BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKETS UE-170033 and UG-170034 *(Consolidated)* SIERRA CLUB'S INITIAL POST HEARING BRIEF

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Sierra Club recommends that the Washington Utilities and Transportation Commission ("Commission") approve in full the *Multiparty Settlement Stipulation and Agreement* filed in the above-captioned proceeding on September 15, 2017 (the "Settlement Agreement").[1] The Settlement Agreement is a landmark achievement that provides enormous economic, environmental and equity benefits for Puget Sound Energy ("PSE") ratepayers related to the future of the Colstrip coal plant in Montana.

In particular, the Settlement Agreement provides a clear path for the responsible transition away from the Colstrip coal plant that will allow PSE to fairly recover its undepreciated plant balances at Colstrip while at the same time providing funding mechanisms for both decommissioning and remediation expenses and a community transition plan at Colstrip. While the Settlement Agreement does not mandate the closure of any Colstrip units, it recognizes the increasingly inevitable reality – supported by the record in this

[1] This brief addresses only the Settlement Agreement. Sierra Club takes no position on the issues raised during the August 30, 2017 contested case hearing.

proceeding – that all Colstrip units will likely retire within the next 10 years.

Approving the Settlement Agreement will resolve the contested issues related to the recovery by PSE of undepreciated plant balances for Colstrip Units 1 and 2 by 2022. The Settlement Agreement also avoids creating a similar problem in the future by setting a depreciation schedule to pay down the remaining plant balances at Colstrip Units 3 and 4 by December 31, 2027. This depreciation schedule is in the public interest because it better protects future ratepayers from paying for a plant they likely will not use. The more accurate depreciation schedule also removes potential financial hurdles from PSE, freeing the Company to pursue lower-cost and cleaner resources without a concern that it will risk under-recovery of any stranded assets at Colstrip.

The Settlement Agreement provides a model for other co-owners at Colstrip to follow as they plan for a responsible end to the Colstrip power plant. The establishment of a $10 million fund – with both shareholder and ratepayer contributions – to assist with a community transition plan recognizes the obligations and responsibilities that Washington has to the Colstrip community in Montana. Finally, ongoing reporting requirements related to Colstrip will allow the Commission to stay apprised of issues related to the coal plant as its retirement approaches.

The Settlement Agreement accomplishes all of these provisions resolving outstanding issues related to Colstrip obligations with an electric rate increase of approximately one percent. Given the magnitude of unfunded liabilities related to Colstrip, the fact that parties were able to address those liabilities without imposing a major rate shock on customers is a commendable achievement. The Commission should approve the Settlement Agreement in full.

I. PROCEDURAL BACKGROUND

Sierra Club submitted the pre-filed Response Testimony and Exhibits of Ezra D. Hausman on June 30, 2017 (EDH-1T through EDH-9) and Cross-Answering Testimony of Ezra D. Hausman on August 9, 2017 (EDH-10T). Sierra Club also participated in extensive settlement discussions with all parties. Those discussions culminated in the Settlement Agreement, and Sierra Club filed the Testimony of Douglas H. Howell in support of the Settlement Agreement on September 15, 2017 (DHH-1T). Mr. Howell also provided oral testimony at the evidentiary hearing held on September 29, 2017.

II. ARGUMENT

Sierra Club intervened in this proceeding primarily to address issues related to the Colstrip coal plant in Montana. Sierra Club has advocated for years that PSE plan a responsible transition away from Colstrip, which is one of the largest and most polluting coal plants in the Western United States.[2] The Settlement Agreement, if approved, would represent a significant step in accomplishing that goal.

Mr. Howell's testimony enumerated the specific provisions of the Settlement Agreement that provide the basis for Sierra Club to support the agreement.[3] Sierra Club does not repeat those arguments here, but instead addresses some of the criticisms of the Settlement Agreement raised by Public Counsel. Specifically, Sierra Club (A) rebuts Public Counsel's assertion that there is no evidence for supporting the accelerated depreciation for Colstrip Units 3 and 4,[4] and (B) responds to Public Counsel's alternative proposal related to the accelerated depreciation of undepreciated plant balances at Colstrip Units 1 and 2.[5] Finally,

[2] DHH-1T at p.3.
[3] DHH-1T at p.5.
[4] CAC-1T at p.4.
[5] CAC-1T at p.4; RMM-12T at p.3.

Sierra Club addresses other benefits of the Settlement Agreement that could be lost if the Commission were to follow Public Counsel's recommendations to reject the Settlement Agreement.

A. Depreciation Schedule for Colstrip Units 3 and 4

One of the most critical pieces of the Settlement Agreement is the provision that adjusts the depreciation schedule for Colstrip Units 3 and 4. Sierra Club's witness in the litigated phase of the proceeding, Dr. Hausman, devoted a substantial portion of his testimony to addressing the various economic, operational, and environmental facts that are pressuring Colstrip Units 3 and 4.[6] Sierra Club's conclusion was – and continues to be – that all of Colstrip will likely close before 2025. Several pieces of evidence supported this conclusion:

i. Sector-wide changes in the relative cost of coal compared to other generation sources such as renewables and natural gas have made coal uneconomic and led to early coal plant closures across the country. (EDH-1T at p.25-31.)
ii. Colstrip's only source of supply, the Rosebud mine, will exhaust its currently permitted coal reserves by 2024 according to Securities and Exchange Commission documents filed by Westmoreland Coal Company. (EDH-1T at p.28.)
iii. State and local policy in the State of Washington is moving away from coal. Local governments representing more than half of PSE's service territory have enacted plans or passed resolutions calling for an end to coal consumption by 2025, and an executive order from the Governor sets a carbon emission reduction goal that will require an exit from all coal generation. (EDH-1T at p.32; DHH-1T at p.6-7.)
iv. Upcoming environmental compliance obligations under the Clean Air Act's Regional Haze Rule[7] will likely require substantial capital expenditures of hundreds of millions of dollars in the 2022-2027 timeframe. (EDH-1T at p.34-37.)
v. Colstrip Units 3 and 4's original depreciation schedules prior to a 2007 rate case settlement assumed remaining useful lives of 2024 and 2026. (EDH-1T at p.24.)

[6] EDH-1T at 25-36.
[7] It is important to distinguish the Regional Haze Rule from the Clean Power Plan. While the future of the Clean Power Plan remains uncertain, the Regional Haze Rule has been a part of the Clean Air Act for decades. Regardless of what happens to the Clean Power Plan, Colstrip will still face compliance obligations to reduce haze forming pollutants such as nitrogen oxides (NOx), sulphur dioxide (SO2) and particulate matter (PM).

In his testimony supporting the Settlement Agreement, Mr. Howell reiterated each of these points.[8] He also provided additional recent evidence from PSE's ongoing 2017 IRP process showing that PSE's own analysis concluded that any reasonable carbon price imposed in 2022 would render Colstrip Units 3 and 4 uneconomic.[9]

For all of these reasons, Sierra Club's litigated position recommended that the Commission set a depreciation schedule that assumed a remaining useful life for Colstrip Units 3 and 4 of December 31, 2024.[10] During the course of settlement negotiations, Sierra Club reached a compromise agreement with parties whereby Sierra Club agreed to a depreciation schedule that assumed a remaining useful life of December 31, 2027. Paragraph 26 of the Settlement Agreement provides:

> The Settling Parties agree to a depreciation schedule for Colstrip Units 3 and 4 that assumes a remaining useful life of those units through December 31, 2027. The Settling Parties understand that December 31, 2027, is a stipulated depreciation life for Colstrip Units 3 and 4.

This revised schedule returns Colstrip Units 3 and 4 closer to their previous depreciation schedules before the 2007 rate case[11] and better reflects the numerous economic and regulatory challenges facing both the coal industry as a whole and Colstrip specifically.[12] While Sierra Club still asserts that an even earlier closure before 2025 is likely, the 2027 schedule is far more accurate than both the current depreciation schedule that assumes a remaining useful life of 2044 and 2045 for Colstrip Units 3 and 4 and the 2035 date proposed in PSE's application. Sierra Club therefore concluded that a compromise agreement setting the depreciation schedule at 2027 would be in the public interest because it would

[8] DHH-1T at pp.6-8.
[9] DHH-1T at p.9.
[10] EDH-1T at p.40.
[11] EDH-1T at p.24.
[12] EDH-1T at pp.25-36; DHH-1T at 6-9.

significantly reduce the magnitude of undepreciated plant balances at Colstrip.

No party in this proceeding argued that the Colstrip plant is likely to operate until the end of its current depreciation schedule in the mid-2040's. Public Counsel did, however, object to the 2027 estimate for the remaining useful life of Colstrip Units 3 and 4 because it "seems early" compared to the range of recommendations put forward by various parties in this docket.[13] Public Counsel instead recommended a depreciation schedule of 2030.[14] Public Counsel did not cite to any evidence about the economic, operational, or regulatory factors applicable to support its contention that 2030 is a more likely end of life date for Colstrip Units 3 and 4 than the agreed upon date of 2027. Instead, Public Counsel appears to have simply picked a date that is in between the various proposals from 2025 to 2035 as "reasonable."[15] Rather than provide support for its own preferred depreciation schedule, Public Counsel instead offered irrelevant and incorrect objections to the agreed upon date of 2027.

First, both Ms. Colamonici and Ms. McCullar objected to 2027 as an estimate for the remaining useful life of Colstrip Units 3 and 4 because PSE does not currently have a set retirement date for those units.[16] This argument is misplaced because setting a depreciation scheduled does not require a firm commitment to retire an asset.[17] Rather, as stated in the Settlement Agreement, the depreciation schedule is set on an estimate of the remaining useful life of the asset.

This Commission has previously acknowledged that external factors such as economic

[13] RMM-12T at p.6.
[14] RMM-12T at p.8.
[15] *See* RMM-12T at p.8.
[16] CAC-1T at p.4; RMM-12T at p.6.
[17] Sierra Club also notes the inconsistency in Public Counsel's argument with respect to its own recommendation to set a depreciation schedule at 2030. There is no current agreement among the plant owners to close Colstrip at any date, whether that be 2025 or 2030.

challenges and environmental obligations can and should be used to refine estimates regarding the remaining useful life of coal units, even in the absence of a firm retirement date. In Docket UE-152253, this Commission approved requests by PacifiCorp to accelerate the depreciation schedules for both the Jim Bridger coal plant and Colstrip Unit 4 without a firm retirement date for either plant.

> We agree with the parties that environmental and market pressures on existing coal-fired generation will continue in the future, and result in more accelerated retirements of coal plants. We also agree with those who argue that a Commission decision to defer an adjustment to current depreciation rates until the 2018-2019 timeframe, when the Company plans to have completed and filed with the Commission its depreciation study, may expose the Company's Washington ratepayers to increased rates in the long term. That is a risk we seek to mitigate here by approving, in part, the Company's accelerated depreciation proposal and directing the Company to take specific actions while we wait for an updated depreciation study.[18]

The Commission in that case recognized that increasing depreciation expense, even without a firm retirement commitment, is appropriate as new information provides a more accurate estimate regarding the estimated useful life of the asset.

The Commission also recognized that adjusting the depreciation schedule protects customers by minimizing the risk of intertemporal cost shifting between current ratepayers who are continuing to receive power from the plant, and future ratepayers who may otherwise be required to pay off undepreciated assets. Without adjusting depreciation, future ratepayers could either be forced to suffer rate shock as undepreciated plant balances are compressed into shorter and shorter periods – which is the issue PSE's ratepayers faced in this case with regard to Colstrip Units 1 and 2 – or they could be forced to pay to depreciate a plant after it has stopped providing power. Accelerating depreciation now avoids both of those problems.

[18] *Washington Utilities & Transportation Comm'n v. Pacific Power and Light*, UE-152253, Order 12 at ¶54 (Sep. 1, 2016).

Furthermore, Paragraph 119 of the Settlement Agreement includes annual reporting requirements for PSE to report back to the Commission on, among other things, the updated estimates on the actual retirement dates of Colstrip Units 3 and 4. This reporting requirement will allow the Commission to reassess whether the estimated remaining life of Colstrip is accurate as new information is available. A future Commission would then be free to refine the depreciation schedule to either accelerate it even further or to delay it, depending on the evidence available to that Commission.

Second, Ms. Colamonici incorrectly asserted that, "there is no evidence for supporting the accelerated depreciation date of 2027 for Colstrip Units 3 and 4."[19] This assertion is simply not true. Public Counsel ignored the testimony of both Dr. Hausman and Mr. Howell, who both provided specific and concrete pieces of evidence supporting an earlier estimate for Colstrip's closure.[20] As discussed above, Sierra Club's testimony showed that a retirement of Colstrip Units 3 and 4 in 2025 is highly likely. In fact, there is far more evidence in the record supporting a retirement in the 2025-2027 timeframe than there is supporting a 2030 or later date. Public Counsel provided no affirmative evidence itself to suggest that a 2030 date is more likely. Nor did Public Counsel rebut the specific pieces of evidence put forward by Dr. Hausman and Mr. Howell.

Sierra Club acknowledges that the Settlement Agreement does not mandate retirement of Colstrip. Nor is there a current agreement among the co-owners or other legal requirement to close Colstrip Units 3 and 4 on a specific date. Nevertheless, the economic, operational, and environmental challenges facing Colstrip Units 3 and 4 are substantial and growing. The Settlement Agreement is in the public interest because it acknowledges that changing reality

[19] CAC-1T at p.4.
[20] EDH-1T at pp.25-36; DHH-1T at 6-9.

and adjusts the estimated remaining life of Colstrip Units 3 and 4 accordingly. The Commission should therefore approve the Settlement Agreement's provision setting the depreciation schedule for Colstrip Units 3 and 4 that assumes a remaining useful life of those units through December 31, 2027.

B. Depreciation Expense at Colstrip Units 1 & 2

The Settlement Agreement provides an important resolution regarding the appropriate depreciation expense for Colstrip Units 1 and 2. Unlike the other Colstrip Units discussed above, Units 1 and 2 do have a firm requirement to stop operating no later than 2022. However, the currently applicable depreciation schedule for those units extends until 2035 due to a settlement agreement in 2007 that extended the depreciation schedule.[21] This misalignment between the current depreciation schedule and the actual retirement date means that a substantial amount of undepreciated plant balance would remain in 2022 unless something changes.

PSE's application proposed to address this problem by compressing all of the undepreciated plant balance into rates over the next five years. Sierra Club, Staff and other parties responded with differing proposals that would have either extended the timeline to recover stranded assets, or would have compelled PSE to take a write-down, or some combination thereof.[22]

Paragraph 25 resolves this contested issue by establishing a middle ground between those various positions that is fair to both shareholders and ratepayers. The Settlement Agreement would set depreciation expense at $18.5 million annually. This amount is an

[21] EDH-1T at 7-8.
[22] *See* EDH-10T at p.1-3 (summarizing other parties' positions with respect to depreciation expense at Colstrip Units 1 and 2).

increase over the currently applicable rates of $5.39 million, and Staff's litigated recommendation of $13.9 million, but less than PSE's as-filed request of $27.24 million.[23] The Settlement Agreement then offsets the unrecovered plant balance at those units with monetized production tax credits ("PTCs") that have been accruing to ratepayers. To the extent PSE is unable to monetize the PTCs by 2029, the Company bears the risk that it would have to take a write-down on that undepreciated balance.

Relying on the PTCs to offset accrued Colstrip liabilities is a reasonable approach under the circumstances as a path forward out of a bad situation. Sierra Club in its litigated case supported PSE's proposal to apply a similar treatment to future decommissioning and remediation costs at Colstrip Units 1 and 2.[24] While unrelated costs generally should remain separate, it is appropriate here to use the PTCs to offset undepreciated plant balances because the same customers who should have been receiving the benefits of the PTCs are also accruing the liabilities at Colstrip. Pairing the two accounts therefore roughly neutralizes the two opposite imbalances of intergenerational inequity.

Although Sierra Club opposed in its litigated case using PTCs to offset depreciation, it is a reasonable compromise for purposes of settlement. One of Sierra Club's primary concerns with the method was that it would send the wrong signal to PSE about how to address the risk of excessively long depreciation schedules.[25] However, the Settlement Agreement removes that concern because it simultaneously mitigates what would otherwise be a repeat of the same problem for Colstrip Units 3 and 4 by setting a more accurate depreciation schedule for those units.

Public Counsel objected to the Settlement Agreement's treatment of undepreciated

[23] *See* CRM-1Tr, Table 1 at p.6.
[24] EDH-1T at p.21.
[25] Id.

plant balance at Colstrip Units 1 and 2 because it continues to prefer its own litigated position.[26] That proposal would reduce depreciation expense to only $8.7 million annually by reallocating depreciation reserve surplus from other Steam Production units to offset depreciation deficiencies at Colstrip Units 1 and 2.[27]

Sierra Club does not object to Public Counsel's proposal in concept. The approach would appear to address the issue of pairing two different imbalances of intergenerational inequity, similar to what is accomplished with using the PTCs to offset undepreciated plant balance. However, it is not evident to Sierra Club that Public Counsel's solution is superior to the Settlement Agreement's solution. Both proposals rely on unrelated account balances to offset differing problems of intergenerational inequity. The only differences appear to be that Public Counsel wants $10 million more of an offset and it wants to rely on accumulated reserve depreciation rather than PTCs. Importantly, and in contrast to the settling parties' agreement on the use of PTCs, PSE vigorously disputed the propriety of using accumulated reserve depreciation as an offset. Litigating this issue would therefore require a substantial devotion of resources and would risk jeopardizing the entire Settlement Agreement. Moreover, Public Counsel does not dispute the need to pay down the undepreciated plant balance at Colstrip Units 1 and 2 by 2022, nor does it dispute the desirability of addressing intergenerational inequity. Public Counsel merely prefers its own disputed method over the Settlement Agreement's agreed upon method of accomplishing roughly the same goal.

Sierra Club therefore recommends that the Commission reject Public Counsel's alternative recommendation on this issue of depreciation expense for Colstrip Units 1 and 2. The Settlement Agreement is by definition a compromise of competing interests. Taken as a

[26] RMM-12T at 3-6.
[27] RMM-12T at 3.

whole, the Settlement Agreement is in the public interest, and there is insufficient evidence or argument to support Public Counsel's conclusion that its method of resolving the depreciation expense for Colstrip Units 1 and 2 is superior to the method agreed upon by all the other parties in this docket.

C. Public Counsel's Opposition Risks Losing Other Beneficial Aspects of the Settlement Agreement

It is important to note that the Settlement Agreement was the result of a broad consensus and compromise on competing issues. No single issue can be removed without jeopardizing the entire package. The Commission must therefore consider the Settlement Agreement as a whole in determining whether or not it is in the public interest. If the Commission were to adopt any of Public Counsel's "alternative viewpoints" on certain provisions of the Settlement Agreement, it would risk PSE or other parties backing out of other beneficial commitments.

First and foremost of these commitments is the provision in Paragraph 118, which requires PSE to develop a community transition plan for the town of Colstrip, Montana. This is a vital commitment to ensure that an equitable transition occurs as PSE and other utilities wind-down their ownership of the Colstrip plant in the coming years. The Settlement Agreement's requirement to include $10 million to begin transition planning – funded 50/50 by PSE shareholders and ratepayers through PTCs – is a vitally important component of the Settlement Agreement. Disturbing any other portion of the Settlement Agreement would risk undermining the entire agreement and could result in the loss of funding for the community transition plan. That is a risk the Commission should not take. Regardless of the various parties' positions on the length of time that Colstrip may continue to operate, it is indisputable

that at some point in time the plant will close. The community of Colstrip has worked to provide power to Washington customers for decades, and they should be entitled to reasonable support now that the time has come to transition away from that power source. The community transition plan sends a strong signal that Washington and PSE will respect their obligations to the community of Colstrip. Hopefully this will set a precedent that other co-owners may follow as they plan their own exit from the plant. It is therefore a highly valuable provision of the Settlement Agreement that should be protected.

Finally, among the other benefits that could be at risk if the Commission picked apart the Settlement Agreement are the reporting requirements included in Paragraph 119 and the transmission study and workshop included in Paragraphs 120 and 121. These commitments by PSE to address the future of Colstrip and its related transmission system are long overdue. PSE's agreement to finally address these issues is an important benefit of the Settlement Agreement that should not be put at risk.

These and other benefits provide substantial value to PSE, its customers, and numerous other stakeholders. The Commission must carefully weigh the value of those benefits and the risk of losing those benefits as it considers whether to reject the Settlement Agreement in favor of Public Counsel's "alternative viewpoints."

III. CONCLUSION

Taken as a whole, the Settlement Agreement is firmly in the public interest. It resolves many of the contested issues related to the depreciation of PSE's remaining plant balances at all Colstrip units. Approving the Settlement Agreement would be a major step forward in responsibly transitioning PSE off of Colstrip in a reasonable time period. The criticisms raised by Public Counsel are either misplaced or insufficient to overcome the otherwise substantial

benefits of this Settlement Agreement. Sierra Club respectfully recommends that the Commission approve the Settlement Agreement in full.

Dated this 18th day of October, 2017.

Respectfully submitted,

/s/ Travis Ritchie

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