

Decision 00-04-031 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

O P I N I O N**I. Summary**

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

II. Background

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

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

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

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

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

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

III. Exempt Wholesale Generator

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

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

Federal statute and regulation require that this Commission must make certain determinations regarding the Seller's share of the Centralia Plant so that TransAlta can file FERC application to become an EWG. The determinations are "that allowing the facility (Seller's share of the Centralia Plant) to be an eligible facility: (1) Will benefit consumers, (2) Is in the public interest, and (3) Does not violate State law." (15 U.S.C. § 79Z-5a(c).)

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

competition in the region and thereby benefiting California consumers.

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

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

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

IV. Environmental Matters

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

V. Hearings

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

VI. Waiver of 30-Day Comment Period

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

Findings of Fact

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

Conclusions of Law

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

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement appended hereto as Exhibit 1 and agreed to by Pacificorp (Seller), TransAlta Corporation and the Office of Ratepayer Advocates is approved.

2. The motion for approval of the Settlement Agreement is granted.

3. In the event of the closing the sale of Seller's share of the Centralia Plant, including Commission approval of the sale under Pub. Util. Code § 851, allowing the Centralia Plant to be afforded Exempt Wholesale Generator status by Federal Energy Regulatory Commission: (a) will benefit customers; (b) is in the public interest; and (c) does not violate State law.

4. Hearings are not required.

5. Pacificorp shall distribute \$1.5 million to customers in accordance with Section 111.C.2 of the Settlement Agreement.

6. Application 99-08-054 is closed.

This order is effective today.

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

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

Exhibit 1

EXHIBIT 1

Page 1 of 42

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

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

Application 99-08-054

**SETTLEMENT AGREEMENT OF
PACIFICORP, TRANSALTA AND OFFICE OF RATEPAYER ADVOCATES**

I. INTRODUCTION

A. In A.99-08-036, filed August 19, 1999 pursuant to section 851 of the California Public Utilities Code, PacifiCorp (or the "Company") seeks a California Public Utilities Commission ("Commission") order authorizing PacifiCorp to sell, and Nor-Cal Electric Authority ("Nor-Cal") to purchase, all distribution and certain transmission assets, as well as permits and other authorizations currently utilized to provide electric distribution service to PacifiCorp's customers in the Company's northern California service territory. This proceeding is hereafter referred to as the "Norcal Application."

B. In A.99-08-054, filed August 30, 1999 pursuant to section 851 of the California Public Utilities Code, PacifiCorp (as the seller) and TransAlta Corporation (on behalf of the buyers - see below) seek a Commission order approving the sale of the Company's interests in: (a) the Centralia Steam Electric Generating Plant consisting of two generating units, each with 650 megawatt nameplate rating, and other related facilities ("Centralia Plant"), and (b) the ratebased portion (47.5%) of the Centralia Coal Mine located in Lewis and Thurston Counties, Washington ("Mine"). The purchaser of the Centralia Plant is TECWA Power, Inc. The purchaser of the Mine is TECWA Fuel, Inc. Both purchasers are indirect wholly-owned subsidiaries of TransAlta Corporation, a Canadian Business Corporation Act corporation. Collectively, the purchasers are hereafter referenced as "TransAlta." The application also seeks the Commission issue the findings required for TECWA Power, Inc. to qualify as an "Exempt Wholesale Generator" pursuant to Section 32 of the Public Utility Holding Company Act. (See Attachments 1, 2, 3 and 4 for the specific relief sought, as modified by this Settlement Agreement).

C. TransAlta and PacifiCorp seek expedited processing of A.99-08-054 as the parties' respective commitments to purchase and sell the Centralia Plant and Mine are limited by the terms of the sale agreements to a March 7, 2000 date. PacifiCorp has filed applications seeking approval of the sale in Oregon, Utah, Wyoming, Idaho and Washington. All of these filings are expected to be processed in time to meet the March 7, 2000 deadline.

D. PacifiCorp's positions are reflected in its prefiled testimony and accompanying exhibits filed with the Company's applications in A.99-08-036 and A.99-08-054. ORA's positions are reflected in its September 22, 1999 Protest in A.99-08-036 and its October 12, 1999 Protest in A.99-08-054. In addition, both PacifiCorp and ORA described their respective positions at the October 26, 1999 prehearing conference for both matters. ORA did not oppose approval of either of PacifiCorp's applications. ORA's principal concern is PacifiCorp's proposal that shareholders retain all of the net gain realized from both sales. ORA's position is that customers should be afforded a reasonable share of any net gain from both proposed sales.

E. A.99-08-036 and A.99-08-054 have not been consolidated by the Commission. The signatories to this document intend for this Settlement Agreement to resolve all issues related to A.99-08-054. Certain parties to the Norcal Application have executed and will file a Settlement Agreement with the Commission. If the Commission adopts the Settlement Agreement in the Norcal Application on a timely basis, upon consummation of the Norcal transaction PacifiCorp will petition the Commission to withdraw its Centralia application, A.99-08-054 (See Recitals, Sections C and D below.) However, the parties to both Settlement Agreements intend for both Applications to continue to be processed at the Commission, and that if the Centralia Application is otherwise ripe for decision prior to consummation of the Norcal

transaction, request the Commission to issue an order approving the transaction in manner contemplated by Attachment 1 hereto.

F. PacifiCorp and ORA began settlement discussions in an effort to settle all or a portion of the issues in both A.99-08-036 and A.99-08-054. After extensive discussions between PacifiCorp and ORA, on January 4, 2000 PacifiCorp issued a Notice of Settlement Conference to be convened at 10 a.m., on Thursday, January 13, 2000 at Room 4200, Public Utilities Commission offices, 505 Van Ness Avenue, San Francisco, California and served such Notice on all parties of record in both proceedings. This settlement conference was continued by stipulation of the parties in attendance to a telephonic conference call on January 21, 2000 at 10 a.m., and continued to a subsequent conference call on February 14, 2000 at 10 a.m. PacifiCorp and TransAlta presented all interested persons attending the Settlement Conference sessions with a draft of this Settlement Agreement. The Settlement Conference has led to the settlement set forth in this Settlement Agreement.

II. PARTIES

The initial parties to this Settlement Agreement are PacifiCorp, TransAlta and the Office of Ratepayer Advocates; however, each participant in A.99-08-054 that executes this document is deemed a "Party" (collectively "Parties") to this Settlement Agreement.

III. AGREEMENT

A. Scope of the Settlement Agreement

This Settlement Agreement resolves among the Parties all issues related to A.99-08-054 (application to the Centralia Power Plant and Mine). The Parties ask the Commission to issue an order adopting the terms of this Settlement Agreement and affording the specific relief set forth in this Settlement Agreement and in Attachments 1 through 4, which are hereby incorporated as

though fully set forth herein. Attachment 1 sets forth specific relief sought; Attachment 2 describes the expedited EWG relief sought by PacifiCorp and TransAlta; Attachment 3 contains copies of the EWG orders from other PacifiCorp states, and Attachment 4 is a proposed EWG decision for the Commission's consideration. The Parties request that the Commission proceed with these dockets in the following manner:

1. The Parties propose that PacifiCorp provide a gross amount of \$1.5 million of the net gain realized from its sale of the Centralia facilities to the Company's northern California customers, contingent upon closing of the Centralia sale transaction.
2. In the event the Commission approves the Norcal settlement (or otherwise reaches a final decision approving the Norcal Application in a manner that results in the absence, following consummation of that transaction, of jurisdiction over PacifiCorp under Section 216 of the Public Utilities Code) prior to action on the Centralia application, the Parties request that the relief and procedures set forth in Section III.C. of this Settlement Agreement be followed with respect to the collection and distribution of the gain realized from the sale of the Centralia Facilities.
3. PacifiCorp and TransAlta request that the Commission promptly issue, upon filing of this Settlement Agreement, an order containing the EWG findings for the Centralia Plant sale, subject to final Commission approval, in the form attached hereto as Attachments 2 and 4. Each of the other states in which PacifiCorp has sought approval for this transaction has issued such an order, true and correct copies of these initial orders are attached hereto as Attachment 3. The issuance of such an order, which does not bind the Commission with respect to any ultimate approval, will likely permit TransAlta and PacifiCorp to obtain an EWG order from the FERC, and therefore consummate their

transaction, between 30 and 60 days sooner than if such findings were issued simultaneously with a Section 851 approval, which will permit the ratepayers to receive the benefits provided by this Settlement Agreement sooner on a commensurate basis. ORA does not object to Commission issuance of the EWG order.

B. Approval of A.99-08-054 (Centralia Sale)

The Parties recommend that the Commission approve Application 99-08-054, as modified by this Settlement Agreement.

C. Treatment of Net Gain from Sales

1. Re: Docket A.99-08-054 (Centralia sale): PacifiCorp agrees to provide a gross amount of \$1.5 million of the net gain associated with the sale of the Centralia Plant and Mine to PacifiCorp's northern California customers, contingent upon closing of the transaction between PacifiCorp and TransAlta. Within 120 days after the closing of the sale to TransAlta, PacifiCorp will effectuate a \$1.5 million credit on bills for electric service rendered to PacifiCorp's former northern California retail customers. This amount will be allocated to customers in the manner specified in Section III.C.2 below.

2. Calculation and Distribution of Net Gains.

PacifiCorp will develop individual active-customer ratios based on the most recent 12-month revenues received from each account. The ratio will be developed by comparing each individual account's 12-month billings to total California retail active-customer billings. PacifiCorp will then allocate amounts payable under Section III.C.1 on a per active-customer basis utilizing the developed ratios. In the event that PacifiCorp is not performing the billing function for Nor-Cal at the time of payment, then Nor-Cal or its billing agent will allocate to customers the amount of credits due under Sections III.C.1 using the method described in this

paragraph. For purposes of this Settlement Agreement, "active customer" means a PacifiCorp retail electric account with an energized meter on the day PacifiCorp identifies active customers. No person or customer will receive a billing credit under this Settlement Agreement unless that person or customer meets this definition of "active customer."

D. Processing of A.99-08-036 (Norcal Sale)

1. The Parties propose that the Commission continue to process, address and rule upon the merits of A.99-08-036, the Nor-Cal Application. If the Commission approves the Settlement Agreement filed in that proceeding, or otherwise approves the Norcal Application in a manner that results, upon the closing of that transaction, in PacifiCorp no longer being subject to the Commission's jurisdiction under Section 216 of the Public Utilities Code, the Parties believe that once the Norcal transaction is closed, there will be no need to further process A.99-08-054, the Centralia sale. At that point, PacifiCorp would have disposed of all of its jurisdictional facilities in the State of California and the operations of the Company's California service territory with its attendant obligation to serve would have been transferred to Nor-Cal, a non-regulated entity, and PacifiCorp will withdraw its application in A.99-08-054. In the event the Commission does not so approve the Norcal Application, or that transaction is not otherwise consummated in a timely fashion with respect to the constraints set forth in the Centralia purchase and sale agreements, the Parties agree that the Commission should continue to process the Centralia Application and approve it as modified by this Settlement Agreement.

2. PacifiCorp and Nor-Cal will execute an agreement that will require PacifiCorp (in the event the Norcal transaction closes prior to Commission action on the Centralia Application) to effectuate the \$1.5 million bill credit to PacifiCorp's former northern California customers, as specified in Section III.C.1, contingent upon closing of the sale of the Centralia

Plant and Mine. This agreement is intended to provide assurances to the Commission, ORA and all other interested parties that PacifiCorp will, upon closing of the Centralia sale, pass through the agreed upon \$1.5 million net gain portion ascribed to the Centralia sale to PacifiCorp's former northern California retail customers, whether or not PacifiCorp remains under the jurisdiction of the Commission.

IV. ADDITIONAL TERMS AND CONDITIONS

A. Term of Settlement Agreement

The Parties agree that this Settlement Agreement shall be in effect until all bill credits for retail services that are required by this Settlement Agreement have been passed through the billing process to PacifiCorp's northern California customers.

B. Obligation To Promote Approval

The Parties agree to use their best efforts to propose, support and advocate adoption of this Settlement Agreement by the Commission. Each Party will advocate implementation of all terms and conditions of this Settlement Agreement. The Parties agree to perform diligently, and in good faith, all actions required or implied herein, including, but not necessarily limited to, the execution of any other documents required to effectuate the terms of this Settlement Agreement, and the preparation of exhibits for, and presentation of witnesses at, any required hearings to obtain the approval and adoption of this Settlement Agreement by the Commission. No Party to this Settlement Agreement will contest any aspect of this Settlement Agreement in any proceeding or in any other forum, by contact or communication, whether written or oral (including *ex parte* communications whether or not reportable under the Commission's Rules of Practice and Procedure) or in any other manner before this Commission.

C. Public Interest

The Parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest. Each of the Parties actively participated in the settlement process.

D. Non-Precedential Effect

This Settlement Agreement is not intended by the Parties to be a binding precedent for any future proceeding. The Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises embodied in this Settlement Agreement. Each Party expressly reserves its right to advocate, in proceedings other than A.99-08-036 and A.99-08-054, positions, principles, assumptions, arguments and methodologies which may be different from those underlying this Settlement Agreement and the Parties expressly declare that, as provided in Rule 51 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should not be considered as a precedent for or against them.

E. Indivisibility

The Parties acknowledge that the positions expressed in this Settlement Agreement were reached after consideration of all positions advanced by each of the Parties during the settlement negotiations. This Settlement Agreement embodies compromises of the Parties' positions. No individual term of this Settlement Agreement is assented to by any Party except in the context of all other terms. Thus, the Settlement Agreement is an integrated and indivisible document in accordance with its terms.

Any Party may withdraw from this Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to

restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

The Parties acknowledge and agree that the failure to close PacifiCorp's sale of the Centralia Plant and Mine to TransAlta will not invalidate this Settlement Agreement.

F. Liability

The Parties further agree that no signatory to this Settlement Agreement, nor any member of the Staff of the Commission, assumes any personal liability as a result of this Settlement Agreement.

G. Governing Law

This Settlement Agreement shall be governed by the laws of the State of California as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

H. No Waiver

No failure or delay by any Party hereto in exercising any right, power or privilege herein shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

I. Amendment

This Settlement Agreement sets forth the entire understanding and agreement among the Parties with reference to the subject matter hereof, and this Settlement Agreement may not be modified or terminated except by an instrument in writing signed by all Parties hereto. This Settlement Agreement supersedes all prior agreements, negotiations, and understandings among the Parties, both oral and written related to this matter.

J. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement through their authorized representatives.

DATED: February 19, 2000.

PACIFICORP

By: E. Ay MHA

Title: Vice President

TRANSALTA

By: _____

Title: _____

OFFICE OF RATEPAYER ADVOCATES

By: _____

Title: _____

J. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement through their authorized representatives.

DATED: February 18, 2000.

PACIFICORP

By: _____

Title: _____

TRANSALTA

By: *Jeff H. Macle*

Title: PARTNER, LATHAM & WATKINS
FOR TRANSALTA

OFFICE OF RATEPAYER ADVOCATES

By: _____

Title: _____

J. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement through their authorized representatives.

DATED: February 25, 2000.

PACIFICORP

By: _____

Title: _____

TRANSALTA

By: _____

Title: _____

OFFICE OF RATEPAYER ADVOCATES

By: Grim _____

Title: STAFF COUNSEL for ORA

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

In the Matter of the Application of PACIFICORP)
(U 901-E) for an Order Approving the Sale of its)
Interest in (1) the Centralia Steam Electric) Application 99-08-054
Generating Plant, (2) the Ratebased Portion of the)
Centralia Coal Mine, and (3) related facilities,)
and for an EWG Determination)

SETTLEMENT AGREEMENT

ATTACHMENT 1

The Parties seek a Commission order granting the following relief:

- A. authorizing PacifiCorp to sell to TransAlta all of PacifiCorp's right, title and interests in and to (1) the Centralia Power Plant and related facilities, (2) the Centralia Mine and related facilities, as well as other assets, permits and authorizations, as more fully described in the two Purchase and Sale Agreement filed as Exhibits to this Application;
- B. finding that \$1.5 million of the net gain on the TransAlta sale should be passed through to customers through billing credits for retail electric service;
- C. finding that the proposed sale will meet the standards of Section 362 of the Public Utilities Code in that the facilities will no longer be required for PacifiCorp or its successors to be utilized in providing electric service to California end-use customers thus having no adverse affect on the reliability of the California electric supply. As TransAlta does not currently provide retail electric service, or own any generation units in California, acquisition of the identified PacifiCorp facilities will not confer any undue market power upon TransAlta;
- D. finding that the proposed sale will meet the intent and policies embodied in Section 363 of the Public Utilities Code, based on the unique facts of this Application, because:
 - (1) TransAlta has agreed, as a condition of the sale, to assume all existing collective bargaining agreements for the Centralia Power Plant and Centralia Coal Mine. TransAlta's present intent is to maintain continuity in the workforce by retaining, consistent with the terms of the collective bargaining agreements, the same unionized workforce in the Centralia Plant and Mine, along with most of the exempt workforce, including key management personnel. This approach also assures continued operation of the Centralia Plant in a safe, reliable manner;

(2) upon closing, PacifiCorp will not own any generation or distribution assets in the vicinity of the Centralia assets and thus there are no reliability objectives to be furthered by requiring PacifiCorp retaining responsibility as the operator of the Power Plant; and

(3) such a requirement would be inconsistent with the decisions of other state commissions with jurisdiction over the sale, therefore, as a matter of comity with respect to the decisions of the other state commissions, in light of the unique facts of this case respecting fulfillment of the legislative intent, policies and goals underlying Section 363, and because the stipulated submittal of this matter is nonprecedential and does not require the Commission to reach a conclusion regarding the extraterritorial application, if any, of Section 363, thereby preserving the Commission's rights to reach a contrary conclusion in future proceedings should that be warranted, the Commission finds that this Application (as modified by the Settlement Agreement) meets the requirements imposed by Section 363 of the Public Utilities Code.

E. the proposed sale transaction to TransAlta is not subject to the California Environmental Quality Act ("CEQA") (Sections 21000 et seq., California Public Resources Code). In the alternative, PacifiCorp and TransAlta ask the Commission to find either that the transaction is exempt from CEQA pursuant to the Commission's exemption for "Existing Facilities," or exempt as an out-of-state project subject to adequate environmental review.

F. as contemplated by Section 32 of the Public Utility Holding Company Act (15 U.S.C. Section 79z-5a(c)), find that the sale (1) is in the public interest, (2) will benefit consumers and (3) does not violate California law.

Parties to this Settlement Agreement support all of the requested relief set forth in A through and including D above. Requests E and F are solely the requested relief of PacifiCorp and TransAlta.

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

In the Matter of the Application of PACIFICORP)
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Centralia Coal Mine, and (3) related facilities,)
and for an EWG Determination)

Application 99-08-054

SETTLEMENT AGREEMENT

ATTACHMENT 2

PacifiCorp and TransAlta seek an Interim Commission order on an expedited basis, granting the following relief:

A. As contemplated by Section 32 of the Public Utility Holding Company Act (15 U.S.C. Section 79z-5a(c)), find that, upon approval of the sale by the Commission, the sale (1) is in the public interest, (2) will benefit consumers and (3) does not violate California law.

ORA has no objection to Commission issuance of an EWG order as described above.

**BEFORE THE PUBLIC UTILITIES COMMISSION
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(U 901-E) for an Order Approving the Sale of its)
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Generating Plant, (2) the Ratebased Portion of the)
Centralia Coal Mine, and (3) related facilities,)
and for an EWG Determination)

SETTLEMENT AGREEMENT

ATTACHMENT 3

ORDER NO. 99-752

ENTERED DEC 12 1999

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 955
[Related Docket: UP 168]

In the Matter of the Request by PacifiCorp for)
Exempt Wholesale Generator Determinations.) ORDER

**DISPOSITION: STAFF RECOMMENDATION ADOPTED;
REQUESTED DETERMINATIONS ISSUED**

In Docket No. UP 168, PacifiCorp seeks approval of the sale of its interest in the Centralia generating plant to TECWA. TECWA is also purchasing all other shares of the Centralia generating facilities as part of the same transaction, and, upon closing, TECWA plans to operate all the generation as an exempt wholesale generator (EWG).

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

Federal statute and regulation require that this Commission must make certain determinations regarding PacifiCorp's share of the Centralia plant so that TECWA can file a FERC application to become an EWG. The determinations are "that allowing the facility [PacifiCorp's share of the Centralia plant] to be an eligible facility [i.e., to be owned by an EWG]: (1) Will benefit consumers, (2) Is in the public interest, and (3) Does not violate State law." Section 4 of PacifiCorp's UP 168 application.

PacifiCorp and TECWA ask the Commission to make the required determinations before the hearing and decision in UP 168, to make closing the transaction easier. PacifiCorp has stated in its motion that proceeding on the EWG determination before the hearing will not prejudice Staff or the Commission. If the Commission approves the UP 168 application, then TECWA will already have its EWG application underway. If the Commission does not approve the UP 168 application, TECWA's EWG application will be moot because it cannot operate PacifiCorp's share of Centralia as an EWG if TECWA does not own the facility.

REGISTRATION
STAFF COUNCIL

PacifiCorp maintains that its application meets the three federal requirements and that the Commission should issue the determinations. The first two requirements are that allowing the plant to be a wholesale facility operated by an EWG (1) will benefit consumers and (2) is in the public interest. PacifiCorp states that if the Commission approves the proposed sale of PacifiCorp's share of the Centralia generating facility, it will no longer be in PacifiCorp's rate base. The plant output will then be in the hands of a new supplier, increasing supply competition in the region and thereby benefiting Oregon consumers. Moreover, because it will no longer be in PacifiCorp rate base, if the plant were ever to become noncompetitive, PacifiCorp's customers would not have to pay for it. For all these reasons, allowing TECWA to operate the plant as an EWG will benefit Oregon consumers and be in the public interest.

The third requirement is that allowing the plant to be a wholesale facility operated by an EWG does not violate State law. PacifiCorp contends that no Oregon laws address the issues raised by this request, and none prohibit or limit the authority of TECWA to operate the plant as a wholesale facility. Therefore, allowing an EWG to operate Centralia as a wholesale facility does not violate State law.

Commission Staff reviewed PacifiCorp's filing and recommended that the Commission issue an order making the determinations required by federal law and include a statement, set out below, to FERC about the EWG issue. At its November 30, 1999, public meeting, the Commission adopted Staff's recommendation, including the following paragraph:

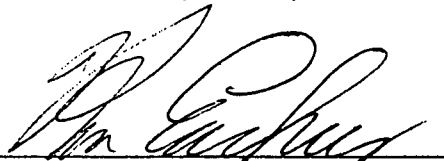
While the Commission has not yet had the opportunity to determine whether the sale of Centralia should be approved under ORS 757.480, the Commission makes the following determinations pursuant to Federal law. The Commission determines that, upon the closing of the sale of the Centralia facilities (including Commission approval of the sale pursuant to ORS 757.480) from PacifiCorp to the buyer of the facilities, allowing the facility [PacifiCorp's share of the Centralia generating facility] to be an eligible facility [i.e., to be owned by an EWG]: (1) will benefit consumers; (2) is in the public interest, and (3) does not violate State law. The Commission consents to these facilities being considered eligible for FERC's determination of exempt wholesale generator status of the buyer at the completion of PacifiCorp's sale to the buyer (including Commission approval of the sale pursuant to ORS 757.480).

ORDER

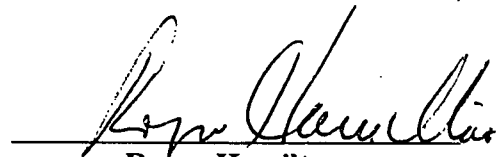
IT IS ORDERED that the Commission makes the following determinations:

1. Upon closing the sale of PacifiCorp's Centralia facilities, including Commission approval of the sale under ORS 757.480, allowing PacifiCorp's share of the Centralia plant to be a facility owned by an EWG
 - A. will benefit consumers;
 - B. is in the public interest, and
 - C. does not violate state law.
2. The Commission consents to PacifiCorp's share of the Centralia plant being considered eligible for FERC's determination of exempt wholesale generator status of the buyer at completion (including Commission approval) of PacifiCorp's sale to the buyer.

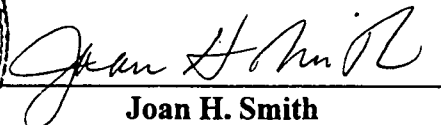
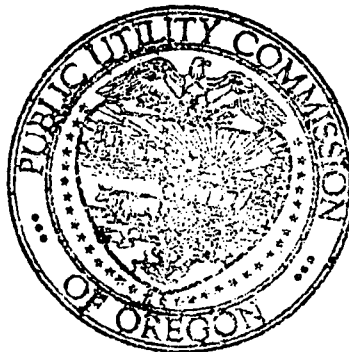
Made, entered, and effective DEC 12 1999



Ron Eachus
Chairman



Roger Hamilton
Commissioner



Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

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

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

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

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

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

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

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

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

Modified Procedure. In its Notice the Commission found that the issue presented regarding the classification of the Centralia generation facility as an "eligible facility" for purpose of subsequent operation by an Exempt Wholesale Generator (EWG) under federal law was an issue that could be addressed by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. The deadline for filing written comments regarding EWG determination and proposed use of Modified Procedure was September 24, 1999. Commission Staff was the only party to file comments.

In its comments Staff states the following:

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

...

For Centralia to be considered as an eligible facility by FERC for EWG status, this Commission is required to make a specific determination that allowing such a facility to be an "eligible facility" (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The third requested determination is perhaps the most straight forward. Based on its review of the Idaho Code, Staff represents that it has discovered no Idaho laws that address the issues raised by this request, and none prohibit or limit the authority of TECWA Power as an EWG to operate the plant as a wholesale facility.

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

Commission Findings

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

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

CONCLUSIONS OF LAW

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

ORDER

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

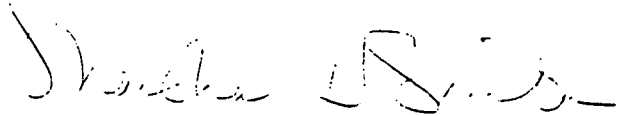
1. Avista and PacifiCorp's Applications for a determination under 15 U.S.C. § 79z-5a(c) are granted conditioned upon a Commission Order approving the proposed sale of the Centralia facilities. If the Commission does not ultimately issue an Order in these cases approving the proposed sale, this EWG determination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

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

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



DENNIS S. HANSEN, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



PAUL KJELLANDER, COMMISSIONER

ATTEST:



Myrna J. Walters
Commission Secretary

bls/O:avue996_pace992_sw

Received

JAN - 4 1999

REGULATION

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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

DOCKET NO. 99-2035-03

ORDER

ISSUED: December 20, 1999

By The Commission:

On August 12, 1999, PacifiCorp filed with this Commission an Application for an order approving the sale of the Company's interests in (a) the Centralia steam generating plant, consisting of two generating units, and other related facilities, and (b) the ratebased portion (47.5%) of the Centralia Coal Mine located adjacent to the Centralia generating plant in the state of Washington. Under the proposed sale, the purchaser of the Centralia generating plant is TECWA Power Inc. ("TECWA Power") and the purchaser of the Centralia Coal Mine is TECWA Fuel, Inc. ("TECWA Fuel"), both wholly-owned indirect subsidiaries of TransAlta Corporation. In its Application, PacifiCorp also seeks a Commission ruling pursuant to 15 U.S.C. §79z-5a(c) allowing the purchaser to operate the Centralia plant as an eligible facility. Specifically, in order for the Centralia plant to be an "eligible" facility authorizing the purchaser to

DOCKET NO. 99-2035-03

-2-

operate the plant as an exempt wholesale generator ("EWG") under the Public Utility Holding Company Act, PacifiCorp seeks Commission determinations that operation as an eligible facility (a) will benefit consumers, (b) is in the public interest, and (c) does not violate state law. As stated in its Application, PacifiCorp requests "that the three determinations be made allowing Centralia to be considered an eligible facility at the completion of PacifiCorp's sale to TransAlta. As completion of the sale cannot take place without the relevant state regulatory approvals, this assures that making these determinations will not prejudice the merits of the proposed sale under Utah statutory standards."

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

Attached to PacifiCorp's Motion was a proposed order which was signed by counsel for the Division of Public Utilities and Committee of Consumer Services as having been

DOCKET NO. 99-2035-03

-3-

approved as to form and substance. In its Motion, counsel for PacifiCorp represented that the LAW Fund does not oppose entry of an order making the EWG determinations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DOCKET NO. 99-2035-03

-4-

gain realized as a result of the sale.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. PacifiCorp's Application and motion for a determination under 15 U.S.C. §15z-5a(c) is granted, conditioned upon a Commission order approving the proposed sale of the Centralia steam generating plant and associated facilities. If the Commission does not ultimately issue an order approving the proposed sale, this EWG determination will be null and void.

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

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

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

SERVICE DATE

OCT 13 1999

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

PACIFICORP dba PACIFIC POWER AND
LIGHT

for an Order Approving the Sale of its Interest in
(1) the Centralia Steam Electric Generating Plant,
(2) the Ratebased Portion of the Centralia Coal
Mine, and (3) related facilities; for a
Determination of the Amount of And the Proper
Ratemaking Treatment of the Gain Associated
with the Sale, and for an EWG Determination.

Docket No. UE-991262

ORDER

RE: EXEMPT WHOLESALE
GENERATOR STATUS

MEMORANDUM

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

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

As set forth in PacifiCorp's application, TECWA Power, Inc., intends to seek Federal Energy Regulatory Commission ("FERC") approval to own and operate the Centralia facilities with exempt wholesale generator status. Because the Centralia Power Plant is currently in PacifiCorp's rate base for its jurisdictional sales of electricity in this state, 15

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STGEI RIVER, LLP
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Attachment 3

U.S.C. § 79z-5a(c) requires that TECWA include with its EWG application to FERC a statement that the Washington Utilities and Transportation Commission has determined that allowing the facility to be a wholesale facility operated by an EWG: "(1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law."

FINDINGS

THE COMMISSION FINDS:

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

ORDER

WHEREFORE, THE COMMISSION HEREBY ORDERS:

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

3. The Commission retains jurisdiction over the subject matter and Pacific Power and Light to effect the provisions of this order.

DATED at Olympia, Washington, and effective this 13th day of October, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION)
OF PACIFICORP FOR AUTHORITY TO SELL)
ITS INTEREST IN THE CENTRALIA STEAM)
ELECTRIC GENERATING PLANT, THE)
RATE BASED PORTION OF THE)
CENTRALIA COAL MINE AND OTHER)
RELATED FACILITIES)

DOCKET NO. 20000-EA-99-146
(RECORD NO. 5114)

ORDER REGARDING EXEMPT WHOLESALE GENERATOR STATUS
(Issued January 18, 2000)

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

1. PacifiCorp is a public utility as defined by W.S. § 37-1-101 and, as such, subject to the Commission's jurisdiction pursuant to the provisions of W.S. § 37-2-112.

2. On August 8, 1999, PacifiCorp filed the above-docketed application requesting authority to sell its interest in the Centralia Steam Electric Generating Plant, the rate based portion of the Centralia Coal Mine and other related facilities.

3. Pursuant to the application, PacifiCorp proposes to sell its interest in the Centralia generating unit to TECWA Power, Inc., and the rate based portion of the Centralia Coal Mine to TECWA Fuel, Inc. Both TECWA Power, Inc. and TECWA Fuel, Inc., are Washington corporations and wholly-owned subsidiaries of TransAlta Corporation.

4. In its application, PacifiCorp sought a Commission ruling, pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 ("PUHCA") (codified at 15 U.S.C. §79z-5a(c)), in order to allow TECWA Power, Inc., to operate the Plant as an exempt wholesale generator under federal law. Specifically, PacifiCorp sought a Commission determination that the operation of the Centralia Plant as an "eligible facility" (i.e., to be owned by an EWG) upon completion of the sale (a) will benefit consumers, (b) is in the public interest and (c) does not violate state law. PacifiCorp stated, in its application, that TransAlta cannot begin processing its application with the Federal Energy Regulatory Commission (FERC) in order to obtain FERC's qualification of the generation assets as "eligible facilities" and TECWA Power, Inc., as an EWG until the Commission has made the three required determinations.

5. At a public hearing held with regard to this matter on January 6, 2000, the Consumer Advocate Staff of the Wyoming Public Service Commission (CAS) presented the testimony of Denise Parrish recommending that the EWG status determinations could only be made if the Commission adopted the CAS recommendations regarding the disposition of the gain from the sale of the Plant and Mine. Specifically, the CAS took the position that 100% of the Wyoming allocation of the gain should be given to the customers, rather than shared with PacifiCorp

stockholders, as proposed by the Company. The CAS took the view that unless customers receive 100% of the gain, the sale is not in the public interest.

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

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

IT IS THEREFORE ORDERED THAT:

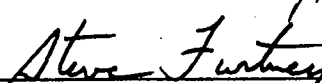
1. Pursuant to the Commission's decision entered on January 7, 2000, PacifiCorp's application for an EWG determination pursuant to the provisions of 15 U.S.C. §79z-5a(c) regarding the proposed sale of the Centralia facilities to TECWA Power, Inc., is hereby granted.

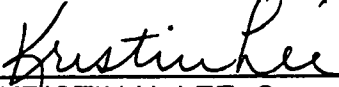
2. This Order is effective immediately.

MADE AND ENTERED at Cheyenne, Wyoming this 18th day of January, 2000.

PUBLIC SERVICE COMMISSION OF WYOMING


STEVE ELLENBECKER, Chairman


STEVE FURTNEY, Deputy Chairman


KRISTIN H. LEE, Commissioner



ATTEST:


IVAN H. WILLIAMS, Assistant Secretary

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

In the Matter of the Application of PACIFICORP)	
(U 901-E) for an Order Approving the Sale of its)	
Interest in (1) the Centralia Steam Electric)	Application 99-08-054
Generating Plant, (2) the Ratebased Portion of the)	
Centralia Coal Mine, and (3) related facilities,)	
and for an EWG Determination)	

SETTLEMENT AGREEMENT

ATTACHMENT 4

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

In the Matter of the Application of PACIFICORP)	
(U 901-E) for an Order Approving the Sale of its)	
Interest in (1) the Centralia Steam Electric)	Application 99-08-054
Generating Plant, (2) the Ratebased Portion of the)	
Centralia Coal Mine, and (3) related facilities,)	
and for an EWG Determination)	

PROPOSED EXEMPT WHOLESALE GENERATOR DECISION

I. BACKGROUND

In A.99-08-054, filed August 30, 1999 pursuant to section 851 of the California Public Utilities Code, PacifiCorp (as the seller) and TransAlta Corporation (on behalf of the buyers) seek a Commission order approving the sale of the Company's interests in: (a) the Centralia Steam Electric Generating Plant consisting of two generating units, each with 650 megawatt nameplate rating, and other related facilities ("Centralia Plant"), and (b) the ratebased portion (47.5%) of the Centralia Coal Mine located in Lewis and Thurston Counties, Washington ("Mine"). The purchaser of the Centralia Plant is TECWA Power, Inc. The purchaser of the Mine is TECWA Fuel, Inc. Both purchasers are indirect wholly-owned subsidiaries of TransAlta Corporation, a Canadian Business Corporation Act corporation. Collectively, the purchasers are hereafter referenced as "TransAlta." The application also seeks the Commission issue the findings required for TECWA Power, Inc. to qualify as an "Exempt Wholesale Generator" ("EWG") pursuant to Section 32 of the Public Utility Holding Company Act.

EWG is a Federal Energy Regulatory Commission ("FERC") classification created by the Energy Policy Act of 1992 to help promote wholesale generation competition. An EWG is exempt from the provisions of the Public Utilities Holding Company Act of 1935. Congress, in

providing this significant exemption, hoped to open the wholesale generation market to many more participants.

Federal statute and regulation require that this Commission must make certain determinations regarding PacifiCorp's share of the Centralia Plant so that TransAlta can file a FERC application to become an EWG. The determinations are "that allowing the facility (PacifiCorp's share of the Centralia Plant) to be an eligible facility: (1) Will benefit consumers, (2) Is in the public interest, and (3) Does not violate State law." 15 U.S.C. § 79z-5a(c)).

PacifiCorp maintains that the issuance of such an order, which does not bind the Commission with respect to any ultimate approval, will likely permit TransAlta and PacifiCorp to obtain an EWG order from the FERC, and therefore consummate their transaction, between 30 and 60 days sooner than if such findings were issued simultaneously with a Section 851 approval. If the application is approved, early FERC EWG approval will permit PacifiCorp's current northern California retail ratepayers to receive the benefits by a share of the net gain associated with the transaction sooner, on a commensurate basis. ORA does not object to Commission issuance of the EWG order.

II. DISCUSSION

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

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

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

While the Commission has not yet had the opportunity to determine whether the sale of the Centralia Plant and Mine should be approved under Section 851 CPU Code, the Commission makes the following determinations pursuant to federal law.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Upon the closing of the sale of the Centralia Plant (including Commission approval of the sale pursuant to Section 851 of the CPU Code) from PacifiCorp to TransAlta, allowing PacifiCorp's share of the Centralia Plant to be an eligible facility: (a) will benefit consumers; (b) is in the public interest, and (c) does not violate State law. The Commission consents to these facilities being considered eligible for FERC's EWG classification at the completion of PacifiCorp's sale to the purchaser.

ORDER

IT IS ORDERED that:

1. Upon closing the sale of PacifiCorp's share of the Centralia Plant, including Commission approval of the sale under Section 851 CPU Code, allowing the Centralia Plant to be afforded EWG status by the FERC:
 - a. Will benefit consumers;

- b. is in the public interest;
- c. does not violate State law.

This order is effective today.

Dated _____, 2000, at San Francisco, California.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled Settlement Agreement of Pacificorp, Transalta and Office of Ratepayer Advocates upon all known parties of record in this proceeding by mailing a copy thereof properly addressed to each party by first-class mail.

Dated at San Francisco, California this 6th day of March 2000.

/s/ JOANNE COXUM

Joanne Coxum

(END OF EXHIBIT 1)