

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of the Petition of:

Sierra Club, Climate Solutions, and
Washington Environmental Council

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

Docket _____

**PETITION FOR ADJUDICATORY
PROCEEDING RELATING TO THE
PRUDENCY OF CONTINUED
INVESTMENTS IN COLSTRIP
PLANT UNITS 1 AND 2**

I. INTRODUCTION

1. Pursuant to Revised Washington Code (“RCW”) 34.05.413, RCW 80.04.110 and WAC 480-07-305(3), Sierra Club, Climate Solutions, Washington Environmental Council (“WEC”) (collectively “Joint Petitioners”) jointly file this petition requesting that the Washington Utilities and Transportation Commission (“Commission”) commence an adjudicatory proceeding for the purpose of determining the prudency of new capital expenses by Puget Sound Energy (“PSE”) in the Colstrip coal-fired electric generating facility and to establish a closure or partial-closure plan for Colstrip Units 1 and 2.
2. An adjudicatory proceeding evaluating the future of Colstrip is necessary because of the risk that continued investment in Colstrip poses to ratepayers. These risks are particularly acute for PSE and its ratepayers because that utility has a large stake in Colstrip Units 1 and 2, which are the most economically vulnerable units. In comments on PSE’s 2013 Integrated Resource Plan (“IRP”), the Commission recommended that PSE consult with Commission staff to “consider a Colstrip Proceeding to determine the prudency of any new investment in Colstrip Units 1 and

2 before it is made or, in the alternative, a closure or partial-closure plan.”¹ It is this “Colstrip Proceeding” recommended by the Commission that Joint Petitioners request at this time.

3. Such a proceeding is timely because various market and regulatory factors will have substantial influence on the economic outlook of Colstrip in the coming years. In particular, PSE’s 2013 IRP demonstrated that natural gas prices, customer demand, and carbon dioxide regulation will have a critical impact on whether Colstrip remains a least-cost resource.² Colstrip also faces uncertainty with regard to various capital expenses that may be triggered by environmental laws and regulations.

II. PARTIES

4. Sierra Club, Climate Solutions, and WEC submit this petition on behalf of themselves and the members they represent who are customers of PSE.
5. Sierra Club is a national, non-profit environmental and conservation organization incorporated under the laws of the State of California. The Sierra Club is dedicated to the protection of public health and the environment. Sierra Club petitions to intervene in this proceeding on behalf of itself and its approximately 23,000 Sierra Club members who live and purchase utility services in Washington, many of whom are residential customers of PSE. Sierra Club participated extensively in PSE’s past IRP advisory group meetings since 2009 and has filed comments to the Commission on each of those PSE IRPs. Sierra Club also intervened in PSE’s most recent general rate case, Dockets UE- 111048 and UG-111049 (consolidated).
6. Climate Solutions is a Northwest climate and clean energy non-profit that works to accelerate practical and profitable solutions to global warming by galvanizing leadership, growing investment, and bridging divides. Since 1998, Climate Solutions

¹ *Puget Sound Energy 2013 Electric and Gas Integrated Resource Plan*, Docket UE-120767 and UG-120768, Attachment B: Utilities and Transportation Commission Comments on Puget Sound Energy’s Colstrip Study, at 15 (Feb. 6, 2014).

² *Puget Sound Energy 2013 Electric and Gas Integrated Resource Plan*, Docket UE-120767 and UG-120768, Attachment B: Utilities and Transportation Commission Comments on Puget Sound Energy’s Colstrip Study, at 10-14 (Feb. 6, 2014).

has cultivated leadership for the proposition that clean energy and broadly-shared economic prosperity go hand-in-hand and consequently has been at the forefront of establishing the Northwest as a national leader on climate change. Climate Solutions regularly advocates policies designed to help Washington reach its codified pollution reduction goals, RCW 70.235.020, and reduced reliance on coal-fired generation is essential to reaching these targets.

7. Western Environmental Council (“WEC”) is a non-profit, statewide advocacy organization with over 22,000 members that has been driving positive change to solve Washington’s most critical environmental challenges since 1967. WEC was incorporated in 1969 in Seattle, Washington. Its mission is to protect, restore, and sustain Washington’s environment. WEC builds and leads partnerships, mobilizes the public, engages decision makers, and takes legal action to enact and enforce environmental protection policy and ensure a sustainable future. WEC has adopted a Climate and Clean Energy Agenda, a long-term commitment to move the dial on state policy to reduce emissions, use energy efficiently, transition to clean energy, set limits on global warming pollution including working to transition Washington off imported coal-fired electricity
8. Joint Parties are separately represented and will accept service related to this docket at the following addresses:

Sierra Club

Gloria Smith
Travis Ritchie
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94618
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org
Phone: 415-977-5727

Jeffrey D. Goltz
Cascadia Law Group, PLLC
606 Columbia Street NW, Suite 212
Olympia, WA 98501
jgoltz@cascadialaw.com
Phone: 360-528-3026

Climate Solutions

Ann E. Gravatt
Policy Advisor
Climate Solutions
610 SW Broadway, Suite 306
Portland, OR 97205
ann@climatesolutions.org
Phone: 503-548-2539

WEC

Sasha Pollack
Climate and Clean Energy Campaign Director
Washington Environmental Council
1402 Third Avenue, Suite 1400
Seattle, WA 98101
sasha@wecprotects.org
Phone: 206-631-2610

9. Respondent PSE is an investor-owned utility engaged in the business of providing electric and gas service within the State of Washington and is subject to the regulatory authority of the Commission for its retail rates, service, facilities and practices. PSE owns 50% of Colstrip Units 1 and 2. PSE may be characterized as a respondent in this proceeding. Joint Petitions are informed and believe that PSE's address is:

Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734

III. JURISDICTION

10. The Commission has jurisdiction over this proceeding pursuant its general authority to regulate the "rates, services, facilities, and practices" of electric utilities, such as PSE (RCW 80.01.040(3)); and specific authority to investigate, on its own motion or upon complaint, whether an electric utility is engaged in any "act or thing" in violation of any statute in title 80 RCW or any order or rule of the Commission (RCW 80.04.110(1)(a)), whether any person (including an electric utility) is engaged

in any activity without complying with requirements of title 80 RCW (RCW 80.04.015), and whether certain expenditures are appropriate (RCW 80.04.310).

11. RCW 80.01.110(1) provides any person or corporation may make a complaint, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of RCW Title 80, or of any order or rule of the Commission. In accordance with RCW 80.01.110(1), Joint Petitioners allege that continued investments in Colstrip Units 1 and 2 by PSE violates a number of statutory and regulatory obligations of PSE including: the obligation to “furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable (RCW 80.28.010(2)); the obligation that PSE’s “practices or contracts” affecting rates be just and reasonable (RCW 80.28.020); and the obligation that PSE’s “practices, acts or services” are not “unjust, unreasonable, improper, insufficient, inefficient or inadequate” (RCW 80.28.040). These provisions provide for a hearing to make such determinations.
12. The Commission also has authority to order revised “practices, acts or services” (RCW 80.28.040(1)) and order “improvements, changes, additions or extensions” to electrical plant (RCW 80.28.130). The Commission also has the authority to enter into an adjudicatory proceeding pursuant to RCW 34.05.413(1).
13. This petition is filed pursuant to RCW 34.05.413(2), RCW 80.04.110 and WAC 480-07-305(3).

IV. BACKGROUND

14. Colstrip is a four-unit, mine mouth, coal-fired electricity-generating facility operated by Talen Energy Corporation (formerly PPL Montana, LLC) in Colstrip, Montana, about 120 miles southeast of Billings. According to the plant’s owners, Colstrip is capable of producing up to 2,094 megawatts (“MW”) of electricity. Colstrip includes four generating units: Units 1 and 2, which are each rated at 307 MW of net generating capacity, and Units 3 and 4, which are each rated at 740 MW of net generating capacity. Units 1 and 2 began commercial operation in 1975 and

1976, respectively, and units 3 and 4 began commercial operation in 1984 and 1986, respectively.

15. PSE owns 50% of units 1 and 2 and 25% of units 3 and 4. PSE's share of capacity for Colstrip is therefore 307 MW for units 1 and 2, and 370 MW for units 3 and 4, which is a combined total of 677 MW of coal-fired generation in PSE's fleet-wide resources. Talen Energy Corporation ("Talen") is a merchant generator and co-owns 50% of units 1 and 2 with PSE. Talen was formed on June 1, 2015 as a spinoff of various generating assets from PPL Montana.
16. PSE, Avista, PacifiCorp, Northwestern Energy, Portland General Electric, and Talen are co-owners of Colstrip units 3 and 4. This proceeding involves only Colstrip Units 1 and 2.
17. In light of the uncertainty and risk facing Colstrip, the Commission recognized the need for a detailed analysis of the coal plant in multiple past proceedings.³ On February 6, 2014, the Commission explained the particular circumstances facing Colstrip that raise the need for an adjudicatory proceeding:

Historically, post-investment prudence review has been used to protect ratepayers from excessively risky investment. However, we question whether reliance on that regulatory mechanism would serve the public interest in this unique situation.⁴
18. The Commission went on to recommend that PSE and Commission staff discuss a "Colstrip Proceeding."⁵

³ See, *Puget Sound Energy 2011 Electric and Gas Integrated Resource Plan*, Dockets UE-100961 and UG-100960, Attachment: Utilities and Transportation Commission Comments on Puget Sound Energy's 2011 Integrated Resource Plan, at 6 (December 28, 2011); *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶ 426 (May 7, 2012).

⁴ *Puget Sound Energy 2013 Electric and Gas Integrated Resource Plan*, Docket UE-120767 and UG-120768, Attachment B: Utilities and Transportation Commission Comments on Puget Sound Energy's Colstrip Study, at 14-15 (Feb. 6, 2014).

⁵ *Id.* at 15.

19. The purpose of this petition is to implement the Commission suggestion in its response to PSE's IRP regarding the unique nature of the problem PSE faces in deciding the fate of Colstrip Units 1 and 2. The Commission may, as a result of this proceeding, protect ratepayers by making a determination before further expenses are made at Colstrip Units 1 and 2 that such expenses are not prudent.
20. Additional recent developments further indicate that initiating a Colstrip Proceeding is necessary. During the 2015 legislative session, the Washington Legislature introduced and considered House Bill ("HB") 2002 and Senate Bill ("SB") 5874 that, among other things, contemplated a transition away from coal-fired electric generation facilities to be done in a prudent and cost-effective manner. While HB 2002 and SB 5874 did not pass, they did garner significant attention and comment by various interested stakeholders.⁶
21. On June 2, 2014, EPA proposed a plan to cut carbon pollution from power plants under Section 111(d) of the Clean Air Act (the "Clean Power Plan"). The Clean Power Plan will reduce carbon pollution from power plants 30% below 2005 levels by 2030. For Montana, EPA proposed a 21% carbon reduction. The four units at Colstrip represent 85% of carbon emissions for qualifying facilities in Montana under EPA's proposed plan. The Clean Power Plan proposes to calculate state targets using four basic building blocks that include a wide range of cost-effective methods to reduce carbon emissions. The four basic building blocks that make up the "best system of emission reduction" according to EPA are: (1) making existing coal plants more efficient, (2) using existing gas plants more effectively, (3) increasing the use of renewable energy, and (4) increasing end-use energy efficiency. Though not yet

⁶ See generally, House Bill Report, HB 2002, As Reported by House Committee On: Technology & Economic Development General Government & Information Technology, available at: <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/2002%20HBR%20GGIT%2015.pdf>

See, generally, History of the Bill, SB 5874, As Reported by Senate Committee On: Energy and Environment & Technology, available at: <http://app.leg.wa.gov/billinfo/summary.aspx?bill=5874&year=2015>

finalized, the Clean Power Plan could have a significant impact on the operation of Colstrip. EPA expects to issue a final rule in summer 2015.

22. In Montana, EPA's Region 8 developed a regional haze plan for Colstrip Units 1 and 2 under the best available retrofit technology ("BART") aspect of the regional haze rule. In September 2012, EPA finalized a federal implementation plan ("FIP") for units 1 and 2 to impose stricter NOx emission limits. After EPA finalized the FIP, Colstrip owners and environmental groups sued EPA. A federal appeals court partially struck down the FIP. Pursuant to the court order, EPA must reanalyze certain aspects of the FIP and may ultimately require additional, stricter NOx controls than those in the original rule. The cost of these potential additional controls, if required, could be significant.
23. Colstrip also faces significant liability from regulation and cleanup of its coal ash waste impoundment ponds. While PSE asserted in its 2013 IRP that costs associated with cleaning up of the waste ponds were sunk, there is clear evidence that remediation will be a growing expense as the toxic plume continues to expand in the groundwater aquifer. This liability is a significant source of concern for Washington legislators and is the focus of litigation in Montana.
24. Colstrip also faces potential increased costs and liability from various other factors, including additional environmental rules and regulations, increasing fuel costs, increasing maintenance and operations costs, high forced outage, and incremental costs for decommissioning and remediation.
25. On July 21, 2015, the Commission issued a notice of opportunity to file written comments regarding an investigation into Colstrip Unit 1 and 2's decommissioning and remediation costs. The Commission recognized, "the need to assess the economic risks associated with continued operation of, and the costs to retire, certain coal-fired generating units included in Washington rates."⁷ Comments are due in UE-151500 on September 15, 2015. The Commission identified the following issues to address:

⁷ UE-151500, *Investigation of coal-fired generating unit decommissioning and remediation costs*. Notice of Opportunity to File Written Comments, July 21, 2015.

- i. Decommissioning costs;
- ii. Remediation costs;
- iii. Decommissioning costs at various retirement dates;
- iv. Net salvage value;
- v. Existing decommissioning and remediation funds;
- vi. Financial and tax implications;
- vii. Depreciation schedule;
- viii. Transmission;
- ix. Ongoing decommissioning and remediation obligations post-closure.

V. GROUNDS FOR COMMENCING AN ADJUDICATORY PROCEEDING

26. As described in paragraphs 10 - 13, the Commission has the authority and responsibility to conduct an investigation to ensure that PSE is conducting its business in accordance with its obligations to provide and maintain facilities that are “safe, adequate and efficient, and in all respects just and reasonable” and to ensure that PSE’s practices, acts and services are not “unjust, unreasonable, improper, inefficient or inadequate.” As described generally below, and as will be demonstrated in the adjudication requested by this Petition, continued expenditures on Colstrip Units 1 and 2 violate these obligations.
27. The Commission acknowledged the particular risks facing Colstrip when it considered PSE’s most recent IRP:

Based on the information presented in the Colstrip study, we are unable to conclude that continued operation of Colstrip Units 1 and 2 should or should not be a component of the Selected Resource Plan. In many places, the inclusion of more information would provide a clearer analysis, or where adjustment to just one or two variables to a reasonable value would render an early closing date of some or all units more cost-effective for customers than continued operation. PSE identifies savings based on the assumptions it makes in its Plan, but the savings are far more modest than the industry’s common perceptions about the financial advantages of coal generation. At this juncture, the Commission is not convinced that the dollar savings PSE

identifies in its Plan outweigh the cumulative cost impact of the open-ended risks.⁸

28. Independent analysis further highlights the economic risks that Colstrip creates for ratepayers. In June 2015, the Institute for Energy Economics and Financial Analysis (IEEFA) issued a report concluding that reductions in natural gas price forecasts and additional costs facing Colstrip lead to the conclusion that “continued ownership of Colstrip 1 and 2 is not cost effective for [PSE’s] customers.”⁹
29. The Commission recognized in its comments on PSE’s 2013 IRP that carbon dioxide regulation will play a critical role in the future economic viability of Colstrip. A Colstrip proceeding is therefore timely because EPA is expected to issue a final rule this summer regulating carbon dioxide under Section 111(d) of the Clean Air Act (the “Clean Power Plan”). That rule will likely impact the future of Colstrip as states respond to the final Clean Power Plan.
30. PSE’s own 2013 IRP analysis of Colstrip claimed all four units may become uneconomic in 2027 depending on the price of carbon and other environmental compliance obligations at the plant. Although PSE did not break out the costs for Units 1 and 2 separately from Units 3 and 4, the data strongly suggest that an early retirement of Units 1 and 2 would be a lower cost alternative for ratepayers. In contrast, extending Colstrip’s life out to 2045, per PSE’s depreciation schedule, is a higher cost alternative.
31. A Colstrip Proceeding would also lead to the development of a detailed evidentiary record related to the forward-looking economic situation of Colstrip. Such a record could provide important information to the Washington Legislature if it decides to take up a bill related to the transition away from coal-fired electric generation in the next legislative session.

⁸ *Puget Sound Energy 2013 Electric and Gas Integrated Resource Plan*, Docket UE-120767 and UG-120768, Attachment B: Utilities and Transportation Commission Comments on Puget Sound Energy’s Colstrip Study, at 14 (Feb. 6, 2014).

⁹ Schlissel, David and Cathy Kunkel, *A Bleak Future for Colstrip 1 and 2*, Institute for Energy Economics and Financial Analysis at 23 (June 2015). A copy of this report is filed as Exhibit 1 to this Petition.

32. Through a Colstrip Proceeding, the Commission will be able to review the prudence of future ratepayer contributions to Colstrip considering all of the market and regulatory risks facing the plant. Clear guidance from the Commission on the issue of a retirement schedule is also in the public interest because such guidance would provide a greater level of certainty for PSE, its ratepayers, and other stakeholders. The Commission will also have an opportunity to address critical concerns such as cleanup of the plant, a just transition for Colstrip workers and the community, and replacement energy.
33. If the Commission grants this petition and commences a docket to consider the complaints made herein, the Joint Petitioners further request the opportunity to conduct discovery, submit evidence in the form of written testimony and exhibits, participate in evidentiary hearings, and submit legal briefing. Through that process, Joint Petitioners expect the Commission will have the information available to it to make a determination about the prudence of expenses related to the continued operation of Colstrip Units 1 and 2 and issue appropriate orders it sees fit regarding a planned retirement path for Units 1 and 2.
34. Joint Petitioners welcomed the Commission's July 21, 2015 notice of an investigation into the costs of decommissioning and remediating Colstrip (Docket UE 151500). The costs addressed in the notice make up an important component of the analysis that should be conducted with regard to the future of Colstrip. However, the costs associated with decommissioning and remediation do not provide a complete picture of all of the costs and risks to ratepayers created by Colstrip. For example, while the notice would include an assessment of incremental remediation costs that will increase if Colstrip continues to operate, it is not clear that the investigation would address the increasing costs to ratepayers to continue to operate Colstrip in the face of increasing regulatory, capital, maintenance, and fuel costs. Also, the notice issued in Docket UE 151500 does not establish an adjudicatory proceeding in which the analysis and data presented can be tested by means traditional in adjudication. While written comments received in that docket no doubt will be informative, the information received may not provide sufficient information for significant decisions that may be required relating to Colstrip Units 1 and 2.

35. Joint Petitioners respectfully recommend that the Commission grant this petition and proceed in a parallel or consolidated docket with UE-151500. In addition to the issues identified by the Commission's notice in UE-151500, Joint Petitioners also plan to address the following:
- i. Future capital and O&M costs necessary to operate Colstrip in compliance with pending or expected environmental laws and regulations;
 - ii. Expected net power costs of Colstrip in light of ongoing and expected capital, O&M, and fuel costs at Colstrip;
 - iii. Costs and risks of alternative generation supplies to meet system demand without Colstrip, including an analysis of renewable energy resources; and,
 - iv. A clear timeline and plan to close all or part of Colstrip.
36. Joint Petitions anticipate a proceeding with expert testimony and analysis that is comparable to the level of detail and analysis that is customary in a general rate case or a request to approve a new resource acquisition. This level of detail and analysis will allow the Commission to fully understand whether ratepayers would be better served by a resource decision to close Colstrip. The results of such a proceeding can and should lead to a Commission order that provides a definitive resolution on the future of Colstrip Units 1 and 2.
37. Accordingly, we urge the Commission to initiate an adjudicatory proceeding pursuant to RCW 34.05.413(2), RCW 80.04.110 and WAC 480-07-305(3).

VI. PROPOSED SCHEDULE AND SCOPE

38. Joint Petitioners request that the Commission establish a schedule for this proceeding so that it, or substantial portions of it, can conclude prior to March 1, 2016. This is desirable for two reasons. First, in the event that the 2016 Legislature desires to take up related issues, the record and decision in this proceeding will inform that process. Second, should PSE file a rate case in 2016, a decision in this proceeding would inform and simplify that proceeding.
39. Accordingly, the Joint Petitioners propose the following schedule:

Answer from PSE		August 20, 2015
Joint Petitioners Reply (if necessary)		August 25, 2015
Prehearing Conference		August 31, 2015
Opening Testimony (All Parties) ¹⁰		Nov. 5, 2015
Responsive Testimony and Exhibits (All Parties)		Dec. 10, 2015
Cross-Examination Exhibits and Lists of Witnesses & Exhibits Filing Deadline		Jan. 5, 2016
Evidentiary Hearing		Jan. 12-14, 2016
Simultaneous Briefs		Feb. 4, 2016

40. Joint Petitioners recognize that this proceeding may be best heard in phases and urge that the issue of whether the proceeding be so considered be a question at the Prehearing Conference. We request that the first phase include the predetermination requested in paragraph 32. Subsequent phases could include issues of closure plans and allocation of liability for closure costs. Such subsequent phases could be heard in conjunction with rate or other proceedings.

VII. PRAYER FOR RELIEF

41. Joint Petitioners respectfully request the Commission enter an order as follows:
- a) Commence an adjudicatory proceeding pursuant to WAC 480-07-305 for the purposes set forth in this Petition;
 - b) Serve PSE and other possible interested parties pursuant to RCW RCW 80.04.110(3) and WAC 480-07-305 (5)(a);
 - c) Direct PSE to respond to the Petition within 20 days of filing;
 - d) Establish a prehearing conference consistent with the proposed schedule in paragraph 39 of this Petition;

¹⁰ Joint Petitioners may choose to file separate testimony, exhibits and briefing at any stage of this proceeding.

- e) Establish the scope of this proceeding to include:
- a. Presentation by Joint Petitioners, PSE, Commission Staff, and Intervenor to present evidence and analysis addressing whether any new capital expenditures by PSE in Colstrip Units 1 and 2 are prudent and in the public interest;
 - b. A directive, if supported by the evidence, that Joint Petitioners, PSE, Commission Staff, and Intervenor propose a plan for the closure of Colstrip Units 1 and 2;
- f) Such other and further relief as the Commission finds just and reasonable.

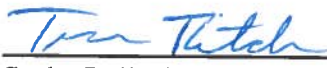
Dated this 31st day of July, 2015.

Respectfully submitted,


 Travis Ritchie
 Sierra Club Environmental Law Program
 85 Second Street, 2nd Floor
 San Francisco, CA 94105
 415-977-5727
travis.ritchie@sierraclub.org

Gloria Smith
 Sierra Club Environmental Law Program
 85 Second Street, 2nd Floor
 San Francisco, CA 94105
 415-977-5532
gloria.smith@sierraclub.org
 Attorneys for Sierra Club


 for Ann E. Gravatt
 Policy Advisor
 Climate Solutions
 610 SW Broadway, Suite 306
 Portland, OR 97205
ann@climatesolutions.org
 Phone: 503-548-2539
On Behalf of Climate Solutions


 for Sasha Pollack
 Climate and Clean Energy Campaign Director
 Washington Environmental Council
 1402 Third Avenue, Suite 1400
 Seattle, WA 98101
sasha@wecprotects.org
 Phone: 206-631-2610
On Behalf of WEC