

**EXH. RJR-1CT  
DOCKET UE-191037  
COLSTRIP UNIT 4 SALE  
WITNESS: RONALD J. ROBERTS**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of 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**

**Docket UE-191037**

**PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF  
RONALD J. ROBERTS  
ON BEHALF OF PUGET SOUND ENERGY**

**REDACTED  
VERSION**

**FEBRUARY 19, 2020**

**PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF  
RONALD J. ROBERTS  
ON BEHALF OF PUGET SOUND ENERGY**

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**PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF  
RONALD J. ROBERTS  
ON BEHALF OF PUGET SOUND ENERGY**

**LIST OF EXHIBITS**

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| Exh. RJR-2  | Professional Qualifications of Ronald J. Roberts                    |
| Exh. RJR-3  | Colstrip Units 3 & 4 Ownership and Operation Agreement              |
| Exh. RJR-4  | Colstrip Common Facilities Agreement                                |
| Exh. RJR-5C | Memorandum to the PSE Board of Directors, dated<br>October 22, 2019 |
| Exh. RJR-6  | Colstrip Unit 4 Purchase and Sale Agreement                         |
| Exh. RJR-7  | Colstrip Transmission System Purchase and Sale Agreement            |
| Exh. RJR-8C | Confirmation for the NorthWestern Energy PPA                        |

1                                   **PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF**  
2                                   **RONALD J. ROBERTS**  
3                                   **ON BEHALF OF PUGET SOUND ENERGY**

4                                   **I.       INTRODUCTION**

5   **Q.     Please state your name, business address, and position with Puget Sound**  
6           **Energy.**

7   A.    My name is Ronald J. Roberts. My business address is 355 110th Ave NE  
8           Bellevue, WA 98004. I am Director of Generation and Natural Gas Storage for  
9           Puget Sound Energy (“PSE”).

10 **Q.    Have you prepared an exhibit describing your education, relevant**  
11         **employment experience, and other professional qualifications?**

12 A.    Yes, I have. Please see the First Exhibit to the Prefiled Direct Testimony of  
13         Ronald J. Roberts, Exh. RJR-2.

14 **Q.    What are your duties as Director of Generation and Natural Gas Storage for**  
15         **PSE?**

16 A. I plan, organize, and direct PSE's energy production, including operations and  
17         maintenance of PSE’s owned and jointly-owned generating facilities and PSE’s  
18         thermal purchased power agreements. Furthermore, I assist PSE’s Resource  
19         Acquisition team in performing due diligence evaluations of potential resource  
20         acquisitions. I am also responsible for overseeing the safe operation of PSE's  
21         thermal, hydro, natural gas storage, and wind generation plants and optimizing

1 their operation in a manner that provides customers with reliable and efficient  
2 power.

3 **Q. Please summarize your testimony.**

4 A. This prefiled direct testimony describes the following:

- 5 • a series of proposed transactions (the “Proposed Transactions”)  
6 with NorthWestern Energy Corporation (“NorthWestern  
7 Energy”), including:
  - 8 ○ the sale of all of PSE’s interests in Colstrip Unit 4 to  
9 NorthWestern Energy;
  - 10 ○ the sale of certain interests of PSE in the Colstrip  
11 Transmission System to NorthWestern Energy; and
  - 12 ○ a power purchase agreement with NorthWestern Energy  
13 for 90 MW of output of Colstrip Unit 4, commencing  
14 June 1, 2020, and expiring on May 15, 2025 (the  
15 “NorthWestern Energy PPA”);
- 16 • the principal commercial terms and conditions of the Proposed  
17 Transactions;
- 18 • the need for the Proposed Transactions;
- 19 • the analyses supporting the selection by PSE of the Proposed  
20 Transactions;
- 21 • key risk factors related to the Proposed Transactions; and
- 22 • the benefits of the Proposed Transactions.

23 The Proposed Transactions would be a valuable step in preparing PSE for the  
24 period beginning January 1, 2026, in which PSE will no longer be able to serve  
25 retail customer loads with power from coal-fired generation.

1 The principal benefits of the proposed transaction are as follows:

- 2 (i) the proposed transactions allow PSE to dispose of its  
3 interests in Colstrip Unit 4 while simultaneously benefitting  
4 customers from lower power prices;
- 5 (ii) PSE projects that the Proposed Transactions provide  
6 benefits to retail customers for the period 2020 through  
7 2025 with a projected net present value of
- 8 • \$58 million, if PSE does not hedge market prices  
9 associated with either (a) the net reduction of 95  
10 MW of capacity resulting from the Proposed  
11 Transactions or (b) the 90 MW of output from  
12 Colstrip Unit 4 that PSE will purchase under the  
13 NorthWestern Energy PPA; or
  - 14 • \$37 million, if PSE (a) hedges market prices  
15 associated with the net reduction of 95 MW of  
16 capacity resulting from the Proposed Transactions  
17 or (b) but does not hedge market prices associated  
18 with the 90 MW of output from Colstrip Unit 4 that  
19 PSE will purchase under the NorthWestern Energy  
20 PPA.
- 21 (iii) The loss of capacity resulting from the sale of Colstrip  
22 Unit 4 will be partially mitigated by the NorthWestern  
23 Energy PPA, which will allow PSE to purchase 90 MW of  
24 output of Colstrip Unit 4 during the period beginning  
25 June 1, 2020, and expiring on May 15, 2025;
- 26 (iv) PSE limits its liabilities associated with compliance costs  
27 associated with Colstrip Unit 4 as of the date of closing of  
28 the sale of its interests in Colstrip Unit 4 to NorthWestern  
29 Energy; and
- 30 (v) PSE will accelerate its path to compliance with the  
31 Washington Clean Energy Transformation Act (subject to a  
32 final resolution of Colstrip Unit 3) and significantly reduce  
33 PSE's greenhouse gas emissions with an annual average  
34 reduction of 350,000 metric tons of carbon dioxide.

35 Based on the declining economics of Colstrip Units 3 & 4, the enactment of the  
36 Washington Clean Energy Transformation Act that prohibits PSE from serving its

1 customers with coal-fired generation on and after January 1, 2026, the  
2 identification and analysis of alternatives considered by PSE, and the described  
3 benefits of the proposed transactions, PSE is respectfully seeking Commission  
4 approval of (i) the sale of PSE’s interests in Colstrip Unit 4 to NorthWestern  
5 Energy and (ii) the sale of certain PSE’s interests in the Colstrip Transmission  
6 System to NorthWestern Energy.

7 **II. BACKGROUND REGARDING COLSTRIP UNIT 4 AND**  
8 **THE COLSTRIP TRANSMISSION SYSTEM**

9 **Q. Please describe the Colstrip Unit 4 and PSE’s interests therein.**

10 A. Colstrip Unit 4 is a 740 MW coal-fired steam plant located in Colstrip, Montana.  
11 Construction for Colstrip Unit 4 started in 1979 and began operating in 1986.  
12 Since that time, Colstrip Unit 4 has operated in conjunction with Colstrip Unit 3,  
13 and neighboring Colstrip Units 1 & 2 (collectively, the “Colstrip Generating  
14 Station”). Colstrip Unit 4 is jointly owned by five regulated utilities, as set forth  
15 below in Table 1.

16 **Table 1. Ownership Structure of Colstrip Unit 4**

<b>Owner</b>	<b>Ownership Interest</b>
NorthWestern Energy	30%
Puget Sound Energy	25%
Portland General Electric	20%
Avista	15%
PacifiCorp	10%

1 Colstrip Unit 3 is jointly owned by four regulated utilities and an independent  
2 power producer, as set forth below in Table 2.

3 **Table 2. Ownership Structure of Colstrip Unit 3**

<b>Owner</b>	<b>Ownership Interest</b>
Talen Montana LLC	30%
Puget Sound Energy	25%
Portland General Electric	20%
Avista	15%
PacifiCorp	10%

4 As shown in Tables 1 and 2 above, Talen Montana LLC (“Talen Montana”) owns  
5 a 30 percent share of Colstrip Unit 3, and NorthWestern Energy owns a  
6 30 percent share of Colstrip Unit 4. Talen Montana and NorthWestern Energy are  
7 parties to a reciprocal sharing agreement that realizes a 15 percent share of each  
8 unit’s generation for each of Talen Montana and NorthWestern Energy.

9 Each of Colstrip Units 3 & 4 consists of a fuel supply system, a coal-fired boiler,  
10 a steam turbine-generator, a cooling tower, step-up transformers, piping, pollution  
11 control equipment, ash handling and disposal ponds, and electric distribution and  
12 auxiliary equipment. Colstrip Units 3 & 4 are each paired, sharing certain  
13 common systems. Also, Colstrip Units 1 & 2 (now retired as of January 3, 2020)  
14 and Colstrip Units 3 & 4 share certain common facilities (administrative  
15 buildings, supply warehouse, water supply system, transmission lines, etc.).

16 Two agreements govern Colstrip Units 3 & 4:

- 17 (i) the Ownership and Operation Agreement, dated as of  
18 May 6, 1981, by The Montana Power Company, Puget

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Sound Power and Light Company, The Washington Water Power Company, Portland General Electric Company, Pacific Power and Light Company, and Basin Electric Power Company that provides for the terms and conditions of the construction and ownership and operation and maintenance of Colstrip Units 3 & 4 (the “Colstrip Units 3 & 4 Ownership and Operation Agreement”); and

(ii) the Common Facilities Agreement, dated as of May 6, 1981, by and between The Montana Power Company, Puget Sound Power & Light Company, Puget Colstrip Construction Company, The Washington Water Power Company, Portland General Electric Company, Pacific Power & Light Company, and Basin Electric Power Cooperative (the “Colstrip Common Facilities Agreement”).

Please see the Second Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-3, for a copy of the Colstrip Units 3 & 4 Ownership and Operation Agreement.

Please see the Third Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-4, for a copy of the Colstrip Common Facilities Agreement.

**Q. Please describe the Colstrip Project Transmission System and PSE’s interests therein.**

A. Please see the Prefiled Direct Testimony of Thomas M. Flynn, Exh. TMF-1T, for a description of the Colstrip Project Transmission System and PSE’s interests therein.

1           **III.     PSE’S EVALUATIONS OF ITS CONTINUED OWNERSHIP**  
2                                   **INTERESTS IN COLSTRIP UNITS 3 & 4**

3     **A.     Need for the Proposed Transactions**

4     **Q.     Please describe the challenges facing PSE’s continued ownership of its**  
5           **interests in Colstrip Unit 4.**

6     A.     The Colstrip Generating Station faces a changing landscape of evolving energy  
7           markets, new environmental regulation, potential carbon pricing, aging  
8           infrastructure, periodic litigation, and potential valuation differences among the  
9           six owners. As these factors influence operations of the Colstrip Generating  
10          Station, PSE continually evaluates its ownership interests in these assets, as it  
11          does all the assets within PSE’s portfolio.

12          Please see the Sixth Exhibit to the Prefiled Direct Testimony of Ronald J.  
13          Roberts, Exh. RJR-5C, for a copy of a Memorandum to the PSE Board of  
14          Directors, dated October 22, 2019 (the “PSE Board Memorandum”). In particular,  
15          please see Exhibit RJR-5C, at pages 22-38, for a summary of challenges facing  
16          PSE’s continued ownership of its interests in Colstrip Unit 4.

17     **Q.     Please describe PSE’s evaluation of its ownership interests in its Colstrip**  
18           **Generating Station.**

19     A.     PSE continually evaluates its ownership interests in its Colstrip Generating  
20          Station assets. In 2018, PSE considered the potential of closing Colstrip  
21          Units 3 & 4 but ultimately determined that such an action would be extremely

1 difficult, if not impossible, due to the provisions of the Ownership and Operation  
2 Agreement that requires unanimity among the owners to effectuate a closure.<sup>1</sup>

3 [REDACTED] first approached PSE during the first  
4 half of 2019 regarding a potential sale of PSE's interests in Colstrip Units 3 & 4.  
5 Ultimately, the transaction proposed by [REDACTED]  
6 [REDACTED], which was conditioned, in part, on [REDACTED]  
7 [REDACTED], failed because [REDACTED]  
8 [REDACTED].<sup>2</sup>

9 After the failure of the condition precedent to the transaction proposed by  
10 [REDACTED], NorthWestern Energy approached PSE  
11 in July 2019 regarding a potential sale of PSE's interests in Colstrip Unit 4.<sup>3</sup> As  
12 discussed below, discussions between PSE and NorthWestern Energy initiated in  
13 July 2019 have resulted in the proposed transaction for which PSE now seeks  
14 approval.

15 **B. Deal Proposed to PSE in the First Half of 2019**

16 **Q. What were the commercial terms of the deal proposed by [REDACTED]  
17 [REDACTED] in the first half of 2019?**

18 **A. The principal commercial terms of the deal proposed by [REDACTED]  
19 [REDACTED] in the first half of 2019 were as follows:**

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<sup>1</sup> See Roberts, Exh. RJR-5C, at 38.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 39.

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**Table 7. Summary of the Principal Commercial Terms of the Deal Proposed by [REDACTED] in the First Half of 2019**

**General:**

[REDACTED]

**Purchase Price:**

[REDACTED]<sup>5</sup>

**Purchased Assets:**

[REDACTED]<sup>6</sup>

**Retained Assets:**

[REDACTED]  
:

- [REDACTED]

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<sup>4</sup> See Roberts, Exh. RJR-5C, at 39; *see also id.* at 285-86.  
<sup>5</sup> See Roberts, Exh. RJR-5C, at 39; *see also id.* at 286.  
<sup>6</sup> See Roberts, Exh. RJR-5C, at 39-40; *see also id.* at 286.

[REDACTED];

- [REDACTED]; and

- [REDACTED].<sup>7</sup>

**Assumed  
Liabilities:**

[REDACTED].<sup>8</sup>

**Excluded  
Liabilities:**

[REDACTED].<sup>9</sup>

**Environmental  
Costs:**

[REDACTED].<sup>10</sup>

**Conditions  
Precedent:**

- [REDACTED]

<sup>7</sup> See Roberts, Exh. RJR-5C, at 40; *see also id.* at 286-87.

<sup>8</sup> See Roberts, Exh. RJR-5C, at 40-41; *see also id.* at 287.

<sup>9</sup> See Roberts, Exh. RJR-5C, at 41; *see also id.* at 287-88.

<sup>10</sup> See Roberts, Exh. RJR-5C, at 41; *see also id.* at 288.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED].<sup>11</sup>

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<sup>11</sup> See Roberts, Exh. RJR-5C, at 41-42; *see also id.* at 289-91.

[REDACTED]

[REDACTED]

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**Q. Why was the deal proposed by [REDACTED] in the first half of 2019 unsuccessful?**

A. As previously mentioned, the [REDACTED]  
[REDACTED]  
[REDACTED], and in addition, the [REDACTED]  
[REDACTED] made the economics unpalatable. Therefore, the parties did not proceed far in negotiations beyond the initial proposal of [REDACTED]  
[REDACTED].<sup>14</sup>

**Q. Did PSE’s preliminary analysis of the deal proposed by [REDACTED] in the first half of 2019 project potential benefits to PSE customers?**

A. No. The preliminary analyses conducted by PSE indicated that the proposal failed to provide benefits to PSE customers. At the time of the analysis in May of 2019,

<sup>12</sup> See Roberts, Exh. RJR-5C, at 42; see also *id.* at 286.  
<sup>13</sup> See Roberts, Exh. RJR-5C, at 42; see also *id.* at 282.  
<sup>14</sup> See Roberts, Exh. RJR-5C, at 42-43.

1 PSE projected that continued operations of Colstrip Units 3 & 4 on a "business as  
2 usual" basis would cost PSE customers a net present value of \$641 million  
3 through the end of the calendar year 2025. In comparison, PSE projected that the  
4 proposal of [REDACTED] would cost PSE customers  
5 a net present value of \$826 million over the same period. Therefore, the proposal  
6 of [REDACTED] in the first half of 2019 would have  
7 cost PSE customers a net present value of \$185 million when compared to PSE  
8 continuing ownership of Colstrip Units 3 & 4 through the end of the calendar year  
9 2025.<sup>15</sup>

10 **C. Deal Proposed by NorthWestern Energy in July 2019**

11 **Q. Please describe the proposal made by NorthWestern Energy in July 2019.**

12 A. In July 2019, NorthWestern Energy approach PSE regarding a potential sale of  
13 PSE's interests in Colstrip Unit 4. The principal commercial terms of the deal  
14 proposed by NorthWestern Energy in July of 2019 were as follows:<sup>16</sup>

15 **Table 8. Summary of the Principal Commercial Terms of**  
16 **the Deal Proposed by NorthWestern Energy in July of 2019<sup>17</sup>**

**General:** NorthWestern Energy would acquire all of PSE's  
ownership interests and rights in Colstrip Unit 4 in such  
a manner that, following the closing of the proposed  
transaction, NorthWestern Energy would own fifty-five  
percent (55%) of Colstrip Unit 4.<sup>18</sup>

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<sup>15</sup> See Roberts, Exh. RJR-5C, at 42; *see also id.* at 300-02.

<sup>16</sup> See Roberts, Exh. RJR-5C, at 43; *see also id.* at 308-18.

<sup>17</sup> See Roberts, Exh. RJR-5C, at 43.

<sup>18</sup> See *id.* at 43-44.

<b>Purchase Price:</b>	One dollar (\$1.00) <sup>19</sup>
<b>Purchased Assets:</b>	The purchased assets would include all rights, title and interest of PSE in Colstrip Unit 4, including PSE's pro rata interest (with respect to its interest in Colstrip Unit 4) in the Common Facilities (as defined in the Common Facilities Agreement), real property (both generating and non-generating), real property leases, inventory (including fuel), contracts for goods or services, security deposits (including PSE's share of any working capital deposit held by Talen Montana), prepaid expenses, fuel contracts with coal suppliers, and emission allowances. <sup>20</sup>
<b>Retained Assets:</b>	<p>PSE would retain all of its rights, title, and interest in the following:</p> <ul style="list-style-type: none"> <li>• Colstrip Units 1, 2, and 3, including PSE's pro rata interest (with respect to its interest in Colstrip Units 1, 2, and 3) in the Common Facilities, real property (both generating and non-generating), real property leases, inventory (including fuel), contracts for goods or services, security deposits (including PSE's share of any working capital deposit held by Talen Montana), prepaid expenses, fuel contracts with coal suppliers, and emission allowances; and</li> <li>• Other retained assets that may be identified in the course of negotiating the definitive agreement.<sup>21</sup></li> </ul>
<b>Assumed Liabilities:</b>	NorthWestern Energy would assume certain specified liabilities of PSE associated with the purchased assets upon the closing of the proposed transaction. The assumed liabilities will include only specified liabilities in respect of the purchased assets, including liabilities and claims with respect to the purchased assets arising after the closing of the proposed transaction. <sup>22</sup>

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<sup>19</sup> See *id.* at 44.

<sup>20</sup> See Roberts, Exh. RJR-5C, at 44.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* at 44-45.

**Excluded Liabilities:** PSE would retain and have exclusive responsibility for (i) all liabilities and obligations not related to the purchased assets and (ii) all liabilities and obligations relating to the purchased assets other than the assumed liabilities.<sup>23</sup>

**Environmental Costs:** PSE would bear its pro rata share of remediation costs, decommissioning costs, and miscellaneous shutdown costs.<sup>24</sup>

**Conditions Precedent:** The closing of the proposed transaction would be subject to the following conditions precedent:

- Receipt of all necessary consents and approvals for the transaction by governmental bodies, including approval of FERC under section 203 of the Federal Power Act, approval of the Montana Public Service Commission and the WUTC, and expiration or early termination of the waiting period under the Hart-Scott-Rodino Act, to the extent each such approval is required.
- Either no other owner of Colstrip Units 3 & 4 exercise its right of first refusal to acquire any of the interests being transferred to NorthWestern Energy by PSE under the Ownership and Operations Agreement or the parties' receipt of the written consent of the other owners of Colstrip Unit 4 to the transfer of PSE's interests to NorthWestern Energy pursuant to the Ownership and Operations Agreement.
- Closing of NorthWestern Energy's acquisition of certain of PSE's interests in the Colstrip Transmission System.
- Effectiveness of the NorthWestern Energy PPA.<sup>25</sup>

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<sup>23</sup> See *id.* at 45.

<sup>24</sup> See Roberts, Exh. RJR-5C, at 45.

<sup>25</sup> See *id.* at 45-46.

**NorthWestern Energy PPA:**

PSE would enter into a power purchase agreement with NorthWestern Energy for up to 90 MW of output from Colstrip Unit 4 with a term commencing on the hour ending 0100 on June 1, 2020, through hour ending 2400 on May 15, 2025. The pricing under the NorthWestern Energy PPA would be the higher of

- (i) the Mid C Day-Ahead Index Price for on-peak and off-peak periods, as applicable, as published by the Intercontinental Exchange for the applicable day of delivery; and
- (ii) the marginal operating cost of Colstrip Unit 4.<sup>26</sup>

**Colstrip Transmission System Interests:**

PSE would sell a pro rata share of its interests in the Broadview-to-Townsend segment of the Colstrip Transmission System to Northwestern Energy at book value.<sup>27</sup>

1 **Q. Was it important to PSE that the structure proposed by NorthWestern**  
2 **Energy contained a proposed power purchase agreement for ninety**  
3 **megawatts of capacity?**

4 A. Yes. If PSE were to sell all of its interests in Colstrip Unit 4 to NorthWestern  
5 Energy, this would result in a reduction of 185 MW in generating capacity for  
6 PSE. The NorthWestern Energy PPA would replace 90 MW of the capacity  
7 reduction through May 15, 2025, leaving PSE with a net reduction of 95 MW of  
8 capacity through May 15, 2025. For purposes of analysis, PSE assumed that it  
9 would replace all of the lost capacity during the term of the NorthWestern Energy  
10 PPA with power purchased at the Mid C Day-Ahead Index Price for on-peak and  
11 off-peak periods, as applicable, as published by the Intercontinental Exchange for

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<sup>26</sup> See Roberts, Exh. RJR-5C, at 46.

<sup>27</sup> See *id.*

1 the applicable day of delivery. This is the most likely pricing of the NorthWestern  
2 Energy PPA and the market price that PSE would likely pay unless PSE were to  
3 acquire a new resource to fill the net reduction of 95 MW of capacity through  
4 May 15, 2025.<sup>28</sup>

5 **Q. Did PSE perform a quantitative analysis of the deal proposed by**  
6 **NorthWestern Energy in July 2019?**

7 A. Yes. Using the assumptions outlined in the previous paragraph, PSE initially  
8 projected that the transaction proposed by NorthWestern Energy would provide  
9 benefits to customers under the most conservative of scenarios. In the initial  
10 quantitative analysis conducted, PSE projected that its customers would benefit  
11 from a reduction in power costs with a present value of \$10/MWh. If, however,  
12 PSE were to hedge the net reduction of 95 MW in capacity that PSE would  
13 purchase from the market, then PSE's customers would benefit from a reduction  
14 in power costs with a present value of \$4/MWh.<sup>29</sup>

15 Please see the Prefiled Direct Testimony of Cindy Song, Exh. CS-1T, for a more  
16 detailed discussion of the quantitative analysis conducted by PSE with regard to  
17 the Proposed Transactions.

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<sup>28</sup> See Roberts, Exh. RJR-5C, at 46.

<sup>29</sup> See *id.* at 46.

1 **Q. Did PSE and NorthWestern Energy enter into a term sheet based on the deal**  
2 **proposed by NorthWestern Energy in July 2019?**

3 A. Yes. Based on the favorable projections of PSE regarding the commercial terms  
4 of the deal proposed by NorthWestern Energy, PSE entered into a non-binding  
5 letter of intent with NorthWestern Energy on August 14, 2019.<sup>30</sup> PSE provided  
6 details of the proposed transaction with NorthWestern Energy to the Board of  
7 Directors on August 19, 2019.<sup>31</sup>

8 **Q. Did PSE and NorthWestern Energy subsequently enter into definitive**  
9 **agreements based on the deal proposed by NorthWestern Energy in July**  
10 **2019?**

11 A. Yes. On December 9, 2019, PSE and NorthWestern Energy entered into the  
12 following definitive agreements that provide the basis for the Proposed  
13 Transactions:

14 (i) The Colstrip Unit 4 Purchase and Sale Agreement. The  
15 Colstrip Unit 4 Purchase and Sale Agreement, dated as of  
16 December 9, 2019, between NorthWestern Energy and PSE  
17 (the “Colstrip Unit 4 Purchase and Sale Agreement”)  
18 generally proposes the sale by PSE to NorthWestern  
19 Energy of all of PSE’s interests in Colstrip Unit 4.

20 (ii) The Colstrip Transmission System Purchase and Sale  
21 Agreement. The Colstrip Transmission System Purchase  
22 and Sale Agreement, dated as of December 9, 2019,  
23 between NorthWestern Energy and PSE (the “Colstrip  
24 Transmission System Purchase and Sale Agreement”)  
25 generally proposes the sale by PSE to NorthWestern

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<sup>30</sup> See Roberts, Exh. RJR-5C, at 47; see also *id.* at 308-18.

<sup>31</sup> See *id.* at 320-29.

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Energy of certain of PSE’s interests in the Colstrip Transmission System.

(iii) The NorthWestern Energy PPA. The NorthWestern Energy PPA, dated as of December 9, 2019, between NorthWestern Energy and PSE (the “NorthWestern Energy PPA”) generally proposes the sale by NorthWestern Energy to PSE of ninety (90) megawatts (MW) of capacity from Colstrip Unit 4 for a term commencing on June 4, 2020, and ending on May 15, 2025.

Please see the Eighth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, for a copy of the Colstrip Unit 4 Purchase and Sale Agreement.

Please see the Ninth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-7, for a copy of the Colstrip Transmission System Purchase and Sale Agreement.

Please see the Tenth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-8C, for a copy of the confirmation for the NorthWestern Energy PPA.

The material terms of each of these agreements are discussed in Section IV below and in the PSE Board Memorandum.

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**IV. MATERIAL TERMS OF THE  
PROPOSED TRANSACTIONS**

**A. The Colstrip Unit 4 Purchase and Sale Agreement**

**Q. Please provide an overview of the Colstrip Unit 4 Purchase and Sale Agreement.**

A. The Colstrip Unit 4 Purchase and Sale Agreement proposes the sale by PSE to NorthWestern Energy of the following:

(i) Colstrip 4 Interests. PSE will sell to NorthWestern Energy all of PSE's twenty-five percent (25%) undivided interest in the 740 MW Colstrip Unit 4 to NorthWestern Energy (the "Colstrip 4 Interests");

(ii) Colstrip 4 Real Property Interests. PSE will transfer to NorthWestern Energy the portion of PSE's real property rights associated with the Colstrip 4 Interests (the "Colstrip 4 Real Property Interests");

(iii) Common Facilities Interests. PSE will transfer to NorthWestern Energy the portion of PSE's interest in the common facilities and associated assets related to the Colstrip 4 Interests (the "Common Facilities Interest"); and

(iv) Colstrip 4 Material Contract Interests. PSE will transfer to NorthWestern Energy the portion of PSE's rights under the contracts, leases, and agreements related to the Colstrip 4 Interests (the "Colstrip 4 Material Contract Interests").

The Colstrip 4 Interests, the Colstrip 4 Real Property Interests, the Common Facilities Interests, and the Colstrip 4 Material Contract Interests are referred to in this prefiled direct testimony as the "Transferred Assets".<sup>32</sup>

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<sup>32</sup> See Roberts, Exh. RJR-5C, at 57-58; see also Roberts, Exh. RJR-6, at 15-16.

1           **1.     Assets and Liabilities Retained by PSE**

2           **Q.     Will PSE retain any assets and liabilities under the Colstrip Unit 4 Purchase**  
3           **and Sale Agreement?**

4           A.     Yes. PSE will retain the following assets and liabilities under the terms and  
5           conditions of the Colstrip Unit 4 Purchase and Sale Agreement:

- 6                   (i)     all of PSE's interest in Colstrip Units 1 & 2 and Colstrip  
7                   Unit 3;
- 8                   (ii)    claims arising out of liabilities occurring prior to closing,  
9                   including environmental liabilities and pension liabilities;
- 10                  (iii)   future decommissioning and demolition costs in connection  
11                  with the Colstrip 4 Interests (excluding decommission or  
12                  demolition costs arising from post-closing improvements to  
13                  the Colstrip 4 Interests);
- 14                  (iv)    any obligation or liability related to or arising out of any of  
15                  the excluded assets identified in Exhibit B to the Colstrip  
16                  Unit 4 Purchase and Sale Agreement;
- 17                  (v)     any obligation or liability related to or arising out of actions  
18                  pending as of closing against PSE or any of its affiliates;
- 19                  (vi)    any obligation or liability related to or arising out of PSE's  
20                  conduct of the business or ownership of the Colstrip 4  
21                  Interests prior to closing;
- 22                  (vii)   any ERISA liability or any obligation or liability related to  
23                  or arising out of any collective bargaining agreement of  
24                  PSE, whether prior to, on or after closing;
- 25                  (viii)  any ERISA liability or any obligation or liability related to  
26                  or arising out of any collective bargaining agreement of  
27                  Talen Montana on or prior to closing and any compliance  
28                  with or violations of labor laws by Talen Montana on or  
29                  prior to closing;
- 30                  (ix)    any tax obligation or liability of PSE; and

1 (x) any obligation or liability of PSE for any debt.<sup>33</sup>

2 **2. Assumption of Liabilities by NorthWestern Energy**

3 **Q. What liabilities will NorthWestern Energy assume under the Colstrip Unit 4**  
4 **Purchase and Sale Agreement?**

5 A. NorthWestern Energy assumes all liabilities and obligations related to the  
6 Colstrip 4 Interests arising after closing.<sup>34</sup>

7 **3. Purchase Price**

8 **Q. What is the purchase price for the Transferred Assets under the Colstrip**  
9 **Unit 4 Purchase and Sale Agreement?**

10 A. As consideration for the purchase of the Transferred Assets, NorthWestern  
11 Energy will pay to PSE a purchase price of one dollar (\$1.00).<sup>35</sup>

12 **4. Conditions Precedent to Closing**

13 **Q. Are there any conditions to closing under the Colstrip Unit 4 Purchase and**  
14 **Sale Agreement?**

15 A. Yes, The Colstrip Unit 4 Purchase and Sale Agreement includes customary  
16 conditions precedent, including delivery of certain documentation, the  
17 representations, and warranties of the parties remain true and correct as of closing,  
18 the delivery of necessary consents, no order or decree of a court or governmental  
19 authority has been issued that would prevent closing, termination of all liens

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<sup>33</sup> See Roberts, Exh. RJR-5C, at 58-59; see also Roberts, Exh. RJR-6, at 16-17.

<sup>34</sup> See Roberts, Exh. RJR-5C, at 59; see also Roberts, Exh. RJR-6, at 17.

<sup>35</sup> See Roberts, Exh. RJR-5C, at 59; see also Roberts, Exh. RJR-6, at 17.

1 except permitted liens, payment of the purchase price, and no event causing or  
2 constituting a material adverse effect has occurred or is occurring. Additional  
3 conditions precedent include the following:

4 (i) the other owners of Colstrip Units 3 & 4 (i.e., Avista,  
5 PacifiCorp, Portland General, and Talen Montana) have  
6 either declined to exercise or executed a waiver of their  
7 rights of first refusal contained in Section 24 of the  
8 Ownership and Operations Agreement;

9 (ii) execution of the Colstrip Transmission System Purchase  
10 and Sale Agreement by both NorthWestern Energy and  
11 PSE;

12 (iii) approval of NorthWestern Energy's acquisition of the  
13 Colstrip 4 Interests by the Federal Energy Regulatory  
14 Commission ("FERC");

15 (iv) approval of NorthWestern Energy's acquisition of the  
16 Colstrip 4 Interests by the Montana Public Service  
17 Commission; and

18 (v) approval of PSE's sale of the Colstrip 4 Interests by this  
19 Commission.<sup>36</sup>

20 **5. Representations and Warranties of PSE**

21 **Q. What representations and warranties will PSE make under the Colstrip**  
22 **Unit 4 Purchase and Sale Agreement?**

23 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary  
24 representations and warranties provisions for PSE, including the following  
25 customary representations and warranties: (i) organization and good standing;  
26 (ii) authority; (iii) enforceability; (iv) title; (v) no violation or breach;

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<sup>36</sup> See Roberts, Exh. RJR-5C, at 59-60; see also Roberts, Exh. RJR-6, at 19-21.

1 (vi) consents; (vii) material contracts; (viii) no disputes or litigation; (ix) no  
2 brokerage fees or commissions; and (x) no bankruptcy.<sup>37</sup>

3 **6. Representations and Warranties of NorthWestern Energy**

4 **Q. What representations and warranties will NorthWestern Energy make under**  
5 **the Colstrip Unit 4 Purchase and Sale Agreement?**

6 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary  
7 representations and warranties provisions for NorthWestern Energy, including the  
8 following customary representations and warranties: (i) organization and good  
9 standing; (ii) authority; (iii) enforceability; (iv) no violation or breach;  
10 (v) consents; (vi) no disputes or litigation; (vii) no brokerage fees or commissions;  
11 (viii) no bankruptcy, and (ix) regulatory approvals and authorizations.<sup>38</sup>

12 **7. Access**

13 **Q. What access rights does NorthWestern Energy have under the Colstrip**  
14 **Unit 4 Purchase and Sale Agreement?**

15 A. Pursuant to the terms and conditions of the Colstrip Unit 4 Purchase and Sale  
16 Agreement, PSE agrees (i) to cooperate in facilitating reasonable access to PSE's  
17 records, personnel, offices and other facilities and properties related to the  
18 Colstrip 4 Interests and (ii) to permit NorthWestern Energy to make copies and  
19 inspections of records as reasonably requested, and (iii) furnish NorthWestern

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<sup>37</sup> See Roberts, Exh. RJR-5C, at 60-61; see also Roberts, Exh. RJR-6, at 23-25.

<sup>38</sup> See Roberts, Exh. RJR-5C, at 61-62; see also Roberts, Exh. RJR-6, at 21-23.

1 Energy with financial and operating data and other information with respect to the  
2 Colstrip 4 Interests as NorthWestern Energy may from time to time reasonably  
3 request.<sup>39</sup>

4 **8. Confidentiality**

5 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain**  
6 **confidentiality provisions?**

7 A. Yes. Each party agrees to maintain in confidence all information made available  
8 to it under the Colstrip Unit 4 Purchase and Sale Agreement and to cause their  
9 respective officers, directors, agents, employees, representatives, consultants, and  
10 advisors to maintain in confidence all information made available to them under  
11 the Colstrip Unit 4 Purchase and Sale Agreement, all as provided in the Mutual  
12 Non-Disclosure Agreement, dated July 19, 2019, between PSE and NorthWestern  
13 Energy.<sup>40</sup>

14 **9. Covenants**

15 **Q. What covenants do each party make under the Colstrip Unit 4 Purchase and**  
16 **Sale Agreement?**

17 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary covenants  
18 of PSE and NorthWestern Energy, including the following: (i) exclusivity;  
19 (ii) conduct of business; (iii) public announcements; (iv) actions by parties;  
20 (v) further assurances; (vi) records; (vii) privilege; (viii) regulatory and other

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<sup>39</sup> See Roberts, Exh. RJR-5C, at 63; see also Roberts, Exh. RJR-6, at 25.

<sup>40</sup> See Roberts, Exh. RJR-5C, at 63; see also Roberts, Exh. RJR-6, at 25-26.

1 authorizations and consents filings; (ix) required regulatory approvals; (x) fees  
2 and expenses; (xi) tax matters; (xii) transfer taxes; (xiii) right of first refusal;  
3 (xiv) updates to disclosure schedules; and (xv) transfers of interests.<sup>41</sup>

4 **10. Liability**

5 **Q. What liabilities will the parties potentially have under the Colstrip Unit 4**  
6 **Purchase and Sale Agreement?**

7 A. PSE will be responsible for losses arising from the ownership or operation of the  
8 Colstrip 4 Interests, Colstrip Units 3 & 4, or the common facilities that are wholly  
9 or partially caused by or arise from events or occurrences which took place before  
10 the closing date based on its pre-closing date project shares (i.e., PSE's 25 percent  
11 share of Colstrip Units 3 & 4 before closing). NorthWestern Energy (and not  
12 PSE) will be responsible for losses arising from the ownership or operation of the  
13 Colstrip 4 Interests that are wholly or partially caused by or arise from events or  
14 occurrences which took place on or after closing.

15 If the parties are unable to agree on whether particular losses are at least partially  
16 the result of events, occurrences, or conditions from before or after the closing  
17 date, the parties agree to attempt to settle such disagreement by mutual discussion  
18 between executives from both parties. If any such disagreement is not resolved  
19 within thirty (30) days of receipt of a notice of such dispute, the parties will  
20 jointly retain an independent third-party consultant (with expertise in the subject  
21 matter giving rise to the liability) to promptly determine when the events or

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<sup>41</sup> See Roberts, Exh. RJR-5C, at 63-67; see also Roberts, Exh. RJR-6, at 26-31.

1 occurrences that caused or gave rise to the losses in question took place. The  
2 independent third-party consultant will act as an impartial and neutral arbitrator in  
3 carrying out its duties. If the independent third-party consultant determines that  
4 the losses in question were at least partially caused by or partially arose from  
5 events or occurrence from prior to the closing date, then PSE will be responsible  
6 for those losses. If the independent third-party consultant determines that losses in  
7 question were wholly caused by or wholly arose from events or occurrence after  
8 the closing date, NorthWestern Energy will be responsible for those losses.<sup>42</sup>

9 **11. Indemnification**

10 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain**  
11 **indemnification provisions?**

12 A. Yes. The Colstrip Unit 4 Purchase and Sale Agreement includes customary  
13 indemnification provisions (e.g., indemnification with respect to breaches or  
14 inaccuracies in any of the representations, warranties, covenants, agreement, or  
15 other obligation of such party).

16 If the closing of the Colstrip Unit 4 Purchase and Sale Agreement occurs, PSE  
17 will indemnify NorthWestern Energy for:

- 18 • any failure by PSE to pay, perform or discharge any  
19 excluded liability under the agreement;
- 20 • any failure by PSE to pay, perform or discharge any  
21 retained liability under the agreement;

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<sup>42</sup> See Roberts, Exh. RJR-5C, at 67; see also Roberts, Exh. RJR-6, at 31-35.

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- any liability, obligation or commitment of PSE relating to the Colstrip 4 Interests not assumed by NorthWestern Energy under the agreement;
- any taxes of, or attributable to, PSE and the Colstrip 4 Interests for all pre-closing periods;
- all transfer taxes;
- any fraud, willful misconduct or gross negligence in connection with the agreement by PSE or its affiliates; or
- any claim by a third-party or liability to a third-party to the extent it seeks to hold NorthWestern Energy responsible for more than the share of any losses set forth in the liability provisions of the Colstrip Unit 4 Purchase and Sale Agreement.<sup>43</sup>

If the closing of the Colstrip Unit 4 Purchase and Sale Agreement occurs, NorthWestern Energy will indemnify PSE for:

- any failure of NorthWestern Energy to pay, discharge or perform any of the assumed liabilities under the agreement;
- any fraud, willful misconduct or gross negligence in connection with the agreement by NorthWestern Energy; or
- any claim by a third-party or liability to a third-party to the extent it seeks to hold PSE responsible for more than the share of any losses provided for in the liability provisions of the Colstrip Unit 4 Purchase and Sale Agreement.<sup>44</sup>

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<sup>43</sup> See Roberts, Exh. RJR-5C, at 68; *see also* Roberts, Exh. RJR-6, at 35-36.

<sup>44</sup> See Roberts, Exh. RJR-5C, at 68-69; *see also* Roberts, Exh. RJR-6, at 35.

1           **12.    Termination**

2    **Q.    What are the termination provisions under the Colstrip Unit 4 Purchase and**  
3    **Sale Agreement?**

4    A.    The Colstrip Unit 4 Purchase and Sale Agreement may be terminated prior to  
5    closing:

- 6           •       at any time by mutual written agreement of PSE and  
7                   NorthWestern Energy; or
- 8           •       by either PSE or NorthWestern Energy upon the material  
9                   breach of the agreement by the other, to be effective, if  
10                  curable, upon the breaching party's failure to cure within  
11                  five (5) business days of notice given, and if incurable,  
12                  upon notice given.<sup>45</sup>

13           Additionally, PSE may generally terminate the Colstrip Unit 4 Purchase and Sale  
14    Agreement prior to closing:

- 15           •       at any time after any final, non-appealable decision is made  
16                   by the applicable governmental authority denying any  
17                   required regulatory approval; or
- 18           •       at any time after December 31, 2020, if the Closing has not  
19                   yet occurred.<sup>46</sup>

20           Finally, NorthWestern Energy may generally terminate the Colstrip Unit 4  
21    Purchase and Sale Agreement prior to closing:

- 22           •       if a fact, matter, condition, event or circumstance first  
23                   disclosed in an update from PSE has had or would  
24                   reasonably be expected to have a material adverse effect;

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<sup>45</sup> See Roberts, Exh. RJR-5C, at 69; see also Roberts, Exh. RJR-6, at 38.

<sup>46</sup> See Roberts, Exh. RJR-5C, at 69; see also Roberts, Exh. RJR-6, at 39.

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- at any time after any final, non-appealable decision is made by the applicable governmental authority denying any required regulatory approval;
- at any time after December 31, 2020, if the Closing has not yet occurred;
- at any time after December 31, 2020, if any order or decree by any federal or state court or governmental authority exists which would delay or otherwise impair the consummation of the sale of the Colstrip 4 Interests;
- at any time if any other Colstrip owner exercises a right of first refusal offered to it by PSE (pursuant to the terms of the Ownership and Operations Agreement); or
- if PSE has failed to deliver to NorthWestern Energy the Right of First Refusal Resolution Notice within the time specified in the Colstrip Unit 4 Purchase and Sale Agreement.<sup>47</sup>

**Q. What will occur in the event of a termination of the Colstrip Unit 4 Purchase and Sale Agreement?**

A. In the event of termination of the Colstrip Unit 4 Purchase and Sale Agreement pursuant to its terms,

- all filings, applications and other submissions made to any governmental authority shall, to the extent practicable, be withdrawn from the governmental authority to which they were made; and
- except for those access and confidentiality obligations set forth in the access and confidentiality provisions of the agreement, neither PSE nor NorthWestern Energy shall have any further obligation under the agreement.

There shall be no liability of any shareholder, partner, member, director, officer, employee, advisor or representative of PSE or NorthWestern Energy or any

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<sup>47</sup> See Roberts, Exh. RJR-5C, at 69-70; see also Roberts, Exh. RJR-6, at 38-39.

1 affiliate thereof or any other person (including any shareholder, partner, member,  
2 director, officer, employee, advisor or representative thereof) in connection with  
3 any liability or other obligation of PSE or NorthWestern Energy or any affiliate  
4 thereof, whether under the Colstrip Unit 4 Purchase and Sale Agreement or  
5 otherwise in connection with the transactions contemplated by the Colstrip Unit 4  
6 Purchase and Sale Agreement.<sup>48</sup>

7 **13. Dispute Resolution**

8 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain dispute**  
9 **resolution provisions?**

10 A. Yes. In the event of a dispute between PSE or NorthWestern Energy under the  
11 Colstrip Unit 4 Purchase and Sale Agreement, the parties will attempt to settle  
12 such dispute by mutual discussions. If any dispute is not resolved within  
13 thirty (30) days of receipt of a dispute notice, then, upon either party's request, the  
14 dispute shall be finally and exclusively resolved by arbitration. The arbitration  
15 shall be held in accordance with the Commercial Arbitration Rules of the  
16 American Arbitration Association, then in effect, except as modified by the  
17 Colstrip Unit 4 Purchase and Sale Agreement. The arbitration shall be held, and  
18 the award shall be issued in Chicago, Illinois.

19 Any arbitrator appointed shall be a retired judge, preferably from a Federal  
20 District Court or Federal Court of Appeals, or a practicing attorney with no less  
21 than twenty (20) years of experience and an experienced arbitrator and, if

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<sup>48</sup> See Roberts, Exh. RJR-5C, at 70-71; see also Roberts, Exh. RJR-6, at 39-40.

1 possible, shall have experience with disputes relating to electric power  
2 infrastructure. The arbitrator is not empowered to award damages in excess of  
3 compensatory damages, and each party hereby irrevocably waives any right to  
4 recover consequential, punitive, exemplary or similar damages with respect to any  
5 dispute. The arbitrator's award shall allocate all costs of the arbitration, including  
6 the fees and expenses of the arbitrator and reasonable attorneys' fees, costs, and  
7 expert witness expenses of the parties. The award shall be final and binding on the  
8 Parties and may be enforced in any court having jurisdiction.<sup>49</sup>

9 **14. Governing Law**

10 **Q. What is the governing law under the Colstrip Unit 4 Purchase and Sale**  
11 **Agreement?**

12 A. The Colstrip Unit 4 Purchase and Sale Agreement is to be governed by, enforced,  
13 and interpreted in accordance with the laws of the State of Delaware without  
14 regard to principles of conflicts of laws.<sup>50</sup>

15 **15. The Vote Sharing Agreement**

16 **Q. Please describe the Vote Sharing Agreement.**

17 A. The Vote Sharing Agreement is attached as Exhibit F to the Colstrip Unit 4  
18 Purchase and Sale Agreement.<sup>51</sup> The Vote Sharing Agreement governs each of  
19 PSE's and NorthWestern Energy's respective voting obligations under the

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<sup>49</sup> See Roberts, Exh. RJR-5C, at 71; see also Roberts, Exh. RJR-6, at 40-41.

<sup>50</sup> See Roberts, Exh. RJR-5C, at 72; see also Roberts, Exh. RJR-6, at 41-42.

<sup>51</sup> See Roberts, Exh. RJR-6C, at 61-75.

1 Colstrip Units 3 & 4 Ownership and Operation Agreement with respect to  
2 (i) PSE's retained undivided interest in Colstrip Unit 3 and (ii) NorthWestern  
3 Energy's undivided interest in Colstrip Unit 4 acquired from PSE (but excluding  
4 NorthWestern Energy's preexisting interest in Colstrip Unit 4 (together,  
5 the "Shared Vote"). In general, the Vote Sharing Agreement provides that,  
6 depending on the issue on which votes are required under the Colstrip Unit 4  
7 Purchase and Sale Agreement, the Shared Vote would be cast by the PSE  
8 representative or the NorthWestern Energy Representative.

9 **Q. On what issues would the PSE representative cast the Shared Vote under the**  
10 **Vote Sharing Agreement?**

11 A. The Vote Sharing Agreement generally provides that the PSE representative will  
12 cast the Shared Vote with respect to the following issues:

- 13 (i) a Colstrip 3 Proposal;<sup>52</sup>  
14 (ii) a Unit 3 Budget Proposal;<sup>53</sup>  
15 (iii) a Unit 3 Decommissioning Proposal;<sup>54</sup> and

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<sup>52</sup> See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase "Colstrip 3 Proposal" as "a Proposal, other than a Unit 3 Decommissioning Proposal or Remediation Proposal that relates primarily to Colstrip Unit 3, but not to Proposals concerning Common Facilities." See *id.* at 62.

<sup>53</sup> See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase "Unit 3 Budget Proposal" as "a Proposal regarding the Project's budget for a year during which Unit 3 is the only unit at the Project for which there is a planned maintenance outage, or, if both Unit 3 and Unit 4 have planned maintenance outages during a given year, a Proposal regarding the Project's budget for that year if the scheduled duration of the planned maintenance outage for Unit 3 is longer than the scheduled duration of the planned maintenance outage for Unit 4." See *id.* at 64.

<sup>54</sup> See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase "Unit 3 Decommissioning Proposal" as "a Proposal regarding the decommissioning, mothballing, closure, retirement, deactivation, shut down, deconstruction, removal, or demolition of all or a portion of Colstrip Unit 3." See *id.* at 64.

1 (iv) a Remediation Proposal.<sup>55</sup>

2 **Q. On what issues would the NorthWestern Energy representative cast the**  
3 **Shared Vote under the Vote Sharing Agreement?**

4 A. The Vote Sharing Agreement generally provides that the NorthWestern Energy  
5 representative will cast the Shared Vote with respect to the following issues:

6 (i) a Colstrip 4 Proposal;<sup>56</sup>

7 (ii) a Mixed Proposal;<sup>57</sup>

8 (iii) a Unit 4 Budget Proposal;<sup>58</sup> and

9 (iv) a Unit 4 Decommissioning Proposal.<sup>59</sup>

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<sup>55</sup> See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Remediation Proposal” as “a Proposal primarily concerning the remediation of ground water or soil contamination located at Colstrip Unit 3 or Colstrip Unit 4 as required under applicable Laws.” See *id.* at 64.

<sup>56</sup> See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase “Colstrip 4 Proposal” as “a Proposal, other than a Unit 3 Decommissioning Proposal or Remediation Proposal that relates primarily to Colstrip Unit 4, but not to Proposals concerning Common Facilities.” See *id.* at 62.

<sup>57</sup> See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase “Mixed Proposal” as “a Proposal that is not a Colstrip 3 Proposal, Colstrip 4 Proposal, Unit 4 Decommissioning Proposal, Unit 3 Decommissioning Proposal, Unit 3 Budget Proposal, Unit 4 Budget Proposal, or a Remediation Proposal. Mixed Proposal includes, but is not limited to, budget proposals for years for which there are no planned maintenance outages and budget proposals for years for which there are planned maintenance outages for both Unit 3 and Unit 4 which are of the exact same scheduled duration.” See *id.* at 63.

<sup>58</sup> See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Unit 4 Budget Proposal” as “a Proposal regarding the Project’s budget for a year during which Colstrip Unit 4 is the only unit at the Project for which there is a planned maintenance outage, or, if both Unit 3 and Unit 4 have planned maintenance outages during a given year, a Proposal regarding the Project’s budget for that year if the scheduled duration of the planned maintenance outage for Unit 4 is longer than the scheduled duration of the planned maintenance outage for Unit 3.” See *id.* at 64.

<sup>59</sup> See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Unit 4 Decommissioning Proposal” as “a Proposal regarding the decommissioning, mothballing, closure, retirement, deactivation, shut down, deconstruction, removal, or demolition of all or a portion of Colstrip Unit 4.” See *id.* at 64.

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16. [REDACTED]

Q. [REDACTED]?

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[REDACTED]

**B. The Colstrip Transmission System Purchase and Sale Agreement**

**Q. Please provide an overview of the Colstrip Transmission System Purchase and Sale Agreement.**

A. The Colstrip Transmission System Purchase and Sale Agreement proposes the sale by PSE and purchase by NorthWestern Energy of the following assets, free and clear of all liens other than certain permitted liens:

- (i) Puget Transmission Assets. The Puget Transmission Assets, which consist of the following:
  - (a) Initial Purchase Assets. The Initial Purchase Assets, which consist of an undivided interest in PSE’s interest in the Colstrip Transmission System representing not less than 95 MW, consisting of not less than a four and 2/10ths percent (4.2%) interest in the Colstrip-to-Broadview segment and a four and 9/10ths percent (4.9%) interest in the Broadview-to-Townsend segment of the Colstrip Transmission System (the “Initial Purchase Assets”).
  - (b) Option Assets. The Option Assets, which consist of an option of NorthWestern Energy to acquire an undivided ownership interest in PSE’s interest in the Colstrip Transmission System representing not less than 90 MW, consisting of not less than a four percent (4%) interest in the Colstrip-to-Broadview

1 segment and a four and 2/10ths percent (4.2%)  
2 interest in the Broadview-to-Townsend segment of  
3 the Colstrip Transmission System (the “Option  
4 Assets”).

5 (ii) Puget Transmission Assets Real Property Interests. PSE  
6 will transfer to NorthWestern Energy the portion of PSE’s  
7 real property rights associated with the Puget Transmission  
8 Assets (the “Puget Transmission Assets Real Property  
9 Interests”); and

10 (iii) Puget Transmission Assets Material Contract Interests. PSE  
11 will transfer to NorthWestern Energy the portion of PSE’s  
12 rights under the contracts, leases, and agreements related to  
13 the Puget Transmission Assets (the “Puget Transmission  
14 Assets Material Contract Interests”).<sup>60</sup>

15 **1. Assets and Liabilities Retained by PSE**

16 **Q. Will PSE retain any assets and liabilities under the Colstrip Transmission**  
17 **System Purchase and Sale Agreement?**

18 **A.** Yes. PSE will retain the following assets and liabilities under the terms and  
19 conditions of the Colstrip Transmission System Purchase and Sale Agreement:

20 (i) all of PSE’s interest in the Colstrip Transmission System  
21 other than the Puget Transmission Assets;

22 (ii) claims arising out of liabilities occurring prior to closing,  
23 including environmental liabilities;

24 (iii) any obligation or liability related to or arising out of any of  
25 the excluded assets;

26 (iv) any obligation or liability related to or arising out of (a) any  
27 real property lease or sublease not included in the Puget  
28 Transmission Assets Real Property Interests and (b) any  
29 contract not included in the Puget Transmission Assets  
30 Material Contract Interests;

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<sup>60</sup> See Roberts, Exh. RJR-5C, at 72-73; see also Roberts, Exh. RJR-7, at 15.

- 1 (v) any obligation or liability related to or arising out of any  
2 Puget Transmission Assets Real Property Interests or Puget  
3 Transmission Assets Material Contract Interests to the  
4 extent such obligation or liability relates to or arises out of  
5 the time period prior to closing;
- 6 (vi) any obligation or liability related to or arising out of actions  
7 pending as of closing against PSE or its affiliates;
- 8 (vii) any obligation or liability related to or arising out of the  
9 PSE's conduct of the business or ownership of the Puget  
10 Transmission Assets prior to closing;
- 11 (viii) any ERISA Affiliate liability or any obligation or liability  
12 related to or arising out of any collective bargaining  
13 agreement of PSE, whether prior to, on or after closing;
- 14 (ix) any obligation or liability of any kind or nature relating to  
15 (a) taxes of PSE and (b) taxes related to PSE's conduct of  
16 the business or ownership of the Puget Transmission Assets  
17 prior to closing; and
- 18 (x) any obligation or liability of PSE for any debt.<sup>61</sup>

19 **2. Purchase Price**

20 **Q. What is the purchase price for the Puget Transmission Assets under the**  
21 **Colstrip Transmission System Purchase and Sale Agreement?**

22 A. At least three business days prior to the closing for the acquisition of each of the  
23 Initial Purchase Assets and the Option Assets, PSE will deliver to NorthWestern  
24 Energy a calculation of the depreciated net book value of the Initial Assets and the  
25 Option Assets, respectively. The purchase price for the Initial Purchase Assets  
26 will be the depreciated net book value of the Initial Assets, and the purchase price

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<sup>61</sup> See Roberts, Exh. RJR-5C, at 73-74; see also Roberts, Exh. RJR-7, at 15-16.

1 for the Options Assets will be the depreciated net book value of the Options  
2 Assets.<sup>62</sup>

3 **3. Allocation of Purchase Price**

4 **Q. How will the Purchase Price be allocated under the Colstrip Transmission**  
5 **System Purchase and Sale Agreement?**

6 A. The allocation of the purchase price will be allocated in compliance with  
7 section 1060 of the Internal Revenue Code. NorthWestern Energy will prepare an  
8 allocation schedule setting forth NorthWestern Energy's determination of the  
9 allocation within thirty (30) days after closing. If PSE objects to any item of the  
10 schedule, it must provide written objection to NorthWestern Energy within  
11 ten (10) days of receipt of the schedule. If PSE does not timely object to the  
12 schedule, PSE shall be deemed to have approved the schedule. If the parties are  
13 unable to resolve any such dispute within fifteen (15) days after NorthWestern  
14 Energy's receipt of PSE's written objection to the schedule, the dispute will be  
15 submitted to an independent accounting firm for a final and binding  
16 determination.<sup>63</sup>

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<sup>62</sup> See Roberts, Exh. RJR-5C, at 74; see also Roberts, Exh. RJR-7, at 16.

<sup>63</sup> See Roberts, Exh. RJR-5C, at 74-75; see also Roberts, Exh. RJR-7, at 17.

1           **4.     Assumption of Liabilities by NorthWestern Energy**

2   **Q.     What liabilities will NorthWestern Energy assume under the Colstrip**  
3           **Transmission System Purchase and Sale Agreement?**

4   A.     NorthWestern Energy will assume the liabilities and obligations of PSE related to  
5           the Puget Transmission Assets acquired at closing, including those liabilities and  
6           obligations contained in the Puget Transmission Assets Material Contracts  
7           Interests, but solely with respect to liabilities or obligations arising after closing.<sup>64</sup>

8           **5.     Real Property Taxes**

9   **Q.     Will PSE be responsible for real property taxes under the Colstrip**  
10           **Transmission System Purchase and Sale Agreement?**

11   A.     Yes. PSE will be responsible for all real property taxes imposed on or with  
12           respect to the Puget Transmission Assets Real Property Interests for all tax  
13           periods ending on or prior to closing. Any real property tax reductions or refunds  
14           for or relating to a period prior to closing will be for the account of PSE. If  
15           NorthWestern Energy receives a property tax refund or credit with respect to the  
16           Puget Transmission Assets Real Property Interests for or relating to a period prior  
17           to closing, NorthWestern Energy will remit to PSE the portion of such refund or  
18           credit relating to the period prior to closing.<sup>65</sup>

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<sup>64</sup> See Roberts, Exh. RJR-5C, at 75; see also Roberts, Exh. RJR-7, at 17.

<sup>65</sup> See Roberts, Exh. RJR-5C, at 75; see also Roberts, Exh. RJR-7, at 17-18.

1           **6.       Conditions Precedent to Closing on the Initial Purchase Assets**

2       **Q.       Are there conditions precedent to closing on the sale of the Initial Purchase**  
3       **Assets?**

4       A.       Yes. The Colstrip Transmission System Purchase and Sale Agreement includes  
5               customary conditions precedent, including delivery of certain documentation, the  
6               representations, and warranties of the parties remain true and correct as of closing,  
7               the delivery of necessary consents, no order or decree of a court or governmental  
8               authority has been issued that would prevent closing, termination of all liens  
9               except permitted liens, payment of the purchase price, and no event causing or  
10              constituting a material adverse effect has occurred or is occurring. Additional  
11              conditions precedent include the following:

- 12                   (i)       delivery of the purchase price for the Initial Purchase  
13                               Assets by NorthWestern Energy;
- 14                   (ii)       execution of the Colstrip Unit 4 Purchase and Sale  
15                               Agreement by both parties;
- 16                   (iii)      all other owners of the Colstrip Transmission System have  
17                               either declined to exercise or executed a waiver of their  
18                               rights of first refusal contained in Section 28 of the Colstrip  
19                               Project Transmission Agreement;
- 20                   (iv)       approval of NorthWestern Energy's acquisition of the  
21                               Initial Purchase Assets by FERC;
- 22                   (v)       approval of NorthWestern Energy's acquisition of the  
23                               Initial Purchase Assets by the Montana Public Service  
24                               Commission; and
- 25                   (vi)       approval of PSE's sale of the Initial Purchase Assets by this  
26                               Commission.<sup>66</sup>

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<sup>66</sup> See Roberts, Exh. RJR-5C, at 75-76; see also Roberts, Exh. RJR-7, at 20-21.

1           7.       **Conditions Precedent to Closing on the Option Assets**

2       **Q.     Are there conditions precedent to closing on the sale of the Option Assets?**

3       A.     Yes. The Colstrip Transmission System Purchase and Sale Agreement includes  
4           customary conditions precedent, including delivery of certain documentation, the  
5           representations, and warranties of the parties remain true and correct as of closing,  
6           the delivery of necessary consents, no order or decree of a court or governmental  
7           authority has been issued that would prevent closing, termination of all liens  
8           except permitted liens, payment of the purchase price, and no event causing or  
9           constituting a material adverse effect has occurred or is occurring. Additional  
10          conditions precedent include the following:

- 11                   (i)     delivery of the purchase price for the Option Assets by  
12                   NorthWestern Energy;
- 13                   (ii)    approval of NorthWestern Energy's acquisition of the  
14                   Option Assets by FERC;
- 15                   (iii)  approval of NorthWestern Energy's acquisition of the  
16                   Option Assets by the Montana Public Service Commission;  
17                   and
- 18                   (iv)   approval of PSE's sale of the Option Assets by this  
19                   Commission.<sup>67</sup>

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<sup>67</sup> See Roberts, Exh. RJR-5C, at 76-77; see also Roberts, Exh. RJR-7, at 23-24.

1           **8.       Representations and Warranties of PSE**

2   **Q.       What representations and warranties will PSE make under the Colstrip**  
3           **Transmission System Purchase and Sale Agreement?**

4   A.       The Colstrip Transmission System Purchase and Sale Agreement includes  
5           customary representations and warranties provisions for PSE, including the  
6           following customary representations and warranties: (i) organization and good  
7           standing; (ii) authority; (iii) enforceability; (iv) title to Puget Transmission Assets;  
8           (v) no violation or breach; (vi) consents; (vii) material contracts; (viii) actions  
9           pending; (ix) compliance with laws; (x) real property; (xi) material changes;  
10          (xii) no brokerage fees or commissions; (xiii) no bankruptcy; (xiv) tax matters;  
11          (xv) material contracts; (xvi) licenses; (xvii) insurance; (xviii) environmental  
12          matters; (xix) no employees or benefits plans; (xx) labor matters; (xxi) intellectual  
13          property; (xxii) books and records; (xxiii) no options; (xxiv) no undisclosed  
14          liabilities; (xxv) Puget Transmission Assets operations; and (xxvi) affiliate  
15          transactions.<sup>68</sup>

16           **9.       Representations and Warranties of NorthWestern Energy**

17   **Q.       What representations and warranties will NorthWestern Energy make under**  
18           **the Colstrip Transmission System Purchase and Sale Agreement?**

19   A.       The Colstrip Transmission System Purchase and Sale Agreement includes  
20           customary representations and warranties provisions for NorthWestern Energy,  
21           including the following customary representations and warranties: (i) organization

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<sup>68</sup> See Roberts, Exh. RJR-5C, at 77-80; see also Roberts, Exh. RJR-7, at 25-30.

1 and good standing; (ii) authority; (iii) enforceability; (iv) no violation or breach;  
2 (v) consents; (vi) no disputes; (vii) no brokerage fees or commissions; (viii) no  
3 bankruptcy; (ix) regulatory matters.<sup>69</sup>

4 **10. Access**

5 **Q. What access rights does NorthWestern Energy have under the Colstrip**  
6 **Transmission System Purchase and Sale Agreement?**

7 A. PSE agrees (i) to cooperate in facilitating reasonable access to PSE's records,  
8 personnel, offices and other facilities and properties related to the Puget  
9 Transmission Assets; (ii) to permit NorthWestern Energy to make copies and  
10 inspections of records as reasonably requested, and (iii) furnish NorthWestern  
11 Energy with financial and operating data and other information with respect to the  
12 Puget Transmission Assets as NorthWestern Energy may from time to time  
13 reasonably request.<sup>70</sup>

14 **11. Confidentiality**

15 **Q. Does the Colstrip Transmission System Purchase and Sale Agreement**  
16 **contain confidentiality provisions?**

17 A. Yes. Each party agrees to maintain in confidence all information made available  
18 to it under the Colstrip Transmission System Purchase and Sale Agreement and to  
19 cause their respective officers, directors, agents, employees, representatives,  
20 consultants, and advisors to maintain in confidence all information made available

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<sup>69</sup> See Roberts, Exh. RJR-5C, at 80-82; see also Roberts, Exh. RJR-7, at 31-32.

<sup>70</sup> See Roberts, Exh. RJR-5C, at 82; see also Roberts, Exh. RJR-7, at 32-33.

1 to them under the Colstrip Transmission System Purchase and Sale Agreement,  
2 all as provided in the Mutual Non-Disclosure Agreement, dated July 19, 2019,  
3 between PSE and NorthWestern Energy.<sup>71</sup>

4 **12. Covenants**

5 **Q. What covenants do each party make under the Colstrip Transmission**  
6 **System Purchase and Sale Agreement?**

7 A. The Colstrip Transmission System Purchase and Sale Agreement includes  
8 customary covenants of PSE and NorthWestern Energy, including the following:  
9 (i) exclusivity; (ii) conduct of business; (iii) public announcements; (iv) actions  
10 by parties; (v) further assurances; (vi) records; (vii) amendment of Colstrip  
11 Project Transmission Agreement; (viii) privilege; (ix) regulatory and other  
12 authorizations and consents filings; (x) required regulatory approvals; (xi) fees  
13 and expenses; (xii) tax matters; (xiii) transfer taxes; (xiv) right of first refusal; and  
14 (xv) updates to disclosure schedules.<sup>72</sup>

15 **13. Indemnification**

16 **Q. Does the Colstrip Transmission System Purchase and Sale Agreement**  
17 **contain indemnification provisions?**

18 A. Yes. The Colstrip Transmission System Purchase and Sale Agreement includes  
19 customary indemnification provisions (e.g., indemnification with respect to

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<sup>71</sup> See Roberts, Exh. RJR-5C, at 82; *see also* Roberts, Exh. RJR-7, at 33.

<sup>72</sup> See Roberts, Exh. RJR-5C, at 82-85; *see also* Roberts, Exh. RJR-7, at 33-39.

1 breaches or inaccuracies in any of the representations, warranties, covenants,  
2 agreement, or other obligation of such party).

3 If the closing of the Colstrip Transmission System Purchase and Sale Agreement  
4 occurs, PSE will indemnify NorthWestern Energy for:

- 5 • any failure by PSE to pay, perform or discharge any  
6 excluded liability under the agreement;
- 7 • any failure by PSE to pay, perform or discharge any  
8 retained liability under the agreement;
- 9 • any liability, obligation or commitment of PSE relating to  
10 the Puget Transmission Assets not assumed by  
11 NorthWestern Energy under the agreement;
- 12 • any taxes of, or attributable to, PSE and the Puget  
13 Transmission Assets for all pre-closing periods;
- 14 • all transfer taxes; or
- 15 • any fraud, willful misconduct, or gross negligence in connection  
16 with the agreement by PSE or its affiliates.<sup>73</sup>

17 If the closing of the Colstrip Transmission System Purchase and Sale Agreement  
18 occurs, NorthWestern Energy will indemnify PSE for:

- 19 • any failure by NorthWestern Energy to pay, perform or  
20 discharge any assumed liability under the agreement; or
- 21 • any fraud, willful misconduct or gross negligence in  
22 connection with the agreement by NorthWestern Energy.<sup>74</sup>

23 Neither party may not make a claim for indemnification until the total damages  
24 for which such party exceeds in the aggregate a threshold amount equal to one

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<sup>73</sup> See Roberts, Exh. RJR-5C, at 86; see also Roberts, Exh. RJR-7, at 39-40.

<sup>74</sup> See Roberts, Exh. RJR-5C, at 86; see also Roberts, Exh. RJR-7, at 40.

1 percent (1%) of the purchase price for the Initial Purchase Assets or the purchase  
2 price for the Option Assets, as applicable, and, once such amount is exceeded,  
3 indemnification may be sought for the full aggregate amount of damages. The  
4 aggregate damages for which PSE may be subject to claims of indemnification  
5 related to breaches of representations and warranties cannot exceed fifteen  
6 percent (15%) of the purchase price for the Initial Purchase Assets or the purchase  
7 price for the Option Assets, as applicable. The aggregate damages for which  
8 NorthWestern Energy may be subject to claims of indemnification related to  
9 breaches of representations and warranties cannot exceed ten percent (10%) of the  
10 purchase price for the Initial Purchase Assets or the purchase price for the Option  
11 Assets, as applicable.<sup>75</sup>

12 **14. Termination**

13 **Q. What are the termination provisions under the Colstrip Transmission**  
14 **System Purchase and Sale Agreement?**

15 A. The Colstrip Transmission System Purchase and Sale Agreement may be  
16 terminated prior to closing:

- 17 • at any time by mutual written agreement of PSE and  
18 NorthWestern Energy; or
- 19 • by either PSE or NorthWestern Energy upon the material  
20 breach of the agreement by the other, to be effective, if  
21 curable, upon the breaching party's failure to cure within  
22 five (5) business days of notice given, and if incurable,  
23 upon notice given.<sup>76</sup>

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<sup>75</sup> See Roberts, Exh. RJR-5C, at 87; see also Roberts, Exh. RJR-7, at 42-44.

<sup>76</sup> See Roberts, Exh. RJR-5C, at 87; see also Roberts, Exh. RJR-7, at 44.

1 PSE may generally terminate the Colstrip Transmission System Purchase and Sale  
2 Agreement prior to closing:

- 3 • at any time after any final, non-appealable decision is made  
4 by the applicable governmental authority denying any  
5 required regulatory approval; or
- 6 • at any time after December 31, 2020, if the closing has not  
7 yet occurred.<sup>77</sup>

8 PSE may generally terminate the Colstrip Transmission System Purchase and Sale  
9 Agreement prior to closing:

- 10 • if a fact, matter, condition, event or circumstance first  
11 disclosed in an update from NorthWestern Energy has had  
12 or would reasonably be expected to have a material adverse  
13 effect;
- 14 • at any time after any final, non-appealable decision is made  
15 by the applicable governmental authority denying any  
16 required regulatory approval;
- 17 • at any time after December 31, 2020, if the Closing has not  
18 yet occurred;
- 19 • at any time after December 31, 2020, if any order or decree  
20 by any federal or state court or governmental authority  
21 exists which would delay or otherwise impair the  
22 consummation of the sale of the Puget Transmission  
23 Assets;
- 24 • at any time if any other owner of the Colstrip Transmission  
25 System exercises a right of first refusal offered to it by PSE  
26 (pursuant to the terms of the Colstrip Project Transmission  
27 Agreement); or

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<sup>77</sup> See Roberts, Exh. RJR-5C, at 88; see also Roberts, Exh. RJR-7, at 44.

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- if NorthWestern Energy has failed to deliver to PSE the Right of First Refusal Resolution Notice within the time specified in the Colstrip Transmission System Purchase and Sale Agreement.<sup>78</sup>

In the event of termination of the Colstrip Transmission System Purchase and Sale Agreement pursuant to its terms,

- all filings, applications and other submissions made to any governmental authority shall, to the extent practicable, be withdrawn from the governmental authority to which they were made; and
- except for those access and confidentiality obligations set forth in the access and confidentiality provisions of the agreement, neither PSE nor NorthWestern Energy shall have any further obligation under the agreement.

There shall be no liability of any shareholder, partner, member, director, officer, employee, advisor or representative of PSE or NorthWestern Energy or any affiliate thereof or any other person (including any shareholder, partner, member, director, officer, employee, advisor or representative thereof) in connection with any liability or other obligation of PSE or NorthWestern Energy or any affiliate thereof, whether under the Colstrip Transmission System Purchase and Sale Agreement or otherwise in connection with the transactions contemplated by the Colstrip Transmission System Purchase and Sale Agreement.<sup>79</sup>

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<sup>78</sup> See Roberts, Exh. RJR-5C, at 88; see also Roberts, Exh. RJR-7, at 44-45.

<sup>79</sup> See Roberts, Exh. RJR-5C, at 89; see also Roberts, Exh. RJR-7, at 45.

1           **15.    Dispute Resolution**

2    **Q.    Does the Colstrip Transmission System Purchase and Sale Agreement**  
3           **contain dispute resolution provisions?**

4    A.    Yes. In the event of a dispute between PSE or NorthWestern Energy under the  
5           Colstrip Transmission System Purchase and Sale Agreement, the parties will  
6           attempt to settle such dispute by mutual discussions. If any dispute is not resolved  
7           within thirty (30) days of receipt of a dispute notice, then, upon either party's  
8           request, the dispute shall be finally and exclusively resolved by arbitration. The  
9           arbitration shall be held in accordance with the Commercial Arbitration Rules of  
10          the American Arbitration Association, then in effect, except as modified by the  
11          Colstrip Transmission System Purchase and Sale Agreement. The arbitration shall  
12          be held, and the award shall be issued in Chicago, Illinois.

13          Any arbitrator appointed shall be a retired judge, preferably from a Federal  
14          District Court or Federal Court of Appeals, or a practicing attorney with no less  
15          than twenty (20) years of experience and an experienced arbitrator and, if  
16          possible, shall have experience with disputes relating to electric power  
17          infrastructure. The arbitrator is not empowered to award damages in excess of  
18          compensatory damages, and each party hereby irrevocably waives any right to  
19          recover consequential, punitive, exemplary or similar damages with respect to any  
20          dispute. The arbitrator's award shall allocate all costs of the arbitration, including  
21          the fees and expenses of the arbitrator and reasonable attorneys' fees, costs, and

1 expert witness expenses of the parties. The award shall be final and binding on the  
2 Parties and may be enforced in any court having jurisdiction.<sup>80</sup>

3 **16. Governing Law**

4 **Q. What is the governing law under the Colstrip Transmission System Purchase  
5 and Sale Agreement?**

6 A. The Colstrip Transmission System Purchase and Sale Agreement is to be  
7 governed by, enforced, and interpreted in accordance with the laws of the State of  
8 Delaware without regard to principles of conflicts of laws.<sup>81</sup>

9 **C. The NorthWestern Energy PPA**

10 **Q. Please provide an overview of the NorthWestern Energy PPA.**

11 A. The parties have agreed upon to use the WSPP Agreement as the master  
12 agreement from PSE's purchases of power from NorthWestern Energy from  
13 Colstrip Unit 4 through May 15, 2025. The principal commercial terms of the  
14 WSPP Agreement are summarized below.

15 **Q. What is the WSPP Agreement?**

16 A. The WSPP Agreement represents a standardized default contract for electric  
17 power sales and physical options. If the parties to a WSPP transaction do not  
18 mutually agree to changes to the WSPP Agreement, the terms of the WSPP  
19 Agreement will control. The WSPP Agreement, however, provides parties with

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<sup>80</sup> See Roberts, Exh. RJR-5C, at 89-90; see also Roberts, Exh. RJR-7, at 45-47.

<sup>81</sup> See Roberts, Exh. RJR-5C, at 91; see also Roberts, Exh. RJR-7, at 47.

1 the flexibility on the major terms to modify the agreement, by their mutual  
2 agreement, to be applied to any WSPP transaction, as discussed below. The  
3 WSPP Agreement, by its terms, only applies to transactions between WSPP  
4 members, such as PSE and NorthWestern Energy.<sup>82</sup>

5 **Q. What is a confirmation under the WSPP Agreement?**

6 A. As previously mentioned, the WSPP Agreement provides default standardized  
7 contract provisions for electric power sales and physical options, but parties to a  
8 transaction have the flexibility to modify the agreement, by their mutual  
9 agreement. Confirmation agreements include the specific terms to the transaction,  
10 including changes to the base WSPP Agreement to which the parties mutually  
11 agree.<sup>83</sup>

12 PSE and NorthWestern Energy have agreed upon a confirmation, the principal  
13 commercial terms of which are summarized below.

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<sup>82</sup> See Roberts, Exh. RJR-5C, at 91-96; see also WSPP, *WSPP Agreement Description*, available at <https://www.wspp.org/pages/Agreement.aspx>; WSPP, *WSPP Agreement*, available at [http://www.wspp.org/pages/documents/01\\_25\\_20\\_current\\_effective\\_agreement.docx](http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx).

<sup>83</sup> See Roberts, Exh. RJR-5C, at 96; see also WSPP, *WSPP Agreement Description*, available at <https://www.wspp.org/pages/Agreement.aspx>; WSPP, *WSPP Agreement*, available at [http://www.wspp.org/pages/documents/01\\_25\\_20\\_current\\_effective\\_agreement.docx](http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx).

1           **1.     Term**

2       **Q.     What is the term of the NorthWestern Energy PPA?**

3       A.     The term of the confirmation requires deliveries of power to PSE from Colstrip  
4           Unit 4 commencing on the hour ending 0100 on June 1, 2020, through hour  
5           ending 2400 on May 15, 2025. This term is less than five (5) years.<sup>84</sup>

6           **2.     Delivery Point**

7       **Q.     What is the delivery point under the NorthWestern Energy PPA?**

8       A.     The delivery point under the NorthWestern Energy PPA is the high side of the  
9           500 kV bus for Colstrip Unit 4 in the Colstrip Switchyard, or, at NorthWestern  
10          Energy's option and with prior notice to PSE, at Mid-C. For deliveries to the  
11          500 kV bus for Colstrip Unit 4, PSE will use its existing transmission rights on  
12          the Colstrip Transmission System to deliver the power to PSE's retail  
13          customers.<sup>85</sup>

14          **3.     Product**

15       **Q.     What is the product under the NorthWestern Energy PPA?**

16       A.     The WSPP Agreement sets forth three basic produces in its service schedules.  
17           PSE and NorthWestern Energy have agreed to use Service Schedule B (Unit  
18           Commitment Service), which is a sale from a specified unit (i.e., Colstrip Unit 4)

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<sup>84</sup> See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

<sup>85</sup> See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

1 for a specified period (through May 15, 2025). Other than through force majeure,  
2 Unit Commitment Service may be curtailed based upon the following conditions:

- 3 • upon mutually agreed upon recall provisions;
- 4 • when all or a portion of the specified unit is unavailable;
- 5 • to prevent system separation during an emergency  
6 (provided that prudent alternatives to curtailment have been  
7 exhausted);
- 8 • for the seller (i.e., NorthWestern Energy) to meet its public  
9 utility or statutory obligations; or
- 10 • due to the unavailability of transmission service.

11 The stipulated damages provision applies to failures to deliver or to take Service  
12 Schedule B power unless the parties agree otherwise.<sup>86</sup>

13 **4. Contract Quantity**

14 **Q. What is the contract quantity under the NorthWestern Energy PPA?**

15 A. The contract quantity under the NorthWestern Energy PPA is up to  
16 ninety (90) MW per hour.<sup>87</sup>

17 **5. Contract Price**

18 **Q. What is the contract price under the NorthWestern Energy PPA?**

19 A. Regardless of the delivery point, the contract price under the NorthWestern  
20 Energy PPA is the higher of (i) the Mid C Day-Ahead Index Price for on-peak

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<sup>86</sup> See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1; WSPP, *WSPP Agreement*, available at [http://www.wspp.org/pages/documents/01\\_25\\_20\\_current\\_effective\\_agreement.docx](http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx).

<sup>87</sup> See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

1 and off-peak periods, as applicable, minus O&M Costs (Base) Equivalent and (ii)  
2 the Floor Price applicable to such hour. In addition, PSE will pay a monthly  
3 payment of 1/12th of the annual O&M Costs (Base).<sup>88</sup>

4 **Q. What is the “Floor Price” under the NorthWestern Energy PPA?**

5 A. The “Floor Price” means, for any hour during the Period of Delivery, a per MWh  
6 price calculated in accordance with Exhibit A to the confirmation.<sup>89</sup>

7 **Q. What is the “O&M Costs (Base)” under the NorthWestern Energy PPA?**

8 A. The "O&M Costs (Base)" means the 90 MW share of the O&M Cost (Base) fixed  
9 costs as identified and approved annually for Colstrip Units 3 and 4 Budget.<sup>90</sup>

10 **Q. What is the “O&M Costs (Base) Equivalent” under the NorthWestern**  
11 **Energy PPA?**

12 A. The “O&M Costs (Base) Equivalent” means the O&M Cost (Base) divided by the  
13 annual net generation, as identified and approved annually for Colstrip Units 3  
14 and 4 Budget.<sup>91</sup>

15 **V. CONCLUSION**

16 **Q. Does this conclude your prefiled direct testimony?**

17 A. Yes.

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<sup>88</sup> See Roberts, Exh. RJR-8C, at 1-2.

<sup>89</sup> See *id.* at 2.

<sup>90</sup> See *id.*

<sup>91</sup> See *id.*