

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of  PUGET SOUND ENERGY,  For Approval of its April 2019 Power Cost Adjustment Mechanism Report	DOCKET UE-190324  RESPONSE OF COMMISSION STAFF TO PUGET SOUND ENERGY’S 2019 POWER COST ADJUSTMENT FILING
In the Matter of  PACIFIC POWER & LIGHT COMPANY,  2019 Power Cost Adjustment Mechanism Report	DOCKET UE-190458  RESPONSE OF COMMISSION STAFF TO PACIFIC POWER’S 2019 POWER COST ADJUSTMENT MECHANISM FILING
In the Matter of  AVISTA CORPORATION, d/b/a AVISTA UTILITIES,  2019 Power Energy Recovery Mechanism Report	DOCKETS UE-190334, UG-190335, and UE-190222 (Consolidated)  MOTION FOR SEVERANCE AND CONSOLIDATION OF PROCEEDINGS PURSUANT TO WAC 480-07-320  MOTION FOR SUSPENSION OF PROCEDURAL SCHEDULE IN DOCKET UE-190222 AND MOTION FOR PREHEARING CONFERENCE

**I. INTRODUCTION**

*1* Staff of the Washington Utilities and Transportation Commission (“Staff”) completed its initial review of Puget Sound Energy’s (“PSE”) 2019 Power Cost Adjustment (“PCA”) filing and Pacific Power & Light Company’s (“Pacific Power”) 2019 Power Cost Adjustment Mechanism (“PCAM”) filing and does not recommend the Commission approve the deferrals for either filing. Instead, Staff recommends that the Commission commence an adjudicative

proceeding to determine the appropriate 2018 deferral amount under both the PCA and PCAM.

2       As discussed below, a proper examination of the 2018 deferrals must include consideration of costs associated with the replacement power purchases incurred as a result of the unexpected outage at Colstrip Units 3 and 4. The need to make replacement power purchases, in turn, requires an examination of the outage itself, why the outage occurred, and to determine if it was avoidable. It is PSE and Pacific Power's burden to provide information on the cause of the outage and to prove that the purchases of replacement power were prudently incurred. However, through informal discovery, Staff has been unable to obtain the necessary information to determine the underlying causes for the outage and hence, if these purchases were incurred prudently. Consequently, Staff requests that the Commission commence an adjudicative proceeding in both the PCA and PCAM to determine if these costs were prudently incurred. Staff believes that the discovery processes afforded in an adjudication will allow Staff to obtain the necessary information to provide a more detailed recommendation to the Commission on the prudence of these costs.

3       If the Commission commences adjudicative proceedings in the PCA and PCAM, Staff respectfully requests that the Commission consolidate those proceedings, pursuant to WAC 480-07-320. Staff further requests that the Commission exercise its discretion to sever Avista's 2019 Energy Recovery Mechanism ("ERM") filing from Avista's 2019 GRC and consolidate the 2019 PCA, PCAM, and ERM filings (collectively "the Power Cost Filings") into one adjudicative proceeding. As discussed below, given that the Power Cost Filings concern the same underlying facts and principles of law, Staff believes it would promote judicial economy to consolidate all three dockets into one adjudicative proceeding. Staff further requests that the Commission

suspend the October 3, 2019, testimony filing date in the ERM (UE-190222)<sup>1</sup> until the Commission rules on this pleading. If the Commission grants the requests in this pleading, Staff further requests that the Commission set a prehearing conference for the consolidated adjudication of the Power Cost Filings.

4 Staff shared its intent to file this motion with the other parties to Avista’s 2019 general rate case (consolidated Dockets UE-190334 and UG-190335). None of the non-company parties oppose the motion.

## II. PROCEDURAL HISTORY

### A. Procedural History of the PCA

5 On April 30, 2019, PSE filed its annual PCA report in Docket UE-190324 (“2019 PCA Filing”). PSE filed the 2019 PCA Filing pursuant to the settlement stipulation in Docket UE-130617, which requires PSE to file an annual report during the month of April to allow the Commission and interested parties to “review the prudence of the power costs included in the deferred calculations, and costs determined to be imprudent can be disallowed at that time.”<sup>2</sup> The stipulation states that “the Company shall file an annual report . . . for Commission review and approval by September 30 of that year.”<sup>3</sup> On June 18, 2019, a joint motion to continue was filed by the reviewing parties (Staff, the Public Counsel Unit of the Attorney General’s Office (“Public Counsel”), the Alliance of Western Energy Consumers (“AWEC”)) and PSE. The joint motion requested that the Commission continue the date for “review and approval” of the 2019 PCA Filing from September 30, 2019, to November 22, 2019. On July 15, 2019, the

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<sup>1</sup> Unless referring to the actual mechanism, references to the “ERM” mean Docket UE-190222; references to the “PCA” mean Docket UE-190324, and references to the “PCAM” mean Docket UE-190458.

<sup>2</sup> UE-130617 (Attachment A to Settlement Stipulation) p.2; *see also* UE-130617, Order 11 (Approving and adopting Settlement Stipulation).

<sup>3</sup> *Id.*

Commission issued an order granting the joint motion to continue.

## **B. Procedural History of the PCAM**

6 On June 3, 2019, Pacific Power filed its annual PCAM report in Docket UE-190458 (“2019 PCAM Filing”). Pacific Power filed the 2019 PCAM Filing pursuant to the settlement stipulation in Docket UE-140762, which requires Pacific Power to file an annual report on or before June 1 of each year “for the Commission to confirm and approve the deferred PCAM balances for the previous calendar year.”<sup>4</sup> The stipulation also establishes a review period of 90 days to allow Staff and other interested parties to review the deferred PCAM balances. This 90 day review period may be “extended by agreement of the parties participating in the review, or by Commission Order.”<sup>5</sup> On July 15, 2019, Staff notified the Commission that the reviewing parties (Staff, Public Counsel, and Boise White Paper, LLC) and Pacific Power had agreed to extend the time for review of the 2019 PCAM Filing until November 22, 2019.

## **C. Procedural History of the ERM**

7 On March 29, 2019, Avista filed its annual ERM report in Docket UE-190222 (“2019 ERM Filing”). Avista filed the 2019 ERM Filing pursuant to the settlement stipulation in Docket UE-011595, which requires Avista to make annual filings on or before April 1 of each year to “provide opportunity for the Commission and other interested parties to review the prudence of and audit the ERM deferral entries for the prior calendar year.”<sup>6</sup>

8 The 2019 ERM Filing sought a tariff adjustment to rebate back to ratepayers approximately \$34.4 million, in accordance with the multiparty settlement stipulation in Docket

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<sup>4</sup> UE-140762 (Settlement Stipulation) ¶9; *see also* UE-140762, Order 09 (Approving and adopting Settlement Agreement).

<sup>5</sup> UE-140762, Order 09 ¶20.

<sup>6</sup> UE-011595 (Settlement Stipulation) p.7; *see also* UE-011595, Fifth Supplemental Order (Approving and adopting Settlement Stipulation).

UE-120436. The stipulation states that if the cumulative, year-end ERM deferral balance exceeds plus or minus \$30 million, the Company must file a tariff change to either implement a surcharge or rebate the balance back to ratepayers.<sup>7</sup> In the cover letter to the 2019 ERM Filing, Avista requested that the \$34.4 million rebate to customers be made over a three year amortization period beginning on July 1, 2019.

9 On April 30, 2019, Avista filed a general rate case (“GRC”) with the Commission in consolidated Dockets UE-190334 and UG-190335. As part of its electric rate request, Avista sought to increase base revenues by \$45.8 million, effective April 1, 2020, with an additional increase of \$18.9 million, effective April 1, 2021.

10 On May 2, 2019, Avista filed a motion requesting that the Commission consolidate its GRC with the 2019 ERM Filing. On May 15, 2019, Staff filed a joint response in opposition to this motion. Through consolidation, Avista sought to offset the proposed electric rate increase of \$45.8 million in its GRC with the \$34.4 million ERM rebate owed to ratepayers. On May 30, 2019, the Commission issued an order granting Avista’s request to consolidate its 2019 GRC with its 2019 ERM Filing.

### III. EVIDENCE RELIED ON

11 In this pleading, Staff relies on the companies’ initial filings and on the Declaration of David C. Gomez that is attached to this pleading.

### IV. FACTUAL BACKGROUND OF THE 2018 COLSTRIP OUTAGE

12 Colstrip is a four unit coal-fired power plant located in Montana.<sup>8</sup> The power plant is jointly owned by various parties—including PSE, Pacific Power, and Avista—and is operated

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<sup>7</sup> UE-120436 ¶10 (Multiparty Settlement Stipulation); *see also* Docket UE-120436, Order 09 (Accepting with conditions Multiparty Settlement Stipulation).

<sup>8</sup> Declaration of David C. Gomez ¶4.

by Talen Montana (“Talen”).<sup>9</sup> The Colstrip Units are subject to 40 C.F.R. Part 6, Subpart UUUUU – National Emission Standards for Hazardous Air Pollutants: Coal – and Oil-Fired Electric Utility Steam Generating Units—commonly referred to as the Mercury Air Toxics Standard (“MATS”).<sup>10</sup> MATS became effective on April 16, 2017 for the Colstrip Units, and these standards are enforced by the Montana Department of Environmental Quality (“MDEQ”).<sup>11</sup> MATS requires that particulate matter (“PM”) emissions be used as a surrogate for toxic emissions or non-mercury metals.<sup>12</sup> Mercury emissions are measured separately to meet a mercury-specific limitation.<sup>13</sup> MATS requires that the Colstrip Units maintain a rolling 30-day average PM emission rate of 0.030 pounds per million British Thermal Units (“lb/MMBtu”).<sup>14</sup> This means the average PM emission rate across all four Colstrip Units must be less than or equal to 0.030 lb/MMBtu.<sup>15</sup>

13 During the first quarter of 2018, the PM emission rate of the Colstrip Units were elevated—however, the facility remained in compliance during this time period.<sup>16</sup> Historically, Units 3 and 4 have operated below the 0.030 lb /MMBtu limit while Units 1 and 2 have been above the limit, creating a site-wide average that met the MATS PM emission limit.<sup>17</sup>

14 During the second quarter of 2018, Units 1 and 2 were offline and therefore not subject to MATS PM emission testing.<sup>18</sup> Prior to Units 3 and 4 being officially tested for MATS PM compliance, Talen burned coal from an alternative source—Area A coal—in an attempt to lower

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<sup>9</sup> *Id.* at ¶4

<sup>10</sup> *Id.* at ¶4.

<sup>11</sup> *Id.* at ¶4.

<sup>12</sup> *Id.* at ¶4.

<sup>13</sup> *Id.* at ¶4.

<sup>14</sup> *Id.* at ¶4.

<sup>15</sup> *Id.* at ¶4.

<sup>16</sup> Declaration of David C. Gomez at ¶5.

<sup>17</sup> *Id.* at ¶5.

<sup>18</sup> *Id.* at ¶6.

the elevated PM levels of the Units.<sup>19</sup> On June 21, 2018, Unit 3 was tested and the results indicated a PM emission rate of 0.043 lb/MMBtu.<sup>20</sup> On June 26, 2018, Unit 4 was tested and the results indicated a PM emission rate of 0.051 lb/MMBtu.<sup>21</sup> These tests revealed that Colstrip Units 3 and 4 were out of compliance with the PM emission limit.<sup>22</sup> Talen notified MDEQ of the non-compliant test results on June 28, 2018.<sup>23</sup> Due to this violation of the PM emission limit, Unit 3 and 4 went into a forced outage.<sup>24</sup> Unit 3 was removed from service on June 28 and kept offline until July 8.<sup>25</sup> Unit 4 was removed from service on June 29 and kept offline until July 17.<sup>26</sup> When these Units came back online, they were ran only for the purposes of gathering information, performing diagnostics, evaluating potential remedial actions, and testing.<sup>27</sup>

15           After corrective actions were taken by Talen, both Unit 3 and 4 came back into PM emission compliance.<sup>28</sup> On September 4, 2018, Unit 4 demonstrated compliance with a PM emission rate of 0.021 lb/MMBtu and on September 11, 2018, Unit 3 demonstrated compliance with a PM emission rate of 0.024 lb/MMBtu.<sup>29</sup> As a result of the 2018 Colstrip Units 3 and 4 outage (the “2018 Colstrip Outage”), PSE, Pacific Power, and Avista incurred costs associated with purchases of replacement power. All three companies are now seeking recovery of the replacement power costs necessitated by the 2018 Colstrip Outage in their respective power cost adjustment mechanisms. To assess if these costs were prudently incurred Staff necessarily must examine the root causes of the 2018 Colstrip Outage itself.

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<sup>19</sup> *Id.* at ¶6.

<sup>20</sup> *Id.* at ¶6.

<sup>21</sup> *Id.* at ¶6.

<sup>22</sup> *Id.* at ¶6.

<sup>23</sup> *Id.* at ¶6.

<sup>24</sup> *Id.* at ¶6.

<sup>25</sup> *Id.* at ¶6.

<sup>26</sup> *Id.* at ¶6.

<sup>27</sup> *Id.* at ¶6.

<sup>28</sup> Declaration of David C. Gomez at ¶7.

<sup>29</sup> *Id.* at ¶7.

## V. RESPONSE OF STAFF TO PSE'S 2019 PCA FILING

16 Based on Staff's review of the 2019 PCA Filing and PSE's responses to informal discovery, Staff is unable to recommend that the Commission approve the 2018 deferral balance. Staff is unable to provide this recommendation because it has unresolved concerns regarding the prudence of the replacement power costs associated with the 2018 Colstrip Outage—which PSE witness Ronald J. Roberts discusses in his pre-filed direct testimony.<sup>30</sup> Staff recommends that the Commission commence an adjudicative proceeding to determine whether these costs were prudently incurred and appropriate to include in the 2018 PCA deferral balance.

17 It is PSE's burden to prove that the replacement power costs associated with the 2018 Colstrip Outage were prudently incurred.<sup>31</sup> PSE's initial filing failed to provide the information necessary for Staff to make a recommendation to the Commission on if these cost were prudently incurred.<sup>32</sup> On January 17, 2019, Staff sent an email communication to all three companies about their respective upcoming annual power cost deferral reviews.<sup>33</sup> This email addressed the need for Staff to assess the prudence of costs associated with the 2018 Colstrip Outage in the annual reviews, and conveyed the expectation that the companies provide a full and transparent analysis of the cause, costs, and prudence of the expenses associated with the outage:

The annual power cost deferral reviews are coming up for each of you in the next handful of months. As you know, the central purpose of these filings is for the commission to review the prudence of power costs included in the deferral calculation, and ultimately approve a specific deferral balance. The power costs included in the forthcoming filings will include the effect of last summer's outage at Colstrip units 3 and 4.

This email is to let you know commission staff will be expected to provide the commission with an analysis of the outage, including the cause of the outage and

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<sup>30</sup> UE-190324, Exh. RJR-1T (Direct Testimony of Ronald J. Roberts).

<sup>31</sup> UE-152253, Order 12 ¶94 (“Regulated public service companies bear the burden of proof that their decisions are prudent . . .”).

<sup>32</sup> Declaration of David C. Gomez at ¶9.

<sup>33</sup> *Id.* at ¶8.



the cost of replacement power, and a recommendation regarding the prudence of incremental costs associated with the outage. I would like to ask that you address this issue [in] a proactive manner in your filings. As we will be expected to investigate this issue, it would be more efficient if you all could file testimony (or at a minimum a comprehensive narrative) and any additional pertinent evidence on the issue. *I'm worried that if this issue is not addressed proactively, and staff has to conduct its review through discovery, the probability that these filings will need to be suspended and set for hearing rises substantially.*

Please do not interpret this email to mean that staff intends to challenge the prudence of costs associated with the outage. Rather, I just want to make you all aware staff will need to investigate this issue, and that producing the pertinent information up front will help us complete our review in the limited time we will have.<sup>34</sup>

18 Despite this notification to the companies, PSE provided only a few pages of testimony concerning the 2018 Colstrip Outage. This testimony is included in the direct testimony of Ronald J. Roberts, which is only six pages in length.<sup>35</sup> The limited amount of information provided in PSE's initial filing obliged Staff to initiate informal discovery.

19 Despite extensive efforts in informal discovery, Staff was unable to obtain the necessary information from PSE to support a recommendation to the Commission to approve the 2018 deferral balance.<sup>36</sup> Staff's investigation and discovery efforts are memorialized in the Declaration of David C. Gomez.<sup>37</sup> Through its data requests and communications with PSE, Staff made it abundantly clear that it needed contemporaneous documentation of Talen and PSE's decision-making processes pertaining to the Q1 elevated PM levels at Colstrip Units 3 and 4.<sup>38</sup> The need for contemporaneous documentation to assess the subsequent prudence of a company's decision has been explained by the Commission in prior orders.<sup>39</sup> PSE failed to

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<sup>34</sup> *Id.* at ¶8.

<sup>35</sup> UE-190324, Exhibit RJR-1T (Direct Testimony of Ronald J. Roberts).

<sup>36</sup> Declaration of David C. Gomez ¶10–18.

<sup>37</sup> *Id.* at ¶10–18.

<sup>38</sup> *Id.* at ¶11–14.

<sup>39</sup> *See generally* UE-152253, Order 12 (Finding that Pacific Power failed to meet its legal burden of proof that its SCR system investments were prudent because it failed to produce the *necessary contemporaneous documentation* that it

provide this required documentation in its informal data request responses, which resulted in Staff's inability to recommend approval of the 2018 deferral balance.<sup>40</sup>

20 During the course of informal discovery, PSE lodged objection after objection to Staff's data requests, necessitating numerous follow-up requests.<sup>41</sup> PSE has also withheld many responsive documents on the basis of attorney client and/or work product privileges, as well as an apparent (yet unsubstantiated) assertion of the joint defense and/or common interest privilege it has with the other Colstrip joint-owners.<sup>42</sup> Without the processes afforded by an adjudicative proceeding, many of these discovery disputes have gone unresolved.<sup>43</sup> In an effort to address its concerns informally, counsel for Staff requested and participated in a meet and confer conference with representatives of PSE and its counsel on July 18, 2019, but remained unsuccessful in obtaining the needed information.<sup>44</sup>

21 Staff conducts its prudence investigations in accordance with the standards set forth by the Commission.<sup>45</sup> Staff does *not* believe the actions by Talen or PSE were imprudent *after* the outage occurred.<sup>46</sup> However, Staff does not have enough information to determine if the actions by Talen or PSE *leading up* to the outage (or the outage itself) were imprudent.<sup>47</sup> Therefore,

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re-evaluated certain options).

<sup>40</sup> Declaration of David C. Gomez at ¶18.

<sup>41</sup> *Id.* at ¶17.

<sup>42</sup> *See id.* at ¶17.

<sup>43</sup> *Id.* at ¶17.

<sup>44</sup> *Id.* at ¶17.

<sup>45</sup> *See e.g.*, UE-152253, Order 12 ¶94 (“Regulated public service companies bear the burden of proof that their decisions are prudent, just as they are required to demonstrate generally that their proposed rates are just and reasonable reflecting capital expenditures that are used and useful to end-users. . . . The Commission has often cited the prudence legal standard as thus: What would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision?”).

<sup>46</sup> Declaration of David C. Gomez at ¶18.

<sup>47</sup> *Id.*; Although Talen is not a company regulated by the Commission, Talen is PSE's contractor and agent who is contractually obligated to operate Units 3 and 4 in a prudent manner. *See* UE-190222, Avista's response to UTC Informal Data Request No. 5, SUBPART C. The operation of the plant, while under Talen's management, is still the responsibility of PSE. *See e.g.*, PG-060215, Order 02 (Final Order Accepting Settlement Agreement on Condition) ¶ 1. In Order 02, the Commission stated:

Staff believes that PSE has not yet met its burden to prove that the replacement power costs associated with the 2018 Colstrip Outage were prudently incurred. Staff does not recommend the Commission approve the 2018 deferral balance in the PCA. Instead, Staff requests that the Commission commence an adjudicative proceeding in the PCA to determine if these costs were prudently incurred. Staff believes that the discovery processes afforded in an adjudication will allow Staff to obtain the necessary information to provide a more detailed recommendation to the Commission on the prudence of these costs.

## VI. RESPONSE OF STAFF TO PACIFIC POWER'S 2019 PCAM FILING

22 Based on Staff's review of the 2019 PCAM Filing and Pacific Power's responses to informal discovery, Staff is unable to recommend that the Commission approve the 2018 deferral balance. Staff is unable to provide this recommendation because it has unresolved concerns regarding the prudence of the replacement power costs associated with the 2018 Colstrip Outage—which Pacific Power witness Michael G. Wilding discusses in his testimony.<sup>48</sup> Staff recommends that the Commission commence an adjudicative proceeding to determine whether these costs were prudently incurred and appropriate to include in the 2018 PCAM deferral

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The Commission imposes a penalty of \$ 1.25 million on PSE for the fraudulent actions of *certain of its contractor employees* in falsifying pipeline inspection records. . . . The Commission emphasizes the responsibility of regulated utilities to ensure adequate safeguards are in place to protect the public, *even when relying on contractor employees to achieve portions of their mission.* (emphasis added); *see also* UT-140597, Order 03 ¶25 (Final Order Approving Settlement Agreement) (Commission approving settlement imposing a penalty of \$2,854,750 against Quest Corporation d/b/a CenturyLink QC for violations arising from a 911 service outage caused by issues with its vendor's software). In Order 03, the Commission stated:

What is important for our review is to ensure that CenturyLink has *adequate management and oversight systems* in place to both reduce the risks of such errors occurring and also to have systems in place to provide awareness of outages and to restore 911 service as rapidly as possible. *This applies both to the Company itself and to any contractor or vendor such as Intrado.* In other words, we require regulated companies to implement measures that are reasonable under the circumstances to minimize service disruptions and other violations of Commission requirements.

(emphasis added).

<sup>48</sup> UE-190458, Exhibit No. MWG-1T (Direct Testimony of Michael G. Wilding).

balance.

23 It is Pacific Power’s burden to prove that the replacement power costs associated with the 2018 Colstrip Outage were prudently incurred.<sup>49</sup> Similar to PSE, Pacific Power’s initial filing failed to provide the information necessary for Staff to make a recommendation to the Commission on if these costs were prudently incurred. The testimony proffered by Pacific Power concerning the 2018 Colstrip Outage is located on pages 13–16 of Mr. Wilding’s testimony.<sup>50</sup> The limited amount of information provided in Pacific Power’s initial filing necessitated that Staff engage in informal discovery.<sup>51</sup>

24 Despite efforts in informal discovery, Staff was unable to obtain the necessary information from Pacific Power to support a recommendation to the Commission to approve the 2018 deferral balance.<sup>52</sup> Staff’s investigation and discovery efforts are memorialized in the Declaration of David C. Gomez.<sup>53</sup> Through its data requests and communications with Pacific Power, Staff made it abundantly clear that it needed contemporaneous documentation of Talen and Pacific Power’s decision making processes pertaining to the Q1 elevated PM levels at Colstrip Units 3 and 4.<sup>54</sup> The need for contemporaneous documentation to assess the subsequent prudence of a company’s decision has been explained by the Commission in prior orders.<sup>55</sup> Pacific Power failed to provide this required documentation in its informal data request responses, which resulted in Staff’s inability to recommend approval of the 2018 deferral

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<sup>49</sup> UE-152253, Order 12 ¶94 (“Regulated public service companies bear the burden of proof that their decisions are prudent . . .”).

<sup>50</sup> UE-190458, Exhibit No. MWG-1T (Direct Testimony of Michael G. Wilding).

<sup>51</sup> Declaration of David C. Gomez at ¶9.

<sup>52</sup> *Id.* at ¶10–18.

<sup>53</sup> *Id.* at ¶10–18.

<sup>54</sup> *Id.* at ¶11–14.

<sup>55</sup> *See generally* Docket UE-152253, Order 12 (Finding that Pacific Power failed to meet its legal burden of proof that its SCR system investments were prudent because it failed to produce the *necessary contemporaneous documentation* that it re-evaluated certain options).

balance.<sup>56</sup>

25           On August 21, 2019, Staff propounded Informal Data Request No. 8 asking Pacific Power to admit or deny that it had produced all contemporaneous documentation of all decision making pertaining to the 2018 Colstrip Outage.<sup>57</sup> In its response, Pacific Power stated that it “considers these requests overly broad, unduly burdensome, and not reasonably calculated to lead to the admission of information.”<sup>58</sup> Pacific Power requested an extension to provide a substantive response to this data request.<sup>59</sup> Pacific Power further requested that Staff attend a “workshop” to discuss this data request. Staff granted this extension and agreed to attend this workshop with the Company—which took place via conference call on September 20, 2019.<sup>60</sup> At this workshop, Staff requested that the Company provide evidence and discuss the actions and decision making of Pacific Power and Talen during the time period leading up to the 2018 Colstrip Outage.<sup>61</sup> Staff’s understanding is that, as a result of this workshop, Pacific Power will provide a narrative statement(s) that will be submitted as a supplementary response to Staff’s prior informal data requests.<sup>62</sup>

26           Staff conducts its prudence investigations in accordance with the standards set forth by the Commission.<sup>63</sup> Staff does *not* believe the actions by Talen or Pacific Power were imprudent *after* the outage occurred.<sup>64</sup> However, Staff does not have enough information to determine if the actions by Talen or Pacific Power *leading up to* the outage (or the outage itself) were

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<sup>56</sup> Declaration of David C. Gomez at ¶18.

<sup>57</sup> <sup>57</sup> Declaration of David C. Gomez at ¶16; UE- 190458, UTC Staff Informal Data Request No. 8.

<sup>58</sup> *Id.* at ¶16; UE- 190458, Pacific Power’s response to UTC Staff Informal Data Request No. 8.

<sup>60</sup> *Id.* at ¶16.

<sup>61</sup> *Id.* at ¶16.

<sup>62</sup> *Id.* at ¶16.

<sup>63</sup> *See e.g.*, UE-152253, Order 12 ¶94.

<sup>64</sup> Declaration of David C. Gomez at ¶18.

imprudent.<sup>65</sup> Therefore, Staff believes that Pacific Power has not yet met its legal burden to prove that the replacement power costs associated with the 2018 Colstrip Outage were prudently incurred. Staff does not recommend that the Commission approve the 2018 deferral balance in the PCAM. Instead, Staff requests that the Commission commence an adjudicative proceeding in the PCAM to determine if these costs were prudently incurred. Staff believes that the discovery processes afforded in an adjudication will allow Staff to obtain the necessary information to provide a more detailed recommendation to the Commission on the prudence of these costs.

## **VII. MOTION FOR SEVERANCE AND CONSOLIDATION OF PROCEEDINGS PURSUANT TO WAC 480-07-320**

27 “The [C]ommission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related.” WAC 480-07-320. “Parties may request consolidation or may request the severance of consolidated matters by motion to the [C]ommission.” WAC 480-07-320. “In determining whether to exercise such discretion, the Commission considers not just the extent to which the factual and legal issues are related but whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.”<sup>66</sup> If the Commission determines to commence adjudicative proceedings in the PCA and PCAM, Staff moves that the Commission exercise its discretion to sever Avista’s 2019 ERM Filing (Docket UE-190222) from its GRC and consolidate the ERM, PCA, and PCAM into one adjudicative proceeding because: (A) the Power Cost Filings all involve the same issues of fact and principles of law; (B) Granting the motion would promote judicial economy and not unduly delay any proceeding; and (C) Granting the motion could resolve the confidentiality

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<sup>65</sup> See footnote 47.

<sup>66</sup> UE-111048, Order 04 ¶8.

issues among the three dockets.<sup>67</sup>

**A. The Power Cost Filings All Involve The Same Issues Of Fact And Principles Of Law**

28 All three electric investor owned utilities have an ownership interest in Colstrip Units 3 and 4—and thus all three companies are seeking recovery of the replacement power costs incurred from the 2018 Colstrip Outage through their respective power cost mechanisms. In particular: PSE owns a 25% interest in Colstrip Units 3 and 4; Avista owns a 15% interest in Colstrip Units 3 and 4; and Pacific Power owns a 10% interest in Colstrip Unit 4.<sup>68</sup>

29 All three companies have estimated their respective replacement power costs associated with the 2018 Colstrip Outage. In particular: PSE estimated approximately \$12 million;<sup>69</sup> Avista estimated approximately \$3.5 million;<sup>70</sup> and Pacific Power estimated approximately \$0.5 million.<sup>71</sup> Staff’s primary concern in all three Power Cost Filings is whether these replacement power costs were prudently incurred by each company.<sup>72</sup> Consequently, all three Power Cost Filings are dealing with the same underlying “facts [and] principles of law”—the prudence of the replacement power costs associated with the 2018 Colstrip Outage. *See* WAC 480-07-320. Instead of adjudicating the prudence of these costs in three separate dockets, Staff requests that the Commission exercise its discretion to sever the ERM from Avista’s GRC and consolidate all three Power Cost Filings dockets into one adjudicative proceeding.

**B. Granting the Motion Promotes Judicial Economy and Does Not Unduly Delay Any Proceeding**

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<sup>67</sup> In the alternative, if the Commission decides not to grant severance of the ERM, Staff moves that the PCA and PCAM still be consolidated into one proceeding for the same reasons articulated in this motion.

<sup>68</sup> Pacific Power is a 10 percent owner in both Colstrip Units 3 and 4. However, in accordance with Order 08 in Docket UE-061546, only the Company’s ownership of Unit 4 is included in the Company’s base rates and computation of actual net power costs. *See* UE-190458, Exhibit No. MWG-1T p.12 (Direct Testimony of Michael G. Wilding).

<sup>69</sup> UE-190324 Exhibit No. PKW-1CT (Direct Testimony of Paul K. Wetherbee); *See also* PSE’s response to Informal Staff Data Request No. 01 SUBPART A.

<sup>70</sup> UE-190222 Exhibit No. TCD-1T p.7 (Direct Testimony of Thomas C. Dempsey).

<sup>71</sup> UE-190458 Exhibit No. MWG-1T p.15 (Direct Testimony of Michael G. Wilding).

<sup>72</sup> Declaration of David C. Gomez ¶19.

30           Given that the Power Cost Filings have the same underlying facts and principles of law, it would promote judicial economy to consolidate all three dockets into one adjudicative proceeding. Having three separate adjudications on the prudence of the replacement power costs associated with the 2018 Colstrip Outage would necessarily mean three separate procedural schedules. Instead of having three separate procedural schedules, Staff believes it would promote judicial economy for these Power Cost Filings to have one procedural schedule. Staff further believes that severance of the ERM and consolidation of the Power Cost Filings would not unduly delay any proceeding.

31           Judicial economy is generally defined as: “[e]fficiency in the operation of the courts and the judicial system; esp., the efficient management of litigation so as to minimize duplication of efforts and to avoid wasting the judiciary’s time and resources.”<sup>73</sup> In line with this definition, consolidating the Power Cost Filings as to avoid three sets of settlement conferences, three sets of written testimonies, three hearings, and three Commission orders—concerning the same outages at Colstrip, which itself is mutually owned by the companies—would promote judicial economy and be less burdensome on Staff’s resources.<sup>74</sup> Furthermore, a single discovery order for the Power Cost Filings would provide uniform discovery timelines and rules—as opposed to operating under three different timelines and rules in each Power Cost Filing. Given the similarities of the Power Cost Filings, judicial economy is promoted by having the cases consolidated and under the same procedural schedule.

32           Granting severance of Avista’s ERM and consolidating the ERM with the other Power Cost Filings would also not unduly delay one or more of the proceedings. The ERM is currently

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<sup>73</sup> BRYAN A. GARNER, BLACK’S LAW DICTIONARY THIRD POCKET EDITION 391 (1996).

<sup>74</sup> Declaration of David C. Gomez ¶19.



under the Avista GRC (UE-190334 and UG-190335) procedural schedule, which has a suspension date of April 1, 2020.<sup>75</sup> If the Commission grants this motion, Staff does not anticipate that the consolidated adjudication would extend past April 1, 2020.<sup>76</sup> Further, there is no reason to expect that severance of the ERM and consolidation of the Power Cost Filings would unduly delay either the PCA or the PCAM.<sup>77</sup>

**C. Granting The Motion Could Resolve The Confidentiality Issues Among The Three Dockets**

33 A single protective order for the Power Cost Filings could promote judicial economy by resolving the current confidentiality issues among the three dockets. There has been inconsistency among the companies as to what the companies consider to be confidential.<sup>78</sup> For instance, the same document has been labeled as both confidential and not confidential in the companies' various responses.<sup>79</sup> Furthermore, some companies have either failed or refused to provide certain documents, while the other companies have provided those documents and have marked them as confidential.<sup>80</sup> As it stands, this impairs Staff's ability to use that confidential information in the other dockets.<sup>81</sup> Navigating these designations and varying interpretations in informal discovery has seriously burdened Staff's capacity.<sup>82</sup>

34 Much of the information marked as confidential by the companies likely would *not* be considered confidential *among* the companies.<sup>83</sup> All three companies are joint owners of Colstrip

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<sup>75</sup> *Id.* at ¶21.

<sup>76</sup> *Id.* at ¶21.

<sup>77</sup> *Id.* at ¶21.

<sup>78</sup> Declaration of David C. Gomez ¶20.

<sup>79</sup> *Id.* at ¶20.

<sup>80</sup> *Id.* at ¶20.

<sup>81</sup> *Id.* at ¶20.

<sup>82</sup> *Id.* at ¶20.

<sup>83</sup> *Id.* at ¶20.

Units 3 and 4, and much of the information that is marked confidential relates to the outage.<sup>84</sup> Nevertheless, the information currently designated as confidential (among the three dockets) could limit the amount of information Staff is able to provide the Commission in its respective recommendations—unless severance and consolidation is granted (or each of the existing and/or future protective orders is individually modified).<sup>85</sup> This, in turn, could lead to inconsistent Staff recommendations and case outcomes.<sup>86</sup> Consolidating these cases under one protective order would address these discovery and confidentiality issues while ensuring the Commission has sufficient information to render consistent orders on the prudence of these costs in a single proceeding.<sup>87</sup>

35 Finally, no formal protective order exists in either the PCA or PCAM.<sup>88</sup> Given the volume of confidential information already provided among the three dockets, a consolidated adjudication with the protections and procedures afforded by Commission rules and a formal protective order seems appropriate.

#### **VIII. MOTION FOR SUSPENSION OF PROCEDURAL SCHEDULE IN DOCKET UE-190222 AND MOTION FOR PREHEARING CONFERENCE**

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<sup>84</sup> *Id.* at ¶20.

<sup>85</sup> *Id.* at ¶20.

<sup>86</sup> *Id.* at ¶20.

<sup>87</sup> *Id.* at ¶20.

<sup>88</sup> *Id.* at ¶20.

36           Currently, the ERM (UE-190222) is under the Avista GRC (UE-190334 and UG-190335) procedural schedule, which has a testimony filing date of October 3, 2019. Staff requests that the Commission suspend the filing date for ERM testimony until the Commission rules on this pleading. If the Commission grants the requests in this pleading, Staff further requests that the Commission set a prehearing conference for the consolidated adjudication of the Power Cost Filings. Lastly, Staff respectfully requests that the Commission rule on Staff's motion for suspension prior to ruling on the other requests for relief made by Staff in this motion.

**IX. CONCLUSION**

37           Staff requests that the Commission commence an adjudicative proceeding to determine the appropriate 2018 deferrals under both PSE's PCA and Pacific Power's PCAM. If the Commission grants Staff's request for adjudicative proceedings in the PCA and PCAM, Staff moves that the Commission grant severance to remove Avista's 2019 ERM Filing from its 2019 GRC and consolidate the three Power Cost Filings into one adjudicative proceeding. Staff further requests that the Commission suspend the October 3, 2019, testimony filing date in the ERM (UE-190222) until the Commission rules on this pleading. If the Commission grants the requests in this pleading, Staff further requests that the Commission set a prehearing conference for the consolidated adjudication of the Power Cost Filings.

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Respectfully submitted,

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