

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of AVISTA CORPORATION d/b/a AVISTA UTILITIES, PUGET SOUND ENERGY, AND PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY Regarding the 2020 Colstrip Coal Supply Agreement	DOCKET UE-200069 ORDER 01 DENYING PETITION
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	DOCKET UE-191024 ORDER 05 DENYING PETITION, IN PART, AND AMENDING PROCEDURAL SCHEDULE

BACKGROUND

- 1 On January 30, 2020, staff of the Washington Utilities and Transportation Commission (Commission) filed a petition in each of the above-captioned dockets requesting that the Commission initiate an investigation (Petition). Commission staff (Staff)¹ requests an adjudication to facilitate Staff's investigation of (1) the prudence of the increased costs associated with the new coal supply contract for Colstrip Units 3 and 4 (Contract); and (2) the allocation of costs and benefits associated with the Colstrip 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 both of these issues are common to Avista

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Corporation, d/b/a Avista Utilities, (Avista), Puget Sound Energy (PSE), and PacifiCorp, d/b/a Pacific Power & Light Company, (PacifiCorp) (collectively Colstrip Owners or Companies and individually Company) as signatories to the Contract and as owners of Colstrip Units 3 and 4.

- 2 Staff states that it only became aware of the Contract when PSE provided it in discovery in a separate docket on December 13, 2019. Staff claims that it has important questions for all Colstrip Owners about the prudence of the Contract in light of recent legislation mandating the elimination of coal as a source for generating electricity. Staff also contends that it has become aware of those owners' plans to apply pre-combustion additives to coal to qualify for a PTC. Staff argues that investigating these issues in an adjudication to which Avista, PSE, and PacifiCorp are all parties would promote judicial economy, allow both protection of, and appropriate access to, confidential information, and ensure a consistent outcome for all of the Companies. If the Commission declines to initiate such an investigation, however, Staff requests that the Commission require PacifiCorp to file supplemental testimony in its ongoing rate case to address these issues.
- 3 The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) supports the Petition, sharing Staff's concerns with judicial economy and confidentiality. The Alliance of Western Energy Consumers (AWEC) and Packaging Corporation of America (PCA) filed a joint response stating that they do not oppose the Petition as long as (1) any resulting joint investigation is not a proceeding to set rates for any utility, and (2) the Companies bear the burden of proof. PCA supports Staff's alternative request that PacifiCorp file supplemental testimony concerning the Contract.
- 4 Avista opposes the Petition. The prudence of the Contract, according to Avista, may not be the same for all utilities depending on each utility's unique circumstances. Considered outside of a general rate case for each utility, moreover, Avista contends that such an investigation represents inappropriate single-issue ratemaking within a single investment. Avista argues that because each utility's competitively sensitive information would need to be protected, the proceeding Staff requests would require a hearing for each utility and three separate final orders, which would not promote judicial economy or fairness. If the Commission is inclined to grant the Petition, Avista recommends the Commission hold it in abeyance pending a technical workshop to determine common issues and address discovery. Finally with respect to the issue of applying pre-combustion additives to coal to qualify for a PTC, Avista represents that any investigation would be (1) premature because there is no agreement to use such a process, and (2) unnecessary because any attendant costs and benefits would flow through Avista's Energy Recovery Mechanism as a component of power costs.

- 5 PSE also opposes the Petition. As an initial matter, PSE maintains that it has been forthcoming with Staff about the status of the Contract in PSE’s ongoing rate case. PSE argues that the Commission has historically conducted a prudence review of a utility’s resource investments in the context of a general rate case, and PSE has not sought recovery of the costs associated with the Contract. Thus, PSE contends, Staff’s requested investigation is premature and goes against decades of established ratemaking principles. Like Avista, PSE further represents that none of the Colstrip Owners has expressed any plan to apply pre-combustion additives to Colstrip fuel and accordingly any investigation of this issue would be premature at best. PSE notes that Commission rules permit Staff to request information without resorting to an adjudication, rendering Staff’s proposed proceeding unnecessary. Finally, PSE argues that the Petition is an improper attempt to seek reconsideration of the Commission’s previous denial of Staff’s request for the Commission to consider the Contract in the context of PSE’s current general rate case.
- 6 PacifiCorp joins the other Colstrip Owners in opposing the Petition. PacifiCorp maintains that it would be premature and unprecedented for the Commission to consider the prudence of the Contract in a single proceeding involving all Colstrip Owners when only PacifiCorp has sought recovery of the costs of that agreement. PacifiCorp represents that Colstrip’s operator is reviewing whether to supplement the current coal refinement process but that no final decision has been made, so any investigation of this issue would also be premature and may ultimately be unnecessary. The prudence of any utility investment, PacifiCorp adds, must be evaluated individually based on each utility’s unique facts and circumstances, and a joint proceeding would not promote judicial economy. PacifiCorp recommends that the Commission schedule a technical conference in Docket UE-191024 to discuss the issues arising from the Contract, after which PacifiCorp would file supplemental testimony to address those issues on April 1, 2020.

DISCUSSION AND DECISION

- 7 “The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority.”² “A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission to commence an adjudicative proceeding by submitting the appropriate form of pleading.”³ A petition is one such pleading when the relief requested requires adjudication.⁴ Within 90 days after receiving that pleading, the Commission will

² WAC 480-07-305(1).

³ WAC 480-07-305(2).

⁴ WAC 480-07-305(3)(b).

either commence an adjudication or deny the request and briefly explain its reasons for that denial.⁵

- 8 The Commission declines to commence an adjudication in response to the Petition. Neither Avista nor PSE has sought recovery of the costs associated with the Contract, and until they do, any formal inquiry into the prudence of their decisions to enter into that agreement would be premature. Nor are we convinced that the Commission would promote judicial economy by investigating the prudence of investments of all three Colstrip Owners in a single adjudication rather than in the context of individual company general rate cases. To the contrary, we agree with the Colstrip Owners that such a proceeding would be inconsistent with our current and historic practice for making prudence determinations and likely would result in more process, rather than less.
- 9 We also accept the Colstrip Owners' representations that, while the Colstrip operator is reviewing the coal refinement process for Colstrip Units 3 and 4, neither the operator nor the owners currently have plans to apply pre-combustion additives to coal to qualify for a PTC. An investigation of this issue at this time thus would also be premature and potentially fruitless.
- 10 To the extent that Staff seeks information about the Contract in advance of a formal review or Colstrip Owners' plans for coal refinement process changes, PSE correctly observes that the Commission's governing statutes and rules authorize Staff to request information from each of the Companies outside the context of an adjudication.⁶ We understand the limitations and potential frustrations in obtaining data through that process. We nevertheless are unwilling to initiate an adjudication solely to facilitate data gathering, at least in the absence of a demonstration that a utility is significantly impeding Staff's efforts to obtain information about the company's activities or is otherwise being substantially uncooperative in satisfying its regulatory obligations.
- 11 We will, however, grant Staff's alternative relief in Docket UE-191024. PacifiCorp seeks recovery in that docket of the costs associated with the Contract, but the Company has not yet filed direct testimony in support of that request. Staff, PCA, and PacifiCorp agree that the Company should provide such testimony when it files supplemental testimony on April 1, 2020. We concur. Because that date is less than three weeks away, we will not schedule a technical conference as PacifiCorp proposes, but we encourage the parties to consult on the issues the Company should address in its supplemental testimony. Any

⁵ WAC 480-07-305(5).

⁶ RCW 80.04.070; WAC 480-07-175.

disputes or other procedural issues that result from this requirement should be addressed in the first instance to the presiding administrative law judge in that docket.

ORDER

THE COMMISSION ORDERS:

- 12 (1) The Commission denies Commission Staff's petition in Docket UE-200069 and closes this docket.
- 13 (2) The Commission denies, in part, and grants, in part, Commission Staff's petition in Docket UE-191024. The Commission will not initiate a joint investigation into the new coal supply agreement at Colstrip Units 3 and 4 or any plans to apply pre-combustion additives to Colstrip coal but amends the procedural schedule in that docket to require PacifiCorp, d/b/a Pacific Power & Light Company, to include testimony concerning the new coal supply agreement in the supplemental direct testimony the Company must file by April 1, 2020.
- 14 (3) Any disputes or procedural issues arising in Docket UE-191024 from this Order should be addressed to the presiding administrative law judge in that docket.
- 15 (4) The Commission retains jurisdiction to enforce this Order.

Dated at Lacey, Washington, and effective March 13, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.