BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re 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
In re 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 Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination	)	DOCKET NO. UE-991262
In re the Matter of the Application of PUGET SOUND ENERGY, INC. for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period	)	DOCKET NO. UE-991409 SECOND SUPPLEMENTAL ORDER ORDER APPROVING SALE WITH CONDITIONS

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I. SUMMARY

A. SYNOPSIS

1 The Commission authorizes the Applicants to sell their portions of the Centralia steam plant, coal mine, and related facilities subject to conditions. Case-specific circumstances warrant a reasonable allocation between the shareholders and the ratepayers of the benefit of the gain on sale of the Centralia facilities. The Commission orders that the proceeds be allocated as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

B. PROCEEDINGS

2 On August 10, 1999, Avista Corporation ("Avista") filed with the Commission an application for authority to sell its interest in the coal-fired Centralia Power Plant to TECWA Power, Inc. ("TECWA"). The application asks the Commission to approve the sale, to grant approval on an expedited basis, and to authorize Avista to defer treatment of the gain on the sale to a future rate proceeding. Avista also asks the Commission for a determination allowing the facility to be eligible for purposes of becoming an Exempt Wholesale Generator ("EWG"). Avista asks that the EWG determination be made prior to and contingent on approval of the sale. On October 14, 1999, the Commission entered an order approving, conditioned on a final order approving the sale, EWG status for the purchaser. On November 23, 1999, the Commission entered an order consolidating the Avista application with applications by PacifiCorp and Puget Sound Energy. On November 29, 1999, the Commission entered a protective order in the consolidated proceedings.

3 On August 11, 1999, Pacific Power & Light Company ("PacifiCorp") filed with the Commission an application for authority to sell its interests in the Centralia Steam Electric Generating Plant, the rate-based portion of the Centralia Coal Mine, and related facilities to TECWA. The application asks the Commission to approve the sale, to determine the amount and proper ratemaking treatment of the gain associated with the sale, and for an EWG determination. On October 14, 1999, the Commission entered an order conditionally approving EWG status for the purchaser. On November 23, 1999, the Commission entered an order consolidating the PacifiCorp application with applications by Avista and Puget Sound Energy. On November 29, 1999, the Commission entered a protective order in the consolidated proceedings.

4 On September 10, 1999, Puget Sound Energy ("PSE") filed with the Commission an application for approval of the sale of PSE's interest in the Centralia Power Plant to TECWA Power, Inc. The application asks the Commission to approve the sale of PSE's seven-percent interest in the Centralia Power Plant, to authorize PSE to amortize the net gain from the sale over a five-year period commencing January 1, 2000, and to authorize TECWA to operate the Centralia facility as an EWG, conditioned on a final order approving the sale. On October 14, 1999, the Commission entered an order conditionally approving EWG status for the purchaser. On November 23, 1999, the Commission entered an order consolidating the PSE application with applications by Avista and PacifiCorp. On November 29, 1999, the Commission entered a protective order in the consolidated proceedings.

C. HEARINGS

5 A joint prehearing conference was held in these three proceedings in Olympia, Washington, on October 28, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Marjorie R. Schaer. The Commission held an evidentiary hearing on January 7, 10-11, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Marjorie R. Schaer.

D. PARTIES

6 Gary A. Dahlke, Paine Hamblen, Coffin, Brooke & Miller, Spokane, represents Avista. George Galloway, Stoel Rives, Portland, represents PacifiCorp. Matthew R. Harris, Summit Law Group, Seattle, and Kimberly J. Harris, Perkins Coie, Bellevue, represent PSE. We will refer collectively to Avista, PacifiCorp, and PSE as the "Companies" or "Applicants." Charles F. Adams and Simon ffitch, Assistant Attorneys General, Seattle, appear as Public Counsel. Robert D. Cedarbaum, Assistant Attorney General, Olympia, represents the Staff of the Washington Utilities and Transportation Commission ("Commission Staff"). Michael T. Brooks and Brad Van Cleve, Duncan Weinberg Genzer and Pembroke, Portland, represent the Industrial Customers of Northwest Utilities ("ICNU"). Nancy Hirsh, Seattle, represents the Northwest Energy Coalition ("NWEC"). Robert Lavitt, Schwerin Campbell Barnard LLP, Seattle, represents the International Union of Operating Engineers, Local 612 ("Local 612"). John Bishop, Bennett, Hartman & Reynolds, Portland, represents the International Brotherhood of Electrical Workers, Local 125.

E. COMMISSION

7 The Commission authorizes Avista, PacifiCorp, and PSE to sell their ownership interests in the Centralia facilities to TECWA. The Commission also authorizes PacifiCorp to sell its interest in the Centralia Coal Mine to TECWA. Approval of PacifiCorp’s sale is conditioned on PacifiCorp holding its ratepayers, and the other two Applicants and their ratepayers, harmless from any future liability for mine reclamation. Approval of PSE’s sale is conditioned on PSE’s deferral of the gain until its next general-rate request proceeding. PSE must accrue interest of 7.16 percent on the deferred balance. Proceeds are allocated as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded. By original cost we mean the cost of building the plant and all capitalized costs incurred from inception to the date of sale.

II. MEMORANDUM

A. BACKGROUND

8 The Centralia Generation Plant ("Centralia") is a 1,340 MW coal-fired power plant located in Lewis County, Washington. Centralia entered service in 1972 and consists of two steam units. The primary source of coal for Centralia is a mine located adjacent to the power plant.

9 Centralia is owned by eight Northwest utilities in the following shares:

PacifiCorp	47.5%
Avista	15.0%
City of Seattle	8.0%
City of Tacoma	8.0%
Snohomish County PUD	8.0%
PSE	7.0%
Grays Harbor PUD	4.0%
Portland General Electric	2.5%

10 Avista, PSE, and PacifiCorp propose to sell their respective shares of Centralia, including the associated transmission facilities and related property ("Centralia Facilities") to a subsidiary of TransAlta Corporation, which is a Canadian corporation located in Calgary, Alberta. These facilities have been included by the Commission in rate base for each company since Centralia began operation in 1972.

11 The proposed sale to TransAlta also includes the adjacent mine, which is currently owned entirely by PacifiCorp. Forty-seven and one-half percent of PacifiCorp's interest in the mine has also been included in rate base by the Commission.

12 The proceeds from the sale exceed the net book value of the assets resulting in a gain. The after-tax gain for each company is:

PacifiCorp	$82,663,000
Avista	$29,606,000
PSE	$13,520,000

13 These amounts are the estimates provided in the Companies' exhibits. They will be revised at closing based on actual plant balances, costs associated with the sale, and other variables.

B. APPLICABLE STATUTES AND RULES

14 A public service company may not sell a significant asset without prior authorization from the Commission. The following statutes and rules apply.

> **RCW 80.01.040 General powers and duties of commission.** The utilities and transportation commission shall:
>
> (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.
>
> **RCW 80.12.020 Order required to sell, merge, etc.** No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do . . . .
>
> **80.28.010 Duties as to rates, services, and facilities--Limitations on termination of utility service for residential heating.**
>
> (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.
>
> **RCW 80.28.074 Legislative declaration.** The legislature declares it is the policy of the state to:
>
> (1) Preserve affordable natural gas and electric services to the residents of the state;
> (2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington;
> (3) Ensure that customers pay only reasonable charges for natural gas and electric service;
> (4) Permit flexible pricing of natural gas and electric services.

> **WAC 480-143-120 Transfers of property.** A public service company may not complete a transfer of property necessary or useful to perform its public duties unless the company first applies for, and obtains, commission approval. Transfers include sale, lease, assignment of all or part of a public service company's property, and merger or consolidation of a public service company's property with another public service company. . . .
>
> **WAC 480-143-170 Application in the public interest.** If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.

C. POSITIONS OF THE PARTIES

1. PacifiCorp

15 On the basis of estimated replacement power costs and assuming a sharing of the gain on the sale, PacifiCorp asserts that its Washington customers will likely benefit from the sale of Centralia. In addition, PacifiCorp argues that if other "qualitative" factors are taken into account, there are significant benefits to customers from selling the plant and mine as proposed. These qualitative factors include: avoiding the risk of the substantial investment in scrubbers necessary to meet Reasonably Available Control Technology ("RACT") requirements; avoiding the risk of early mine closure, which would accelerate mine reclamation costs; avoiding the risk of plant closure; and avoiding other risks. In addition, sale of the plant would eliminate the operational difficulties that result from multiple ownership of the plant. Major decisions, such as deciding to invest in scrubbers, require unanimous agreement among the owners. This requirement for unanimity poses a risk that the plant will not be operated at all (if the plant must be shut down for environmental reasons), or will not be operated in an optimal manner. PacifiCorp bases its conclusion that the sale of Centralia is in the public interest on the four principles, including a no-harm standard framework, discussed by the Commission in the merger of Puget Power and Washington Natural Gas[1], in the merger of PacifiCorp and Scottish Power,[2] and in PSE's sale of Colstrip facilities[3].

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[1]*In the Matter of the Proposal by Puget Sound Power & Light Company*, Docket No. UE-960195, Washington Utilities and Transportation Commission, February 5, 1997.

[2]*In the Matter of the Application of PacifiCorp and Scottish Power, PLC*, Docket No. UE-981627, Washington Utilities and Transportation Commission, October 14, 1999.

[3]*Puget Sound Energy, Inc. In the Application of Re Colstrip*, Docket No. UE-990267, Third Supplemental Order, Washington Utilities and Transportation Commission, September 30, 1999.

16 PacifiCorp proposes to share the gain on the sale with ratepayers using a "depreciation reserve" method that would flow to ratepayers the proportion of the gain above book value equal to the ratio of the undepreciated to depreciated portions of the plant. The company proposes to use the ratepayer portion of the gain to write down its YAMPA facilities in Colorado.

2. Avista

17 Avista testifies that the sale of Centralia will result in customer benefits over 20 years, irrespective of the book gain. The company suggests, however, that power forecasts (comparing the cost of Centralia's power to projected market prices) taken beyond ten years should be viewed with great care and given little weight. Avista also uses the no-harm standard discussed by the Commission in previous cases[4] to derive its conclusion that the sale of Centralia is in the public interest.

18 Avista proposes in its testimony to flow 100% of the book gain to shareholders, arguing that shareholders should get occasional gains to offset occasional losses, and pointing specifically to write-offs the company has taken in the past. The company also points out that customers have enjoyed historically low rates and high-quality service. In the event the Commission allocates any portion of the gain from the sale to customers, Avista proposes to share the gain using PacifiCorp's depreciation reserve methodology. The company proposes that any customer-share of the gain be used to offset all or a portion of the costs related to storm damages resulting from an ice storm in 1996, and to offset a portion of the transition obligation for post-retirement health care and life insurance benefits.

3. PSE

19 PSE argues that although the sale of the plant will not necessarily result in power cost savings, the public interest determination should not rely solely on estimates of the cost of replacement power. PSE's forecasts suggest a relative cost to ratepayers over the company's 19-year analysis; however, PSE argues that the sale will have positive benefits when qualitative issues are considered. In particular, the company argues that sale of the plant will eliminate significant risks for customers, including the elimination of potential environmental costs, such as mine reclamation and stringent air regulation, as well as other risks. PSE also cites complications associated with multiple ownership of the plant. In addition, PSE points out that near-term market forecasts suggest near-term benefits to customers that should be weighed more heavily than longer-term speculative forecasts. PSE testifies that the sale of Centralia is in the public interest based on the

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4 *See* cases cited *supra* notes 1-3.

four principles, including the no-harm standard framework, discussed by the Commission in previous cases[5].

20 PSE proposes to amortize its book gain on the sale of Centralia over five years, beginning in 2000, a period which coincides in part with the company's merger-related Rate Plan (i.e., pre-programmed annual rate increases until December 31, 2001). PSE argues that its proposed accounting treatment is consistent with the five-year merger Rate Plan. Under the Rate Plan, the company is exposed to risk by not being able to come in for rate relief unless it has an emergency need. In return for assuming this risk, the company has an opportunity to manage its power costs, and retain any and all financial benefits it achieves during the five-year period. Under the company's proposal, the gain would be applied "below the line" during the merger rate plan.

4. Commission Staff

21 Commission Staff testifies that the various quantitative analyses of relative power costs resulting from the sale demonstrate that the only benefit to ratepayers comes from near-term savings in replacement power. Staff argues that standing alone, the quantitative analyses provided by the Applicants suggest the plant exposes ratepayers to higher long-term costs. However, qualitative factors support the decision to sell Centralia. These factors include: avoiding the risk of environmental costs, avoiding the risk of plant closure caused by multiple ownership, and potential changes in technology and electric industry structure that could make Centralia less beneficial to the ratepayers. Staff argues that only if all near-term power supply benefits and all sale proceeds above the unamortized balance of the plant are returned to ratepayers is the sale in the public interest.

22 Staff argues that the precise methods to flow through the book gains to Avista and PacifiCorp ratepayers should be determined in the pending general rate proceedings before the Commission. Staff argues that PSE's share of the gain should be deferred and earn a return until its next general rate proceeding. In addition, Staff argues that PSE should be required to defer estimated savings in power costs during the rate plan for return to ratepayers after the rate plan is over. Staff recommends that the Applicants' gain calculations be modified in several ways. Staff proposes removing the environmental liabilities that PacifiCorp has accrued in the books of both the plant and mine, as they are speculative and unknown. Staff asks the Commission to require PacifiCorp to seek a private letter ruling from the IRS allowing it to include excess deferred taxes in the gain calculation. If a sharing of the gain is approved, Staff proposes removing the reclamation balances from each of the Applicants' gain calculations, as those funds accrued through fuel costs paid by ratepayers. Staff argues that the allocation

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5 *See* cases cited *supra* notes 1-3.

of the gain from the sale should be deferred and addressed in general rate proceedings, allowing the Commission to address the issue within the broader context of the Companies' operations. Outside a rate case, there may not be enough information to assess the effects any sharing may have on the overall rate structures.

5. Northwest Energy Coalition

23 NWEC testifies that the type of replacement power is fundamental to determining whether the sale of Centralia is in the public interest. NWEC argues that the financial gain from the sale should be used to provide services or benefits that are in the public interest, such as investments in cleaner and less-polluting power resources. NWEC recommends that each utility be required to issue an RFP for replacement power with low carbon dioxide emissions, and that a portion of the net sale proceeds or a portion of the revenue requirement not used to replace power be used to offset any premium. In addition, NWEC testifies that the net proceeds from the sale should flow to customers and benefit the environment after each company is made whole on the plant's book value. Specifically, benefits to ratepayers should be divided into thirds and allocated to the following three categories: rate adjustments, clean energy investments, and buy-down of generation-related regulatory assets.

6. Industrial Customers of Northwest Utilities

24 ICNU testifies that the allocation of the gain from the sale should be deferred and addressed in general rate proceedings, allowing the Commission to address the issues within the broader context of the Companies' operations. ICNU argues that outside a rate case, there may not be enough information to assess the effects any sharing may have on the overall rate structures. ICNU argues that ratepayers are entitled to 100% of the gain, because they have borne the risk and financial burden of the costs of the plant. ICNU notes that costs associated with the plant were front-loaded in rate base; that is, ratepayers paid a disproportionate share of costs in the early years of operation, with the understanding that a disproportionate share of the benefits would accrue to ratepayers towards the end of the asset's life. ICNU argues that shareholders are entitled only to the undepreciated value of the plant — any additional return would be excess return. ICNU suggests that the treatment of the gain must be considered in the broader context of stranded-cost exposure that may occur through restructuring, rather than in isolation. ICNU argues that any sharing of gain is inappropriate and would provide an incentive for the Applicants to sell off their low-cost assets.

25 In addition to the no-harm standard, ICNU argues that the sale must provide "customer benefits" in order to be consistent with the federal Energy Policy Act. That Act requires that for the purchaser to obtain EWG status, affected states must "...make a specific

determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law." 15 U.S.C. § 79z-5a(c).

7. Public Counsel

26 Public Counsel testifies that the sale price of Centralia is too low to avoid harm to customers, regardless of the disposition of the book gain on the sale. Public Counsel argues the sale will result in increased costs to ratepayers. In addition, Public Counsel argues that the qualitative risks identified by the Applicants are both speculative and non-quantified, and do not overcome the costs of replacement power that ratepayers will bear if the plant is sold. Public Counsel provides detailed arguments regarding the appropriate assumptions necessary to analyze whether the sale is in the public interest. In its analysis, Public Counsel assumes the same plant life, 26 years, that was assumed in arguments used to persuade the Legislature to grant scrubber tax credits. Public Counsel uses the most recent (November 29, 1999) power cost forecast from the Northwest Power Planning Council's model, an "adder" to represent the value of the plant derived from its location, and a dispatch value, among other assumptions. Based on its analyses and the lack of the Applicants' least-cost planning addressing divestiture of generation assets, Public Counsel argues that the Applicants have failed to demonstrate that the sale is in the public interest and recommends that the Commission deny the sale applications.

27 In the event, however, the Commission approves the sale, Public Counsel testifies that disposition of the proceeds should first return the undepreciated portion of the plant to shareholders and the depreciated portion to ratepayers, arguing that only the amount of the sale price that exceeds the total invested capital is "real gain" and potentially appropriately shared.

8. International Union of Operating Engineers, Local 612 ("Local 612")

28 Local 612 provides testimony highlighting TransAlta's excellent safety record and workforce stability. In particular, Local 612 discusses TransAlta's record on safety and operational stability as they pertain to the public interest. Local 612 testifies that TransAlta is one of the safest electrical utilities in Canada with a history of operational stability, and is a leader among Canadian industry in reducing greenhouse gas emissions.

III. COMMISSION DISCUSSION

A. STANDARD OF REVIEW

29 In undertaking its review and arriving at a decision to approve or disapprove a requested property transfer the Commission looks to its general responsibility to regulate in the public interest, RCW 80.01.040. In past decisions and under our rule,

WAC 480-143-170, we have interpreted this as a "no harm" standard. That is, we will deny the application if the transaction is not consistent with the public interest, but will approve it, if the applicant demonstrates that the transaction, on balance, at least does not harm. To reach this determination, we have, in the past and in this case, considered and balanced four principles. The four principles address: (1) the rates and risks faced by ratepayers, (2) the balance of interests among customers, shareholders, and the broader public, (3) the effect of the transaction on competitive markets, and (4) protection of the interests of Washington ratepayers[6]. These four principles do not constitute a checklist or a definitive set of minimum requirements. In *Colstrip,* we stated that, "These principles are not minimum standards; rather they are guidelines that, when taken together, can be used to determine whether there is, at least, no harm to the public interest." (Colstrip, Third Supplemental Order at 8). We also advised that, "Over time, and across different industries and transactions, different considerations may prove relevant to determining the public interest." *Id.* Each principle may not be relevant in every case, and where they are relevant, the unique mix of factors each transaction presents for evaluating risks and benefits will dictate that they apply in different measure.

30 The parties in this case have generally used the "no harm" standard. ICNU asserts that the Commission must go beyond the "no harm" standard and determine that there is a positive benefit to consumers, if the purchased plant is to satisfy the requirements of federal law that govern whether a facility is eligible for exempt wholesale generator status. To satisfy those requirements states must, "[m]ake a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law." But this standard applies to the

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[6] These principles, as expressed in *Colstrip*, Docket No. UE-990267, Third Supplemental Order, at pp. 9-10, are:

1 The transaction should not harm ratepayers by causing rates or risks to increase, or by causing service quality and reliability to decline, compared with what could reasonably be expected to have occurred in the absence of the transaction.

2 The transaction, with conditions required for its approval, should strike a balance among the interests of ratepayers, shareholders, and the broader public that is fair and that preserves affordable, efficient, reliable, and available service.

3 The transaction, with conditions required for its approval, should not distort or impair the development of competitive markets where such markets can effectively deliver affordable, efficient, reliable, and available service.

4 The jurisdictional effect of the transaction should be consistent with the Commission's role and responsibility to protect the interests of Washington gas and electricity ratepayers.

question of whether the facility should be granted Exempt Wholesale Generator (EWG) status, not to the question of whether the underlying transaction is in the public interest. As laid out in our October 14, 1999, conditional orders, we found that EWG status, should the plant be sold, will benefit consumers. ICNU is misguided in attempting to apply these standards to the underlying decision we make in this order.

31 Bearing in mind, then, the "no harm" standard and the four related principles, we will discuss and examine:

- The risks and benefits of the transaction;
- Accounting treatment of the gain, if the sale is approved; and
- In light of the first two discussions, whether the sale overall is consistent with the public interest.

B. RISKS AND BENEFITS OF THE TRANSACTION

32 Examining the risks and benefits of the proposed sale requires us to evaluate events and circumstances that could, but might not, occur in the future. We are required to consider future risks and benefits to ratepayers, shareholders, and the broader public. The science of forecasting and scenario analyses are important tools for informing our understanding of the future and its uncertainties. They are not tools that can, with certainty, predict what the future will be.

33 The record provides us a great deal of information for assessing the current risks and benefits of the Centralia plant, as well as the risks and benefits ratepayers, shareholders, and the broader public might experience as a consequence of sale of the plant. Some of this information is "quantitative" and some of it is "qualitative." Because all of it is based on assumptions, projections, and applied judgment, all of it is subjective at some level — whether stated in quantitative or in qualitative terms. Evidence concerning potential risks and benefits is not known and measurable in an absolute sense. It is nonetheless evidence that is critical to informing our assessment of the effects of the sale on the public interest.

34 Our challenge in this decision is to weigh the importance of all the evidence, whether measured numerically or not, while recognizing that all analyses of future risks and benefits rely on projections of unknown probability. The task would be easier if all of these factors could be reduced to common numerical terms. But they cannot be. We must exercise our informed judgment in balancing factors that cannot be reduced to a common denominator.

35 We introduce our discussion of risks and benefits with the observation that the ratepayers and the utilities incur risks and benefits whether or not the plant is sold. An environment of risk and benefit is not uniquely a consequence of the proposed sale. Public Counsel and Staff point out that if the plant is sold, the ratepayers face the risk that relative power costs will increase. However, if the plant is *not* sold, ratepayers face a risk that the relative cost of power from Centralia will increase, if market prices decline due to technological change or other factors, or if Centralia costs increase due to environmental legislation. The utilities and the ratepayers both face uncertain risks from the timing, shape, and consequences of industry restructuring, which could occur at either the state legislative or Congressional level. Finally, continued shared plant ownership could impede the ability of any of the owning utilities to make business decisions necessary to maximize overall value to both shareholders and ratepayers of the utility's distribution and generation portfolios. More broadly, the utilities, the ratepayers, and the general public all face the risk today that the shared plant ownership and management structure will interfere with timely decisions to make capital investments necessary to maintain efficient and environmentally compliant plant operation.

36 We will now explore, in greater detail, the nature and uncertainty of these risks and benefits.

1. Relative Power Costs: Centralia's Advantage Over Market

37 First, we are presented with analyses of relative future power costs. Four of the parties to this case present an analysis that includes a forecast of the future market value of Centralia-produced power in comparison to its cost. These analyses are intended to assess whether ratepayers might see higher or lower power costs if the plant is sold, and Centralia's cost-based power replaced with market-priced power. For consistency and clarity we will refer to the relative cost of Centralia power when compared to projected market-priced power as Advantage Over Market, or AOM. Centralia's AOM is positive if the cost of Centralia-generated power is lower than the projected cost of market power and it is negative if Centralia's cost exceeds the projected cost of market power.

38 The three Applicants each present an analysis suitable for derivation of Centralia's AOM. PacifiCorp and PSE complicate their assessments by incorporating into the analyses the effects of their proposals for regulatory treatment of the gain resulting from the sale. Each Applicant's analysis relies on a narrow analytic scope that covers only the circumstances of the individual utility and its share of the Centralia plant. Public Counsel offers a detailed analysis with a broader analytic scope that encompasses the entire plant. This broader scope has the feature of applying a common set of assumptions to all of the utilities with ownership interest in the plant.

39 Table 1 demonstrates the range in predicted Centralia AOM. The figures are in present-value terms based on the discount rates used by the party sponsoring the analysis. All of the values represent estimates of the relative power costs only — that is, based on exhibits in the record, the effect of the proposed regulatory treatment of the gain has been removed from PacifiCorp's and PSE's estimates. Avista's figures have been taken from Exhibit 332, which Mr. Johnson, Avista's power cost witness, agreed on the stand was appropriate. Finally, Public Counsel's figures have been calculated from his "whole-plant" analysis to represent the appropriate ownership shares for each of the utilities.

Table 1. Centralia Advantage Over Market (AOM) Without Consideration of Gain.
Washington Share. Present Value in Million Dollars (negative values in brackets)

Utility	5 Years	10 Years	20 Years	26 Years
Avista: Company (a)	(6)	(5)	15	NA
Avista: Public Counsel (b)	11	35	74	91
PacifiCorp: Company(c)	(0.50)	0.90	5	NA
PacifiCorp: Public Counsel(b)	8	26	52	66
PSE: Company(d)	(0.80)	6	19	NA
PSE: Public Counsel(b)	8	24	52	63

(a) Derived from Exhibit 332; 66.9% of the system is apportioned to Washington.
(b) Derived from Exhibit 513; based on each Applicant's ownership share of plant, as apportioned to Washington.
(c) Derived from Exhibit 239; 15.4% of the system is apportioned to Washington.
(d) Exhibit 114; the effect of gain amortization is removed.

40 While the majority of the estimates in Table 1 indicate that power costs may increase as a result of the sale (Centralia AOM is positive and increasing), the analyses also present an impressive array of forecasting issues and assumptions. In search of common terms, Public Counsel argues that these assumptions should be standardized. Public Counsel asserts that there is a common set of assumptions about the future life-expectancy of the plant, market prices for power, capacity values, plant dispatch values, and discount rate that should be adopted by all parties to evaluate the future consequences of the sale in common terms. This recommendation draws fire from the three Applicants. They argue that important circumstances vary among them, including the way in which the plant

contributes to their power supply systems, the way in which each would replace the power, and the costs that each would thereby incur for power replacement. In other words, the utilities argue that the capacity value and plant dispatch value vary depending on utility circumstances.

a. Assumptions: Capacity and Dispatch Value

41 We are persuaded that the Applicants are correct. While it is true that there is but one Centralia plant, this fact only establishes that there is justification for a common estimate of the cost of power from that plant. The value that each of the three Applicants (and, we might add, the five owners who are parties to the sale, but not parties to this case) obtain from the plant is not necessarily the same. In other words, the AOM of Centralia varies across the utilities. Commission Staff and PacifiCorp both point out that the value of Centralia's power and the cost of replacement power are properly estimated through use of a "dispatch model" that considers the availability, cost, and character of all other power resources available to each utility. Consequently, the replacement costs that each will incur are not the same. Therefore, the relative future value of power costs cannot be derived for each Applicant from a common set of standard assumptions concerning capacity and dispatch values.

42 If we were presented with a single plant and a single utility, we would be inclined to establish a single analytic scope and a single standard set of assumptions. Such is not the case here, so we will decline Public Counsel's invitation to endorse a standard, whole-plant analysis, or to endorse the assumptions Public Counsel proposes for capacity-value and dispatch-value.

b. Assumptions: Power Cost Forecasts

43 Turning to the forecasts of the market price for power, we note first that the most important contribution of forecasts to decision-making is that they help us to understand the uncertainty of the future. They do not paint a perfectly accurate prediction of the future.

44 Each of the four parties presenting power forecast analyses relies on its own forecast of market prices. At the end of the day, PSE and Public Counsel chose the November 29, 1999, version of the AURORA-model forecast prepared by the Northwest Power Planning Council. PacifiCorp relies on its own in-house forecast, as does Avista. Public Counsel argues that the AURORA model results should set the standard. When questioned about the reliability of forecasts, all four of the parties freely admit that whichever forecast is chosen it will be wrong, and that forecasting error and uncertainty grow as a forecast is extended into the future. Avista reminds us that past forecasts of energy prices in the Northwest have been wrong, and that the errors have often been to the high side. That is, prices have been forecast to be higher than they turned out to be. For example, Avista points out that the Bonneville Power Administration, in 1990, used

a regional forecast that projected market prices for the year 2000 that are 100% higher than today's actual prices.

45 We are particularly receptive to the point Avista makes because we are not persuaded by the record that any of the forecasts presented attempts, or could reasonably be expected, to capture the potential for technology change. We believe that the advent of a competitive wholesale power market and current developments such as fuel-cell or other distributed-generation technologies could significantly change the electricity service landscape over the period of time spanned in these forecasts. PSE demonstrates (exhibit 114) that if power costs fall only 20 percent below the medium-case AURORA-model forecast, the estimated present value of Centralia AOM changes from a slightly *positive* $1.8 million, to a *negative* $49 million — a swing of over $50 million. The former suggests a risk to ratepayers that market costs will be higher than Centralia's cost. The latter shows the potential for substantial benefit of lower costs if the plant is sold. This is just for PSE's seven-percent share of the plant. Expanding this effect to the entire plant results in a swing from positive $25 million to a strongly negative $700 million. This comparison serves to underscore that the value of the forecasting exercise is to better understand the range of uncertainty around future events and the factors that introduce that uncertainty, not to predict the future with precision.

46 If the benefit of forecasting is a better understanding of the range of uncertainty, then several different views of the future can be more beneficial than a single view. In this case we are presented with four power market forecasts that constitute a ready-made sensitivity analysis. In addition, the AURORA forecast as presented by PSE in exhibit 114 permits us to look at sensitivity across low, medium, and high scenarios. In these circumstances a range of views about an uncertain future is more useful than a single one. We will again decline Public Counsel's invitation to standardize and will not establish a single common forecast. We accept the forecasts used by Public Counsel, PSE, Avista, and PacifiCorp, not as facts but as scenarios. In addition, we have taken advantage of the AURORA model scenarios documented in PSE's exhibits and some key sensitivity analysis presented by Public Counsel.

c. Assumptions: Plant Life Expectancy

47 Turning next to plant life-expectancy, Public Counsel argues that, with anticipated capital investments, the Centralia plant can reasonably be expected to operate for another 25 to 30 years. Analysis done to support the Legislature's decision to grant tax-credits to encourage pollution control investments at the plant was based on a 26-year expected lifetime. We are persuaded that it is justified and reasonable to expect that the plant may

be physically capable of operating over this span. However, the implications for relative power-cost analysis and the risks and benefits faced by ratepayers are less clear.

48 For example, all parties acknowledge that if environmental legislation or taxation regarding carbon dioxide emission control is enacted in the future, a likely result would be to increase the cost of Centralia power (since it is coal-fired) and thereby decrease the value of Centralia power when compared to forecast market prices. The parties did not propose an agreed-upon probability of whether or when such legislation or taxes might be imposed. All seemed to agree that there is a risk, but such a legislative policy is unlikely to be enacted in the near term. NWEC stated that no taxes or regulations are currently imposed or currently under consideration in the Legislature or in Congress. We have no view on this probability, except to observe that the further the analysis is projected into the future, the less certain we can be that such policy changes will not occur. So the choice of a long-plant life brings into play this uncertainty.

49 Public Counsel provides a sensitivity analysis based on a $10/ton tax levied on carbon dioxide. This sensitivity case yields an estimate of the present value of Centralia's AOM — an estimate that is lower by roughly 50 percent or $400 million than Public Counsel's base-case, 26-year, whole-plant analysis. (Ex. 513) PSE's analysis over 19 years assuming a $10/ton tax demonstrates a similar, whole-plant $357 million negative effect on the present value of Centralia's AOM. (Ex. 114).

50 Neither of these estimates of a carbon-tax effect is definitive. They are sensitivity analyses that help us understand the effect that one factor might have on the AOM of the plant. Public Counsel notes that even this major impact is not enough to offset the harmful rate effects estimated by Public Counsel. But when they are considered together with the risk of lower forecasted market prices that we noted previously, we are given pause. We will view any and all of these analyses with caution. Relying on an analysis very far into the future in the presence of such uncertainty and imprecision is problematic, regardless of the likely physical life-expectancy of the plant.

d. Assumptions: Regulatory Structure

51 At least as significant is the prospect of change in the regulatory structure of the retail electricity industry, either by Congress or by the Legislature. An analytic perspective that spans 26 years must consider the consequences of a policy change that could sever the existing relationship between ratepayers and the utility. While it may be appropriate to estimate the value of the Centralia *plant* over its remaining expected lifetime, whether this value *also* represents the value *ratepayers* would see over the next 26 years, is less certain. If, in the course of the next 26 years ratepayers lose their right to regulated rates and are not awarded "stranded benefits" from below-market power plants, the value of keeping Centralia for ratepayers is diminished.

52 The Applicants argue that this uncertainty is a key reason to focus our analysis on the near-term rather than on long-term. We are not expressing a view on the wisdom of legislative retail electric restructuring, but we are sobered by indications that such a change might not include capturing power benefits for ratepayers from plants that become deregulated. This has not been a prominent characteristic of restructuring

legislation in other states; and some of the bills that considered the restructuring issue in this state over the last few years did not clearly address this customer interest, either. Legislation in other states has more commonly provided for stranded costs, protecting shareholders. Whatever the timing and shape that change in regulatory law may eventually take, there is a significant uncertainty that ratepayer benefits in currently regulated plants will be captured over the long term. Consequently, our inclination is to give greater weight to the near-term analysis. Thus, even if the plant promises a long-term benefit compared to market, this promise may turn out to be unrealized by ratepayers if restructuring of electricity service occurs.

e. Assumptions: Discount Rate

53 Finally, Public Counsel argues that we should establish a standard discount rate equal to PSE's most recent after-tax cost of capital. This rate of 7.16 percent was established for use in the *Colstrip* analysis. The Applicants, including PSE, have all used discount rates that are higher than this value. None provides any specific justification for the rate used. Avista and PacifiCorp explain that the discount rate they have applied is intended to represent the time value of money, that is, the opportunity cost of capital, and not to capture the uncertainty of future events like changes in regulatory or environmental policy. In *Colstrip* we considered the circumstances of a single utility, and the record in that case contained evidence that allowed us to confirm that the appropriate discount rate was based on PSE's cost of capital. In this proceeding, we are considering three utilities, two of which have a general rate case pending before us. The appropriate cost of capital and capital structure for Avista and PacifiCorp are matters to be decided on a fully developed record in those proceedings. It is not appropriate for us to appear to short-circuit those proceedings by establishing a standard discount rate in this proceeding without benefit of a relevant record. We are left to judge in this proceeding whether the discount rates used appear reasonable as a way to discount future events — without implying one way or another a view about whether they represent a reasonable cost of capital. We intend to rely on the power cost analyses as a set of sensitivity analyses, rather than precise estimates. For this purpose, we believe the discount rates fall in a reasonable range and we will not standardize. We do emphasize that these values *do not* capture future uncertainty about market structure (restructuring), technological change, or environmental legal changes. We reaffirm our decision in *Colstrip* that, as a value to reflect PSE's after-tax cost of capital, PSE's proper discount rate is 7.16%.

2. Management Structure

54 Aside from power costs, the proposed sale affects a number of other relevant risks and benefits to ratepayers, the utilities, and the broader public. The Applicants argue that these so-called "qualitative" issues represent a substantial benefit of the sale. Staff argues that factors not directly related to power costs offer benefits that provide some balance against the potential risks of higher power costs.

55 For example, the Applicants argue that the multiple-ownership structure has become unmanageable in the face of needed capital investments in the plant. They argue that, because the current structure requires the unanimous agreement of eight owners to proceed with capital projects, needed projects might not be undertaken – in particular the scrubber installations – and that this threatens the plant with closure because environmental improvements are legally required for continued operation of the plant. Public Counsel counters that this is a fantastic and unrealistic threat because the plant is far too valuable for any one to believe it would be shut down.

56 Without endorsing Public Counsel’s specific estimates of plant value, we are inclined to agree that the likelihood of prolonged or permanent plant closure is low. Nonetheless, sale of the plant would replace the current unwieldy ownership structure with a single owner and would increase the probability that plant investments needed to improve efficiency, extend life, and meet environmental deadlines would be undertaken on a timely basis. We agree with the Staff on this point. While we cannot ascribe to it a quantitative value, more efficient management of the plant and more timely capital investments will benefit everyone, including the ratepayers of the three Applicants.

3. Multiple-Utility Decision to Sell

57 Similarly, while we cannot assign a quantitative value, we are impressed that the management of all eight utilities with ownership shares in the plant agreed both to pursue selling the plant and to the purchase terms offered by TECWA. This group includes four investor-owned utilities and four publicly-owned utilities that range greatly in size and circumstances and that encompass diverse interests. We are confident that the decision of this group represents clear evidence that the management structure for the plant had become difficult and that all of these utilities, public and investor-owned, concluded that sale was in the best interests of their customers. In considering the effect of the sale on "the public interest," we need to be mindful of the interests of non-regulated utilities and their customers as well as of the utilities and ratepayers under our jurisdiction.

4. Regional Value of Plant

58 Turning next to a regional issue, all parties agree that the plant makes an important contribution to the reliability of the regional power grid, especially in Western Washington. This is because of its location and the voltage support it provides to the transmission system. The Bonneville Power Administration estimates this contribution to be worth some $273 million in present value (Ex. 227). That is, replacing the contribution Centralia makes to the power grid if the plant were to close or cease operating for some time would cost a substantial amount. Just who would end up with the bill is unclear. In fact, one of the bones of contention in the power cost forecasts is how to treat the capacity value of Centralia. Public Counsel argues that this is a cost properly added to market purchases of power to replace Centralia power. PacifiCorp argues that this is a cost properly ascribed to the regional grid and not directly to any utility or its ratepayers. Staff argues that this is a benefit to the region that will be preserved as long as the plant is kept in operation. We don't need to resolve exactly who receives and who pays for the system value of Centralia to conclude that it does confer a significant system benefit. Under single ownership, the prospects for efficient management and plant investment are improved and, consequently, we believe the sale enhances the security of this benefit.

5. Wholesale Power Market

59 The final important issue regarding the plant is the effect the sale may have on the competitive wholesale power market in the region and the ability of the Applicants and ratepayers to benefit from this market. Staff observes that federal regulatory policy since 1992 has strongly encouraged a competitive market for wholesale power. Removing the Centralia plant from the vertically integrated rates of eight utilities will add significantly to the amount of competitively priced power in the region. This will increase the level of competition in the wholesale market and can be expected to improve its efficiency. All three Applicants argue that sale of the plant will permit them to capture opportunities in the wholesale market that will maximize the value of their power portfolios for both ratepayers and shareholders. Again, we cannot place a quantitative value on this benefit, but we believe a more competitive bulk power market will produce benefits broadly to the region and to the ratepayers of the Applicant utilities, as well as to the Applicants.

6. Mine Reclamation

60 Turning now to the mine, we are persuaded that clarifying responsibility for the costs of mine reclamation is also a meaningful benefit of the sale. According to a consultant's study prepared for PacifiCorp, the estimated present value of the cost to reclaim the mine ranges from about $250 million if undertaken soon, to $188 million if undertaken in 27 years. TECWA is buying both the plant and the mine. Transfer of the mine-reclamation responsibility to TECWA benefits the ratepayers of the utilities that own the generating plant and also benefits the mine owner, PacifiCorp. Ratepayers and PacifiCorp are

relieved of reclamation risk by the amount that the current reclamation trust accounts ($57 million set aside from current and past rates to fund reclamation) fall short of the actual reclamation cost. PSE estimates that this value could be as great as $31 million for its share of reclamation responsibility alone. We agree with Staff and the Applicants that transferring the reclamation responsibility removes a considerable risk from ratepayers, and we note that this benefit is shared by PacifiCorp since only half of the mine is included in regulated utility rates.

61 We must add, however, that removing the liability for mine reclamation from the utilities that currently own the plant and their ratepayers *does not* relieve society of this cost; it only transfers responsibility. Consequently, while this may represent a benefit to the current ratepayers and owner utilities, it only represents a benefit to broader society if the cost of reclamation is reduced, or the probability of its completion is enhanced. In present value terms, the consultant's studies indicate that cost will be reduced the longer the mine stays operating. Single ownership of the plant and mine improves the prospects that needed plant capital investments will be made in a timely fashion and this improves prospects that the mine will continue to operate.

62 Finally, with respect to liability for mine reclamation, we note that PacifiCorp has indicated a willingness to indemnify its ratepayers (and, we assume, the ratepayers of the other owning utilities) from future reclamation costs — beyond the balance currently accumulated in the reclamation trust — if the mine and plant are sold to TECWA. This will be a necessary condition if we are to consider relief from this liability to be a meaningful ratepayer benefit.

7. Summary: Risks and Benefits of the Proposed Sale

63 When all is said and done, the power cost analyses present us with a useful, but not definitive, view of the future. They suggest that, subject to unavoidable uncertainty and imprecision, Centralia power is projected to become increasingly valuable when compared with market-priced power alternatives. These analyses do not, however, take into account technological change which, over the span of 26 years, could cause market rates to be lower than forecast, diminishing or even reversing the cost advantage of Centralia. Nor do these analyses take into account potential industry restructuring, which could sever the ratepayers from any cost advantages of Centralia. Therefore, we do not believe that these analyses are persuasive evidence that ratepayers or the broader public will, on balance, suffer harm from increased rates attributable to the sale. In addition, the benefit of removing mine reclamation responsibilities and liability, along with improving the likelihood that timely capital investments will be made to extend the life of the plant and improve its environmental characteristics, more than balance the uncertain risk of higher costs. The sale also contributes to the vibrancy of the wholesale competitive electricity market, which is generally beneficial, and provides the Applicants with the opportunities restructure more specifically their generation portfolios to maximize value for both ratepayers and shareholders. Finally, we are impressed that eight utilities —

regulated and unregulated ─ jointly decided that the sale was in their and their customers' best interests. When we consider all of these factors, we conclude that the proposed sale is consistent with the interests of the ratepayers, shareholders, and the broader public, subject to appropriate accounting treatment.

C. ACCOUNTING ANALYSIS

64 The amount of the TECWA bid exceeds each of the Companies' current net book values for the Centralia facilities. The amount of the TECWA bid also exceeds each of the Companies' original costs for the Centralia facilities. The proceeds over the net book value is a gain on the sale of the asset. The Commission must decide whether to allow the Companies to sell their shares of the Centralia facilities. Part of this determination is a decision about how to allocate the gain from the proposed sale. "Proceeds" and "gain" are accounting terms and are not synonymous with "benefits." "Gain" is one of the possible benefits of a sale, and has the virtue of being a known quantity. How it should be allocated, however, must be considered in light of both regulatory principles *and* the other risks and benefits of the transaction, as described in the previous section.

1. Preliminary Accounting Issues

a. Accounting Data Relevant for Calculating the Gain

65 Gain on the sale of an asset is a straightforward calculation. It results when the sale price exceeds the net book value (original cost less accumulated depreciation) of the asset(s), plus any additional costs of the sale. Book gain is generally reduced by the Federal income tax due on the "tax gain." The tax gain is higher than the book gain when, as here, accelerated depreciation has been used; the tax basis (net value) is lower, so the gain, for tax purposes, is larger.

66 The precise amount of gain on the proposed sale will not be known until the sale closes. The figures provided by the Companies are sufficiently reliable to allow the Commission to determine how the proceeds should be allocated and to demonstrate estimates of the outcome of this allocation. At this point, however, we emphasize that all figures in the following tables are estimates, included in our decision to illustrate the principles we expect to be implemented when the final allocations are determined in ratemaking. We will require the parties to provide precise figures when they become available. As discussed in paragraphs 76 and 106, below, the actual accounting for the proceeds will occur in general rate case proceedings for each company. Avista and PacifiCorp have rate cases underway currently at the Commission. PSE will not implement new general rates until after that company's rate plan concludes.

67 Table (2) presents Centralia's system-wide (all states) sales proceeds, book values, original cost figures and before tax gain. In addition, the table includes system-wide mine reclamation liability, which Staff has advocated be removed from the gain

calculation and directly allocated to ratepayers in the event the gain is shared. The table also includes PacifiCorp's environmental liability accrual and excess deferred tax balance. Staff argues that the former should be removed from the gain calculation and the latter added to it as an offset to federal income tax. Both adjustments serve to increase the net gain.

Table 2. Centralia's System-wide (all states) Gain Estimates and Issues. **$Millions**

	PacifiCorp	Avista	PSE
Ownership Share (%)	47.5	15	7
Allocated Sale Proceeds	199.4	68.2	33.6
Original Cost	179.2	57.7	27.2
Appreciation	20.2	10.5	6.4
Accumulated Depreciation	122.6	40.2	19.3
Net Book Value	56.6	17.5	7.9
Other costs and adj.	.8	0	3.4
Book gain before tax	142.0	50.7	22.3
Environmental Liability Plant Mine	 2.0 3.0	 N/A N/A	 N/A N/A
Reclamation Fund Balance	25.3	10.3	4.1
Excess Deferred Taxes	5.9	estimated* 1.0	estimated* 0.7

*Excess deferred taxes for Avista and PSE were not discussed by the parties. The numbers represent an estimated excess deferred tax balance existing for these two Companies.

Based on the figures in Table (2), Table (3) translates the estimates into Washington-specific figures. These translations are based on the currently applicable Washington allocations for PacifiCorp (15.4%) and Avista (66.99%). (Tr. pages 622-623, PacifiCorp; Tr. page 627, Avista).

Table 3. Washington's Share of Centralia's Basic Sale, Book, and Depreciation Data. $ Millions

	PacifiCorp	Avista	PSE
Sale Price	30.71	45.69	33.60
Original Cost	27.60	38.65	27.22
Appreciation	3.11	7.04	6.38
Accumulated Depreciation	18.88	26.92	19.25
Book Value	8.72	11.73	7.97
other costs and adj.	.1		3.37
Book Gain (before income tax)	21.89	33.96	22.26

b. Should the Commission Remove Estimates of Environmental Liability From the Gain?

68 PacifiCorp included in the gain calculation accruals for plant and mine environmental liabilities in the respective amounts of $2 million for the plant and $3 million for the mine. These amounts represent costs the company may incur in the future as a result of previous ownership. Avista and PSE did not include such an adjustment in their gain calculation. The Commission Staff objected to inclusion of these amounts, arguing that the amounts are unknown, speculative, and not based on any analytical study. (Ex. T-403 at 2; Ex. 229 at 1; Tr. 634.) Staff argues that it would be more appropriate if, when these environmental remediation amounts become known, PacifiCorp petitions for recovery to the extent any reasonable and prudent costs are not recovered through insurance. (Ex. T-403 at 2; Tr. 568.) The Commission Staff made the same argument in the *Colstrip* proceeding, and PSE agreed to Staff's adjustment. (*Colstrip*, Third Supplemental Order at 11.) The Commission agrees that the same adjustment should be made in this proceeding. The gain should be calculated without the environmental costs included because they may never exist, and can be accounted for separately, should they occur.

c. Should the Commission Require a Private Letter Ruling from the IRS Concerning Excess Deferred Taxes?

69 Commission Staff has requested that PacifiCorp request a ruling from the IRS allowing excess deferred taxes be flowed back to ratepayers by offsetting current taxes thereby increasing the gain. Staff has estimated that PacifiCorp's excess deferred tax balance is approximately $5.9 million. It is noteworthy that any excess deferred tax balance accruals by Avista and PSE are not referenced. It is fair to assume that if one company should seek excess deferred tax treatment favorable to ratepayers then they all should. The figures in Table 2 for Avista and PSE are estimates proportional to PacifiCorp's excess deferred tax balance. Whatever the real balances are, they should be treated equally. The Commission therefore orders all three Companies to request IRS approval to include the excess deferred tax balance as an offset to income tax.

d. Should the Commission Remove the Reclamation Balance From the Gain?

70 The Centralia Plant and Mine have been collecting a mine reclamation fund over the life of the facilities. The source of the funds is a portion of fuel costs included in rates. The mine is a wasting asset, and by Federal law, must be reclaimed after it closes. 30 U.S.C. Sections 1201-1328 (1999). As part of the sales agreement, the applicants have sold the mine-reclamation fund to TECWA. The Commission Staff seeks return of the current balance in the reclamation fund to ratepayers, if the gain on the sale is to be shared. PacifiCorp's consultant studies estimate that the cost to reclaim the mine varies, in present value terms, from about $250 million if undertaken soon, to $188 million if undertaken in 27 years. It argues, as does PSE, that the reclamation fund should pass to TECWA for two reasons. First, the ratepayers are relieved of reclamation risk by the amount that the current reclamation accounts (a total of $57 million set aside from current and past rates of all owning utilities to fund reclamation) fall short of the actual reclamation cost. Second, the sale will ensure that the plant and mine will continue to operate and, thus, the present value cost of mine reclamation is lower.

71 PacifiCorp proposes to hold ratepayers harmless for any mine reclamation costs over and above what is currently in the Reclamation Trust (what ratepayers have already paid), but conditions this offer on Commission approval of PacifiCorp's proposal for gain-sharing.

72 The Commission will not remove the balance of the current Reclamation Trust and assign the balance to ratepayers. It was appropriate for ratepayers to pay this portion of the mine reclamation costs, as they were receiving the benefit of the plant and mine. On the other hand, the Commission will condition its approval of the sale on PacifiCorp's agreement to hold ratepayers harmless from any future mine reclamation costs. As discussed previously, in paragraph 60 the Commission views the removal of future mine reclamation liability as one of the benefits to ratepayers which weighs on the benefit side of the sale.

e. Should the Commission Write Down Regulatory Assets With the Ratepayers' Portion of the Gain?

73 Both PacifiCorp and Avista have sought Commission determination to have any gain allocated to ratepayers assigned to offset certain regulatory assets. The regulatory asset targeted specifically by PacifiCorp is the Yampa acquisition premium associated with the company's acquisition of its Colorado-Ute generation plants. (Ex. T-226 at 9.) PacifiCorp was allowed to record the acquisition premium on its books by Commission Order in Docket UE-911186(P). PacifiCorp argues that as a result of this adjustment, the Company's revenue requirement will remain lower than it otherwise would be, and upward pressure on customer prices will be mitigated. In Docket No. UE-911186(P), the Commission stated specifically that:

> The allowance of acquisition adjustments for rate making purposes is a matter addressed to the Commission's discretion, based upon the Commission's duty to regulate in the public interest, considering all relevant facts and circumstances. By entering this Order in this docket, the Commission has made no determination regarding the merits of the proposed acquisition or the amount of PacifiCorp's investment that may be included in rateable in a future proceeding.

(Ex. 231 at 3-4.)

74 PacifiCorp's Yampa write-down proposal would have us act before we have examined the transaction in a general rate proceeding. Indeed, PacifiCorp did not produce any evidence in this case concerning the prudence of the Colorado-Ute acquisition that would allow the Commission to reach any conclusion on the merits of the acquisition.

75 Avista has proposed that any ratepayer share of the gain first be used to offset all or a portion of the costs related to storm damages resulting from Ice Storm 1996. Then, if any customer gain remains, it should be used to offset a portion of its transition obligation for post-retirement health care and life insurance benefits. Avista argues that both items identified above would have the effect of reducing the revenue requirement in the Company's general electric rate case, Docket No. UE-991606, as well as reducing the revenue requirement in the future.

76 Neither the PacifiCorp's nor the Avista's proposed adjustments can appropriately be made in this proceeding. The Commission is not averse to allowing the ratepayer share of benefits to be used to buy down rate base. Until the amounts sought to be bought down have been determined to be appropriately included in rate base, however, the Commission will not consider the "buy-down" adjustment. Both PacifiCorp and Avista have general rate request proceedings ongoing before the Commission. Treatment of the customer share of the gain should be considered in those proceedings.

f. Conclusion

77 The actual realized gain must be calculated at the time of sale. The gain should be calculated as described in this section. The applicants should be required to provide the Commission with a new gain calculation at the time of sale.

2. Disposition of the Gain

a. Principles of Allocating Gains on the Sale of Utility Assets: Right to Gain Follows Risk of Loss and Benefits Follow Burdens

78 To determine who should receive the gain on the sale of a utility asset, many jurisdictions have employed the principles that the right to gain follows risk of loss and that the benefit of the sale should follow those who bore the burdens associated with the operation of the assets. *Democratic Central Committee v. Washington Metropolitan Transit Commission*[7] is the case most frequently cited to support these two principles. In *Democratic Central* the court determined that the ratepayers had borne the burdens associated with the assets being sold, and allocated all of the gain from the sale to ratepayers. This accounting outcome was dictated by the legal policy decision that reward should follow risks, and by the factual finding that the risks had all been borne by ratepayers.

79 A number of Commissions have applied the equitable-sharing principles of *Democratic Central* to justify a sharing of gain. See, for example, *Power & Light Co. v. State Corp. Comm'n of Kansas*, 5 Kan. App. 514, 529, 620 P.2d 329 (1980) (where the court, on review, reversed the Kansas commission's decision granting 100% of the gain from sale of a utilities headquarters building, and instructed the commission on remand to take into account the equities due to both the ratepayers and stockholders); *In the Matter of the Application of Southern California Gas Company for Authority pursuant to Public Utilities Code Section 851 to sell and lease back its Headquarters Property in Los Angeles, California* Decision No. 90-11-031, Application No. 87-07-041, 118 P.U.R.4th 81 (where the California commission ordered a sharing between shareholders and ratepayers of the gain on the sale of a company's headquarters building); *Central Maine Power Company*, Docket No. 99-155, Maine Public Utilities Commission, Public Utilities Reports Fourth, Slip Opinion, August 02, 1999 (where the Maine commission "ruled" that the ratepayers were entitled to recover the gains on the sale of right-of-way property, but then shared the gains 90/10 between ratepayers and shareholders). See also David W. Wirick, *State Public Service Commission Disposition of the Gain on Sale of Utility Assets,* National Regulatory Research Institute 94-17(1994).

80 In this case, we believe that most of the gain from the sale of the Centralia Facilities should be allocated to ratepayers. However, as we explain below, we also believe that a

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[7] *Democratic Cent. Comm. Of the Dist. of Columbia v. Washington Metro. Area Transit Comm'n.,* 458 F. 2d 786 (D.C. Cir. 1973), *reh den, cert den,* 415 US 935 (1973).

portion of the appreciation from the sale should be allocated to the shareholders. Doing so is consistent with the legal principles set out in *Democratic Central* and its progeny, where equitable sharing arrangements have been ordered.

b. Shareholder Recovery of Net Book Value

81 All of the parties start with the premise that the Applicants should first recover their net book value in the plants. They then go on to discuss the gain above book value, with proposals that run the gamut from all gain going to ratepayers to all gain going to shareholders. The Commission will start from the same point: the sale proceeds should be assigned to cover each company's net book value.

c. Ratepayer Recovery of the Depreciable Cost

82 The Commission believes that sale proceeds should next go to the ratepayers, up to the amount of the original cost of the plant. The ratepayers have supported the Centralia facilities through a return *of* the investment; they have paid based on straight-line depreciation. The ratepayers have also supported the Centralia facilities through rates that include a return *on* the investment; they have paid a fair rate of return on the undepreciated balance of the facilities. Centralia was originally developed as a coal mine and generating facility to be used by monopoly utility companies with limited opportunities either to purchase or sell power in a competitive wholesale market. The fact that the facilities are selling for an amount greater than original cost is evidence that the facilities have an increasing, not a decreasing, value, as an asset in a competitive wholesale generation market. This increased value is greater than the depreciation paid by ratepayers. Thus, a portion of the gain equivalent to the difference between net book value and original cost should be returned to ratepayers, as they have, in effect, overpaid necessary depreciation. This amount would be equivalent to accumulated depreciation.

d. The Parties Should Share the Appreciation

83 The remainder of the gain represents appreciation over the original cost. This appreciation is the result, at least in part, of the availability of new opportunities for independent power producers, such as TECWA, in a competitive wholesale generation market. In a newly competitive wholesale market, both utilities and independent power producers face the economic challenge of valuing their current assets relative to alternatives they might acquire. Inevitably, within a competitive market, there will be firms willing to pay a premium over the value a given asset has to its current holders, in a bid to acquire an asset with particular economic or strategic significance. The Applicants represent this to be the fact situation surrounding TECWA's bid for Centralia.

84 In general, the Commission relies on the broad principle that reward should follow risk and benefit should follow burden. In this particular transaction, both ratepayers and

shareholders have and will incur risks and burdens. In addition to the financial risks and burdens borne by ratepayers, shareholders bear legislative and market risks, and additionally bear the regulatory burden of prudently managing their resources, which multiple ownership can make difficult. As both shareholders and ratepayers have incurred risks and burdens, both should also share in the benefits of the sale. The remaining gain is thus *one* of the benefits, which, when considered with other benefits and burdens, must be fairly allocated.

85 In determining the fair allocation of the appreciation, we must consider in particular the uncertain future of the electricity industry and new opportunities for both shareholders and ratepayers in a competitive wholesale generation market. In light of that uncertainty and those opportunities, regulators must be cautious not to apply precedent in a way that could inhibit utilities from pursuing opportunities beneficial to both ratepayers and shareholders. We must be flexible enough to allow managers of regulated utilities to exercise sound judgements regarding the restructuring of their portfolios of assets so as to maximize the value of their entire systems, minimize rates, and best serve both ratepayers and shareholders. Thus, the Commission, when determining the public interest, must look both at the particular asset and also at the broader context in which the asset is being sold. This case is further complicated by multiple ownership. One owner with insufficient incentive to agree to an otherwise sound sale can adversely affect the interests of the other seven utilities and their ratepayers.

86 Given the risks and burdens borne by the ratepayers and shareholders, and given the other benefits they stand to gain from the sale, we find that it is fair in this case to allocate the appreciation between ratepayers and shareholders. When we apply the principles of *Democratic Central* to the facts of this case, we conclude that one half of the appreciation should go to shareholders, and one half to ratepayers. This is not based on a pre-

conceived formula, but on the equities of this distinctive case.[8] An estimate of the allocation of gain split in this manner is shown in Table 4.

Table 4. Allocation of the Sale Proceeds in Million Dollars. Appreciation Split 50/50. Washington Jurisdiction Estimates. (Before Income Tax)

	PacifiCorp	Avista	PSE
Ratepayers:			
Accum. Depreciation	18.88	26.92	19.25
Appreciation	1.555	3.52	3.19
Utilities:			
Net Book Value	8.72	11.73	7.97
Appreciation	1.555	3.52	3.19

e. Ratepayers and Shareholders Should Each Pay the Taxes on Their Share of the Appreciation

87 The amount of income tax assignable to the appreciation should be split in half, with each half deducted from the respective share of appreciation assigned to ratepayers and

[8] Any claim that our decision breaks from precedent is misplaced. We are applying traditional principles but to a new, and highly distinctive, fact situation. However, even if it *were* a change in practice, our decision is supported by case law. As the United States Supreme Court has held:

> [T]he Commission, faced with new developments or in light of reconsideration of relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice. [Citations omitted] In fact, although we make no judgment as to the policy aspects of the Commission's action, this kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nations' needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

American Trucking Ass'n v. Atchinson, Topeka, and Santa Fe Ry. Co., 387 U.S. 397, 416, 87 S. Ct. 1608, 18 L. Ed. 2d 847 (1967). See also, *Permian Basin Area Rate Cases*, 390 U.S. 747, 784, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968); and *Vergeyle v. Department of Employment Security*, 28 Wn. App. 399, 404, 623, p.2d 738 (1981).

shareholders. The remainder of the income tax should be deducted from the remainder of the gain; this is the portion of the gain assigned to ratepayers.

88 Based on the previous estimates Table (5) illustrates the final distribution of the sale proceeds consistent with the principles established above.

Table 5. Allocation of the Sale Proceeds. Appreciation Split 50/50. NET OF TAX.*
$Million.

	PacifiCorp	AVISTA	PSE
Ratepayers:			
Accumulated. Depreciation	12.88	17.50	12.51
Appreciation	1.01	2.29	2.08
Ratepayer Total:	13.29	19.79	14.59
Utilities:			
Net Book Value	8.72	11.73	7.97
Appreciation	1.01	2.29	2.08
Utility Total:	9.73	14.02	10.05

*A tax rate of 35% used.

89 Finally, Table (6) illustrates the effect of allocation of one-half of the appreciation to the utilities. The percentages demonstrate the magnitude of this allocation relative to the total sale proceeds and the gain associated with the sale. These values are for illustrative purposes only and will not necessarily represent the actual amounts or percentages allocated, once final figures are known and allocations are accomplished consistent with the principles we have herein established.

Table 6. Effect of 50/50 Split of Appreciation for Shareholders

	PacifiCorp	Avista	PSE
Appreciation (½) (net of tax -35%)	**1,010,000**	**2,292,000**	**2,080,000**
Percent of Total Sale	**3.3%**	**5.0%**	**6.2%**
Percent Gross Gain	**4.6%**	**6.7%**	**9.3%**
Percent of Net of Tax Gain	**7.1%**	**10.4%**	**14.4%**

f. Allocation of Income Tax

90 Having determined how the gain should be calculated, and how it should be allocated, we will now discuss how taxes on the sale should be allocated. The federal government will require the Applicants to pay income tax on the gain. The income tax amount will be calculated based on the amount of gain above the tax basis of the plant.

91 The Commission should require the Applicants to seek private letter rulings from the Internal Revenue Service ("IRS") allowing them to exclude excess deferred taxes from the taxes assigned to ratepayers.

92 The tax basis of the plant is much smaller than the net book value, because the Applicants have taken advantage of accelerated depreciation for tax purposes. The difference in taxes was flowed through to ratepayers until 1981, when the IRS changed its rules to prohibit such flow-through. Since that time, the Companies have accrued deferred taxes and have tracked excess deferred taxes. In the gain discussion above, the Commission instructed the Applicants to seek private letter rulings from the IRS, allowing them to return excess deferred taxes to ratepayers. If the accrued deferred taxes and the excess deferred taxes are credited to ratepayers, that should account for the amount of tax that is based on the difference between tax basis and net book value.

93 PacifiCorp has proposed to exclude from the income tax calculation an estimated $5.9 million in excess deferred federal income taxes related to Centralia. The taxes paid by rate payers would be lower by that amount if the Company were able to obtain a ruling from the IRS permitting deduction of this amount from the taxes due from rate payers. Therefore, the Staff has asked the Commission to order PacifiCorp to seek such a ruling, as it did PSE in the *Colstrip* proceeding. (*Colstrip,* Third Supplemental Order at 25; Ex. T-403 at 3.)

94 PacifiCorp agrees with the Staff proposal, but conditions its agreement on "other utilities" receiving a favorable ruling from the IRS on the same issue. (Ex. T-215 at 4.) The utilities referenced, however, include PSE which, given its decision not to sell Colstrip, has not actually made such a request from the IRS. (Tr. 358.) The Commission should require the Applicants to seek letter rulings from the IRS and should not allow PacifiCorp to delay its request to the IRS, pending other requests.

D. TAKEN TOGETHER, ARE THE PROPOSED SALE AND ACCOUNTING TREATMENT OF THE GAIN CONSISTENT WITH THE PUBLIC INTEREST?

95 Our preceding discussions have focused on the risks and benefits expected to flow from the proposed sale, as well as an allocation of the sales proceeds that we believe to be fair, equitable, and appropriate in the circumstances presented by this transaction. Employing the "no harm" standard, we can now determine whether the proposed sale, taken together with the accounting treatment we have directed, is in the public interest.

96 After studying the risks and benefits of the proposed sale and after examining the accounting gain and establishing an allocation of that gain that strikes a fair balance between ratepayers and shareholders, we find that the proposed sale is in the public interest. This finding rests on the accounting treatment we have directed as well as on the expectation of actions to be taken by the Applicants to protect ratepayer interests. The utilities are directed to pursue a favorable ruling from the IRS concerning excess deferred taxes. PacifiCorp is directed to file with the Commission an affidavit serving to indemnify its ratepayers, as well as the other plant owners and their ratepayers, from mine reclamation costs in excess of what is already accumulated in the reclamation trust.

97 We reiterate that this transaction presents a set of circumstances that may well prove to be unique. The fact of multiple ownership and the decision made by all of the owners to sell, taken together with the benefits we perceive the broader public will enjoy as a result of the sale, distinguish this transaction from those typical of a single utility with a single set of ratepayers. In addition, the sale proceeds exceed the historical investment made by the utilities and the ratepayers (through depreciation payments). These circumstances have led us to direct that the appreciation in plant value be shared between the ratepayers and the utilities. This sharing, in this case, appropriately aligns ratepayer and utility interests in capturing this appreciation by taking advantage of the opportunity presented by this sale. If presented with a different asset sale that presents different circumstances, opportunities, risks and benefits, we would not necessarily conclude that such a sharing of the gain is appropriate.

E. OTHER ISSUES

1. Least-Cost Planning

98 Public Counsel argues that we should reject the sale because the Applicants have not submitted timely least-cost plans under WAC 480-100-251. We note that the Commission has never considered least-cost-plan analysis as the definitive factor in setting rates, determining prudence, or otherwise deciding an issue. Information from least-cost-plans is used in combination with other data when issues are presented before us. We do not find the absence of a current least-cost-plan or the absence of consideration of asset sales in a least-cost-plan to be grounds to find that the proposed sale harms the public interest. This decision is consistent with a similar ruling we made in *Colstrip*. (*Colstrip*, Fourth Supplemental Order).

2. Should PSE be Required to Defer 2000 and 2001 Power Savings and Return them to Ratepayers?

99 PSE's rates are currently governed by a rate plan set to expire in 2001. Staff argues that, if the sale is approved and completed, PSE should be required to defer power savings Staff estimates will accrue over the remaining period of the rate plan in order that these savings can be returned to ratepayers in the next PSE rate case. This issue involves only PSE and is the only issue on which Staff has made its own estimate of power costs and savings. Staff estimates, using the AURORA model of market costs (along with some adjustments to better reflect what PSE might actually need to purchase to replace Centralia output), that savings for PSE over this two-year period can reasonably be expected to be $4.1 million. PSE rejoins that, in arriving at this estimate, Staff used a version of the AURORA forecast that is several months older than the November 29, 1999, version that PSE and Public Counsel have used. PSE demonstrates that, if the newer forecast is used, along with all of Staff's modifying assumptions, the result is predicted to be $1.1 million in *additional* power *costs*, rather than power cost *savings*. Viewing this disagreement as a dispute over the precision of forecasts, we are not persuaded that either of these estimates can reasonably be relied upon as a precise estimate of actual power costs to be incurred, and we will not choose between them. Therefore, we are not persuaded that, on this evidence, PSE can be expected to realize any particular level of power savings during the rateplan.

100 In *Colstrip*, we required that PSE defer power savings that occur during the rate plan. In that instance, savings were estimated to be substantial — $140 million. Crediting these savings to ratepayers was a critical factor in our determination that the sale would not harm ratepayers and thereby harm the public interest. On reconsideration in that proceeding, we required that power cost savings be deferred based on actual savings, rather than estimated savings, and that actual savings be calculated and tracked as the difference between the actual cost of power produced by the Colstrip facility and the actual cost incurred by PSE to replace Colstrip power.

101 In the instant case the amount of power savings Staff estimates to be realized over the relevant two-year period is relatively small — less than three percent as large as that in *Colstrip*. Our finding that the sale is consistent with the public interest does not depend on ratepayers being credited with whatever savings might actually accrue, and we have found that the balance of benefits is equitable. Moreover, PSE presents a reasonable case that the savings could well turn out to be *negative*. Under these circumstances we will not require PSE to defer power savings over the period 2000 through 2001 as recommended by Staff.

3. Does the Commission Decision in this Case Constitute Single-Issue Ratemaking for PSE?

102 PSE proposes that the gain should be amortized over a five-year period beginning with the closing of the sale in 2000. The effect of this proposal gives approximately 40% of the

gain and all near-term power supply savings to shareholders during the remaining two years of the rate plan approved in the merger of Puget Sound Power & Light and Washington Natural Gas in Docket No. UE-960195.

103 PSE argues that should the Commission rule to require deferral of the gain beyond the end of its Rate Plan period, such action would violate the rule against single-issue ratemaking. Staff's recommendation to defer the gain is based on the notion that a general rate proceeding is the only time when all aspects of ratemaking and utility operations are considered, and there is evidence sufficient to support the required statutory findings that rates are just, fair, reasonable, and sufficient in accordance with RCW 80.28.010. Staff believes the Commission does not have sufficient information in a transfer of property proceeding to reach that conclusion.

104 PSE criticizes the Staff recommendation to defer the gain as "special accounting treatment." Yet the company has itself requested and received approval from the Commission to defer costs associated with achieving power supply savings on its Tenaska and Encogen purchased-power contracts. It is awkward, at best, for PSE to argue that single-issue ratemaking occurs when *savings* are deferred beyond the rate plan for the benefit of ratepayers, but to see no such violation occurring when *costs* are deferred beyond the rate plan for the benefit of shareholders.

105 The Commission agrees with Staff's argument, and disagrees that deferral of any gain beyond the end of the Rate Plan period constitutes single-issue ratemaking. Because the Commission does not have tariffs before it in this case, we cannot now determine the precise method for flowing the gain into rates. If the Commission were to adjust rates to consumers solely on the basis of any gain allocation arising from this case, that *would*, in fact, constitute single-issue ratemaking. The gains should be deferred and combined with the total company operations in a future or ongoing rate investigation. There, the effects of the gain will be included as only one component of the complex revenue requirement calculation. This does not constitute single-issue rulemaking.

4. Should the Applicants be Required to Acquire Low Carbon-Dioxide Emitting Resources to Replace Centralia Power?

106 NWEC argued in its testimony that the type of replacement power that is secured by the Applicants is fundamental to determining that the sale of Centralia is in the public interest. NWEC proposes that the financial gain from the sale should be used to provide services or benefits that are in the public interest, such as investments in cleaner and less-polluting power resources. Specifically, NWEC recommends that each Applicant be required to issue a Request For Proposals ("RFP") for replacement power with low carbon dioxide emissions.

107 The Commission has historically left supply-side resource decisions to the management of the companies, with the exception of implementation of federal laws requiring utility purchases of electricity from facilities qualifying for treatment under the Public Utilities Regulatory Policy Act. Those decisions, then, are to be examined and evaluated for prudence in a general rate proceeding. In Docket UE-930616, Commission Order

Dismissing Complaint of Sesco, Inc., the Commission said: "Thus, the Commission has determined that it will allow utility management to determine, in the first instance, what resources it should build or purchase. The Commission, under current practice, reviews those decisions in a general rate proceeding."

108 No compelling argument has been presented to alter that practice. In fact, carbon emissions *are* currently considered by utilities in acquiring new resources through the competitive bidding process. Current Commission rules addressing competitive bidding for purchases of electricity from Qualifying Facilities, Independent Power Producers and conservation suppliers (chapter 480-107 WAC), require utilities to consider, at a minimum, several factors to rank competitively bid project proposals. The factors include price, dispatchability, risks imposed on ratepayers, and environmental effects including those associated with resources that emit carbon dioxide. In light of current rules and Commission practice, the Commission will not require utilities to issue RFPs for replacement power with low carbon dioxide emissions.

5. What Inter-State Allocation Formula Should be Used for PacifiCorp?

109 In its testimony, PacifiCorp specifically raises the issue of the allocation of its share of the gain among the various states in its service area. In particular, the company is concerned that it might be required to allocate more than 100% of the gain on sale, based on the fact that Utah has adopted an allocation different from what has historically been used by all of PacifiCorp's jurisdictions. If the allocation to all other states remains unchanged, Utah's allocation would require a subsidy from those other states to satisfy its requirements.

110 PacifiCorp is proposing to use the modified accord allocation factors to assign the gain among the states, which would allocate 15.4% of the gain to Washington. Staff testifies that the allocation issue is best dealt with in the current rate filing. The Commission concurs. The record does not contain sufficient analysis of the modified accord methodology to allow the Commission to make a decision about whether it is the most suitable interjurisdictional allocation method. We believe, therefore, that the current pending rate filing is the most appropriate forum to determine the appropriate allocation factors.

6. The Orders in These Matters Approving the Exempt Wholesale Generator Status of the Centralia Facilities Should be Confirmed

111 The Commission entered orders for each Applicant approving EWG status of the Centralia facilities post sale on October 14, 1999. The orders were in each case conditioned on Commission approval of the Centralia facilities sale. The Commission

has examined the jurisdictional effect of this transaction, and has determined that consumers and the public interest will benefit from operation of the Centralia facilities as wholesale generation facilities not subject to state regulation.

112 The Federal Energy Regulatory Commission requires this Commission to make certain determinations necessary for TECWA to become an EWG, specifically, that EWG status: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law.

113 The Commission herein approves each Applicant’s Centralia sale proposal. The Commission confirms its earlier findings that allowing the purchaser to become an EWG: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law.

114 This ruling confirms for the Applicants the propriety of their sales to TECWA Power, Inc. In Docket No. UE-991993, at TECWA’s request, the Commission will enter a declaratory order on this issue not later than March 21, 2000.

7. The Appropriate Treatment of Avista’s PGE Share will be Determined in Docket No. UE-000080

115 In its direct testimony, Avista indicated that it had agreed to purchase Portland General Electric’s 2.5% share of the Centralia facilities (PGE Acquisition) and to resell that share to TECWA for a gain of $4.2 million. PGE wished to avoid investment in the emission control equipment and the risk of not recovering such investment in the event that the sale to TECWA did not close. The terms of the Centralia Plant Purchase and Sale Agreement required the plant owners to have contracted by the end of May, 1999, for the installation of required emission control equipment and to continue the installation of such equipment until the sale closes. Avista purchased PGE's 2.5% interest in order to enable the sale to TECWA to proceed. Avista will sell the 2.5% share purchased from PGE to TECWA. The purchase from PGE closed on December 31, 1999.

116 On January 24, 2000, Avista filed an application in Docket UE-000080 requesting a ruling by the Commission on the PGE Acquisition. Issues regarding treatment of the gain will be determined in Docket UE-000080.

8. Should the Applicants be Required to Cap Power Costs Based on Centralia’s Power Cost?

117 Public Counsel recommends that future power rates be set to include a cap on replacement power costs equal to the costs of Centralia generation. Public Counsel recommends that this be done in order to ensure that ratepayers are insulated from rate

increases that might be proposed by the Applicants if the cost of replacement power exceeds the cost of Centralia's power.

118 In paragraphs 44-46, we note that future power costs may prove to be higher or lower than Centralia's cost. To place the utilities at risk if they turn out to be higher, without compensation should they turn out to be lower, establishes an unjustified asymmetry of risks and benefits between ratepayers and shareholders. Establishing some form of "balancing account" to establish symmetry would imply that the only important benefits and risks associated with the sale are power costs. We have previously determined that both the shareholders and the ratepayers will see benefits and risks from the sale that go beyond power costs. Consequently, our determination that the proposed sale is consistent with the public interest does not depend on insulating ratepayers from the possibility of future power cost increases. Therefore, we will not require that the Applicants base future power rates on power costs capped by Centralia's power cost as Public Counsel has proposed.

9. The Avista Motion to Strike Portions of Public Counsel's Brief

119 The briefs in this matter were filed on January 28, 2000. On February 4, 2000, Avista filed with the Commission a motion to strike portions of the brief of Public Counsel, or for admission of Supplemental Exhibit Super Confidential -333. The motion alleged that certain numbers used in a table in Public Counsel's brief were identified as being from a certain exhibit, and were not, in fact, to be found in that exhibit. Public Counsel answered Avista's motion on February 18, 2000. The answer admitted that the numbers objected to in its brief were not included in the referenced exhibit, and sought to provide different numbers, and an additional exhibit. Avista responded on February 24, 2000, seeking authorization to file a reply brief and an additional exhibit. Public Counsel inquired on February 29, 2000 when its response to Avista's motion should be provided.

120 The Commission has examined the information objected to in Public Counsel's brief, and agrees with Avista that the numbers included are not to be found in the referenced exhibit. The Commission has also determined that resolution of the dispute between Public Counsel and Avista reflected in their arguments about these numbers is not material to our decision in this matter. The Commission will, therefore, grant Avista's motion to strike portions of the brief of Public Counsel. None of the late-offered exhibits offered in support of the parties' positions in this dispute will be admitted.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

121 Having discussed above in detail the written testimony and the documentary evidence concerning all material matters, and having stated our findings of fact and conclusions of law in the text of the Order, the Commission now makes the following abridged summary of those comprehensive determinations. Those portions of the preceding

detailed findings and conclusions pertaining to the Commission's ultimate findings and conclusions in this matter are incorporated by this reference.

A. FINDINGS OF FACT

122 1. Avista Corporation, d/b/a Avista Utilities ("Avista") is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company.

123 2. Pacific Power & Light Company ("PacifiCorp") is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company.

124 3. Puget Sound Energy, Inc. ("PSE") is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company.

125 4. On August 10, 1999, Avista filed with the Commission an application for authority to sell its interest in the coal-fired Centralia Power Plant to TECWA Power, Inc ("TECWA"). The application asks the Commission to approve the sale, to grant approval on an expedited basis, and to authorize Avista to defer treatment of the gain on the sale to a future rate proceeding.

126 5. Avista also asks the Commission for a determination allowing the facility to be eligible for purposes of becoming an Exempt Wholesale Generator ("EWG"). Avista asks that the EWG determination be made prior to and contingent on approval of the sale. On October 14, 1999, the Commission entered an order conditionally approving EWG status for the purchaser.

127 6. On August 11, 1999, PacifiCorp filed with the Commission an application for authority to sell its interests in the Centralia Steam Electric Generating Plant, the rate-based portion of the Centralia Coal Mine, and related facilities to TECWA. The application asks the Commission to approve the sale to determine the amount and proper ratemaking treatment of the gain associated with the sale.

128 7. PacifiCorp's Application also sought an EWG determination. On October 14, 1999, the Commission entered an order conditionally approving EWG status for the purchaser.

129 8. On September 10, 1999, PSE filed with the Commission an application for approval of the sale of PSE's interest in the Centralia Power Plant to TECWA Power, Inc. The application asks the Commission to approve the sale of PSE's seven-percent interest in the Centralia Power Plant and to authorize PSE to amortize the net gain from the sale over a five-year period commencing January 1, 2000.

130 9. PSE also asked the Commission to authorize TECWA to operate the Centralia facility as an EWG, conditioned on a final order approving the sale. On October 14, 1999, the Commission entered an order conditionally approving EWG status for the purchaser.

131 10. The Centralia Generation Plant ("Centralia") is a 1,340 MW coal-fired power plant located in Lewis County, Washington. Centralia entered service in 1972 and consists of two steam units. The primary source of coal for Centralia is a mine located adjacent to the power plant.

132 11. Centralia is owned by eight Northwest utilities in the following shares:

PacifiCorp	47.5%
Avista	15.0%
City of Seattle	8.0%
City of Tacoma	8.0%
Snohomish County PUD	8.0%
PSE	7.0%
Grays Harbor PUD	4.0%
Portland General Electric	2.5% (sold to Avista, sale closed 12/31/1999)

133 12. Avista, PSE, and PacifiCorp propose to sell their respective shares of Centralia, including the associated transmission facilities and related property ("Centralia facilities") to a subsidiary of TransAlta Corporation, which is a Canadian corporation located in Calgary, Alberta.

134 13. The Centralia facilities have been included by the Commission in rate base for each company since Centralia began operation.

135 14. The proposed sale to TransAlta also includes the adjacent mine, which is currently owned entirely by PacifiCorp. Forty-seven and one-half percent of PacifiCorp's interest in the mine has also been included in rate base by the Commission.

136 15. The proceeds from the sale exceed the net book value. The net book gain for each company is:

PacifiCorp	$82,663,000
Avista	$29,606,000
PSE	$13,520,000

These amounts are estimates that will be revised at closing based on actual plant balances, costs associated with the sale, and other variables. Each applicant should be required to provide the Commission with a new gain calculation at the time of sale.

137 16. The gain from the sale will increase by approximately another $1.0 million if Avista obtains a favorable ruling from the Internal Revenue Service permitting pass-through of excess-deferred taxes as part of the net gain.

138 17. The gain from the sale will increase by approximately another $5.9 million if PacifiCorp obtains a favorable ruling from the Internal Revenue Service permitting pass-through of excess-deferred taxes as part of the net gain.

139 18. The gain from the sale will increase by approximately another $0.7 million if PSE obtains a favorable ruling from the Internal Revenue Service permitting pass-through of excess-deferred taxes as part of the net gain.

140 19. Both ratepayers and shareholders face risks and benefits from the sale, and risks and benefits from no sale. The benefits of the sale should be equitably allocated by the Commission in a manner in which benefits follow burdens, and rewards follow risks. The Commission must exercise its discretion to determine a fair allocation.

141 20. Based on the risks borne by each, a fair allocation of the proceeds from the sale is: net book value to shareholders; remainder, up to original cost, to ratepayers; of the remainder (appreciation) one-half to shareholders and one-half to ratepayers ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

142 21. Avista's proposal to allocate all gain from the sale to shareholders is not a fair sharing, and is not consistent with the public interest. Adoption of this proposal would harm the public interest.

143 22. PacifiCorp's proposal to allocate all gain above book value to shareholders and ratepayers based on its depreciation reserve method is not consistent with the public interest. Adoption of this proposal would harm the public interest.

144 23. PSE's proposal to amortize the sale over a five-year period is not consistent with the public interest. Adoption of this proposal would harm the public interest.

145 24. Approval of PSE's sale should be conditioned on PSE's deferral of the gain until its next general-rate request proceeding. The deferral should accrue interest at a rate of 7.16%.

146 25. Allowing TECWA, Inc. to purchase and operate the Centralia Facilities as an EWG will benefit consumers and is in the public interest. Under these conditions, allowing the purchaser to operate the Centralia Facilities as an EWG would not violate state law.

B. CONCLUSIONS OF LAW

147 1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of these proceedings.

148 2. The Avista application to sell its Centralia facilities (other than the PGE portion, which we do not consider in this opinion) and allocate all of the gain to shareholders is inconsistent with the public interest, and is rejected.

149 3. Avista may sell its Centralia facilities if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers ratepayers, taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

150 4. The PacifiCorp application to sell its Centralia facilities and allocate the gain based on its depreciation reserve methodology is inconsistent with the public interest, and is rejected.

151 5. PacifiCorp may sell its Centralia facilities if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers ratepayers, taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

152 6. PacifiCorp may sell its interest in the Centralia Coal Mine to TECWA. Approval of the PacifiCorp sale is conditioned on PacifiCorp holding its ratepayers, and the other two Applicants and their ratepayers, harmless from any future liability for mine reclamation.

153 7. The PSE application to sell its Centralia facilities and allocate the gain over a five-year period is inconsistent with the public interest, and is rejected.

154 8. PSE may sell its Centralia Facilities if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded. PSE must defer the gain from the sale until its next general rate increase proceeding. It must defer the gain with a return of 7.16%.

155 9. Under, 15 U.S.C. § 79z-5a(c), the proposed transaction allowing the Colstrip Facilities 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.

V. ORDER

THE COMMISSION ORDERS:

156 1. The Commission authorizes Avista to sell its ownership interest in the Centralia facilities to TECWA, if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

157 2. The Commission authorizes PacifiCorp sell its interest in the Centralia Coal Mine to TECWA. Approval of the PacifiCorp sale is conditioned on PacifiCorp holding its ratepayers, and Avista and PSE and their ratepayers, harmless from any future liability for mine reclamation.

158 3. The Commission authorizes PacifiCorp to sell its ownership interest in the Centralia Facilities to TECWA if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

159 4. The Commission authorizes PSE to sell to sell its ownership interest in the Centralia Facilities to TECWA if it allocates the proceeds as follows: net book value to shareholders; remainder, up to original cost, to ratepayers; of remainder (appreciation), one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded. This authority is granted on condition that PSE defers the gain with a return of 7.16%; treatment of the gain will be implemented in PSE's next general rate request proceeding.

160 5. Avista must recalculate the gain on the sale to match the date that the sale closes. That figure must be provided to the Commission.

161 6. PacifiCorp must recalculate the gain on the sale to match the date that the sale closes. That figure must be provided to the Commission.

162 7. PSE must recalculate the gain on the sale to match the date that the sale closes. That figure must be provided to the Commission.

163 8. Avista's application for a determination under 15 U.S.C. §79z-5a(c) is granted.

164 9. PacifiCorp's application for a determination under 15 U.S.C. §79z-5a(c) is granted.

165 10. PSE's application for a determination under 15 U.S.C. §79z-5a(c) is granted.

166 11. Avista must seek a ruling from the Internal Revenue Service allowing pass-through of excess deferred taxes as part of the net gain from the instant sale.

167 12. PacifiCorp must seek a ruling from the Internal Revenue Service allowing pass-through of excess deferred taxes as part of the net gain from the instant sale.

168 13. PSE must seek a ruling from the Internal Revenue Service allowing pass-through of excess deferred taxes as part of the net gain from the instant sale.

169 14. The Commission retains jurisdiction over the subject matter and over Avista, PacifiCorp, and PSE to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this day of March, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

WILLIAM R. GILLIS, Commissioner

HEMSTAD, Commissioner (concurring in part and dissenting in part).

170 I concur in the decision of the majority that the Applicant's request to sell their shares of the Centralia coal mine and generating plant is consistent with the public interest.

171 I dissent from the opinion of the majority that a portion of the gain from the sale that is over and above net book value should be allocated to utility shareholders. All of the gain over and above net book value should go to ratepayers to compensate them for risks they have borne while the facilities were in rate base.

172 In light of the request of the Applicants for an expeditious decision in this matter, I have agreed that the final order be entered with only this brief statement of my dissent. I intend to set out in more detail my reasons for dissent within ten days.

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).