

**EXH. RJR-1CTr
DOCKET UE-200115
COLSTRIP UNIT 4 SALE
WITNESS: RONALD J. ROBERTS**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

PUGET SOUND ENERGY

**For an Order Authorizing the Sale of
All of Puget Sound Energy's Interests
in Colstrip Unit 4 and Certain of Puget
Sound Energy's Interests in the
Colstrip Transmission System**

Docket UE-200115

PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF

RONALD J. ROBERTS

ON BEHALF OF PUGET SOUND ENERGY

**REDACTED
VERSION**

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PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF

RONALD J. ROBERTS

ON BEHALF OF PUGET SOUND ENERGY

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**PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF
RONALD J. ROBERTS
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LIST OF EXHIBITS

- | | |
|-------------|---|
| Exh. RJR-2 | Professional Qualifications of Ronald J. Roberts |
| Exh. RJR-3 | Colstrip Units 3 & 4 Ownership and Operation Agreement |
| Exh. RJR-4 | Colstrip Common Facilities Agreement |
| Exh. RJR-5C | Memorandum to the PSE Board of Directors, dated
October 22, 2019 |
| Exh. RJR-6 | Colstrip Unit 4 Purchase and Sale Agreement |
| Exh. RJR-7 | Colstrip Transmission System Purchase and Sale Agreement |
| Exh. RJR-8C | Confirmation for the NorthWestern Energy PPA |

1 **PREFILED DIRECT TESTIMONY (CONFIDENTIAL) OF**
2 **RONALD J. ROBERTS**
3 **ON BEHALF OF PUGET SOUND ENERGY**

4 **I. INTRODUCTION**

5 **Q. Please state your name, business address, and position with Puget Sound**
6 **Energy.**

7 A. My name is Ronald J. Roberts. My business address is 355 110th Ave NE
8 Bellevue, WA 98004. I am Director of Generation and Natural Gas Storage for
9 Puget Sound Energy (“PSE”).

10 **Q. Have you prepared an exhibit describing your education, relevant**
11 **employment experience, and other professional qualifications?**

12 A. Yes, I have. Please see the First Exhibit to the Prefiled Direct Testimony of
13 Ronald J. Roberts, Exh. RJR-2.

14 **Q. What are your duties as Director of Generation and Natural Gas Storage for**
15 **PSE?**

16 A. I plan, organize, and direct PSE's energy production, including operations and
17 maintenance of PSE’s owned and jointly-owned generating facilities and PSE’s
18 thermal purchased power agreements. Furthermore, I assist PSE’s Resource
19 Acquisition team in performing due diligence evaluations of potential resource
20 acquisitions. I am also responsible for overseeing the safe operation of PSE's
21 thermal, hydro, natural gas storage, and wind generation plants and optimizing

1 their operation in a manner that provides customers with reliable and efficient
2 power.

3 **Q. Please summarize your testimony.**

4 A. This prefiled direct testimony describes the following:

- 5 • a series of proposed transactions (the “Proposed Transactions”)
6 with NorthWestern Energy Corporation (“NorthWestern
7 Energy”), including:
 - 8 ○ the sale of all of PSE’s interests in Colstrip Unit 4 to
9 NorthWestern Energy;
 - 10 ○ the sale of certain interests of PSE in the Colstrip
11 Transmission System to NorthWestern Energy; and
 - 12 ○ a power purchase agreement with NorthWestern Energy
13 for 90 MW of output of Colstrip Unit 4, commencing
14 June 1, 2020, and expiring on May 15, 2025 (the
15 “NorthWestern Energy PPA”);
- 16 • the principal commercial terms and conditions of the Proposed
17 Transactions;
- 18 • the need for the Proposed Transactions;
- 19 • the analyses supporting the selection by PSE of the Proposed
20 Transactions;
- 21 • key risk factors related to the Proposed Transactions; and
- 22 • the benefits of the Proposed Transactions.

23 The Proposed Transactions would be a valuable step in preparing PSE for the
24 period beginning January 1, 2026, in which PSE will no longer be able to serve
25 retail customer loads with power from coal-fired generation.

1 The principal benefits of the proposed transaction are as follows:

- 2 (i) the proposed transactions allow PSE to dispose of its
3 interests in Colstrip Unit 4 while simultaneously benefitting
4 customers from lower power prices;
- 5 (ii) PSE projects that the Proposed Transactions provide
6 benefits to retail customers for the period 2020 through
7 2025 with a projected net present value of
- 8 • \$58 million, if PSE does not hedge market prices
9 associated with either (a) the net reduction of 95
10 MW of capacity resulting from the Proposed
11 Transactions or (b) the 90 MW of output from
12 Colstrip Unit 4 that PSE will purchase under the
13 NorthWestern Energy PPA; or
 - 14 • \$37 million, if PSE (a) hedges market prices
15 associated with the net reduction of 95 MW of
16 capacity resulting from the Proposed Transactions
17 or (b) but does not hedge market prices associated
18 with the 90 MW of output from Colstrip Unit 4 that
19 PSE will purchase under the NorthWestern Energy
20 PPA.
- 21 (iii) The loss of capacity resulting from the sale of Colstrip
22 Unit 4 will be partially mitigated by the NorthWestern
23 Energy PPA, which will allow PSE to purchase 90 MW of
24 output of Colstrip Unit 4 during the period beginning
25 June 1, 2020, and expiring on May 15, 2025;
- 26 (iv) PSE limits its liabilities associated with compliance costs
27 associated with Colstrip Unit 4 as of the date of closing of
28 the sale of its interests in Colstrip Unit 4 to NorthWestern
29 Energy; and
- 30 (v) PSE will accelerate its path to compliance with the
31 Washington Clean Energy Transformation Act (subject to a
32 final resolution of Colstrip Unit 3) and significantly reduce
33 PSE's greenhouse gas emissions with an annual average
34 reduction of 350,000 metric tons of carbon dioxide.

35 Based on the declining economics of Colstrip Units 3 & 4, the enactment of the
36 Washington Clean Energy Transformation Act that prohibits PSE from serving its

1 customers with coal-fired generation on and after January 1, 2026, the
2 identification and analysis of alternatives considered by PSE, and the described
3 benefits of the proposed transactions, PSE is respectfully seeking Commission
4 approval of (i) the sale of PSE’s interests in Colstrip Unit 4 to NorthWestern
5 Energy and (ii) the sale of certain PSE’s interests in the Colstrip Transmission
6 System to NorthWestern Energy.

7 **II. BACKGROUND REGARDING COLSTRIP UNIT 4 AND**
8 **THE COLSTRIP TRANSMISSION SYSTEM**

9 **Q. Please describe the Colstrip Unit 4 and PSE’s interests therein.**

10 A. Colstrip Unit 4 is a 740 MW coal-fired steam plant located in Colstrip, Montana.
11 Construction for Colstrip Unit 4 started in 1979 and began operating in 1986.
12 Since that time, Colstrip Unit 4 has operated in conjunction with Colstrip Unit 3,
13 and neighboring Colstrip Units 1 & 2 (collectively, the “Colstrip Generating
14 Station”). Colstrip Unit 4 is jointly owned by five regulated utilities, as set forth
15 below in Table 1.

16 **Table 1. Ownership Structure of Colstrip Unit 4**

Owner	Ownership Interest
NorthWestern Energy	30%
Puget Sound Energy	25%
Portland General Electric	20%
Avista	15%
PacifiCorp	10%

1 Colstrip Unit 3 is jointly owned by four regulated utilities and an independent
2 power producer, as set forth below in Table 2.

3 **Table 2. Ownership Structure of Colstrip Unit 3**

Owner	Ownership Interest
Talen Montana LLC	30%
Puget Sound Energy	25%
Portland General Electric	20%
Avista	15%
PacifiCorp	10%

4 As shown in Tables 1 and 2 above, Talen Montana LLC (“Talen Montana”) owns
5 a 30 percent share of Colstrip Unit 3, and NorthWestern Energy owns a
6 30 percent share of Colstrip Unit 4. Talen Montana and NorthWestern Energy are
7 parties to a reciprocal sharing agreement that realizes a 15 percent share of each
8 unit’s generation for each of Talen Montana and NorthWestern Energy.

9 Each of Colstrip Units 3 & 4 consists of a fuel supply system, a coal-fired boiler,
10 a steam turbine-generator, a cooling tower, step-up transformers, piping, pollution
11 control equipment, ash handling and disposal ponds, and electric distribution and
12 auxiliary equipment. Colstrip Units 3 & 4 are each paired, sharing certain
13 common systems. Also, Colstrip Units 1 & 2 (now retired as of January 3, 2020)
14 and Colstrip Units 3 & 4 share certain common facilities (administrative
15 buildings, supply warehouse, water supply system, transmission lines, etc.).

16 Two agreements govern Colstrip Units 3 & 4:

- 17 (i) the Ownership and Operation Agreement, dated as of
18 May 6, 1981, by The Montana Power Company, Puget

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Sound Power and Light Company, The Washington Water Power Company, Portland General Electric Company, Pacific Power and Light Company, and Basin Electric Power Company that provides for the terms and conditions of the construction and ownership and operation and maintenance of Colstrip Units 3 & 4 (the “Colstrip Units 3 & 4 Ownership and Operation Agreement”); and

(ii) the Common Facilities Agreement, dated as of May 6, 1981, by and between The Montana Power Company, Puget Sound Power & Light Company, Puget Colstrip Construction Company, The Washington Water Power Company, Portland General Electric Company, Pacific Power & Light Company, and Basin Electric Power Cooperative (the “Colstrip Common Facilities Agreement”).

Please see the Second Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-3, for a copy of the Colstrip Units 3 & 4 Ownership and Operation Agreement.

Please see the Third Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-4, for a copy of the Colstrip Common Facilities Agreement.

Q. Please describe the Colstrip Project Transmission System and PSE’s interests therein.

A. Please see the Prefiled Direct Testimony of Thomas M. Flynn, Exh. TMF-1T, for a description of the Colstrip Project Transmission System and PSE’s interests therein.

1 **III. PSE’S EVALUATIONS OF ITS CONTINUED OWNERSHIP**
2 **INTERESTS IN COLSTRIP UNITS 3 & 4**

3 **A. Need for the Proposed Transactions**

4 **Q. Please describe the challenges facing PSE’s continued ownership of its**
5 **interests in Colstrip Unit 4.**

6 A. The Colstrip Generating Station faces a changing landscape of evolving energy
7 markets, new environmental regulation, potential carbon pricing, aging
8 infrastructure, periodic litigation, and potential valuation differences among the
9 six owners. As these factors influence operations of the Colstrip Generating
10 Station, PSE continually evaluates its ownership interests in these assets, as it
11 does all the assets within PSE’s portfolio.

12 Please see the Sixth Exhibit to the Prefiled Direct Testimony of Ronald J.
13 Roberts, Exh. RJR-5C, for a copy of a Memorandum to the PSE Board of
14 Directors, dated October 22, 2019 (the “PSE Board Memorandum”). In particular,
15 please see Exhibit RJR-5C, at pages 22-38, for a summary of challenges facing
16 PSE’s continued ownership of its interests in Colstrip Unit 4.

17 **Q. Please describe PSE’s evaluation of its ownership interests in its Colstrip**
18 **Generating Station.**

19 A. PSE continually evaluates its ownership interests in its Colstrip Generating
20 Station assets. In 2018, PSE considered the potential of closing Colstrip
21 Units 3 & 4 but ultimately determined that such an action would be extremely

1 difficult, if not impossible, due to the provisions of the Ownership and Operation
2 Agreement that requires unanimity among the owners to effectuate a closure.¹

3 [REDACTED] first approached PSE during the first
4 half of 2019 regarding a potential sale of PSE's interests in Colstrip Units 3 & 4.
5 Ultimately, the transaction proposed by [REDACTED]
6 [REDACTED], which was conditioned, in part, on [REDACTED]
7 [REDACTED], failed because [REDACTED]
8 [REDACTED].²

9 After the failure of the condition precedent to the transaction proposed by
10 [REDACTED], NorthWestern Energy approached PSE
11 in July 2019 regarding a potential sale of PSE's interests in Colstrip Unit 4.³ As
12 discussed below, discussions between PSE and NorthWestern Energy initiated in
13 July 2019 have resulted in the proposed transaction for which PSE now seeks
14 approval.

15 **B. Deal Proposed to PSE in the First Half of 2019**

16 **Q. What were the commercial terms of the deal proposed by [REDACTED]
17 [REDACTED] in the first half of 2019?**

18 **A. The principal commercial terms of the deal proposed by [REDACTED]
19 [REDACTED] in the first half of 2019 were as follows:**

¹ See Roberts, Exh. RJR-5C, at 38.

² See *id.*

³ See *id.* at 39.

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Table 7. Summary of the Principal Commercial Terms of the Deal Proposed by [REDACTED] in the First Half of 2019

General:

[REDACTED]

Purchase Price:

[REDACTED]⁵

Purchased Assets:

[REDACTED]⁶

Retained Assets:

[REDACTED]
:

- [REDACTED]

⁴ See Roberts, Exh. RJR-5C, at 39; *see also id.* at 285-86.
⁵ See Roberts, Exh. RJR-5C, at 39; *see also id.* at 286.
⁶ See Roberts, Exh. RJR-5C, at 39-40; *see also id.* at 286.

[REDACTED];

- [REDACTED]; and

- [REDACTED].⁷

**Assumed
Liabilities:**

[REDACTED].⁸

**Excluded
Liabilities:**

[REDACTED].⁹

**Environmental
Costs:**

[REDACTED].¹⁰

**Conditions
Precedent:**

- [REDACTED]

⁷ See Roberts, Exh. RJR-5C, at 40; *see also id.* at 286-87.

⁸ See Roberts, Exh. RJR-5C, at 40-41; *see also id.* at 287.

⁹ See Roberts, Exh. RJR-5C, at 41; *see also id.* at 287-88.

¹⁰ See Roberts, Exh. RJR-5C, at 41; *see also id.* at 288.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED].¹¹

¹¹ See Roberts, Exh. RJR-5C, at 41-42; see also *id.* at 289-91.

[REDACTED]

[REDACTED]

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Q. Why was the deal proposed by [REDACTED] in the first half of 2019 unsuccessful?

A. As previously mentioned, the [REDACTED]
[REDACTED]
[REDACTED], and in addition, the [REDACTED]
[REDACTED] made the economics unpalatable. Therefore, the parties did not proceed far in negotiations beyond the initial proposal of [REDACTED]
[REDACTED].¹⁴

Q. Did PSE’s preliminary analysis of the deal proposed by [REDACTED] in the first half of 2019 project potential benefits to PSE customers?

A. No. The preliminary analyses conducted by PSE indicated that the proposal failed to provide benefits to PSE customers. At the time of the analysis in May of 2019,

¹² See Roberts, Exh. RJR-5C, at 42; see also *id.* at 286.
¹³ See Roberts, Exh. RJR-5C, at 42; see also *id.* at 282.
¹⁴ See Roberts, Exh. RJR-5C, at 42-43.

1 PSE projected that continued operations of Colstrip Units 3 & 4 on a "business as
2 usual" basis would cost PSE customers a net present value of \$641 million
3 through the end of the calendar year 2025. In comparison, PSE projected that the
4 proposal of [REDACTED] would cost PSE customers
5 a net present value of \$826 million over the same period. Therefore, the proposal
6 of [REDACTED] in the first half of 2019 would have
7 cost PSE customers a net present value of \$185 million when compared to PSE
8 continuing ownership of Colstrip Units 3 & 4 through the end of the calendar year
9 2025.¹⁵

10 **C. Deal Proposed by NorthWestern Energy in July 2019**

11 **Q. Please describe the proposal made by NorthWestern Energy in July 2019.**

12 A. In July 2019, NorthWestern Energy approach PSE regarding a potential sale of
13 PSE's interests in Colstrip Unit 4. The principal commercial terms of the deal
14 proposed by NorthWestern Energy in July of 2019 were as follows:¹⁶

15 **Table 8. Summary of the Principal Commercial Terms of**
16 **the Deal Proposed by NorthWestern Energy in July of 2019¹⁷**

General: NorthWestern Energy would acquire all of PSE's
ownership interests and rights in Colstrip Unit 4 in such
a manner that, following the closing of the proposed
transaction, NorthWestern Energy would own fifty-five
percent (55%) of Colstrip Unit 4.¹⁸

¹⁵ See Roberts, Exh. RJR-5C, at 42; *see also id.* at 300-02.

¹⁶ See Roberts, Exh. RJR-5C, at 43; *see also id.* at 308-18.

¹⁷ See Roberts, Exh. RJR-5C, at 43.

¹⁸ See *id.* at 43-44.

Purchase Price:	One dollar (\$1.00) ¹⁹
Purchased Assets:	The purchased assets would include all rights, title and interest of PSE in Colstrip Unit 4, including PSE's pro rata interest (with respect to its interest in Colstrip Unit 4) in the Common Facilities (as defined in the Common Facilities Agreement), real property (both generating and non-generating), real property leases, inventory (including fuel), contracts for goods or services, security deposits (including PSE's share of any working capital deposit held by Talen Montana), prepaid expenses, fuel contracts with coal suppliers, and emission allowances. ²⁰
Retained Assets:	<p>PSE would retain all of its rights, title, and interest in the following:</p> <ul style="list-style-type: none"> • Colstrip Units 1, 2, and 3, including PSE's pro rata interest (with respect to its interest in Colstrip Units 1, 2, and 3) in the Common Facilities, real property (both generating and non-generating), real property leases, inventory (including fuel), contracts for goods or services, security deposits (including PSE's share of any working capital deposit held by Talen Montana), prepaid expenses, fuel contracts with coal suppliers, and emission allowances; and • Other retained assets that may be identified in the course of negotiating the definitive agreement.²¹
Assumed Liabilities:	NorthWestern Energy would assume certain specified liabilities of PSE associated with the purchased assets upon the closing of the proposed transaction. The assumed liabilities will include only specified liabilities in respect of the purchased assets, including liabilities and claims with respect to the purchased assets arising after the closing of the proposed transaction. ²²

¹⁹ See *id.* at 44.

²⁰ See Roberts, Exh. RJR-5C, at 44.

²¹ See *id.*

²² See *id.* at 44-45.

Excluded Liabilities: PSE would retain and have exclusive responsibility for (i) all liabilities and obligations not related to the purchased assets and (ii) all liabilities and obligations relating to the purchased assets other than the assumed liabilities.²³

Environmental Costs: PSE would bear its pro rata share of remediation costs, decommissioning costs, and miscellaneous shutdown costs.²⁴

Conditions Precedent: The closing of the proposed transaction would be subject to the following conditions precedent:

- Receipt of all necessary consents and approvals for the transaction by governmental bodies, including approval of FERC under section 203 of the Federal Power Act, approval of the Montana Public Service Commission and the WUTC, and expiration or early termination of the waiting period under the Hart-Scott-Rodino Act, to the extent each such approval is required.
- Either no other owner of Colstrip Units 3 & 4 exercise its right of first refusal to acquire any of the interests being transferred to NorthWestern Energy by PSE under the Ownership and Operations Agreement or the parties' receipt of the written consent of the other owners of Colstrip Unit 4 to the transfer of PSE's interests to NorthWestern Energy pursuant to the Ownership and Operations Agreement.
- Closing of NorthWestern Energy's acquisition of certain of PSE's interests in the Colstrip Transmission System.
- Effectiveness of the NorthWestern Energy PPA.²⁵

²³ See *id.* at 45.

²⁴ See Roberts, Exh. RJR-5C, at 45.

²⁵ See *id.* at 45-46.

NorthWestern Energy PPA:

PSE would enter into a power purchase agreement with NorthWestern Energy for up to 90 MW of output from Colstrip Unit 4 with a term commencing on the hour ending 0100 on June 1, 2020, through hour ending 2400 on May 15, 2025. The pricing under the NorthWestern Energy PPA would be the higher of

- (i) the Mid C Day-Ahead Index Price for on-peak and off-peak periods, as applicable, as published by the Intercontinental Exchange for the applicable day of delivery; and
- (ii) the marginal operating cost of Colstrip Unit 4.²⁶

Colstrip Transmission System Interests:

PSE would sell a pro rata share of its interests in the Broadview-to-Townsend segment of the Colstrip Transmission System to Northwestern Energy at book value.²⁷

1 **Q. Was it important to PSE that the structure proposed by NorthWestern**
2 **Energy contained a proposed power purchase agreement for ninety**
3 **megawatts of capacity?**

4 A. Yes. If PSE were to sell all of its interests in Colstrip Unit 4 to NorthWestern
5 Energy, this would result in a reduction of 185 MW in generating capacity for
6 PSE. The NorthWestern Energy PPA would replace 90 MW of the capacity
7 reduction through May 15, 2025, leaving PSE with a net reduction of 95 MW of
8 capacity through May 15, 2025. For purposes of analysis, PSE assumed that it
9 would replace all of the lost capacity during the term of the NorthWestern Energy
10 PPA with power purchased at the Mid C Day-Ahead Index Price for on-peak and
11 off-peak periods, as applicable, as published by the Intercontinental Exchange for

²⁶ See Roberts, Exh. RJR-5C, at 46.

²⁷ See *id.*

1 the applicable day of delivery. This is the most likely pricing of the NorthWestern
2 Energy PPA and the market price that PSE would likely pay unless PSE were to
3 acquire a new resource to fill the net reduction of 95 MW of capacity through
4 May 15, 2025.²⁸

5 **Q. Did PSE perform a quantitative analysis of the deal proposed by**
6 **NorthWestern Energy in July 2019?**

7 A. Yes. Using the assumptions outlined in the previous paragraph, PSE initially
8 projected that the transaction proposed by NorthWestern Energy would provide
9 benefits to customers under the most conservative of scenarios. In the initial
10 quantitative analysis conducted, PSE projected that its customers would benefit
11 from a reduction in power costs with a present value of \$10/MWh. If, however,
12 PSE were to hedge the net reduction of 95 MW in capacity that PSE would
13 purchase from the market, then PSE's customers would benefit from a reduction
14 in power costs with a present value of \$4/MWh.²⁹

15 Please see the Prefiled Direct Testimony of Cindy Song, Exh. CS-1T, for a more
16 detailed discussion of the quantitative analysis conducted by PSE with regard to
17 the Proposed Transactions.

²⁸ See Roberts, Exh. RJR-5C, at 46.

²⁹ See *id.* at 46.

1 **Q. Did PSE and NorthWestern Energy enter into a term sheet based on the deal**
2 **proposed by NorthWestern Energy in July 2019?**

3 A. Yes. Based on the favorable projections of PSE regarding the commercial terms
4 of the deal proposed by NorthWestern Energy, PSE entered into a non-binding
5 letter of intent with NorthWestern Energy on August 14, 2019.³⁰ PSE provided
6 details of the proposed transaction with NorthWestern Energy to the Board of
7 Directors on August 19, 2019.³¹

8 **Q. Did PSE and NorthWestern Energy subsequently enter into definitive**
9 **agreements based on the deal proposed by NorthWestern Energy in July**
10 **2019?**

11 A. Yes. On December 9, 2019, PSE and NorthWestern Energy entered into the
12 following definitive agreements that provide the basis for the Proposed
13 Transactions:

14 (i) The Colstrip Unit 4 Purchase and Sale Agreement. The
15 Colstrip Unit 4 Purchase and Sale Agreement, dated as of
16 December 9, 2019, between NorthWestern Energy and PSE
17 (the “Colstrip Unit 4 Purchase and Sale Agreement”)
18 generally proposes the sale by PSE to NorthWestern
19 Energy of all of PSE’s interests in Colstrip Unit 4.

20 (ii) The Colstrip Transmission System Purchase and Sale
21 Agreement. The Colstrip Transmission System Purchase
22 and Sale Agreement, dated as of December 9, 2019,
23 between NorthWestern Energy and PSE (the “Colstrip
24 Transmission System Purchase and Sale Agreement”)
25 generally proposes the sale by PSE to NorthWestern

³⁰ See Roberts, Exh. RJR-5C, at 47; see also *id.* at 308-18.

³¹ See *id.* at 320-29.

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Energy of certain of PSE’s interests in the Colstrip Transmission System.

(iii) The NorthWestern Energy PPA. The NorthWestern Energy PPA, dated as of December 9, 2019, between NorthWestern Energy and PSE (the “NorthWestern Energy PPA”) generally proposes the sale by NorthWestern Energy to PSE of ninety (90) megawatts (MW) of capacity from Colstrip Unit 4 for a term commencing on June 4, 2020, and ending on May 15, 2025.

Please see the Eighth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, for a copy of the Colstrip Unit 4 Purchase and Sale Agreement.

Please see the Ninth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-7, for a copy of the Colstrip Transmission System Purchase and Sale Agreement.

Please see the Tenth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-8C, for a copy of the confirmation for the NorthWestern Energy PPA.

The material terms of each of these agreements are discussed in Section IV below and in the PSE Board Memorandum.

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**IV. MATERIAL TERMS OF THE
PROPOSED TRANSACTIONS**

A. The Colstrip Unit 4 Purchase and Sale Agreement

Q. Please provide an overview of the Colstrip Unit 4 Purchase and Sale Agreement.

A. The Colstrip Unit 4 Purchase and Sale Agreement proposes the sale by PSE to NorthWestern Energy of the following:

(i) Colstrip 4 Interests. PSE will sell to NorthWestern Energy all of PSE's twenty-five percent (25%) undivided interest in the 740 MW Colstrip Unit 4 to NorthWestern Energy (the "Colstrip 4 Interests");

(ii) Colstrip 4 Real Property Interests. PSE will transfer to NorthWestern Energy the portion of PSE's real property rights associated with the Colstrip 4 Interests (the "Colstrip 4 Real Property Interests");

(iii) Common Facilities Interests. PSE will transfer to NorthWestern Energy the portion of PSE's interest in the common facilities and associated assets related to the Colstrip 4 Interests (the "Common Facilities Interest"); and

(iv) Colstrip 4 Material Contract Interests. PSE will transfer to NorthWestern Energy the portion of PSE's rights under the contracts, leases, and agreements related to the Colstrip 4 Interests (the "Colstrip 4 Material Contract Interests").

The Colstrip 4 Interests, the Colstrip 4 Real Property Interests, the Common Facilities Interests, and the Colstrip 4 Material Contract Interests are referred to in this prefiled direct testimony as the "Transferred Assets".³²

³² See Roberts, Exh. RJR-5C, at 57-58; see also Roberts, Exh. RJR-6, at 15-16.

1 **1. Assets and Liabilities Retained by PSE**

2 **Q. Will PSE retain any assets and liabilities under the Colstrip Unit 4 Purchase**
3 **and Sale Agreement?**

4 A. Yes. PSE will retain the following assets and liabilities under the terms and
5 conditions of the Colstrip Unit 4 Purchase and Sale Agreement:

- 6 (i) all of PSE's interest in Colstrip Units 1 & 2 and Colstrip
7 Unit 3;
- 8 (ii) claims arising out of liabilities occurring prior to closing,
9 including environmental liabilities and pension liabilities;
- 10 (iii) future decommissioning and demolition costs in connection
11 with the Colstrip 4 Interests (excluding decommission or
12 demolition costs arising from post-closing improvements to
13 the Colstrip 4 Interests);
- 14 (iv) any obligation or liability related to or arising out of any of
15 the excluded assets identified in Exhibit B to the Colstrip
16 Unit 4 Purchase and Sale Agreement;
- 17 (v) any obligation or liability related to or arising out of actions
18 pending as of closing against PSE or any of its affiliates;
- 19 (vi) any obligation or liability related to or arising out of PSE's
20 conduct of the business or ownership of the Colstrip 4
21 Interests prior to closing;
- 22 (vii) any ERISA liability or any obligation or liability related to
23 or arising out of any collective bargaining agreement of
24 PSE, whether prior to, on or after closing;
- 25 (viii) any ERISA liability or any obligation or liability related to
26 or arising out of any collective bargaining agreement of
27 Talen Montana on or prior to closing and any compliance
28 with or violations of labor laws by Talen Montana on or
29 prior to closing;
- 30 (ix) any tax obligation or liability of PSE; and

1 (x) any obligation or liability of PSE for any debt.³³

2 **2. Assumption of Liabilities by NorthWestern Energy**

3 **Q. What liabilities will NorthWestern Energy assume under the Colstrip Unit 4**
4 **Purchase and Sale Agreement?**

5 A. NorthWestern Energy assumes all liabilities and obligations related to the
6 Colstrip 4 Interests arising after closing.³⁴

7 **3. Purchase Price**

8 **Q. What is the purchase price for the Transferred Assets under the Colstrip**
9 **Unit 4 Purchase and Sale Agreement?**

10 A. As consideration for the purchase of the Transferred Assets, NorthWestern
11 Energy will pay to PSE a purchase price of one dollar (\$1.00).³⁵

12 **4. Conditions Precedent to Closing**

13 **Q. Are there any conditions to closing under the Colstrip Unit 4 Purchase and**
14 **Sale Agreement?**

15 A. Yes, The Colstrip Unit 4 Purchase and Sale Agreement includes customary
16 conditions precedent, including delivery of certain documentation, the
17 representations, and warranties of the parties remain true and correct as of closing,
18 the delivery of necessary consents, no order or decree of a court or governmental
19 authority has been issued that would prevent closing, termination of all liens

³³ See Roberts, Exh. RJR-5C, at 58-59; see also Roberts, Exh. RJR-6, at 16-17.

³⁴ See Roberts, Exh. RJR-5C, at 59; see also Roberts, Exh. RJR-6, at 17.

³⁵ See Roberts, Exh. RJR-5C, at 59; see also Roberts, Exh. RJR-6, at 17.

1 except permitted liens, payment of the purchase price, and no event causing or
2 constituting a material adverse effect has occurred or is occurring. Additional
3 conditions precedent include the following:

- 4 (i) the other owners of Colstrip Units 3 & 4 (i.e., Avista,
5 PacifiCorp, Portland General, and Talen Montana) have
6 either declined to exercise or executed a waiver of their
7 rights of first refusal contained in Section 24 of the
8 Ownership and Operations Agreement;
- 9 (ii) execution of the Colstrip Transmission System Purchase
10 and Sale Agreement by both NorthWestern Energy and
11 PSE;
- 12 (iii) approval of NorthWestern Energy's acquisition of the
13 Colstrip 4 Interests by the Federal Energy Regulatory
14 Commission ("FERC");
- 15 (iv) approval of NorthWestern Energy's acquisition of the
16 Colstrip 4 Interests by the Montana Public Service
17 Commission; and
- 18 (v) approval of PSE's sale of the Colstrip 4 Interests by this
19 Commission.³⁶

20 **5. Representations and Warranties of PSE**

21 **Q. What representations and warranties will PSE make under the Colstrip**
22 **Unit 4 Purchase and Sale Agreement?**

23 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary
24 representations and warranties provisions for PSE, including the following
25 customary representations and warranties: (i) organization and good standing;
26 (ii) authority; (iii) enforceability; (iv) title; (v) no violation or breach;

³⁶ See Roberts, Exh. RJR-5C, at 59-60; see also Roberts, Exh. RJR-6, at 19-21.

1 (vi) consents; (vii) material contracts; (viii) no disputes or litigation; (ix) no
2 brokerage fees or commissions; and (x) no bankruptcy.³⁷

3 **6. Representations and Warranties of NorthWestern Energy**

4 **Q. What representations and warranties will NorthWestern Energy make under**
5 **the Colstrip Unit 4 Purchase and Sale Agreement?**

6 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary
7 representations and warranties provisions for NorthWestern Energy, including the
8 following customary representations and warranties: (i) organization and good
9 standing; (ii) authority; (iii) enforceability; (iv) no violation or breach;
10 (v) consents; (vi) no disputes or litigation; (vii) no brokerage fees or commissions;
11 (viii) no bankruptcy, and (ix) regulatory approvals and authorizations.³⁸

12 **7. Access**

13 **Q. What access rights does NorthWestern Energy have under the Colstrip**
14 **Unit 4 Purchase and Sale Agreement?**

15 A. Pursuant to the terms and conditions of the Colstrip Unit 4 Purchase and Sale
16 Agreement, PSE agrees (i) to cooperate in facilitating reasonable access to PSE's
17 records, personnel, offices and other facilities and properties related to the
18 Colstrip 4 Interests and (ii) to permit NorthWestern Energy to make copies and
19 inspections of records as reasonably requested, and (iii) furnish NorthWestern

³⁷ See Roberts, Exh. RJR-5C, at 60-61; see also Roberts, Exh. RJR-6, at 23-25.

³⁸ See Roberts, Exh. RJR-5C, at 61-62; see also Roberts, Exh. RJR-6, at 21-23.

1 Energy with financial and operating data and other information with respect to the
2 Colstrip 4 Interests as NorthWestern Energy may from time to time reasonably
3 request.³⁹

4 **8. Confidentiality**

5 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain**
6 **confidentiality provisions?**

7 A. Yes. Each party agrees to maintain in confidence all information made available
8 to it under the Colstrip Unit 4 Purchase and Sale Agreement and to cause their
9 respective officers, directors, agents, employees, representatives, consultants, and
10 advisors to maintain in confidence all information made available to them under
11 the Colstrip Unit 4 Purchase and Sale Agreement, all as provided in the Mutual
12 Non-Disclosure Agreement, dated July 19, 2019, between PSE and NorthWestern
13 Energy.⁴⁰

14 **9. Covenants**

15 **Q. What covenants do each party make under the Colstrip Unit 4 Purchase and**
16 **Sale Agreement?**

17 A. The Colstrip Unit 4 Purchase and Sale Agreement includes customary covenants
18 of PSE and NorthWestern Energy, including the following: (i) exclusivity;
19 (ii) conduct of business; (iii) public announcements; (iv) actions by parties;
20 (v) further assurances; (vi) records; (vii) privilege; (viii) regulatory and other

³⁹ See Roberts, Exh. RJR-5C, at 63; see also Roberts, Exh. RJR-6, at 25.

⁴⁰ See Roberts, Exh. RJR-5C, at 63; see also Roberts, Exh. RJR-6, at 25-26.

1 authorizations and consents filings; (ix) required regulatory approvals; (x) fees
2 and expenses; (xi) tax matters; (xii) transfer taxes; (xiii) right of first refusal;
3 (xiv) updates to disclosure schedules; and (xv) transfers of interests.⁴¹

4 **10. Liability**

5 **Q. What liabilities will the parties potentially have under the Colstrip Unit 4**
6 **Purchase and Sale Agreement?**

7 A. PSE will be responsible for losses arising from the ownership or operation of the
8 Colstrip 4 Interests, Colstrip Units 3 & 4, or the common facilities that are wholly
9 or partially caused by or arise from events or occurrences which took place before
10 the closing date based on its pre-closing date project shares (i.e., PSE's 25 percent
11 share of Colstrip Units 3 & 4 before closing). NorthWestern Energy (and not
12 PSE) will be responsible for losses arising from the ownership or operation of the
13 Colstrip 4 Interests that are wholly or partially caused by or arise from events or
14 occurrences which took place on or after closing.

15 If the parties are unable to agree on whether particular losses are at least partially
16 the result of events, occurrences, or conditions from before or after the closing
17 date, the parties agree to attempt to settle such disagreement by mutual discussion
18 between executives from both parties. If any such disagreement is not resolved
19 within thirty (30) days of receipt of a notice of such dispute, the parties will
20 jointly retain an independent third-party consultant (with expertise in the subject
21 matter giving rise to the liability) to promptly determine when the events or

⁴¹ See Roberts, Exh. RJR-5C, at 63-67; see also Roberts, Exh. RJR-6, at 26-31.

1 occurrences that caused or gave rise to the losses in question took place. The
2 independent third-party consultant will act as an impartial and neutral arbitrator in
3 carrying out its duties. If the independent third-party consultant determines that
4 the losses in question were at least partially caused by or partially arose from
5 events or occurrence from prior to the closing date, then PSE will be responsible
6 for those losses. If the independent third-party consultant determines that losses in
7 question were wholly caused by or wholly arose from events or occurrence after
8 the closing date, NorthWestern Energy will be responsible for those losses.⁴²

9 **11. Indemnification**

10 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain**
11 **indemnification provisions?**

12 A. Yes. The Colstrip Unit 4 Purchase and Sale Agreement includes customary
13 indemnification provisions (e.g., indemnification with respect to breaches or
14 inaccuracies in any of the representations, warranties, covenants, agreement, or
15 other obligation of such party).

16 If the closing of the Colstrip Unit 4 Purchase and Sale Agreement occurs, PSE
17 will indemnify NorthWestern Energy for:

- 18 • any failure by PSE to pay, perform or discharge any
19 excluded liability under the agreement;
- 20 • any failure by PSE to pay, perform or discharge any
21 retained liability under the agreement;

⁴² See Roberts, Exh. RJR-5C, at 67; see also Roberts, Exh. RJR-6, at 31-35.

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- any liability, obligation or commitment of PSE relating to the Colstrip 4 Interests not assumed by NorthWestern Energy under the agreement;
- any taxes of, or attributable to, PSE and the Colstrip 4 Interests for all pre-closing periods;
- all transfer taxes;
- any fraud, willful misconduct or gross negligence in connection with the agreement by PSE or its affiliates; or
- any claim by a third-party or liability to a third-party to the extent it seeks to hold NorthWestern Energy responsible for more than the share of any losses set forth in the liability provisions of the Colstrip Unit 4 Purchase and Sale Agreement.⁴³

If the closing of the Colstrip Unit 4 Purchase and Sale Agreement occurs, NorthWestern Energy will indemnify PSE for:

- any failure of NorthWestern Energy to pay, discharge or perform any of the assumed liabilities under the agreement;
- any fraud, willful misconduct or gross negligence in connection with the agreement by NorthWestern Energy; or
- any claim by a third-party or liability to a third-party to the extent it seeks to hold PSE responsible for more than the share of any losses provided for in the liability provisions of the Colstrip Unit 4 Purchase and Sale Agreement.⁴⁴

⁴³ See Roberts, Exh. RJR-5C, at 68; see also Roberts, Exh. RJR-6, at 35-36.

⁴⁴ See Roberts, Exh. RJR-5C, at 68-69; see also Roberts, Exh. RJR-6, at 35.

1 **12. Termination**

2 **Q. What are the termination provisions under the Colstrip Unit 4 Purchase and**
3 **Sale Agreement?**

4 A. The Colstrip Unit 4 Purchase and Sale Agreement may be terminated prior to
5 closing:

- 6 • at any time by mutual written agreement of PSE and
7 NorthWestern Energy; or
- 8 • by either PSE or NorthWestern Energy upon the material
9 breach of the agreement by the other, to be effective, if
10 curable, upon the breaching party's failure to cure within
11 five (5) business days of notice given, and if incurable,
12 upon notice given.⁴⁵

13 Additionally, PSE may generally terminate the Colstrip Unit 4 Purchase and Sale
14 Agreement prior to closing:

- 15 • at any time after any final, non-appealable decision is made
16 by the applicable governmental authority denying any
17 required regulatory approval; or
- 18 • at any time after December 31, 2020, if the Closing has not
19 yet occurred.⁴⁶

20 Finally, NorthWestern Energy may generally terminate the Colstrip Unit 4
21 Purchase and Sale Agreement prior to closing:

- 22 • if a fact, matter, condition, event or circumstance first
23 disclosed in an update from PSE has had or would
24 reasonably be expected to have a material adverse effect;

⁴⁵ See Roberts, Exh. RJR-5C, at 69; see also Roberts, Exh. RJR-6, at 38.

⁴⁶ See Roberts, Exh. RJR-5C, at 69; see also Roberts, Exh. RJR-6, at 39.

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- at any time after any final, non-appealable decision is made by the applicable governmental authority denying any required regulatory approval;
- at any time after December 31, 2020, if the Closing has not yet occurred;
- at any time after December 31, 2020, if any order or decree by any federal or state court or governmental authority exists which would delay or otherwise impair the consummation of the sale of the Colstrip 4 Interests;
- at any time if any other Colstrip owner exercises a right of first refusal offered to it by PSE (pursuant to the terms of the Ownership and Operations Agreement); or
- if PSE has failed to deliver to NorthWestern Energy the Right of First Refusal Resolution Notice within the time specified in the Colstrip Unit 4 Purchase and Sale Agreement.⁴⁷

Q. What will occur in the event of a termination of the Colstrip Unit 4 Purchase and Sale Agreement?

A. In the event of termination of the Colstrip Unit 4 Purchase and Sale Agreement pursuant to its terms,

- all filings, applications and other submissions made to any governmental authority shall, to the extent practicable, be withdrawn from the governmental authority to which they were made; and
- except for those access and confidentiality obligations set forth in the access and confidentiality provisions of the agreement, neither PSE nor NorthWestern Energy shall have any further obligation under the agreement.

There shall be no liability of any shareholder, partner, member, director, officer, employee, advisor or representative of PSE or NorthWestern Energy or any

⁴⁷ See Roberts, Exh. RJR-5C, at 69-70; see also Roberts, Exh. RJR-6, at 38-39.

1 affiliate thereof or any other person (including any shareholder, partner, member,
2 director, officer, employee, advisor or representative thereof) in connection with
3 any liability or other obligation of PSE or NorthWestern Energy or any affiliate
4 thereof, whether under the Colstrip Unit 4 Purchase and Sale Agreement or
5 otherwise in connection with the transactions contemplated by the Colstrip Unit 4
6 Purchase and Sale Agreement.⁴⁸

7 **13. Dispute Resolution**

8 **Q. Does the Colstrip Unit 4 Purchase and Sale Agreement contain dispute**
9 **resolution provisions?**

10 A. Yes. In the event of a dispute between PSE or NorthWestern Energy under the
11 Colstrip Unit 4 Purchase and Sale Agreement, the parties will attempt to settle
12 such dispute by mutual discussions. If any dispute is not resolved within
13 thirty (30) days of receipt of a dispute notice, then, upon either party's request, the
14 dispute shall be finally and exclusively resolved by arbitration. The arbitration
15 shall be held in accordance with the Commercial Arbitration Rules of the
16 American Arbitration Association, then in effect, except as modified by the
17 Colstrip Unit 4 Purchase and Sale Agreement. The arbitration shall be held, and
18 the award shall be issued in Chicago, Illinois.

19 Any arbitrator appointed shall be a retired judge, preferably from a Federal
20 District Court or Federal Court of Appeals, or a practicing attorney with no less
21 than twenty (20) years of experience and an experienced arbitrator and, if

⁴⁸ See Roberts, Exh. RJR-5C, at 70-71; see also Roberts, Exh. RJR-6, at 39-40.

1 possible, shall have experience with disputes relating to electric power
2 infrastructure. The arbitrator is not empowered to award damages in excess of
3 compensatory damages, and each party hereby irrevocably waives any right to
4 recover consequential, punitive, exemplary or similar damages with respect to any
5 dispute. The arbitrator's award shall allocate all costs of the arbitration, including
6 the fees and expenses of the arbitrator and reasonable attorneys' fees, costs, and
7 expert witness expenses of the parties. The award shall be final and binding on the
8 Parties and may be enforced in any court having jurisdiction.⁴⁹

9 **14. Governing Law**

10 **Q. What is the governing law under the Colstrip Unit 4 Purchase and Sale**
11 **Agreement?**

12 A. The Colstrip Unit 4 Purchase and Sale Agreement is to be governed by, enforced,
13 and interpreted in accordance with the laws of the State of Delaware without
14 regard to principles of conflicts of laws.⁵⁰

15 **15. The Vote Sharing Agreement**

16 **Q. Please describe the Vote Sharing Agreement.**

17 A. The Vote Sharing Agreement is attached as Exhibit F to the Colstrip Unit 4
18 Purchase and Sale Agreement.⁵¹ The Vote Sharing Agreement governs each of
19 PSE's and NorthWestern Energy's respective voting obligations under the

⁴⁹ See Roberts, Exh. RJR-5C, at 71; see also Roberts, Exh. RJR-6, at 40-41.

⁵⁰ See Roberts, Exh. RJR-5C, at 72; see also Roberts, Exh. RJR-6, at 41-42.

⁵¹ See Roberts, Exh. RJR-6C, at 61-75.

1 Colstrip Units 3 & 4 Ownership and Operation Agreement with respect to
2 (i) PSE's retained undivided interest in Colstrip Unit 3 and (ii) NorthWestern
3 Energy's undivided interest in Colstrip Unit 4 acquired from PSE (but excluding
4 NorthWestern Energy's preexisting interest in Colstrip Unit 4 (together,
5 the "Shared Vote"). In general, the Vote Sharing Agreement provides that,
6 depending on the issue on which votes are required under the Colstrip Unit 4
7 Purchase and Sale Agreement, the Shared Vote would be cast by the PSE
8 representative or the NorthWestern Energy Representative.

9 **Q. On what issues would the PSE representative cast the Shared Vote under the**
10 **Vote Sharing Agreement?**

11 A. The Vote Sharing Agreement generally provides that the PSE representative will
12 cast the Shared Vote with respect to the following issues:

- 13 (i) a Colstrip 3 Proposal;⁵²
14 (ii) a Unit 3 Budget Proposal;⁵³
15 (iii) a Unit 3 Decommissioning Proposal;⁵⁴ and

⁵² See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase "Colstrip 3 Proposal" as "a Proposal, other than a Unit 3 Decommissioning Proposal or Remediation Proposal that relates primarily to Colstrip Unit 3, but not to Proposals concerning Common Facilities." See *id.* at 62.

⁵³ See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase "Unit 3 Budget Proposal" as "a Proposal regarding the Project's budget for a year during which Unit 3 is the only unit at the Project for which there is a planned maintenance outage, or, if both Unit 3 and Unit 4 have planned maintenance outages during a given year, a Proposal regarding the Project's budget for that year if the scheduled duration of the planned maintenance outage for Unit 3 is longer than the scheduled duration of the planned maintenance outage for Unit 4." See *id.* at 64.

⁵⁴ See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase "Unit 3 Decommissioning Proposal" as "a Proposal regarding the decommissioning, mothballing, closure, retirement, deactivation, shut down, deconstruction, removal, or demolition of all or a portion of Colstrip Unit 3." See *id.* at 64.

1 (iv) a Remediation Proposal.⁵⁵

2 **Q. On what issues would the NorthWestern Energy representative cast the**
3 **Shared Vote under the Vote Sharing Agreement?**

4 A. The Vote Sharing Agreement generally provides that the NorthWestern Energy
5 representative will cast the Shared Vote with respect to the following issues:

6 (i) a Colstrip 4 Proposal;⁵⁶

7 (ii) a Mixed Proposal;⁵⁷

8 (iii) a Unit 4 Budget Proposal;⁵⁸ and

9 (iv) a Unit 4 Decommissioning Proposal.⁵⁹

⁵⁵ See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Remediation Proposal” as “a Proposal primarily concerning the remediation of ground water or soil contamination located at Colstrip Unit 3 or Colstrip Unit 4 as required under applicable Laws.” See *id.* at 64.

⁵⁶ See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase “Colstrip 4 Proposal” as “a Proposal, other than a Unit 3 Decommissioning Proposal or Remediation Proposal that relates primarily to Colstrip Unit 4, but not to Proposals concerning Common Facilities.” See *id.* at 62.

⁵⁷ See Roberts, Exh. RJR-6, at 67. The Vote Sharing Agreement defines the phrase “Mixed Proposal” as “a Proposal that is not a Colstrip 3 Proposal, Colstrip 4 Proposal, Unit 4 Decommissioning Proposal, Unit 3 Decommissioning Proposal, Unit 3 Budget Proposal, Unit 4 Budget Proposal, or a Remediation Proposal. Mixed Proposal includes, but is not limited to, budget proposals for years for which there are no planned maintenance outages and budget proposals for years for which there are planned maintenance outages for both Unit 3 and Unit 4 which are of the exact same scheduled duration.” See *id.* at 63.

⁵⁸ See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Unit 4 Budget Proposal” as “a Proposal regarding the Project’s budget for a year during which Colstrip Unit 4 is the only unit at the Project for which there is a planned maintenance outage, or, if both Unit 3 and Unit 4 have planned maintenance outages during a given year, a Proposal regarding the Project’s budget for that year if the scheduled duration of the planned maintenance outage for Unit 4 is longer than the scheduled duration of the planned maintenance outage for Unit 3.” See *id.* at 64.

⁵⁹ See Roberts, Exh. RJR-6, at 68. The Vote Sharing Agreement defines the phrase “Unit 4 Decommissioning Proposal” as “a Proposal regarding the decommissioning, mothballing, closure, retirement, deactivation, shut down, deconstruction, removal, or demolition of all or a portion of Colstrip Unit 4.” See *id.* at 64.

1 **16. Importance of the Vote Sharing Agreement to PSE**

2 **Q. Why is the Vote Sharing Agreement important to PSE?**

3 A. The Vote Sharing Agreement is important to PSE because it provides certainty
4 with respect to ambiguities within the Colstrip Units 3 & 4 Ownership and
5 Operation Agreement that could have created difficulties for the owners of
6 Colstrip Unit 3 to decommission and remediate that unit at the appropriate time.
7 The Colstrip Units 3 & 4 Ownership and Operation Agreement contains
8 provisions that determine the percentage vote required by the Colstrip Units 3 & 4
9 Project Committee on various matters, none of which address closure or
10 decommissioning of a unit. Arguments could be made that any decision regarding
11 the closure or decommissioning of one or both units must be unanimous.
12 NorthWestern Energy would likely be the owner with the most difficulty
13 approving the closure or decommissioning of Colstrip Unit 3 due to political and
14 economic pressures in the State of Montana. At best, the owners of Colstrip
15 Unit 3 & 4 would have been subject to potentially lengthy and costly litigation to
16 determine the question whether unanimous consent were required under the
17 Colstrip Units 3 & 4 Ownership and Operation Agreement to close or
18 decommission Colstrip Unit 3. At worst, NorthWestern Energy could have had a
19 *de facto* veto for any decision to close or decommission Colstrip Unit 3, even if
20 all of the entities with an ownership interest in the unit thought that closure and
21 decommissioning were appropriate.

1 The Vote Sharing Agreement resolves this ambiguity by providing PSE the sole
2 right to vote the Shared Vote on any issue with respect to a Unit 3
3 Decommissioning Proposal. This provision effectively removes any “veto right”
4 of NorthWestern Energy under the Colstrip Units 3 & 4 Ownership and Operation
5 Agreement with respect to any vote regarding the closure and decommissioning
6 of Colstrip Unit 3, when the time is appropriate.

7 **B. The Colstrip Transmission System Purchase and Sale Agreement**

8 **Q. Please provide an overview of the Colstrip Transmission System Purchase**
9 **and Sale Agreement.**

10 A. The Colstrip Transmission System Purchase and Sale Agreement proposes the
11 sale by PSE and purchase by NorthWestern Energy of the following assets, free
12 and clear of all liens other than certain permitted liens:

13 (i) Puget Transmission Assets. The Puget Transmission
14 Assets, which consist of the following:

15 (a) Initial Purchase Assets. The Initial Purchase Assets,
16 which consist of an undivided interest in PSE’s
17 interest in the Colstrip Transmission System
18 representing not less than 95 MW, consisting of not
19 less than a four and 2/10ths percent (4.2%) interest
20 in the Colstrip-to-Broadview segment and a four
21 and 9/10ths percent (4.9%) interest in the
22 Broadview-to-Townsend segment of the Colstrip
23 Transmission System (the “Initial Purchase
24 Assets”).

25 (b) Option Assets. The Option Assets, which consist of
26 an option of NorthWestern Energy to acquire an
27 undivided ownership interest in PSE’s interest in
28 the Colstrip Transmission System representing not
29 less than 90 MW, consisting of not less than a four
30 percent (4%) interest in the Colstrip-to-Broadview

1 segment and a four and 2/10ths percent (4.2%)
2 interest in the Broadview-to-Townsend segment of
3 the Colstrip Transmission System (the “Option
4 Assets”).

5 (ii) Puget Transmission Assets Real Property Interests. PSE
6 will transfer to NorthWestern Energy the portion of PSE’s
7 real property rights associated with the Puget Transmission
8 Assets (the “Puget Transmission Assets Real Property
9 Interests”); and

10 (iii) Puget Transmission Assets Material Contract Interests. PSE
11 will transfer to NorthWestern Energy the portion of PSE’s
12 rights under the contracts, leases, and agreements related to
13 the Puget Transmission Assets (the “Puget Transmission
14 Assets Material Contract Interests”).⁶⁰

15 **1. Assets and Liabilities Retained by PSE**

16 **Q. Will PSE retain any assets and liabilities under the Colstrip Transmission**
17 **System Purchase and Sale Agreement?**

18 **A.** Yes. PSE will retain the following assets and liabilities under the terms and
19 conditions of the Colstrip Transmission System Purchase and Sale Agreement:

- 20 (i) all of PSE’s interest in the Colstrip Transmission System
21 other than the Puget Transmission Assets;
- 22 (ii) claims arising out of liabilities occurring prior to closing,
23 including environmental liabilities;
- 24 (iii) any obligation or liability related to or arising out of any of
25 the excluded assets;
- 26 (iv) any obligation or liability related to or arising out of (a) any
27 real property lease or sublease not included in the Puget
28 Transmission Assets Real Property Interests and (b) any
29 contract not included in the Puget Transmission Assets
30 Material Contract Interests;

⁶⁰ See Roberts, Exh. RJR-5C, at 72-73; see also Roberts, Exh. RJR-7, at 15.

- 1 (v) any obligation or liability related to or arising out of any
2 Puget Transmission Assets Real Property Interests or Puget
3 Transmission Assets Material Contract Interests to the
4 extent such obligation or liability relates to or arises out of
5 the time period prior to closing;
- 6 (vi) any obligation or liability related to or arising out of actions
7 pending as of closing against PSE or its affiliates;
- 8 (vii) any obligation or liability related to or arising out of the
9 PSE's conduct of the business or ownership of the Puget
10 Transmission Assets prior to closing;
- 11 (viii) any ERISA Affiliate liability or any obligation or liability
12 related to or arising out of any collective bargaining
13 agreement of PSE, whether prior to, on or after closing;
- 14 (ix) any obligation or liability of any kind or nature relating to
15 (a) taxes of PSE and (b) taxes related to PSE's conduct of
16 the business or ownership of the Puget Transmission Assets
17 prior to closing; and
- 18 (x) any obligation or liability of PSE for any debt.⁶¹

19 **2. Purchase Price**

20 **Q. What is the purchase price for the Puget Transmission Assets under the**
21 **Colstrip Transmission System Purchase and Sale Agreement?**

22 A. At least three business days prior to the closing for the acquisition of each of the
23 Initial Purchase Assets and the Option Assets, PSE will deliver to NorthWestern
24 Energy a calculation of the depreciated net book value of the Initial Assets and the
25 Option Assets, respectively. The purchase price for the Initial Purchase Assets
26 will be the depreciated net book value of the Initial Assets, and the purchase price

⁶¹ See Roberts, Exh. RJR-5C, at 73-74; see also Roberts, Exh. RJR-7, at 15-16.

1 for the Options Assets will be the depreciated net book value of the Options
2 Assets.⁶²

3 **3. Allocation of Purchase Price**

4 **Q. How will the Purchase Price be allocated under the Colstrip Transmission**
5 **System Purchase and Sale Agreement?**

6 A. The allocation of the purchase price will be allocated in compliance with
7 section 1060 of the Internal Revenue Code. NorthWestern Energy will prepare an
8 allocation schedule setting forth NorthWestern Energy's determination of the
9 allocation within thirty (30) days after closing. If PSE objects to any item of the
10 schedule, it must provide written objection to NorthWestern Energy within
11 ten (10) days of receipt of the schedule. If PSE does not timely object to the
12 schedule, PSE shall be deemed to have approved the schedule. If the parties are
13 unable to resolve any such dispute within fifteen (15) days after NorthWestern
14 Energy's receipt of PSE's written objection to the schedule, the dispute will be
15 submitted to an independent accounting firm for a final and binding
16 determination.⁶³

⁶² See Roberts, Exh. RJR-5C, at 74; see also Roberts, Exh. RJR-7, at 16.

⁶³ See Roberts, Exh. RJR-5C, at 74-75; see also Roberts, Exh. RJR-7, at 17.

1 **4. Assumption of Liabilities by NorthWestern Energy**

2 **Q. What liabilities will NorthWestern Energy assume under the Colstrip**
3 **Transmission System Purchase and Sale Agreement?**

4 A. NorthWestern Energy will assume the liabilities and obligations of PSE related to
5 the Puget Transmission Assets acquired at closing, including those liabilities and
6 obligations contained in the Puget Transmission Assets Material Contracts
7 Interests, but solely with respect to liabilities or obligations arising after closing.⁶⁴

8 **5. Real Property Taxes**

9 **Q. Will PSE be responsible for real property taxes under the Colstrip**
10 **Transmission System Purchase and Sale Agreement?**

11 A. Yes. PSE will be responsible for all real property taxes imposed on or with
12 respect to the Puget Transmission Assets Real Property Interests for all tax
13 periods ending on or prior to closing. Any real property tax reductions or refunds
14 for or relating to a period prior to closing will be for the account of PSE. If
15 NorthWestern Energy receives a property tax refund or credit with respect to the
16 Puget Transmission Assets Real Property Interests for or relating to a period prior
17 to closing, NorthWestern Energy will remit to PSE the portion of such refund or
18 credit relating to the period prior to closing.⁶⁵

⁶⁴ See Roberts, Exh. RJR-5C, at 75; see also Roberts, Exh. RJR-7, at 17.

⁶⁵ See Roberts, Exh. RJR-5C, at 75; see also Roberts, Exh. RJR-7, at 17-18.

1 **6. Conditions Precedent to Closing on the Initial Purchase Assets**

2 **Q. Are there conditions precedent to closing on the sale of the Initial Purchase**
3 **Assets?**

4 A. Yes. The Colstrip Transmission System Purchase and Sale Agreement includes
5 customary conditions precedent, including delivery of certain documentation, the
6 representations, and warranties of the parties remain true and correct as of closing,
7 the delivery of necessary consents, no order or decree of a court or governmental
8 authority has been issued that would prevent closing, termination of all liens
9 except permitted liens, payment of the purchase price, and no event causing or
10 constituting a material adverse effect has occurred or is occurring. Additional
11 conditions precedent include the following:

- 12 (i) delivery of the purchase price for the Initial Purchase
13 Assets by NorthWestern Energy;
- 14 (ii) execution of the Colstrip Unit 4 Purchase and Sale
15 Agreement by both parties;
- 16 (iii) all other owners of the Colstrip Transmission System have
17 either declined to exercise or executed a waiver of their
18 rights of first refusal contained in Section 28 of the Colstrip
19 Project Transmission Agreement;
- 20 (iv) approval of NorthWestern Energy's acquisition of the
21 Initial Purchase Assets by FERC;
- 22 (v) approval of NorthWestern Energy's acquisition of the
23 Initial Purchase Assets by the Montana Public Service
24 Commission; and
- 25 (vi) approval of PSE's sale of the Initial Purchase Assets by this
26 Commission.⁶⁶

⁶⁶ See Roberts, Exh. RJR-5C, at 75-76; see also Roberts, Exh. RJR-7, at 20-21.

1 7. **Conditions Precedent to Closing on the Option Assets**

2 **Q. Are there conditions precedent to closing on the sale of the Option Assets?**

3 A. Yes. The Colstrip Transmission System Purchase and Sale Agreement includes
4 customary conditions precedent, including delivery of certain documentation, the
5 representations, and warranties of the parties remain true and correct as of closing,
6 the delivery of necessary consents, no order or decree of a court or governmental
7 authority has been issued that would prevent closing, termination of all liens
8 except permitted liens, payment of the purchase price, and no event causing or
9 constituting a material adverse effect has occurred or is occurring. Additional
10 conditions precedent include the following:

- 11 (i) delivery of the purchase price for the Option Assets by
12 NorthWestern Energy;
- 13 (ii) approval of NorthWestern Energy's acquisition of the
14 Option Assets by FERC;
- 15 (iii) approval of NorthWestern Energy's acquisition of the
16 Option Assets by the Montana Public Service Commission;
17 and
- 18 (iv) approval of PSE's sale of the Option Assets by this
19 Commission.⁶⁷

⁶⁷ See Roberts, Exh. RJR-5C, at 76-77; see also Roberts, Exh. RJR-7, at 23-24.

1 **8. Representations and Warranties of PSE**

2 **Q. What representations and warranties will PSE make under the Colstrip**
3 **Transmission System Purchase and Sale Agreement?**

4 A. The Colstrip Transmission System Purchase and Sale Agreement includes
5 customary representations and warranties provisions for PSE, including the
6 following customary representations and warranties: (i) organization and good
7 standing; (ii) authority; (iii) enforceability; (iv) title to Puget Transmission Assets;
8 (v) no violation or breach; (vi) consents; (vii) material contracts; (viii) actions
9 pending; (ix) compliance with laws; (x) real property; (xi) material changes;
10 (xii) no brokerage fees or commissions; (xiii) no bankruptcy; (xiv) tax matters;
11 (xv) material contracts; (xvi) licenses; (xvii) insurance; (xviii) environmental
12 matters; (xix) no employees or benefits plans; (xx) labor matters; (xxi) intellectual
13 property; (xxii) books and records; (xxiii) no options; (xxiv) no undisclosed
14 liabilities; (xxv) Puget Transmission Assets operations; and (xxvi) affiliate
15 transactions.⁶⁸

16 **9. Representations and Warranties of NorthWestern Energy**

17 **Q. What representations and warranties will NorthWestern Energy make under**
18 **the Colstrip Transmission System Purchase and Sale Agreement?**

19 A. The Colstrip Transmission System Purchase and Sale Agreement includes
20 customary representations and warranties provisions for NorthWestern Energy,
21 including the following customary representations and warranties: (i) organization

⁶⁸ See Roberts, Exh. RJR-5C, at 77-80; see also Roberts, Exh. RJR-7, at 25-30.

1 and good standing; (ii) authority; (iii) enforceability; (iv) no violation or breach;
2 (v) consents; (vi) no disputes; (vii) no brokerage fees or commissions; (viii) no
3 bankruptcy; (ix) regulatory matters.⁶⁹

4 **10. Access**

5 **Q. What access rights does NorthWestern Energy have under the Colstrip**
6 **Transmission System Purchase and Sale Agreement?**

7 A. PSE agrees (i) to cooperate in facilitating reasonable access to PSE's records,
8 personnel, offices and other facilities and properties related to the Puget
9 Transmission Assets; (ii) to permit NorthWestern Energy to make copies and
10 inspections of records as reasonably requested, and (iii) furnish NorthWestern
11 Energy with financial and operating data and other information with respect to the
12 Puget Transmission Assets as NorthWestern Energy may from time to time
13 reasonably request.⁷⁰

14 **11. Confidentiality**

15 **Q. Does the Colstrip Transmission System Purchase and Sale Agreement**
16 **contain confidentiality provisions?**

17 A. Yes. Each party agrees to maintain in confidence all information made available
18 to it under the Colstrip Transmission System Purchase and Sale Agreement and to
19 cause their respective officers, directors, agents, employees, representatives,
20 consultants, and advisors to maintain in confidence all information made available

⁶⁹ See Roberts, Exh. RJR-5C, at 80-82; see also Roberts, Exh. RJR-7, at 31-32.

⁷⁰ See Roberts, Exh. RJR-5C, at 82; see also Roberts, Exh. RJR-7, at 32-33.

1 to them under the Colstrip Transmission System Purchase and Sale Agreement,
2 all as provided in the Mutual Non-Disclosure Agreement, dated July 19, 2019,
3 between PSE and NorthWestern Energy.⁷¹

4 **12. Covenants**

5 **Q. What covenants do each party make under the Colstrip Transmission**
6 **System Purchase and Sale Agreement?**

7 A. The Colstrip Transmission System Purchase and Sale Agreement includes
8 customary covenants of PSE and NorthWestern Energy, including the following:
9 (i) exclusivity; (ii) conduct of business; (iii) public announcements; (iv) actions
10 by parties; (v) further assurances; (vi) records; (vii) amendment of Colstrip
11 Project Transmission Agreement; (viii) privilege; (ix) regulatory and other
12 authorizations and consents filings; (x) required regulatory approvals; (xi) fees
13 and expenses; (xii) tax matters; (xiii) transfer taxes; (xiv) right of first refusal; and
14 (xv) updates to disclosure schedules.⁷²

15 **13. Indemnification**

16 **Q. Does the Colstrip Transmission System Purchase and Sale Agreement**
17 **contain indemnification provisions?**

18 A. Yes. The Colstrip Transmission System Purchase and Sale Agreement includes
19 customary indemnification provisions (e.g., indemnification with respect to

⁷¹ See Roberts, Exh. RJR-5C, at 82; *see also* Roberts, Exh. RJR-7, at 33.

⁷² See Roberts, Exh. RJR-5C, at 82-85; *see also* Roberts, Exh. RJR-7, at 33-39.

1 breaches or inaccuracies in any of the representations, warranties, covenants,
2 agreement, or other obligation of such party).

3 If the closing of the Colstrip Transmission System Purchase and Sale Agreement
4 occurs, PSE will indemnify NorthWestern Energy for:

- 5 • any failure by PSE to pay, perform or discharge any
6 excluded liability under the agreement;
- 7 • any failure by PSE to pay, perform or discharge any
8 retained liability under the agreement;
- 9 • any liability, obligation or commitment of PSE relating to
10 the Puget Transmission Assets not assumed by
11 NorthWestern Energy under the agreement;
- 12 • any taxes of, or attributable to, PSE and the Puget
13 Transmission Assets for all pre-closing periods;
- 14 • all transfer taxes; or
- 15 • any fraud, willful misconduct, or gross negligence in connection
16 with the agreement by PSE or its affiliates.⁷³

17 If the closing of the Colstrip Transmission System Purchase and Sale Agreement
18 occurs, NorthWestern Energy will indemnify PSE for:

- 19 • any failure by NorthWestern Energy to pay, perform or
20 discharge any assumed liability under the agreement; or
- 21 • any fraud, willful misconduct or gross negligence in
22 connection with the agreement by NorthWestern Energy.⁷⁴

23 Neither party may not make a claim for indemnification until the total damages
24 for which such party exceeds in the aggregate a threshold amount equal to one

⁷³ See Roberts, Exh. RJR-5C, at 86; see also Roberts, Exh. RJR-7, at 39-40.

⁷⁴ See Roberts, Exh. RJR-5C, at 86; see also Roberts, Exh. RJR-7, at 40.

1 percent (1%) of the purchase price for the Initial Purchase Assets or the purchase
2 price for the Option Assets, as applicable, and, once such amount is exceeded,
3 indemnification may be sought for the full aggregate amount of damages. The
4 aggregate damages for which PSE may be subject to claims of indemnification
5 related to breaches of representations and warranties cannot exceed fifteen
6 percent (15%) of the purchase price for the Initial Purchase Assets or the purchase
7 price for the Option Assets, as applicable. The aggregate damages for which
8 NorthWestern Energy may be subject to claims of indemnification related to
9 breaches of representations and warranties cannot exceed ten percent (10%) of the
10 purchase price for the Initial Purchase Assets or the purchase price for the Option
11 Assets, as applicable.⁷⁵

12 **14. Termination**

13 **Q. What are the termination provisions under the Colstrip Transmission**
14 **System Purchase and Sale Agreement?**

15 A. The Colstrip Transmission System Purchase and Sale Agreement may be
16 terminated prior to closing:

- 17 • at any time by mutual written agreement of PSE and
18 NorthWestern Energy; or
- 19 • by either PSE or NorthWestern Energy upon the material
20 breach of the agreement by the other, to be effective, if
21 curable, upon the breaching party's failure to cure within
22 five (5) business days of notice given, and if incurable,
23 upon notice given.⁷⁶

⁷⁵ See Roberts, Exh. RJR-5C, at 87; see also Roberts, Exh. RJR-7, at 42-44.

⁷⁶ See Roberts, Exh. RJR-5C, at 87; see also Roberts, Exh. RJR-7, at 44.

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PSE may generally terminate the Colstrip Transmission System Purchase and Sale

Agreement prior to closing:

- at any time after any final, non-appealable decision is made by the applicable governmental authority denying any required regulatory approval; or
- at any time after December 31, 2020, if the closing has not yet occurred.⁷⁷

PSE may generally terminate the Colstrip Transmission System Purchase and Sale

Agreement prior to closing:

- if a fact, matter, condition, event or circumstance first disclosed in an update from NorthWestern Energy has had or would reasonably be expected to have a material adverse effect;
- at any time after any final, non-appealable decision is made by the applicable governmental authority denying any required regulatory approval;
- at any time after December 31, 2020, if the Closing has not yet occurred;
- at any time after December 31, 2020, if any order or decree by any federal or state court or governmental authority exists which would delay or otherwise impair the consummation of the sale of the Puget Transmission Assets;
- at any time if any other owner of the Colstrip Transmission System exercises a right of first refusal offered to it by PSE (pursuant to the terms of the Colstrip Project Transmission Agreement); or

⁷⁷ See Roberts, Exh. RJR-5C, at 88; see also Roberts, Exh. RJR-7, at 44.

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- if NorthWestern Energy has failed to deliver to PSE the Right of First Refusal Resolution Notice within the time specified in the Colstrip Transmission System Purchase and Sale Agreement.⁷⁸

In the event of termination of the Colstrip Transmission System Purchase and Sale Agreement pursuant to its terms,

- all filings, applications and other submissions made to any governmental authority shall, to the extent practicable, be withdrawn from the governmental authority to which they were made; and
- except for those access and confidentiality obligations set forth in the access and confidentiality provisions of the agreement, neither PSE nor NorthWestern Energy shall have any further obligation under the agreement.

There shall be no liability of any shareholder, partner, member, director, officer, employee, advisor or representative of PSE or NorthWestern Energy or any affiliate thereof or any other person (including any shareholder, partner, member, director, officer, employee, advisor or representative thereof) in connection with any liability or other obligation of PSE or NorthWestern Energy or any affiliate thereof, whether under the Colstrip Transmission System Purchase and Sale Agreement or otherwise in connection with the transactions contemplated by the Colstrip Transmission System Purchase and Sale Agreement.⁷⁹

⁷⁸ See Roberts, Exh. RJR-5C, at 88; see also Roberts, Exh. RJR-7, at 44-45.
⁷⁹ See Roberts, Exh. RJR-5C, at 89; see also Roberts, Exh. RJR-7, at 45.

1 **15. Dispute Resolution**

2 **Q. Does the Colstrip Transmission System Purchase and Sale Agreement**
3 **contain dispute resolution provisions?**

4 A. Yes. In the event of a dispute between PSE or NorthWestern Energy under the
5 Colstrip Transmission System Purchase and Sale Agreement, the parties will
6 attempt to settle such dispute by mutual discussions. If any dispute is not resolved
7 within thirty (30) days of receipt of a dispute notice, then, upon either party's
8 request, the dispute shall be finally and exclusively resolved by arbitration. The
9 arbitration shall be held in accordance with the Commercial Arbitration Rules of
10 the American Arbitration Association, then in effect, except as modified by the
11 Colstrip Transmission System Purchase and Sale Agreement. The arbitration shall
12 be held, and the award shall be issued in Chicago, Illinois.

13 Any arbitrator appointed shall be a retired judge, preferably from a Federal
14 District Court or Federal Court of Appeals, or a practicing attorney with no less
15 than twenty (20) years of experience and an experienced arbitrator and, if
16 possible, shall have experience with disputes relating to electric power
17 infrastructure. The arbitrator is not empowered to award damages in excess of
18 compensatory damages, and each party hereby irrevocably waives any right to
19 recover consequential, punitive, exemplary or similar damages with respect to any
20 dispute. The arbitrator's award shall allocate all costs of the arbitration, including
21 the fees and expenses of the arbitrator and reasonable attorneys' fees, costs, and

1 expert witness expenses of the parties. The award shall be final and binding on the
2 Parties and may be enforced in any court having jurisdiction.⁸⁰

3 **16. Governing Law**

4 **Q. What is the governing law under the Colstrip Transmission System Purchase
5 and Sale Agreement?**

6 A. The Colstrip Transmission System Purchase and Sale Agreement is to be
7 governed by, enforced, and interpreted in accordance with the laws of the State of
8 Delaware without regard to principles of conflicts of laws.⁸¹

9 **C. The NorthWestern Energy PPA**

10 **Q. Please provide an overview of the NorthWestern Energy PPA.**

11 A. The parties have agreed upon to use the WSPP Agreement as the master
12 agreement from PSE's purchases of power from NorthWestern Energy from
13 Colstrip Unit 4 through May 15, 2025. The principal commercial terms of the
14 WSPP Agreement are summarized below.

15 **Q. What is the WSPP Agreement?**

16 A. The WSPP Agreement represents a standardized default contract for electric
17 power sales and physical options. If the parties to a WSPP transaction do not
18 mutually agree to changes to the WSPP Agreement, the terms of the WSPP
19 Agreement will control. The WSPP Agreement, however, provides parties with

⁸⁰ See Roberts, Exh. RJR-5C, at 89-90; see also Roberts, Exh. RJR-7, at 45-47.

⁸¹ See Roberts, Exh. RJR-5C, at 91; see also Roberts, Exh. RJR-7, at 47.

1 the flexibility on the major terms to modify the agreement, by their mutual
2 agreement, to be applied to any WSPP transaction, as discussed below. The
3 WSPP Agreement, by its terms, only applies to transactions between WSPP
4 members, such as PSE and NorthWestern Energy.⁸²

5 **Q. What is a confirmation under the WSPP Agreement?**

6 A. As previously mentioned, the WSPP Agreement provides default standardized
7 contract provisions for electric power sales and physical options, but parties to a
8 transaction have the flexibility to modify the agreement, by their mutual
9 agreement. Confirmation agreements include the specific terms to the transaction,
10 including changes to the base WSPP Agreement to which the parties mutually
11 agree.⁸³

12 PSE and NorthWestern Energy have agreed upon a confirmation, the principal
13 commercial terms of which are summarized below.

⁸² See Roberts, Exh. RJR-5C, at 91-96; see also WSPP, *WSPP Agreement Description*, available at <https://www.wspp.org/pages/Agreement.aspx>; WSPP, *WSPP Agreement*, available at http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx.

⁸³ See Roberts, Exh. RJR-5C, at 96; see also WSPP, *WSPP Agreement Description*, available at <https://www.wspp.org/pages/Agreement.aspx>; WSPP, *WSPP Agreement*, available at http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx.

1 **1. Term**

2 **Q. What is the term of the NorthWestern Energy PPA?**

3 A. The term of the confirmation requires deliveries of power to PSE from Colstrip
4 Unit 4 commencing on the hour ending 0100 on June 1, 2020, through hour
5 ending 2400 on May 15, 2025. This term is less than five (5) years.⁸⁴

6 **2. Delivery Point**

7 **Q. What is the delivery point under the NorthWestern Energy PPA?**

8 A. The delivery point under the NorthWestern Energy PPA is the high side of the
9 500 kV bus for Colstrip Unit 4 in the Colstrip Switchyard, or, at NorthWestern
10 Energy's option and with prior notice to PSE, at Mid-C. For deliveries to the
11 500 kV bus for Colstrip Unit 4, PSE will use its existing transmission rights on
12 the Colstrip Transmission System to deliver the power to PSE's retail
13 customers.⁸⁵

14 **3. Product**

15 **Q. What is the product under the NorthWestern Energy PPA?**

16 A. The WSPP Agreement sets forth three basic produces in its service schedules.
17 PSE and NorthWestern Energy have agreed to use Service Schedule B (Unit
18 Commitment Service), which is a sale from a specified unit (i.e., Colstrip Unit 4)

⁸⁴ See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

⁸⁵ See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

1 for a specified period (through May 15, 2025). Other than through force majeure,
2 Unit Commitment Service may be curtailed based upon the following conditions:

- 3 • upon mutually agreed upon recall provisions;
- 4 • when all or a portion of the specified unit is unavailable;
- 5 • to prevent system separation during an emergency
6 (provided that prudent alternatives to curtailment have been
7 exhausted);
- 8 • for the seller (i.e., NorthWestern Energy) to meet its public
9 utility or statutory obligations; or
- 10 • due to the unavailability of transmission service.

11 The stipulated damages provision applies to failures to deliver or to take Service
12 Schedule B power unless the parties agree otherwise.⁸⁶

13 **4. Contract Quantity**

14 **Q. What is the contract quantity under the NorthWestern Energy PPA?**

15 A. The contract quantity under the NorthWestern Energy PPA is up to
16 ninety (90) MW per hour.⁸⁷

17 **5. Contract Price**

18 **Q. What is the contract price under the NorthWestern Energy PPA?**

19 A. Regardless of the delivery point, the contract price under the NorthWestern
20 Energy PPA is the higher of (i) the Mid C Day-Ahead Index Price for on-peak

⁸⁶ See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1; WSPP, *WSPP Agreement*, available at http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx.

⁸⁷ See Roberts, Exh. RJR-5C, at 97; see also Roberts, Exh. RJR-8C, at 1.

1 and off-peak periods, as applicable, minus O&M Costs (Base) Equivalent and (ii)
2 the Floor Price applicable to such hour. In addition, PSE will pay a monthly
3 payment of 1/12th of the annual O&M Costs (Base).⁸⁸

4 **Q. What is the “Floor Price” under the NorthWestern Energy PPA?**

5 A. The “Floor Price” means, for any hour during the Period of Delivery, a per MWh
6 price calculated in accordance with Exhibit A to the confirmation.⁸⁹

7 **Q. What is the “O&M Costs (Base)” under the NorthWestern Energy PPA?**

8 A. The "O&M Costs (Base)" means the 90 MW share of the O&M Cost (Base) fixed
9 costs as identified and approved annually for Colstrip Units 3 and 4 Budget.⁹⁰

10 **Q. What is the “O&M Costs (Base) Equivalent” under the NorthWestern**
11 **Energy PPA?**

12 A. The “O&M Costs (Base) Equivalent” means the O&M Cost (Base) divided by the
13 annual net generation, as identified and approved annually for Colstrip Units 3
14 and 4 Budget.⁹¹

15 **V. CONCLUSION**

16 **Q. Does this conclude your prefiled direct testimony?**

17 A. Yes.

⁸⁸ See Roberts, Exh. RJR-8C, at 1-2.

⁸⁹ See *id.* at 2.

⁹⁰ See *id.*

⁹¹ See *id.*