

EXHIBIT NO. _____ (AML-13)
DOCKET NOS. UE-200115
COLSTRIP UNIT 4 SALE
WITNESS: AMANDA MARIE LEVIN

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant, v.

PUGET SOUND ENERGY,

Respondent.

DOCKET NO. UE-200115

**THIRTEENTH EXHIBIT TO THE
PREFILED RESPONSE TESTIMONY OF
AMANDA LEVIN
ON BEHALF OF
THE NATURAL RESOURCES DEFENSE COUNCIL**

October 2, 2020

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Docket UE-200115

Puget Sound Energy

Application Authorizing Sale of PSE Interest in Colstrip Unit 4

PUBLIC COUNSEL DATA REQUEST NO. 008:

Please refer to the Application of Puget Sound Energy for an Order Authorizing the Sale of All of Puget Sound Energy's Interests in Colstrip Unit 4 and Certain of Puget Sound Energy's Interests in the Colstrip Transmission System at 2:12-13.

The Application states that the proposed transaction would "cap PSE's liabilities with compliance costs associated with Colstrip Unit 4".

- a. Please explain in detail, with references to all relevant provisions of the proposed Purchase and Sale Agreement, whether the proposed sale would cap PSE's compliance-cost liabilities at a specific dollar amount.
- b. Please explain in detail whether the cap on PSE's compliance-cost liabilities associated with the proposed transaction would also limit the amount of compliance costs recovered through PSE's retail rates.
- c. Please explain in detail, with references to all relevant provisions of the proposed Purchase and Sale Agreement, whether the proposed transaction would cap PSE's liabilities for remediation costs for coal combustion residuals.

Response:

Section 8.2 through Section 8.6 of the Colstrip Unit 4 Purchase and Sale Agreement, dated as of December 9, 2019, between Puget Sound Energy ("PSE") and NorthWestern Energy ("Colstrip Unit 4 Purchase and Sale Agreement") applies to the allocation of liabilities between PSE and NorthWestern.

Section 8.2 - Liabilities With Respect to the AOC and/or CCR Rules

Section 8.2 of the Colstrip Unit 4 Purchase and Sale Agreement addresses liabilities of PSE and NorthWestern Energy with respect to the AOC¹ and/or CCR Rules.² Section 8.2 generally provides that PSE and NorthWestern Energy will be responsible for liabilities that arise with respect to the AOC and/or CCR Rules based on their existing, pre-Closing Date Project Shares. See, e.g., Roberts, Exh. RJR-6, at 31-32. For PSE, the pre-Closing Date Project Share is 25 percent. For NorthWestern Energy, the pre-Closing Date Project Share is 15 percent.

However, if such liabilities increase due to violation of environmental laws or releases of hazardous substances that wholly arise or substantially take place after closing, then Section 8.2 provides that PSE and NorthWestern Energy will be responsible for liabilities that arise with respect to the AOC and/or CCR Rules based on their post-Closing Date Project Shares. See, e.g., *id.* For PSE, the post-Closing Date Project Share is 12.5 percent. For NorthWestern Energy, the post -Closing Date Project Share is 21.25 percent.

All liabilities caused by or arising from the AOC and/or CCR Rules that arise from or are caused by the deposit, storage, generation, staging, or release of coal combustion residuals shall be based on pre-Closing Date Project Shares, without regard to whether such deposit, storage, generation, staging, or release occurs before or after closing. See, e.g., *id.*

Section 8.3 - Liabilities With Respect to Decommissioning

Section 8.3 of the Colstrip Unit 4 Purchase and Sale Agreement addresses liabilities of PSE and NorthWestern Energy with respect to decommissioning. Section 8.3 generally provides that PSE and NorthWestern Energy will be responsible for liabilities that arise with respect to decommissioning based on their existing, pre-Closing Date Project Shares. See, e.g., *id.* at 32. For PSE, the pre-Closing Date Project Share is 25 percent. For NorthWestern Energy, the pre-Closing Date Project Share is 15 percent.

PSE would not be responsible for any decommissioning liabilities for buildings constructed after closing that intended to predominantly benefit Colstrip Unit 4. See, e.g., *id.*

¹ AOC refers to the Administrative Order on Consent Regarding Impacts Related to Wastewater Facilities Compromising the Closed-Loop System at Colstrip Steam Electric Station, Colstrip Montana entered into between PPL Montana, LLC (n/k/a Talen Montana, LLC) and the Montana Department of Environmental Quality in July and August of 2012, as amended by the March 1, 2017, Agreement to Amend Administrative Order on Consent.

² CCR Rules refers to environmental laws relating to the release, discharge, disposal, storage, remediation, or removal of coal combustion residuals, including those rules issued by the United States Environmental Protection Agency pursuant to subtitle D of the Resource Conservation and Recovery Act.

Section 8.4 - Liabilities With Respect to Pensions

Section 8.4 of the Colstrip Unit 4 Purchase and Sale Agreement addresses liabilities of PSE and NorthWestern Energy with respect to pensions. Section 8.4 generally provides that PSE and NorthWestern Energy will be responsible for pension liabilities that arise prior to closing or are wholly or partially caused by events, incidents, liabilities, work performed, or conditions from prior to closing, based on their existing, pre-Closing Date Project Shares.³ Section 8.4 generally provides that PSE and NorthWestern Energy will be responsible for any costs of any pensions converted after Closing to annuities based on the pre-Closing Date Project Shares for that portion of the costs attributable to employment before closing and based on post-Closing Date Project Shares for that portion of the costs attributable to employment after closing. *See, e.g., id.* at 32. For PSE, the pre-Closing Date Project Share⁴ is 25 percent, and the post-Closing Date Project Share⁵ is 12.5 percent. For NorthWestern Energy, the pre-Closing Date Project Share is 15 percent, and the post-Closing Date Project Share is 21.25 percent.

Section 8.5 - Other Liabilities Based on Pre-Closing Date Project Shares

Section 8.5 of the Colstrip Unit 4 Purchase and Sale Agreement addresses other liabilities of PSE and NorthWestern Energy that will be based on pre-Closing Date Project Shares. Section 8.5 generally provides that PSE and NorthWestern Energy would be responsible for any operating costs incurred for work performed before the Closing Date, but not billed until after the Closing Date, based on their pre-Closing Date Project Shares. *See, e.g., id.* at 33 and 126. For PSE, the pre-Closing Date Project Share is 25 percent. For NorthWestern Energy, the pre-Closing Date Project Share is 15 percent.

Section 8.5 also generally provides that PSE and NorthWestern Energy would be responsible for any costs arising from the ownership or operation of the Colstrip 4 Interests, the Project, or the Common Facilities, in each case that are not described in Sections 8.2, 8.3, 8.4, or 8.6, and that do not arise from or are not caused by items listed on Schedule 8.5 or Schedule 8.6, but that are caused by or which arise from events, occurrences or conditions which a reasonable environmental professional would determine substantially all of such events, occurrences or conditions took place or existed before closing based on their respective pre-Closing Date Project Shares. However, any cost increase due to (a) actions taken after closing, (b) violations of environmental laws that wholly arise or wholly take place after closing or which a reasonable environmental professional would determine substantially all of such violations took place after

³ "Project Share" refers to the ownership interests of a Colstrip Owner, as a tenant in common, in the Project (i.e. Colstrip Units 3 & 4). *See* Roberts, Exh. RJR-3, at 5 and 6.

⁴ The "pre-Closing Date Project Share" refers to the Project Share attributable to each of PSE and NorthWestern Energy as specified in the Ownership and Operation Agreement, dated May 6, 1981, as amended by Amendment No. 1, dated October 11, 1991, Amendment No. 2, dated July 13, 1998, Amendment No. 3 entered into in 2004, and Amendment No. 4 entered into in 2008, between PSE, NorthWestern Energy Portland General Electric Company, the Washington Water Power Company (now Avista), and Pacific Power & Light Company (now PacifiCorp). *See* Roberts, Exh. RJR-6, at 12.

⁵ The "post-Closing Date Project Share" refers to the Project Share attributable to each of PSE and NorthWestern Energy after giving effect to the transactions contemplated by the Colstrip Unit 4 Purchase and Sale Agreement. *See* Roberts, Exh. RJR-6, at 11.

the closing or (c) releases of hazardous substances arising from events, occurrences or conditions that wholly arise or take place or which a reasonable environmental professional would determine substantially all of such events, occurrences or conditions took place after the closing would be addressed in Section 8.6 of the Colstrip Unit 4 Purchase and Sale Agreement. See, e.g., *id.*

Section 8.6 - Other Liabilities Based on Post-Closing Date Project Shares

Section 8.6 of the Colstrip Unit 4 Purchase and Sale Agreement addresses other liabilities of PSE and NorthWestern Energy that will be based on post-Closing Date Project Shares. Section 8.6 generally provides that PSE and NorthWestern Energy would be responsible for costs arising from the ownership or operation of the Colstrip 4 Interests, the Project, or the Common Facilities, in each case that are not governed by Sections 8.2, 8.3, 8.4, or 8.5, and that do not arise from or are not caused by items listed on Schedule 8.5 or Schedule 8.6, but that are wholly caused by or arise wholly from events or occurrences which take place, or which a reasonable environmental professional would determine substantially all of such events or occurrences took place, after Closing based on their respective post-Closing Date Project Shares. See, e.g., *id.* at 33. For PSE, the post-Closing Date Project Share is 12.5 percent. For NorthWestern Energy, the post-Closing Date Project Share is 21.25 percent.

- a. Those provisions identified in Section 8.2, 8.3, 8.4, 8.5, and 8.6 of the Colstrip Unit 4 Purchase and Sale Agreement that allocate liabilities to PSE based on its post-Closing Date Project Share of 12.5 percent limit PSE's liabilities with respect to PSE's ownership with respect to Colstrip Unit 4. For example, if any law or regulation were to require the installation of additional equipment not covered in not governed by Sections 8.2, 8.3, 8.4, or 8.5, and that do not arise from or are not caused by items listed on Schedule 8.5 or Schedule 8.6, after closing, the Section 8.6 would limit PSE's liability to its post-Closing Date Project Share of 12.5 percent
- b. Please see the response to part a. above. To the extent provisions identified in Section 8.2, 8.3, 8.4, 8.5, and 8.6 of the Colstrip Unit 4 Purchase and Sale Agreement allocate liabilities to PSE based on its post-Closing Date Project Share of 12.5 percent instead of its post-Closing Date Project Share of 25 percent, those savings would be reflected in PSE's retail rates.
- c. Please see the summary of Section 8.3 of the Colstrip Unit 4 Purchase and Sale Agreement above. Please also see Section 8.3 of the Colstrip Unit 4 Purchase and Sale Agreement above. *Id.* at 32.