

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of  AVISTA CORPORATION d/b/a AVISTA UTILITIES, PUGET SOUND ENERGY, and PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY  Regarding the 2020 Colstrip Coal Supply Agreement	DOCKET UE-200069
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PACIFIC POWER & LIGHT COMPANY,  Respondent.	DOCKET UE-191024  PUGET SOUND ENERGY'S RESPONSE TO COMMISSION STAFF'S PETITION TO INITIATE JOINT INVESTIGATION

1. Pursuant to the Notice of Opportunity to Respond issued by the Washington Utilities and Transportation Commission (“WUTC” or “Commission”), Puget Sound Energy (“PSE”) hereby responds to the Petition to Initiate Joint Investigation brought by WUTC Staff (“Petition”). As set forth in more detail below, PSE requests that the Commission deny the Petition. A Joint Investigation is unnecessary, will not promote judicial economy, and would compel PSE to participate in an adjudicative proceeding to determine the prudence of a coal supply agreement when PSE has not filed a case requesting such a determination.

2. PSE's representative for purposes of this proceeding is:

PUGET SOUND ENERGY  
RESPONSE TO PETITION TO  
INITIATE JOINT INVESTIGATION- 1

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## I. BACKGROUND

### A. Staff's Petition

3. On January 30, 2020, Commission staff ("Staff") filed a petition with the Commission in Pacific Power's general rate case requesting that the Commission initiate a joint investigation pertaining to: (1) the prudence of the new Colstrip Units 3 and 4 coal supply agreement and (2) Staff's perception that there is a plan to apply pre-combustion additives to coal at Colstrip Units 3 and 4 in order to qualify for a Production Tax Credit and the allocation of the costs and benefits associated with the possibility of such a plan. In the alternative, Staff requested that the Commission order Pacific Power to file supplemental testimony in its current general rate case, Docket UE-191024, regarding the above issues.

4. Staff’s Petition requests a “joint investigation” but, in essence, the request is for the Commission to initiate an adjudicative proceeding, with the use of a protective order and discovery procedures.<sup>1</sup> The adjudicative proceeding would involve three different utilities—PSE, Avista, and PacificCorp— and would seek a prudence determination for the coal supply agreement. It would force PSE to address prudence for a resource outside of a general rate case and before PSE has initiated a proceeding requesting a prudence determination.

5. On January 31, 2020, the Commission issued a Notice of Opportunity to Respond (“Notice”). The Notice afforded interested persons and parties who are not otherwise parties to Pacific Power’s general rate case (including PSE and Avista) the opportunity to respond to Staff’s Petition.

#### **B. Pacific Power’s General Rate Case**

6. Pacific Power filed a general rate case on December 13, 2019. Staff’s Petition apparently arises from the fact that it “received a highly confidential copy of the new Colstrip Units 3 and 4 coal supply agreement in response to a data request propounded by Staff in PSE’s current general rate case” but “has not received the agreement from any of the other Colstrip owners, even though Pacific Power is seeking recovery of the increased costs associated with the new agreement in its current general rate case.”<sup>2</sup> Staff claims that it cannot discuss its concerns pertaining to the coal supply agreement with Pacific Power in any specificity without violating the protective order in PSE’s general rate case.<sup>3</sup> Staff does not indicate whether it has asked Pacific Power to provide the coal supply agreement in discovery nor does Staff assert that Pacific Power is unwilling to provide the coal supply agreement in discovery in its general rate case.

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<sup>1</sup> Petition at ¶¶ 2, 17-19 (discussing need for two-tiered protective order and discovery).

<sup>2</sup> Petition at ¶ 2.

<sup>3</sup> *Id.*

**C. PSE Has Been Forthcoming About the Coal Supply Agreement in PSE’s General Rate Case**

7. PSE has been forthcoming throughout its 2019 general rate case regarding the coal supply agreement that was being negotiated in 2019 to replace the coal contract that expired in December 2019. PSE advocated in the initial filing in its general rate case for an update to power costs as PSE has provided in past general rate cases; the coal supply agreement would have been included in the update. At the prehearing conference in Docket UE-190529 et al., Staff argued for a very limited power cost update that did not include the coal supply agreement. After negotiating for nearly two hours at the prehearing conference the parties agreed to a very limited scope of power cost update that did not include the coal supply agreement, which was reflected in the prehearing conference order.<sup>4</sup>

8. Staff ultimately reversed its position in November 2019 and filed a motion for leave to file supplemental testimony to address the coal supply agreement.<sup>5</sup> While PSE did not oppose Staff’s change of position, Public Counsel and AWEC did oppose it. Ultimately, the Commission denied Staff’s motion to file supplemental testimony.<sup>6</sup> Even so, PSE provided to Staff in response to discovery the unsigned working group draft term sheet, and once the coal supply agreement was executed, PSE provided this agreement to Staff.<sup>7</sup> In summary, PSE has been forthcoming with Staff about the status of the coal supply agreement.

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<sup>4</sup> See Dockets UE-190529 et al, PSE’s Response to Commission Staff’s Motion For Leave to File Supplemental Testimony at ¶ 5; Order 03, Appendix B.

<sup>5</sup> See Dockets UE-190529 et al, Staff’s Motion For Leave to File Supplemental Testimony.

<sup>6</sup> See Dockets UE-190259 et al., Order 05/02.

<sup>7</sup> Staff incorrectly claims PSE failed to provide the term sheet in response to a data request. Petition at ¶ 9. PSE kept Staff informed of the status of the negotiations of the coal supply agreement in informal meetings, responded appropriately to the data requests propounded by Staff, provided the unsigned working group draft terms sheet which “outlines the basic points for a potential contract if agreeable terms can be reached” when requested, and provided the new coal supply agreement once it was finalized and executed in December 2019. See Dockets UE-190529 et al., PSE’s Response to Commission Staff’s Motion For Leave to File Supplemental Testimony at ¶¶ 7-12.

**D. PSE, Avista and Pacific Power Have Been Co-Owners of Colstrip Units 3 and 4 for Decades**

9. PSE, Avista, and Pacific Power have been co-owners of Colstrip Units 3 and 4 for decades. During those years, numerous issues relating to prudence of capital expenditures, operations and maintenance expense, major maintenance, forced and unforced outages, and other issues have arisen in each company's general rate cases. Generally, the Commission has addressed these prudence and cost recovery issues in each company's general rate cases, without setting joint proceedings to discuss each issue.

**II. RESPONSE**

**A. A Prudence Review of PSE's Increased Costs Associated with the New Coal Supply Agreement Is Premature Because PSE has not Initiated a Proceeding Seeking Prudence Review or Requesting Cost Recovery.**

10. The appropriate forum for a prudence review is a proceeding initiated by the company in which the company seeks a prudence determination or rate recovery. Commission Staff has previously argued that the Commission should examine prudence issues exclusively in general rate cases, which are formal, contested proceedings.<sup>8</sup> Yet, here, Staff requests a prudence review in the context of an investigation with all three Washington investor-owned electric utilities, when PSE is not yet seeking recovery of the costs and has not filed a case seeking a prudence review. This goes against decades of established ratemaking principles. The Commission has previously stated that the prudence review of new resource acquisitions would be conducted in general rate cases only. "The Commission again clearly stated that the prudence of resource contracts would be decided in the context of the general rate case.... The

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<sup>8</sup> *WUTC v. Puget Sound Power and Light*, Docket UE-920433, et al., Eleventh Supplemental Order at 27-28, 147 P.U.R. 4th 80 (1993). See also *WUTC, v. Pac. Power & Light Co.*, Docket UE-140762, Order 3 (May 29, 2014). ("Staff has not yet performed a prudency review of the Merwin Project and believes the best forum for determining prudency is a GRC, rather than a separate consideration of PacifiCorp's Schedule 90 or a deferred accounting review.")

Commission sees no reason to modify its previous decisions with respect to the appropriate forum to consider prudence review.”<sup>9</sup>

11. The Commission recently confirmed this principle in a policy statement. “Electrical company resource decisions undergo rigorous review by staff and stakeholders throughout the integrated resource planning cycle, and a full prudence evaluation by staff and interveners in a general rate case.”<sup>10</sup> Staff points to no case where the Commission has determined prudence of costs outside of a company-initiated proceeding. Here, Staff asks the Commission to determine prudence of a coal supply agreement when PSE has not filed a case seeking prudence of the agreement and where the issues are limited to one document. Staff’s request is a significant departure from decades of established ratemaking policy.<sup>11</sup>

**B. Initiating A Proceeding to Determine the Allocation of Costs and Benefits Associated With Pre-Combustion Additives Is Premature.**

12. Staff relies on nothing more than an on-line job announcement by Tinuum Group, LLC, to request that the Commission open an investigation to determine the allocation of production tax credits that may or may not result from the application of a pre-combustion additive that may or may not be applied to Colstrip coal sometime in the future.<sup>12</sup> Staff’s request is, at best, extremely premature. As Staff states, no Colstrip owner has expressed any plan to apply pre-combustion additive to Colstrip fuel.<sup>13</sup> If, at some point in the future, PSE and the

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<sup>9</sup> *WUTC v. Puget Sound Power and Light*, Docket UE-920433, et al., Eleventh Supplemental Order at 27-28, 147 PUR 4th 80 (1993).

<sup>10</sup> Docket UE-160799, Policy Statement re: Commission Regulation of EV Charging Services, ¶ 25 (June 14, 2017) 2017 WL 4484990, 338 PUR 4th 1.

<sup>11</sup> Additionally, Staff’s initiation of a prudence proceeding for the coal supply agreement may cause the burden of proof to shift to Staff on the prudence issue for the coal supply agreement, with respect to PSE and Avista who have not filed for such a determination. *See e.g., City of Seattle v. Pub. Serv. Comm. of Washington*, 76 Wash. 492, 500, 136 P. 850 (1913).

<sup>12</sup> Petition at ¶ 12, citing Exh. DCG-13 in Docket UE-190882.

<sup>13</sup> Petition at ¶ 4.

Colstrip owners agree and vote to apply the pre-combustion additive and, if application of that pre-combustion additive ultimately results in associated costs or benefits, then PSE will, at that time, seek the appropriate rate making treatment associated with those costs or benefits.

**C. An Adjudicative Proceeding Is Not Necessary.**

13. Staff has requested that the Commission initiate a joint investigation into the prudence of increased costs associated with a new coal supply agreement at Colstrip Units 3 and 4, but Staff admits that it actually filed its Petition because it simply wants to ask PSE, Pacific Power and Avista some general questions about that one document, and it prefers to do that in a joint proceeding rather than ask questions of each company separately.<sup>14</sup> Initiating a separate adjudicative proceeding for this purpose is inappropriate and unnecessary.

14. The Commission's procedural rules provide for the relief Staff seeks without the administrative burden of initiating an adjudicative proceeding. Staff's Petition was filed simply to 1) obtain a copy of a 2020 Colstrip Units 3 and 4 coal supply agreement to use in Pacific Power's pending rate case,<sup>15</sup> and 2) ask PSE, Avista and Pacific Power general questions about the contract.<sup>16</sup> Staff admittedly wants to open a separate, joint proceeding involving all three electric investor-owned utilities in the state simply to ask questions about one document. The Commission's procedural rules expressly reference and protect the Commission's authority and ability to audit or obtain the books and records of the states' public service companies, *whether or not in the context of an adjudicative proceeding*.<sup>17</sup> In the context of the PacifiCorp general rate case, Commission Staff has a wide variety of discovery mechanisms available including data

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<sup>14</sup> Petition at ¶ 2.

<sup>15</sup> Staff complains that "Pacific Power is currently seeking recovery of the increased costs associated with the new coal supply agreement — yet it did not provide a copy of the new agreement with its initial filing." Petition at ¶ 21.

<sup>16</sup> "Staff has not formed a position on whether the increased costs within the new agreement are prudent, but at this point only has questions it would like to ask each of the signatories to the agreement—Avista, PSE, and Pacific Power—preferably in a single proceeding (as opposed to three separate proceedings)." Petition at ¶ 2.

<sup>17</sup> See WAC 480-07-400(1).

requests,<sup>18</sup> bench requests,<sup>19</sup> subpoenas,<sup>20</sup> and even depositions<sup>21</sup> that allow Staff to access the desired information. But even outside of an adjudicative proceeding, Commission Staff routinely reviews company records, issues informal data requests, and audits company books and records.<sup>22</sup> Staff can ask questions and review records from companies outside of an adjudication. There is no reason why PSE should be brought into an adjudicative proceeding for a prudence determination when it has not filed a general rate case or other case seeking cost recovery or a prudence determination.

15. It is unclear why Staff's Petition references the protective order in PSE's general rate case, Dockets UE-190529 et al., but it is incorrect to imply that the protective order in Docket UE-190529 in any way limits Staff's ability to obtain the coal supply agreement from Pacific Power in the ongoing general rate case. Nothing in the Commission's rules or the protective order in Docket UE-190529 limits Staff's ability to request the same document from another company if it is relevant in another proceeding. In other words, Staff can request the coal supply agreement from Pacific Power in that company's ongoing rate case without violating the protective order in PSE's general rate case.

**D. Staff's Petition Would Misuse Administrative Resources**

16. Staff's reliance on Docket UE-190882 to justify initiating a new investigation is misplaced, and Staff's reference to that docket is inapplicable and irrelevant. In the Colstrip outage investigation, Docket UE-190882, each company had initiated an annual power cost review proceeding to seek the Commission's prudence determination for short-term variable power costs including replacement power costs related to an outage at the Colstrip Generating

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<sup>18</sup> See WAC 480-07-400(1)(c)(iii).

<sup>19</sup> See WAC 480-07-400(1)(c)(iv).

<sup>20</sup> See WAC 480-07-400(2)(a).

<sup>21</sup> See WAC 480-07-410.

<sup>22</sup> See WAC 480-07-400(1).



Plant. Staff then initiated data requests to each company, some of which were unclear and called for data that either did not exist or was not in the possession of the company. Here, Staff wants one document, and it is undisputed that Pacific Power possesses the document. There is no reason to initiate an adjudicative proceeding among three companies to obtain one document.

17. Further, Staff's claim of judicial economy simply makes no sense. Currently, Pacific Power is the only owner seeking a prudence determination or recovery of any costs associated with the Colstrip coal supply agreement. That case was recently filed, is currently pending, and is an appropriate forum for determining the prudence and ratemaking treatment of Pacific Power's costs. PSE and Avista, on the other hand, are likely to seek recovery of costs associated with the coal supply agreement in a future rate case, as appropriate. If Staff is successful in persuading the Commission to open a joint adjudicative proceeding at this time to determine the prudence of costs related to the Colstrip coal supply agreement, that does not mean that PSE's and Avista's future rate proceeding will not occur, it simply means that costs related to the coal supply agreement will be removed from a rate case or other proceeding filed by the utility to be determined separately, and prematurely. That would result in an additional proceeding that PSE did not file, and more administrative costs for all parties, not less. To put it simply, the Commission would be initiating an unnecessary, fourth adjudicative proceeding to determine the prudence and ratemaking treatment of a single issue. This does not promote judicial economy.

**E. Staff's Petition Is an Attempt To Relitigate The Commission's Denial Of Staff's Motion In Docket UE-190529**

18. Staff recently moved to address the coal supply agreement in PSE's still-pending general rate case, Docket UE-190529. The Commission denied Staff's motion.<sup>23</sup> There, AWEC

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<sup>23</sup> Dockets UE-190259 *et al.*, Order 05/02.

and Public Counsel both argued that a prudence review of the coal supply agreement must be conducted in a subsequent power cost proceeding.

Prior to determining prudence, the Commission should receive robust evidence on, among other things, whether continued operation of Colstrip Units 3 and 4 under a new supply contract is a lower cost, lower risk decision than closing these units outright. This requires complex and detailed modeling of Colstrip's economics relative to the economics of alternative resources available to the Company.<sup>24</sup>

AWEC also expressed its preference that the coal supply agreement costs be reviewed in an established procedural mechanism that “would allow stakeholders the opportunity to develop a full and complete record upon which the Commission can base a determination regarding the prudence of the new contract and its terms.”<sup>25</sup> Public Counsel shared AWEC's concerns, explaining that the coal supply agreement costs should be reviewed, not in isolation, but with other power costs in a power cost rate proceeding.<sup>26</sup> The Commission agreed, finding that the coal supply agreement would introduce a complex issue that should be addressed in the context of a later proceeding.<sup>27</sup>

19. Staff's Petition reflects its attempt at a reconsideration of that decision. No relevant facts have changed since that order was issued two months ago. A robust prudence review of PSE's decisions with respect to the coal supply agreement should be conducted by

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<sup>24</sup> Docket UE-190529 *et al.*, AWEC Response to Staff's Motion for Leave to File Supplemental Testimony at ¶ 8,

<sup>25</sup> *Id.* at ¶ 12.

<sup>26</sup> Dockets UE-190529 *et al.*, Public Counsel Response to Staff Motion for Leave to File Supplemental Testimony at ¶¶4-5.

<sup>27</sup> Dockets UE-190259 *et al.*, Order 05/02 at ¶¶ 9-10.

stakeholders when PSE files a case seeking a prudence determination or cost recovery of the agreement.

20. For the reasons set forth above, PSE respectfully requests the Commission deny Staff's Petition To Initiate a Joint Investigation.

DATED: February 20, 2020.

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By

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