

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKETS UE-191024, UE-190750,
	)	UE-190929, UE-190981, UE-180778
Complainant,	)	( <i>Consolidated</i> )
	)	
v.	)	JOINT RESPONSE OF PACKAGING
	)	CORPORATION OF AMERICA AND
PACIFICORP DBA PACIFIC POWER & LIGHT COMPANY,	)	THE ALLIANCE OF WESTERN
	)	ENERGY CONSUMERS TO
Respondent.	)	COMMISSION STAFF'S PETITION TO
	)	INITIATE JOINT INVESTIGATION
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**I. INTRODUCTION**

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") January 31, 2020 Notice of Opportunity to Respond, the Alliance of Western Energy Consumers ("AWEC") and Packaging Corporation of America ("PCA") file this Joint Response to Commission Staff's Petition to Initiate Joint Investigation ("Petition") into the new coal supply agreement for Units 3 and 4 of the Colstrip Generating Station, to which PacifiCorp, Puget Sound Energy ("PSE"), and Avista Corp. ("Avista") are all signatories.<sup>1/</sup>

2 AWEC and PCA do not oppose Staff's Petition, with two caveats. First, that any joint investigation is affirmatively not a proceeding to set rates for any utility and that, if the supply agreement is found to be prudent, these costs will only be includable in rates following a

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<sup>1/</sup> AWEC's interest in Staff's Petition is with respect to its impact on PSE and Avista; PCA's interest is in the Petition's impact on PacifiCorp. Where necessary, this Joint Response refers to AWEC or PCA individually, but both parties support each of the positions in this Joint Response.

general rate case. Second, that the utilities, and not Staff or intervenors, bear the burden of proof. If the Commission does not open the separate investigation Staff requests, however, then PCA affirmatively supports Staff's alternative request to have PacifiCorp file supplemental testimony on the new Colstrip supply agreement.

## II. ARGUMENT

3 Staff's Petition is unusual in a couple of respects. First, it effectively seeks an affirmative finding of prudence or imprudence with respect to the Colstrip supply agreement. In a rate case, the Commission will reduce a utility's revenue requirement by denying cost recovery of an investment it determines was *imprudent*; the Commission normally does not, however, affirmatively find that all other investments that support the revenue requirement were prudent. That would not be the case in Staff's investigation where the Commission would need to affirmatively decide that the Colstrip supply agreement was imprudent or prudent (or, at least, *not* imprudent).

4 This raises the question of who carries the burden of proof in this investigation. Because it is Staff's Petition, normally Staff would carry the burden of proof. This would be improper for several reasons, however. One, Staff has not taken a position on the prudence of the Colstrip supply agreement in its Petition, so what burden it would carry in this investigation is unclear. Second, if the issue of the prudence of this contract is left in PacifiCorp's rate case, there is no doubt that PacifiCorp would carry the burden of proof to demonstrate its prudence. That burden should not shift to another party merely because Staff seeks a more administratively efficient method of reviewing a contract applicable to multiple utilities.

5                   Staff’s Petition is also unusual in that it seeks to initiate an investigation into costs that, with respect to PSE and Avista, have not been proposed to be recovered from customers. Staff’s Petition does not explain what the ratemaking outcome would be from this investigation as it relates to these utilities if the Colstrip supply agreement is found to be prudent. AWEC would strongly oppose an investigation the outcome of which could be to include the costs of the new Colstrip supply agreement in rates sooner than Avista and PSE themselves have requested. If the Commission does open Staff’s requested investigation, therefore, it should specify that it is not a ratemaking docket and that any recovery of the costs of the new Colstrip supply agreement, if determined prudent, will not begin until the rate effective date of a utility’s next general rate case (or, in PacifiCorp’s case, the currently pending rate case).

6                   Despite these irregularities, AWEC and PCA do not oppose Staff’s Petition, subject to the conditions discussed above. Staff’s rationale for an administratively efficient process that ensures consistency in the discovery process appears to be sound and may result in a better evidentiary record than litigating this contract over several different dockets.

7                   One further related issue deserves discussion. Under the recently adopted procedural schedule in PacifiCorp’s rate case, PacifiCorp will file supplemental testimony on updated decommissioning studies it has commissioned for several of its coal plants, including Colstrip. If the Commission opens Staff’s requested investigation, and finds the new Colstrip supply agreement to be imprudent, this may impact the level of the decommissioning reserve included in depreciation rates for Colstrip. At this time, PCA lacks sufficient information to know whether there is a direct relationship between the decommissioning costs assumed in the updated studies and the new Colstrip supply agreement. Additionally, PCA does not read Staff’s

Petition as requesting that decommissioning costs included in PacifiCorp's rates be considered in the separate investigation, and do not believe such costs need to be included in this investigation. Nevertheless, PCA and AWEC believe it is worth noting up front that the investigation Staff requests could have impacts on utility-specific costs under consideration in other dockets.

8                   Finally, if the Commission denies Staff's Petition to open a separate investigation, PCA affirmatively supports Staff's alternative motion to require PacifiCorp to file supplemental testimony explaining and justifying the costs of the new Colstrip supply agreement. As Staff's Petition explains, PacifiCorp is seeking to include these costs in customer rates in its pending general rate case, yet it has not provided the new supply agreement and provides only passing testimony in support of it. The following is the entire discussion on the new supply contract PacifiCorp includes in its initial filing:

The new coal supply agreement was fully executed in the first week of December, and will go into effect January 1, 2020. Pricing used in the test period is based on the new coal supply agreement between Westmoreland Rosebud Mining, LLC and the Colstrip owners.<sup>2/</sup>

On its face, this is an insufficient basis to demonstrate the prudence of PacifiCorp's decision to enter into this new supply agreement. If not required to supplement this testimony now, the most likely scenario is that PacifiCorp will file the testimony it should have included in its initial filing as rebuttal to other parties' testimony on this contract. That will deny these parties a reasonable opportunity to respond to this rebuttal testimony and, consequently, would prejudice their interests in this case. Given the early stages of PacifiCorp's rate case, PacifiCorp should be required to provide a full discussion of the new contract in supplemental testimony well before

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<sup>2/</sup> Docket UE-191024, Exh. MWG-1CT at 66:1-4.

party response testimony is due on June 2, 2020. PCA recommends that this supplemental testimony be filed on April 1, 2020, the same date PacifiCorp is scheduled to file supplemental testimony on its updated decommissioning studies, and responses to data requests on the supplemental testimony be due in five business days.

### III. CONCLUSION

9 For the foregoing reasons, AWEC and PCA do not oppose Staff's Petition, subject to the caveats that the utilities carry the burden of proof in Staff's requested investigation and the investigation itself is not a rate-setting proceeding. If the Commission denies Staff's Petition, PCA supports Staff's alternative request that PacifiCorp file supplemental testimony demonstrating the prudence of its decision to enter into the new coal supply agreement for Colstrip Units 3 and 4.

Dated this 20<sup>th</sup> day of February, 2020.

Respectfully submitted,

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*/s/ Tyler C. Pepple*

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