

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET UE-210241
NW ENERGY COALITION, et.al.,	ORDER 01
To commence an adjudicative proceeding to investigate Colstrip’s ongoing expenses	DENYING PETITION

BACKGROUND

- 1 On February 3, 2021, NW Energy Coalition, Climate Solutions, Washington Environmental Council, Western Grid Group, 350 Seattle, Vashon Climate Action Group, 350 Spokane, Climate Action Bainbridge, Sierra Club, and Coalition of Eastside Neighborhoods for Sensible Energy (collectively, non-governmental organizations or NGOs) sent an email to the commissioners of the Washington Utilities and Transportation Commission (Commission) regarding the Colstrip plant (Colstrip) co-owned by Puget Sound Energy (PSE), Avista Corporation d/b/a Avista Utilities (Avista), and PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) (collectively, Joint Utilities). The email requests that the Commission “initiate a proceeding to investigate Colstrip’s ongoing expenses” and enter “a clear order or determination . . . that continued funding to maintain and operate Colstrip is not consistent with prudent utility practice”
- 2 Although the NGOs did not make a formal filing, the Commission exercised its discretion to docket the email as UE-210241 on April 12, 2021.
- 3 On April 13, 2021, the Commission issued a notice seeking feedback and comments related to the NGOs’ request from the affected utilities and other interested persons. The notice required responses to be filed with the Commission by May 4, 2021.
- 4 On April 26, 2021, the Commission received comments from Dow Constantine on behalf of King County.

5 On May 4, 2021, the Commission received comments and responses from the Public
Counsel Unit of the Washington Attorney General’s Office (Public Counsel),
NorthWestern Energy, a joint response from the NGOs, and a joint response from the
Joint Utilities.

6 Constantine expressed King County’s support for the NGOs’ request that the
Commission initiate “an investigation into the financial prudence of” PSE’s Colstrip
operations, noting that he has long advocated for Colstrip’s closure. Constantine raised
the issues of Colstrip’s climate impact and a recent 2020 letter to the Commission
opposing PSE’s proposed sale to Northwestern Energy in Docket UE-200115.

7 Public Counsel expressed support for the NGO’s request and stated that it would
participate if the Commission decided to commence such an adjudication.

8 NorthWestern Energy requests that the Commission deny the NGOs’ request in part due
to the legal process outlined in the Colstrip Ownership and Operation Agreement, which
has already commenced.

9 The NGOs restated their belief that an investigation is warranted and provided additional
detail to support their arguments that Colstrip is no longer economic and that continued
funding to maintain and operate it would be imprudent.

10 The Joint Utilities request that the Commission deny the NGOs’ request to investigate
ongoing expenses for Colstrip Units 3 and 4, asserting the arbitration process that has
been initiated under the Ownership and Operation Agreement may render moot some of
the issues the NGOs request the Commission investigate.

DISCUSSION AND DECISION

11 After the Commission formally docketed the NGOs’ request and reviewed the
subsequently filed responses to the NGOs’ request on May 4, it became apparent that the
NGOs’ request requires the Commission to determine whether to initiate an adjudication.
We thus exercise our discretion to liberally construe the NGOs’ letter as a petition
(Petition).¹ Washington Administrative Code (WAC) 480-07-305(3)(b) defines petitions
for adjudication as “petitions for commission action when the relief requested requires
adjudication or when the commission determines the issues should be resolved through

¹ See WAC 480-07-395(4).

adjudication.” Because granting the Petition would require the Commission to file a complaint against several regulated utilities on its own motion and direct its staff to conduct a complex investigation, we determine that the relief requested would require an adjudication and construe the Petition accordingly. However, we deny the Petition for the reasons explained below.

12 As a threshold matter, the NGOs’ request fails to satisfy the procedural requirements for filing a petition as set forth in WAC 480-07-370(3)(b), which requires, in relevant part, that petitions cite to the statutes or Commission rules that provide the Commission with jurisdiction and authority to grant the requested relief.² The Commission will not commence an adjudication if a petition for adjudication fails to establish the Commission’s jurisdiction or the authority to grant the requested relief.³ The Petition cites neither statute nor rule. Rather, the Petition requests only that the Commission (1) initiate an investigation of the ongoing expenses required to maintain Colstrip, and (2) find that continued funding of such expenses is not consistent with prudent utility practice.

13 Even without these procedural infirmities, we conclude that it would be untimely for the Commission to interpose an investigation during the ongoing arbitration proceeding involving Colstrip’s owners. The Joint Utilities argue:

Initiating a complex investigation into matters that are subject to the arbitration provisions of the Colstrip Units 3 and 4 Ownership Agreement will unnecessarily hinder the Joint Utilities’ ability to fully raise and respond to issues in arbitration. Moreover, resolution of the issues to be addressed in the arbitration may render moot some of the items that the NGOs seek to have the Commission investigate or provide guidance with respect to the respective obligations of the Joint Utilities under the Colstrip Units 3 and 4 Ownership Agreement.⁴

14 We agree. The Commission has conducted several recent proceedings regarding Colstrip’s ownership and operations and appreciates the complexities the Ownership

² These infirmities are additional to the defects related to the NGOs’ failure to properly style and file its request with the Commission’s records center.

³ See WAC 480-07-370(3)(b); WAC 480-07-305(5)(b)(i).

⁴ Joint Utilities’ Response at 2.

Agreement presents.⁵ We also appreciate the concern for Washington utilities and ratepayers expressed by Constantine on behalf of King County, Public Counsel, and the NGOs. We conclude, however, that it is not an appropriate time to initiate such an investigation, complaint, or adjudication. Commission interference at this juncture may unnecessarily complicate the arbitration proceeding, the outcome of which may resolve some of the issues raised by the Petition. Further, pending federal litigation related to recent laws passed in Montana concerning Colstrip and Colstrip's owners may affect the need for, or the importance of, any Commission investigation into the subject matter of the NGOs' request.

- 15 In light of these factors, we decline to act at this time. The NGOs should ensure that any future petitions filed with the Commission conform to the Commission's procedural rules set out in WAC 480-07-305.

ORDER

- 16 THE COMMISSION ORDERS: The request submitted by NW Energy Coalition, Climate Solutions, Washington Environmental Council, Western Grid Group, 350 Seattle, Vashon Climate Action Group, 350 Spokane, Climate Action Bainbridge, Sierra

⁵ See e.g. *In re Investigation of Avista Corp., d/b/a Avista Utils., Puget Sound Energy, and Pacific Power & Light Co. Regarding Prudency of Outage and Replacement Power Costs*, Docket UE-190882; *In re Application of Puget Sound Energy for an Order Authorizing the Sale of All of Puget Sound Energy's Interests in Colstrip Unit 4 and Certain of Puget Sound Energy's Interests in the Colstrip Transmission System*, Docket UE-200115.

Club, and Coalition of Eastside Neighborhoods for Sensible Energy for the Commission to initiate an investigation, which we construe as a petition for adjudication, is denied.

DATED at Lacey, Washington, and effective June 8, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner