

ENERGY FACILITY SITING COUNCIL
ORDER APPROVING
HERMISTON GENERATING COMPANY
REQUEST FOR
PARTIAL REASSIGNMENT OF SITE CERTIFICATE

I. Introduction and Procedural History

On April 26, 1996, Hermiston Generating Company ("HGC") submitted a request for partial reassignment ("the Request") of the Site Certificate for the Hermiston Generating Project as issued on March 11, 1994, amended on August 12, 1994, and amended again on May 10, 1996 ("Site Certificate").

HGC seeks to partially reassign the Site Certificate to PacifiCorp, which would acquire an undivided 50% interest in the facility and the Site Certificate under the terms of the "Long-Term Power Sales Agreement" dated October 7, 1993 (the "HGC-PacifiCorp Power Agreement"). PacifiCorp joins HGC in requesting this partial reassignment.

The procedure for transfer of Site Certificates is set forth in Oregon Administrative Rule OAR 345-27-100. Amendment #2 to the Site Certificate applied the May 10, 1996 version of OAR 345 Division 27 rules for future amendments to the HGC Site Certificate. However, the scope of amendment #2 did not include OAR 345-27-100. Therefore, the applicable rule for this Request for Partial Reassignment is OAR 345-27-100 as effective March 11, 1994, the date the Site Certificate was issued.

OAR 345-27-100(5) states that:

"After mailing notice of receipt of the application for transfer to all person on the Council's general mailing list, including the current certificate holder, the Council shall hold an informational hearing. Following the hearing, the Council may approve an application for transfer of a site certificate if the Council determines that:

- (a) The applicant satisfies the provision of OAR 345-22-010 and 345-22-050;*
- (b) The applicant is entitled to possession of the energy facility described in the site certificate at issue; and*
- (c) The applicant agrees to abide by all the terms and conditions of the site certificate to be transferred."*

On April 26, 1996, the Oregon Office of Energy ("the Department") mailed notice of this request to persons on the Council's mailing list and to property owners meeting the criteria of OAR 345-21-010(e). The notice briefly described the request and stated that the information hearing required by OAR 345-27-100 would be held during the Council's regularly scheduled meeting of May 10, 1996. The information hearing was held as scheduled. There were no comments or questions from the public, other State agencies, or

affected local governments.

On June 19, 1996, the Department mailed notice to the Council's mailing list of the availability of a Proposed Order, recommending approval of the Request. The notice stated that the Council would make its decision at its meeting of June 27, 1996, and that comments from the public would be accepted at any time up to and including the June 27, 1996 meeting.

II. Description of the Request for Partial Reassignment

OAR 345-27-100(3) requires that "an application for transfer of a site certificate shall include the same information as required by OAR 345-21-010(a), (d) and (k), unless otherwise allowed by the Council."

OAR 345-21-010(a) requires information describing the transferee. In this case, the transferee is an Oregon corporation. The Request includes the name, address, and date and place of incorporation for PacifiCorp, as well as the name and official designation of the officer responsible for submitting the application. The Request also includes a copy of the PacifiCorp articles of incorporation and authorization for filing this application.

OAR 345-21-010(d) requires a description of the organizational, managerial and technical expertise of the applicant. The Request includes a list and description of similar facilities which PacifiCorp either operates or has an interest in. The Request also describes PacifiCorp's proposed rights and responsibilities with regard to operation of the energy facility. PacifiCorp and HGC have established an Engineering and Operating Committee which will oversee facility operation, maintenance and capital improvements. The Request describes that Committee's role in detail and states that U.S. Operating Services Company, which currently operates the facility for HGC, will continue to handle all day-to-day operations. The Request includes personnel qualifications for PacifiCorp personnel who will have responsibility for operation of the energy facility, to the extent such personnel are known at this time. At the Department's request, applicant have provided supplemental information describing the regulatory compliance history since 1983 for similar facilities in which PacifiCorp has an interest.

OAR 345-21-010(k) requires information necessary to show compliance with the Council's Financial Assurance Standard. The Request includes PacifiCorp Annual Financial Statements for the years 1992 through 1995.

The Department has reviewed the Request and finds that it contains the information required by OAR 345-27-100(3). OAR 345-27-100(4) states that the Council may require written consent from the current site certificate holder. In this case, such written consent is not necessary because the partial reassignment is consistent with the terms of the HGC-PacifiCorp Power Agreement.

III. Findings, Conclusions, and Recommendations.

The Council must determine that:

- (a) PacifiCorp meets the Organizational, Managerial and Technical Expertise Standard and the Financial Assurance Standard;
- (b) PacifiCorp is entitled to possession of the Energy Facility described in the Site Certificate; and
- (c) PacifiCorp agrees to abide by all terms and conditions of the Site Certificate.

As stated in Part I of this order, the applicable rule for this partial reassignment is the version of OAR 345-27-100 in effect on March 11, 1994. Similarly, the Council must find compliance with the versions of its Managerial, Organizational and Technical Expertise standard and its Financial Assurance Standard that were in effect on March 11, 1994.

Compliance with Organizational, Managerial and Technical Expertise Standard

This standard requires that :

"the applicant has a reasonable probability of successful construction and operation of the facility.."

The standard, as in effect in March 1994, also required the applicant to:

"...have all necessary state permits and approvals to allow construction and operation of the facility in the manner contemplated by the applicant in the application. If the applicant will not itself obtain any necessary permit or approval, but will rely on a permit or approval issued to a third party, the Council must determine that the named third party has a reasonable likelihood of obtaining the necessary permit or approval, and that the applicant has a reasonable likelihood of entering into a contractual or other arrangement with the third party."

HGC has already secured the necessary permits, including third party permits. Construction of the Hermiston Generating Project is complete, and the plant is currently undergoing pre-operational testing. Therefore the Council need only find that this standard is met for purposes of operation and retirement.

PacifiCorp has stated that it has experience with other fossil fired generating plants similar in size to the Hermiston Generating Project. These include the Gadsby Plant (240 megawatts - natural gas), the Naughton Plant (800 megawatts - coal and natural gas), the Crockett Plant (450 megawatts - natural gas), and the Little Mountain Plant (combustion turbine). PacifiCorp has provided personnel information for individuals who would be responsible for facility operation, to the extent that such personnel are known at this time. These qualifications demonstrate that PacifiCorp has access to personnel with appropriate prior fossil plant experience.

At the Department's request, PacifiCorp provided a list of 12 regulatory citations between 1983 and the present, for other energy facilities in which it has an interest. These include six actions related to Air Quality measures at plants located in Colorado, Wyoming, Utah, and Washington. Other citations involved labeling of Hazardous Materials which were packaged for transport, waste characterization and disposal, PCB storage, late submittal of

a required report, and one instance of a red tailed hawk found dead in the surge tank at a dam. However, these citations were distributed among eight different plants over a period of 12 years, and the information provided shows no instance of any plant receiving a repeat violation.

PacifiCorp currently holds one Energy Facility Site Certificate, for the 500 kilovolt transmission line from Eugene to Medford. Department records indicate one alleged violation of that Site Certificate, 1991. An Oregon Department of Energy letter dated August 19, 1991 from David Stewart-Smith to J.D. Walker of PacifiCorp indicates that insufficient measures were taken during construction to prevent adverse impacts to archaeological or cultural resources. Representatives from PacifiCorp appeared before the Council at its meeting of September 13, 1991. Council meeting minutes indicate that the company was responsive and that appropriate corrective actions were taken. Additionally, during the proceedings leading up to the construction of that transmission line, the company cooperated with the Department in voluntarily implementing the Council's stated policy of prudent avoidance of Electro Magnetic Field effects by utilizing transmission towers designed for lower electromagnetic field.

The Request describes the formation of an Engineering Oversight Committee, which will have authority over annual operation, maintenance, and capital budgets, and which must approve any contract greater than one year in duration or in excess of \$250,000.

Responsibility for day to day operations and maintenance will remain with HGC through its agent, U.S. Operating Services Company (USOSC). USOSC will remain responsible for compliance with permits and licenses. The request states that engineering services will continue to be provided by USOSC, and that the proposed transfer will therefore have no effect on day to day operations. The Site Certificate includes a condition that any change to the identity of the operating agent requires prior Council notification. This condition was added as part of Amendment #2 on May 10, 1996. Therefore, no further amendments regarding the identity of the facility operator are needed as a result of this proposed partial reassignment.

Construction of the facility is complete. HGC has secured all required permits, including third party permits. Based on the above information, there is a reasonable likelihood that the partial reassignment will not adversely affect the Site Certificate holders' ability to operate and retire the facility in compliance with the terms of the Site Certificate and applicable regulations. The Council's Organizational, Managerial and Technical Expertise Standard is met.

Compliance with the Financial Assurance Standard

The Financial Assurance Standard in effect in March 1994 required:

- (1) The applicant, together with all co-owners, collectively shall possess or have reasonable assurance of obtaining, the funds necessary to cover the estimated construction, operating and retirement costs for the design lifetime of the facility including related fuel cycle costs; and*
- (2) An applicant and co-owners of the facility collectively will be capable of*

providing funds as needed to construct, operate and retire the facility without violating their respective bond indenture provision, articles of incorporation, common stock covenants, or similar agreements.

Plant construction is complete at this time. In its Final Order approving the Site Certificate, the Council found that HGC met this standard. Therefore, the Council must find that PacifiCorp and HGC collectively have the financial resources necessary to cover operation and retirement costs, including fuel cycle costs.

With respect to operating costs, the Request for Partial Reassignment points out that HGC has already shown compliance with this standard based on its own resources, and that the addition of PacifiCorp's resources to those of HGC only adds to the resources available to the Site Certificate holder. The Department concurs.

Under the HGC-PacifiCorp Power Agreement, PacifiCorp will already purchase the output of the plant. That agreement was used by HGC in October 1994 to meet Site Certificate Condition A.6, which required a firm power sales contract prior to construction. The Council reviewed the Agreement and found it sufficient to meet Condition A.6, in an Order dated October 18, 1994. HGC and PacifiCorp must cover the plant's operating cost whether the Site Certificate is partially assigned to PacifiCorp or not. The partial reassignment does not change the Site Certificate holder's ability to cover operating costs in any way. Therefore, the Council's previous finding of compliance with the Financial Assurance Standard is not affected by this partial reassignment.

With respect to facility retirement, the Site Certificate contains conditions under the Financial Assurance Standard, requiring annual contributions after the fifth year of operation to a decommissioning fund, in the amount of \$200,000 per year, secured by a Letter of Credit, performance bond, or other acceptable security, until the fund reaches \$5 million.

PacifiCorp's Annual Statements for the years 1992 through 1995 show annual revenue of approximately \$3.5 billion, and net income of approximately \$500 million. Therefore, there is a reasonable likelihood that PacifiCorp can secure the funds necessary to meet the above commitment. The addition of PacifiCorp's financial resources to those of HGC make it more likely that the Site Certificate holders can provide the financing necessary to restore the site. Further, these Annual Financial statements indicate that PacifiCorp would have the financial resources to restore the site even in the event of a failure by HGC to meet its financial obligations under the terms of the Site Certificate.

PacifiCorp has also submitted an Opinion of Counsel dated April 5, 1995, indicating that PacifiCorp has the legal authority to operate the Facility without violating the provisions of its articles of incorporation, bylaws or any indenture, mortgage, deed of trust or other material agreement for money borrowed, to which the Company is a party or by which it may be bound.

For these reasons, the Council finds that its Financial Assurance Standard is met.

Entitled to Possession of the Energy Facility described in the Site Certificate

The Request states that PacifiCorp has an option to acquire a fifty percent undivided

interest in the project, under the terms of the HGC-PacifiCorp Power Sales Agreement. PacifiCorp has submitted resolutions adopted by PacifiCorp's Board of Directors and signed by the Assistant Secretary of PacifiCorp, authorizing the company to acquire the undivided interest in the energy facility and to take any steps necessary to effect this transaction. The resolution is dated March 27, 1996. Based on this resolution and on the Opinion of Counsel submitted in support of compliance with the Financial Assurance Standard, the Council finds that PacifiCorp is entitled to possession of the Energy Facility.

PacifiCorp agrees to abide by all Terms and Conditions of the Site Certificate

The request states that PacifiCorp agrees to abide by all terms and conditions of the Site Certificate. This agreement is evidenced by its execution of the Request, and would be evidenced by execution of the amended Site Certificate as well.

No Finding of Need Required

The Site Certificate was issued in 1994 under an exemption from the Council's Need for Power Standard. That exemption was codified in 1993 Senate Bill 1016 and was open to applicants with completed Applications for Site Certificate (ASC) filed by August 13, 1993. The exemption made no distinction between independent power producers versus regulated public utilities. Therefore, the exemption which applied to the HGC application is not affected by this partial transfer.

IV. Conclusion and Order

The Council concludes that the conditions for transfer under OAR 345-27-100, as it was in effect on March 11, 1994, are satisfied by this Request for Partial Reassignment. The Council orders that the chair execute a site certificate to reflect this transfer as well as the amendments adopted on August 12, 1994 and again on May 10, 1996.

7/23/90

date



Chair, Energy Facility Siting Council

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