BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKETS UE-170033/UG-170034 (*Consolidated)*

Reply Post-Settlement Hearing Brief of
the State of Montana in Support of
the Proposed Multiparty Settlement Stipulation and Agreement

October 27, 2017

I. INTRODUCTION

1 The Settling Parties have shown that the Commission should accept the proposed multiparty settlement (“Settlement”) unconditionally, because it is lawful, supported by the record, and serves the public interest.[1] Public Counsel has failed to show the opposite.

2 In fact, Public Counsel’s initial post-hearing brief shows that it agrees with more of the Settlement terms than Public Counsel’s opposition testimony and cross-examination at the September 29, 2017, hearing would otherwise suggest.

3 The State of Montana (“Montana”) files this reply brief not only to show that the Settlement should be approved unconditionally, but also to provide the Commission with suggestions for ensuring that its unconditional acceptance of the Settlement will serve the public interest in the most helpful way.[2]

II. FACTS

4 Montana incorporates the Facts section of its initial post-hearing brief in support of the Settlement, which Montana filed on October 18, 2017.

5 On October 18, 2017, the other Settling Parties filed initial post-hearing briefs, all of which included support for approving the Settlement unconditionally. That same day, Public Counsel submitted its initial post-hearing brief, opposing much less of the Settlement than its previous testimony and cross-examination had suggested.

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[1] Public Counsel continues to attempt to recast its opposition to the Settlement as advocacy for a conditional approval. Public Counsel’s efforts should be rejected. At the September 29, 2017, settlement hearing, Public Counsel styled its objection to the proposed Settlement as an “alternative viewpoint.” As Chairman Danner observed, the Washington Administrative Code provisions which apply to Utilities and Transportation Commission adjudicative proceedings generally, and to Alternative Dispute Resolution mechanisms specifically, do not provide for “alternative viewpoint” positions. Settlement Hearing Tr. at 569:14-19 (Sept. 29, 2017).

[2] On February 15, 2017, the Commission granted Montana’s petition to intervene. Order 03, ¶ 8. The Commission concluded that Montana’s participation is “in the public interest,” and added that Montana should focus its “efforts on issues within the Commission’s jurisdiction that are related to the Colstrip facilities.” *Id.*

III. ARGUMENT

A. Public Counsel has moved closer to the Settling Parties' position.

6 Public Counsel has clarified that it does not object to the Settlement's payment arrangements for decommissioning and remediation of Colstrip Units 1 & 2. Specifically, Public Counsel states: "The Settlement provides that PSE will deposit Treasury Grants totaling $95 million into an account created pursuant to RCW [Ch.] 80.84. Public Counsel has no objection to this term and was supportive of creating and funding the statutory account."[3] Because the Settling Parties have shown that this component of the Settlement is lawful, supported by the record, and serves the public interest, the Commission should include that aspect of the Settlement in an unconditional approval of it.[4]

7 Public Counsel now implies that it supports community planning funding through the use of Production Tax Credits ("PTCs"). After not objecting to the use of shareholder dollars for such purposes, Public Counsel states: "If the balance of PTCs is not sufficient, then shareholders *should reimburse the Company with the amount of PTCs used for community planning. This will ensure that the funds are available for cleanup measures once the site is ready for decommissioning and remediation.*"[5] Montana interprets Public Counsel's statement to mean that it does not object to the use of PTCs for community planning funding, despite Public Counsel having previously and

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[3] Public Counsel Br. at ¶ 61 (Oct. 18, 2017).

[4] Inexplicably and unnecessarily, Public Counsel remarks that the funds it supports "are not a guarantee that any specific decommissioning or remediation activity will be deemed prudent and recoverable in rates." *Id.* at ¶ 62. That issue is not before the Commission, because actual decommissioning and remediation costs related to Colstrip have not been finally determined, as Montana and other Settling Parties have explained in previous testimony and briefing. PSE will only be able to calculate precise decommissioning and remediation costs after the decommissioning and remediation regulatory process in Montana is complete. The assets proposed to be set aside for those costs now, however, represent a fiscally responsible approach to addressing environmental cleanup costs that will be unavoidable. And this fiscally responsible approach will reduce or avoid rate shock to Washington ratepayers.

[5] Public Counsel Br. at ¶ 63.

erroneously characterizing PTCs as "designed to benefit PSE's Washington ratepayers."[6] And Public Counsel's suggestion that any shortfall (a contingency that Public Counsel floats after conceding that "[i]t appears that the balance of PTCs is large enough for all of the planned usages") should be covered by shareholder dollars,[7] appears to endorse the prioritization of PTC usage that Public Counsel previously opposed outright.[8] Simply suggesting that PSE shareholders should reimburse a second or third priority PTC recipient account does not require a reversal of prioritization. At most, that calls for a future proceeding in this Commission regarding an event for which Public Counsel provides no level of certainty of occurring. Because the Settling Parties have shown that prioritizing PTCs as outlined in the Settlement is lawful, supported by the record, and serves the public interest, the Commission should include that aspect of the Settlement in an unconditional approval of it.

8 Public Counsel's only contention with Settlement terms (relevant to Montana's interests in this proceeding) is that without a certain closure date, "accelerating cost recovery to 2027 is too aggressive based on the information available in this proceeding."[9] But all parties, including Public Counsel, have characterized the suggested depreciation date as "accelerated." Coupled with the fact that various dates of 2027, 2030 and 2035 have been suggested, Public Counsel's mere suggestion of one date versus another shows that the depreciation date is for cost accounting purposes only and has nothing to do with an actual or planned retirement of Colstrip Units 3 & 4.

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[6] Testimony of Carla A. Colamonici Opposing Settlement, Exh. CAC-1T, at 13:23 (Sept. 22, 2017).
[7] Public Counsel Br. at 25.
[8] *Compare* CAC-1T, at 13:10-23 & 14:1-18 (proposing a reverse order of prioritization) *with* Public Counsel Br. at 25 (expressing that Public Counsel has "some concerns" about the prioritization but proposing only that shortfalls be covered by shareholder dollars).
[9] Public Counsel Br. at 24.

B. The Commission's Order, which should unconditionally approve the Settlement, should also explain clearly what its approval of an accelerated 2027 depreciation date means for Colstrip Units 3 & 4 and what it does not mean. The public interest would best be served by such an explanation.

9 It is fiscally responsible to pay off a depreciating asset sooner rather than later. This is as true for power plants as it is for pickup trucks. Not every pickup truck buyer will be able to pay in full upon purchase, of course. Most will pay over time, one way or another. But paying for a depreciating asset over too long a period of time poses some risks. And, a pickup truck buyer would never reasonably intend to scrap the truck immediately after it is paid off, but typically will drive it for years afterward. None of the evidence in the record shows that PSE ever intended the depreciation date to represent a retirement date for Units 3 & 4.

10 As Mr. Douglas H. Howell noted on behalf of Sierra Club's full support of the proposed Settlement, "certainty of retirement dates is not required–nor is it advisable–in setting a depreciation date."[10] Montana agrees with that particular statement. Even though depreciation, in theory, could align with retirement, the idea of an exact alignment is fanciful at best. In any case, the Commission should agree with the Settling Parties that, for most accounting and financial planning purposes, 2027 is in the public interest. But, at the same time, the public interest would be well served by the Commission's explaining that depreciation and retirement dates are not one and the same.[11]

IV. CONCLUSION

11 The Settling Parties have shown, through voluminous testimony, extensive cross-examination, and now through compelling arguments in post-hearing briefing, that the proposed

[10] Testimony of Douglas H. Howell, Exh. DHH-1T at 11:5-6 (Sept. 15, 2017).
[11] *See, e.g.*, Public Comment Hearing Transcript, Vol. IV, at 436:2-4, 443:7-10, and 530:1-2 (public commenters misunderstanding proposed depreciation end dates and asking the Commission to act beyond its power and "shut down" Units 3 & 4.).

Settlement is legal, supported by the record, and serves the public interest. Public Counsel has failed to rebut any of that. The Commission should accept the proposed Settlement unconditionally, while clearly explaining, for the public interest, why a depreciation end date and retirement date are not the same thing.

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