale of the Centralia plant.

### COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record and comments in this case. We have also considered the Company's most recent Integrated Resource Plan (IRP), its capacity reserve margin and the effect of the sale on the Company's power supply.

PacifiCorp requests Commission approval of the sale of the Company's interest in the Centralia steam generating plant and the rate-based portion of the Centralia coal mine. In support of the transaction, the Company advances both quantitative and qualitative reasons. We agree with Staff's observations regarding the sensitivity of the Company's economic analysis to small changes in critical assumptions. We also recognize the vagaries inherent in long-term forecasting. The Company's decision to sell in this case was the result of its assessment of operational constraints, of future risk and cost and an attempt to minimize that risk. Staff has characterized it as an exercise of business judgment. We agree. Based on our review of the record in this case, we find no compelling reason to disapprove the proposed sale of the Centralia generating plant and mine. We accordingly find it reasonable to approve the sale.

The transaction has been structured in such a way that the Company will realize no regulatory gain on the sale of the mine. We find the depreciation reserve methodology proposed by the Company to be a reasonable method for distribution of gain associated with the sale of the Centralia plant. Under this methodology Idaho customers will receive 64.17% of the gain and shareholders the remaining 35.83% of the gain. The Idaho jurisdictional portion under the transmission/distribution formula is 0.291%. The Idaho customers' portion of gain is approximately \$154,373 (subject to adjustment at closing).

The amount of gain allocated to Idaho customers related to Centralia is so very small that a rate adjustment to account for the gain not only is not required but is practically speaking impossible. We agree with the Company's proposal to use the gain to offset steam generation-related regulatory assets. The Company specifically proposes the use of a Colorado-Ute related sub account for Yampa, Account 114.5. We note that the Yampa facility has not been addressed in a rate case before this Commission and find the proposed offset to be inappropriate. Reference Commission Order No. 24077, Case Nos. PPL-E-91-2, UPL-E-91-4. Instead, the gain is to be accounted for separately as a generic offset to asset accounts, Account 114.XX - Centralia sale, until the next rate case.

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The Company has not proposed nor do we make any rate base adjustment in this case related to the loss of Centralia as a Company-owned resource. We will address the regulatory and rate base adjustments for Centralia in the Company's next general rate case when removal of the resource can be viewed in context with all related revenue, expense, supply and operational ramifications.

### CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over the Application of PacifiCorp dba Utah Power & Light Company, an electric utility, and the issues presented in this case pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### ORDER

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the sale by PacifiCorp of the Company's interest in the Centralia steam generating plant to TECWA Power and rate based portion of the Centralia coal mine to TECWA Fuel.

IT IS FURTHER ORDERED and the Company is directed to account for the regulatory gain associated with the sale in the manner set forth above.

IT IS FURTHER ORDERED and the Company is directed to file (1) a copy of the Closing Documents, and (2) a copy of the accounting entries with this Commission upon completion of the sale.

IT IS FURTHER ORDERED and the Commission does hereby reaffirm its prior Order No. 28186 in Case No. PAC-E-99-2 granting the Company's request for determination of EWG "eligible facility status" under 15 U.S.C. Section 79z-5a(c).

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

**DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
day of March 2000.**

**\_\_\_\_\_**  
**DENNIS S. HANSEN, PRESIDENT**

**\_\_\_\_\_**  
**MARSHA H. SMITH, COMMISSIONER**

**\_\_\_\_\_**  
**PAUL KJELLANDER, COMMISSIONER**

**ATTEST:**

**\_\_\_\_\_**  
**Myrna J. Walters**  
**Commission Secretary**

**VM/O:PAC-E-99-2\_sw**

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### ***Description of Plant and Mine***

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Centralia was originally conceived as a seasonal-use generating station. However, as reflected in the Application, the plant has been dispatched as a base load facility over most of its service life. Capacity factors have averaged 70% over the past five years, with a high of 84% in 1994. Availability over the last five years has averaged 88%. The plant produces about four million megawatt hours annually for PacifiCorp. Without Centralia, PacifiCorp intends to balance its loads and resources with market purchases.

#### ***Financial Impacts of Sale***

The Company's analysis shows the net present value of the revenue requirement associated with selling the plant is lower than the net present value of the revenue requirement associated with keeping the plant over the short, medium and long term. Sale of the plant and mine, the Company contends, provides greater certainty of benefits to customers, because keeping the resource exposes customers to significant risks of additional cost increases in the future.

If plant ownership is retained, the Company assumes that the plant will be retrofitted with scrubbers to meet pollution control requirements and continue to run through its remaining life till 2023. If the sale closes, the Company forecasts that replacement power will be purchased from the wholesale market under medium, low and high market prices over the remaining life of the plant. The customer portion of the gain is reflected in the studies as a revenue requirement reduction.

Under the Company's medium market price forecasts, customers are better off if the plant is sold. The Company contends that its analysis is conservative and does not incorporate all the significant cost exposures and uncertainties related to continued ownership and operation of the plant and mine—joint ownership issues, additional reclamation costs, additional pollution control mitigation costs and temporary or permanent closure of the plant and/or mine. In addition, the Company contends, continued ownership could be impacted by potential future CO<sub>2</sub> taxes, potential increased



force outage rates and higher maintenance costs for an older facility.

As with any forecast, the Company recognizes that the longer forecast period tends to exacerbate forecast inaccuracies. Accordingly, there is less certainty with data in the later years of analysis. Recognizing the uncertainty of long term forecasting the Company also estimated a net present value revenue requirement benefit of selling versus keeping the plant using the medium market prices over a ten-year period. The results project that there are \$39 million of net present value revenue requirement reductions in the sell case when compared to the keep case.

Under the Company's analyses the first year to show that keeping the plant is less expensive than the medium market replacement purchases is 2010. The Company also assessed the ramifications of the sale on the BPA Residential Exchange Program and concluded that it is unlikely that the effects would lead to a different realized level of benefits.

### ***Proposed Disposition of Gain***

As stated above, PacifiCorp will not realize any gain related to sale of the mine.

PacifiCorp estimates that it will realize an estimated gain of approximately \$83 million on a system-wide basis associated with its 47.5% ownership share of the plant. The actual dollar value of the net gain on the sale of the plant will not be finalized until the close of the transaction.

PacifiCorp proposes the following disposition of the net gain proceeds related to the proposed sale of the plant:

- o The total net gain would be shared between customers and shareholders consistent with the depreciation reserve method
- o This methodology results in customers receiving 64.17% of the net gain, and the shareholders receiving 35.83% of the net gain.

### ***Depreciation Reserve Methodology***

The depreciation reserve methodology is based on the relationship between net plant and gross plant. This relationship establishes the percentage of the capital costs of the plant that have been recovered over time through customers' prices and the percentage of these costs that remain on the Company's books. These percentages are then multiplied by the overall gain to establish the sharing ratio. (Exhibit Eakin 3.1)

The rationale behind this methodology, the Company contends, is straightforward and balances the interests of customers and shareholders. The Company's proposal acknowledges that over time customers have repaid shareholders for a portion of the up-front capital through their electricity prices. The methodology also recognizes that shareholders continue to bear the risk of recovering the undepreciated portion of the generating facility.

### ***Proposed Ratemaking Treatment of Gain***

PacifiCorp proposes to use the customer portion of the net proceeds of the sale to write off generation-related regulatory assets, thereby reducing the Company's rate base. The Company proposes to record this write off in the year that the transaction closes.

This proposed ratemaking treatment, the Company contends, benefits customers by immediately reducing the Company's rate base and, by extension, the Company's revenue requirement. This reduction to revenue requirement, the Company contends, will be reflected in its future results of

operations, and will mitigate the upward pressure in customer prices. In future rate cases, the reduction in revenue requirement will be flowed through to customers.

## PROCEDURE

On September 7, 1999, the Commission issued a Notice of Application and established a September 17 deadline for intervention. No Petitions for Intervention were filed. The Commission in its Notice also solicited comment on the Company's proposal to process its Application pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. The deadline for filing written comments regarding the Company's proposed use of Modified Procedure was September 30, 1999. The Commission Staff was the only party to file written comments. Based on its preliminary review Staff supported the Company's request to process its Application pursuant to Modified Procedure.

The Commission Notice of Modified Procedure was issued on October 26, 1999. A December 3, 1999, deadline was established for filing written comments regarding issues presented in the Company's filing pertaining to the sale of its Centralia facilities, calculation of the associated gain, and related ratemaking treatment. The Company was permitted to file reply comments by December 30, 1999.

In its findings the Commission noted that the Company in this case also requested a Commission determination regarding classification of its Centralia generation facility upon sale as an "eligible facility" for purpose of subsequent operation by an exempt wholesale generator (EWG). This matter was handled by separate notice issued August 31, 1999, and was not the subject of further comment. The Commission's Order No. 28186 regarding "eligible facility" status issued on October 26, 1999.

## STAFF COMMENTS

The Commission Staff was the only party to file comments in this case. In its comments Staff addressed: (a) prudence of sale—reclamation risk, multiple-owner risk, economics (cost of replacement power, etc.); (b) gain—dollar calculation and regulatory treatment.

### *Economic Analysis*

Staff notes that according to PacifiCorp's 1997 Integrated Resource Plan (IRP) the Centralia coal-fired power plant represents approximately 6.4% of the Company's existing summertime capacity. The IRP further states that the Company also plans for a 10% capacity reserve margin. The loss of Centralia, Staff contends, represents a significant portion of the Company's reserves and must be replaced. To that end, Staff notes that it is the Company's stated intention to balance its loads and resources with market purchases. The Company utilized its power supply model to estimate the economic impact of removing Centralia from the Company's resource stack. The change in power supply revenue requirement with and without Centralia is then projected through the year 2023 and combined with the capital recovery revenue requirement for the same period. The net present value of the stream of revenue requirements with and without the Centralia power plant and coal mine are then calculated. Staff concludes that the Company's analysis methodology demonstrates a sensitivity and potential for inaccurately projecting the economic impact of the sale. In fact, Staff contends that selection of just a few critical variables can determine whether the Company's net present value economic analysis results in sale benefits or expenses. A comparison of the power supply revenue requirement with and without Centralia shows that six components included in total power supply revenue requirement change when Centralia is replaced. They are (1) secondary sales, (2) secondary purchases, (3) wheeling costs, (4) other thermal plant fuel expenses, (5) Centralia fuel expenses, and (6) Centralia energy and capacity purchases. All of these components entail assumptions. Changes in any of the assumptions affect not only the long-term economic impact of the sale but the short-term economic impact as well.

### *Qualitative Analysis*

Staff notes that in addition to economic reasons advanced by the Company, the Company also describes qualitative benefits to be derived from the sale. These are potential benefits that result from eliminating the uncertainties surrounding multiple owners of Centralia and elimination of the cost risk associated with mine reclamation. Staff recognizes the potential risk associated with both of these issues but, like the Company, has no way of determining how serious these problems might actually be.

Staff believes that by making assumptions within a reasonable range, a net present value economic analysis can either justify or preclude the sale of Centralia. Although the Company has definitively chosen to replace generation with market purchases, Staff contends that the impact on customers is still uncertain given the broad range of possible market prices, coal escalation rates and capital investment scenarios. The qualitative sale benefits described by the Company, Staff states, are simply not quantifiable at this time. Ultimately, however, Staff concludes that the decision to sell Centralia must be based on judgment regarding future conditions. Staff believes that the Company should be allowed to exercise its business judgment regarding the significance of the economic projections and in addressing the qualitative issues. Staff recommends that the sale be allowed to proceed.

### *Accounting Rules and Regulations—Treatment of Gain*

Staff in its comments details accounting rules and regulations for the treatment of gain on the sale of a utility asset setting out applicable sections from the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts prescribed for public utilities.

The accounting entries for the sale of depreciable property in textbook terms, Staff contends, would be to debit the cash account for the purchase or sale price of the property; credit the property asset account for the original cost of the asset; debit the accumulated depreciation account for the amount of the accumulated depreciation associated with the property; and credit gain on disposal of the property. If the sale resulted in a loss, loss on the disposition of property would be debited. The appropriate regulatory commission, Staff states, would determine the ratemaking treatment of any gain or loss.

The Company, Staff notes, has provided workpapers and assumptions used in calculation of the regulatory gain on sale of the Centralia facility. Staff has reviewed the supplied documents and agrees with the Company's calculation of the gain. The Company determined the customer portion of the gain, Staff states, using the depreciation reserve methodology. This methodology is based on a ratio of the depreciated plant to the total plant, and Staff contends is consistent with the Commission's prior Orders that speak to the distribution on the gain on the sale of a utility plant asset. The percentage allocated to customers is the percentage of depreciated plant to gross plant. The percentage allocated to shareholders is the remaining ratio based on undepreciated plant. Idaho customers will receive 64.17% of the gain, and shareholders the remaining 35.83% of the gain. While the total customer portion of gain is \$53,042,987, the Idaho jurisdictional portion is 0.291%, or \$154,373 using the phased-in full rolled-in interstate allocation method, with two years (as of December 31, 1999) of the five year phase-in included in the calculation of the Idaho jurisdictional gain. The Idaho jurisdictional portion is relatively small since the Centralia plant and mine were not included in Idaho's rate base until 1990 following the PacifiCorp/Utah Power & Light merger.

PacifiCorp has proposed that the customer portion from the gain of the sale be used to write off generation-related regulatory assets. The Company in its Application does not specify which accounts would be charged. The Commission, Staff notes, has utilized gains on the sale of utility assets in various ways: return to ratepayers through a bill credit, offset expenses, make special contributions to other accounts (i.e., the Idaho Universal Service Fund), amortize the gain over a period of years, or charge (increase) accumulated depreciation or offset plant investment as proposed by PacifiCorp.

In this case, Staff recommends that the gain from the sale of the Centralia facility be used to offset steam generation assets. The accumulated depreciation account associated with steam generation should be charged. This, Staff contends, will reduce the rate base and the associated revenue requirement. This reduced revenue requirement will be reflected in the annual Idaho jurisdictional reports required in the merger that Staff will audit.

### **PACIFICORP REPLY COMMENTS**

PacifiCorp's reply comments focus on two specific recommendations of Staff:

1. That "firm purchases made by the Company be monitored on an annual basis in conjunction with the required merger reports until the Company's next general rate case"
2. That the gain from the sale of the Centralia facility be used to write off steam generation assets by charging the "accumulated depreciation" account associated with steam generation. This would reduce the rate base and the associated revenue requirement.

#### *Difficulties in Monitoring Future Market Purchases*

To the extent that a future firm market purchase is specifically tied to the replacement of Centralia Power, PacifiCorp admits that Staff's requirement is straight forward. However, the Company states that it is important to recognize that loads and resources will be balanced through the redispatch of its system as well as through market purchases. Further activities may also affect the Company's future need for resources. As such, Centralia, PacifiCorp notes, is not likely to be replaced with in-kind purchases of similar size and shape.

#### *Recommendation for Treatment of Gain*

PacifiCorp does not believe that "accumulated depreciation" Account 108 is the proper account to use. PacifiCorp believes that it will be administratively easier to track the return of a gain to customers through reduced steam generation rate base by crediting Account 114.5 "Electric Plant Acquisition Adjustments," Yampa Project.

Consistent with Staff's proposal, the Company's proposal to credit Account 114, it states, will result in an immediate reduction of steam generation rate base, and will reduce the amortization over the 22 1/3 year remaining life (of Yampa), which is equivalent to the Centralia life. According to FERC regulations, Account 114, "Electric Plant Acquisition Adjustments," is used for the difference between cost to the utility of electric plant acquired by purchase, merger, consolidation, liquidation, or otherwise and the book value of the property. PacifiCorp requests that the Commission authorize the Company to reduce rate base by writing off from Account 114 an amount equal to the customer's share of the gain from the sale of the Centralia plant.

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings of record and comments in this case. We have also considered the Company's most recent Integrated Resource Plan (IRP), its capacity reserve margin and the effect of the sale on the Company's power supply.

PacifiCorp requests Commission approval of the sale of the Company's interest in the Centralia steam generating plant and the rate-based portion of the Centralia coal mine. In support of the transaction, the Company advances both quantitative and qualitative reasons. We agree with Staff's

observations regarding the sensitivity of the Company's economic analysis to small changes in critical assumptions. We also recognize the vagaries inherent in long-term forecasting. The Company's decision to sell in this case was the result of its assessment of operational constraints, of future risk and cost and an attempt to minimize that risk. Staff has characterized it as an exercise of business judgment. We agree. Based on our review of the record in this case, we find no compelling reason to disapprove the proposed sale of the Centralia generating plant and mine. We accordingly find it reasonable to approve the sale.

The transaction has been structured in such a way that the Company will realize no regulatory gain on the sale of the mine. We find the depreciation reserve methodology proposed by the Company to be a reasonable method for distribution of gain associated with the sale of the Centralia plant. Under this methodology Idaho customers will receive 64.17% of the gain and shareholders the remaining 35.83% of the gain. The Idaho jurisdictional portion under the transmission/distribution formula is 0.291%. The Idaho customers' portion of gain is approximately \$154,373 (subject to adjustment at closing).

The amount of gain allocated to Idaho customers related to Centralia is so very small that a rate adjustment to account for the gain not only is not required but is practically speaking impossible. We agree with the Company's proposal to use the gain to offset steam generation-related regulatory assets. The Company specifically proposes the use of a Colorado-Ute related sub account for Yampa, Account 114.5. We note that the Yampa facility has not been addressed in a rate case before this Commission and find the proposed offset to be inappropriate. Reference Commission Order No. 24077, Case Nos. PPL-E-91-2, UPL-E-91-4. Instead, the gain is to be accounted for separately as a generic offset to asset accounts, Account 114.XX - Centralia sale, until the next rate case.

The Company has not proposed nor do we make any rate base adjustment in this case related to the loss of Centralia as a Company-owned resource. We will address the regulatory and rate base adjustments for Centralia in the Company's next general rate case when removal of the resource can be viewed in context with all related revenue, expense, supply and operational ramifications.

#### CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over the Application of PacifiCorp dba Utah Power & Light Company, an electric utility, and the issues presented in this case pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

#### ORDER

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the sale by PacifiCorp of the Company's interest in the Centralia steam generating plant to TECWA Power and rate based portion of the Centralia coal mine to TECWA Fuel.

IT IS FURTHER ORDERED and the Company is directed to account for the regulatory gain associated with the sale in the manner set forth above.

IT IS FURTHER ORDERED and the Company is directed to file (1) a copy of the Closing Documents, and (2) a copy of the accounting entries with this Commission upon completion of the sale.

IT IS FURTHER ORDERED and the Commission does hereby reaffirm its prior Order No. 28186 in Case No. PAC-E-99-2 granting the Company's request for determination of EWG "eligible facility status" under 15 U.S.C. Section 79z-5a(c).

**THIS IS A FINAL ORDER.** Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

**DONE** by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
day of March 2000.

**DENNIS S. HANSEN, PRESIDENT**

**MARSHA H. SMITH, COMMISSIONER**

**PAUL KJELLANDER, COMMISSIONER**

**ATTEST:**

**Myrna J. Walters**

**Commission Secretary**

VIDO:PAC-8-99-1\_sw

ORDER NO. 99-617

ENTERED OCT 05 1999

This is an electronic copy. Appendices and footnotes may not appear.

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UP 168

In the Matter of the Application of PacifiCorp for an	)	
Order Approving the Sale of its Interest in (1) the	)	
Centralia Steam Electric Generating Plant, (2) the	)	ORDER
Ratebased Portion of the Centralia Coal Mine, and (3)	)	
related facilities for a Determination of the Amount of	)	
and the Proper Rate-making Treatment of Gain	)	
Associated with the Sale; and for an EWG	)	
Determination.	)	

On September 22, 1999, PacifiCorp requested the issuance of a standard Protective Order to govern the disclosure of confidential information in this docket. On September 23, 1999, PacifiCorp filed a motion seeking additional protection for certain highly sensitive proprietary company information by limiting the disclosure of information related to bids in the Centralia auction solely to the Commission Staff. No party filed an objection to either request. The Commission addresses each separately.

**STANDARD PROTECTIVE ORDER**

PacifiCorp states that Staff Data Requests 1-20 seek information that is deemed confidential, including, but not limited to, business plans and projected market prices for electricity.

PacifiCorp contends that the release of this confidential information could provide advantages to its competitors and impair its ability to enter into necessary contracts and honor confidentiality provision of existing agreements. Therefore, it requests the Commission issue a Standard Protective Order to govern the disclosure of confidential information in this docket.

**Disposition**

The Commission finds that good cause exists to issue a Standard Protective Order, attached as Appendix A. Under the terms of that order, a party may designate as confidential any information it believes falls within the scope of ORCP 36(C)(7). Once designated as confidential, the information may be disclosed only to "qualified persons" associated with parties that have agreed to be bound by the terms of the protective order by signing the signatory page set forth in Appendix B.

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Paragraph 3 of the protective order establishes two categories of "qualified persons." The first category, set forth in subsections (a) through (d), includes the authors of the confidential material, the Commission or its Staff, and counsel of record for a party or persons directly employed by counsel. This group of persons is entitled to review confidential information without the need to give notice to the party desiring confidentiality or execute an additional statement agreeing to be bound by the terms of the order. As noted above, however, a party must sign the signatory page before anyone associated with the party, including its counsel, may review the confidential material.

Subsections (e) through (g) of Paragraph 3 set forth the second category of qualified persons. These include unaffiliated party experts, persons approved by the party desiring confidentiality, and persons designated as qualified by Commission order. As a prerequisite to gaining access to confidential information, this second category of qualified persons must execute a consent to be bound. Prior to disclosing confidential information to an unaffiliated expert, the party seeking to disclose the information must also notify the party desiring confidentiality. See Paragraphs 7 and 8.

Paragraph 9 provides the procedures for when a party desires to disclose information to a person who is not qualified under Paragraph 3. In such circumstances, the party must request permission from the party desiring confidentiality and provide certain information, including the identity of the unqualified person and the specific reasons why disclosure is necessary. If the party desiring confidentiality fails or refuses to grant the request, the party seeking disclosure may file a motion to qualify the person by Commission order.

All persons who are given access to confidential information have the duty to monitor their own conduct to ensure their compliance with the Protective Order. Such persons shall not use or disclose the information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the confidential information secure.

**ADDITIONAL PROTECTION FOR HIGHLY SENSITIVE PROPRIETARY INFORMATION**

In addition to the Standard Protective Order, PacifiCorp seeks greater protection of certain information it deems highly sensitive. The information requested by the Commission Staff includes bids of non-winning bidders in the recent auction for the sale of the Centralia Steam Electric Generating Plant and Mine.

PacifiCorp contends that the disclosure of this information to parties, even if subject to a Standard Protective Order, would be extremely harmful to the company and its co-owners. Therefore, it requests that the Protective Order in this proceeding contain a provision that bars disclosure of this information to any party other than Commission Staff.

PacifiCorp makes several arguments in support of its request. First, it states that disclosure of the information could harm the parties to the auction. The information sought in the Staff data request is the bids from non-winning bidders that were provided to PacifiCorp under strict confidentiality agreements. PacifiCorp notes that unwarranted disclosure of this information could result in liability, especially if the proposed sale does not close.



ORDER NO. 99-617

Second, PacifiCorp argues that disclosure of the bidding documents may adversely affect future sales of utility property by jeopardizing the bidder's competitive positions in the industry. PacifiCorp states that without assurances of maintaining the confidential nature of the contents of bid documents, potential bidders may be reluctant to submit an offer to acquire property, resulting in the selling utility not being confident that the highest possible bid was submitted. PacifiCorp also asserts unwarranted disclosure could also harm the seller's competitive position, especially if the transaction does not close and the assets must go through another auction process.

**Disposition**

PacifiCorp's request for a protective order that limits disclosure of certain specified information to any party other than staff is granted. The Commission rarely issues protection beyond that granted in our Standard Protective Order.<sup>1</sup> Nonetheless, the provisions of ORCP 36C provide for greater protection if circumstances warrant. In this case, the circumstances make an exception to the standard protective order appropriate. In drawing this conclusion, the Commission balances the potential harm from disclosure of the material against any benefit which might accrue from that disclosure. The Commission notes that this ruling is based on the pleading filed by PacifiCorp and the fact that no party filed an objection to the request. This ruling is subject to reconsideration if circumstances change.

The Commission finds that PacifiCorp's concerns about irreparable and long-lasting economic harm from disclosure of the information are persuasive. The Commission is persuaded by the potential impact of disclosure on PacifiCorp's ability to participate in future auctions.

The Commission emphasizes that this ruling is intended to be narrow and applies only to the specific information identified by PacifiCorp in its motion. PacifiCorp may designate this information as "Confidential - Subject to Protective Order - Staff Review Only." As noted above, the Commission will reconsider this ruling if necessary.

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<sup>1</sup> See In the Matter of the Application of Portland General Electric for Approval of the Customer Choice Plan, UE 102, Order No. 98-163.

ORDER NO. 99-617

**ORDER**

IT IS ORDERED that the request for a Standard Protective Order and provision that bars disclosure of certain specified information to any party other than Staff is granted.

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.

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application for an Order Approving the Sales of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) The Ratebased Portion of the Centralia Coal Mine, and (3) Related facilities; for a Determination of the Amount of and the Proper Ratemaking Treatment of the Gain Associated with the Sale; and for an EWG Determination	<p style="text-align: center;"><u>DOCKET NO. 99-2035-03</u></p> <p style="text-align: center;"><u>ORDER</u></p>
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ISSUED: December 20, 1999

**By The Commission:**

On August 12, 1999, PacifiCorp filed with this Commission an Application for an order approving the sale of the Company's interests in (a) the Centralia steam generating plant, consisting of two generating units, and other related facilities, and (b) the ratebased portion (47.5%) of the Centralia Coal Mine located adjacent to the Centralia generating plant in the state of Washington. Under the proposed sale, the purchaser of the Centralia generating plant is TECWA Power Inc. ("TECWA Power") and the purchaser of the Centralia Coal Mine is TECWA Fuel, Inc. ("TECWA Fuel"), both wholly-owned indirect subsidiaries of TransAlta Corporation. In its Application, PacifiCorp also seeks a Commission ruling pursuant to 15 U.S.C. §79z-5a(c) allowing the purchaser to operate the Centralia plant as an eligible facility. Specifically, in order for the Centralia plant to be an "eligible" facility authorizing the purchaser to operate the plant as an exempt wholesale generator ("EWG") under the Public Utility Holding Company Act, PacifiCorp seeks Commission determinations that operation as an eligible facility (a) will benefit consumers, (b) is in the public interest, and (c) does not violate state law. As stated in its Application, PacifiCorp requests "that the three determinations be made allowing Centralia to be considered an eligible facility at the completion of PacifiCorp's sale to TransAlta. As completion of the sale cannot take place without the relevant state regulatory approvals, this assures that making these determinations will not prejudice the merits of the proposed sale under Utah statutory standards."

The Commission now has before it a motion filed by PacifiCorp seeking the order addressing the EWG status of the Centralia plant if the sale is completed. As stated in the motion, TECWA Power intends to seek FERC approvals to own and operate the Centralia plant with EWG status. However, because the Centralia plant is in the ratebase of PacifiCorp for its jurisdictional sales in this state, 15 U.S.C. §79z-5a(c) requires that TECWA Power include in its EWG application to FERC a statement that this Commission has made the three EWG determinations described above. PacifiCorp states that expedited processing of the EWG issue is important from a timing standpoint in that TECWA Power cannot commence processing its application at FERC until the Commission has made the three determinations required by the federal statute.

Attached to PacifiCorp's Motion was a proposed order which was signed by counsel for the Division of Public Utilities and Committee of Consumer Services as having been approved as to form and substance. In its Motion, counsel for PacifiCorp represented that the LAW Fund does not oppose entry of an order making the EWG determinations.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. PacifiCorp is an electrical corporation and public utility in the state of Utah and is subject to the jurisdiction of this Commission.
2. PacifiCorp filed an Application on August 12, 1999, for approval of the sale of the Company's interests in the Centralia steam generating plant and the ratebased portion of the Centralia Coal Mine, as well as approval of PacifiCorp's proposed methodology for calculation of the associated gain and the proposed ratemaking treatment of that gain. The Application also sought a determination that allowing the Centralia facility to be operated as an eligible facility meets the requirements of 15 U.S.C. §79z-5a(c). The Company has also filed a motion for expedited determination regarding the EWG status.
3. If the Commission approves the proposed sale of the Centralia plant and the sale is completed, the purchaser's operation of the Centralia steam generating plant as an eligible facility will benefit consumers and is in the public interest. Under these conditions, operation of the Centralia steam generating plant as an eligible facility would not violate Utah state law.
4. No party opposes PacifiCorp's Motion.
5. The determinations made herein shall not preclude any party from raising, addressing or resolving any other issues, including, without limitation, the standard to be applied in resolving whether to approve the proposed sale or the appropriate regulatory treatment for any gain realized as a result of the sale.

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. PacifiCorp's Application and motion for a determination under 15 U.S.C.

§15z-5a(c) is granted, conditioned upon a Commission order approving the proposed sale of the Centralia steam generating plant and associated facilities. If the Commission does not ultimately issue an order approving the proposed sale, this EWG determination will be null and void.

2. This order shall in no way be construed as prejudging the merits of the proposed sale.

DATED at Salt Lake City, Utah, this 20th day of December, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary



**Online Document**

▼ **General Info**

Document Name: 99/10/13 UE 991262 PACIFIC POWER AND LIGHT COMPANY

Application for Transfer of Property

Description: Application for approval of the sale of PacifiCorp's interests in the Centralia Steam Electric Generating Plant.

▼ **Body**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Application of <b>PACIFICORP dba PACIFIC POWER AND LIGHT</b>  for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Ratebased Portion of the Centralia Coal Mine, and (3) related facilities; for a Determination of the Amount of And the Proper Ratemaking Treatment of the Gain Associated with the Sale, and for an EWG Determination.</p>	<p>Docket No. UE-991262  <b>ORDER</b>  <b>RE: EXEMPT WHOLESALE GENERATOR STATUS</b></p>
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**MEMORANDUM**

On August 12, 1999, PacifiCorp filed an Application for "An Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Ratebased Portion of the Centralia Coal Mine, and (3) related facilities; for a Determination of the Amount of And the Proper Ratemaking Treatment of the Gain Associated with the Sale, and for an EWG Determination." PacifiCorp's application seeks an order authorizing the sale of its 47.5 percent ownership interest in the 1340-megawatt Centralia Power Plant (Centralia) and the ratebased portion (47.5 percent) of the adjacent Centralia Coal Mine (Mine) to TECWA Power, Inc. The Application also seeks a determination that TECWA Power, Inc., should be allowed to operate the Centralia Power Plant as an Exempt Wholesale Generator (EWG).

TECWA is a Washington corporation and a subsidiary of TransAlta Corporation, headquartered in Calgary, Alberta, Canada. The parent company, TransAlta, is a Canadian energy company with \$5 billion (Canadian) in assets and is the leading

producer of independent power in Canada. TECWA has agreed to purchase Centralia for \$425,598,000 and the adjacent Centralia Mine for \$101,400,000.

As set forth in PacifiCorp's application, TECWA Power, Inc., intends to seek Federal Energy Regulatory Commission ("FERC") approval to own and operate the Centralia facilities with exempt wholesale generator status. Because the Centralia Power Plant is currently in PacifiCorp's rate base for its jurisdictional sales of electricity in this state, 15 U.S.C. § 79z-5a(c) requires that TECWA include with its EWG application to FERC a statement that the Washington Utilities and Transportation Commission has determined that allowing the facility to be a wholesale facility operated by an EWG: "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law."

### **FINDINGS**

#### **THE COMMISSION FINDS:**

1. PacifiCorp is engaged in the business of furnishing electric service within the state of Washington as a public service company, and is subject to the jurisdiction of this Commission.
2. PacifiCorp filed an Application on August 12, 1999, for an order under chapter 80.12 RCW authorizing the sale of PacifiCorp's ownership interests in the Centralia Power Plant and adjacent Centralia Coal Mine to TECWA Power, Inc. The Application also sought a determination from the Commission that allowing these facilities to be operated by an exempt wholesale generator meets the requirements of 15 U.S.C. § 79z-5a(c).
3. If the Commission eventually approves the sale of the Centralia Power Plant, allowing the purchaser to operate the Centralia Power Plant as an EWG will benefit consumers and is in the public interest. Under these conditions, allowing the purchaser to operate the Centralia Power Plant as an EWG would not violate state law.

### **ORDER**

#### **WHEREFORE, THE COMMISSION HEREBY ORDERS:**

1. PacifiCorp's application for a determination under 15 U.S.C. § 79z-5a(c) is granted, conditioned upon a Commission order approving the proposed sale of the Centralia Power Plant and the Centralia Coal Mine. If the Commission does not ultimately issue an order approving the proposed sale, this EWG determination will be null and void.
2. This order shall in no way affect the authority of this Commission over rates, services, accounts, evaluations, estimates, or determination of cost or any matters whatsoever that may come before it, nor shall anything herein be construed as an acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.
3. The Commission retains jurisdiction over the subject matter and Pacific Power and Light to effect the provisions of this order.

DATED at Olympia, Washington, and effective this 13th day of October, 1999.  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

► **Creation Info**

*Carolyn Grimm was the last to edit this document, on 10/13/99.*

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**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**  
**IN THE MATTER OF THE APPLICATION )**  
**OF PACIFICORP FOR AUTHORITY TO SELL )**  
**ITS INTEREST IN THE CENTRALIA STEAM ) DOCKET NO. 20000-EA-99-146**  
**ELECTRIC GENERATING PLANT, THE ) (RECORD NO. 5114)**  
**RATE BASED PORTION OF THE )**  
**CENTRALIA COAL MINE AND OTHER )**  
**RELATED FACILITIES )**

**ORDER REGARDING EXEMPT WHOLESALE GENERATOR STATUS**

**(Issued January 18, 2000)**

This matter is before the Commission upon the application of PacifiCorp to sell its interest in the Centralia Steam Electric Generating Plant, the rate based portion of the Centralia Coal Mine and other related facilities, and its requested determinations regarding the operation of the Centralia plant as an exempt wholesale generator.

1. PacifiCorp is a public utility as defined by W.S. § 37-1-101 and, as such, subject to the Commission's jurisdiction pursuant to the provisions of W.S. § 37-2-112.
2. On August 8, 1999, PacifiCorp filed the above-docketed application requesting authority to sell its interest in the Centralia Steam Electric Generating Plant, the rate based portion of the Centralia Coal Mine and other related facilities.
3. Pursuant to the application, PacifiCorp proposes to sell its interest in the Centralia generating unit to TECWA Power, Inc., and the rate based portion of the Centralia Coal Mine to TECWA Fuel, Inc. Both TECWA Power, Inc. and TECWA Fuel, Inc., are Washington corporations and wholly-owned subsidiaries of TransAlta Corporation.
4. In its application, PacifiCorp sought a Commission ruling, pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 ("PUHCA") (codified at 15 U.S.C. §79z-5a(c)), in order to allow TECWA Power, Inc., to operate the Plant as an exempt wholesale generator under federal law. Specifically, PacifiCorp sought a Commission determination that the operation of the Centralia Plant as an "eligible facility" (i.e., to be owned by an EWG) upon completion of the sale (a) will benefit consumers, (b) is in the public interest and (c) does not violate state law. PacifiCorp stated, in its application, that TransAlta cannot begin processing its application with the Federal Energy Regulatory Commission (FERC) in order to obtain FERC's qualification of the generation assets as "eligible facilities" and TECWA Power, Inc., as an EWG until the Commission has made the three required determinations.
5. At a public hearing held with regard to this matter on January 6, 2000, the Consumer Advocate Staff of the Wyoming Public Service Commission (CAS) presented the testimony of Denise Parrish recommending that the EWG status determinations could only be made if the Commission adopted the CAS recommendations regarding the disposition of the gain from the sale of the Plant and Mine. Specifically, the CAS took the position that 100% of the Wyoming allocation of the gain should be given to the customers, rather than shared with PacifiCorp stockholders, as proposed by the Company. The CAS took the view that unless customers receive 100% of the gain, the sale is not in the public interest.



6. In addition to the information contained in its application and prefiled testimony, PacifiCorp stated that operation of the Centralia plant as an eligible facility after the sale will benefit consumers and be in the public interest because it will introduce additional competition in the wholesale power market. At the conclusion of the evidentiary hearing in this case, counsel for PacifiCorp sought a bench ruling on the EWG status, and provided the Commission clarification regarding the need for the EWG determinations. Counsel for the CAS, in response to PacifiCorp's motion, reiterated its position on the matter. WIEC, the only other party in the case, did not take a position on the EWG issue.

7. Upon concluding the hearing, the Commission held public deliberations regarding the Company's application. As will be more fully detailed in a separate order, the Commission approved the proposed sale of the Centralia facilities as being consistent with the public interest, and approved the sharing of the gain between ratepayers and shareholders in the proportions proposed by the Company. The Commission finds and concludes that the Company has established that consumers will benefit from the proposed sale and that the proposed sale and operation of the Centralia plant as an eligible facility is in the public interest. The Commission further concludes that operation of the Centralia steam generating plant as an eligible facility would not violate Wyoming law.

**IT IS THEREFORE ORDERED THAT:**

1. Pursuant to the Commission's decision entered on January 7, 2000, PacifiCorp's application for an EWG determination pursuant to the provisions of 15 U.S.C. §79z-5a(c) regarding the proposed sale of the Centralia facilities to TECWA Power, Inc., is hereby granted.

2. This Order is effective immediately.

MADE AND ENTERED at Cheyenne, Wyoming this 18<sup>th</sup> day of January, 2000.

**PUBLIC SERVICE COMMISSION OF WYOMING**

**STEVE ELLENBECKER, Chairman**

**STEVE FURTNEY, Deputy Chairman**

**KRISTIN H. LEE, Commissioner**

**(SEAL)**

**ATTEST:**

**IVAN H. WILLIAMS, Assistant Secretary**