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4 **BEFORE THE**
5 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
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8
9 In the Matter of

Docket No. UE-121373

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11 **PUGET SOUND ENERGY, INC.**

**PETITION FOR RECONSIDERATION
AND MOTION TO REOPEN THE
RECORD**

12
13 Petition for Approval of a Power Purchase
14 Agreement for Acquisition of Coal
15 Transition Power, as Defined in
16 RCW 80.80.010, and the Recovery of
17 Related Acquisition Costs
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22 **I. INTRODUCTION**

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25 1. In accordance with RCW 34.05.470 and WAC 480-07-850, Puget Sound
26 Energy, Inc. (“PSE”) submits this Petition requesting that the Washington Utilities and
27 Transportation Commission (the “Commission”) reconsider Order 03 entered on January 9,
28 2013, in this proceeding (“Order 03”).
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34 2. PSE further requests that the Commission reopen the record¹ to allow into
35 evidence the Affidavit of Roger Garratt and the exhibits attached thereto, filed herewith.
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37 Included as an exhibit is an amendment to the Coal Transition Purchase Power Agreement
38 (“Coal Transition PPA”) between PSE and TransAlta Centralia Generation LLC (“TransAlta
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45 ¹ It is not clear whether the record in this case has been officially closed or whether it remains
46 open. The parties were not notified of a date certain on which the record would be closed.
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1 Centralia”). The Amendment to Coal Transition Power Purchase and Sale Agreement dated
2
3 as of January 22, 2013 (the “Amendment”), addresses concerns expressed in Order 03
4
5 regarding employment at the Centralia Transition Coal Facility (“CTCF”).
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8 3. Order 03 is the first Commission decision implementing Engrossed Second
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10 Substitute Senate Bill 5769 (“Coal Transition Energy Bill”) passed by the Washington
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12 Legislature and signed into law by Governor Gregoire in 2011. The Coal Transition Energy
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14 Bill was enacted for the purpose of preserving jobs in the CTCF’s community, as well as
15
16 reducing greenhouse gas emissions, ensuring the reliability of the electric grid, providing for
17
18 decommissioning, and providing assistance to host communities.²
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21 4. Although Order 03 purports to grant approval of the Coal Transition PPA, the
22
23 conditions imposed in Order 03 substantially impair the approval. Order 03's reservation of
24
25 authority to reopen the approval decision creates a level of uncertainty that would require
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27 PSE to reject the Coal Transition PPA. Moreover, Order 03 postpones any decision on
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29 deferred accounting—in violation of the plain language of the law—and erroneously
30
31 calculates the equity component of the Coal Transition PPA. As discussed in more detail
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33 herein, the Commission should reconsider its decisions set forth in Order 03 because such
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35 order fails to carry out the requirements and intent of the Coal Transition Energy Bill for the
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37 following reasons:
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42 • The equity component allowed by the Commission fails to comply with the
43 letter or spirit of the Coal Transition Energy Bill. The Commission’s
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45 ² See SB 5769, Section 101(4) and (5).
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1 decision does not allow PSE to “earn the equity component of its authorized
2 rate of return in the same manner as if it had purchased or built an equivalent
3 plant.”³ A plant that is not available to meet the resource need that the Coal
4 Transition PPA covers cannot be used an equivalent plant. Moreover, by
5 slashing the equity return PSE can recover for the Coal Transition PPA, the
6 Commission has gutted the incentive to enter into a coal transition PPA that
7 the Coal Transition Energy Bill is intended to provide.
8

- 9
- 10 • Order 03 fails to constitute approval of the Coal Transition PPA, as
11 anticipated under the law. It imposes as a condition of approval an ongoing
12 reporting requirement, which is problematic to the extent that the
13 Commission would use such reports, *at any time during the term of the Coal*
14 *Transition PPA and after PSE is contractually obligated to purchase power*
15 *under the agreement:* (i) to determine that the Coal Transition PPA is no
16 longer a coal transition power purchase agreement; (ii) to reconsider whether
17 the Coal Transition PPA is prudent; and (iii) to prohibit PSE from earning an
18 equity return on the Coal Transition PPA.⁴ The uncertainty and potential
19 consequences that flow from this condition eviscerate the approval Order 03
20 purports to grant. PSE is left with such a level of uncertainty—regarding
21 future events over which it has no control—that it cannot enter into the Coal
22 Transition PPA. PSE can accept the obligation to file reports but respectfully
23 requests that the Commission eliminate the provisions for retained authority
24 to reconsider whether it remains prudent for PSE to continue taking deliveries
25 under the Coal Transition PPA. PSE believes the Amendment provides a
26 more direct way of addressing the Commission's concerns in these areas.
27
 - 28 • The Commission’s decision to wait to determine whether PSE may defer the
29 incremental costs it incurs as volume and price terms vary during the life of
30 the Coal Transition PPA⁵ fails to ensure that PSE will be able to fully recover
31 its prudently incurred costs. The Commission’s failure to authorize PSE to
32 defer these costs is inconsistent with the statutory requirement that “[u]pon
33 commission approval of an electrical company’s [Coal Transition PPA], the
34 electrical company is allowed to . . . recover the cost of the coal transition
35 power under the power purchase agreement.”⁶ PSE respectfully requests that
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42 ³ *Id.*

43 ⁴ Order 03 at ¶¶ 58, 69.

44 ⁵ Order 03 at ¶ 94.

45 ⁶ RCW 80.04.570(6)(a) (emphasis added).
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1 the Commission reconsider its decision and authorize *now* the deferral
2 methodology requested by PSE.

3
4 5. PSE stands at a crossroads. It must decide whether to accept or reject the
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6 Coal Transition PPA based on the new terms imposed by the Commission in Order 03.
7
8 Once PSE accepts the Coal Transition PPA, it has no termination right other than for Events
9 of Default,⁷ certain Force Majeure Events,⁸ for a change in the greenhouse gases law,⁹ or
10 TransAlta Centralia's termination of the MOA.¹⁰ Under the current conditions imposed by
11 the Commission in Order 03, the uncertainty PSE faces in moving forward with the Coal
12 Transition PPA is too great, and PSE has no incentive to enter into the Coal Transition PPA,
13 which is contrary to the intent and plain language of the Coal Transition Energy Bill.
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15 Absent reconsideration of these conditions by the Commission, PSE must reject the
16 agreement.
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27 6. Since the issuance of Order 03, PSE has worked with TransAlta Centralia to
28 provide some additional assurances to address Commission concerns. Specifically, Order 03
29 reserved to the Commission the authority to revisit its approval of the Coal Transition PPA
30 based on operational conditions that might affect employment. It also reserved authority to
31 revisit approval based on events under TransAlta's Centralia's Memorandum of Agreement
32 ("MOA") with the State of Washington. Recognizing these concerns, PSE and TransAlta
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42 ⁷ Garratt, Exh. No. ___(RG-3C) at pages 24-25 (section 8.2).

43 ⁸ *Id.* at pages 28-29 (section 9.3).

44 ⁹ *Id.* at page 30 (section 10.1).

45 ¹⁰ *Id.* at pages 38-39 (section 17.3).
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1 Centralia have entered into the Amendment to address jobs preservation directly, and for
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3 PSE to involve the Commission in any decision it makes regarding termination of the PPA.
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5 Further, PSE and TransAlta Centralia have negotiated a side letter obligating TransAlta
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7 Centralia to provide PSE with annual reports on related operations and employment data. A
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9 copy is attached to the Affidavit of Roger Garratt filed herewith. With the Amendment,
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11 which is discussed in more detail below, PSE believes there is no further need for the
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13 Commission to reserve for itself the authority to reopen its approval decision to address
14
15 these issues.
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18 **II. PETITION FOR RECONSIDERATION**

19 **A. The Authorized Equity Component Is Insufficient and Fails To Provide the** 20 **Incentive Set Forth in the Coal Transition Energy Bill**

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22 7. PSE respectfully requests the Commission reconsider its calculation of the
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24 equity component for the Coal Transition PPA. The equity component allowed by the
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26 Commission in Order 03 fails to comply with the letter or spirit of the Coal Transition
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28 Energy Bill. The Commission’s decision does not allow PSE to “earn the equity component
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30 of its authorized rate of return in the same manner as if it had purchased or built an
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32 equivalent plant.”¹¹ This is a key component of the Coal Transition Energy Bill. The law is
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34 intended to make a coal transition PPA more attractive to an electric company than a
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36 traditional PPA by making it equivalent to a rate base addition. This is because the electric
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38 company foregoes the opportunity to build or purchase a generation plant to meet future
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45 ¹¹ RCW 80.04.570(6)(a).
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1 energy needs, and likewise foregoes the opportunity to earn an equity return on an owned
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3 plant. The Commission stripped away PSE's incentive to enter into the Coal Transition PPA
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5 when it decreased the equity return that PSE could earn below what it otherwise would earn
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7 if it had purchased or built an equivalent plant.
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10 8. Moreover, Order 03 fails to recognize that the Coal Transition PPA was the
11
12 lowest cost resource even with a higher equity return than PSE requested. PSE initially
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14 evaluated the Coal Transition PPA using an equity return based on its self-build option,
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16 which proved to be a least cost resource even at a higher dollar per kW cost. PSE then
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18 looked at other resources available in the market and voluntarily reduced its equity return
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20 consistent with the Alternative Plant.¹² Thus, PSE had already reflected a cost reduction in
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22 its requested equity return. For the Commission to now lower the equity component even
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24 further by using a plant that is no longer available on the market is inappropriate. The
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26 Commission should not attempt to rewrite the legislation by reducing the equity return
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28 below that allowed by law.
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33 9. The Commission's use of the Ferndale Cogeneration Station as an equivalent
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35 plant from which to calculate an authorized equity return is patently inappropriate given that
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37 PSE already uses that plant to meet current needs. PSE cannot rely on the Ferndale
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39 Cogeneration Station to meet PSE's incremental capacity need in both 2012 and 2014.
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41 Relying on the Ferndale Cogeneration Station as an equivalent plant to meet capacity needs
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45 ¹² See Garratt, Exh. No. ____ (RG-10HCT), page 25-26.
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1 in 2014 is no more logical than relying on the Goldendale or Mint Farm Generation Stations
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3 as equivalent plants available to meet such needs. The equivalent plant must be PSE's next
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5 best ownership option—a plant that PSE would build or buy to meet the need met by the
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7 Coal Transition PPA.¹³
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10 10. The Coal Transition Energy Bill could have provided that the most recently
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12 purchased asset would determine the pricing for a company's equity return, but it did not do
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14 so. Instead, it states that the electrical company is allowed to earn the equity component of
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16 its authorized rate of return in the same manner as if it *had* purchased or built an equivalent
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18 plant.¹⁴ This was meant as an incentive to make the company whole for entering into a coal
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20 transition power purchase agreement rather than purchasing or building an additional plant
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22 Thus, the legislatively defined “equivalent plant” is a foregone opportunity rather than a
23
24 previously purchased plant.
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28 11. Order 03 refers to arguments of Public Counsel that the plant referred to in
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30 Order 03 as the Alternative Plant is not a least cost resource option on a portfolio basis¹⁵ but
31
32 fails to acknowledge that the Alternative Plant *is* the least cost resource option when
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34 expressed in dollars per kilowatt as required by the Coal Transition Energy Bill.¹⁶
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36 Additionally, Order 03 refers to arguments of Commission Staff and Public Counsel that the
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42 ¹³ RCW 80.04.570(6)(b).

43 ¹⁴ RCW 80.04.570(6)(a) (emphasis added).

44 ¹⁵ Order 03 at ¶ 35.

45 ¹⁶ RCW 80.04.570(6)(b).
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1 Alternative Plant does not meet the capacity criterion for selection as a resource.¹⁷ These
2
3 arguments fail to acknowledge that PSE adjusted for the smaller volumes under the Coal
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5 Transition PPA relative to the Alternative Plant's capacity in a manner identical to the
6
7 adjustment that Public Counsel and the Commission made for the larger volumes under the
8
9 Coal Transition PPA relative to Ferndale's capacity. In short, the Commission simply
10
11 ignored indisputable evidence that the Alternative Plant, as proposed by PSE, is the least
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13 cost (expressed in dollars per kilowatt) purchased or self-built electric generation plant
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15 available to meet PSE's 2014 capacity needs.
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19 12. Moreover, the Commission's use of a single "comparable—the Ferndale
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21 Cogeneration Station¹⁸—is contrary to principles of resource acquisition planning and
22
23 property valuation. In property valuation, more than one comparable is used to value a
24
25 property. Thus, the Commission's analogy to property valuation fails with the use of only
26
27 the Ferndale Cogeneration Station as a comparable. If the Commission uses the three
28
29 reasonable comparables—the Ferndale Cogeneration Station, the Alternative Plant, and a
30
31 self-build option the average per kilowatt price would be \$628/kW¹⁹ rather than the
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33 \$318/kW cited by the Commission for the Ferndale Cogeneration Station.²⁰
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39 ¹⁷ Order 03 at ¶¶ 36-37.

40 ¹⁸ Order 03 at n. 46.

41 ¹⁹ Average of the \$318/kW cited in Order 03 for the Ferndale Cogeneration Station and the
42 capital costs of the Alternative Plant and PSE's self-build option. See Garratt, Exh. No. ___(RG-
43 1HCT) at page 26, lines 1-16, for the capital costs of the Alternative Plant and PSE's self-build
44 option.

45 ²⁰ Order 03 at ¶ 43.
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1 **B. The Ongoing Approval Authority that Order 03 Retained Is Inconsistent with**
2 **RCW 80.04.570**

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4 13. PSE respectfully requests that the Commission reconsider its decision in
5
6 Order 03 and eliminate conditions that provide for ongoing review of the status of the Coal
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8 Transition PPA, its prudence, and the basis it provides for an equity return. The provisions
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10 for ongoing review creates an environment that undermines key elements of the approval
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12 required by the statute and, from a practical perspective, leave the door open to post-hoc
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14 withdrawal of approval. Specifically, the conditional approval in Order 03 allows the
15
16 Commission to determine, after PSE executes and is contractually bound by the Coal
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18 Transition PPA, that the Coal Transition PPA is no longer a coal transition power purchase
19
20 agreement, that PSE's continued receipt of power deliveries under the executed Coal
21
22 Transition PPA is no longer prudent, and that PSE may no longer recover an equity return
23
24 on the Coal Transition PPA.²¹ These conditions should be eliminated because they preclude
25
26 PSE from entering into the Coal Transition PPA. Moreover, in light of the Amendment
27
28 presented with this petition, these conditions are no longer needed to address the
29
30 Commission's concerns. With the Amendment, PSE now has an opportunity to terminate
31
32 the PPA if TransAlta Centralia ceases generating at the CTCF or conducts substantial
33
34 layoffs, and PSE must also seek the Commission's concurrence in its decision. The
35
36 Amendment also requires PSE to seek the Commission's concurrence regarding its decision
37
38 to terminate or continue the Coal Transition PPA in the event the MOA terminates because
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²¹ Order 03 at ¶¶ 58, 69.
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1 TransAlta fails to make payments required by the MOA or fails to obtain sufficient long-
2
3 term power purchase agreements.
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5 14. The reopener provisions of Order 03 are also inconsistent with RCW
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7 80.04.570(3), which requires the Commission to “issue a final order that approves or
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9 disapproves the power purchase agreement.” In Order 03, the Commission determined the
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11 Coal Transition PPA is a coal transition power purchase agreement and granted approval of
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13 the Coal Transition PPA, but reserved the right to determine later (i) that the Coal Transition
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15 PPA is no longer a coal transition power purchase agreement and (ii) that PSE may not
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17 recover its costs for the agreement or earn a return on the agreement if the resupply power
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19 under the contract reaches an unspecified, but unacceptable, level. In the “Commission
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21 Determination,” the Commission stated:
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26 *It is conceivable that deliveries from the facility will reach a*
27 *point where the contract may be determined to no longer*
28 *qualify under the terms of RCW 80.04.570 and related*
29 *authority as a “coal transition PPA.” In such unlikely*
30 *circumstances, the Commission may initiate a proceeding to*
31 *consider whether it remains prudent for PSE to continue*
32 *taking deliveries under the contract and, if so, whether PSE*
33 *can continue to recover any equity return in association with*
34 *any volumes delivered under the contract.*²²
35
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38 15. Order 03 further reiterates that the Commission retains the right to alter the
39
40 approval granted at a later date:

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42 We determine that it is necessary to condition our approval of
43 the Coal Transition PPA in connection with this issue only to
44

45
46 ²² *Id.* at ¶ 58 (italics in original).
47

1 the extent of imposing a reporting requirement. This will
2 enable the Commission to know if TransAlta exercises its
3 resupply right to a degree that might be found to put the Coal
4 Transition PPA in jeopardy. If Commission Staff's continuing
5 review suggests that the contract has lost its identity as a coal
6 transition agreement, the Commission may initiate
7 proceedings to determine whether this is the case and, if so,
8 what consequences flow from the determination.²³
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10
11 PSE has no objection to a reporting requirement, but the Commission has imposed
12 something much more than an annual reporting requirement. In essence, the Commission
13 reserved the right to rescind the approval granted in Order 03 after the Coal Transition PPA
14 takes effect and after PSE is contractually bound for the term of the agreement. This defeats
15 an important policy objective underpinning the statute—to grant electricity companies that
16 commit to taking power from coal transition facilities finality and certainty that the costs of
17 this coal transition power will not later be disallowed.
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27 **1. The Commission Must Definitively Approve or Disapprove the Coal**
28 **Transition PPA Based on Circumstances Existing at the Time of the**
29 **Commission's Review—Approval Subject To Later Disapproval Is Not**
30 **an Option Under the Law**
31

32 16. Order 03 errs by looking beyond the circumstances existing when the
33 Commission considered the Coal Transition PPA. The Commission seeks to justify its
34 rescission reservation in Order 03 based on the resupply rights contained in the contract that
35 could potentially result in TransAlta Centralia providing power to PSE from sources other
36 than the Centralia Transition Coal Facility at some point in the future. However, the Coal
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²³ Order 03 at ¶69.
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1 Transition Energy Bill limits the Commission to consideration of the circumstances existing
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3 at the time when the PPA is presented for Commission approval.²⁴ The circumstances
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5 existing when the Commission reviewed the Coal Transition PPA support approval without
6
7 condition, as the Commission recognized in Order 03.²⁵
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10 17. Based on these findings by the Commission, coupled with the additional
11
12 protections provided by the Amendment, on reconsideration the Coal Transition PPA should
13
14 be approved unconditionally, without a reservation of the right to later determine that the
15
16 Coal Transition PPA is no longer a coal transition PPA and thus retroactively deny recovery
17
18 of costs and equity on the PPA.
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21 18. Additionally, Order 03 conflicts with RCW 80.04.570(1), which states that
22
23 “[n]o agreement for an electrical company’s acquisition of coal transition power takes effect
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25 until it is approved by the commission.” Nothing in the statute gives the Commission the
26
27 authority to later make the agreement ineffective or to recharacterize it. As part of the
28
29 approval process, the Commission must determine that the contract at issue is in fact a coal
30
31 transition agreement and that it complies with all the terms for such a contract set forth in
32
33 the Coal Transition Energy Bill. This provision provides protection to the electrical
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35 company and its customers by making sure that the company is not bound by a contract
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37 inconsistent with the law and that customers receive adequate protections under the contract.
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40 The legislature included this provision in the law, recognizing full well that the coal
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44 ²⁴ RCW 80.04.570(4).

45 ²⁵ Order 03 at ¶68.
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1 transition power purchase agreements that the Commission would consider would be long-
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3 term contracts of five years or greater. Even so, the legislature did not make allowances for
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5 approvals subject to later disapproval. The legislation requires approval or disapproval of
6
7 the power purchase agreement when it is first brought before the Commission.
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10 19. Order 03 undermines the certainty and finality the Coal Transition Energy
11
12 Bill intended to provide. Order 03 allows the Coal Transition PPA to go into effect, but
13
14 leaves open the possibility that the Commission will later rule that the Coal Transition PPA
15
16 is not, in fact, a coal transition power purchase agreement and disallow the recovery of costs
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18 and the allowed return on equity. Such rescission of approval is inconsistent with the
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20 language and spirit of the law.
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24 **2. Order 03 Creates Uncertainty Regarding PSE's Recovery of Its Equity**
25 **Return**

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27 20. Order 03 conflicts with the requirement in RCW 80.04.570(6) that the
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29 Commission's approval of the Coal Transition PPA allows PSE to earn the equity
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31 component of its authorized return. Under the express provisions of the Coal Transition
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33 Energy Bill, PSE is allowed to earn the equity component of its authorized rate of return in
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35 the same manner as if it had purchased or built an equivalent plant. RCW 80.04.570(6)(a)
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37 provides as follows:
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41 Upon Commission approval of an electrical company's power
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43 purchase agreement for acquisition of coal transition power in
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45 accordance with this section, the electrical company is allowed
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47 to earn the equity component of its authorized rate or return in
the same manner as if it had purchased or built an equivalent

1 plant and to recover the cost of the coal transition power under
2 the power purchase agreement.

3
4 In contrast to this legislative mandate, the Commission's conditional approval in Order 03
5 allows PSE to earn a return on the Coal Transition PPA, subject to a possible determination
6 that PSE is no longer entitled to earn a return on the agreement.²⁶
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11 21. Moreover, the Commission's conditional approval of the Coal Transition
12 PPA does not allow PSE to earn its authorized rate of return as if it had purchased or built an
13 equivalent plant. If PSE had purchased or built an equivalent plant, once the plant was
14 deemed prudent and allowed into rates, PSE would be entitled to earn its authorized return
15 on the plant throughout the life of the plant. The Commission should not be asking for
16 annual reports to reassess the nature of the power plant and annually reconsider whether
17 PSE could earn a return on the plant.
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27 **3. Order 03 Creates Uncertainty Regarding Prudence and Cost Recovery**
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29 22. Similarly, Order 03 conflicts with the requirement in RCW 80.04.570(6) that
30 the Commission's approval of a Coal Transition PPA allows the electric company to recover
31 the costs of coal transition power under the agreement. In Order 03, the Commission
32 approved the Coal Transition PPA but reserved its right to later determine that the Coal
33 Transition PPA is no longer a coal transition power purchase agreement. In effect, Order 03
34 reserves the right of the Commission to rescind the approval previously granted. Also, in
35 Order 03 the Commission keeps open the possibility of determining that it is no longer
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²⁶ Order 03 at ¶ 58.
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1 prudent for PSE to continue taking deliveries under the contract.²⁷ A negative prudence
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3 determination results in a disallowance of the costs associated with the contract.²⁸ If the
4
5 Commission makes an after-the-fact reversal of its approval and finds the Coal Transition
6
7 PPA to be no longer prudent, PSE faces a no-win situation. PSE would be contractually
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9 bound to TransAlta Centralia and would be required either (i) to continue taking power
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11 under the Coal Transition PPA and not recover the costs of the PPA, or (ii) breach the
12
13 agreement with TransAlta Centralia and subject itself to damages as a result of the breach.
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15 The Commission's conditional approval in Order 03 conflicts with the statutory requirement
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17 that PSE be allowed to recover its cost of the PPA once the Commission approves the PPA.
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22 23. If left unaddressed, these issues would lead PSE to reject the Coal Transition
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24 PPA. With the Amendment, PSE believes that the Commission's concerns have been
25
26 resolved and the problematic provisions eliminated.
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28 **C. The Commission's Failure to Authorize a Deferral Conflicts with the Coal**
29 **Transition Energy Bill**
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32 24. PSE respectfully requests that the Commission authorize PSE's requested
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34 deferral now to ensure that PSE is allowed to recover its costs as provided by the Coal
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36 Transition Energy Bill. The Commission's decision to wait to determine whether PSE may
37
38 defer the incremental costs associated with the Coal Transition PPA fails to ensure that PSE
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42 ²⁷ Order 03 at ¶¶ 58, 69.

43 ²⁸ See, e.g., *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-031725, Order No. 14 (2004)
44 (ordering a disallowance based on management of the Tenaska regulatory asset that the Commission
45 deemed imprudent).
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1 will be able to fully recover its prudently incurred costs and violates the Coal Transition
2 Energy Bill. As discussed above, RCW 80.04.570(6) provides that “[u]pon Commission
3 approval” of a Coal Transition PPA, the electrical company is allowed to recover the cost of
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5 the coal transition power under the power purchase agreement. In contrast to this clear
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7 statutory directive, the Commission determined in Order 03:
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12 *that the question whether PSE should be authorized to defer*
13 *the incremental costs it incurs as volume and price terms vary*
14 *from time to time during the life of the Coal Transition PPA*
15 *should be reserved for decision during a rate proceeding in*
16 *which PSE seeks to recover its initial costs under the Coal*
17 *Transition PPA, beginning in December 2014.*²⁹
18
19

20 25. Even as the Commission declined to authorize deferral of costs, the
21 Commission acknowledged in Order 03 the undisputed testimony that unless PSE is able to
22 defer its incremental costs as volume and price terms vary, PSE will be subject to potential
23 over- and under-recovery of costs:
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29 Staff does not address specifically the question of deferrals
30 PSE proposes during the term of the Coal Transition PPA as
31 prices and volumes change from year to year.
32
33

34 Ms. Barnard focuses on this point in her rebuttal. She testifies
35 that PSE cannot time a general rate case or PCORC filing
36 perfectly to address changes in costs with the Coal Transition
37 PPA that occur throughout its term. Ms. Barnard reiterates the
38 point made in her direct testimony that what PSE proposes to
39 defer are its incremental costs associated with the Coal
40 Transition PPA that are not included in rates. While these
41 costs change from year to year, the time required to process a
42 general rate case, or even a PCORC, means it is necessary for
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46 ²⁹ Order 03 at ¶ 94 (italics in original).
47

1 PSE to maintain a deferral account for these costs or it may
2 lose the opportunity to recover them.
3

4 PSE acknowledges that it can time the filing of a general rate
5 case or a PCORC so that the costs of the Coal Transition PPA
6 beginning on December 1, 2014, could be recovered in rates.
7 PSE argues, however, that during the subsequent course of the
8 contract, as TransAlta's delivery obligations change from time
9 to time and the power price changes from year to year, it
10 would become difficult to time PCORC and general rate
11 proceedings to include the incremental costs associated with
12 these changes, as they occur. PSE argues that without the
13 authority to defer these costs, the Company would be at risk
14 for losing its ability to recover them. PSE believes this
15 problem would be most significant in the years when the
16 volumes change.³⁰
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20 26. In light of this undisputed testimony and the plain language of the statute, the
21 Commission should reconsider its decision to postpone a decision on deferral of costs until a
22 later date. Now, upon approval of the Coal Transition PPA, the Commission should
23 authorize PSE to defer the incremental costs it incurs as volume and price terms vary from
24 time to time during the life of the Coal Transition PPA.
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31 **III. MOTION TO REOPEN THE RECORD**

32 27. The Commission should exercise its discretion under WAC 480-07-830 to
33 "reopen the record to allow receipt of evidence that is essential to a decision and that was
34 unavailable and not reasonably discoverable with due diligence at the time of the hearing or
35 for any other good and sufficient cause." The Amendment is essential to the Commission's
36 decision regarding the Coal Transition PPA; it was unavailable at the time of hearing; and
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³⁰ Order 03 at ¶¶ 96-98 (internal footnotes omitted).
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1 other good causes exist to admit it, including the advancement of the legislative purposes of
2
3 the Coal Transition Energy Bill.
4

5 28. In Order 03, the Commission expressed concern regarding preservation of
6
7 jobs at Centralia Transition Coal Facility in connection with resupply right under the Coal
8
9 Transition PPA.³¹ The reporting requirements in Order 03, to which PSE has objected,
10
11 appear to have been included to minimize the possibility that a cessation of plant operations
12
13 as a result of economic dispatch might result in loss of jobs, contrary to the purpose of the
14
15 legislation to preserve jobs at the plant.³²
16
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18 29. Since the issuance of Order 03, PSE and TransAlta Centralia have negotiated
19
20 the Amendment to address this concern. The Amendment makes two important revisions to
21
22 the agreement. First, it amends section 17.3 of the Coal Transition PPA to provide a process
23
24 by which PSE would, in the event TransAlta Centralia terminates the MOA with the State of
25
26 Washington, allow PSE the option to continue with or terminate the Coal Transition PPA
27
28 and seek concurrence from the Commission of such decision. Second, it adds a new section
29
30 17.4 to the Coal Transition PPA that gives PSE a right to terminate the Coal Transition PPA
31
32 in the event of a Permanent Cessation of Generation, which occurs upon any of the
33
34 following events:
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- 38 (i) a formal determination by the management of
39
40 TransAlta Centralia to permanently cease the
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44 ³¹ Order 03 at ¶ 67.

45 ³² Order 03 at ¶¶ 67-69.
46
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1 generation of electric energy at the Centralia Transition
2 Coal Facility;

3
4 (b) the Centralia Transition Coal Facility has, for any
5 reason other than Force Majeure, failed during a
6 continuous period of 365 or more days to generate any
7 electric energy; or
8

9
10 (c) the number of FTEs³³ over a six-month period has
11 been reduced below 50% (or, if TransAlta Centralia
12 has permanently terminated operation of one
13 generating boiler at the Centralia Transition Coal
14 Facility at any time during or after the preceding
15 eighteen (18) consecutive months, below 30%) of the
16 average number of FTEs during the preceding eighteen
17 (18) consecutive calendar months.
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20 30. PSE submits with this petition the Affidavit of Roger Garratt, attaching a true
21 and correct copy of the Amendment and a side letter agreement relating to TransAlta's
22 provision of information for use by PSE in its reports to the Commission.
23
24

25
26 31. PSE respectfully requests the Commission reopen the record and allow this
27 affidavit to be admitted into evidence in this proceeding. The admission of this additional
28 evidence addresses the Commission's concerns regarding a possible termination of the MOA
29 by TransAlta Centralia and the possibility that TransAlta Centralia will liberally exercise
30 resupply rights and permanently cease generation at the Centralia Transition Coal Facility
31 thus jeopardizing jobs. With this evidence in the record, it is no longer necessary for the
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41 ³³ The Amendment defines the term "FTE" as a full-time employee of TransAlta Centralia who
42 has a minimum of thirty-five (35) scheduled hours per week, or such other number of hours per week
43 (but not less than twenty-five (25) hours) as established by (i) existing practices or written policies of
44 TransAlta Centralia or (ii) any collective bargaining agreement to which TransAlta Centralia is
45 bound, and whose workplace location is the Centralia Transition Coal Facility.
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1 Commission to retain authority to consider whether the PPA has lost its character as an
2
3 agreement for the sale and delivery of coal transition power, or whether the PPA remains
4
5 prudent, or whether PSE may earn its equity return in association with the PPA.
6

7 Accordingly, PSE requests that the following language be removed from Order 03 in light of
8
9 the additional assurances provided by PSE and TransAlta Centralia.
10

11
12 **32. Paragraph 58: Delete the following language:**
13

14 *In such unlikely circumstances, the Commission may initiate a proceeding to*
15
16 *consider whether it remains prudent for PSE to continue taking deliveries under the contract*
17
18 *and, if so, whether PSE can continue to recover any equity return in association with any*
19
20 *volumes delivered under the contract.*
21
22

23
24 **33. Paragraph 68: Delete footnote 79**
25

26 We also need not determine today the full legal consequences of such a finding. We
27
28 note, however, that it could support a conclusion that PSE is no longer entitled to recover
29
30 equity return on deliveries under the agreement.
31

32
33 **34. Paragraph 69: Delete the following language:**
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35 This will enable the Commission to know if TransAlta Centralia exercises its
36
37 resupply right to a degree that might be found to put the Coal Transition PPA in jeopardy. If
38
39 Commission Staff's continuing review suggests that the contract has lost its identity as a
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41 coal transition agreement, the Commission may initiate proceedings to determine whether
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43 this is the case and, if so, what consequences flow from the determination.
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35. **Paragraph 87: Delete footnote 95**

We note in this connection that the Commission, in a subsequent proceeding, could open the question whether it would be imprudent for PSE to not exercise these rights should the opportunity present itself.

36. **Paragraph 93: Delete the following language:**

We determine, however, that significant changes in circumstances such as a decision by TransAlta Centralia to terminate the MOA, or its failure to meet its financial obligations under the MOA as contemplated under RCW 80.80.100, may require a reexamination of the contract between TransAlta and PSE. Should the contract be found under some set of circumstances to have lost its character, and its legal status, as a coal transition PPA, it may be incumbent upon the Commission to initiate proceedings to review the contract and, among other things, consider whether PSE can continue to earn the equity return allowed here, as provided only for a coal transition agreement under RCW 80.04.570.

37. **Paragraph 119 and 124: Delete the following language:**

subject to a future prudence review of PSE's actual power costs as provided in Paragraph 4 of the PCA Settlement Agreement approved in Dockets UE-011570 and UG-011571.

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IV. CONCLUSION

38. PSE respectfully requests that the Commission reconsider its decision in Order 03 and allow the additional evidence into the record. Specifically, PSE requests that the Commission revise Order 03 to reflect the changes noted above, as well as ordering the

1 deferral and equity return requested by PSE.
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3
4 Respectfully submitted this 22nd day of January, 2013
5

6 **PERKINS COIE LLP**
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8
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