**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

## I. INTRODUCTION

1 On January 30, 2020, Staff of the Washington Utilities & Transportation Commission ("Commission") submitted their Petition to Initiate Joint Investigation pursuant to WAC 480-07-305. Commission Staff ("Staff") requested that the Commission initiate this investigation to purportedly facilitate Staff's investigation of: (1) the prudency of the increased costs associated with the new coal supply agreement at Colstrip Units 3 and 4; and (2) the allocation of costs and benefits associated with Owners' plan to apply pre-combustion additives to coal burned at Units 3 and 4 in order to qualify for a Production Tax Credit ("PTC"). Staff claims that these issues are common to Avista, PSE, and Pacific Power ("Colstrip Owners") as signatories to the new coal contract and owners of Colstrip Units 3 and 4.

## II. ARGUMENT

### A. The Circumstances of Each Company Vis-à-Vis the Coal Agreement are Sufficiently Differentiated.

2 Staff begins, innocuously enough, by suggesting that, "at this point [Staff] only has questions it would like to ask each of the signatories to the [new coal supply agreement] - preferably in a single proceeding (as opposed to three separate proceedings)."[1]

3 Beginning in the very next paragraph, however, it morphs into something quite different, with concerns expressed over the prudency of expanding into a new area (Area F) for purposes of the new contract, arguing concerns over the Clean Energy Transformation Act ("CETA"), and increased coal plant remediation costs.[2] While Avista has never objected to providing all necessary information to regulators on a timely and sufficient basis, all parties should be direct about where this joint investigation is intended to lead - not just to make use of a means of discovery in an adjudicated proceeding. Rather, it is clear that the Staff seeks resolution of the very issue of prudence of the terms of a new coal supply agreement - and that ultimate determination may not be the same for each of the companies, because it will depend on the unique circumstances of each. It will also be based on commercially-sensitive information and differing resource strategies and portfolios of the companies, and the costs and benefits of each of those strategies. And that is why each company files its own Integrated Resource Plan ("IRP") and why they are taken up separately by the Commission.

4 Before addressing whether this will, in fact, "promote judicial economy," by having one proceeding, as opposed to three, and will "resolve confidentiality concerns," as argued by Staff,[3]

[1] Petition at ¶ 2.
[2] Id. at ¶ 3 and ¶¶ 8-10.
[3] Petition at ¶ 15.

one should review where each of the affected utilities stand in their respective cost-recovery dockets: PSE has just completed its contested hearing phase of its GRC, and briefing is pending; Pacific is in the discovery phase of its pending GRC; and Avista has a joint settlement of its GRC pending for decision by the Commission.[4] Accordingly, Avista is near the end of its general rate case proceeding, and the only power supply issues included in that proceeding are related to 2018 power supply costs - not the costs associated with a coal contract that went into effect January 1, 2020. There is nothing yet before the Commission from Avista (nor PSE) related to this issue, unlike the MATS issue where each party had their 2018 review of power supply costs before the Commission. It is therefore quite clear that each company is in a different posture, both with respect to GRCs and power cost adjustment filings.[5]

5 Because the timing of any joint investigation here and the accompanying Order will not lend itself nicely to either pending or future GRC or power cost adjustment filings, this, of course, presents the usual concerns over case efficiency and overlap - but more importantly, it shines a bright light on "single-issue ratemaking" outside the context of a GRC, where the new coal contract would be but one of many issues to be collectively decided, in order to reach a "reasonable end result." This Commission has long stated its displeasure over "single-issue ratemaking."[6] But it is

[4] See, Dockets UE-190529 (PSE); Docket UE-191024 (Pacific); and Dockets UE-190334, UE-190222, and UE-190882 (Avista).

[5] Avista's current ERM docket (Dockets UE-190222/UE-190882) is awaiting decision. PSE must file its next PCA on or before April 30, 2020.

[6] The Commission disfavors "single-issue ratemaking" because it violates the matching principle. (*Wash. Util. & Transp. Comm'n v. Avista*, Docket UG-060518, Order 04 at ¶ 19 (Feb. 1, 2007).) Single-issue ratemaking violates this principle because it sets rates based upon an examination of only one component. (*See Re U.S. West Comm'n, Inc.*, Docket UT-920085, 3rd Suppl. Order, at 5 (Apr. 15, 1993) ("without considering other aspects of the company's rate structure [this] would amount to single issue ratemaking"); *Re U.S. West Communications, Inc.*, Docket No. UT-970766, 14th Suppl. Order at 5 (Mar. 24, 1998) ("the proper means to examine [revenue and expenses] is a general rate case"); *MCI Telecommunications Corp. v. GTE Northwest, Inc.*, Docket UT-970653, Second Suppl. Order (Oct. 22, 1997. ("The Commission has consistently held that these questions are resolved by a comprehensive review of the Company's rate base and operating expenses determining a proper rate of return and allocating rate charges equitably among ratepayers.").

arguably even worse than that: It is "single issue ratemaking" within a "single issue." Fuel costs (coal) are only one determinant of the final Colstrip costs of each owner; and each owner has different pricing tolerances for each resource within their individual power supply portfolios. Therefore, one cannot make a "one-size-fits-all" determination on prudency of the coal contract for all three owners. Finally, such a prudency issue should be taken up in a GRC when new base power supply costs are set, so as to avoid "single-issue ratemaking."

**B. The Purposes of Judicial Economy and Efficient Discovery Will Not Be Served.**

6 Staff argues that it has "several common questions it would like to ask each of the Colstrip's Owners."[7] It argues that "many of those questions are very important," but cites only to one area (the expansion of the Rosebud Mine into Area F). It doesn't even begin to argue that there may be any other common questions that go to the contract itself: e.g., price, quantity, term, etc. -- the prudence of which is not a common issue but will depend on the unique (and commercially-sensitive) situation of each owner, because it feeds into unique resource portfolios and operating decisions. In short, this proceeding, under the guise of efficiency, should not be allowed to transform itself into a final prudency determination on the coal contract for each of the companies. This is clearly what Staff anticipates will happen, when it argues that a consolidation "would also avoid the necessity of the Commission writing three separate orders on these issues."[8]

7 Nor would consolidation ease discovery and resolve confidentiality concerns, as argued by Staff.[9] Staff likens such a consolidated docket to the pending proceeding on the Colstrip outage (Dkt. UE-190882). That proceeding presented its own challenges with respect to confidentiality, but those pale in comparison to the challenges of protecting each company's confidential,

[7] Petition at ¶ 11.
[8] Petition at ¶ 17.
[9] Petition at ¶ 15.

commercially-sensitive information, that goes to the very prudence of Colstrip and its costs in relation to each company's entire portfolio of resources. If we were to undertake to do this joint investigation at this time, it would essentially require three different sets of confidential back-to-back hearings, one for each company, and three separate final Orders, issuing seriatim, reflecting the unique circumstances of each. This does not promote judicial economy - or fairness.[10]

**C. Request for Informal Workshop.**

8 If the Commission is otherwise inclined to grant the petition and consolidate this matter, Avista would suggest that the Petition at least be held in abeyance until such time as all interested parties could convene an informal workshop to better determine whether there are truly common issues and the scope of discovery. This may avoid some of the real discovery problems recently experienced in Dkt. No. UE-190882.

9 Following this, the parties will have a better understanding of areas of true common concern and can target discovery accordingly. From the companies' perspective, the pending Colstrip Outage proceeding engendered significant confusion and delay in the discovery process, until it was finally made clear what matters were of actual concern (pre-June Q2 testing for MATS). That case should not be looked to as a model for the discovery process, notwithstanding the good faith of all parties.

10 At the end of the workshop process, Staff can choose to either renew its Petition, withdraw it, or revise it to reflect any consensus of the parties around issues or process.

[10] Simply establishing two versions of the confidentiality agreements - confidential and company confidential - won't solve this underlying issue.

## III. APPLICATION OF PRE-COMBUSTION ADDITIVE TO QUALIFY FOR PTC

11 Staff indicated that it is aware of efforts to implement a "Tinuum Refined Coal System" ("Tinuum") at Units 3 and 4.[11] Staff argues that this would generate a $7.173 per ton level of PTC, adding up to $50 to $70 million annually of PTC (Production Tax Credits) to be allocated among the owners.[12] Presumably, this is not a bad thing (nor is it characterized as such by Staff). Apparently, Staff wants to be sure customers will be receiving their share of the benefit of this.

12 This question does not require discovery or a hearing, and is premature at this time, as no agreement or contract has been signed with "Tinuum". To date there has been no agreement made related to the Tinuum Refined Coal System at Units 3 and 4. The Joint Utilities and Talen have all agreed that if this option would be pursued, it would be through a unanimous approval by all owners. To this point, Talen has not completed its discussions with "Tinuum" to come to an agreement that would ultimately be presented to the owners for approval. That said, for Avista, any costs and benefits ultimately associated with a contract with "Tinuum" would all flow through the ERM as a component of power costs. We would be happy to direct a letter to the Commission to this effect. There is nothing nefarious here, done to benefit Company shareholders.

## IV. CONCLUSION

13 Consolidation for the purpose of examining the Coal Supply Agreement will neither promote judicial economy nor efficient discovery. Circumstances surrounding the prudency of entering into such a contract are unique to each company and involve highly sensitive commercial

[11] Staff announced that it became aware of this "Tinuum" process only through perusing the employment advertisements for a job at Colstrip meant to oversee this process (Petition at ¶ 12). Because none of the costs and benefits of this prospective program have hit the Owners' books, it has not yet become an issue in any of the companies' filings.

[12] Ibid. These are Staff's estimates, and the amount of PTC is not known at this time.

information. In the very least, the Petition should be held in abeyance until such time as an informal workshop is held to better define any common issues and a plan for efficient discovery.

RESPECTFULLY SUBMITTED this 20th day of February, 2020.

AVISTA CORPORATION

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