

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKETS UE-190529 and UG-190530 ( <i>consolidated</i> )
	)	
Complainant,	)	
	)	
v.	)	
	)	
PUGET SOUND ENERGY,	)	
	)	
Respondent.	)	
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In the Matter of the Petition of	)	DOCKETS UE-190274 and UG-190275 ( <i>consolidated</i> )
	)	
PUGET SOUND ENERGY	)	<b>ALLIANCE OF WESTERN ENERGY CONSUMERS’ RESPONSE TO STAFF’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY</b>
	)	
For an Order Authorizing Deferral Accounting and Ratemaking Treatment for Short-life UT/Technology Investment.	)	
	)	
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**I. INTRODUCTION**

1 Pursuant to WAC 480-07-375(4), the Alliance of Western Energy Consumers (“AWEC”) hereby responds to Commission Staff’s (“Staff”) Motion for Leave to File Supplemental Testimony (“Motion”). AWEC opposes Staff’s requested relief, and further opposes the alternate remedy proposed by Puget Sound Energy (“PSE” or “Company”) in its Response to Commission Staff’s Motion for Leave to File Supplemental Testimony (“Company’s Response”). As noted in both the Motion and the Company’s Response, the scope of the Company’s Power Cost Update, to be provided in its last-word, rebuttal testimony, was a point of significant discussion and contention during the pre-hearing conference. As PSE accurately states, Staff’s position at the prehearing conference was that the Company should not

be allowed to update any aspect of its power costs. As a compromise at that time, all parties agreed upon the limited scope and breadth of the Power Cost Update the Company would be providing a mere three weeks prior to the evidentiary hearing for this matter.

2                   Now, Staff’s Motion seeks to expand the boundaries of the Power Cost Update beyond those previously agreed to. More troubling, the Company’s Response seeks to move the needle even further, apparently including a prudence determination related to a potential replacement coal contract—information that would be submitted into the record and presented for review for the first time three weeks prior to the scheduled hearing. AWEC submits that these proposed changes to the schedule, presented now after parties have submitted their pre-filed written testimony and now that they will have no meaningful time to review the prudence of the new coal supply contract for Colstrip Units 3 and 4, is prejudicial and improper.

3                   AWEC recognizes the importance of having the Power Cost Adjustment (“PCA”) power cost baseline represent a close approximation of the costs ratepayers will experience during the rate-effective period. However, it is not clear that Staff’s requested relief will achieve this objective. AWEC submits that the Commission cannot adequately determine the prudence of the new (and as yet unexecuted) Colstrip supply contract at this point in the proceeding, including a review of whether *closure* of units 3 and 4 would provide net economic benefits to customers relative to the new contract, where PSE has presented no evidence on it and parties have no meaningful opportunity to perform a prudence review. This would require prudence to be determined in a subsequent PCA proceeding. If this contract ultimately is determined to be imprudent, the PCA baseline set in this case will have been artificially high, also resulting in the

rate instability for customers and inaccurate forecasted power costs with which Staff is concerned.

4           Alternate procedural remedies exist that do not present the prejudice to stakeholders and ratepayers that result from the remedies proposed by Staff and the Company, which could result in the inclusion of additional costs in customer rates without a robust evidentiary record of the prudence of the (as yet unexecuted) Colstrip supply contract. Accordingly, AWEC objects to Staff’s Motion and the relief requested therein, as well as the additional relief requested by the Company’s Response.

## II. ARGUMENT

### A. Pre-Hearing Conference Agreement

5           As noted within the Company’s Response, Staff’s position advocated in its Motion is contrary to the position Staff firmly presented at the pre-hearing conference in this matter. Specifically, Staff asserted that the Power Cost Update, scheduled for January 15, 2020, be limited “to consist *exclusively* of updates to (1) forward market data, (2) short-term fixed-price power contracts that are an AURORA input, (3) fixed-price gas for power contracts, (4) index-based power and gas for power contracts, and (5) costs that are themselves dependent on the updated AURORA output.”<sup>1/</sup> The discussion that led to this agreement was not without contention, and, as noted within the Company’s Response, lasted at least an hour and forty-five minutes.<sup>2/</sup> Moreover, and importantly, the parties “invested in that time to agree on the language...and make sure we’ve got it right.”<sup>3/</sup> Indeed, the language regarding the Power Cost

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<sup>1/</sup> See Attachment A to AWEC’s Response; see also Appendix B to Order 3, Dockets UE-190529 and UG-190530 (July 22, 2019) (emphasis added).

<sup>2/</sup> See Attachment A to the Company’s Response.

<sup>3/</sup> See Id.

Update was so important to Staff that, as shown in Attachment A to this Response, the parties provided this precise language to the Administrative Law Judge for inclusion in the prehearing conference order.<sup>4/</sup>

6           Staff's about-face at this stage of the proceeding, seeking effectively to expand the scope of the Power Cost Update, is prejudicial to the parties, including AWEC, who have proceeded with the understanding of the agreed-upon scope of the Power Cost Update and have conducted their review of the Company's initial filing based only on the costs included in that filing. While not diminishing the importance of the potential coal replacement contract, these costs were not included in the Company's revenue requirement, nor is an update to this type of cost within the scope of the expected Power Cost Update and was, therefore, not a subject of exploration by AWEC during the development of answering testimony.

7           Staff's proposal to now introduce a new issue, at an undefined time, subjects AWEC and other parties to undue prejudice, and should therefore be rejected. Indeed, even accounting for the proposed deadline of December 24, 2019, presented by the Company, for Staff's proposed Supplemental Testimony, AWEC would not have sufficient time and opportunity to evaluate the potential increase as identified by the Company, nor Staff's estimated three-fold increase above that estimated by the Company. The relief requested by Staff's Motion is unduly prejudicial and should be denied.

8           This is particularly true in this case, where inclusion of the costs of a new Colstrip supply contract necessarily requires a determination of the prudence of this contract. Prior to determining prudence, the Commission should receive robust evidence on, among other things,

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<sup>4/</sup>       See Attachment A to AWEC's Response (emphasis in original).

whether continued operation of Colstrip Units 3 and 4 under a new supply contract is a lower cost, lower risk decision than closing these units outright. This requires complex and detailed modeling of Colstrip’s economics relative to the economics of alternative resources available to the Company. If the Commission has followed PacifiCorp’s current integrated resource plan (“IRP”) development, including the associated economic modeling that utility performed of its coal fleet, which led to several delays in the release of this IRP, it can understand the potential complexity of this analysis. Staff’s motion and PSE’s response asks the parties to perform a similar exercise in a month or less. This is an unfair and untenable position to put parties in, and will inevitably lead to an incomplete evidentiary record.

**B. Alternate Processes are Available to Address the Potential Costs**

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In response to Staff’s Motion, the Company appears to declare its willingness to support Staff’s request for leave to file supplemental testimony, if the Company is allowed to “update power costs to reflect a new coal supply agreement for Colstrip Units 3 and 4...and to seek a prudence determination of this new contract...”<sup>5/</sup> That is to say, the Company’s proposal to address Staff’s concern regarding the potential coal-replacement contract is to present the contract as part of the Power Cost Update, when no party has an opportunity to provide a written response, and with only seven days to conduct discovery under the terms of the Commission’s Procedural Order in this case. AWEC submits this solution presented by the Company magnifies the prejudice inherent within Staff’s original Motion beyond the threshold of tolerance and due process.

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<sup>5/</sup> Company Response at 6:15-20.

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The Company’s proposal would allow ratepayers **one week** to review and issue discovery on a contract potentially worth millions of dollars in ratepayer costs. AWEC and other ratepayer advocates would have no opportunity to present evidence into the record contesting the prudence of the contract, even if it were possible to perform such an evaluation in the limited time proposed. While AWEC recognizes the importance of setting the power cost baseline as accurately as possible, this focus should not be allowed to overshadow the due process rights of stakeholders and the need for the Commission to issue informed decisions based on substantial record evidence.

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If the cost impacts of the new Colstrip supply contract are sufficiently material to PSE’s bottom line, the Company has the opportunity to present a complete, executed replacement coal contract – not merely a term sheet as is currently all that is available – for stakeholder review and potential Commission approval by way of a subsequent general rate case or a Power Cost Only Rate Case (“PCORC”). In Docket UE-130617, *et. al.*, the Commission issued Order 11, approving and adopting a Settlement Stipulation that modified and outlined an updated framework for the Company’s Power Cost Adjustment and PCORC filings. This settlement was the culmination of a “collaborative process to address issues relevant to the PCA mechanism and power cost only rate cases....”<sup>6/</sup> Within that Settlement Stipulation, the Company, Staff and Public Counsel agreed that “[the Company’s] ability to file a PCORC will not change....”<sup>7/</sup> The Company did agree “not to file a general rate case or PCORC within six months of the date new rates go into effect for any PCORC filing made during [a] five-year

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<sup>6/</sup> Docket UE-130617 et al., Order 11, ¶ 3 (Aug. 7, 2015) (“Order 11”).  
<sup>7/</sup> Order 11, Appendix A at 6.

period.”<sup>8/</sup> However, that agreement does not prevent the Company from filing a PCORC after the conclusion of this proceeding, to present any new coal contract for full and complete evaluation by stakeholders, prior to a Commission decision regarding the prudence of the terms of the new contract.

12                   While AWEC has concerns with PCORCs in general – as they allow utilities to update one category of costs without a holistic review of all costs and revenues – they are established procedural mechanisms at the Commission and, in this case, would be far more preferable to Staff’s or PSE’s proposals, as a PCORC would allow stakeholders the opportunity to develop a full and complete record upon which the Commission can base a determination regarding the prudence of the new contract and its terms. In comparison, and as discussed above, the Company’s proposal to present the new contract for inclusion into base rates, and for a determination of prudence from the Commission, by way of the Power Cost Update in this proceeding, inhibits the ability of stakeholders to evaluate the new contract and present evidence for the Commission’s review. The Commission should not permit the Company to present the replacement coal contract for the first time as part of the Power Cost Update, scheduled three weeks prior to the hearing on this matter. This option does not allow for an adequate record to support any determination by the Commission and infringes on the due process rights of ratepayers.

### III. CONCLUSION

13                   To protect the due process rights of ratepayers and the integrity of the record upon which a decision must be based, the Commission should not allow Staff or the Company to

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<sup>8/</sup> Id.

expand the scope of this proceeding beyond the agreed upon Power Cost Update. Moreover, Staff should be held to the agreement made during the pre-hearing conference regarding the scope of the Power Cost Update. Parties have relied in good faith on this limited scope and would be prejudiced now by materially modifying it. The Commission should deny Staff's Motion and the proposed alternative remedy presented by the Company.

Dated this 4th day of December, 2019.

Respectfully submitted,

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