

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PUGET SOUND ENERGY,

For Approval of its April 2019 Power Cost
Adjustment Mechanism Report

DOCKET UE-190324

**PUGET SOUND ENERGY'S RESPONSE TO STAFF'S
MOTIONS FOR SEVERANCE AND CONSOLIDATION OF PROCEEDINGS**

OCTOBER 10, 2019

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I. INTRODUCTION

1. Puget Sound Energy (“PSE”) respectfully submits to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) this response opposing Staff’s Motions for Severance and Consolidation of Proceedings filed September 26, 2019 (“Motion”). Staff moves to (1) sever Avista Utilities’ (“Avista”) Energy Recovery Mechanism (“ERM”)¹ proceeding from its 2019 general rate case (“GRC”)² and (2) consolidate PSE’s 2019 Power Cost Adjustment filing (“PCA”),³ Pacific Power & Light Company’s (“Pacific Power”) 2019 Power Cost Adjustment Mechanism filing (“PCAM”),⁴ and Avista’s ERM into one consolidated proceeding. Staff also moves to commence an adjudicative proceeding in both PSE’s PCA and Pacific Power’s PCAM filings. PSE does not oppose Staff’s motion to commence adjudicative proceedings, but the Commission should deny Staff’s motion to consolidate the power cost proceedings of three separate utilities because there is minimal factual overlap between the cases, and consolidation would complicate and delay each power cost proceeding while adding administrative burdens and potentially making settlement in all cases more difficult.

II. MEMORANDUM

2. The Commission has substantial discretion whether to sever and consolidate proceedings. The Commission is not required to consolidate cases, but may do so, where the facts and issues or principles of law are related. *See* WAC 480-07-320. The

¹ UE-190222.

² UE-190334 and UG-190335 (consolidated).

³ UE-190324.

⁴ UE-190458.

Commission has refused to consolidate cases in the past, where there were insufficient common issues of fact and law to warrant consolidation.⁵ Further, the Commission will not exercise such discretion if consolidation would not produce a meaningful increase in administrative efficiency or judicial economy and would unacceptably delay entering a final order in a proceeding.⁶ Consolidation of Avista's ERM, Pacific Power's PCAM and PSE's PCA would derail an already-consolidated proceeding, complicate each party's power cost filing, and require the parties to duplicate months of discovery already completed in each case. Additionally, consolidation would make resolution of each power cost proceeding more difficult because any proposed settlement would necessarily involve three company's separate power costs rather than just one.

A. Avista's ERM, PSE's PCA and Pacific Power's PCAM are separate proceedings involving unique facts, different parties, and distinct issues

3. The Commission appropriately consolidated Avista's ERM with its GRC more than four months ago, finding the facts and principles of laws in Avista's ERM and its GRC are related.

The Commission is also persuaded that consolidation of these dockets is appropriate because it will allow the Commission, as well as the parties, to more efficiently direct their resources. Additionally, consolidation will create greater rate stability for customers because the rate impact, if any, of Avista's general rate case will align with

⁵ See, e.g., *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 01, ¶¶10-11 (December 30, 2008). See, e.g., *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 01, ¶¶10-11 (December 30, 2008).

⁶ See *Qwest Corp. v. Level 3 Comm., LLC*, Docket UT-063038, Order Declining to Consolidate Dockets, Order 09, ¶ 22 (Feb. 15, 2008).

the commencement of the return of the ERM balance, thereby avoiding additional and frequent rate fluctuations.⁷

4. Here, consolidation is not appropriate because there is only one factual similarity among Avista's, Pacific Power's and PSE's power cost proceedings: the companies all incurred replacement power costs necessitated by a temporary outage in Colstrip units 3&4.
5. Staff oversimplifies its request when it refers to adjudicating only the issue of prudence of replacement power costs associated with the 2018 Colstrip outage.⁸ Staff is not asking to consolidate just that issue, it is requesting consolidation of all three utilities' entire power cost adjustment proceedings. There is no witness in common between proceedings. Of the nine parties involved in the three proceedings, only Staff and Public Counsel are common to each.⁹ Consolidation would burden those parties interested in only one company's power cost proceeding, increasing their administrative costs. Further, the Colstrip outage is only one of multiple power cost variables that affected each company in 2018, and it affected each company differently. For PSE, variances in load and generation from hydro, wind and gas-fired resources combined with Colstrip to result in actual power costs that differ from those power costs PSE recovered in rates.¹⁰ This Commission has never consolidated multiple power cost proceedings. Consolidating

⁷ UE-190334, UE-190335, and UE-190222 (consolidated), Order 02 at ¶ 6.

⁸ Motion at ¶ 30.

⁹ See Master Service Lists in Dockets UE-190334, UE-190335, and UE-190222 (consolidated), UE-190324, and UE-190458.

¹⁰ See Prefiled Direct Testimony of Paul K. Wetherbee, Exh. PKW-1CT, at pages 11-12.

these proceedings now would be a departure from the seventeen years of orderly and efficient approval of PCAs.

B. Consolidation would complicate the administration of each case and unacceptably delay a final order in all three proceedings

1. Consolidated would create more work, not less, and delay resolution of each proceeding.

6. In determining whether to consolidate proceedings, the Commission will consider whether consolidation would unduly delay the resolution of one or more of the proceedings.¹¹ Here, consolidation will undoubtedly delay resolution of all the proceedings. First, consolidation would delay the PCA and PCAM because Staff apparently does not anticipate a resolution of those cases, if consolidated, until Spring of 2020. “Staff does not anticipate that the consolidated adjudication would extend past April 1, 2020.”¹² The deadline for review and approval of PSE’s and Pacific Power’s power cost proceedings is in less than two months, November 22, 2019.¹³ Obviously, consolidation would delay both PSE’s and Pacific Power’s current proceedings.

7. Severing Avista’s ERM from its GRC and consolidating three power cost proceedings would also delay Avista’s ERM and GRC. Just by filing its Motion, Staff asks the Commission to suspend the procedural schedule in Avista’s consolidated ERM and GRC so that Staff does not have to file testimony on October 3, 2019.¹⁴ Suspending the procedural schedule literally halts that proceeding and unavoidably delays that

¹¹ See UE-111048, Order 4 ¶ 8.

¹² Motion at ¶ 32.

¹³ See Motion at ¶ 5.

¹⁴ See Motion at ¶ 3.

proceeding's resolution. Further, Staff acknowledges that each separate proceeding has already engaged in substantial discovery.¹⁵ If Avista's ERM is severed from its GRC, it is unclear what would happen with the ERM-specific discovery already propounded in that consolidated proceeding. Staff does not explain how Avista's consolidated discovery, which is currently subject to a protective order, can be made available in another consolidated proceeding with different parties. It is likely that such discovery would not be available in the newly consolidated power cost proceeding. Therefore, Avista's ERM would effectively have to start over. This would duplicate efforts and hamper judicial economy.

2. Consolidation would not resolve Staff's concerns about discovery.

8. Staff apparently intends to use a consolidated adjudication to obtain documents from Talen MT, a company not regulated by the WUTC:

Staff has serious concerns that Pacific Power and PSE may have some inability to obtain information from Talen. Talen is not an entity regulated by the Commission and, therefore, Staff relies on PSE and Pacific Power to obtain information from Talen to determine if the costs associated with Talen's actions are prudent. Furthermore, the companies' failure to provide this information limits the amount of information the Commission would have in making its ultimate prudence determination on these costs.¹⁶

9. However, severing Avista's ERM and consolidating the power cost proceedings would have no effect on what appears to be Staff's primary concern: obtaining

¹⁵ See Declaration of David C. Gomez at ¶¶ 11-13.

¹⁶ *Id.* at ¶ 13.

documents from Talen MT.¹⁷ Assuming such documents exist, consolidation will do nothing to enable any company to obtain documents from Talen MT. Issuing more data requests or re-issuing data requests that have already been answered will only delay resolution of each company's case. As stated above, the Commission consolidated Avista's ERM with its GRC not only because of similar facts and principles of law, but also because consolidating those proceedings would create greater rate stability for Avista's customers.

Additionally, consolidation will create greater rate stability for customers because the rate impact, if any, of Avista's general rate case will align with the commencement of the return of the ERM balance, thereby avoiding additional and frequent rate fluctuations.¹⁸

10. Severing Avista's ERM from its GRC now would reverse that effort and undo the progress the parties have made over the past five months in that consolidated proceeding. Staff opposed the Commission's consolidation in May, arguing that consolidation now, after the Commission consolidated Avista's ERM and its GRC, would be inappropriate.¹⁹ "The Joint Parties do not recommend consolidation of [the power cost] dockets at this time, but granting Avista's Motion effectively would eliminate this procedural option."²⁰ The only thing that has changed since May is all parties have invested months of work in

¹⁷ See *id.* at ¶¶ 10-14.

¹⁸ UE-190334, UE-190335, and UE-190222 (consolidated), Order 02 at ¶ 6.

¹⁹ See Docket UE-190222, Joint Response in Opposition to Avista's Motion to Consolidate (May 15, 2019).

²⁰ *Id.* at ¶ 17.

each separate docket. Staff was correct then that consolidation of Avista's ERM and GRC eliminated the option to consolidate the power cost proceedings now.

3. Staff's Motion is untimely.

11. Further, Staff's Motion is untimely. Staff could have filed its Motion months ago but waited until now, without any explanation. Staff was aware in January that all three utilities would be addressing Colstrip replacement costs,²¹ and in May Staff contemplated filing this Motion.²² Pacific Power filed its PCAM on June 3, 2019, and Staff could have filed its Motion then. Yet Staff waited four months, after substantial discovery has occurred in all proceedings. Staff's request should be denied.

4. There is no support for consolidating the PCA and PCAM.

12. The Commission should deny Staff's alternative motion to consolidate just the PCA and PCAM for the same reasons it should deny the motion to consolidate all three power cost proceedings.²³ Staff makes no argument for why the Commission should consolidate PSE's and Pacific Power's, but not Avista's proceedings. Instead, Staff's Motion seems to imply that consolidation will somehow allow the companies to produce more documents or share documents that one company possesses. There is no support for such inclination. Staff acknowledges that neither PSE nor Pacific Power possess or have access to documents Staff is seeking,²⁴ and there is no reason to believe that

²¹ See Motion at ¶ 17.

²² Dockets UE-190334, UG-190335, and UE-190222 (consolidated), (Joint Response in Opposition to Avista's Motion to Consolidate at ¶ 17).

²³ Motion at note 67.

²⁴ See Declaration of David C. Gomez at ¶ 13 ("Pacific Power and PSE's data request responses generally indicate that the companies may have some inability to obtain documents from Talen", and "Staff has serious concerns that Pacific Power and PSE may have some inability to obtain information from

consolidating the PCA and PCAM would enable production of such documents. Further, while Staff's concern in each power cost filing may be "related to the prudence of the replacement power costs associated with the 2018 Colstrip Outage," the 2018 Colstrip Outage is the only fact in common between the parties. Never before has the Commission consolidated two companies' power cost filings, and one fact in common does not justify consolidation now.

C. Consolidation will not resolve Staff's concerns regarding confidentiality

13. Consolidation of the ERM, PCA and PCAM will complicate confidentiality issues, delaying discovery and delaying potential resolution of each case. Inexplicably, Staff claims that consolidating the three proceedings could resolve the "confidentiality issue" among the three dockets.²⁵ For example, Staff states that there has been inconsistency among the companies as to what the companies consider to be confidential. "The same document has been labeled as both confidential and not confidential in the companies' various responses. Furthermore, some companies have either failed or refused to provide certain documents while the other companies have provided those documents and have marked them as confidential."²⁶ Staff claims that such inconsistencies impair its ability to use confidential information in other dockets, and "[n]avigating these designations and varying interpretations in informal discovery has

Talen"). *See also, id.*, at ¶ 17, ("PSE and Pacific Power have objected frequently to Staff's informal data requests and withheld responsive documents on the basis of several different grounds and asserted privileges.").

²⁵ *See* Motion at ¶ 33.

²⁶ *Id.*

seriously burdened Staff's capacity."²⁷ First, it is wholly inappropriate to use confidential information from one company's docket in another company's docket, especially when the second docket involves parties that have no right to access the first company's confidential information. What Staff sees as an "inconsistency" to be resolved with consolidation actually supports keeping the dockets separate. It is perfectly understandable that PSE does not possess the same documents that Avista or Pacific Power possesses, and vice versa. Further, what one company designates as confidential, another company may consider public. This is not only reasonable, it is appropriate that each company decide for itself what information it possesses is "valuable commercial information". WAC 480-07-160(2)(b).

14. Staff also does not explain how consolidation would resolve any confidentiality "inconsistency". Consolidation is more likely to exacerbate confidentiality issues rather than resolve them. Issuing joint data requests to three companies at once rather than individually is likely to create more delay and produce less information. Avista, Pacific Power and PSE will necessarily be required to reach a consensus on every response to every data request and agree on the confidentiality designation for each document produced. Requiring a consolidated joint response is not only inappropriate, it will undoubtedly delay production of documents and increase the likelihood that a company will object to the data request. Alternatively, the parties will simply submit separate answers to each joint data request, which will do nothing to increase judicial efficiency.

²⁷ *Id.*

15. Staff also does not explain how inconsistent confidentiality designations “limit the amount of information Staff is able to provide the Commission in its responsive recommendations...”²⁸ Staff’s argument does not make sense because Staff and the Commission have statutorily-entitled access to any information designated as confidential. RCW 80.04.095. Accordingly, whether a document is designated as confidential does not in any way limit Staff’s recommendation to the Commission. Staff simply wants to use one company’s data request response in another company’s proceeding. That is not appropriate. Staff also argues that inconsistent confidential designations could lead to inconsistent Staff recommendations and case outcomes.²⁹ Again, it is completely understandable that Staff’s recommendation to the Commission in PSE’s PCA differs from its recommendations in Pacific Power’s and Avista’s cases. The parties have three different power cost cases. Staff’s goal should be to make a correct recommendation, not a consistent one.

D. Consolidation is unnecessary and would create an obstacle to resolving discovery disputes

16. PSE understands Staff’s ultimate concern to be summarized in paragraph 16 of the Declaration of David C. Gomez, “The purpose of these data requests was to ensure I had received all responsive documents before making any recommendation to the Commission.” This is absolutely a legitimate concern, and PSE is committed to providing Staff the information it needs to make an informed recommendation to the

²⁸ Motion at ¶ 34.

²⁹ *Id.*

Commission regarding PSE's PCA. PSE has provided hundreds, if not thousands of documents to Staff in response to Staff's data requests. PSE has conferred telephonically with Staff on multiple occasions regarding additional productions. PSE also offered to personally meet with Staff to address any remaining discovery concerns. Further, PSE will consider disclosing additional documents *in camera* with an administrative law judge. Such *in camera* review may be facilitated by converting PSE's PCA to an adjudicative proceeding, but consolidation of the PCA with the ERM or PCAM will only create an obstacle to such review.

E. Staff's Motion to consolidate is predicated on an incorrect characterization of PSE's PCA filing

17. In its motion to consolidate Staff states, "All three companies are now seeking recovery of the replacement power costs."³⁰ In fact, PSE is not seeking cost recovery in its PCA filing. PSE's filing presents a \$3.5 million under recovery of 2018 power costs.³¹ Given the terms of the PCA, the entire under recovery was absorbed in the company's earnings.³² If PSE had booked an under recovery greater than \$17 million, a portion would have been assigned to customers for potential recovery, and if PSE had booked an over recovery greater than \$17 million a portion would have been assigned to customers for potential credit. This under recovery further distinguishes PSE's PCA from Avista's power cost proceedings. There is no reason to involve two other companies in an adjudicative proceeding related to PSE's PCA filing.

³⁰ Motion at ¶ 15.

³¹ Petition at ¶ 9-10.

³² *Id.*

III. CONCLUSION

18. Consolidation is not necessary or beneficial. There is only one fact in common among the three power cost proceedings, and that fact does not justify consolidation. Moreover, consolidation would complicate and unduly delay the administration of all three cases. Further, any issues that Staff has with confidentiality will not be resolved by consolidation. On the contrary, production of information necessary for Staff to make a recommendation to the Commission will be hindered, rather than helped, by consolidation. Accordingly, PSE respectfully requests that the Commission deny Staff's Motions for Severance and Consolidation.

Respectfully submitted this 10th day of October, 2019.

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