

**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

ORDER 02

PREHEARING CONFERENCE  
ORDER

- 1 **NATURE OF PROCEEDING.** On February 19, 2020, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) an Application for an Order Authorizing the Sale of All of PSE's Interests in Colstrip Unit 4 and Certain of PSE's Interests in the Colstrip Transmission System (Application).
- 2 PSE requests that the Commission's order authorize (i) the sale of PSE's interests in Colstrip Unit 4 to NorthWestern Corporation(NorthWestern Energy or Purchaser)<sup>1</sup>; (ii) the sale of certain PSE interests in the Colstrip Transmission System to NorthWestern Energy; (iii) a power purchase agreement between PSE and NorthWestern Energy for 90 MW of the output of Colstrip Unit 4 with a term beginning June 1, 2020, and expiring on May 15, 2025 (Proposed Transactions); and, (iv) the accounting treatment proposed by PSE.
- 3 PSE owns a 25 percent ownership interest in Colstrip Unit 4. NorthWestern Energy is also a co-owner of Colstrip Unit 4, owning a 30 percent ownership interest. The other co-owners of Colstrip Unit 4 are: Avista Corporation, d/b/a Avista Utilities (Avista), which owns a 15 percent ownership interest; PacifiCorp, d/b/a Pacific Power & Light Company

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<sup>1</sup> "NorthWestern Corporation" is the actual business name of the Purchaser. In the Purchase and Sale Agreement, Roberts, Exhibit RJR-6, the Purchaser is also referred to as "Northwestern." In PSE's Application, the Purchaser is predominantly referred to as "NorthWestern Energy," but is also referred to as "NorthWestern Energy Corporation." We adopt, for now, the predominant short form of the Purchaser's name included in PSE's Application.

(PacifiCorp), which owns a 10 percent ownership interest; and, Portland General Electric (PGE), which owns a 20 percent ownership interest.

4 PSE owns a 33 percent share of capacity in the Colstrip-Broadview segment of the Colstrip Transmission System and 39 percent of the Broadview-Townsend segment. NorthWestern Energy is also a co-owner of both segments, owning a 36 percent share of capacity in the Colstrip-Broadview segment of the Colstrip Transmission System and 24 percent of the Broadview-Townsend segment. The other co-owners of the Colstrip Transmission System are: Avista, which owns a 10 percent share of capacity in the Colstrip-Broadview segment of the Colstrip Transmission System and 12 percent of the Broadview-Townsend segment; PacifiCorp, which owns a 7 percent share of capacity in the Colstrip-Broadview segment of the Colstrip Transmission System and 8 percent of the Broadview-Townsend segment; and, PGE, which owns a 14 percent share of capacity in the Colstrip-Broadview segment of the Colstrip Transmission System and 16 percent of the Broadview-Townsend segment.

5 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on March 13, 2020, before Administrative Law Judge Andrew J. O'Connell.

6 **APPEARANCES.** Sheree S. Carson, Jason Kuzma, and David Steele, Perkins Coie LLP, Bellevue, Washington, represent PSE. Lisa W. Gafken, Nina Suetake, and Ann Paisner, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel). Joe Dallas, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).<sup>2</sup> Tyler Pepple and Brent L. Coleman, Davison Van Cleve, P.C., Portland, Oregon, represent AWEC. Irion Sanger, Marie Barlow, and Joni Sliger, Sanger Law P.C., Portland, Oregon, represent the NW Energy Coalition (NVEC) and Renewable Northwest (RNW). Jessica Yarnall Loarie and Andrea Issod, Senior Attorneys Sierra Club Environmental Law Program, Oakland, California, represent Sierra Club. Katherine White Tudor, Olympia, Washington, represents Natural Resources Defense Council (NRDC). David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, and Michael G. Andrea, Senior Counsel, Avista, Spokane, Washington, represent Avista. Ajay Kumar,

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<sup>2</sup> In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Senior Attorney, PacifiCorp, Portland, Oregon, represents PacifiCorp. Loretta I. Mabinton and Douglas C. Tingey, Associate General Counsel, PGE, Portland, Oregon represent PGE. Contact information for the representatives of those granted party status is attached as Appendix A to this Order.

7 **SCOPE OF PROCEEDING.** RCW 80.12.020(1) requires regulated utilities to secure from the Commission an order authorizing the sale of its properties and facilities, which are necessary or useful in the performance of its duties to the public.<sup>3</sup> The Commission will examine whether the utility's proposed transaction is in the public interest. The Commission will deny a utility's application for authorization if it finds the proposed transaction is not consistent with the public interest.<sup>4</sup> Therefore, we examine PSE's Proposed Transactions to determine whether they are consistent with the public interest.

8 **PETITIONS FOR INTERVENTION.** The following organizations filed petitions to intervene:

AWEC	RNW
Sierra Club	Avista
NRDC	PacifiCorp
NWEC	PGE

9 Absent objections to the petitions to intervene filed by AWEC, Sierra Club, NRDC, and NWEC, the Commission finds that these petitioners have established a substantial interest in this proceeding and that their participation will be in the public interest. Although there were no objections to Avista's and PacifiCorp's petitions to intervene, the Commission finds that neither has established a substantial interest in this proceeding, as explained below. The Commission does, however, find that their participation will aid its decision-making in this matter, and is therefore in the public interest. Accordingly, the Commission grants these petitions.

10 PSE objected to the petitions to intervene filed by RNW and PGE. At the prehearing conference, Staff and Public Counsel commented on, but did not oppose, any of the contested petitions. While we find that RNW and PGE have failed to establish a

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<sup>3</sup> WAC 480-143-120.

<sup>4</sup> WAC 480-143-170.

substantial interest in this proceeding, as explained below, we also find their participation will aid our decision-making in this matter and is therefore in the public interest.

11 **Standard of Review.** The Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”<sup>5</sup> Commission rules provide the presiding officer with discretion to grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”<sup>6</sup> In addition, “the presiding officer may impose conditions upon the intervenor’s participation in the proceedings.”<sup>7</sup> To determine whether a petitioner has a substantial interest in the proceeding, the Commission applies a “zone of interest test” that requires the petitioner to demonstrate that there is a nexus between the stated purpose of its intervention and an interest protected by a Washington statute within the Commission’s jurisdiction.<sup>8</sup>

12 We find RNW, Avista, PacifiCorp, and PGE have each failed to establish a substantial interest in this proceeding. Mere co-ownership in the asset of which PSE proposes to sell its ownership interest does not establish a substantial interest within the scope of the Commission’s examination of whether the Proposed Transactions are consistent with the public interest. Likewise, an altruistic desire to ensure the Applicant’s compliance with state law and conservation or renewable energy targets does not establish a substantial interest or one not otherwise represented in this proceeding by Public Counsel and Staff. Nonetheless, because we believe that their participation may aid the Commission in its consideration of this matter, we grant the petitions to intervene filed by RNW, Avista, PacifiCorp, and PGE, finding that each of these petitioners’ participation is in the public interest.

13 In doing so, however, we emphasize that the scope of this proceeding is limited. It concerns the Proposed Transactions and whether they are consistent with the public

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<sup>5</sup> RCW 34.05.443(1).

<sup>6</sup> WAC 480-07-355(3).

<sup>7</sup> RCW 34.05.443(2); *accord* WAC 480-07-355(3).

<sup>8</sup> *In re Joint Application of Verizon Commc’ns, Inc. and Frontier Commc’ns Corp. for an Order Declining to Assert Jurisdiction or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Nw., Inc.*, Docket UT-090842, Order 05, ¶ 14 (Sep. 10, 2009) [hereinafter Docket UT-090842].

interest. It does not concern any contractual rights or obligations between PSE and Avista, PacifiCorp, or PGE. Our authority and jurisdiction in this matter concerns only whether the Proposed Transactions are in the public interest. Avista's, PacifiCorp's, and PGE's input, as co-owners, on how the Proposed Transactions will impact the controlling ownership of Colstrip Unit 4 and the Colstrip Transmission System will aid the Commission's decision making. Their participation is, therefore, in the public interest.

14 Avista and PacifiCorp, in addition to being co-owners, are also electric companies serving Washington customers. Their participation in this proceeding will aid the Commission in determining whether the Proposed Transactions are in the public interest by providing perspective related to the ways in which the Proposed Transactions may affect the interests of Washington ratepayers outside of PSE's service territory.

15 This proceeding does not present an opportunity to promote the commercial interests of any party. While RNW is a nonprofit organization with members that include commercial entities who may compete with PSE, RNW also has expertise in and advocates for renewable energy issues in the Pacific Northwest. We grant RNW's petition to intervene in this matter because we believe its expertise in renewable energy will aid our decision making and is therefore in the public interest. We will not entertain any arguments or issues unrelated to the Proposed Transactions, including any issues that may arise from the commercial interests of RNW's constituents.

16 In the event it becomes clear later in the proceeding that RNW, Avista, PacifiCorp, PGE, or any other intervenors' continued participation is not in the public interest, or that any intervenors' efforts would broaden the scope of the proceeding, the Commission has authority to dismiss that intervenor from this proceeding. In addition, the Commission may strike from the record any discovery requests, testimony, or evidence beyond the scope of or not relevant to this proceeding.<sup>9</sup> We advise all parties to keep all discovery requests, testimony, and evidence relevant to and within the scope of this proceeding.

17 **PROTECTIVE ORDER.** On March 3, 2020, the Commission entered in this docket Order 02, Protective Order with Highly Confidential Provisions.

18 **DISCOVERY.** Discovery will be conducted according to this Order, the procedural schedule attached to this Order as Appendix B, the Protective Order, and the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the

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<sup>9</sup> WAC 480-07-355(4); WAC 480-07-495; WAC 480-07-400(3); *see* WAC 480-07-375.

parties to work cooperatively to avoid having to bring discovery matters forward for formal resolution.

19 No party objects to the Commission making the exchange of data requests and responses with all parties a requirement for discovery in this case. Accordingly, the Commission requires the parties to share every data request and response with all parties, subject to any confidentiality limitations contained in Commission rule or the Protective Order.

20 **PROCEDURAL SCHEDULE.** The Commission conveyed to the parties the limitations it had for scheduling of an evidentiary hearing. With those limitations in mind, the parties presented an agreed procedural schedule at the prehearing conference. Subsequently, the Commission's availability for the evidentiary hearing changed and the presiding officer discussed with the parties secondary dates for the evidentiary hearing. None of the secondary dates were agreed but all parties were available on October 14, 2020, which is one of the few dates on which the Commission is available. The Commission adopts the procedural schedule presented at the prehearing conference, which is attached to this Order as Appendix B, with minor alterations accommodating the Commission's availability for an evidentiary hearing, filing dates in anticipation of the hearing, and briefing.

21 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Documents that include information designated as confidential must comply with the requirements in WAC 480-07-160 and the Protective Order in these dockets.
- (b) The Commission accepts only electronic versions of documents for formal filing. The Commission requires electronic copies to be in searchable pdf format (adobe acrobat or comparable software), or to otherwise comply with WAC 480-07-140(6)(a). Parties must submit documents electronically through the Commission's web portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to [records@utc.wa.gov](mailto:records@utc.wa.gov) provided the email:

- (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).
- (c) Beginning 60 days from the date of this Order,<sup>10</sup> parties must also file **an original and three (3)** paper copies (with original signatures, if applicable) of the documents with the Commission by 5 p.m. on the next business day following the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. If any of the exhibits contain information designated as confidential or highly confidential, parties must also file an electronic copy in searchable pdf (adobe acrobat or comparable software) but need not file a paper copy. All hard copy filings must be mailed or otherwise delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.
- (d) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket for documents that include information designated as confidential or highly confidential.
- (e) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge ([andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov)) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

22 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on September 29, 2020.** The Commission requires electronic copies in searchable pdf (adobe acrobat or comparable software), the original paper copy, and three (3) paper copies of the exhibits. If any of the exhibits contain information designated as confidential or highly confidential, parties must also file an electronic copy in searchable pdf (adobe acrobat or comparable software), the original paper copy, and one (1) paper copy of each redacted version of each such exhibit. The exhibits must be grouped

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<sup>10</sup> This date will be revisited and may be extended depending on the status of the public health crisis created by the COVID-19 virus and precautions being taken to avoid exchanging paper documents.

according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.

- 23 **EXHIBIT LISTS.** With each submission of prefiled testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. Joint Applicants will prepare and file their preliminary exhibit list for their initial filing in this docket. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits by **5 p.m., September 29, 2020.**
- 24 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge ([andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov)) and the other parties by **5 p.m., September 29, 2020.**
- 25 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter on **October 14, 2020, at 9:30 a.m.,** in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.
- 26 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division ([rayne.pearson@utc.wa.gov](mailto:rayne.pearson@utc.wa.gov) or 360-664-1136).
- 27 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection,**

**this Order will control further proceedings in these dockets, subject to Commission review.**

DATED at Lacey, Washington, and effective March 23, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL  
Administrative Law Judge

**APPENDIX A  
PARTIES' REPRESENTATIVES  
DOCKET UE-200115**

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**APPENDIX B  
PROCEDURAL SCHEDULE  
DOCKET UE-200115**

<b>EVENT</b>	<b>DATE</b>
Applicant's Filing <sup>11</sup>	<b>February 19, 2020</b>
Initial Settlement Conference	<b>July 1, 2020</b>
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits <sup>12</sup>	<b>July 17, 2020</b>
Settlement Conference	<b>August 13, 2020</b>
Public Comment Hearing(s)	<b>TBD</b>
Joint Applicants Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits <sup>13</sup>	<b>August 26, 2020</b>
Discovery Deadline – Last Day to Issue Data Requests	<b>September 25, 2020</b>
Cross-Examination Exhibits, Witness Lists, and Time Estimates	<b>October 7, 2020</b>
Evidentiary Hearing	<b>October 14, 2020</b>
Post-Hearing Briefs	<b>October 28, 2020</b>
Statutory Deadline (subject to 4-month extension)	<b>January 19, 2021</b>

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<sup>11</sup> Response time to data requests will be 10 business days.

<sup>12</sup> Response time to data requests will be 7 business days.

<sup>13</sup> Response time to data requests will be 5 business days.