

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of the Petition of:

SIERRA CLUB, CLIMATE
SOLUTIONS, and WASHINGTON
ENVIRONMENTAL COUNCIL

For an Adjudicatory Proceeding Relating
to the Prudency of Continued
Investments in Colstrip Plant Units 1 and
2.

Docket UE-151556

COMMISSION STAFF RESPONSE
SUPPORTING PUGET SOUND
ENERGY INC.'S MOTION TO DISMISS

I. INTRODUCTION

1 On July 31, 2015, the Sierra Club, Climate Solutions, and Washington Environmental Council (“Joint Petitioners”) filed a petition requesting that the Washington Utilities and Transportation Commission (“Commission”) commence an adjudicatory proceeding for the purpose of pre-determining the prudency of ongoing and new capital expenditures made by Puget Sound Energy (“PSE”) to support the Colstrip coal-fired electric generating facility (Colstrip Facility).¹ Further, the petition seeks to establish a closure or partial-closure plan for Colstrip Units 1 and 2.

2 PSE responded to the Joint Petitioners’ filing on August 14, 2015, seeking dismissal of the petition. PSE’s Motion to Dismiss relies on several grounds, including the petition’s lack of specificity as to the capital expenses to be incurred at the Colstrip Facility, the Commission’s lack of authority to order the closure of a facility located in Montana and owned in part by a company outside the Commission’s regulatory authority, the Joint Petitioners’ misplaced use of

¹ Presumably, this reference to the Colstrip coal-fired electric generating facility is referring to PSE’s interests in the four generating units that comprise the Colstrip facility.

ratemaking principles to force a rate change outside a ratemaking proceeding, and the Commission's lack of specific authority to close a generating facility because of its impact on the environment. Further, PSE cites to the Commission's *Investigation of Coal-Fired Generating Unit Decommissioning and Remediation Costs* initiated on July 21, 2015, arguing that the Joint Petitioners seek to duplicate the Commission's own investigation and create confusion and unnecessary work for the Commission and interested parties.²

3 Staff supports PSE's Motion to Dismiss, relying upon the Commission's denial of previous requests to initiate an adjudicative proceeding to deal with future Colstrip costs, and the expected substantive and procedural value of the Commission's own investigation into the issues raised by the Joint Petitioners. Further, Staff agrees with PSE that the petition raises ratemaking issues and contemplates changes in rates that – when ripe – will come before the Commission without regard to the petition. When ripe for review, the Commission will have the opportunity to consider these very issues, and can take appropriate action based on a full adjudicative record, involving all interested parties whose rates may be affected by the proceeding. The Joint Petitioners offer no compelling reason why the Commission should either take up these issues outside the context of a full general rate case or effectively quash its own investigation in favor of the Joint Petitioners' desired process.

4 For the reasons stated below, the Commission should recognize the petition's lack of tangible support and dismiss the petition. Thus, allowing the Commission to perform its regulatory responsibilities to investigate Colstrip Units 1 & 2 as it intended and without burdening it and the parties with the procedural limitations attendant to an adjudication.

² *In the Matter of Investigation of Coal-Fired Generating Unit Decommissioning and Remediation Costs*, UE-151500.

II. ARGUMENT

A. **The Commission Has Previously Considered and Rejected a Sierra Club Request To Initiate an Adjudicatory Proceeding Dealing With Colstrip's Future Costs**

5 Pursuant to its investigatory authority, the Commission intends to “examine the expected costs of decommissioning certain coal-fired generating units ... owned by utilities under Commission regulation.”³ The Commission will also examine the expected costs of necessary environmental remediation at the Colstrip site, plant retirement costs, and the funds accumulated by PSE “for the purpose of decommissioning the affected coal facilities.”⁴ Importantly, the Commission’s investigation was not predicated on an expressed immediate need to approve a plan for the closure of these facilities. Nor does the investigation foreclose this option. At the conclusion of the investigation, the record should be factually sufficient to support the Commission’s next steps with regard to Colstrip 1 & 2. This is Staff’s expectation, and the Joint Petitioners offer nothing to contradict it.

6 The Sierra Club has asked the Commission to review the prudence of the Colstrip Facility before. This very issue was raised by the Sierra Club in PSE’s 2011 rate case, and later referenced in the Commission’s acknowledgment letter covering PSE’s 2013 IRP, issued on February 6, 2014.

7 In its 2014 acknowledgment letter, the Commission noted the Sierra Club’s previous request to open a docket outside of a general rate case to review the economics of Colstrip’s continued operation. At the time, the Sierra Club’s new docket would have focused on a proposed study to be performed by PSE that would have included:

³ Docket UE-151500 Notice of Opportunity To File Written Comments at 1 (July 21, 2015).

⁴ *Id.*

[A] full analysis of the range of risks for future costs at Colstrip from environmental retrofits due to state and federal regulations, increasing coal prices, costs and risks associated with the rehabilitation, maintenance, expansion, and continued operation of storage ponds for combustion waste, and the risks associated with future carbon emissions costs.⁵

8 The Commission rejected the Sierra Club's request for a separate study of Colstrip's future costs, but required PSE to present a like study in its 2013 IRP. Importantly, the Commission also rejected the Sierra Club's request for a separate docket covering this same subject matter, finding a separate adjudicatory proceeding on the Colstrip issues unnecessary.⁶

9 PSE filed its Colstrip study in its 2013 IRP. In response, the Commission's 2014 acknowledgment letter cited the study and found:

"Based on the information presented in the Colstrip study, we are unable to conclude that continued operation of Colstrip Units 1 and 2 *should or should not* be a component of the Selected Resource Plan."⁷

In other words, the Commission found that even with the substantial record presented in the IRP, it could not answer yes or no to the question of whether PSE should continue to invest in Colstrip.

10 The Commission's reluctance to go further with the 2013 IRP's existing record does not open the door to further requests for adjudication on substantially similar issues, such as that filed by the Joint Petitioners.

11 In sum, the Commission has previously declined the Sierra Club's invitation to establish a separate adjudicatory process for determining the prudence of PSE's Colstrip investments. It

⁵ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (*consolidated*), Order 08 ¶ 420 (May 7, 2012) quoting Sierra Club Initial Brief ¶44.

⁶ *Id.* at ¶ 425.

⁷ *Puget Sound Energy's 2013 Electric and Natural Gas Integrated Resource Plan*, Docket UE-120767 & UG-120768, Attachment B at p. 14 (February 6, 2013)

also refused to require PSE to present a Colstrip cost and risk study outside of its IRP. The Commission's current investigation is consistent with this prior treatment of the subject matter.

12 The instant proceeding is an attempt to resuscitate a prior demand and should be rejected. The Joint Petitioners offer no new or changed circumstances to support their petition. In fact, the circumstances affecting Colstrip are largely the same at this point in time as they were in 2013. Consistent with the Commission's precedent on this subject, the Joint Petitioners' request to initiate an adjudication under these circumstances should be denied.

B. The Joint Petitioners' Adjudicatory Process Would Impose Unnecessary Administrative Burdens on the Commission and Parties

13 The adjudication requested by the Joint Petitioners will impose unnecessary constraints on the Commission's interaction with Staff and the parties. The Colstrip investigation requires PSE to provide the Commission *current* information regarding the Company's expected costs to decommission the facility and remediate its environmental impacts. Consistent with its character, the Commission's investigation will permit a free exchange of information and ideas among the Commissioners, their regulatory and policy staff members, interested parties, members of the legislature and its employees, and the public generally. In contrast, the adjudication sought by the Joint Petitioners would create immediate boundaries between the Commission and the parties. The formalities attendant to such a proceeding would constrict the free flow of information between PSE and the Commission, between PSE and the parties, between the Commission and its own regulatory staff, and between the parties themselves. The investigation contemplated by the Commission avoids these burdens.

14 Given the range of complexities associated with decommissioning Colstrip 1 & 2, the Commission should retain the flexibility to act according to the facts generated by its investigation. By way of an adjudicatory proceeding, the Commission must act consistent with

the record before it - largely dependent on the issues brought forward by the parties for adjudication. There is value in retaining the informality and flexibility of an investigation. The Joint Petitioners see no such value here and seek to quash it.

15 Furthermore, the Joint Petitioners seek an expedited decision with the completion of discovery, briefing and a full evidentiary hearing by early February. This is an unrealistic objective given the importance of the issues in play. Unless the Commission initiates a complaint against PSE's rates, there is no statutory deadline to complete a case such as the one presented. The issues could be adjudicated for a very long period. Staff believes it would be imprudent to think otherwise. An investigation permits the Commission to make progress in areas it has called out for review. It should not be forced to depend upon the litigants in order to accomplish its objectives.

C. The Issues Presented by the Joint Petitioners are not Ripe for Adjudication

16 The issues raised by the petition are not ripe for an adjudicative proceeding. The Joint Petitioners justify their filing with a *proposed* plan of the Environmental Protection Agency, *potential* costs of additional nitrous oxide controls, *pending* litigation in Montana, and *potential* increased costs and liabilities. These reasons are too tenuous and prospective to justify an adjudicative proceeding. The final rule for the Clean Power Plan was released by the EPA on August 3, 2015, and requires that states submit state plans by September 6, 2016, to implement the Clean Power Plan. Washington currently has no state plan implementing the Clean Power Plan that would impose any obligation upon PSE. This may change in the future, but Joint Petitioners' reliance upon such prospective authority is further evidence of the petition's lack of ripeness.

IV. SUMMARY

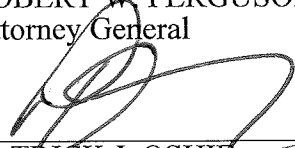
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For the reasons expressed above, Staff supports PSE's motion to dismiss the Joint Petitioners' proposed adjudicatory proceeding. It is untimely, lacks factual support for the outcomes it professes to support, and would effectively quash the Commission's investigation into the issues presented by Colstrip Units 1 & 2. The Joint Petitioners have sought similar relief before and have not been successful. Staff sees no reason why the Commission should accept the Joint Petitioners' current attempt for relief here.

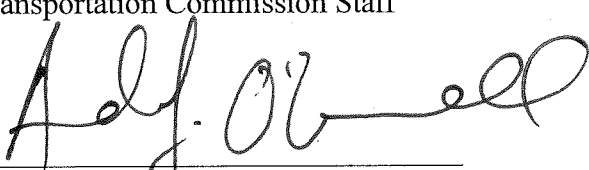
Dated this 24th day of August 2015.

Respectfully submitted,

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