

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-190882

TESTIMONY OF

David C. Gomez

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

2018 Colstrip Outage & Derate

January 10, 2020

COMPANY-CONFIDENTIAL PER PROTECTIVE ORDER

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- Exh. DCG-21 Colstrip Plant – Units 3 & 4 Monthly Executive Summaries 2018, Attachment to Avista’s Supplemental Response to Staff DR No. 62, dated August 2, 2019
- Exh. DCG-22 Declaration of David C. Gomez, filed September 26, 2019
- Exh. DCG-23 PSE’s Response to UTC Staff Data Request No. 314
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- Exh. DCG-25CC MDEQ Draft penalty calculation worksheet. UE-190222, Avista’s responses to UTC Staff Informal Data Request No. 8, Confidential Attachment I
- Exh. DCG-26CC Talen and MDEQ settlement negotiations. UE-190222, Avista’s responses to UTC Staff Informal Data Request No. 8, Confidential Attachment I

1
2
3 **I. INTRODUCTION**

4 **Q. Please state your name and business address.**

5 A. My name is David C. Gomez. My business address is 621 Woodland Square Loop
6 S.E., Lacey, Washington 98503. My business mailing address is P.O. Box 47250,
7 Olympia, Washington 98504-7250. My business email address is
8 david.gomez@utc.wa.gov.

9 **Q. By whom are you employed and in what capacity?**

10 A. I am employed by the Washington Utilities and Transportation Commission
11 (Commission) as the Assistant Power Supply Manager in the Energy Section of the
12 Regulatory Services Division. I attained this position on July 1, 2012. Prior to my
13 current position, I was the Deputy Assistant Director in the Solid Waste and Water
14 Section of the Regulatory Services Division.

15
16 **Q. How long have you been employed by the Commission?**

17 A. I have been employed by the Commission since May 2007.
18

19 **Q. Please state your educational and professional background.**

20 A. I hold a Bachelor of Arts degree in Business from Hamline University and a Masters
21 of Business Administration degree from the University of Saint Thomas; both
22 universities are located in Saint Paul, Minnesota.

1 Before joining the Commission, my relevant professional experience
2 consisted of 31 years in a variety of fields, including management, contracting,
3 supply chain, procurement, operations and engineering. I hold professional
4 certifications from the Institute for Supply Management (ISM); APICS – The
5 Association for Operations Management; Universal Public Procurement Council
6 (UPPC); and QAI Global Institute (Software Testing).

7
8 **Q. What are your duties with the Commission?**

9 A. I perform accounting and financial analysis of regulated utility companies, as well as
10 legislative and policy analysis. I presented testimony on behalf of Commission Staff
11 in Docket UE-121373, regarding the Coal Transition Power Purchase Agreement
12 between Puget Sound Energy and TransAlta Centralia Generation LLC; Dockets
13 UE-130043 and UE-140762, Pacific Power’s 2013 and 2014 general rate cases
14 (GRC); Puget Sound Energy’s 2013, 2014 and 2016 Power Cost Only Rate Cases
15 (PCORCs) and 2017, 2018 and 2019 GRCs. I have also provided testimony in
16 Avista’s last five GRCs: Dockets UE-140188, UE-150204, UE-160228, UE-170485
17 and UE-190334. Additionally, I have provided Staff recommendations to the
18 Commission at numerous open meetings, and worked on various Commission
19 rulemakings.

1 **II. SCOPE AND SUMMARY OF TESTIMONY**

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Q. What is the purpose of your testimony?

A. My testimony presents the results of Staff’s investigation regarding the prudence of decisions made and actions taken by Avista Corporation, d/b/a Avista Utilities (“Avista”), Puget Sound Energy (“PSE”), and Pacific Power & Light Company (“Pacific Power”) as co-owners of Colstrip, as well as the additional costs incurred by the Companies to acquire replacement power as a result of the forced outage and derate of Units 3 and 4 that occurred in 2018. Specifically, Staff’s investigation focuses on the prudence of the decisions and actions taken by Avista, PSE and Pacific Power (collectively the “Companies” or “Owners”) prior to the start of the outage on June 28, 2018. My testimony also describes Staff’s difficulties in conducting its investigation into the outage.

Q. What guided Staff in preparing this testimony?

A. I relied on the Commission’s directives in Order 01 of this docket:

Staff’s investigation will produce a full, complete, and common assembly of information regarding the 2018 Colstrip outage, which will allow the Commission to make a fully informed prudence decision.
.....
This investigation will be limited in scope and not include the numerous, discrete issues contained in the separate power cost dockets. Because of its limited scope, we expect the investigation will afford the Commission a comprehensive understanding of Avista’s, PSE’s, and Pacific Power’s decision making as co-owners of Colstrip leading up to the 2018 outage and the resulting costs of replacement power.
.....
It is imperative that the Commission have all relevant information necessary to make a fully informed decision regarding the prudence of the decisions

1 made by Avista, PSE, and Pacific Power leading up to the 2018 Colstrip
2 Outage and the costs incurred by each to acquire replacement power.¹
3
4

5 **Q. Who has the burden to demonstrate that replacement power costs associated**
6 **with the 2018 Colstrip Outage were prudently incurred?**

7 A. Each of the Companies has the burden to make this demonstration to the
8 Commission. As the Commission stated in Order 01 in this docket:

9 Each of the co-owners has the burden to show that its decision making
10 leading up to the outage was prudent, and that the increased replacement
11 costs were prudently incurred. We then require Staff . . . [to file] testimony
12 and exhibits regarding their prudence evaluation and recommendation.²
13
14

15 **Q. Can you briefly discuss the difficulties Staff encountered in conducting its**
16 **investigation of the 2018 Colstrip outage?**

17 A. Yes. Anticipating the Commission’s expectation that it be provided a
18 comprehensive explanation of the 2018 Colstrip outage and its causes, Staff
19 proactively contacted the Companies and communicated the need that they provide
20 sufficient testimony on the outage in their initial power cost filings.³ Rather than
21 follow Staff’s guidance, the Companies filed only brief and incomplete narratives on
22 the actions taken and decisions made by Talen MT (“Talen”) and the Owners, and
23 only for actions and decisions *after* the start of the outage. As a result, Staff was
24 forced to expend significant time and resources attempting to develop an accurate
25 and useful record, particularly with respect to the actions taken and decisions made

¹ Docket UE-190882, Order 01 ¶¶ 16, 23, 38.

² Docket UE-190882, Order 01 ¶ 25; *See also* UE-152253, Order 12 ¶ 94 (“Regulated public service companies bear the burden of proof that their decisions are prudent. . .”).

³ Gomez, Exh. DCG-2; *See also* Gomez, DCG-22(C).

1 by Talen and the Owners before the start of the outage, which were absent entirely
2 from the Companies' narratives of the event.⁴

3

4 **Q. Please summarize your recommendations.**

5 A. As discussed in Section IX of this testimony, Staff concludes that the actions of the
6 Colstrip Owners leading up to the 2018 Colstrip outage reflect unreasonable and
7 imprudent decision making. Accordingly, Staff recommends that the Commission
8 disallow the recovery of \$21.9 million in replacement power costs incurred by the
9 Companies as a result of the 2018 outage and derate of Colstrip Units 3 and 4. This
10 amount represents the collective impact for all three Companies, allocated as
11 follows: PSE - \$17.9 million; Avista - \$3.5 million; and Pacific - \$0.5 million.⁵

12

13 **III. BACKGROUND OF THE COLSTRIP OUTAGE**

14

15 **A. Outage Background**

16

17 **Q. Is Staff challenging the prudence of the actions taken and decisions made by**
18 **Talen and the Owners to rectify emission violations and restart the plant after**
19 **the start of the outage?**

4 [REDACTED]

⁵ Wetherbee, UE-190324, Exh. PKW-1CT (revised Nov. 13, 2019) at 15:3-9, UE-190222, Johnson Exh. WGJ-1T, at 12:4-11, and UE-190458, Wilding Exh. MGW-1T at 15:10-13.

1 A. No. Staff recommends that the Commission allow each of the Companies to recover
2 its share of the \$3.4 million in O&M and capital expense associated with corrective,
3 post-outage actions.⁶

4

5 **Q. Please describe the Colstrip generation outage and derate that occurred in 2018.**

6 A. During the second quarter (“Q2”) of 2018, Units 1 and 2 were offline.⁷ Talen, the
7 operator of Units 3 and 4 (hereinafter referred to as the “Operator”), were forced to
8 take Units offline at this time because they were violating emission standards. Unit 3
9 was removed from service on June 28, and kept offline until July 8.⁸ Unit 4 was
10 removed from service on June 29, and kept offline until July 17.⁹ Because this
11 outage was compliance-related, these units ran intermittently during the Operator’s
12 post-outage investigation until the Units’ emissions were brought back under control
13 and returned to service in September.¹⁰ During this period of limited operation, the
14 Units were run only for the purposes of gathering information, performing
15 diagnostics, evaluating potential remedial actions, and testing.¹¹ These Units 3 and 4
16 were ultimately brought back online when they could demonstrate compliance with
17 the PM Emissions standards—after corrective actions were taken during the time
18 when these Units were in outage.

19

⁶ Gomez, Exh. DCG-21(Company Confidential).

⁷ Gomez, Exh. DCG-22 at 3.

⁸ Gomez, Exh. DCG-22 at 5.

⁹ Gomez, Exh. DCG-22 at 5.

¹⁰ Gomez, Exh. DCG-22 at 5.

¹¹ Gomez, Exh. DCG-22 at 5.

1 **Q. Please describe the emission standards that forced these units to be shut down.**

2 A. The Mercury Air Toxics Standard¹² (“MATS”) requires that particulate matter
3 (“PM”) emissions be used as a surrogate for toxic emissions and non-mercury
4 metals.¹³ MATS also requires that the Colstrip Units maintain a rolling 30-day
5 average PM emission rate of 0.030 pounds per million British Thermal Units
6 (lb/MMBtu).¹⁴ This means the average PM emission rate across all four Colstrip
7 Units must be less than or equal to 0.030 lb/MMBtu in order to be in compliance.¹⁵
8 Beginning in the first quarter (“Q1”) of 2018, the PM levels at Colstrip were elevated
9 from previous readings, and registered at or just below the PM compliance limit of
10 0.030 lb/MMBtu.¹⁶

11 During Q2 of 2018, Units 1 and 2 were offline and were therefore not subject
12 to MATS PM emission testing.¹⁷ On June 21, 2018, Unit 3 was tested and the results
13 indicated a PM emission rate of 0.043 lb/MMBtu.¹⁸ On June 26, 2018, Unit 4 was
14 tested and the results indicated a PM emission rate of 0.051 lb/MMBtu.¹⁹ These tests
15 thus revealed that Colstrip Units 3 and 4 were *substantially* out of compliance with
16 the PM emission limit.²⁰ The Operator notified the Montana Department of
17 Environmental Quality (MDEQ) of the non-compliant test results on June 28, 2018.²¹

¹² The Colstrip Units are subject to 40 C.F.R. Part 6, Subpart UUUUU - National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—commonly referred to as the Mercury Air Toxics Standard.

¹³ Gomez, Exh. DCG-22 at 2.

¹⁴ Gomez, Exh. DCG-22 at 2.

¹⁵ Gomez, Exh. DCG-22 at 2–3.

¹⁶ Gomez, Exh. DCG-22 at 2–3; Tack Exh. CLT-12 at 2.

¹⁷ Gomez, Exh. DCG-22 at 3.

¹⁸ Gomez, Exh. DCG-22 at 3–4.

¹⁹ Gomez, Exh. DCG-22 at 4.

²⁰ Gomez, Exh. DCG-22 at 4.

²¹ Gomez, Exh. DCG-22 at 4.

1 Due to this violation of the PM emission limit, Units 3 and 4 went into a forced
2 outage beginning on June 28, 2019.²²

3

4 **Q. When were the units brought back on line?**

5 A. On September 4, 2018, Unit 4 demonstrated compliance, with a PM emission rate of
6 0.021 lb/MMBtu.²³ On September 11, 2018, Unit 3 demonstrated compliance, with a
7 PM emission rate of 0.024 lb/MMBtu.²⁴

8

9 **Q. Did the Companies procure power from different sources during these outages?**

10 A. Yes. As a direct result of the outage and derate, all three Companies procured power
11 to replace Colstrip's lost generation. The 2018 Colstrip outage and derate coincided
12 with particularly high market prices for energy,²⁵ resulting in the Companies
13 procuring power from different sources at a net increase to power costs of \$21.9
14 million in the deferral year.²⁶ All three Companies are now seeking recovery of these
15 replacement power costs in their respective power cost adjustment mechanism
16 filings.

17

²² Gomez, Exh. DCG-22 at 4.

²³ Gomez, Exh. DCG-22 at 4.

²⁴ Gomez, Exh. DCG-22 at 4.

²⁵ Exhibit DCG-19 illustrates the Colstrip monthly generation relative to the Mid-Columbia power prices during the time period around the 2018 Colstrip Outage.

²⁶ **PSE** - \$17.9 million, Wetherbee, UE-190324, Exh. PKW-1CT (revised Nov. 13, 2019) at 15:3-9; **Avista** - \$3.5 million, UE-190222, Johnson Exh. WGJ-1T, at 12:4-11; and **Pacific** - \$0.5 million, UE-190458, Wilding Exh. MGW-1T at 15:10-13.

1 **B. Montana Department of Environmental Quality’s Lawsuit**

2

3 **Q. Did the Operator of Colstrip Units 3 and 4 face any civil penalties as a result of**
4 **violating the MATS standard from the Montana Department of Environmental**
5 **Quality?**

6 A. Yes. The Montana Department of Environmental Quality (“MDEQ”) filed a
7 Complaint and Application for Injunction against the Operator in the Sixteenth
8 Judicial District, Rosebud County, Montana.²⁷ The complaint contained two causes
9 of action against the Operator: first, for operating while out of compliance with the
10 MATS PM emission standard; and second, for failing to appropriately certify a
11 compliance report.²⁸ The first cause of action is particularly relevant to this docket.
12 In the first cause of action, MDEQ asserted that Units 3 and 4 failed to comply with
13 applicable laws by exceeding the PM emission limit for 77 days.²⁹ MDEQ sought
14 relief in the form of a civil penalty of up to \$10,000 for each of the 77 days the
15 Colstrip Facility was out of compliance.³⁰

16

17 **Q. What was the result of the lawsuit MDEQ brought against the Operator for its**
18 **violation of the MATS PM standard?**

²⁷ Gomez, Exh. DCG-5; Tack, Exh. CLT-11 ¶ 10 (“The Department has filed a Complaint and Application for Injunction against Talen in the Sixteenth Judicial District, Rosebud County, Montana.”).

²⁸ Tack, Exh. CLT-11 ¶ 10.

²⁹ Tack, Exh. CLT-11 ¶¶ 10, 29.

³⁰ Tack, Exh. CLT-11 ¶¶ 10, 31.

1 A. MDEQ and the Operator filed a Stipulation for Consent Decree in the Sixteenth
2 Judicial District, Rosebud County, Montana.³¹ The consent decree resolved the
3 claims against the Operator in MDEQ’s complaint. As a term of the consent decree,
4 the Operator agreed to pay a \$450,000 penalty for violations of the MATS PM
5 emission standards.³² The Operator also agreed to comply with injunctive relief as a
6 term of the consent decree.³³ In return for agreeing to the \$450,000 penalty and
7 injunctive relief, MDEQ agreed to the following:

8 In consideration of the actions that will be performed and the payments that
9 will be made by Talen under the terms of the Consent Decree, the
10 *Department covenants not to sue Talen in another judicial or administrative*
11 *action for any of the alleged actions or violations identified in the*
12 *Complaint.*³⁴

³¹ Tack, Exh. CLT-11.

³² Tack, Exh. CLT-11 at 13.

³³ Tack, Exh. CLT-11 at 15–18. The Operator agreed to the following injunctive relief as a term of the Consent Decree:

1. Conduct PM emission testing on each electrical generating unit (EGU) at the Colstrip facility to demonstrate compliance with its Operating Permit issued under ARM Title 17, chapter 8, subchapter 12 (also known as its Title V permit) each month, beginning December 2018. The testing must be in accordance with Talen’s existing source test protocol and Talen may not deviate from this schedule unless it has obtained written approval from the Department. After at least 12 months have elapsed from the December 2018 initial monthly test, Talen may request Department approval, which may not be unreasonably withheld, to return to quarterly testing.
2. Submit, for Department review and approval, a revised test protocol MATS PM testing associated reporting in accordance with the Montana Source Test report. The report must include all relevant data used to perform the calculation, including pollutant emission rate, the daily heat input for each unit for the reporting period, and the total heat input for the proceeding 30-boiler operating days for each unit. Talen shall also provide the report described in this paragraph to the Department in electronic spreadsheet format.

³⁴ Tack, Exh. CLT-11 at 17 (emphasis added).

1 **Q. Did the Operator admit to any imprudent actions in the consent decree?**

2 A. No. The consent decree explicitly states that “[t]he Department and Talen agree that
3 the actions undertaken by Talen in accordance with the Consent Decree *do not*
4 *constitute an admission of any liability or imprudence by Talen.*”³⁵

5
6 **Q. How much weight did Staff give to MDEQ’s draft and final penalty calculation
7 worksheet in providing its prudence recommendation to the Commission?**

8 A. Not much. Staff’s prudence recommendation described in Section IX below is based
9 on Staff’s independent analysis of whether the Companies met their legal burden to
10 demonstrate the prudence of the costs associated with the 2018 Colstrip outage.
11 Staff’s conclusion is, essentially, an application of the facts it discovered through its
12 investigation, applied to the Commission’s prudency standard as articulated in prior
13 orders. Accordingly, Staff’s conclusion is not dependent on MDEQ’s assessment of
14 the Operator’s violations of PM emission standards that caused the 2018 Colstrip
15 outage. However, Staff did inquire into why MDEQ thought the PM emission
16 violations were foreseeable, thereby warranting an increase in the base penalty
17 amount against the Operator in MDEQ’s ██████████ penalty assessments.

18

19 **Q. Did MDEQ provide any evidence that supported Staff’s investigation?**

20 A. Yes. In his Exhibit CLT-12, Mr. Charles (Chuck) L. Tack; Managing Director of
21 Generation Support for Pacific Power, includes the final penalty calculation

³⁵ Tack, Exh. CLT-11 at 17 (emphasis added).
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1 worksheet (that was associated with the consent decree) from MDEQ showing how it
 2 calculated its penalty against the Operator.³⁶ MDEQ found the gravity³⁷ and extent³⁸
 3 of the violation warranted the highest penalty factor against the Operator. The table
 4 below demonstrates how MDEQ calculated its penalty factor:

Harm to Human Health or the Environment				
Extent	Gravity			
	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
			Gravity and Extent Factor:	0.85

Impact to Administration				
Gravity				
Major	Moderate	Minor		
0.50	0.40	0.30		
			Gravity Factor:	0.00

6 **BASE PENALTY (Maximum Penalty Authority x Gravity Factor):** **\$8,500.00**

7
 8 **Q. Did MDEQ provide any indication that the PM Emission violation was**
 9 **foreseeable?**

10 A. In its final penalty calculation worksheet, MDEQ increased the base penalty by eight
 11 percent due to the circumstances of the violation.³⁹ These circumstances included the
 12 foreseeability of the violation and whether reasonable precautions could have been
 13 taken to prevent the violation.⁴⁰ In this section of the penalty assessment, MDEQ
 14 indicated the eight percent increase was due to the foreseeability of the violation:

³⁶ Tack Exh. CLT-12 at 1(emphasis added).

³⁷ Tack Exh. CLT-12 at 1. MDEQ stated that “Talen released a substance which poses a potential to harm human health or the environment Talen experienced an exceedance of the HAP emission limit designed to protect human health which has the potential for serious harm. *The gravity of the violation was major.*” Tack, Exh. CLT-12 at 1 (emphasis added).

³⁸ Tack Exh. CLT-12 at 1. MDEQ stated that “[t]he limit of 0.030 lb/MMBtu was exceeded by 16%–36% for 77 days of noncompliance, with an average exceedance of 32%. Based on the length of noncompliance and percent of exceedance from an air toxic limit, *the extent is major.*” Tack, Exh. CLT-12 at 1 (emphasis added).

³⁹ Tack Exh. No. CLT-12 at 2.

⁴⁰ Tack Exh. CLT-12 at 2.

1 While individual unit emission rates have experienced increases and decreases
2 over the years, the weighted average PM emission rate has a slight upward
3 trend, indicating a shrinking compliance margin over time. The PM emission
4 rate from the first quarter showed a decrease in PM emissions for Unit 1,
5 however, Unit 2, 3, and 4 all showed increases in PM emissions to their highest
6 reported weight average since MATS took effect in 2016. The resulted yielded
7 a weighted average emissions rate equal to the permit limit of 0.030 lb/MMBtu,
8 prompting Talen to investigate possible reasons for the elevated PM emissions.
9 . . . The Department has determined that an increase in the base penalty of 8%
10 is appropriate for circumstance.⁴¹
11

12 Q. [REDACTED]

13 [REDACTED]

14 A. [REDACTED]

15 [REDACTED]:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]⁴²

⁴¹ Tack Exh. CLT-12 at 2.

⁴² Gomez, Exh. DCG-25(Company Confidential) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 IV. PRINCIPLES APPLIED TO STAFF'S INVESTIGATION

2

3 Q. What prudence standard applies to a power cost deferral filing?

4 A. In Pacific Power's 2016 Power Cost Adjustment Mechanism (PCAM) annual review,
5 Staff challenged the prudence of the abandonment of the Joy Longwall Mining System
6 at the Jim Bridger coal mine. The prudence standard that Staff relies on in this Docket
7 is the same one that Staff applied in the Joy Longwall case.⁴³

8

9 Q. Please describe in more detail the prudence standard Staff relies on.

10 A. As with any other expense, the reasonableness standard is generally appropriate to
11 determine whether certain power costs should be deferred and ultimately born by
12 ratepayers.⁴⁴ The Commission applies a reasonableness standard "when reviewing
13 the prudence of decisions relating to power costs, including those arising from power

[REDACTED]

[REDACTED]

⁴³ In the Matter of Pacific Power & Light Company, 2016 Power Cost Adjustment Mechanism Report, Docket UE-170717, Ball Exh. JLB-1CT at 6:1 through 7:12. *See e.g.*, UE-152253, Order 12 ¶94 ("Regulated public service companies bear the burden of proof that their decisions are prudent, just as they are required to demonstrate generally that their proposed rates are just and reasonable reflecting capital expenditures that are used and useful to end-users. . . . The Commission has often cited the prudence legal standard as thus: What would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision?").

⁴⁴ *See* Charles F. Phillips, Jr., *The Regulation of Public Utilities* 256 (1993) ("In all cases . . . the commissions should require proof as to the reasonableness of a utility's charges to operating expenses").

1 generation asset acquisitions.”⁴⁵ “Prudence is an expression of the reasonableness
2 standard, and the Commission typically employs the term ‘prudence’ when it
3 evaluates rate base expenditures. In determinations of the reasonableness of non-rate
4 base expenditures, such as power costs, the Commission’s prudence decisions are
5 just as applicable.”⁴⁶

6

7 **Q. Please explain why all three Companies would be responsible for the actions of**
8 **the Operator of Colstrip Units 3 and 4?**

9 A. Although the Operator is not an entity that is directly regulated by the Commission,
10 the Operator is contractually obligated to all three Companies to operate Colstrip
11 Units 3 and 4 in a prudent manner.⁴⁷ Given prior Commission guidance, Staff’s
12 position is that the Companies cannot avoid regulatory responsibility to operate
13 Colstrip Units 3 and 4 in a prudent manner by simply delegating the operation to a
14 third party—the Operator—via contract.⁴⁸ Accordingly, any increased fuel costs

⁴⁵ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12, ¶ 19 (Apr. 7, 2004) (footnotes and related citations omitted).

⁴⁶ In the Matter of Pacific Power & Light Company, 2016 Power Cost Adjustment Mechanism Report, Docket UE-170717, Ball, Exh. JLB-1CT at 6:8-12.

⁴⁷ Gomez, Exh. DCG-7(C), Avista’s response to SUBPART C.

⁴⁸ Staff’s motion for severance and consolidation filed in the power costs dockets provided the following legal citations: *See e.g.*, PG—060215 Order 02 (Final Order Accepting Agreement on Condition). In Order 01, the Commission stated:

The Commission imposes a penalty of \$ 1.25 million on PSE for the fraudulent actions of *certain of its contractor employees* in falsifying pipeline inspection records. . . . The Commission emphasizes the responsibly of regulated utilities to ensure adequate safeguards are in place to protect the public, *even when relying on contractor employees to achieve portions of their mission.* (emphasis added);

see also UT-140597, Order 03 ¶25 (Final Order Approving Settlement Agreement) (Commission approving settlement imposing a penalty of \$2,854,750 against Quest Corporation d/b/a CenturyLink QC for violations arising from a 911 service outage caused by issues with its vendor’s software). In Order 03, the Commission stated:

What is important for our review is to ensure that CenturyLink has *adequate management and oversight systems* in place to both reduce the risks of such errors occurring and also to have systems in place to provide awareness of outages and to restore 911 service as rapidly as possible. *This applies*

1 associated with the actions of the Operator cannot be recovered by the Companies if
2 the Operator's actions are found to be imprudent. Additionally, if any costs are
3 disallowed as imprudent in this case, the Companies could potentially recover these
4 costs in a suit against the Operator for breach of contract, for example, for failing to
5 operate Colstrip Units 3 and 4 in a prudent manner.

6

7 **Q. Has there been recent guidance from the Commission on prudence?**

8 A. Yes. In Pacific Power's 2015 GRC, the Commission stated that:

9 Simply because a decision to begin a project is initially prudent does not, ipso
10 facto, make the continuation or actual completion of the project prudent. We
11 have required that companies continually evaluate a project as it progresses to
12 determine if the project continues to be prudent from both the need for the
13 project and its impact on the company's ratepayers.⁴⁹

14

15 **Q. Has the Commission addressed the importance of documentation to the**
16 **assessment of a decision's prudence?**

17 A. Yes. The Commission has explained the importance of documenting company
18 communication:

19 Although helpful, we find that ... the verbal exchanges ... among ...
20 management in place of a full [System Optimizer] SO model reassessment is
21 not sufficiently documented or precise enough to support an ultimate decision
22 of prudence on the basis of continuous and rigorous analysis over this seven
23 month period. In our view ... [this] simply does not prove that the Company
24 adequately examined the changing circumstances in coal and natural gas
25 prices, which could have impacted a prudent or imprudent decision. As we
26 stated in a previous order involving PSE:

both to the Company itself and to any contractor or vendor such as Intrado. In other words, we require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements. (emphasis added).

⁴⁹ *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-152253, Order 12, ¶ 98 (Sep. 17, 2016) (emphasis added) (footnotes and related citations omitted).

1 'robust discussions' about various resources, with 'a consensus' on
2 the decisions, are not sufficient to demonstrate prudence [...] The
3 parties and the Commission therefore should be able to follow the
4 company's decision-making process, knowing what elements the
5 company used, and the manner in which the company valued those
6 elements. Such a process should certainly be documented.⁵⁰
7

8 **Q. Has the Commission expressed the importance of keeping contemporaneous**
9 **documentation to assess the subsequent prudence of a decision?**

10 A. Yes. In Docket UE-152253, Order 12, the Commission found that Pacific Power
11 failed to meet its legal burden of proof to show that its SCR system investments were
12 prudent because it failed to produce the *necessary contemporaneous documentation*
13 that it re-evaluated certain options. The Commission concluded in that case:

14 With regard to the Company's request for full recovery of its selective catalytic
15 reduction (SCR) systems on Units 3 and 4 of Bridger, the Commission finds that
16 *Pacific Power failed to produce contemporaneous documentation* and
17 demonstrate, from May to December 2013, it re-evaluated its options to comply
18 with the Regional Haze Rule obligations when significant changes were
19 occurring in natural gas pricing and coal costs and before it signed the full notice
20 to proceed with the SCR engineering, procurement, and construction services
21 contract. Thus, the Company failed to meet its burden of proof that the
22 investments were prudent.⁵¹
23
24

25 V. COMMISSION FILINGS

26 27 A. Companies' Initial Filings

28
29 **Q. What is the timing of the Companies' annual power cost mechanism reviews?**

⁵⁰ *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-152253, Order 12, ¶ 107 (Sep. 17, 2016) (emphasis added).

⁵¹ Docket UE-152253, Order 12 at 3 (emphasis added).

1 A. The Companies' annual reviews are staggered, with Avista's filing due on April 1,
2 PSE's on May 1, and Pacific Power's on June 1, 2018.

3

4 **Q. Did Staff anticipate a need to investigate the prudence of the Colstrip outage**
5 **prior to the annual power cost mechanism reviews?**

6 A. Yes. Staff communicated its expectations to the Companies regarding the upcoming
7 annual power cost mechanism filings on January 17, 2019:

8 This email is to let you know commission staff will be expected to provide
9 the commission with an analysis of the outage, including the cause of the
10 outage and the cost of replacement power, and a recommendation regarding
11 the prudence of incremental costs associated with the outage. I would like to
12 ask that you address this issue in a proactive manner in your filings. As we
13 will be expected to investigate this issue, it would be more efficient if you all
14 could file testimony (or at a minimum a comprehensive narrative) and any
15 additional pertinent evidence on the issue. *I'm worried that if this issue is not*
16 *addressed proactively, and staff has to conduct its review through discovery,*
17 *the probability that these filings will need to be suspended and set for hearing*
18 *risers substantially.* Please do not interpret this email to mean that staff
19 intends to challenge the prudence of costs associated with the outage. Rather,
20 I just want to make you all aware *staff will need to investigate this issue, and*
21 *that producing the pertinent information up front will help us complete our*
22 *review in the limited time we will have.*⁵²

23

24 **Q. Did the Companies provide sufficient evidence that adhered to this advice?**

25 A. No. PSE provided a total of six pages of testimony; Avista provided five pages of
26 testimony; and Pacific Power provided two pages of testimony pertaining to the 2018
27 Colstrip outage in their initial filings.⁵³ With the exception of six sentences
28 contained in the pre-filed direct testimony of PSE's witness Ronald Roberts, these

⁵² Gomez, Exh. DCG-2. *See also* Gomez, Exh. DCG-22 (Declaration of David C. Gomez in Staff's motion filed on September 26, 2019).

⁵³ Gomez, Exh. DCG-22 at 5–6.

1 initial testimonies and the accompanying evidence avoided any mention of the
2 decisions made and actions taken by the Colstrip Owners [REDACTED]

3 [REDACTED]
4 [REDACTED] 54

5
6 **Q. Starting with Avista, please describe the Companies' initial filings in their**
7 **respective annual power cost mechanism reviews.**

8 A. On March 29, 2019, Avista filed testimony and exhibits as part of its annual filing to
9 review the prudence of power cost expenditures in the 2018 Energy Recovery
10 Mechanism (ERM) deferral year.⁵⁵ In his prefiled direct testimony, Avista witness
11 Thomas Dempsey sums up his argument regarding the prudence of the 2018 Colstrip
12 outage as follows:

13 The outage was not the result of imprudent actions on the part of Avista, Talen,
14 or the other plant owners. In my view, Talen acted appropriately both in terms of
15 conducting the required compliance testing which provided the preliminary
16 findings of non-compliance with MATS, properly notifying MDEQ of the issue
17 and securing an agreement to provide for the limited operation of the units until
18 the issue could be resolved. Talen immediately began troubleshooting to
19 determine the cause of the exceedance, made adjustments and needed equipment
20 improvements which ultimately brought Units #3 and #4 back into MATS
21 compliance.⁵⁶

22 Avista also provided, at initial filing, testimony and exhibits relating to a second
23 major baseload plant forced outage which occurred right after the outage at Colstrip.
24 Had Avista's outage of its Coyote Springs 2 plant occurred at the same time as the

⁵⁴ Gomez, Exh. DCG-22 at 5-6.; Gomez, Exh. DCG-5(CC), Department of Environmental Quality - Enforcement Division Penalty Calculation Worksheet, Subsection IIA.

⁵⁵ Wash. Utils. & Transp. Comm'n v. Avista Corporation, Docket No. UE-011595, Fifth Supplemental Order (June 18, 2002) (2002 ERM Order).

⁵⁶ UE-190222, Dempsey Exh. TCD-1T at 7:3-11.

1 outage at Colstrip Units 3 and 4, the impacts to the 2018 power costs would have
2 likely been much greater.⁵⁷ Staff expressed its concerns about the reliability of
3 Avista's system, due to the close timing of these two base-load plant outages, in
4 testimony filed in Avista's latest GRC.⁵⁸

5
6 **Q. Does Mr. Dempsey describe Avista's role in managing operations at Colstrip?**

7 A. Yes. Mr. Dempsey states that Avista, along with the other Owners, provides
8 oversight of the Colstrip facility with the Operator being responsible for day-to-day
9 operations.⁵⁹

10

11 **Q. Did Mr. Dempsey's testimony mention the actions taken and decisions made by**
12 **the Operator and the Owners before the start of the outage?**

13 A. No.

14

15 **Q. Turning now to PSE, please describe their initial filing.**

16 A. On April 30, 2019, PSE filed testimony and exhibits as part of its annual filing to
17 review the prudence of power cost expenditures in the 2018 Power Cost Adjustment
18 mechanism deferral year. This initial filing included the testimony and exhibits of
19 Mr. Roberts, PSE's principal witness concerning the 2018 Colstrip outage.⁶⁰ Mr.

⁵⁷ See UE-190222, Dempsey Exh. TCD-1T

⁵⁸ UE-190334, UG- 190335, UE-190222 (consolidated), Exh. DCG-1CT Testimony of David C. Gomez at 31:1-6.

⁵⁹ UE-190222, Dempsey Exh. TCD-1T at 2:13-19.

⁶⁰ UE-190324, Roberts Exh. RJR-1T.

1 Roberts' testimony recounts events after the outage along with steps taken by the
2 Operator and the Owners to remedy Colstrip's PM emission compliance problem.⁶¹

3

4 **Q. Does Mr. Roberts describe PSE's role in managing operations at Colstrip?**

5 A Yes. According to Mr. Roberts, the Operator acts as operator and makes day-to-day
6 operational decisions with oversight from the Owners.⁶²

7

8 **Q. Does Mr. Roberts' initial testimony mention the actions taken and decisions
9 made by the Operator and the Owners before the start of the outage?**

10 A. Yes. PSE's witness, Mr. Roberts, dedicates a total of six sentences to this topic in
11 his testimony:

12 Initial compliance [particulate matter emission rate of 0.030 lb/MMBtu] at
13 Colstrip was in September 2016, and until June 2018 Colstrip had maintained full
14 compliance. In fact, compliance testing in fourth quarter of 2017 showed lower
15 than normal results. There was elevation in the results for the first quarter of
16 2018; however, the facility remained in compliance. Investigation following the
17 first quarter 2018 testing period showed no operational issues that would
18 indicate further increases in particulate matter levels. The particulate matter
19 readings at Colstrip have fluctuated over the years. For example, please see Exh.
20 RJR-3 for Units 3 & 4 particulate matter test results from 2016 through August
21 2018 (column titled lb/MMBtu).⁶³

22

23 **Q. Finally, please describe Pacific Power's initial filing.**

24 A. The prefiled initial testimony of Pacific Power witness Michael Wilding presents the
25 power cost deferrals associated with the 12-month period between January 1, 2018

⁶¹ UE-190324, Roberts Exh. RJR-1T at 2:1-5.

⁶² UE-190324, Roberts Exh. RJR-1T at 2:17-19.

⁶³ UE-190324, Roberts Exh. RJR-1T at 4:7-15 (emphasis added).

1 and December 31, 2018.⁶⁴ Mr. Wilding's testimony includes a discussion of the
2 Colstrip outage.

3

4 **Q. Does Wilding describe Pacific Power's role in managing operations at Colstrip?**

5 A. Yes. According to Mr. Wilding:

6 The plant is jointly-owned by various parties, of which the company is a 10
7 percent owner in Unit 3 and Unit 4. In accordance with Order 08 in Docket UE-
8 061546, only the company's ownership of Unit 4 is included in the company's
9 Washington base rates and computation of Actual NPC. The operator, Talen
10 Montana (Talen), plans and carries out the daily operation of the facility.⁶⁵

11 Mr. Wilding then goes on to say:

12 As stated above, in accordance with the joint-owner agreement, the company has
13 a 10 percent ownership in Colstrip Unit 4. The company participates to the
14 fullest extent of the joint-ownership agreement, including participation in on-
15 going operations and the management committee, in which a representative from
16 the company is present at a monthly meeting to discuss, among other items,
17 safety, operations, environmental, finance, and to provide input for decisions
18 related to the Colstrip plant.⁶⁶

19

20 **Q. Does Mr. Wilding's initial testimony mention the actions taken and decisions
21 made by the Operator and the Owners before the start of the outage?**

22 A. No.

23

24 **B. Staff's Motion for Severance and Consolidation**

25

26 **Q. Why did Staff file its motion for severance and consolidation on September 26,
27 2019?**

⁶⁴ UE-190458, Wilding Exh. MGW-1T.

⁶⁵ UE-190458, Wilding Exh. MGW-1T at 13:14-19.

⁶⁶ UE-190458, Wilding Exh. MGW-1T at 13:20 to 14:3.

1 A. As described in my declaration dated September 26, 2019, Staff was not able to offer
2 a recommendation to the Commission regarding the prudence of the actions taken by
3 the Operator and the Companies leading up to the outage after its informal discovery
4 efforts.⁶⁷ Staff therefore filed its motion to sever Avista’s ERM filing from the
5 Avista GRC, consolidate all three power cost filings, and set the matter for
6 adjudication on September 26, 2019. On October 24, 2019, the Commission issued
7 an order initiating the joint investigation in this docket.

8

9 **C. Pacific Power’s Supplemental Testimony**

10

11 **Q. Did the Commission’s order and Staff’s subsequent investigation result in**
12 **additional evidence that enabled Staff to make a recommendation as to the**
13 **prudence of the Owners’ and Operator’s actions prior to the outage?**

14 A. Yes. The filing of supplemental testimony on December 5, 2019, by Pacific Power
15 witness Mr. Tack permitted Staff to make a prudence recommendation in this docket.
16 Staff would not have had sufficient information to write this testimony without this
17 supplemental filing from Pacific Power—as Staff’s previous discovery efforts had
18 been unsuccessful in obtaining this information.⁶⁸ Accordingly, the filing of this

⁶⁷ See Gomez, Exh. DCG-22 - (UE-190324 (et al), Declaration of David C. Gomez, September 26, 2019).

⁶⁸ Pacific Power’s offer of a “discovery” workshop (that began the conversations that lead to the filing of this supplemental testimony) came after Staff had issued DR Nos. 8 and 9 (PCAM):

DR) No. 8 – Please confirm/admit or deny that Pacific Power has produced all contemporaneous documentation of all analyses and/or decision making in its or in Talen’s possession relating to: (1) the elevated particulate matter levels at Colstrip Units 3 and 4 during Q1 2018; (2) the 2018 Colstrip Units 3 and 4 derate and outage; and/or (3) the acquisition and/or cost of replacement power

1 supplemental testimony helped avoid the need for Staff to file motions to compel and
2 propound numerous other data requests to the Companies to obtain the information it
3 needed to provide its recommendation. The testimony of Mr. Tack was the result of a
4 series of meetings organized by counsel for Staff and Pacific Power. While Staff
5 appreciates Pacific Power’s efforts in providing this testimony in advance of Staff’s
6 deadline for responsive testimony, this information should have been provided by all
7 of the Companies at their initial filings.

9 VI. STAFF’S INVESTIGATION

11 A. Staff’s Investigation; Actions Taken after the Outage

13 Q. Did Staff look into the actions taken by the Companies after the outage 14 occurred?

associated with the 2018 Colstrip Units 3 and 4 derate and outage. If any such documents exist but have not been produced, please produce these documents as a response to this data request.

This documentation and/or information is needed to demonstrate to Staff the prudence of the Company’s and its agent’s conduct, decision-making, and deliberative processes, as well as for Staff to know the elements the Company and its agents used in its decision making and the manner in which the Company and its agents valued each of those elements.”

DR No. 9 – Please state whether any Company officers, executives, or any witnesses that intends to testify on behalf of the Company (should this matter proceed to adjudication) have any knowledge of the analyses and/or decision making relating to: (1) the elevated particulate matter levels at Colstrip Units 3 and 4 during Q1 2018; (2) the 2018 Colstrip Units 3 and 4 derate and outage; and/or (3) the acquisition and/or cost of replacement power associated with the 2018 Colstrip Units 3 and 4 derate and outage. If such individuals have knowledge that has not yet been provided by the Company, please memorialize and provide the substance of those individuals’ knowledge as a response to this data request.⁶⁸

Gomez, Exh. DCG-15.

1 A. Yes. The Companies' initial filings focused on the actions taken by the Operator
2 after the outage occurred and how the Companies procured replacement power once
3 they were informed of the outage by the Operator.⁶⁹ After conducting its
4 investigation, Staff believes the actions taken by the Operator to get Units 3 and 4
5 back into PM emission compliance after the outage occurred were reasonable and
6 prudent. Staff also believes the individual methods of procurement used by each
7 Company to obtain replacement power, due to the outage, were reasonable and
8 prudent.

9
10 **B. Staff's Investigation; Actions Taken before the Outage**

11
12 **Q. When did Staff first suspect that the Operator had conducted an investigation**
13 **into elevated PM levels at Colstrip in Q1 of 2018, prior to the forced outage?**

14 A. The first indication Staff received that an investigation had taken place, in Q1
15 (before the outage) was in PSE's initial testimony.⁷⁰ However, Staff received
16 corroboration of this fact through additional informal discovery. For example, in
17 Avista's response to Staff's DR No. 4, Subparts J and K it was revealed that non-
18 Area C coal had been burned in Units 3 and 4 for the first time in their history as part
19 of a "troubleshooting" effort.⁷¹ [REDACTED]

20 [REDACTED]

21 [REDACTED]⁷²

⁶⁹ See Gomez, Exh. DCG-22.

⁷⁰ UE-190324, Roberts Exh. RJR-1T at 4:7-15.

⁷¹ Gomez, Exh. DCG-6(C).

⁷² Gomez, Exh. DCG-25(Company Confidential).

1 **Q. What type of information and/or documentation did Staff request about the**
2 **Operator’s Q1 investigation?**

3 A. Staff hoped to learn how the Operator and the Owners planned to address the
4 elevated PM levels during Q1. In particular, Staff wanted to know how the Operator
5 (as the contractual agent of all three Companies) planned to address these elevated
6 levels in Q1 of 2018—given that these Units would again be tested in June 2018. To
7 apply a metaphor, Colstrip’s zero PM compliance margin in Q1 was akin to an
8 automobile’s “check engine light” coming on—and Staff wanted to know what the
9 Operator’s plans were to address the issue. [REDACTED]

10 [REDACTED]

11 [REDACTED]⁷³

12

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

13

14 **Q. When asked by Staff in discovery about a Q1 investigation into elevated PM**
15 **levels, what were the Companies’ initial responses?**

⁷³ Tack, Exh. CLT-7 (Company Confidential). These elevated PM levels were at historically high levels for Units 3 and 4. As MDEQ states in its final penalty assessment:

While the individual unit emission rates have experienced increases and decreases over the years, the weighted average PM emission rate has a slight upward trend, indicating a shrinking compliance margin over time. . . . The results yielded a weighted average emission rate equal to the permit limit of 0.030 lb/MMBtu, *prompting Talen to investigate possible reasons for the elevated PM emission.*

Tact, Exh. CLT-12 at 2 (emphasis added).

1 A. Initially, Avista and Pacific Power failed to acknowledge that the Operator
2 conducted an investigation. Avista’s confidential response to Staff DR No. 5,
3 Subpart D and Staff DR No. 62 were as follows:

4 *Avista does not recall* Talen’s investigation into the increase in particulate matters
5 in Q1 2018, primarily because of the fact Colstrip was not otherwise out of
6 compliance. Avista does not have any documentation dating back to Q1 of 2018
7 related to this question. However, we are aware of Puget Sound Energy, witness
8 Mr. Roberts who states in his testimony, JRJ-1T, at p. 4 ln 9-13 in Docket No. UE-
9 190324:

10 There was an elevation in the results for the first quarter of 2018; however,
11 the facility remained in compliance. Investigation following the first quarter
12 2018 testing period showed no operational issues that would indicate further
13 increase in particulate matter levels”⁷⁴

14 To the best of Avista’s knowledge, Colstrip did not burn Area A coal for the
15 purpose of evaluating elevated levels of PM in Q1.”⁷⁵

16 Pacific Power’s response to Staff DR No. 5, Subpart C was as follows:

17 *Pacific Power is not aware of an investigation* by Talen into the particulate matter
18 levels in Q1 of 2018. The rise in particulate matter levels was the subject of
19 additional monitoring, but was within compliance. The results of the investigation
20 into the rise of particulate matter levels that caused the MATS issues are described
21 in the root cause analysis (RCA). Please refer to Confidential Attachment WUTC
22 5-1 which contains the root cause analysis (RCA).”⁷⁶

23

24 **Q. Having originally denied knowledge of a Q1 investigation into elevated PM**
25 **levels at Colstrip in both its initial filing and informal discovery, did Pacific**
26 **Power admit that one had been conducted after all?**

⁷⁴ Gomez, Exh. DCG-7C.

⁷⁵ Gomez, Exh. DCG-12C (emphasis added).

⁷⁶ Gomez, Exh. DCG-8.

1 A. Yes. Pacific Power supplemented its response to Staff Data Request No. 8 (PCAM)
2 with a copy of a management presentation relating to the MATS PM emission issues
3 which plagued the Colstrip plant through most of 2018.⁷⁷ Notably, the date of this
4 presentation to Pacific Power's management was not provided to Staff. [REDACTED]

5 [REDACTED]
6 [REDACTED].⁷⁸

7 At this meeting, the Operator informed the Companies that it would be conducting
8 an investigation into the elevated PM levels.⁷⁹

9

10 **Q. How about Avista?**

11 A. In its November 25, 2019 response to Staff Data Request No. 303 Corrected, Avista
12 states that it had recently become aware of a Q1 investigation into elevated PM
13 levels through its conversations with the Operator.⁸⁰ This came *seven months* after
14 Avista filed its testimony in the ERM annual review.

15

16 **Q. Did Pacific Power's supplemental testimony address the issue of a Q1**
17 **investigation before the outage?**

18 A. Yes. Pacific Power's supplemental filing on December 5, 2019, discusses the
19 Operator's Q1 investigation addressing the elevated PM levels.

20

⁷⁷ Gomez, Exh. DCG-16C.

⁷⁸ Gomez, Exh. DCG-16C (Company Confidential); Tack Exh. CLT-1T at 4

⁷⁹ Tack, Exh. CLT-1T at 4.

⁸⁰ Gomez, Exh. DCG-17C.

1 **VII. TIMELINE OF EVENTS BEFORE THE OUTAGE**

2

3 **Q. Did the Commission instruct Staff to provide a comprehensive understanding of**
4 **the decision making leading up to the 2018 outage?**

5 A. Yes. The Commission stated that:

6 [W]e expect the investigation will afford the Commission a
7 comprehensive understanding of Avista’s, PSE’s, and Pacific Power’s
8 decision making as co-owners of Colstrip leading up to the 2018 outage
9 and the resulting costs of replacement power.⁸¹

10

11

12 **Q. Can you provide a timeline of the events leading up to the Colstrip outage that**
13 **will provide the Commission with a comprehensive understanding of the**
14 **decision making leading up to the 2018 Outage?**

15




16 A. Yes.

17

18 **Q. Provide a timeline of the events leading up to the 2018 Colstrip outage.**

19 A. The table below summarizes the timeline and major decision points leading up to the
20 2018 Colstrip outage (based on Staff’s investigation):

21

Feb. 14	   ⁸²
Feb. 21	At an O&O Committee meeting, the Operator decides that the best course to deal with these elevated levels is to monitor “alternative indicators” and other troubleshooting efforts. ⁸³

⁸¹ Docket UE-190882, Order 01 ¶ 23.
⁸² Tack, Exh. CLT-7 (Company Confidential).
⁸³ Tack, Exh. CLT-1T 4-5.

Apr. 19	The Operator schedules the official Q2 PM Emission test for Unit 3 on June 5, and Unit on June 7. ⁸⁴
Mar. - May 30	[REDACTED] [REDACTED] [REDACTED] ⁸⁵
Mar. 21	At an O&O Committee meeting, the Operator states that it has not identified any item causing the elevated levels but nevertheless thought they would pass the Q2 PM Emissions test. ⁸⁶
May 30	[REDACTED] [REDACTED] [REDACTED] [REDACTED] ⁸⁷
June 1	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ⁸⁹
June 6 - June 20	[REDACTED] [REDACTED] [REDACTED] [REDACTED] ⁹⁰
June 20 - June 28	[REDACTED] [REDACTED] [REDACTED] ⁹¹
June 20	[REDACTED] [REDACTED] [REDACTED] ⁹²
June 21	[REDACTED] [REDACTED] ⁹³
June 26	[REDACTED] [REDACTED] ⁹⁴

⁸⁴ Gomez, Exh. DCG-18, Appendix E.

⁸⁵ Tack, Exh. CLT-9 at 2 (Company Confidential).

⁸⁶ Tack, Exh. CLT-1T at 7.

⁸⁷ Gomez, Exh. DCG-18, Appendix E.

⁸⁸ Tack, Exh. CLT-1T at 8; Gomez, Exh. DCG-18, Appendix E.

⁸⁹ Tack, Exh. CLT-1T at 8 (Company Confidential); Gomez, Exh. DCG-18, Appendix E; Tact Exh. CLT-7 (Company Confidential).

⁹⁰ Tack, Exh. CLT-7 (Company Confidential).

⁹¹ Tack CLT-1T at 9-10 (Company Confidential).

⁹² Tack, CLT-9 at 5 (Company Confidential).

⁹³ Tack, CLT-7 (Company Confidential). For a graph that shows recorded PM levels, please refer to my Exhibit DCG-4.

⁹⁴ Tack, CLT-7 (Company Confidential).

June 27	[REDACTED] ⁹⁵
June 28	[REDACTED] ⁹⁶
June 29	[REDACTED] ⁹⁷
Sept 4	[REDACTED] ⁹⁸
Sept. 11	[REDACTED] ⁹⁹

1

2

3 **Q. Can you please provide a brief description of the events listed above?**

4 **A.** [REDACTED]

5 [REDACTED]¹⁰⁰ [REDACTED]

6 [REDACTED]¹⁰¹ [REDACTED]

7 [REDACTED] To

8 use the metaphor mentioned earlier, on February 14, 2018, the “check engine light”

9 came on at Colstrip. This check engine light needed to be addressed before the next

10 official PM Emission Test, but no later than June 30, the deadline for Colstrip to

11 complete its official Q2 MATS PM tests.

12

13

14

According to Mr. Tack, at a February 21, 2018, O&O Committee meeting, the Operator informed the Companies that it planned to address these elevated levels by ongoing monitoring of unofficial “alternative indicators.”¹⁰² These alternative

⁹⁵ Tack, CLT-9 at 5 (Company Confidential).

⁹⁶ Tack, CLT-9 at 5 (Company Confidential).

⁹⁷ Tack, CLT-9 at 5 (Company Confidential).

⁹⁸ Gomez, Exh. DCG-22 at 4.

⁹⁹ Gomez, Exh. DCG-22 at 4.

¹⁰⁰ Tack, CLT-7 (Company Confidential).

¹⁰¹ Tack, CLT-7 (Company Confidential).

¹⁰² Tack, Exh. CLT-1T at 4–5.

1 indicators did not include in-stack testing of PM levels in either Units 3 or 4.¹⁰³ [REDACTED]

2 [REDACTED]

3 [REDACTED]¹⁰⁴ [REDACTED]

4 [REDACTED]

5 [REDACTED]¹⁰⁵

6 On March 21, 2018, at an O&O Committee meeting, the Operator informed
7 the Companies that it had not identified what caused the elevated PM levels from the
8 official Q1 PM tests conducted in February.¹⁰⁶ Nevertheless, the Operator informed
9 the Companies that Units 3 and 4 should pass the Q2 PM Emissions test in June.¹⁰⁷

10 On April 19, 2018, the Operator scheduled the official Unit 3 PM Emission Test for
11 Q2 on June 5, and the official Unit 4 PM Emission Test for June 7.¹⁰⁸

12 [REDACTED]

13 [REDACTED]¹⁰⁹ [REDACTED]

14 [REDACTED]¹¹⁰ [REDACTED]

15 [REDACTED]

16 [REDACTED]¹¹¹ [REDACTED]

17 [REDACTED]

18 [REDACTED]

¹⁰³ See Tack, Exh. CLT-1T at 5.

¹⁰⁴ Tack, Exh. CLT-9 at 2 (Company Confidential).

¹⁰⁵ Tack, Exh. CLT-9 at 2 (Company Confidential).

¹⁰⁶ Tack, Exh. CLT-1T at 7.

¹⁰⁷ Tack, Exh. CLT-1T at 7.

¹⁰⁸ Gomez, Exh. DCG-18, Appendix E.

¹⁰⁹ Tack, Exh. CLT-9 at 4 (Company Confidential).

¹¹⁰ Tack, Exh. CLT-7 (Company Confidential).

¹¹¹ Gomez, Exh. DCG-18, Appendix; Tack, Exh. CLT-7 (Company Confidential); Tack, Exh. CTL-1T at 8 (Company Confidential).

1 [REDACTED]

2 [REDACTED] ¹¹² [REDACTED]

3 [REDACTED]

4 [REDACTED] ¹¹³ [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] ¹⁴ [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] ¹¹⁵ [REDACTED]

11 [REDACTED]

12 [REDACTED] ¹⁶

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] ¹⁷ [REDACTED]

¹¹² Tack, Exh. CLT-7 (Company Confidential).

¹¹³ Tack, Exh. CLT-7 (Company Confidential).

¹¹⁴ Tack, Exh. CLT-7 (Company Confidential).

¹¹⁵ Tack, Exh. CLT-7 (Company Confidential).

¹¹⁶ Tack, Exh. CLT-9 at 5 (Company Confidential). Please see Section IX of my testimony. It would seem that the Operator did not inform the Companies of its unofficial test results until after the outage occurred. As PSE has stated:

Talen MT did not inform PSE of unofficial MATS PM tests that showed elevated levels. Talen MT informed the owners of the PM MATS non-compliance issue on June 27, 2018, as soon as the official compliance tests showed indications of non-conformity.

Gomez, Exh. DCG-9.

¹¹⁷ See Tack, CLT-12 at 4 (“Talen ceased normal operation of the affected units during a time when power output was in high demand.”). Pacific Power’s response to UTC Staff Data Request 314 States:

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] ¹¹⁸ [REDACTED]
6 [REDACTED]
7 [REDACTED] ¹¹⁹ [REDACTED]
8 [REDACTED]
9 [REDACTED] ¹²⁰ [REDACTED]
10 [REDACTED]
11 [REDACTED] ¹²¹ [REDACTED]
12 [REDACTED] ¹²² Both Units went into forced outage

A) Talen stated that they requested Area A coal in approximately the middle of June. It usually takes 2-4 days from the time the mine ships the coal to being burned in the boiler. They also stated that in mid-July they were back on Area C coal.

Gomez, Exh. DCG-24. PSE response to UTC Staff Data Request 314 stated:

SUBPART A: Rosebud Mine Area A coal was used as fuel in Colstrip Units 3 and 4 from approximately June 20, 2018 to approximately June 29, 2018.

SUBPART B: Yes, Area A coal was used in the Colstrip Unit 3 official MATS PM compliance test conducted on June 21, 2018.

SUBPART C: Yes, Area A coal was used in the Colstrip Unit 4 official MATS PM compliance test conducted on June 26, 2018.

Gomez, Exh. DCG-23

¹¹⁸ See, Tack, Exh. CLT-7 (Company Confidential).
¹¹⁹ Tack, Exh. CLT-7 (Company Confidential).
¹²⁰ Tack, Exh. CLT-7 (Company Confidential).
¹²¹ Tack, Exh. CLT-9 at 5 (Company Confidential).
¹²² Tack, Exh. CLT-9 at 5 (Company Confidential).

1 during a *period of high power prices* that resulted in increased replacement power
2 costs.¹²³ [REDACTED]

3 [REDACTED]¹²⁴ [REDACTED]

4 [REDACTED]

5 [REDACTED]

6
7 **Q. Now that you've described the events leading up to the 2018 Colstrip outage, let**
8 **us discuss these events individually. First, when did the Operator inform the**
9 **Companies of the elevated PM levels and its plan to address them?**

10 A. According to Mr. Tack, the Operator informed the Colstrip Owners about the
11 elevated PM Levels and its plan to address these levels at a February 21, 2018, O&O
12 Committee meeting.¹²⁵

13
14 **Q. What was the Operator's plan to address the elevated PM levels during the time**
15 **period between March and May 30, 2019?**

16 A. According to Mr. Tack, the Operator's approach was to investigate what could be
17 causing the elevated PM levels while monitoring "*alternative indicators.*"¹²⁶ Mr. Tack
18 explained that these alternative indicators are "not official compliance measurements
19 but help provide additional evidence of whether PM levels were still within

¹²³ Gomez, Exh. DCG-19; Tack, Exh. CLT-12 at 4 ("Talen ceased normal operation of the affected units during a time when power output was in high demand").

¹²⁴ Gomez, Exh. DCG-22 at 4.

¹²⁵ Tack, Exh. CLT-1T at 4-5.

¹²⁶ Tack, Exh. CLT-1T at 5 (emphasis added).

1 acceptable limits.”¹²⁷ [REDACTED]
2 [REDACTED]¹²⁸ Mr. Tack explains that the Operator informed the Companies
3 that it would be monitoring these parameters in its February 21, 2018, O&O
4 meeting.¹²⁹ Mr. Tack explains that due to the monitoring of these unofficial
5 alternative indicators, the Operator did not believe it would fail the Q2 PM Emission
6 test:

7 *Talen was confident they would maintain compliance based on the*
8 *alternative indicators they were monitoring as well as plant parameters they*
9 *were evaluating.* From my discussions with Talen, they did not believe they
10 would fail the second quarter official PM test. If Talen would have provided
11 any hint that they believed the units would fail official testing, Pacific Power
12 would have told them our standard position is to immediately shut down the
13 units and address the concerns. Pacific Power’s priority is to ensure that
14 Colstrip meets safety, environmental and compliance requirements.¹³⁰
15

16 **Q. Did the Operator update the Companies on any trends observed in the tracking**
17 **of these alternative indicators?**

18 A. Yes. On March 21, 2018, at an O&O Committee meeting, the Operator informed the
19 Companies that it had not identified what caused the elevated PM levels from the
20 official Q1 PM tests conducted in February.¹³¹ Nevertheless, the Operator informed
21 the Companies that Units 3 and 4 should pass the Q2 PM Emissions test in June.
22

23 **Q. When did the Operator initially schedule the official Q2 PM Emission Test for**
24 **Units 3 and 4?**

¹²⁷ Tack, Exh. CLT-1T at 5 :
¹²⁸ Tack, Exh. CLT-6 (Company Confidential).
¹²⁹ Tack, Exh. CLT-1T at 4–5.
¹³⁰ Tack, Exh. CLT-1 at 11 (emphasis added).
¹³¹ Tack, Exh. CLT-1T at 7.

1 A. On April 19, 2018, the Operator initially scheduled the official Q2 PM Emission test
2 for Unit 3 on June 5, 2018, and Unit 4 on June 7, 2018.¹³²

3

4 Q. [REDACTED]

5 A. [REDACTED]

6 [REDACTED]¹³³ [REDACTED]

7 [REDACTED]

8 [REDACTED]¹³⁴

9

10

11 Q. [REDACTED]

12 [REDACTED]

13 A. [REDACTED]

14 [REDACTED]¹³⁵

15

16 Q. [REDACTED]

17 [REDACTED]

18 A. [REDACTED]

19 [REDACTED]

¹³² Gomez, Exh. DCG-18, Appendix E.

¹³³ Tack, Exh CLT-9 at 4 (Company Confidential).

¹³⁴ Tack, Exh. CLT-7 (Company Confidential).

¹³⁵ Gomez, Exh. DCG-18, Appendix; Tack, Exh. CLT-7 (Company Confidential); Tack, Exh. CTL-1T at 8 (Company Confidential).

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[REDACTED] 139 [REDACTED]

[REDACTED]

¹³⁶ Tack, Exh. CLT-7 (Company Confidential).
¹³⁷ Tack, Exh. CLT-7 (Company Confidential).
¹³⁸ Tack, Exh. CLT-7 (Company Confidential).
¹³⁹ Tact Exh. CLT-9 at 5.

1 [REDACTED]⁴⁰ Further PSE states that the
2 Operator did not inform them that these unofficial tests were indicating that PM
3 levels were worse and only notified it when the Units failed their official tests:

4 Talen MT did not inform PSE of unofficial MATS PM tests that showed
5 elevated levels. Talen MT informed the owners of the PM MATS non-
6 compliance issue on June 27, 2018, as soon as the official compliance
7 tests showed indications of non-conformity.”¹⁴¹
8
9

10 Q. [REDACTED]

11 [REDACTED]

12 A. [REDACTED]

13 [REDACTED]

14 [REDACTED]¹⁴³ [REDACTED]

15 [REDACTED]¹⁴⁴ [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]¹⁴⁵ [REDACTED]

¹⁴⁰ Tack Exh. CLT-9 at 5

¹⁴¹ Gomez, Exh. DCG-9 (emphasis added).

¹⁴² Gomez, Exh. DCG-24; Tack, Exh. CLT-7 (Company Confidential)

¹⁴³ Tack, Exh. CLT-7 (Company Confidential).

¹⁴⁴ [REDACTED]

¹⁴⁵ The Area F Final Environmental Impact Statement states:

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[REDACTED]

[REDACTED]¹⁴⁶

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]¹⁴⁷ PSE stated that it was advised after the outage but couldn't recall the exact date.¹⁴⁸

Q. [REDACTED]

A. [REDACTED]

Units 3 and 4 were originally limited to burning coal from Permits Areas C, D, and E but in 2015 DEQ approved an amendment to the Certificate also allowing the use of coal from Permit Areas A, B, F, and G (DEA 2015a). Currently, only coal from Area C is being burned in Units 3 and 4.

Available at: https://www.wrcc.osmre.gov/initiatives/westernEnergy/documents/WesternEnergy_Area_F_Final_EIS.pdf

¹⁴⁶ ¹⁴⁶ Tack, Exh. CLT-7 (Company Confidential).

¹⁴⁷ Tact, Exh. CLT-1T, at 6 (Company Confidential) [REDACTED]

[REDACTED]

¹⁴⁸ Gomez, Exh. DCG-9.

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Q.
A.

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[REDACTED] ¹⁴⁹ [REDACTED]

[REDACTED]

[REDACTED] ¹⁵⁰ [REDACTED]

[REDACTED] ¹⁵¹ [REDACTED]

Q.
A.
[REDACTED]

¹⁴⁹ Tack, Exh. CLT-7 (Company Confidential).
¹⁵⁰ Tack, Exh. CLT-7 (Company Confidential).
¹⁵¹ Tack, Exh. CLT-9 at 5 (Company Confidential).

1 Q. [REDACTED]
2 [REDACTED]
3 A. [REDACTED]
4 [REDACTED]
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9 [REDACTED]¹⁵²
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11 [REDACTED]
12 [REDACTED]
13 [REDACTED]¹⁵³ [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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18 Q. [REDACTED]
19 A. [REDACTED]
20 [REDACTED]¹⁵⁴ [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

¹⁵² Tack, Exh. CLT-10, at 4 (Company Confidential)
¹⁵³ Tack, Exh. CLT-10, at 7-8 (Company Confidential)
¹⁵⁴ Gomez, Exh. DCG-22 at 4.

1 **VIII. MANAGEMENT ON THE PART OF COLSTRIP'S OWNERS**

2
3 **Q. Did the Companies know about the Operator's Q1 investigation prior to their**
4 **filing of initial testimony in their 2018 power cost reviews?**

5 A. Yes. It is clear to Staff that the Companies knew *or should have known* about the
6 Operator's Q1 investigation after the February 21, 2018, Colstrip O&O Committee
7 meeting, and which each company should have had a representative in attendance.¹⁵⁵

8
9 **Q. Having known in February 2018 that Units 3 and 4's PM levels were at their**
10 **compliance limit, was there any evidence provided showing that the Companies**
11 **participated in the development, execution, or supervision of the Operator's Q1**
12 **plan to bring the plant under control?**

13 A. Having been informed of the plant's tenuous condition in February 2018, there is not
14 sufficient evidence in the record provided by the Companies to indicate the Owners'
15 participated in the Q1 investigation. It appears that the Companies put all of their
16 trust in the Operator to address the elevated PM levels. As Mr. Tack explains in his
17 testimony:

18 From my discussions with Talen, they did not believe they would fail the
19 second quarter official PM test. If Talen would have provided any hint that
20 they believed the units would fail official testing, Pacific Power would have
21 told them our standard position is to immediately shut down the units and
22 address the concerns. Pacific Power's priority is to ensure that Colstrip meets
23 safety, environmental and compliance requirements.¹⁵⁶
24

¹⁵⁵ Tack, Exh. CLT-1T at 4-5.

¹⁵⁶ Tack, Exh. CLT-1T at 11 (emphasis added).

1 Similarly, PSE stated that it was not notified of the elevated results of the
2 unofficial PM tests conducted from between May 30 to June 20, 2018. PSE
3 stated that it was only informed of this after Colstrip Units 3 and 4 failed the
4 official Q2 PM Emission test on June 27, 2018:

5 In compliance with the Ownership and Operation agreement for Units 3&4,
6 Talen MT, as operator, is tasked with operating the plant in a prudent utility
7 manner and within applicable laws and regulations. Testing, including
8 unofficial MATS PM testing, is performed by the operator as a regular
9 operational procedure at Colstrip. Given that testing was a normal course of
10 business, and work was ongoing to address the issue, Talen MT did not
11 inform PSE of unofficial MATS PM tests that showed elevated levels. Talen
12 MT informed the owners of the PM MATS non-compliance issue on June 27,
13 2018, as soon as the official compliance tests showed indications of non-
14 conformity.¹⁵⁷

15 Avista apparently was not even aware that the Operator conducted *any sort of*
16 *investigation* until well after the outage occurred. In response to UTC Staff Data
17 Request 303, Avista stated:

18 Through recent conversations with Talen, the Company understands that due
19 to first quarter particulate emissions being higher than expected, Talen made
20 an effort to investigate those emissions even though the plant was in full
21 compliance with MATS.

22

23
24
25 Through conversations with Talen, the Company understands that Talen
26 reviewed and monitored operational parameters such as fuel, plumb bob DP,
27 opacity, & boiler combustion in an effort to troubleshoot.¹⁵⁸
28

29 However, Mr. Tack did explain that he had additional conversations with the
30 Operator, after having been informed of the elevated PM levels at the February 21
31 O&O Committee meeting. As Mr. Tack explained:

¹⁵⁷ Gomez, Exh. DCG-9 (emphasis added).

¹⁵⁸ Gomez, Exh. DCG-17C

1 [A]fter being informed of the elevated PM levels, *I had multiple additional*
2 *conversations with Talen's representatives regarding my concerns around*
3 *the elevated PM levels.* I asked for more specificity regarding the actions that
4 were being taken to find the cause of the elevated PM levels and what
5 alternate indicators they used to help ensure compliance was maintained in
6 the interim between official compliance tests.¹⁵⁹
7

8 During the course of its investigation, Staff was not provided with contemporaneous
9 documentation corroborating Mr. Tack's recollection of these conversations with the
10 Operator. Nor is there sufficient evidence in the record to indicate that the
11 Companies had any input or control over the Operator's actions leading up to the
12 2018 Colstrip outage. Besides Mr. Tack's alleged conversations, it seems that the
13 Operator had complete autonomy in the conduct of its Q1 investigation leading up to
14 the 2018 Colstrip outage.
15

16 **Q. Is there evidence to show that any Companies took any action after attending**
17 **the March 21, 2018, O&O Committee meeting?**

18 A. No. At this meeting, the Operator informed the companies that it had not identified
19 any items causing the elevated PM levels in February.¹⁶⁰ The Operator then told the
20 Companies that it would continue monitoring the alternative indicators, rather than
21 performing any unofficial PM tests.¹⁶¹ There is no indication in the record, that any
22 Owner raised concerns at that point in time or tried to line up contingent replacement
23 power in the event that the Units would fail their Q2 MATS PM test and go into a
24 forced outage.
25

¹⁵⁹ Tack, Exh. CLT-1T at 5.

¹⁶⁰ Tack, Exh. CLT-1T at 7.

¹⁶¹ Tack, Exh. CLT-1T at 7.

1 **Q. Does Mr. Tack’s testimony provide any mention that the Operator actively**
2 **coordinated with the Companies’ respective power supply groups during the Q1**
3 **investigation as a contingency in case the Units failed the Q2 tests?**

4 A. No. The Operators’ Q1 investigation to bring PM emission levels back under control
5 faced a clear deadline—the date of the required Q2 test. The Companies should have
6 understood in February that a failure of the Q2 test would result in a forced outage.
7 Given this risk, it is logical to expect that, as part of its plan, the Operator and the
8 Companies’ respective power supply groups would have closely monitored electric
9 market prices and loads. It appears, however, that no such coordination took place
10 and indeed the failed Q2 PM tests appear to have caught the Companies completely
11 by surprise.

12

13 **IX. STAFF’S RECOMMENDATION**

14

15 **Q. Did the Commission direct Staff to provide the Commission with a prudence**
16 **recommendation on the increased power costs associated with the 2018 Colstrip**
17 **outage?**

18 A. Yes. With regard to the increased power costs associated with the 2018 Colstrip
19 outage, the Commission stated:

20 We then *require* Staff, Public Counsel to file in Docket UE-190882
21 testimony and exhibits regarding their prudency evaluation and
22 recommendation.¹⁶²

¹⁶² Docket UE-190882, Order 01 ¶ 25 (emphasis added).

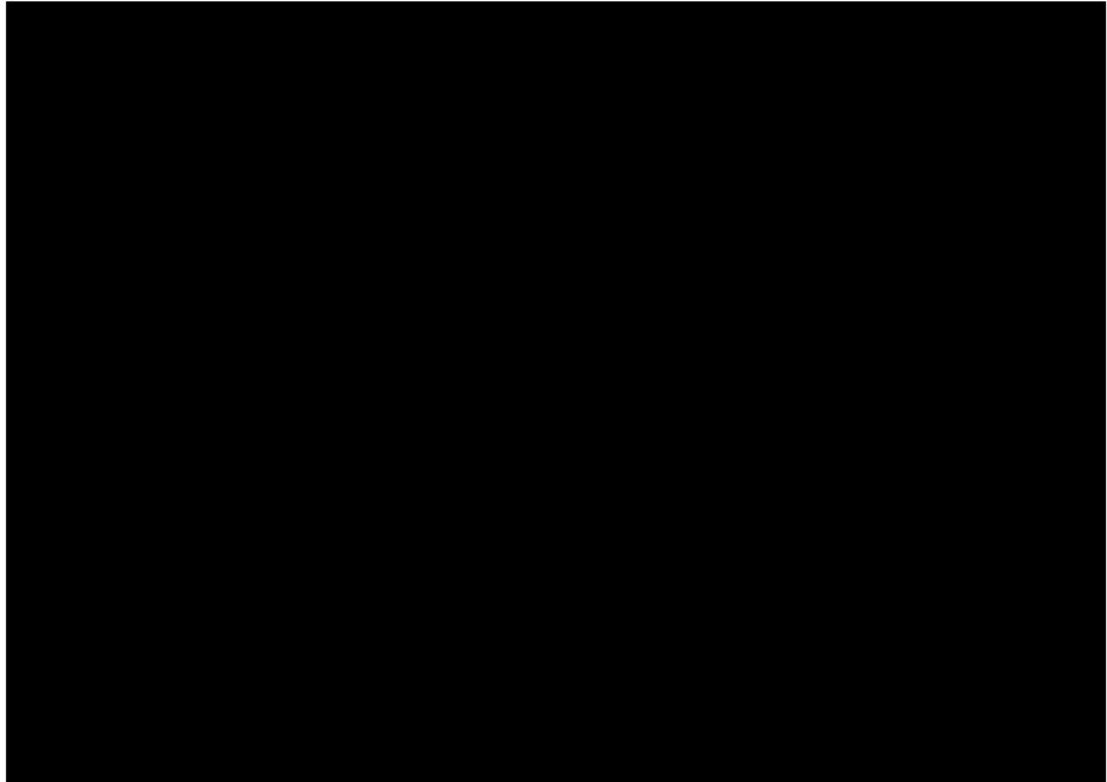
1 **Q. Can you provide your understanding of what the Commission’s prudence**
2 **standard is?**

3 A. Yes. From my understanding, the Commission applies a reasonableness
4 standard:

5 The test this Commission applies to measure prudence is what a
6 reasonable board of directors and company management [would] have
7 decided given what they knew or reasonably should have known to be
8 true at the time they made a decision. This test applies both to the
9 question of need and the appropriateness of the expenditures.¹⁶³
10
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12

13 **Q. Please provide Staff’s recommendation on the prudence of increased power costs**
14 **associated with the 2018 Colstrip outage.**

15 A.



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¹⁶³ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 14, p. 34, ¶ 65 (May 13, 2004) (citations omitted).

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¹⁶⁴ Tact, Exh. CLT-1T at 7.

¹⁶⁵ [REDACTED]

¹⁶⁶ Tact, Exh. CLT-7

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[REDACTED]

¹⁷² Gomez, Exh. DCG-19.

¹⁷³ Tack, CLT-1T at 7.

1 **Q. What is Staff's recommendation regarding the prudence of the outage?**

2 A. The Operator's and Owner's actions and decisions leading up to the 2018 Colstrip
3 outage and derate were unreasonable and imprudent. Staff recommends
4 disallowance of the \$21.9 million in replacement power costs incurred by the
5 Companies as a direct result of their lack of oversight and imprudent management of
6 the emerging emission issues at the Colstrip plant which ultimately resulted in a
7 forced outage of Colstrip Units 3 and 4. Staff also recommends that the Commission
8 allow each of the Companies to recover their share of the \$3.4 million in O&M and
9 capital expense associated with corrective, post-outage actions.

10

11 **Q. Why is contemporaneous evidence important for Staff in determining**
12 **prudence?**

13 A. In order to render a recommendation to the Commission that the specific actions and
14 decisions of a regulated utility are prudent, Staff has to be able to follow the
15 company's decision-making process at the time those actions and decisions were
16 made. After-the-fact narratives and recollections rely on memory, which is an
17 unreliable source of facts and which can be spun to suit a biased narrative.

18

19 **Q. Did the Companies provide evidence in the form of contemporaneous**
20 **documentation which establishes the Operator's plan to investigate the elevated**
21 **PM levels?**

22 A. With the exception of Mr. Tack's Exhibit CLT-7, the Companies failed to produce
23 sufficient contemporaneous documentation. Staff hoped to find contemporaneous

1 documentation from the O&O Committee meetings—the same meetings which are
2 discussed in Mr. Tack’s testimony. Staff was particularly interested in the
3 contractually required minutes from the O&O Committee meetings. Staff’s efforts to
4 obtain contemporaneous documentation are described in the Declaration of David C.
5 Gomez that was filed with Staff’s motion for severance and consolidation in this
6 docket.¹⁷⁴ In spite of numerous discovery requests, the most the Companies were
7 able to produce were copies of meeting agendas (which they referred to as minutes)
8 containing generic topics and incorrect dates.¹⁷⁵ None of the responsive documents
9 obtained in discovery ever mentioned either elevated PM Emission Levels or a plan
10 to address them. [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED]¹⁷⁶ Staff has not been able confirm (with contemporaneous
14 documentation) the existence of the Operator’s plan to troubleshoot and monitor
15 alternative indicators in the time period between March and May 30, 2019.

16

17 **Q. Would you describe Mr. Tack’s Exhibit CLT-5 as a “plan”?**

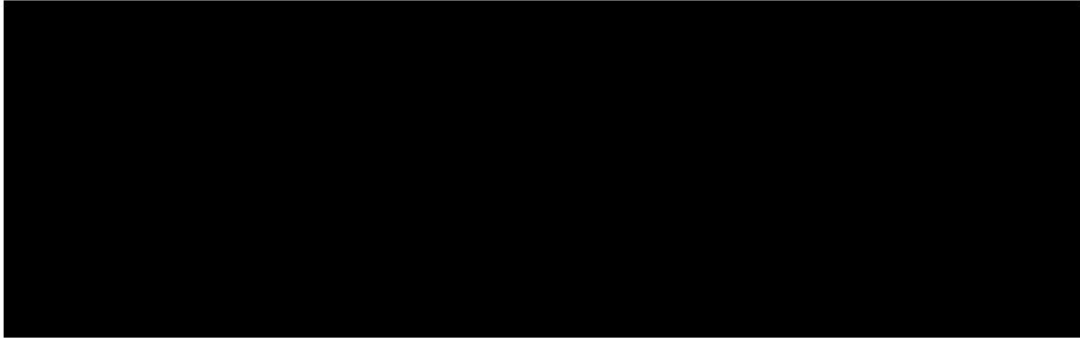
18 A. [REDACTED]
19 [REDACTED]
20 [REDACTED]

¹⁷⁴ See Gomez, Exh. DCG-22.

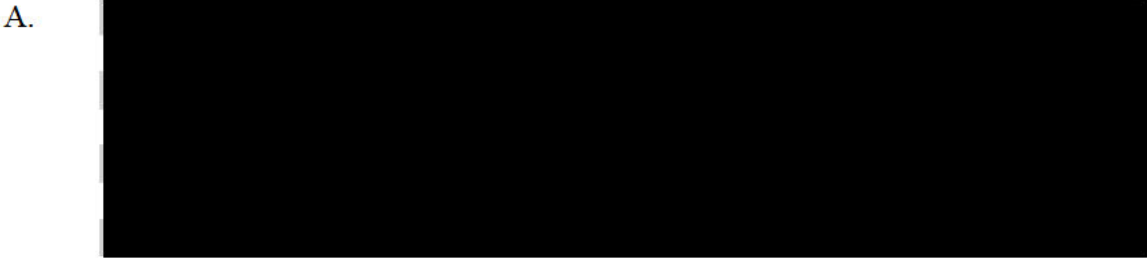
¹⁷⁵ Avista states that “[t]hese minutes document on a *high level* the topics that were discussed.” Gomez, Exh. DCG-17C. Staff has concerns that these minutes provides no useful information on what was discussed in these meetings, which inhibits Staff’s prudence investigation on the decisions made in these meetings.

¹⁷⁶ UE-190458, Pacific Power’s Response to UTC Staff Informal Data Request No. 1, Attach WUTC 1-1 CONF, February 2018 U34 Owners Meeting CONF.

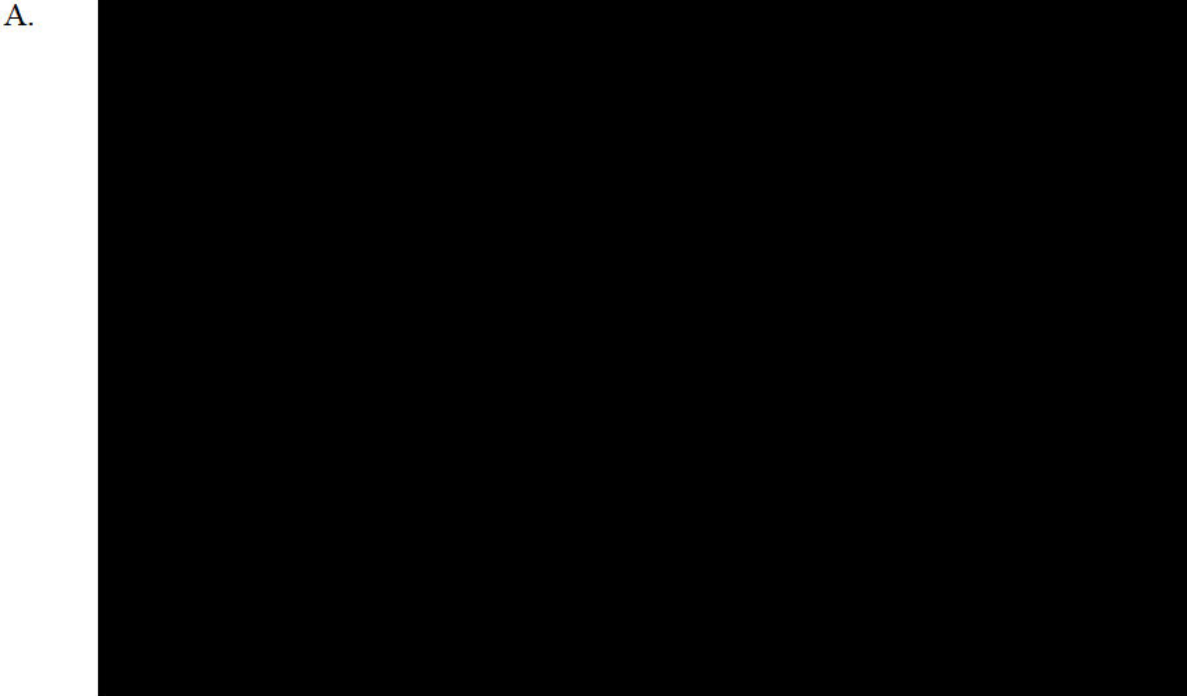
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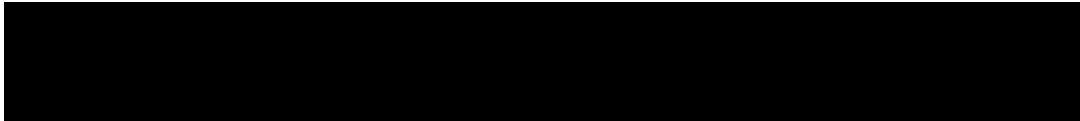
Q. Would you describe Mr. Tack’s Exhibits CLT-3 and CLT-9 as a “plan”?



Q. Is Mr. Tack’s Exhibit CLT-7 a “plan”?



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¹⁷⁷

Q. Is Staff aware of any concerns raised by the communities neighboring Colstrip as a result of the outage?

A. Yes. Recalling MDEQ’s assessment of the severity of the emission exceedance’s impact to human health, Staff includes as an exhibit, a letter from L. Jace Killsback, President of the Northern Cheyenne Tribe.¹⁷⁸ President Killsback’s letter expresses the Tribe’s “extreme concern” over its members and other Reservation residents being exposed to hazardous levels of pollutants as a result of the emission exceedances at the plant. The letter also asked the Operator to respond to a number of the Tribe’s questions regarding the outage so they can properly assess the impact of the emission exceedances on their community’s health. The Northern Cheyenne’s community lies just 15 miles south of the plant. He also goes on to say that the Tribe was disappointed on not being informed by the Operator directly and instead had to learn of the emission violations through the media. Staff does not know if the operator responded to the Tribe on this matter and whether other members of the surrounding community have expressed these same concerns.

¹⁷⁷ Tack, Exh. CLT-9 at 4.
¹⁷⁸ Gomez, Exh. DCG-20.

1 **X. ADDITIONAL COLSTRIP ISSUES**

2

3 **Q. In addition to the outage, have there been other developments relating to**
4 **Colstrip in the last few years?**

5 A. Yes. There is the closure of Units 1 and 2; PSE’s sale of its 25 percent share of
6 Colstrip Unit 4 for one dollar; a new coal contract with Westmoreland;
7 Westmoreland’s 2018 bankruptcy; and lawsuits relating to the Operator’s spinoff
8 from Pennsylvania Power and Light. In addition to these, there are three other major
9 developments regarding Colstrip’s future: Westmoreland’s expansion into Area F of
10 the Rosebud mine, Talen’s diversification of its fuel supply via Wyoming mines, and
11 Talen’s plans to apply pre-combustion chemicals to the coal in order to qualify for a
12 refined coal Production Tax Credit (PTC).

13 Throughout 2018 and 2019, both the Operator and Westmoreland Rosebud
14 LLC (Westmoreland) were pursuing changes to their various air operating permits
15 and site certificates as part of their efforts to ensure continued operation of both the
16 mine and power plant for many years to come. Westmoreland succeeded in gaining
17 approval of its plan to expand its strip mining operations into the previously unmined
18 Area F of the Rosebud mine.¹⁷⁹ About two months ago, various environmental
19 groups mounted a legal challenge in Federal court to stop Westmoreland’s expansion
20 into Area F.¹⁸⁰ With a new coal contract for Colstrip in hand, Westmoreland appears

¹⁷⁹ See <https://www.wrcc.osmre.gov/initiatives/westernEnergy/aboutProject.shtm>;

¹⁸⁰ Gomez, Exh. DCG-11.

1 to be poised, if it has not already done so, to begin its strip mining operations in Area
2 F.¹⁸¹

3 The Operator also succeeded in gaining approval for its plan to diversify Unit
4 3 and 4's fuel supply with Wyoming coal from the Powder River Basin. Of
5 particular importance for the Operator is its implementation of the "Tinuum Refined
6 Coal System" ("Tinuum") for Colstrip.¹⁸² With Tinuum installed at Colstrip, the
7 Operator can pre-treat (prior to combustion) Westmoreland coal, and/or less
8 expensive Powder River coal, with Tinuum's proprietary chemicals and earn a
9 \$7.173 per ton Federal Production Tax Credit (PTC).¹⁸³ Given Tinuum's job posting
10 on its web site for an operator at Colstrip, the Operator appears ready to begin
11 treating Colstrip's coal with Tinuum's emission additives, if it has not already started
12 doing so.¹⁸⁴

13
14 **Q. What is the significance of these developments?**

15 A. These developments are upon us right now. For example, the new coal contract has
16 been signed and executed and Pacific Power has included the effects of the new coal
17 contract price in its pro forma power costs in its 2020 GRC filed last month. How
18 will the Commission want to evaluate the prudence of the new coal contract?
19 Individually, or in a similar proceeding as the one employed in this case? These are

¹⁸¹ Gomez, Exh. DCG-14C [REDACTED]

¹⁸² Gomez, Exh. DCG-3.

¹⁸³ By Staff's estimate, at full output (7,000,000 – 10,000,000 tons), Units 3 and 4 will generate approximately \$50 to \$70 million annually in "refined coal" PTCs. As of December 30, 2019, Powder River Basin spot coal was \$11.80 per ton.

¹⁸⁴ Gomez, Exh. DCG-13.

1 decisions that the Commission will have to make now and cannot wait until
2 sometime in the future. How will the Commission evaluate and establish
3 Washington's fair share of the cost of environmental remediation and is it reasonable
4 for ratepayers to *pay for the mine's expansion* at a time when we are seeking to
5 unwind our involvement with coal power? If Washington's ratepayers are being
6 asked to shoulder the increased costs of a new coal contract, should they also be able
7 to receive their fair share of refined coal PTC's to offset undepreciated plant amounts
8 or help fund environmental remediation (risk follows reward)?

9 The outage and its material impact to power costs, highlight the very real
10 risks which Washington ratepayers face as we move closer to the year 2025 and
11 ending our relationship with coal. It is therefore important, that the Colstrip Owners
12 demand from their Operator, transparency and accountability in how decisions are
13 made at the plant. Absent good faith cooperation on the part of the Operator and
14 Westmoreland to ensure a smooth transition away from coal for Washington's
15 ratepayers, we will need to reevaluate our timeline to exit Colstrip sooner rather than
16 later.

17
18 **Q. Does Staff have any recommendations regarding future Colstrip filings**
19 **involving issues common to all three Owners?**

20 A. Yes. The consolidated investigation approach for issues common to all three
21 Colstrip Owners seems to be the most efficient and effective way to develop a
22 complete record for the Commission to render its decisions. An example of an issue

1 relating to Colstrip that is unique to one Company, however, would be PSE's sale of
2 its share of Unit 4 for a single dollar.

3

4 **Q. Does this conclude your testimony?**

5 A. Yes.