

**EXH. RJR-9T
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
SUPPLEMENTAL DIRECT TESTIMONY (NONCONFIDENTIAL) OF
RONALD J. ROBERTS
ON BEHALF OF PUGET SOUND ENERGY**

AUGUST 20, 2020

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LIST OF EXHIBITS

- Exh. RJR-10 PSE offer, dated January 10, 2020, to Talen Montana pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation Agreement
- Exh. RJR-11 PSE offer, dated January 10, 2020, to Portland General Electric Company pursuant to section 28(f) of the Colstrip Transmission Agreement
- Exh. RJR-12 Acceptance, dated April 8, 2020, by Talen Montana of PSE's offer pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation Agreement
- Exh. RJR-13 Conditional exercise, dated April 8, 2020, by NorthWestern Energy of its right of first refusal pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation Agreement
- Exh. RJR-14 Conditional exercise, dated April 8, 2020, by NorthWestern Energy of its right of first refusal pursuant to section 28(f) of the Colstrip Transmission Agreement
- Exh. RJR-15 PSE notice, dated April 13, 2020, to Owners of Colstrip Unit 4 regarding the results of the exercises of the rights of first refusal
- Exh. RJR-16 Amendment No. 1 to Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between NorthWestern Energy and PSE
- Exh. RJR-17 Comparison of the Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between

NorthWestern Energy and PSE, as amended by Amendment No. 1 to the Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between NorthWestern Energy and PSE

Exh. RJR-18 Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between Talen Montana and PSE

Exh. RJR-19 Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between Talen Montana and PSE with the Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between NorthWestern Energy and PSE, as amended by Amendment No. 1 to the Colstrip Unit 4 Purchase and Sale Agreement, dated as of August 14, 2020, between NorthWestern Energy and PSE

Exh. RJR-20C Form Confirmation for the Talen Montana Power Purchase Agreement, dated as of August 14, 2020, between PSE and Talen Montana

Exh. RJR-21 Amended and Restated Project Committee Vote Sharing Agreement, dated as of October 16, 2009, between NorthWestern Energy and Talen Montana

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I. INTRODUCTION

1
2 **Q. Are you the same Ronald J. Roberts who provided prefiled direct testimony,**
3 **Exhibit RJR-1CT,¹ and seven supporting exhibits, Exhibit RJR-2 through**
4 **Exhibit RJR-8C, on behalf of Puget Sound Energy (“PSE”) on February 19,**
5 **2020?**

6 **A. Yes.**

7 **Q. Please summarize your prefiled supplemental direct testimony.**

8 **A. This prefiled supplemental direct testimony describes (i) a series of amendments**
9 **to proposed transactions with NorthWestern Energy that PSE originally filed on**
10 **February 19, 2020, for the sale of half of PSE’s interests in Colstrip Unit 4 to**
11 **NorthWestern Energy and (ii) a series of proposed transactions with Talen**
12 **Montana, LLC (“Talen Montana”) for the sale of half of PSE’s interests in**
13 **Colstrip Unit 4 to Talen Montana.**

¹ Revised on March 10, 2020 as Exh. RJR-1CTr. The revised version removes some confidential designations.

1 These proposed amendments and new transactions are a necessary result of Talen
2 Montana, a co-owner of Colstrip Units 3 & 4, who exercised its right of first
3 refusal pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and
4 Operation Agreement² to purchase a proportionate interest in PSE's 25 percent
5 undivided ownership interest in Colstrip Unit 4 to be transferred to NorthWestern
6 Energy pursuant to the terms and conditions of the NorthWestern Energy Colstrip
7 Unit 4 Purchase and Sale Agreement filed as the Fifth Exhibit to the Prefiled
8 Direct Testimony of Ronald J. Roberts, Exh. RJR-6. As a result of this
9 development, PSE will continue with its proposal to sell its 25 percent interest in
10 Colstrip Unit 4. However, rather than Northwestern Energy acquiring PSE's
11 entire ownership interest in Colstrip Unit 4, Northwestern Energy and Talen
12 Montana will each now acquire half (i.e., 12.5 percent) of PSE's 25 percent
13 ownership interest in Colstrip Unit 4.

14 Finally, instead of a single 90-megawatt ("MW") power purchase agreement
15 ("PPA") with NorthWestern Energy, PSE will enter into two separate 45 MW
16 PPAs with Northwestern Energy and Talen Montana for output of Colstrip Unit 4.
17 The amount of power that PSE will purchase has not changed nor have the
18 material terms of the PPA. At this time, the proposed sale of certain interests of

² "Colstrip Units 3 & 4 Ownership and Operation Agreement" refers to that certain Ownership and Operation Agreement, dated as of May 6, 1981, by The Montana Power Company, Puget Sound Power and Light Company, The Washington Water Power Company, Portland General Electric Company, Pacific Power and Light Company, and Basin Electric Power Company, as amended and revised. Please see the Second Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-3, for a copy of the Ownership and Operation Agreement.

1 PSE in the Colstrip Transmission System to NorthWestern Energy have not
2 changed.

3 **II. BACKGROUND REGARDING THE EXERCISE OF THE**
4 **RIGHT OF FIRST REFUSAL BY TALEN MONTANA**

5 **Q. Please describe PSE’s request for Commission authorization originally filed**
6 **on February 19, 2020, in this proceeding.**

7 A. On February 19, 2020, PSE filed with the Washington Utilities and
8 Transportation Commission (the “Commission”) an Application for an Order
9 Authorizing the Sale of All of PSE’s Interests in Colstrip Unit 4 and Certain of
10 PSE’s Interests in the Colstrip Transmission System (the “Application”) in this
11 proceeding.

12 In the Application, PSE requested that the Commission issue an order authorizing
13 the following:

- 14 (i) the sale of PSE’s interests in Colstrip Unit 4 to
15 NorthWestern Energy pursuant to the terms and conditions
16 of the Colstrip Unit 4 Purchase and Sale Agreement, dated
17 as of December 9, 2019, between NorthWestern Energy
18 and PSE (the “NorthWestern Energy Colstrip Unit 4
19 Purchase and Sale Agreement”), a copy of which PSE
20 provided as the Fifth Exhibit to the Prefiled Direct
21 Testimony of Ronald J. Roberts, Exh. RJR-6;
- 22 (ii) the sale by NorthWestern Energy to PSE of ninety (90)
23 megawatts (MW) of capacity from Colstrip Unit 4 for a
24 term commencing on the later of (i) June 4, 2020, and
25 (ii) the Closing Date, and ending on May 15, 2025,
26 pursuant to the terms and conditions of the NorthWestern
27 Energy PPA, dated as of December 9, 2019
28 (the “Northwestern PPA”), a copy of which PSE provided

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as the Seventh Exhibit to the Prefiled Direct Testimony of
Ronald J. Roberts, Exh. -8; and

(iii) the sale of certain PSE interests in the Colstrip
Transmission System to NorthWestern Energy pursuant to
the terms and conditions of the Colstrip Transmission
System Purchase and Sale Agreement, dated as of
December 9, 2019, between NorthWestern Energy and PSE
(the “Colstrip Transmission System Purchase and Sale
Agreement”); and

(iv) the accounting treatment proposed by PSE.

**Q. What changes have transpired since the original PSE filing on February 19,
2020.**

A. Since PSE filed the Application with the Commission on February 19, 2020,
Talen Montana, a co-owner of Colstrip Units 3 & 4, exercised its right of first
refusal pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and
Operation Agreement to purchase a proportionate interest in PSE’s 25 percent
undivided ownership interest in Colstrip Unit 4 to be transferred to NorthWestern
Energy pursuant to the terms and conditions of the NorthWestern Energy Colstrip
Unit 4 Purchase and Sale Agreement.

1 **Q. Did PSE have an obligation to offer the other co-owners of Colstrip**
2 **Units 3 & 4 an opportunity to purchase a proportionate interest in**
3 **PSE's 25 percent undivided ownership interest in Colstrip Unit 4 to be**
4 **transferred to NorthWestern Energy pursuant to the terms and conditions of**
5 **the NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement?**

6 A. Yes. Section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation
7 Agreement required PSE to offer the other co-owners of Colstrip Units 3 & 4 an
8 opportunity to purchase a proportionate interest in PSE's 25 percent undivided
9 ownership interest in Colstrip Unit 4 to be transferred to NorthWestern Energy
10 pursuant to the terms and conditions of the NorthWestern Energy Colstrip Unit 4
11 Purchase and Sale Agreement:

12 All or any part of the interest of each Owner and Project Owner in
13 the Project or any part thereof, and all or any part of the rights set
14 forth in the Project Agreements which relate to such interest, may
15 be transferred and assigned as follows, but not otherwise:

16 ...

17 (f) To any other Person, provided that the Owner or Project User
18 shall first offer to transfer its interest or any part thereof to the other
19 Project Users, at the amount of, and on terms not less advantageous
20 than, those of a bona fide offer from a buyer able and willing to
21 purchase such Owner's or Project User's interest. The portion of
22 such interest to be offered to each Project User pursuant to this
23 subsection (f) shall be equal to the proportionate interest of such
24 Project User in the Project after excluding the interest being offered.
25 The initial offer shall be kept open for a period of 90 days. If, at the
26 end of the 90-day period, any Project User shall have failed to accept
27 such offer, the proportionate interest offered to such Project User
28 shall be offered on a pro rata basis to the other Project Users, who
29 shall have a further period of 7 days to accept the same. The process
30 referred to in the immediately preceding sentence shall be repeated

1 until all Project Users then being offered an interest shall have failed
2 to accept such offer.³

3 **Q. Did PSE offer the other co-owners of Colstrip Units 3 & 4 an opportunity to**
4 **purchase a proportionate interest in PSE's 25 percent undivided ownership**
5 **interest in Colstrip Unit 4 to be transferred to NorthWestern Energy**
6 **pursuant to the terms and conditions of the NorthWestern Energy Colstrip**
7 **Unit 4 Purchase and Sale Agreement?**

8 A. Yes. On January 10, 2020, PSE offered the other co-owners of Colstrip
9 Units 3 & 4 an opportunity to purchase a proportionate interest in PSE's
10 25 percent undivided ownership interest in Colstrip Unit 4 to be transferred to
11 NorthWestern Energy on terms not less advantageous than the terms and
12 conditions of the NorthWestern Energy Colstrip Unit 4 Purchase and Sale
13 Agreement.

14 **Q. Did PSE make such an offer to Talen Montana pursuant to section 24(f) of**
15 **the Colstrip Units 3 & 4 Ownership and Operation Agreement?**

16 A. Yes. PSE made such an offer to Talen Montana pursuant to section 24(f) of the
17 Colstrip Units 3 & 4 Ownership and Operation Agreement. Please see the First
18 Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J. Roberts,
19 Exh. RJR-10, for a copy of the PSE offer, dated January 10, 2020, to Talen
20 Montana. PSE also made similar offers to the other co-owners of Colstrip

³ Roberts, Exh. RJR-3, at 29-30.

1 Units 3 & 4 (i.e., Avista Corporation, PacifiCorp, and Portland General Electric
2 Company).

3 **Q. Did PSE have an obligation to offer the other co-owners of Colstrip**
4 **Transmission System an opportunity to purchase a proportionate interest in**
5 **those certain PSE interests in the Colstrip Transmission System to be**
6 **transferred to NorthWestern Energy pursuant to the terms and conditions of**
7 **the Colstrip Transmission System Purchase and Sale Agreement?**

8 A. Yes. Section 28(f) of the Colstrip Transmission Agreement⁴ required PSE to offer
9 the other co-owners of the Colstrip Transmission System an opportunity to
10 purchase a proportionate interest in those certain PSE interests in the Colstrip
11 Transmission System to be transferred to NorthWestern Energy pursuant to the
12 terms and conditions of the Colstrip Transmission System Purchase and Sale
13 Agreement:

14 All or any part of the interest of each Transmission Owner in the
15 Transmission System or any part thereof, and all or any part of the
16 rights set forth in the Project Agreements which relate to such
17 interest, may be transferred and assigned as follows, but not
18 otherwise:

19 ...

20 (f) To any other Person, provided that the Transmission Owner shall
21 first offer to transfer its interest or any part thereof to the other
22 Transmission Owners, at the amount of, and on terms not less

⁴ “Colstrip Transmission Agreement” refers to that certain Amended and Restated Colstrip Project Transmission Agreement, dated as of September 27, 2013, by and among NorthWestern Energy, Puget Sound Energy, Avista Corporation, Portland General Electric Company, and PacifiCorp. Please see the Second Exhibit to the Prefiled Direct Testimony of Thomas M. Flynn, Exh. TMF-3, for a copy of the Colstrip Transmission Agreement.

1 advantageous than, those of a bona fide offer from a buyer able and
2 willing to purchase such Transmission Owner's interest. The portion
3 of such interest to be offered to each Transmission Owner pursuant
4 to this subsection (f) shall be equal to the proportionate interest of
5 such Transmission Owner in the Transmission System after
6 excluding the interest being offered. The initial offer shall be kept
7 open for a period of 90 days. If, at the end of the 90-day period, any
8 Transmission Owner shall have failed to accept such offer, the
9 proportionate interest offered to such Transmission Owner shall be
10 offered on a pro rata basis to the other Transmission Owners, who
11 shall have a further period of 7 days to accept the same. The process
12 referred to in the immediately preceding sentence shall be repeated
13 until all Transmission Owners then being offered an interest shall
14 have failed to accept such offer.⁵

15 **Q. Did PSE offer the other co-owners of Colstrip Transmission System an**
16 **opportunity to purchase a proportionate interest in those certain PSE**
17 **interests in the Colstrip Transmission System to be transferred to**
18 **NorthWestern Energy pursuant to the terms and conditions of the Colstrip**
19 **Transmission System Purchase and Sale Agreement?**

20 **A.** Yes. On January 10, 2020, PSE offered the other co-owners of the Colstrip
21 Transmission System an opportunity to purchase a proportionate interest in those
22 certain PSE interests in the Colstrip Transmission System to be transferred to
23 NorthWestern Energy on terms not less advantageous than the terms and
24 conditions of the Colstrip Transmission System Purchase and Sale Agreement.

⁵ Flynn, Exh. TMF-3, at 32.

1 **Q. Did PSE make such an offer to Talen Montana pursuant to section 28(f) of**
2 **the Colstrip Transmission Agreement?**

3 A. No. Talen Montana is neither a co-owner of the Colstrip Transmission System nor
4 a party to the Colstrip Transmission Agreement. Accordingly, PSE did not make
5 such an offer to Talen Montana pursuant to section 28(f) of the Colstrip
6 Transmission Agreement. PSE did, however, make such an offer to the other co-
7 owners of the Colstrip Transmission System (i.e., Avista Corporation, PacifiCorp,
8 and Portland General Electric Company). Please see, for purposes of example
9 only, the Second Exhibit to the Prefiled Supplemental Direct Testimony of
10 Ronald J. Roberts, Exh. RJR-11, for a copy of the PSE offer, dated January 10,
11 2020, to Portland General Electric Company pursuant to section 28(f) of the
12 Colstrip Transmission Agreement.

13 **Q. Did any co-owner of Colstrip Units 3 & 4 accept PSE's offer to purchase a**
14 **proportionate interest in PSE's 25 percent undivided ownership interest in**
15 **Colstrip Unit 4 pursuant to section 24(f) of the Colstrip Units 3 & 4**
16 **Ownership and Operation Agreement?**

17 A. Yes. By letter dated April 8, 2020, Talen Montana provided notice that it would
18 accept PSE's offer to purchase a proportionate interest in PSE's 25 percent
19 undivided ownership interest in Colstrip Unit 4. Please see the Third Exhibit to
20 the Prefiled Supplemental Direct Testimony of Ronald J. Roberts, Exh. RJR-12,
21 for a copy of the acceptance, dated April 8, 2020, by Talen Montana of PSE's

1 offer pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and
2 Operation Agreement.

3 By letter dated April 8, 2020, NorthWestern Energy provided notice of its
4 conditional exercise of its right of first refusal pursuant to section 24(f) of the
5 Colstrip Units 3 & 4 Ownership and Operation Agreement “if (and only if) one or
6 more other [co-owners of Colstrip Units 3 & 4] also exercise their rights of first
7 refusal.” Please see the Fourth Exhibit to the Prefiled Supplemental Direct
8 Testimony of Ronald J. Roberts, Exh. RJR-13, for a copy of the conditional
9 exercise, dated April 8, 2020, by NorthWestern Energy of its right of first refusal
10 pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation
11 Agreement.

12 No other co-owner of Colstrip Units 3 & 4 accepted PSE’s offer to purchase a
13 proportionate interest in PSE’s 25 percent undivided ownership interest in
14 Colstrip Unit 4 pursuant to section 24(f) of the Colstrip Units 3 & 4 Ownership
15 and Operation Agreement.

16 **Q. Did any co-owner of the Colstrip Transmission System accept PSE’s offer to**
17 **purchase a proportionate interest in those certain PSE interests in the**
18 **Colstrip Transmission System pursuant to section 28(f) of the Colstrip**
19 **Transmission Agreement?**

20 A. By letter dated April 8, 2020, NorthWestern Energy provided notice of its
21 conditional exercise of its right of first refusal pursuant to section 28(f) of the

1 Colstrip Transmission Agreement “if (and only if) one or more other [co-owners
2 of Colstrip Transmission System] also exercise their rights of first refusal.” Please
3 see the Fifth Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J.
4 Roberts, Exh. RJR-14, for a copy of the conditional exercise, dated April 8, 2020,
5 by NorthWestern Energy of its right of first refusal pursuant to section 28(f) of the
6 Colstrip Transmission Agreement. No other co-owner of the Colstrip
7 Transmission System accepted PSE’s offer to purchase a proportionate interest in
8 those certain PSE interests in the Colstrip Transmission System pursuant to
9 section 28(f) of the Colstrip Transmission Agreement.

10 In its acceptance letter, dated April 8, 2020, Talen Montana did assert a right
11 under section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation
12 Agreement to an offer of a proportionate interest in those certain PSE interests in
13 the Colstrip Transmission System.⁶

14 **Q. Did either NorthWestern Energy or PSE agree with Talen Montana’s**
15 **assertion of a right under section 24(f) of the Colstrip Units 3 & 4 Ownership**
16 **and Operation Agreement to an offer of a proportionate interest in those**
17 **certain PSE interests in the Colstrip Transmission System?**

18 A. No. Neither NorthWestern Energy nor PSE agreed with Talen Montana’s
19 assertion of a right under section 24(f) of the Colstrip Units 3 & 4 Ownership and
20 Operation Agreement to an offer of a proportionate interest in those certain PSE

⁶ See, e.g., Roberts, Exh. RJR-12, at 1-2.

1 interests in the Colstrip Transmission System. NorthWestern Energy, PSE, and
2 Talen Montana have agreed to resolve this dispute pursuant to binding arbitration
3 in accordance with section 18 of the Colstrip Units 3 & 4 Ownership and
4 Operation Agreement. The arbitration hearing has been scheduled for
5 September 17, 2020, and the arbitrator has thirty (30) days thereafter to render her
6 opinion in writing.

7 **Q. What occurred after PSE received the Talen Montana acceptance on April 8,**
8 **2020?**

9 A. On April 13, 2020, PSE provided notice to all co-owners of Colstrip Units 3 & 4
10 that Talen Montana and NorthWestern Energy were the two co-owners to have
11 exercised their respective rights of first refusal pursuant to section 24(f) of the
12 Colstrip Units 3 & 4 Ownership and Operation Agreement. Please see the Sixth
13 Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J. Roberts,
14 Exh. RJR-15, for a copy of the PSE notice, dated April 13, 2020. In that notice,
15 PSE indicated that Talen Montana and NorthWestern Energy “can each
16 independently determine what, if any, further communications they wish to make
17 under section 24 of the [Colstrip Units 3 & 4 Ownership and Operation
18 Agreement].”⁷

⁷ Roberts, Exh. RJR-15, at 1.

1 **Q. What occurred after PSE provided the notice dated April 13, 2020?**

2 A. After PSE provided the notice on April 13, 2020, Talen Montana and
3 NorthWestern Energy negotiated between themselves regarding how to allocate
4 the purchase of PSE's interests in Colstrip Unit 4 and the sale of 90 MW of
5 capacity from Colstrip Unit 4 in the period after closing. Although the two parties
6 reached a relatively quick consensus that each would purchase half of PSE's
7 interests in Colstrip Unit 4 and sell PSE 45 MW of capacity from Colstrip Unit 4
8 in the period after closing, because the vote sharing allocation is a more complex
9 issue, the parties required additional time to address the allocation of voting rights
10 between NorthWestern Energy and Talen Montana under a three-party vote share
11 agreement among NorthWestern Energy, PSE, and Talen Montana.

12 Ultimately, the three parties were able to reach consensus on a new three-party
13 vote share agreement and any remaining terms in the first half of August of 2020,
14 and the parties executed the following agreements on August 14, 2020:

15 (i) Amendment No. 1 to Colstrip Unit 4 Purchase and Sale
16 Agreement, dated as of August 14, 2020, between
17 NorthWestern Energy and PSE, a copy of which is
18 provided as the Seventh Exhibit to the Prefiled
19 Supplemental Direct Testimony of Ronald J. Roberts,
20 Exh. RJR-16 (the "Amendment to the NorthWestern
21 Energy Colstrip Unit 4 Purchase and Sale Agreement");
22 and

23 (ii) Colstrip Unit 4 Purchase and Sale Agreement, dated as of
24 August 14, 2020, between Talen Montana and PSE, a copy
25 of which is provided as the Seventh Exhibit to the Prefiled
26 Supplemental Direct Testimony of Ronald J. Roberts,
27 Exh. RJR-18 (the "Talen Montana Colstrip Unit 4 Purchase
28 and Sale Agreement").

1 **III. AMENDMENT TO THE NORTHWESTERN**
2 **ENERGY COLSTRIP UNIT 4 PURCHASE**
3 **AND SALE AGREEMENT**

4 **Q. Please describe the Amendment to the NorthWestern Energy Colstrip Unit 4**
5 **Purchase and Sale Agreement.**

6 A. The Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale
7 Agreement generally amends the underlying NorthWestern Energy Colstrip
8 Unit 4 Purchase and Sale Agreement to reflect the reduction in interests acquired
9 by NorthWestern Energy that results from the exercise by Talen Montana of its
10 right of first refusal pursuant to section 24(f) of the Colstrip Units 3 & 4
11 Ownership and Operation Agreement to purchase a proportionate interest in
12 PSE's 25 percent undivided ownership interest in Colstrip Unit 4 originally to be
13 transferred to NorthWestern Energy pursuant to the terms and conditions of the
14 NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.

15 **Q. Has PSE prepared a comparison of the original NorthWestern Energy**
16 **Colstrip Unit 4 Purchase and Sale Agreement as amended by the**
17 **Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale**
18 **Agreement with the original NorthWestern Energy Colstrip Unit 4 Purchase**
19 **and Sale Agreement filed by PSE on February 19, 2020?**

20 A. Yes. To reflect the changes made by the Amendment to the NorthWestern Energy
21 Colstrip Unit 4 Purchase and Sale Agreement, PSE prepared a comparison of the
22 original NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement as
23 amended by the Amendment to the NorthWestern Energy Colstrip Unit 4

1 Purchase and Sale Agreement. Please see the Eighth Exhibit to the Prefiled
2 Supplemental Direct Testimony of Ronald J. Roberts, Exh. RJR-17, for a copy of
3 this comparison.

4 **A. Reduction in the Undivided Ownership Interest in Colstrip Unit 4 to**
5 **be Acquired by NorthWestern Energy**

6 **Q. Please describe the first change reflected in the Amendment to the**
7 **NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.**

8 A. The first change reflected in the Amendment to the NorthWestern Energy Colstrip
9 Unit 4 Purchase and Sale Agreement are revisions that reflect the fact that
10 NorthWestern Energy is now acquiring a 12.5 percent undivided ownership
11 interest in Colstrip Unit 4.⁸ This change reflects the reduction in NorthWestern
12 Energy's acquisition that results from the arrangement reached by NorthWestern
13 Energy and Talen Montana after Talen Montana exercised its right of first refusal
14 under section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation
15 Agreement. Similar revisions reflecting the reduction in NorthWestern Energy's
16 acquired interests occur in the following exhibits and scheduled to the
17 NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement:

- 18
- Exhibit I (Form of Deed),⁹

⁸ See Roberts, Exh. RJR-16, at 1-2 (Amendments 1.a. and 1.b.); Roberts, Exh. RJR-17, at 6.

⁹ See, e.g., Roberts, Exh. RJR-17, at 91, 94, 98, 100, 103, and 104.

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- Schedule 1.1 (Water Rights),¹⁰
- Schedule 2.1(a) (Real Property),¹¹ and
- Schedule 2.1(b) (Common Facilities Interest and Associated Assets).¹²

B. Reduction in the Purchase Price to be Paid by NorthWestern Energy

Q. Please describe the second change reflected in the Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.

A. The second change reflected in the Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement reflects the fifty percent reduction in the purchase price to be paid by NorthWestern Energy.

C. Reduction in the Contract Quantity Under the NorthWestern PPA

Q. Please describe the third change reflected in the Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.

A. The third change reflected in the Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement reflects the fifty percent reduction in the Contract Quantity to be sold by NorthWestern Energy pursuant to the NorthWestern PPA.¹³

¹⁰ See, e.g., *id.* at 110.
¹¹ See, e.g., *id.* at 112, 115, 119, 121, and 122.
¹² See, e.g., Roberts, Exh. RJR-17, at 123.
¹³ See Roberts, Exh. RJR-16, at 2 (Amendment 1.b.); Roberts, Exh. RJR-17, at 52-53 (revising the Contract Quantity from 90 MW to 45 MW).

1 **D. Revisions to the Vote Sharing Agreement**

2 **Q. Please describe the fourth change reflected in the Amendment to the**
3 **NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.**

4 A. The fourth change reflected in the Amendment to the NorthWestern Energy
5 Colstrip Unit 4 Purchase and Sale Agreement reflects a set of changes necessary
6 to reflect the substantial revisions to the Vote Sharing Agreement.¹⁴ The revisions
7 to the Vote Sharing Agreement are discussed in greater detail in Section VI
8 below.

9 **E. Removal of the Condition Precedent Related to Rights of First Refusal**
10 **of Co-Owners of Colstrip Units 3 & 4 Pursuant to Section 24(f) of the**
11 **Colstrip Units 3 & 4 Ownership and Operation Agreement**

12 **Q. Please describe the fifth change reflected in the Amendment to the**
13 **NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.**

14 A. The fifth change reflected in the Amendment to the NorthWestern Energy
15 Colstrip Unit 4 Purchase and Sale Agreement is to remove the condition
16 precedent in section 3.5(g) that related to the potential of a co-owner of Colstrip
17 Units 3 & 4 to exercise its right of first refusal pursuant to section 24(f) of the
18 Colstrip Units 3 & 4 Ownership and Operation Agreement.¹⁵ Talen Montana did

¹⁴ See Roberts, Exh. RJR-16, at 2 (Amendment 1.d.); Roberts, Exh. RJR-17, at 17 (revising section 2.2).

¹⁵ See Roberts, Exh. RJR-16, at 2 (Amendments 1.c. and 1.f.); Roberts, Exh. RJR-17, at 26-27 (revising section 7.1(b)(iv)) and at 62-83 (revising Exhibit F (Vote Sharing Agreement)).

1 exercise its right of first refusal, and NorthWestern Energy waived the condition
2 precedent in such section 3.5(g).

3 **F. Addition of Section 7.12 to Address Scheduling Issues**

4 **Q. Please describe the sixth change reflected in the Amendment to the**
5 **NorthWestern Energy Colstrip Unit 4 Purchase and Sale Agreement.**

6 A. The sixth and final change reflected in the Amendment to the NorthWestern
7 Energy Colstrip Unit 4 Purchase and Sale Agreement is to the addition of the
8 following section 7.12 to address scheduling issues identified by NorthWestern
9 Energy:

10 **Section 7.12 Scheduling Protocols/Allocation Software.** Buyer
11 and Seller agree to use Commercially Reasonable Efforts and act in
12 good faith to address scheduling issues by either revisions to the
13 allocation software presently utilized to schedule and dispatch
14 output from Colstrip Units 3 and 4 or entry into an agreement to
15 true-up scheduling, or a combination of the both, so as to
16 appropriately and equitably implement the effects of the transactions
17 contemplated by the Agreement as may be necessary to equitably
18 and appropriately implement the impact of the transactions
19 contemplated by the Agreement on operations of Colstrip Unit 4.¹⁶

¹⁶ See Roberts, Exh. RJR-16, at 2 (Amendment 1.e.); Roberts, Exh. RJR-17, at 21 (section 3.5(g)).

1 **IV. THE TALEN MONTANA COLSTRIP UNIT 4**
2 **PURCHASE AND SALE AGREEMENT**

3 **Q. Please describe the Talen Montana Colstrip Unit 4 Purchase and Sale**
4 **Agreement.**

5 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement is the
6 agreement pursuant to which PSE will sell half (i.e., 12.5 percent) of its
7 25 percent of its interests in Colstrip Unit 4 to Talen Montana. Please see the
8 Ninth Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J.
9 Roberts, Exh. RJR-18, for a copy of the Talen Montana Colstrip Unit 4 Purchase
10 and Sale Agreement.

11 **Q. Are the material terms of the Talen Montana Colstrip 4 Purchase and Sale**
12 **Agreement substantially similar to the material terms of the NorthWestern**
13 **Energy Colstrip Unit 4 Purchase and Sale Agreement, as amended?**

14 A. Yes. The material terms of the Talen Montana Colstrip Unit 4 Purchase and Sale
15 Agreement, which are discussed in further detail later in this section, are
16 substantially similar to the material terms of the NorthWestern Energy Colstrip
17 Unit 4 Purchase and Sale Agreement, as amended.

18 PSE prepared a comparison of the Talen Montana Colstrip Unit 4 Purchase and
19 Sale Agreement and the NorthWestern Energy Colstrip Unit 4 Purchase and Sale
20 Agreement, as amended. Please see the Tenth Exhibit to the Prefiled
21 Supplemental Direct Testimony of Ronald J. Roberts, Exh. RJR-19, for a copy of
22 this comparison.

1 **A. Overview of the Talen Montana Colstrip Unit 4 Purchase and Sale**
2 **Agreement**

3 **Q. Please provide an overview of the Talen Montana Colstrip Unit 4 Purchase**
4 **and Sale Agreement.**

5 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement proposes the
6 sale by PSE to Talen Montana of the following:

- 7 (i) PSE Colstrip 4 Interests. PSE will sell to Talen Montana
8 half (i.e., 12.5%) of all of PSE's twenty-five percent (25%)
9 undivided interest in the 740 MW Colstrip Unit 4 to Talen
10 Montana (the "PSE Colstrip 4 Interests");
- 11 (ii) Colstrip 4 Real Property Interests. PSE will transfer to
12 Talen Montana half of the portion of PSE's real property
13 rights associated with the PSE Colstrip 4 Interests
14 (the "Colstrip 4 Real Property Interests");
- 15 (iii) Common Facilities Interests. PSE will transfer to Talen
16 Montana half of the portion of PSE's interest in the
17 common facilities and associated assets related to the PSE
18 Colstrip 4 Interests (the "Common Facilities Interest"); and
- 19 (iv) Colstrip 4 Material Contract Interests. PSE will transfer to
20 Talen Montana half of the portion of PSE's rights under the
21 contracts, leases, and agreements related to the PSE
22 Colstrip 4 Interests (the "Colstrip 4 Material Contract
23 Interests").

24 The PSE Colstrip 4 Interests, the Colstrip 4 Real Property Interests, the Common
25 Facilities Interests, and the Colstrip 4 Material Contract Interests are referred to in
26 this prefiled supplemental direct testimony as the "Transferred Assets".¹⁷

¹⁷ See Roberts, Exh. RJR-18, at 16-17.

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

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

4 A. Yes. PSE will retain the following assets and liabilities under the terms and
5 conditions of the Talen Montana 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 PSE Colstrip 4 Interests (excluding decommission
12 or demolition costs arising from post-closing improvements
13 to the PSE 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 Talen
16 Montana Colstrip 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 PSE 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.¹⁸

2 **C. Assumption of Liabilities by Talen Montana**

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

5 A. Talen Montana assumes all liabilities and obligations related to the PSE Colstrip 4
6 Interests arising after closing.¹⁹

7 **D. Purchase Price**

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

10 A. As consideration for the purchase of the Transferred Assets, Talen Montana will
11 pay to PSE a purchase price of fifty cents (\$0.50).²⁰

12 **E. Conditions Precedent to Closing**

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

15 A. Yes, The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement includes
16 customary conditions precedent, including delivery of certain documentation, the
17 representations, and warranties of the parties remain true and correct as of closing,

¹⁸ See Roberts, Exh. RJR-18, at 16-17.

¹⁹ See *id.* at 17-18.

²⁰ See *id.* at 17.

1 the delivery of necessary consents, no order or decree of a court or governmental
2 authority has been issued that would prevent closing, termination of all liens
3 except permitted liens, payment of the purchase price, and no event causing or
4 constituting a material adverse effect has occurred or is occurring. Additional
5 conditions precedent include the approval of PSE's sale of the PSE Colstrip 4
6 Interests by this Commission.²¹

7 **F. Representations and Warranties of PSE**

8 **Q. What representations and warranties will PSE make under the Talen**
9 **Montana Colstrip Unit 4 Purchase and Sale Agreement?**

10 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement includes
11 customary representations and warranties provisions for PSE, including the
12 following customary representations and warranties: (i) organization and good
13 standing; (ii) authority; (iii) enforceability; (iv) title; (v) no violation or breach;
14 (vi) consents; (vii) material contracts; (viii) no disputes or litigation; (ix) no
15 brokerage fees or commissions; and (x) no bankruptcy.²²

²¹ See Roberts, Exh. RJR-18, at 21.

²² See *id.* at 22-24.

1 **G. Representations and Warranties of Talen Montana**

2 **Q. What representations and warranties will Talen Montana make under the**
3 **Talen Montana Colstrip Unit 4 Purchase and Sale Agreement?**

4 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement includes
5 customary representations and warranties provisions for Talen Montana,
6 including the following customary representations and warranties: (i) organization
7 and good standing; (ii) authority; (iii) enforceability; (iv) no violation or breach;
8 (v) consents; (vi) no disputes or litigation; (vii) no brokerage fees or commissions;
9 (viii) no bankruptcy, and (ix) regulatory approvals and authorizations.²³

10 **H. Access**

11 **Q. What access rights does Talen Montana have under the Talen Montana**
12 **Colstrip Unit 4 Purchase and Sale Agreement?**

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

²³ See Roberts, Exh. RJR-18, at 24-25.

1 with respect to PSE's Colstrip 4 Interests as Talen Montana may from time to
2 time reasonably request.²⁴

3 **I. Confidentiality**

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

6 A. Yes. Each party agrees to maintain in confidence all information made available
7 to it under the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement and
8 to cause their respective officers, directors, agents, employees, representatives,
9 consultants, and advisors to maintain in confidence all information made available
10 to them under the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement,
11 all as provided in the Mutual Nondisclosure Agreement executed as of
12 January 29, 2019, among PSE, NorthWestern, and Talen Montana.²⁵

13 **J. Covenants**

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

16 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement includes
17 customary covenants of PSE and Talen Montana, including the following:
18 (i) exclusivity; (ii) conduct of business; (iii) public announcements; (iv) actions

²⁴ See Roberts, Exh. RJR-18, at 25-26.

²⁵ See *id.* at 26.

1 by parties; (v) further assurances; (vi) records; (vii) privilege; (viii) regulatory and
2 other authorizations and consents filings; (ix) required regulatory approvals;
3 (x) fees and expenses; (xi) tax matters; (xii) transfer taxes; (xiii) right of first
4 refusal; (xiv) updates to disclosure schedules; and (xv) transfers of interests.²⁶

5 **K. Liability**

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

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

16 If the parties are unable to agree on whether particular losses are at least partially
17 the result of events, occurrences, or conditions from before or after the closing
18 date, the parties agree to attempt to settle such disagreement by mutual discussion
19 between executives from both parties. If any such disagreement is not resolved
20 within thirty (30) days of receipt of a notice of such dispute, the parties will

²⁶ See Roberts, Exh. RJR-18, at 26-28.

1 jointly retain an independent third-party consultant (with expertise in the subject
2 matter giving rise to the liability) to promptly determine when the events or
3 occurrences that caused or gave rise to the losses in question took place. The
4 independent third-party consultant will act as an impartial and neutral arbitrator in
5 carrying out its duties. If the independent third-party consultant determines that
6 the losses in question were at least partially caused by or partially arose from
7 events or occurrence from prior to the closing date, then PSE will be responsible
8 for those losses. If the independent third-party consultant determines that losses in
9 question were wholly caused by or wholly arose from events or occurrence after
10 the closing date, Talen Montana will be responsible for those losses.²⁷

11 **L. Indemnification**

12 **Q. Does the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement**
13 **contain indemnification provisions?**

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

18 If the closing of the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement
19 occurs, PSE will indemnify Talen Montana for:

²⁷ See Roberts, Exh. RJR-18, at 32-36.

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- any failure by PSE to pay, perform or discharge any excluded liability under the agreement;
- any failure by PSE to pay, perform or discharge any retained liability under the agreement;
- any liability, obligation or commitment of PSE relating to the PSE Colstrip 4 Interests not assumed by Talen Montana Talen Montana under the agreement;
- any taxes of, or attributable to, PSE and the PSE 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 Talen Montana responsible for more than the share of any losses set forth in the liability Talen Montana provisions of the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement.²⁸

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

- any failure of Talen Montana 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 Talen Montana; 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 Talen Montana Colstrip Unit 4 Purchase and Sale Agreement.²⁹

²⁸ See Roberts, Exh. RJR-18, at 36.
²⁹ See *id.* at 37.

1 **M. Termination**

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

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

- 6 • at any time by mutual written agreement of PSE and Talen
7 Montana; or
- 8 • by either PSE or Talen Montana upon the material breach
9 of the agreement by the other, to be effective, if curable,
10 upon the breaching party's failure to cure within five (5)
11 business days of notice given, and if incurable, upon notice
12 given.³⁰

13 Additionally, PSE may generally terminate the Talen Montana Colstrip Unit 4
14 Purchase and Sale 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.³¹

20 Finally, Talen Montana may generally terminate the Talen Montana Colstrip
21 Unit 4 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;

³⁰ See Roberts, Exh. RJR-18, at 38.

³¹ See *id.* 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; or
- 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 PSE Colstrip 4 Interests.³²

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

A. In the event of termination of the Talen Montana 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 Talen Montana 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 Talen Montana 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 Talen Montana or any affiliate thereof,

³² See Roberts, Exh. RJR-18, at 40-41.

1 whether under the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement
2 or otherwise in connection with the transactions contemplated by the Talen
3 Montana Colstrip Unit 4 Purchase and Sale Agreement.³³

4 **N. Dispute Resolution**

5 **Q. Does the Talen Montana Colstrip Unit 4 Purchase and Sale Agreement**
6 **contain dispute resolution provisions?**

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

16 Any arbitrator appointed shall be a retired judge, preferably from a Federal
17 District Court or Federal Court of Appeals, or a practicing attorney with no less
18 than twenty (20) years of experience and an experienced arbitrator and, if
19 possible, shall have experience with disputes relating to electric power
20 infrastructure. The arbitrator is not empowered to award damages in excess of

³³ See Roberts, Exh. RJR-18, at 41.

1 compensatory damages, and each party hereby irrevocably waives any right to
2 recover consequential, punitive, exemplary or similar damages with respect to any
3 dispute. The arbitrator's award shall allocate all costs of the arbitration, including
4 the fees and expenses of the arbitrator and reasonable attorneys' fees, costs, and
5 expert witness expenses of the parties. The award shall be final and binding on the
6 Parties and may be enforced in any court having jurisdiction.³⁴

7 **O. Governing Law**

8 **Q. What is the governing law under the Talen Montana Colstrip Unit 4**
9 **Purchase and Sale Agreement?**

10 A. The Talen Montana Colstrip Unit 4 Purchase and Sale Agreement is to be
11 governed by, enforced, and interpreted in accordance with the laws of the State of
12 Delaware without regard to principles of conflicts of laws.³⁵

13 **V. THE TALEN MONTANA PPA**

14 **Q. Please provide an overview of the Talen Montana PPA.**

15 A. Similar to the NorthWestern Energy PPA, PSE and Talen Montana have agreed
16 upon to use the WSPP Agreement as the master agreement from PSE's purchases
17 of power from Talen Montana from Colstrip Unit 4.

³⁴ See Roberts, Exh. RJR-18, at 41-43.

³⁵ See *id.* at 43.

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

2 A. The WSPP Agreement represents a standardized default contract for electric
3 power sales and physical options. If the parties to a WSPP transaction do not
4 mutually agree to changes to the WSPP Agreement, the terms of the WSPP
5 Agreement will control. The WSPP Agreement, however, provides parties with
6 the flexibility on the major terms to modify the agreement, by their mutual
7 agreement, to be applied to any WSPP transaction, as discussed below. The
8 WSPP Agreement, by its terms, only applies to transactions between WSPP
9 members, such as PSE and Talen Montana.³⁶

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

11 A. As previously mentioned, the WSPP Agreement provides default standardized
12 contract provisions for electric power sales and physical options, but parties to a
13 transaction have the flexibility to modify the agreement, by their mutual
14 agreement. Confirmation agreements include the specific terms to the transaction,
15 including changes to the base WSPP Agreement to which the parties mutually
16 agree.³⁷

³⁶ 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.

³⁷ 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 Please see the Eleventh Exhibit to the Prefiled Supplemental Direct Testimony of
2 Ronald J. Roberts, Exh. RJR-20C, for a copy of the form confirmation for the
3 proposed PPA with Talen Montana (the “Talen Montana PPA”). The principal
4 commercial terms of the Talen Montana PPA are summarized below.

5 **A. Term**

6 **Q. What is the term of the Talen Montana PPA?**

7 A. Although the form confirmation provided in the Eleventh Exhibit to the Prefiled
8 Supplemental Direct Testimony of Ronald J. Roberts, Exh. RJR-20C, suggests a
9 term commencing on June 1, 2020, and ending on May 15, 2025,³⁸ the proposed
10 term of the confirmation requires deliveries of power to PSE from Colstrip Unit 4
11 commencing on the hour ending 0100 on the date following closing and will
12 continue for a period that expires at the earlier of (i) 258 weeks after closing or
13 (ii) December 31, 2025. The parties elected to refer to the prior proposed term of
14 the PPA with NorthWestern Energy until such time as the commencement date
15 under the Talen Montana PPA is known.

16 The purpose of this term is to maintain the term of 258 weeks (i.e., two weeks less
17 than a full five (5) years) negotiated in the Talen Montana PPA but
18 (i) acknowledges the fact that the commencement date is unknown and dependent
19 on the closing of the transactions and (ii) prevents deliveries after December 31,
20 2025, for purposes of compliance with the Washington Clean Energy

³⁸ See Roberts, Exh. RJR-20C, at 1.

1 Transformation Act. In any event, the term is less than five (5) years. It should be
2 noted that the confirmation for the PPA with NorthWestern Energy would include
3 an identical term. Indeed, the material terms of the PPAs with NorthWestern
4 Energy and Talen Montana would be identical.

5 As discussed in the Prefiled Supplemental Direct Testimony of Cindy L. Song,
6 Exh. CLS-8T, PSE has assumed a term beginning on the hour ending 0100 on
7 December 17, 2020, and ending on the hour ending 2400 on December 2, 2025.
8 This assumption is made for modeling purposes only and will not affect the
9 ultimate term of the Talen Montana PPA.

10 **B. Delivery Point**

11 **Q. What is the delivery point under the Talen Montana PPA?**

12 A. The delivery point under the Talen Montana PPA is the high side of the 500 kV
13 bus for Colstrip Unit 4 in the Colstrip Switchyard, or, at Talen Montana's option
14 and with prior notice to PSE, at Mid-C. For deliveries to the 500 kV bus for
15 Colstrip Unit 4, PSE will use its existing transmission rights on the Colstrip
16 Transmission System to deliver the power to PSE's retail customers.³⁹

³⁹ See Roberts, Exh. RJR-20C, at 1.

1 C. **Product**

2 Q. **What is the product under the Talen Montana PPA?**

3 A. The WSPP Agreement sets forth three basic products in its service schedules. PSE
4 and Talen Montana have agreed to use Service Schedule B (Unit Commitment
5 Service), which is a sale from a specified unit (i.e., Colstrip Unit 4) for a specified
6 period. Other than through force majeure, Unit Commitment Service may be
7 curtailed based upon the following conditions:

- 8 • upon mutually agreed upon recall provisions;
- 9 • when all or a portion of the specified unit is unavailable;
- 10 • to prevent system separation during an emergency
11 (provided that prudent alternatives to curtailment have been
12 exhausted);
- 13 • for the seller (i.e., Talen Montana) to meet its public utility
14 or statutory obligations, if any; or
- 15 • due to the unavailability of transmission service.

16 The stipulated damages provision applies to failures to deliver or to take Service
17 Schedule B power unless the parties agree otherwise.⁴⁰

⁴⁰ See Roberts, Exh. RJR-20, at 1; see also WSPP, *WSPP Agreement*, available at http://www.wspp.org/pages/documents/01_25_20_current_effective_agreement.docx.

1 **D. Contract Quantity**

2 **Q. What is the contract quantity under the Talen Montana PPA?**

3 A. The contract quantity under the Talen Montana PPA is up to forty-five (45) MW
4 per hour.⁴¹

5 **E. Contract Price**

6 **Q. What is the contract price under the Talen Montana PPA?**

7 A. Regardless of the delivery point, the contract price under the Talen Montana PPA
8 is the higher of (i) the Mid C Day-Ahead Index Price for on-peak and off-peak
9 periods, as applicable, minus O&M Costs (Base) Equivalent and (ii) the Floor
10 Price applicable to such hour. In addition, PSE will pay a monthly payment
11 of 1/12th of the annual O&M Costs (Base).⁴²

12 **Q. What is the “Floor Price” under the Talen Montana PPA?**

13 A. The “Floor Price” means, for any hour during the Period of Delivery, a per MWh
14 price calculated in accordance with Exhibit A to the confirmation.⁴³

⁴¹ See Roberts, Exh. RJR-20C, at 1

⁴² See *id.* at 1-2.

⁴³ See *id.* at 2 and 5.

1 **Q. What is the “O&M Costs (Base)” under the Talen Montana PPA?**

2 A. The “O&M Costs (Base)” means the 45 MW share of the O&M Cost (Base) fixed
3 costs as identified and approved annually for Colstrip Units 3 and 4 Budget.⁴⁴

4 **Q. What is the “O&M Costs (Base) Equivalent” under the Talen Montana**
5 **PPA?**

6 A. The “O&M Costs (Base) Equivalent” means the O&M Cost (Base) divided by the
7 annual net generation, as identified and approved annually for Colstrip Units 3
8 and 4 Budget.⁴⁵

9 **VI. PROPOSED VOTE SHARING AGREEMENT AMONG**
10 **NORTHWESTERN ENERGY, PSE, AND**
11 **TALEN MONTANA**

12 **Q. Please describe the Proposed Vote Sharing Agreement among NorthWestern**
13 **Energy, PSE, and Talen Montana.**

14 A. The proposed Vote Sharing Agreement is attached as Amended Exhibit F to the
15 Amendment to the NorthWestern Energy Colstrip Unit 4 Purchase and Sale
16 Agreement and as Exhibit F to the Talen Montana Colstrip Unit 4 Purchase and
17 Sale Agreement. The proposed Vote Sharing Agreement governs each of PSE’s,
18 NorthWestern Energy’s, and Talen’s respective voting obligations under the
19 Colstrip Units 3 & 4 Ownership and Operation Agreement with respect to
20 (i) PSE’s retained undivided interest in Colstrip Unit 3 and (ii) NorthWestern

⁴⁴ See Roberts, Exh. RJR-20C, at 2 and 5.

⁴⁵ See *id.* at 2 and 5.

1 Energy's and Talen Montana's 12.5 percent undivided interest in Colstrip Unit 4
2 acquired from PSE (but excluding NorthWestern Energy's preexisting interest in
3 Colstrip Unit 4 (together, the "Shared Vote"). In general, the proposed Vote
4 Sharing Agreement provides that, depending on the issue on which votes are
5 required under the Colstrip Unit 4 Purchase and Sale Agreement, the Shared Vote
6 would be cast on matters considered by the Project Committee in accordance with
7 the directions of the PSE representative or the consensus of NorthWestern Energy
8 and Talen Montana representatives.

9 **A. Structure of the Project Committee and the Need for the Proposed**
10 **Vote Sharing Agreement**

11 **Q. Please describe the need for the proposed Vote Sharing Agreement.**

12 A. Section 17 of the Colstrip Units 3 & 4 Ownership and Operation Agreement
13 provides for a Project Committee.⁴⁶ The purpose of the Project Committee is "to
14 facilitate effective cooperation, interchange of information and efficient
15 management of the Project, on a prompt and orderly basis."⁴⁷ The Colstrip
16 Units 3 & 4 Ownership and Operation Agreement defines the word "Project" as
17 follows:

18 "Project" means the coal-fired steam electric generating project
19 known as Colstrip Units #3 and #4 Steam Electric Generating
20 Project, consisting of two units, each of 700 megawatt nominal

⁴⁶ 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.

⁴⁷ Roberts, Exh. RJR-3, at 19 (quoting from section 17(a) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

1 rating, the Common Facilities and related facilities, real property
2 and property rights (including, but not limited to, the real property
3 described in Exhibit “A” hereto) located near Colstrip, Montana.
4 The Project shall not include the Transmission System defined in
5 Section 2(p) of the Transmission Agreement.⁴⁸

6 The Project Committee cannot consist of more than five (5) members on any issue
7 that requires a vote.⁴⁹ Each party to the Colstrip Units 3 & 4 Ownership and
8 Operation Agreement may appoint one (1) member to the Project Committee.⁵⁰
9 Each Project Committee member shall have the right to vote the Project Share⁵¹
10 of the party that appointed such member.⁵²

11 **Q. How many members are on the Project Committee and how are votes cast?**

12 A. Currently, the Project Committee has six (6) members, each of whom represents
13 one of the six (6) parties to the Colstrip Units 3 & 4 Ownership and Operation
14 Agreement. Although there are six (6) members of the Project Committee, the
15 terms and conditions of the Colstrip Units 3 & 4 Ownership and Operation
16 Agreement restricts the number of votes to five (5) votes on any given issue.
17 NorthWestern Energy and Talen Montana share one (1) of the five (5) Project
18 Committee votes pursuant to the terms and conditions of the Amended and

⁴⁸ Roberts, Exh. RJR-3, at 4 (quoting section 1(n) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

⁴⁹ *See id.* at 19 (section 17(a) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

⁵⁰ *See id.*

⁵¹ The “Project Share” is the sum of the percentages of undivided interest in the Project: (i) owned by (and not leased to another Person) a Project User; and (ii) leased by an owner to such Project User. *See id.* at 6 (section 2(b) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

⁵² *See id.* (section 17(a) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

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Restated Project Committee Vote Sharing Agreement, dated as of October 16, 2009, between NorthWestern Energy and Talen Montana (the “Existing Vote Sharing Agreement”). Please see the Twelfth Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J. Roberts, Exh. RJR-21, for a copy of the Existing Vote Sharing Agreement.

Table 1 below identifies the current parties to the Colstrip Units 3 & 4 Ownership and Operation Agreement, the Project Share of each party to the Colstrip Units 3 & 4 Ownership and Operation Agreement, and the number of Project Committee members representing each party to the Colstrip Units 3 & 4 Ownership and Operation Agreement.

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**Table 1. Project Committee for Colstrip Units 3 and 4
(Prior to Sale of PSE’s Interests in Colstrip Unit 4)**

Party	Project Share	Committee Members	Committee Vote
Avista Corporation (“Avista”)	15% (15% interest in each of Colstrip Units 3 and 4)	1	1
NorthWestern Energy	15% (30% interest in Colstrip Unit 4 only)	1	Existing Shared Vote ⁵³
PacifiCorp	10% (10% interest in each of Colstrip Units 3 and 4)	1	1
Portland General Electric Company (“Portland General”)	20% (20% interest in each of Colstrip Units 3 and 4)	1	1
PSE	25% (25% interest in each of Colstrip Units 3 and 4)	1	1
Talen Montana	15% (30% interest in Colstrip Unit 3 only)	1	Existing Shared Vote ⁵⁴

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Q. Who is the member of the Project Committee representing the Operator referred to in section 17 of the Colstrip Units 3 & 4 Ownership and Operating Agreement?

A. The member of the Project Committee representing the Operator acts as the chair of the Project Committee.⁵⁵ Talen Montana is the current Operator of Colstrip

⁵³ Shared with Talen Montana pursuant to the terms and conditions of the Existing Vote Sharing Agreement.

⁵⁴ Shared with NorthWestern Energy pursuant to the terms and conditions of the Existing Vote Sharing Agreement.

⁵⁵ Roberts, Exh. RJR-3, at 20 (section 17(c) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

1 Units 3 & 4, and the member of the Project Committee representing Talen
2 Montana serves as the chair of the Project Committee.

3 **Q. What is the role of the member of the Project Committee representing the**
4 **Operator?**

5 A. Section 17(f) of the Colstrip Units 3 & 4 Ownership and Operating Agreement
6 requires Talen Montana, in its role as Operator, to submit certain matters “to the
7 Committee for approval, which approval must be by a vote of Operator's
8 Committee member, plus at least two other Committee members so that the
9 Committee members voting for approval represent at least 55% of the total
10 Project Share”⁵⁶ Thus, any approval of the Project Committee pursuant to
11 section 17(f) of the Colstrip Units 3 & 4 Ownership and Operating Agreement
12 must

- 13 (i) receive the affirmative vote of the member of the Project
14 Committee that casts the Existing Shared Vote;
- 15 (ii) receive the affirmative votes of at least two (2) members of
16 the Project Committee other than the member of the Project
17 Committee that casts the Existing Shared Vote; and
- 18 (iii) the aggregate sum of the Project Shares represented by the
19 affirmative votes must be equal to or greater than
20 55 percent of the Project Shares.

⁵⁶ Roberts, Exh. RJR-3, at 20 (section 17(f) of the Colstrip Units 3 & 4 Ownership and Operation Agreement).

1 **Q. How would the sale of PSE's interests to NorthWestern Energy and Talen**
2 **Montana affect the structure of the Project Committee?**

3 A. If PSE were to sell its interests in Colstrip Unit 4, then each of NorthWestern
4 Energy and Talen Montana would acquire an undivided 12.5 percent of Colstrip
5 Unit 4, which represents an additional 6.25 percent Project Share. Additionally,
6 upon the sale of PSE's interests in Colstrip Unit 4 to NorthWestern and Talen
7 Montana, each of PSE, NorthWestern, and Talen Montana would share a vote
8 pursuant to the terms and conditions of the proposed Vote Sharing Agreement
9 with respect to the vote currently controlled by PSE. Table 2 below presents the
10 composition of the Project Committee after the sale of PSE's interests in Colstrip
11 Unit 4 to NorthWestern Energy and Talen Montana.

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**Table 2. Project Committee for Colstrip Units 3 and 4
(After Sale of PSE's Interests in Colstrip Unit 4 to
NorthWestern and Talen Montana)**

Party	Project Share	Committee Members	Committee Vote
Avista	15% (15% interest in each of Colstrip Units 3 and 4)	1	1
NorthWestern Energy	21.25% (42.5% interest in Colstrip Unit 4 only)	1	Existing Shared Vote ⁵⁷ Proposed Shared Vote ⁵⁸
PacifiCorp	10% (10% interest in each of Colstrip Units 3 and 4)	1	1
Portland General	20% (20% interest in each of Colstrip Units 3 and 4)	1	1
PSE	12.5% (25% interest in Colstrip Units 3 only)	1	Proposed Shared Vote ⁵⁹
Talen Montana	21.25% (30% interest in Colstrip Unit 3 and 12.5% interest in Colstrip Unit 4)	1	Existing Shared Vote ⁶⁰ Proposed Shared Vote ⁶¹

⁵⁷ Shared with Talen Montana pursuant to the terms and conditions of the Existing Vote Sharing Agreement.

⁵⁸ Shared with each of PSE and Talen Montana pursuant to the terms and conditions of the proposed Vote Sharing Agreement.

⁵⁹ Shared with each of NorthWestern Energy and Talen Montana pursuant to the terms and conditions of the proposed Vote Sharing Agreement.

⁶⁰ Shared with NorthWestern Energy pursuant to the terms and conditions of the Existing Vote Sharing Agreement.

⁶¹ Shared with each of NorthWestern Energy and PSE pursuant to the terms and conditions of the proposed Vote Sharing Agreement.

1 **B. Background Regarding the Project Committee and the Need for the**
2 **Proposed Vote Sharing Agreement**

3 **Q. On what issues would the PSE representative cast the Proposed Shared Vote**
4 **under the Proposed Vote Sharing Agreement?**

5 A. The Proposed Vote Sharing Agreement generally provides that the PSE
6 representative will cast the Proposed Shared Vote with respect to the following
7 issues:

- 8 (i) a Colstrip Unit 3 Proposal;⁶²
9 (ii) a Colstrip Unit 3 Budget Proposal;⁶³
10 (iii) a Colstrip Unit 3 Decommissioning Proposal;⁶⁴ and
11 (iv) a Remediation Proposal.⁶⁵

⁶² See, e.g., Roberts, Exh. RJR-18, at 70. The Proposed 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, and does not involve the Common Facilities.” See, e.g., *id.* at 64.

⁶³ See, e.g., *id.* at 71. The Vote Sharing Agreement defines the phrase “Unit 3 Budget Proposal” as “a Proposal regarding the Project’s budget for a year during which (i) Unit 3 is the only unit at the Project for which there is a planned maintenance outage, or (ii) both Unit 3 and Unit 4 have planned maintenance outages, but 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, e.g., *id.* at 66.

⁶⁴ See, e.g., *id.* at 72. The Proposed 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 alone.” See, e.g., *id.* at 66.

⁶⁵ See, e.g., *id.* at 72-73. The Proposed 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.

1 **Q. On what issues would the Northwestern Energy and Talen Montana**
2 **representatives be able to direct PSE to cast the Proposed Shared Vote under**
3 **the Proposed Vote Sharing Agreement?**

4 A. The Proposed Vote Sharing Agreement generally provides that the NorthWestern
5 Energy and Talen Montana representatives (collectively, the “Unit 4 Owners’
6 Appointees”) will be able to direct PSE to cast the Proposed Shared Vote with
7 respect to the following issues:

8 (i) a Colstrip Unit 4 Proposal;⁶⁶

9 (ii) a Mixed Proposal Other than for Replacement of Talen as
10 Operator;⁶⁷

11 (iii) a Colstrip Unit 4 Budget Proposal;⁶⁸ and

⁶⁶ See, e.g., Roberts, Exh. RJR-18, at 70. The Proposed Vote Sharing Agreement defines the phrase “Colstrip 4 Proposal” as “a Proposal, other than a Unit 4 Decommissioning Proposal or Remediation Proposal, that relates primarily to Colstrip Unit 4, and does not involve the Common Facilities.” See *id.* at 64.

⁶⁷ See, e.g., *id.* at 70. The Proposed Vote Sharing Agreement defines the phrase “Mixed Proposal Other than for Replacement of Talen as Operator” as “Proposal that is not a Colstrip 3 Proposal, Colstrip 4 Proposal, Unit 3 Decommissioning Proposal, Unit 4 Decommissioning Proposal, Unit 3 Budget Proposal, Unit 4 Budget Proposal, or Remediation Proposal. A Mixed Proposal may be either a Mixed Proposal for Replacement of Talen as Operator or a Mixed Proposal Other than for Replacement of Talen as Operator; provided, however, that if a Mixed Proposal may reasonably be classified in any category of Proposal other than as a Mixed Proposal for Replacement of Talen as Operator, such Proposal shall be classified in such other category. A Mixed Proposal Other than for Replacement of Talen as Operator shall include, 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 65.

⁶⁸ See, e.g., *id.* at 71. The Proposed Vote Sharing Agreement defines the phrase “Unit 4 Budget Proposal” as “a Proposal regarding the Project’s budget for a year during which (i) Unit 4 is the only unit at the Project for which there is a planned maintenance outage, or (ii) both Unit 3 and Unit 4 have planned maintenance outages, but 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 67.

1 (iv) a Colstrip Unit 4 Decommissioning Proposal.⁶⁹

2 **Q. How would the Unit 4 Owners' Appointees decide on proposals in which the**
3 **Proposed Vote Sharing Agreement permits them to direct PSE how to cast**
4 **the Proposed Shared Vote?**

5 A. The Proposed Vote Sharing Agreement contemplates the following potential
6 scenarios:

7 (i) **If the Unit 4 Owners' Appointees Agree How the**
8 **Proposed Vote Shall Be Cast.** If the proposal is one that
9 the Proposed Sharing Agreement requires PSE to cast the
10 Proposed Shared Vote in accordance with the direction
11 provided by the Unit 4 Owners' Appointees, the Proposed
12 Vote Sharing Agreement directs PSE to cast the Proposed
13 Shared Vote only if the Unit 4 Owners' Appointees agree
14 as to how to vote on the proposal in question.⁷⁰

15 (ii) **If the Unit 4 Owners' Appointees Disagree How the**
16 **Proposed Vote Shall Be Cast.** If the proposal is one that
17 the Proposed Sharing Agreement requires PSE to cast the
18 Proposed Shared Vote in accordance with the direction
19 provided by the Unit 4 Owners' Appointees but the Unit 4
20 Owners' Appointees are not in agreement regarding how to
21 cast the Proposed Shared Vote, the Unit 4 Owners'
22 Appointees shall abstain from voting on the proposal, and
23 no Shared Vote shall be cast with respect to such proposal
24 under the Proposed Vote Sharing Agreement.⁷¹

25 (iii) **If One of the Unit 4 Owners' Appointees is Absent from**
26 **the Vote.** If the proposal is one that the Proposed Sharing
27 Agreement requires PSE to cast the Proposed Shared Vote
28 in accordance with the direction provided by the Unit 4

⁶⁹ See, e.g., Roberts, Exh. RJR-18, at 71-72. The Proposed 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 alone." See *id.* at 67.

⁷⁰ See, e.g., *id.* at 69.

⁷¹ See, e.g., *id.* at 70-72.

1 Owners' Appointees but one of the Unit 4 Owners'
2 Appointees is absent from a Project Committee meeting
3 and appropriate alternate arrangements consistent with the
4 Colstrip Units 3 & 4 Ownership and Operation Agreement
5 have not been made (except for such absences due to an
6 emergency or similar circumstances beyond such
7 Appointees' control), the other Unit 4 Owners' Appointee
8 may cast the Proposed Shared Vote.⁷²

- 9 (iv) **If Both of the Unit 4 Owners' Appointees are Absent**
10 **from the Vote.** If the proposal is one that the Proposed
11 Sharing Agreement requires PSE to cast the Proposed
12 Shared Vote in accordance with the direction provided by
13 the Unit 4 Owners' Appointees but both of the Unit 4
14 Owners' Appointees are absent from a Project Committee
15 meeting and appropriate alternate arrangements consistent
16 with the Colstrip Units 3 & 4 Ownership and Operation
17 Agreement have not been made (except for such absences
18 due to an emergency or similar circumstances beyond such
19 Appointees' control), then PSE appointee may cast the
20 Proposed Shared Vote.⁷³

21 **C. Importance of the Proposed Vote Sharing Agreement to PSE**

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

- 23 A. The Vote Sharing Agreement is important to PSE because it provides certainty
24 with respect to ambiguities within the Colstrip Units 3 & 4 Ownership and
25 Operation Agreement that could have created difficulties for the owners of
26 Colstrip Unit 3 to decommission and remediate that unit at the appropriate time.
27 The Colstrip Units 3 & 4 Ownership and Operation Agreement contains
28 provisions that determine the percentage vote required by the Colstrip Units 3 & 4
29 Project Committee on various matters, none of which address closure or

⁷² See, e.g., Roberts, Exh. RJR-18, at 69.

⁷³ See, e.g., *id.* at 69.

1 decommissioning of a unit. Arguments could be made that any decision regarding
2 the closure or decommissioning of one or both units must be unanimous.

3 NorthWestern Energy would likely be the owner with the most difficulty
4 approving the closure or decommissioning of Colstrip Unit 3 due to political and
5 economic pressures in the State of Montana. At best, the owners of Colstrip
6 Units 3 & 4 would have been subject to potentially lengthy and costly litigation to
7 determine the question whether unanimous consent were required under the
8 Colstrip Units 3 & 4 Ownership and Operation Agreement to close or
9 decommission Colstrip Unit 3. At worst, NorthWestern Energy could have had a
10 de facto veto for any decision to close or decommission Colstrip Unit 3, even if
11 all of the entities with an ownership interest in the unit thought that closure and
12 decommissioning were appropriate.

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

1 **VII. NO CHANGES TO THE PROPOSED SALE OF**
2 **CERTAIN OF PSE'S INTERESTS IN THE**
3 **COLSTRIP TRANSMISSION SYSTEM**

4 **Q. Has there been any change with respect to the sale of certain of PSE's**
5 **interest in the Colstrip Transmission System to NorthWestern Energy?**

6 A. Not at this time. The sale of certain of PSE's interest in the Colstrip Transmission
7 System is a separate transaction that is not affected by the changes discussed
8 above. Talen Montana does not have a right of first refusal under the Colstrip
9 Transmission System Agreement with respect to the sale of the Colstrip
10 Transmission System because Talen Montana is not a party to the Colstrip
11 Transmission Agreement. Additionally, Talen Montana's right of first refusal
12 rights under section 24(f) of the Colstrip Units 3 & 4 Ownership and Operation
13 Agreement does not extend to PSE's proposed sale of its interest in the Colstrip
14 Transmission System.

15 **Q. Is there anything more to add with respect to the sale of certain of PSE's**
16 **interest in the Colstrip Transmission System to NorthWestern Energy?**

17 A. Despite the terms of section 24(f) of the Colstrip Units 3 & 4 Ownership and
18 Operation Agreement, Talen Montana is claiming it still has a right of first refusal
19 to also purchase an interest in the sale of certain of PSE's share of the Colstrip
20 Transmission System. Both NorthWestern Energy and PSE disagree with Talen
21 Montana's arguments, and PSE has denied Talen Montana's request to obtain an
22 interest in the sale of certain of PSE's share of the Colstrip Transmission System
23 to NorthWestern Energy. Talen Montana has initiated an arbitration process to

1 resolve this dispute. PSE anticipates a resolution of this issue in mid-October of
2 2020.

3 **Q. What if Talen Montana were to prevail in the arbitration?**

4 A. If Talen Montana were to prevail in the arbitration, PSE would still sell those
5 certain interests in the Colstrip Transmission System that PSE now proposes to
6 sell to NorthWestern Energy.

7 **Q. If Talen Montana were to prevail in the arbitration and purchase some of**
8 **those certain PSE interests in the Colstrip Transmission System that PSE**
9 **now proposes to sell to NorthWestern Energy, would such an acquisition**
10 **hinder any ability of PSE to pursue the acquisition of renewable energy**
11 **resources in eastern Montana?**

12 A. No. As described in Prefiled Supplemental Direct Testimony of Thomas M.
13 Flynn, Exh. TMF-5T, the amount of Available Transmission Capacity currently
14 made available to PSE and other customers under PSE's Open Access
15 Transmission Tariff will stay the same.

16 **VIII. CONCLUSION**

17 **Q. Does this conclude your prefiled supplemental direct testimony?**

18 A. Yes, it does.