

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

**DOCKETS UE-090704
and UG-090705 (consolidated)**

REPLY BRIEF ON BEHALF OF COMMISSION STAFF

March 2, 2010

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1 Commission Staff files this Reply Brief to respond to Puget Sound Energy, Inc. (“PSE” or “the Company”) and Public Counsel.¹ Staff’s Initial Brief addressed the vast majority of arguments raised by the Company and Public Counsel on all contested issues. Thus, lack of repetition here should not be construed as agreement with those parties on those issues.

I. REPLY TO PUGET SOUND ENERGY, INC.

A. The Applicable Legal Standards Do Not Guarantee Full Cost Recovery, As Suggested By the Company

2 The Company is correct that it is entitled to reasonable and sufficient compensation for the service it provides, and the opportunity to earn a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return commensurate with other enterprises of comparable risk.²

3 However, the Company is wrong to suggest that these rights guarantee cost recovery and a reasonable return on investment.³ Rather, they presume an “efficient and economical management” that will control operating expenses and effectively allocate resources between capital investments in order to maximize earnings between rate cases.⁴ Thus, the traditional methods used by the Commission to set rates do not result in “chronic under-recovery of the levels of revenues and rates of return that the Commission has authorized.”⁵ To the contrary, disallowance of an operating expense places the Company on notice to

¹ Staff again defers to the Reply Brief of the Industrial Customers of Northwest Utilities on power cost issues other than production operations and maintenance expense.

² PSE Initial Br. at ¶¶6 and 54-55, citing, *People's Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 808 (1985) (“POWER”), *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), and *Bluefield Water Works Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 679 (1923).

³ PSE Initial Br. at ¶7.

⁴ *Bluefield Water Works Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. at 692 (1923).

⁵ PSE Initial Br. at ¶7, citing *POWER* at 811 for the proposition that disallowance of an operating expense reduces investors’ actual rate of return and increases utility risk.

eliminate or control that expense going forward in order to preserve its ability to earn its authorized rate of return. There is simply no reason to abandon this time-tested and reasonable approach to ratemaking, as affirmed recently by the Commission and as applied directly by Staff in this case.⁶

4 The Company is correct that the ultimate legal question in this case is whether the rates and charges it proposes are “just, fair, reasonable and sufficient.”⁷ However, PSE ignores that it alone bears the burden to prove that it has met that standard.⁸ The Company’s burden is not one of merely coming forward with the evidence. It is a burden of persuasion that extends to each and every element by which PSE seeks to justify the rate increases it proposes.⁹

5 Through an exhaustive examination of the evidence and underlying ratemaking rationale, Staff’s Initial Brief demonstrated that PSE has not met its burden of proof, given Company proposals that sharply favor the interests of investors over the interests of ratepayers. For example, PSE refers to other utilities to justify a significant increase in its authorized return on equity from 10.15 percent to 10.8 percent,¹⁰ rather than reducing the return on equity in order to give ratepayers the benefit of capital costs that have declined unmistakably since the 2008 financial crisis.¹¹ Likewise, PSE proposes numerous ratemaking adjustments based on unverified, budget projections that increase ratepayer responsibility above levels produced by pro forma adjustments that meet Commission rules

⁶ See, Staff Initial Br. at ¶¶47-53, discussing *WUTC v. Avista Corporation, d/b/a Avista Utilities*, Dockets UE-090134 and UG-090135, Order 10 (December 22, 2009).

⁷ PSE Initial Br. at ¶6, citing RCW 80.28.020.

⁸ RCW 80.04.130(4).

⁹ Tegland, Karl B., *Washington Practice*, Vol. 3, §301.2 (4th Ed. 1999).

¹⁰ PSE Initial Br. at ¶¶57-58.

¹¹ Staff Initial Br. at ¶¶14-20 (reduced capital costs) and ¶¶21-25 (reduced Company risk).

for such adjustments. Staff's presentation corrects all of these deficiencies and strikes a fair balance of ratepayer and investor interests.

B. The Commission Should Reject the Company's Proposed Cost of Capital

1. Capital Structure

6 The Company's argument in support of its proposed capital structure with 48 percent common equity succeeds only in highlighting the shortcomings of its evidentiary presentation. PSE states that its proposal reflects the Commission's approach to adopt a common equity ratio that is most likely to prevail during rate year.¹² Experience, however, undermines the Company's credibility that a 48 percent common equity ratio will meet that test. PSE has requested a common equity ratio of 45 percent in its last five cases despite much lower year-end actual common equity ratios of 40.11 percent (2004), 43.84 percent (2005), 39.81 percent (2006), and 39.58 percent (2007) and 37.97 (2008).¹³ The Commission has also typically adopted a lower common equity ratio than the 45 percent requested by the Company: 40.0% (Dockets UE-011570/UG-011571); 43.0% (Dockets UE-040641/UG-040640); 44.0% (Dockets UE-060266/UG-060267); and 46.0% (Dockets UE-072300/UG-072301).¹⁴

7 The Company argues that its proposed capital structure meets the Commission's test to balance safety and economy.¹⁵ This assertion comes for the first time at the latest possible moment: PSE's Initial Brief. No Company testimony even references the Commission's test. In contrast, Staff witness Mr. Parcell relied expressly on the safety and economy test to support his proposed capital structure containing 45 percent common

¹² PSE Initial Br. at ¶50.

¹³ Exhibit No. SGH-5C at 1.

¹⁴ Tr. 707:5-16 (Parcell).

¹⁵ PSE Initial Br. at ¶50, citing *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-040641 and UG-040640, Order 06 at ¶27 (February 18, 2007).

equity.¹⁶ PSE declined to cross-examine him on his conclusion and provided no witness of its own to testify on that issue.

8 Finally, the Company argues that its proposed common equity ratio of 48 percent is reasonable because it is consistent with recent decisions of other state regulatory commissions.¹⁷ The Company's argument reveals a gross inconsistency in its approach. PSE asks the Commission to ignore the lower 45 percent average common equity ratio of publicly-traded, combination utilities,¹⁸ at the same time the Company relies upon the upwardly biased equity returns of combination utilities to justify an increase in its authorized return on equity.¹⁹

9 Mr. Parcell did not make that same mistake. He examined the consolidated operations of publicly-traded holding companies both for purposes of determining an appropriate capital structure and for purposes of estimating PSE's cost of equity. His proposal for a capital structure with 45 percent common equity is consistent with publicly-traded combination utilities, consistent with PSE requests in prior cases, and consistent with the test of safety and economy. His recommendation should be adopted by the Commission.

2. Cost of Equity

10 Cost of capital witnesses must support any change in the authorized return on equity with evidence of changed circumstances in the capital markets and the particular company under consideration.²⁰ Staff met this requirement through its presentation of extensive evidence of market conditions following the 2008 financial crisis, showing that the cost of

¹⁶ Exhibit No. DCP-1T at 25:17-26:7.

¹⁷ PSE Initial Br. at ¶49.

¹⁸ PSE Initial Br. at ¶52.

¹⁹ PSE Initial Br. at ¶57. The returns on equity of the combination utilities are upwardly biased because they rely upon on analytical studies that include the non-regulated operations of those holding companies. Exhibit No. DEG-12 (Staff Response to PSE Data Request No. 7).

²⁰ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-060266 and UG-060267, Order 08 at ¶84 (January 5, 2007).

capital for the Company has declined, not increased, since the Company's last general rate case, justifying a decrease in PSE's return on equity from 10.15 percent to 10.0 percent.²¹

11 The Company ignores the requirement to examine changed market conditions and the evidence that examination produces. Its arguments for increasing its return on equity to 10.80 percent focus largely on the technical aspects of the analytical studies offered by Dr. Morin. However, even those arguments fail. A comparison of Dr. Morin's initial and rebuttal Risk Premium and four Discounted Cash Flow ("DCF") studies demonstrate that the cost of equity has declined following the financial crisis.²² The Company disavows completely the results of Dr. Morin's Capital Asset Pricing Model ("CAPM") studies,²³ even though they were his only studies showing an increase in the cost of equity. Mr. Parcell's CAPM analysis supported a decrease in PSE's return on equity, although he acknowledged that CAPM results should be taken with a grain of salt because they are biased downward by recent market conditions.²⁴

12 PSE's only remaining challenge is that Mr. Parcell's recommended 10.0 percent cost of equity is below the average return of the utility industry and his comparable group of utilities.²⁵ However, all of the equity returns noted by the Company were authorized in 2008 using market data before the financial crisis. No showing has been made by PSE that these returns reflect the reduced cost of capital that followed the 2008 financial crisis.²⁶

3. Cost of Long-Term Debt

²¹ Staff Initial Br. at ¶¶14-24.

²² The results of these studies are summarized at ¶26 of Staff's Initial Brief.

²³ PSE Initial Br. at ¶61. The Company debunks CAPM on brief even though Dr. Morin touted CAPM as the "fundamental paradigm of finance." Exhibit No. RAM-1T at 23:5-6.

²⁴ Exhibit No. DCP-1T at 34:20-35:16 and Tr. 697:11-689:17 (Parcell).

²⁵ PSE Initial Br. at ¶58.

²⁶ PSE's argument also ignores recent decisions by this Commission authorizing much lower returns on equity (10.2 percent) than what PSE claims is the norm for other regulatory commissions. *WUTC v. Avista Corporation, d/b/a Avista Utilities*, Dockets UE-090134 and UG-090135, Order 10 (December 22, 2009) and *WUTC v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-090205, Order 09 at ¶76 (December 16, 2009).

13 The Company challenges Staff's decision to estimate the price of two future bond issuances at the 5.757 percent coupon rate PSE received for debt in September 2009. PSE states that its projected coupon rates of 6.72 percent and 6.86 percent should be used, instead, because they are very close to its embedded cost of long-term debt of 6.70 percent.²⁷ However, the Company does not explain why its embedded cost of debt is at all relevant to pricing new debt to be issued in 2010.

14 Company projections of debt costs have also proven to be grossly unreliable. In its direct case, PSE projected a cost of debt for the September 2009 debt issue of 6.90 percent.²⁸ That projection proved to greatly exceed the actual September 2009 issuance of bonds at 5.757 percent. There is no reason on this record to rely upon the Company's projected cost rates for the remaining two bond issuances yet to come in 2010.

15 The best evidence of the cost of debt in this case is the cost PSE actually experienced in today's capital markets. The cost PSE actually experienced in today's capital markets is 5.757 percent. Staff used that coupon rate to estimate the cost of long-term debt for the rate year. The Commission should approve Staff's approach.

**C. The Commission Should Reject the Company's Position on Contested
Ratemaking Adjustments**

1. Major Maintenance

16 Staff recommends that, for ratemaking, PSE continue its current accounting for major maintenance under the American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Guide for Airlines and Generally Accepted Accounting Principles.²⁹

²⁷ PSE Initial Br. at ¶65.

²⁸ Exhibit No. DEG-5C at 5:31-33.

²⁹ Exhibit No. KHB-1TC at 14:15-19 and 16:21-17:1. For facilities with long-term service contracts, the cost is amortized until the next planned major maintenance event. For peaking plants or plants without long-term service agreements, the cost is recognized as incurred under the direct expense method.

The Company stated that its proposal to recover major maintenance is “consistent” with Staff’s recommendation.³⁰ It repeats that characterization in its Initial Brief.³¹

17 It is clearly not the case that PSE’s proposal is the methodology that Staff recommends be continued. PSE’s actual request is that the Commission should revise the accounting for major maintenance, thereby creating regulatory assets for all major maintenance and allowing major maintenance for turbines without service agreements to be capitalized and amortized to expense, even though insufficient information exists to reasonably determine an appropriate amortization period.³²

18 Staff’s Initial Brief provided sound reasons for the Commission to reject the Company’s proposal.³³ We emphasize that rationale and recommendation here.

2. Contested Ratemaking Adjustments

19 Staff’s Initial Brief explained its fundamental approach in this case: the straightforward application of the letter and spirit of historical test year ratemaking. This approach required Staff to revise many of PSE’s expense pro forma adjustments because those adjustments used budget forecasts of future expenses that were not shown to be “known and measurable” and “not offset by other factors.” Indeed, the Company’s own presentation demonstrated that many of its projections are inherently unreliable, irrespective of the judgment of management and underlying analysis.³⁴

³⁰ Exhibit No. LEO-13CT at 4:3-9 and Tr. 789:1-14 (Odom).

³¹ PSE Initial Br. at ¶87.

³² Exhibit No. JHS-29.

³³ Staff Initial Br. at ¶¶99-102.

³⁴ See, for example, Adjustments 10.15 and 9.10, Property Tax. PSE’s projections changed 187 percent and 24 percent for electric and natural gas operations, respectively. Exhibit No. B-2 at Attachment C, page 2.22, Exhibit No. MJS-9 at 9.10, and Exhibit B-2 at Attachment D, page 3.15. See also, Adjustment 10.03, Power Cost, where the Company’s projections for total production O&M expense decreased 23 percent. Exhibit No. DEM-15, column entitled “Difference From 9.28 Update”, lines for Colstrip 1/2, Colstrip 3/4, Upper Baker & Baker Licensing, Snoqualmie 1/2, incl Licensing, Freddie 1, Mint Farm, Hopkins Ridge + Expansion, and Wild Horse and Wild Horse Expansion.

20 Staff's approach also required it to revise many of PSE's adjustments for plant added during or after the test year, based generally on verified expenditures at August 2009, rather than the projections used by PSE. Many of these Company projections also proved to be undependable despite analysis the Company purported was detailed and rigorous.³⁵

21 The thrust of PSE's defense generally and for each of its pro forma adjustments is that Staff has endorsed a restrictive approach that deviates from prior Staff practice and Commission precedent, and is incompatible with PSE's "critical need" for significant investments in new energy resources and new and aging energy delivery systems.³⁶ Staff's Initial Brief anticipated the Company's arguments, and explains in depth that the Commission has heard identical challenges before and has rejected all of them.³⁷ We see no reason to burden the Commission with repetition here.

22 The Company does argue that Staff's proposal to keep Exhibit G of the Power Cost Adjustment ("PCA") mechanism intact for Mint Farm deferred costs creates a duplication of costs for PSE. However, the support for that allegation is merely Staff's description of the Company's own deferred cost proposal.³⁸ No citation to the Staff presentation itself is provided by the Company.

³⁵ See, for example, Adjustment 10.07, Wild Horse Expansion. PSE's forecast decreased \$5,469,920 (5.3 percent) for plant investment, increased \$1,295,256 (5630.1 percent) for wheeling, decreased \$82,056 (100.0 percent) for property insurance, and decreased \$274,947 (61.4 percent) for property taxes. Compare Exhibit No. JHS-10 at 13 with Exhibit No. B-2 at Attachment C, page 2.14. Similarly, Adjustment 10.08, Mint Farm, saw forecasts that decreased \$3,922,732 (1.6 percent) for plant including acquisition costs, decreased \$401,950 (52.1 percent) for property insurance, decreased \$475,252 (36.7 percent) for property tax, decreased \$2,864,717 (4.6 percent) for fuel expense, and decreased \$4,148,029 (44.30 percent) for O&M expense. Compare Exhibit No. B-2 at Attachment C, page 2.15 with Exhibit No. JHS-10 at 14.

The volatility of the property tax projections for all of the individual plant adjustments is not surprising given that Company property is not assessed individually and the tax levy rates have not been fixed. Exhibit No. MRM-5.

³⁶ PSE Initial Br. at ¶¶2 and 69.

³⁷ Staff Initial Br. at ¶¶50-53, discussing *WUTC v. Avista Corporation, d/b/a Avista Utilities*, Dockets UE-090134 and UG-090135, Order 10 (December 22, 2009).

³⁸ PSE Initial Br. at ¶125, citing Exhibit No. RCM-1T at 19.

23 Moreover, the Company mischaracterizes the impact of the Staff proposal itself. Under Staff's proposal to maintain Exhibit G, the variable costs that exceed the Power Cost baseline are adjusted as a reduction to the allowable costs for calculating the PCA imbalance, rather than as a reduction of the deferred variable power costs. Thus, under Staff's proposal "all costs associated with Mint Farm are removed from the Income Statement and costs that were originally allowed for purchased power have been restored as if the machine were not available."³⁹ No duplication of costs results.

D. The Commission Should Not Approve the Low-Income Proposal at This Time

24 PSE proposes to increase the annual level of low-income electric and natural gas bill assistance by the residential class percentage increase approved by the Commission.⁴⁰

25 Low-income bill assistance is offered under Schedule 129. That schedule is not under suspension.⁴¹ Thus, Staff recommends that the Commission delay consideration of the Company's proposal until PSE files revisions to Schedule 129 for the next program year.

II. REPLY TO PUBLIC COUNSEL

26 Public Counsel concludes that the Mint Farm Energy Center was not a prudent acquisition and does not qualify for deferred accounting under RCW 80.80.060(6). For reasons stated in Staff's Initial Brief and below, Public Counsel is wrong on both counts.

A. Public Counsel Does Not Undermine the Company's Demonstration of Mint Farm Prudence

27 Public Counsel argues that the acquisition of Mint Farm is imprudent because the plant creates surplus capacity through 2011.⁴² He makes this argument despite admitting

³⁹ PSE Initial Br. at ¶125.

⁴⁰ PSE Initial Br. at ¶146.

⁴¹ WN U-60, Tariff G, Electric Service, Advice No. 2009-11 (May 8, 2009).

⁴² Public Counsel Opening Br. at ¶33.

that “in the long-run ownership of Mint Farm should benefit customers”⁴³ and despite agreeing that a facility can be prudent even when acquired to fill a resource deficit that will not occur until after the rate year.⁴⁴ More to the point, Public Counsel provides no explanation why Mint Farm is imprudent because it creates short-term surplus capacity, especially in light of detailed and significant evidence of a mid- and long-term need of the Company for new resources that Public Counsel does not dispute.⁴⁵

28 Public Counsel argues that PSE’s quantitative analysis does not support the acquisition of Mint Farm. In making this argument, Public Counsel focuses upon the Portfolio Benefit and Benefit Ratio, and disregards the 20-Year Levelized Cost calculation that clearly favored Mint Farm over other alternatives.⁴⁶

29 Public Counsel’s approach is incomplete. The 20-Year Levelized Cost is the only criteria that measures the expected costs to deliver power for a specific resource over 20 years.⁴⁷ Thus, the 20-Year Levelized Cost measures directly and independently the total system cost impact of a resource on customers. Neither the Portfolio Benefit nor Benefit Ratio can make that claim.

30 This is not to say that the Portfolio Benefit and Benefit Ratio do not both deserve equal consideration. Rather, the point is that the Company’s quantitative analysis provided varied results among equally important criteria, but there were qualitative factors that led PSE to decide to acquire Mint Farm. Staff’s independent and comprehensive analysis of all

⁴³ Exhibit No. SN-1HCT at 21:15-16 and Tr. 209:24-210:7 (Harris).

⁴⁴ *WUTC v. PacifiCorp, d/b/a, Pacific Power & Light Co.*, Docket UE-090205, Order 09 at ¶50 (December 16, 2009) (PacifiCorp acquisition of Chehalis to fill resource deficit in 2012).

⁴⁵ Staff’s Initial Brief at ¶¶166-167 summarizes this evidence that Public Counsel does not contest.

⁴⁶ Public Counsel Opening Br. at ¶¶36-42 and 44-49.

⁴⁷ Tr. 290:12-22 (Elsa).

of the evidence confirmed that that decision was well-reasoned. Public Counsel has not shown otherwise.⁴⁸

31 Finally, Public Counsel faults the Company for having chosen a resource that will be added to rate base, allowing investors to earn an additional return.⁴⁹ PSE has responded that it did not consider the availability of higher shareholder returns in making the decision to acquire Mint Farm.⁵⁰ Staff only points out that the Company has also requested a prudence determination for the acquisitions of Fredonia Units 3 and 4, and the Wild Horse expansion. Those facilities will also be added to rate base, with additional returns for shareholders. Public Counsel does not, however, oppose these Company acquisitions.

B. Public Counsel Misconstrues and Misapplies the Statutory Requirements for Deferred Accounting

32 PSE has requested, under RCW 80.80.060(6), deferred accounting of the fixed and variable costs of Mint Farm from the December 2008 acquisition date to the effective date of new rates in this case. Staff agrees with the request, although there are issues regarding carrying costs, amortization period, and the suspension of Power Cost Adjustment features (Exhibit G).

33 There are several errors in Public Counsel's conclusion that Mint Farm does not qualify for deferred accounting under RCW 80.80.060(6).⁵¹ First, Public Counsel argues that deferred accounting is available only if there is a need for Mint Farm and Mint Farm is

⁴⁸ Public Counsel points to the "Qualitative Evaluation-Key Risks" performed by PSE. Public Counsel Opening Br. at ¶50, citing Exhibit No. RG-3HC at 110. Mint Farm's slightly higher risk for one out of four criteria should not require a conclusion that Mint Farm was an imprudent acquisition, given all of the record evidence, including Exhibit No. RG-3HC at 113, which shows some of Mint Farm's qualitative rankings exceeding Public Counsel's preferred alternative.

⁴⁹ Public Counsel Opening Br. at ¶51.

⁵⁰ Exhibit No. KJH-8CT at 11.

⁵¹ In a sense, this issue is largely academic. If RCW 80.80.060(6) is not available to PSE, the Company still requests deferred accounting for Mint Farm costs under the Commission's traditional procedures. The only other impact of a finding that RCW 80.80.060(6) is not available to PSE is that the greenhouse gas statutory compliance aspect of the prudence review for Mint Farm is unnecessary.

an appropriate resource to meet that need.⁵² It is unclear where Public Counsel derives this argument since the statute he cites for support (RCW 80.80.060(5)) does not mention need or appropriateness. It may be that Public Counsel was relying upon the prior version of RCW 80.80.060(5), which does reference those issues.⁵³ But even that prior version addressed only company applications outside of a general rate case for a Commission determination that a resource meets the greenhouse gas emissions standard. In that context, the Commission was required previously to address need and appropriateness of the resource to meet that need. That is not the context of this proceeding, however.

34 In any event, the provision for deferred accounting is RCW 80.80.060(6). Demonstrations of need and appropriateness of the resource to meet that need are not required in that context. The only requirement is that the resource be a “long-term financial commitment”.

35 That brings us to Public Counsel’s second error. A long-term financial commitment means “baseload electric generation.”⁵⁴ “Baseload electric generation” means energy from a facility that is “designed and intended” to provide electricity at an annualized capacity factor of 60 percent or more.⁵⁵ Public Counsel devotes considerable effort arguing that Mint Farm does not meet that standard because its projected annual capacity factor fell below 60 percent.⁵⁶

36 However, in determining whether a facility is “designed and intended” to operate at least at a 60 percent capacity factor, the Commission is required to consider:

1. the design of the power plant; and

⁵² Public Counsel Opening Br. at ¶¶59-60.

⁵³ Laws of 2007, ch. 307, §8.

⁵⁴ RCW 80.80.010(15).

⁵⁵ RCW 80.80.010(4).

⁵⁶ Public Counsel Opening Br. at ¶¶61-71.

2. its intended use, *based upon* ...
 - i. permits necessary for the operation of the power plant and
 - ii. any other matter the commission determines is relevant under the circumstances.⁵⁷ (Emphasis added.)

The Commission has held that the primary focus under this standard is plant design.⁵⁸ No party disputes that Mint Farm is designed to operate well over a 60 percent annual capacity factor and that PSE made no alterations to the plant that would reduce that capability.

37 It is true that PSE projected annual capacity factors for Mint Farm below the 60 percent annual capacity factor threshold.⁵⁹ However, it is also true that other Company analysis projected annual capacity factors over 60 percent in nearly half of 1,800 runs that were modeled.⁶⁰ This conflicting evidence makes it particularly appropriate for the Commission to focus on the technical design capabilities of Mint Farm, rather than modeling of possible future annual plant capacities.

38 Finally, Public Counsel alleges that Staff placed undue reliance on the Department of Ecology's determination that Mint Farm is baseload electric generation.⁶¹ Public Counsel mischaracterizes the Staff testimony. Staff's reliance on the Department of Ecology was directly primarily to confirming Staff's conclusion that air quality permit restrictions were not in place for Mint Farm that would affect the plant's capacity factor, and to Ecology's

⁵⁷ RCW 80.80.060(3).

⁵⁸ *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-090205, Order 09 at ¶68 (December 16, 2009). The PacifiCorp case was a settlement. Nevertheless, the Commission interpreted the phrase "design and intended" on the merits. In doing so, the Commission relied on Staff witness David Nightingale, whose testimony presented the issue in a "reasonable and effective manner." Mr. Nightingale's testimony is also contained in this record at Exhibit No. DN-1T at 40:4-42:6.

⁵⁹ Exhibit No. DN-1T at 41:13-19.

⁶⁰ Exhibit No. WJE-1HCT at 29. Public Counsel challenges this analysis as including only Mint Farm model runs with primary firing. Public Counsel Opening Br. at ¶67. However, Public Counsel does not explain whether and by how much the capacity factor from those model runs would change if Mint Farm duct firing had been included.

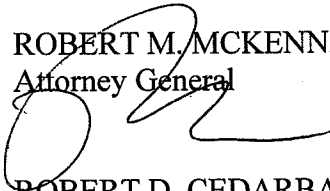
⁶¹ Public Counsel Opening Br. at ¶73.

determination that Mint Farm met the greenhouse gases emissions performance standard.⁶²

Staff's reliance on the Department of Ecology for these purposes was reasonable and appropriate. Indeed, Staff has no source other than the Department of Ecology for determining if any generation facility meets the greenhouse gases emissions performance standard.

DATED this 2nd day of March 2010.

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⁶² Exhibit No. DN-1T at 19:8-13 and 44:2-7.