

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of PUGET SOUND ENERGY, For Approval of its April 2019 Power Cost Adjustment Mechanism Report	DOCKET UE-190324
In the Matter of PACIFIC POWER & LIGHT COMPANY, 2019 Power Cost Adjustment Mechanism Report	DOCKET UE-190458
In the Matter of AVISTA CORPORATION, d/b/a AVISTA UTILITES, 2019 Power Energy Recovery Mechanism Report	DOCKETS UE-190334, UG-190335, and UE-190222 (Consolidated) DECLARATION OF DAVID C. GOMEZ

1. I, David Carlos Gomez, under penalty of perjury under the laws of the state of Washington, declare as follows:

2. I am over 18 years of age, a citizen of the United States of America, a resident of the State of Washington, and competent to be a witness.

3. I am employed by the Washington Utilities and Transportation Commission (“UTC” or “Commission”) as an Assistant Power Supply Manager. I have been employed in this position at the UTC for six years. As an Assistant Power Supply Manager, my responsibilities include: independent economic, statistical, technical, and/or policy analysis as well as providing technical assistance on complex energy regulatory issues that impact

industries, companies, consumers, and other stakeholders across the state of Washington. I am the principal Staff witness in the three annual power cost filings referred to in the caption of my declaration. The Commission orders which implement the power cost mechanisms for each company mandate an annual filing to provide the Commission and interested parties an opportunity to review the prudence of all power costs included in the deferral calculations for each mechanism. Costs determined by the Commission to be imprudent in the deferral year can be disallowed.¹

4. Colstrip is a four unit coal-fired power plant located in Montana. The power plant is jointly owned by various parties—including PSE, Pacific Power, and Avista—and is operated by Talen Montana (“Talen”).² The Colstrip Units are subject to 40 C.F.R. Part 6, Subpart UUUUU – National Emission Standards for Hazardous Air Pollutants: Coal – and Oil-Fired Electric Utility Steam Generating Units—commonly referred to as the Mercury Air Toxics Standard (“MATS”).³ MATS became effective on April 16, 2017, for the Colstrip Units, and these standards are enforced by the Montana Department of Environmental Quality (“MDEQ”).⁴ MATS requires that particulate matter (PM) emissions be used as a surrogate for toxic emissions or non-mercury metals.⁵ Mercury emissions are measured separately to meet a mercury-specific limitation.⁶ MATS requires that the Colstrip Units maintain a rolling 30-day average PM emission rate of 0.030 pounds per million British Thermal Units

¹ **Puget Sound Energy** - UE-130617 (Attachment A to Settlement Stipulation) p.2; *see also* UE-130617, Order 11 (Approving and adopting Settlement Stipulation); **Pacific Power & Light Company** - UE-140762 (Settlement Stipulation) ¶19; *see also* UE-140762, Order 09 (Approving and adopting Settlement Agreement); and **Avista Corporation** - UE-011595 (Settlement Stipulation) p.7; *see also* UE-011595, Fifth Supplemental Order (Approving and adopting Settlement Stipulation).

² UE-190324, Exhibit RJR-1T (Direct Testimony of Ronald J. Roberts) p.3.

³ *Id.* at p.3.

⁴ *Id.*; UE-190222, Exhibit TCD-1T (Direct Testimony of Thomas C. Dempsey) at p.2.

⁵ UE-190222, Exhibit TCD-1T, at p.2–3.

⁶ *Id.*

(1b/MMBtu).⁷ This means the average PM emission rate across all four Colstrip Units must be less than or equal to 0.030 1b/MMBtu.⁸

5. Starting in the first quarter of 2018, the PM levels at Colstrip were elevated—however, the facility remained in compliance during this time period because the average PM levels of all of the Colstrip Units were below or at the 0.030 lb/MMBtu limit.⁹ Historically, Units 3 and 4 have operated below the 0.030 lb/MMBtu limit while Units 1 and 2 have operated above the limit, creating a site-wide average that met the MATS PM emission limit.¹⁰

6. During the second quarter of 2018, Units 1 and 2 were offline and therefore not subject to MATS PM emission testing.¹¹ Prior to Units 3 and 4 being officially tested for MATS PM compliance, Talen burned coal from an alternative source—Area A coal—in an attempt to lower the elevated PM levels of the Units.¹² On

⁷ *Id.* at p.3.

⁸ UE-190324, Exhibit RJR-1T p.4.

⁹ UE-190324, Exhibit RJR-1T p.4.

¹⁰ *See generally, id.*

¹¹ *Id.*

¹² UE-190324, PSE's response to UTC Staff Informal Data Request No. 2, SUPART I (Appx. B):

SUBPART I: Since 2015, has Colstrip Units 3 and 4 burned any coal that was not mined from Area C of the Rosebud Mine?

Yes, in 2018 Units 3 and 4 burned coal that was not mined from Area C of the Rosebud Mine: a total of approximately 184,000 tons was purchased from Western Energy Company ("WECO").

The decision to request coal from Rosebud Area A was part of the investigative process into the 2018 MATS PM issue. During individual unit diagnostic testing just prior to the late June official site-wide MATS PM testing, the operator's personnel observed an elevation in the unofficial MATS PM level. The facility took a broad approach to the investigation of the elevated level and one of the areas they explored was the effect coal quality on the boilers. To that end, the plant requested coal from Rosebud Area A to see if different coal would improve the MATS PM level. The Area A coal did not bring the MATS PM level into compliance range and the facility resumed burning Area C coal through the remainder of the year. During the time the Units were out of compliance level, it made no significant difference whether Area C or Area A coal was being burned. Colstrip Units 3 and 4 burned a total of 5,974,128.92 tons of coal in 2018, the 184,000 tons of Area A coal was a small portion of that amount.

It is Staff's understanding that Units 3 and 4 had previously never burned coal from any other area of the Rosebud Mine except Area C. [REDACTED]

June 21, 2018, Unit 3 was tested and the results indicated a PM emission rate of 0.043 1b/MMBtu.¹³ On June 26, 2018, Unit 4 was tested and the results indicated a PM emission rate of 0.051 1b/MMBtu.¹⁴ These tests revealed that Colstrip Units 3 and 4 were out of compliance with the PM emission limit.¹⁵ Talen notified MDEQ of the non-compliant test results on June 28, 2018.¹⁶ Due to this violation of the PM emission limit, Units 3 and 4 went into a forced outage.¹⁷ Unit 3 was removed from service on June 28 and kept offline until July 8.¹⁸ Unit 4 was removed from service on June 29 and kept offline until July 17.¹⁹ When these Units came back online during the period of non-compliance, they were run only for the purposes of gathering information, performing diagnostics, evaluating potential remedial actions, and testing.²⁰

7. After corrective actions were taken by Talen, both Unit 3 and 4 came back into PM emission compliance.²¹ On September 4, 2018, Unit 4 demonstrated compliance with a PM emission rate of 0.021 1b/MMBtu and Unit 3 demonstrated compliance with a PM emission rate of 0.024 1b/MMBtu on September 11, 2018.²² PSE, Pacific Power, and Avista incurred replacement power costs as a result of the 2018 Colstrip Units 3 and 4 derate and outage (the “2018 Colstrip Outage”). All three companies are now seeking



¹³ UE-190324, Exhibit RJR-1T p.4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* p.4–5.

¹⁷ *Id.* at p.5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at p.6.

²² *Id.*

recovery of the replacement power costs required by the 2018 Colstrip Outage in their respective power cost adjustment mechanisms.

8. Staff was aware of the 2018 Colstrip Outage at the time of its occurrence and anticipated that the prudence of the outage would need to be examined in the annual power cost reviews for all three companies. On January 17, 2019, Staff sent an email communication to all three companies addressing Staff's need to assess the prudence of costs associated with the 2018 Colstrip Outage:

The annual power cost deferral reviews are coming up for each of you in the next handful of months. As you know, the central purpose of these filings is for the commission to review the prudence of power costs included in the deferral calculation, and ultimately approve a specific deferral balance. The power costs included in the forthcoming filings will include the effect of last summer's outage at Colstrip units 3 and 4.

This email is to let you know commission staff will be expected to provide the commission with an analysis of the outage, including the cause of the outage and the cost of replacement power, and a recommendation regarding the prudence of incremental costs associated with the outage. I would like to ask that you address this issue [in] a proactive manner in your filings. As we will be expected to investigate this issue, it would be more efficient if you all could file testimony (or at a minimum a comprehensive narrative) and any additional pertinent evidence on the issue. *I'm worried that if this issue is not addressed proactively, and staff has to conduct its review through discovery, the probability that these filings will need to be suspended and set for hearing rises substantially.*

Please do not interpret this email to mean that staff intends to challenge the prudence of costs associated with the outage. Rather, I just want to make you all aware staff will need to investigate this issue, and that producing the pertinent information up front will help us complete our review in the limited time we will have.²³

9. Despite this notification to the companies, PSE provided six pages of

²³ Email from Chris McGuire, Assistant Director of Energy Regulation (Staff) to Ariel Son (Pacific Power), Jon Piliaris, Kathie Barnard, and Ron Roberts (PSE), Pat Ehrbar, Annette Brandon, and Kinney Scott (Avista) (January 17, 2019, 09:47 AM PST).

testimony; Avista provided five pages of testimony; and Pacific Power provided two pages of testimony pertaining to the 2018 Colstrip Outage in their initial filings. The testimony provided by each company was not sufficient for Staff to assess the prudence of the replacement power costs associated with the 2018 Colstrip Outage. This required Staff to engage in informal discovery in an attempt to evaluate the prudence of these costs.

10. In informal discovery, Staff's investigation focused on Talen and the owners' decision making pertaining to the elevated PM levels leading up to the 2018 Colstrip Outage. As PSE witness Mr. Ron Roberts states in his initial testimony:

There was elevation in the results for the first quarter [Q1] of 2018; however, the facility remained in compliance. Investigation following the first quarter 2018 testing period showed no operational issues that would indicate further increases in particulate matter levels.²⁴

In light of the elevated PM levels, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


²⁴ UE-190324, Prefiled Direct Testimony of Mr. Ron Roberts, Exhibit No. RJR-1T, page 4, 9-13.



11. Staff engaged in informal discovery because it needed to understand the decision making by the three the companies and Talen pertaining to the Q1 elevated PM levels. Staff wanted to know more about Talen’s investigation into the elevated PM levels in order to assess the prudence of its actions. In particular, Staff wanted to know the decision making process surrounding Talen’s decision to burn Area A Coal, in its attempt to get the Units back into MATS PM compliance.²⁶

12. Talen is contractually obligated by each company to operate Colstrip Units 3 and 4 in a prudent manner.²⁷ However, in informal discovery, each company failed to provide any documentation concerning Talen’s investigation into the increased PM levels in their data request responses. For example, in Avista’s response to UTC Staff Informal Data Request No. 5, Avista stated:

Avista does not recall Talen’s investigation into the increase in particulate matters

²⁵ UE-190222, Avista’s response to Informal Staff Data Request No. 8, SUBPART C Confidential Attachment I (Appx. A)(emphasis added). 

²⁶ See UE-190324, PSE’s response to UTC Staff Informal Data Request No. 2 SUBPART I–J (Appx. B).

²⁷ UE-190222, Avista’s response to UTC Informal Data Request No. 5 SUBPART C (Appx. A).

in Q1 2018, primarily because of the fact Colstrip was not otherwise out of compliance. Avista does not have any documentation dating back to Q1 of 2018 related to this question. However, we are aware of Puget Sound Energy, witness Mr. Roberts who states in his testimony, JRJ-1T, at p. 4 ln 9-13 in Docket No. UE-190324: “There was an elevation in the results for the first quarter of 2018; however, the facility remained in compliance. Investigation following the first quarter 2018 testing period showed no operational issues that would indicate further increase in particulate matter levels.”²⁸

In response to UTC Staff Informal Data Request No. 3, PSE stated:

PSE does not have any correspondence (including emails), documents, data, reports and analyses relating to Talen’s investigation into [the] increase[d] particulate matter levels in Q1 of 2018 referred to above. As plant operator, Talen MT is tasked with maintaining the plant and, given that the facility was within compliance range, communication was not provided to PSE related to the 2018 Q1 elevated MATS PM tests.²⁹

In response to UTC Staff Informal Data Request No. 5, Pacific Power stated: “Pacific Power is not aware of an investigation by Talen into the particulate matter levels in Q1 of 2018. . . .”³⁰ And with regard to Talen’s decision to burn Area A coal, Pacific Power stated, “PacifiCorp had no direct involvement in procuring Area A coal. Talen, the operator of the plant, made the decision.”³¹

13. Pacific Power and PSE’s data request responses generally indicate that the companies may have some inability to obtain documents from Talen. For instance, in response to UTC Staff Informal Data Request No. 23, PSE stated: “PSE cannot confirm or deny whether all contemporaneous documentation that may be in the possession or control of Talen MT has been produced.”³² Similarly, in response to UTC Staff Informal Data Request No. 5, Pacific Power stated: “Pacific Power is not the operator of Colstrip and

²⁸ UE-190222, Avista’s response to UTC Staff Informal Data Request No. 5 SUBPART D (Appx. A).

²⁹ UE-190324, PSE’s response to UTC Staff Informal Data Request No. 3 SUBPART G (Appx. B).

³⁰ UE-190458, Pacific Power’s response to UTC Informal Data Request No. 5 SUBPART C (Appx. C).

³¹ UE-190458, Pacific Power’s response to UTC Staff Informal Data Request No. 5 SUBPART D (Appx. C).

³² UE-190324, PSE’s response to UTC Staff Informal Data Request No. 23 (Appx. B).

does not have that information in its possession or control.”³³ Although Pacific Power and PSE do not operate Colstrip Units 3 and 4, they (and Avista) are owners of these Units. Staff has serious concerns that Pacific Power and PSE may have some inability to obtain information from Talen. Talen is not an entity regulated by the Commission and, therefore, Staff relies on PSE and Pacific Power to obtain information from Talen to determine if the costs associated with Talen’s actions are prudent. Furthermore, the companies’ failure to provide this information limits the amount of information the Commission would have in making its ultimate prudence determination on these costs.

14. In addition to Talen’s investigation, Staff needed information on how each company responded to the elevated PM levels. Staff needed to know this information to determine if the 2018 Colstrip outage was caused by imprudent actions, and in turn, if the replacement power costs incurred by the outage should be included in the 2018 deferral balances. In both discovery and informal conversation, Staff made abundantly clear that Staff needed contemporaneous documentation regarding each company’s decision making processes pertaining to the elevated PM levels. In prior orders, the Commission has emphasized the need for contemporaneous documentation to assess the prudence of a company’s decision making.³⁴ The companies failed to provide this necessary documentation in their data request responses. For instance, PSE in response to UTC Informal Data Request No. 03 stated:

. . . .PSE does not have any presentations, notes, minutes, emails and any other documentation provided to PSE’s management and/or Board of Directors concerning the Q1 2018 investigation into increased particulate matter. PSE’s management and/or Board of Directors did not make any decisions related to the Q1 2018 investigation into increased particulate matter so no

³³ UE-190458, Pacific Power’s response to UTC Staff Informal Data Request No. 5 SUBPART D (Appx. C).

³⁴ See generally, UE-152253, Order 12 (Finding that Pacific Power failed to meet its legal burden of proof that its SCR system investments were prudent because it failed to produce the *necessary contemporaneous documentation* that it re-evaluated certain options).

documentation, transcripts, notes, letters, correspondence memorializing decisions are available.³⁵

In response to UTC Informal Data Request No. 5, Avista similarly did not provide any such contemporaneous documentation.³⁶ In response to UTC Informal Data Request No. 5, Pacific Power provided only a redacted version of Confidential Attachment WUTC 5-2, which contains a cumulative chronological record of the updates provided to Pacific Power's management on the 2018 Colstrip Outage.³⁷ Staff cannot determine if the redacted portion of this Attachment contains relevant information to its investigation.

15. Staff also requested information about how [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁵ UE-190324, PSE's response to UTC Staff Informal Data Request No. 3 SUBPART H (Appx. B).

³⁶ UE-190222, Avista's response to UTC Staff Informal Data Request No. 5 (Appx. A).

³⁷ UE-190458, Pacific Power's response to UTC Staff Informal Data Request No. 5 Confidential Attachment WUTC 5-2 (Appx. C).

³⁸ UE-190324, PSE's response to UTC Staff Informal Data Request No. 4 SUBPART A, Attachment A (Ownership and Operating Agreement § 17(c)) & Attachment O (Amended Restated Coal Supply Agreement §§ 5.3, 5.6, 6.3, 6.6) (Appx. B); *see also* UE-190222, Avista's response to UTC Staff Informal Data Request No. 6 SUBPART A. (Not included in Appx. A as to avoid duplicative documents in the administrative record). Although PSE and Avista did not mark these Agreements as confidential in their informal data request responses, it is counsel to Staff's understanding that Pacific Power considers these agreements to be confidential. Therefore, these agreements will be marked as confidential for the purposes of this pleading.

³⁹ *See e.g.*, UE-190458, UTC Staff Informal Data Request No.1 (Appx. C); UE-190324, UTC Staff Informal Data Request No. 8 (Appx. B).

[REDACTED]

16. At the conclusion of my initial investigation, I failed to receive the necessary information from either: Talen, the companies, or [REDACTED] on the decision making processes pertaining to the elevated PM levels. This lack of information prohibited me from making a recommendation to the Commission to approve the 2018 deferral amounts in the PCA and PCAM. In an effort to obtain this information, I decided to issue one last data request to each company to admit or deny if they produced all contemporaneous documentation pertaining to their decision making processes leading up to the 2018 Colstrip Outage.⁴⁰ The purpose of these data requests was to ensure I had received all responsive documents before making any recommendation to the Commission. In their responses to these data requests, Avista and PSE confirmed they had produced all responsive documents.⁴¹ Pacific Power stated that it “considers these requests overly broad, unduly burdensome, and not reasonably calculated to lead to the admission of information.”⁴² Pacific Power requested an extension to provide a substantive response to this data request. Pacific Power further requested that Staff attend a workshop to discuss

⁴⁰ UE-190458, UTC Staff Informal Data Request No. 8 (Appx. C); UE-190324, UTC Staff Informal Data Request No. 23 (Appx. B); UE-190334/UG-190335/UE-190222 (consolidated) UTC Staff Data Request No. 104 (Appx. A).

⁴¹ UE-190334/UG-190335/UE-190222 (consolidated), Avista’s response to UTC Staff Data Request No. 104 (Appx. A) (“To the best of Avista’s knowledge, Avista has provided all of the relevant documents in response to those requests.”); UE-190324, PSE’s response to UTC Staff Informal Data Request No. 23 (Appx. B):

PSE confirms it has produced all contemporaneous document and analyses in its possession or control related to the elevated particulate matter levels at Colstrip Units 3 and 4 during Q1 2018 because PSE did not receive or undertake any documentation or analysis related to the Q1 issues with MATS PM compliance. The Colstrip plant was within MATS PM compliance limits during Q1 2018. Talen MT, in its capacity as operator, did undertake investigation of the Q1 PM level in the normal course of work but did not find any indicators that would predict Q2 PM levels would deviate from compliance limits.

PSE confirms it has produced all nonprivileged, contemporaneous documentation and analysis in its possession or control related to the elevated particulate matter levels at Colstrip Units 3 and 4 during the 2018 Colstrip Units 3 and 4 derate and outage.

⁴² UE-190458, Pacific Power’s response to UTC Staff Informal Data Request No. 8 (Appx. C).

this data request. Staff granted this extension and agreed to attend this workshop with the Company—which took place via conference call on September 20, 2019. At this workshop, Staff requested that the Company provide evidence and discuss the actions and decision making of Pacific Power and Talen during the time period leading up to the 2018 Colstrip Outage. The Company expressed some willingness at this workshop to provide a narrative statement(s) that could potentially fill in the gaps within the record pertaining to the elevated Q1 PM levels and Talen’s decision to burn Area A coal. It is Staff’s understanding that the Company will provide this narrative statement(s) as a supplementary response to prior informal data requests.

17. PSE and Pacific Power have objected frequently to Staff’s informal data requests and withheld responsive documents on the basis of several different grounds and asserted privileges. Without the processes afforded by an adjudicative proceeding, many of these discovery disputes have gone unresolved and Staff is still without information necessary to render an opinion as to prudence. In an effort to address some of these disputes informally, counsel for Staff requested and participated in a meet and confer conference with representatives of PSE and their counsel on July 18, 2019, but remained unsuccessful in obtaining the needed information.

18. In conclusion, Staff does *not* believe the actions by Talen or the owners were imprudent *after* the outage occurred. Staff does not have enough information to make a determination if the actions by Talen or the owners *leading up* to the outage (or the outage itself) were imprudent.

19. Staff’s concerns in each Power Cost Filing are related to the prudence of the replacement power costs associated with the 2018 Colstrip Outage. Therefore, it makes sense to determine the prudence of these costs in a single adjudicative proceeding.

Consolidation would also be more efficient and be far less burdensome on Staff's resources because it would avoid the necessity of three separate procedural schedules on the same costs.

20. Furthermore, there has been inconsistency among the companies as to what the companies consider to be confidential information. For example, the same document has been labeled as both confidential and not confidential in the companies' various responses. Furthermore, some companies have either failed or refused to provide certain documents, while the other companies have provided those documents and have marked them as confidential. This impairs Staff's ability to use that confidential information in the other dockets. Navigating these designations and varying interpretations in informal discovery has seriously burdened and inhibited Staff's capacity. Much of the information marked as confidential by the companies likely would *not* be considered confidential *among* the companies. All three companies are joint owners of Colstrip Units 3 and 4, and much of the information that is marked confidential relates to the derate and outage. Nevertheless, the information currently designated as confidential (among the three dockets) could limit the amount of information Staff is able to provide the Commission in its recommendations—unless severance and consolidation is granted (or each of the existing and/or future protective orders is individually modified). This, in turn, could lead to inconsistent Staff recommendations and case outcomes. Consolidating these cases under one protective order would address these discovery and confidentiality issues while ensuring the Commission has sufficient information to render consistent orders on the prudence of these costs in a single proceeding. Further, there is currently no formal protective order in either the PCA or PCAM.

21. The ERM is currently under the Avista GRC (UE-190334 and UG-190335)

procedural schedule, which has a suspension date of April 1, 2020. If the Commission consolidates the ERM with the other Power Cost Filings, Staff does not anticipate that the consolidated adjudication would extend past April 1, 2020. Further, there is no reason to expect that consolidation of the Power Cost Filings would unduly delay either the PCA or the PCAM.

DATED at Olympia, Washington, and effective this 26th day of September, 2019.

David C. Gomez