

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

AVISTA CORPORATION, d/b/a  
AVISTA UTILITIES, PUGET SOUND  
ENERGY, and PACIFIC POWER &  
LIGHT COMPANY

Regarding Prudency of Outage and  
Replacement Power Costs

DOCKET UE-190882

FINAL ORDER 05

**COMPANY CONFIDENTIAL PER PROTECTIVE ORDER  
REDACTED**

*Avista Corporation, d/b/a Avista Utilities, Pacific Power & Light Company, and Puget Sound Energy (collectively Companies), which are among six co-owners of the Colstrip power plant in Montana, seek to recover costs for replacement power needed to meet customer load during an extended outage of Colstrip Units 3 and 4 in 2018, as well as the costs for operations and maintenance and capital expenses associated with corrective, post-outage actions. The Commission designated these issues for decision in this proceeding, and by this Order a majority of the Commission determines that the Companies have not met their burden of demonstrating the prudency of replacement power costs. Specifically, the majority finds that because each of the Companies failed to provide contemporaneous documentation of decisions leading to the shutdown of the units, the Commission lacks an evidentiary record by which to determine whether any of the Companies' costs were prudently incurred.*

*As a result, Avista Corporation, d/b/a Avista Utilities, is not authorized to recover from Washington ratepayers \$3.274 million incurred to acquire replacement power. However, Avista is authorized to recover from Washington ratepayers \$507,360 for operations and maintenance and capital expenses associated with corrective, post-outage actions.*

**DOCKETS UE-190882  
FINAL ORDER 05 (CC)**

*Pacific Power & Light Company is not authorized to recover from Washington ratepayers \$457,000 incurred to acquire replacement power costs. The company is authorized to recover from Washington ratepayers \$338,240 for operations and maintenance and capital expenses associated with corrective, post-outage actions.*

*Puget Sound Energy is not authorized to recover from Washington ratepayers \$11.7 million incurred to acquire replacement power. The company is authorized to recover from Washington ratepayers \$845,602 for operations and maintenance and capital expenses associated with corrective, post-outage actions.*

*Commissioner Balasbas dissents from this Order and his dissenting statement follows the majority decision.*

## INTRODUCTION

- 1 Avista Corporation, d/b/a Avista Utilities (Avista), Pacific Power & Light Company (Pacific Power), and Puget Sound Energy (PSE) (collectively, the Companies) are co-owners of the Colstrip power plant (Colstrip), a four-unit coal-fired facility in Colstrip, Montana. Talen Montana, LLC, (Talen or Operator) is both a co-owner and the operator.<sup>1</sup> Talen is not a party to this proceeding.
- 2 Avista owns 10.6 percent of Colstrip, or 15 percent of Unit 3 and 15 percent of Unit 4.<sup>2</sup> Pacific Power owns 7.1 percent of Colstrip, or 10 percent of Unit 3 and 10 percent of Unit 4.<sup>3</sup> PSE owns 32.3 percent of Colstrip, or 50 percent of Unit 1, 50 percent of Unit 2, 25 percent of Unit 3, and 25 percent of Unit 4.<sup>4</sup>
- 3 On June 28 and 29, 2018, respectively, Colstrip Units 3 and 4 were placed out-of-service due to failing required emissions testing and were not placed back in-service until September 2018. We refer to the outage in this Order as the 2018 Colstrip outage.<sup>5</sup>
- 4 Avista, Pacific Power, and PSE all incurred costs by acquiring replacement power for the duration of the outage. This proceeding concerns the prudence of those costs and the prudence of the Companies' decision-making leading up to the 2018 Colstrip outage.

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<sup>1</sup> As operator, Talen plans and carries out the daily operations of Colstrip. Tack, Exh. CLT-1CCTr at 2:6-7. Talen owns 50 percent of Unit 1, 50 percent of Unit 2, 30 percent of Unit 3 and none of Unit 4. Docket UE-160918, *2017 PSE Integrated Resource Plan*, Appendices A-P, Appendix K: Colstrip at K-4 (Nov. 2017). Separate agreements for operation of Units 1 and 2 and for operation of Units 3 and 4 exist between Talen and the co-owners.

<sup>2</sup> Docket UE-160918, *2017 PSE Integrated Resource Plan*, Appendices A-P, Appendix K: Colstrip at K-4 (Nov. 2017).

<sup>3</sup> *Id.*; Tack, Exh. CLT-1CCTr at 2:3-6. Only Pacific Power's ownership of Unit 4 is included in Washington base rates and computation of adjusted actual net power costs. Wilding, Exh. MGW-1T at 3:3-4, 14:12-15:9 citing *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-061546, Order 08, Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing (Jun. 21, 2007); Tack, Exh. CLT-1CCTr at 2:3-6.

<sup>4</sup> Docket UE-160918, *2017 PSE Integrated Resource Plan*, Appendices A-P, Appendix K: Colstrip at K-4 (Nov. 2017).

<sup>5</sup> Tack, Exh. CLT-11, *State of Mont. ex rel. Dep't. of Env. Quality v. Talen Montana, LLC*, Stipulation for Consent Decree, at 6, ¶¶ 19-21 (Nov. 25, 2019) [hereinafter MDEQ-Talen Consent Decree]; Tack, Exh. CLT-1CCTr at 12:19-22.

## PROCEDURAL HISTORY

- 5 On March 29, 2019, Avista filed with the Washington Utilities and Transportation Commission (Commission) tariff revisions to its Energy Recovery Mechanism (ERM) designed to rebate to customers approximately \$34.4 million in Docket UE-190222. On May 30, 2019, the Commission consolidated Docket UE-190222 with Dockets UE-190334 and UG-190335, Avista's electric and natural gas general rate case, filed on April 30, 2019.
- 6 On April 30, 2019, PSE filed testimony, exhibits, and supporting documentation in Docket UE-190324 related to power costs deferred under its Power Cost Adjustment (PCA) mechanism for the 12-month period beginning January 1, 2018, and ending December 31, 2018.
- 7 On June 3, 2019, Pacific Power filed testimony, exhibits, and supporting documentation in Docket UE-190458 related to power costs deferred under its Power Cost Adjustment Mechanism (PCAM) for the 12-month period beginning January 1, 2018, and ending December 31, 2018.
- 8 Portions of each docket identified above addressed the 2018 Colstrip outage and the costs incurred to acquire replacement power.
- 9 On October 24, 2019, the Commission issued Order 06/02/02/01 in Dockets UE-190334, UG-190335, and UE-190222 (*Consolidated*), UE-190458, and UE-190324 (Order 01), initiating this proceeding in order to consider the limited issue of prudence of decisions made and actions taken by Avista, Pacific Power, and PSE, electric companies providing electric service to Washington customers and co-owners of Colstrip, leading up to the 2018 Colstrip outage and the costs incurred by each company to acquire replacement power.<sup>6</sup>
- 10 Relevant portions of the filings made in Dockets UE-190222, UE-190458, and UE-190324 were placed in Docket UE-190882 by the Commission.<sup>7</sup> The Commission

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<sup>6</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-190334, UG-190335, UE-190222 (*Consolidated*), UE-190324, UE-190458, UE-190882, Order 06/02/02/01, 7, ¶ 23 (Oct. 23, 2019) [hereinafter Order 01].

<sup>7</sup> *Id.* at 7, ¶ 25.

determined that the decisions made in this proceeding will be binding in Dockets UE-190222, UE-190324, and UE-190458.<sup>8</sup>

- 11 In addition to the Companies, Commission staff (Staff), the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel), and The Alliance of Western Energy Consumers (AWEC) are parties to this proceeding.<sup>9</sup>
- 12 On October 28, 2019, the Commission issued a protective order with special provisions. The Commission implemented these protections pursuant to a proposal by the parties for a two-tiered protective order with multiple confidentiality designations – a traditional “confidential information” designation and a special “company-confidential information” designation.<sup>10</sup> The company-confidential designation indicates information that is deemed confidential but, because Avista, Pacific Power, and PSE are all co-owners of Colstrip, is already known to and disclosable between the Companies. On the other hand, information designated confidential is not disclosable between the Companies because that information is deemed commercially valuable.<sup>11</sup> While no portions of this Order are designated as confidential, portions are designated as company-confidential consistent with the designations assigned by the Companies in this proceeding.
- 13 On November 27, 2019, the Commission issued a Notice Revising Procedural Schedule and Notice of Hearing, setting this matter for hearing on February 14, 2020, pursuant to

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<sup>8</sup> *Id.* at 8, ¶ 27.

<sup>9</sup> On November 4, 2019, the Commission issued Order 04 in this docket, granting the timely petition to intervene submitted by AWEC.

<sup>10</sup> These protections were implemented in conjunction with the protective orders in Dockets UE-190334, UG-190335, and UE-190222 (*Consolidated*), UE-190324, and UE-190458, which afforded the Commission the ability to gather and use information in any and all of the dockets for the purpose of reincorporating any binding decision made in this proceeding. *In re the Investigation of Avista Corp. d/b/a Avista Utils., Puget Sound Energy, and Pacific Power & Light Co. Regarding Prudency of Outage and Replacement Power Costs*, Docket UE-190882, Order 02, 5-6, ¶¶ 15-16 (Oct. 28, 2019). *See also Wash. Utils. & Transp. Comm’n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-190334, UG-190335, UE-190222 (*Consolidated*), Order 07, 1-2, 4-5, ¶¶ 4, 15-16 (Oct. 29, 2019); *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UE-190324, Order 04, 5-6, ¶¶ 15-16 (Oct. 29, 2019); *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-190458, Order 03, 5-6, ¶¶ 15-16 (Oct. 29, 2019).

<sup>11</sup> For example, Exh. CLT-3Cr is an exhibit designated confidential by Pacific Power and cannot be shared with Avista or PSE. Likewise, Exhibits AA-4C and AA-5C are exhibits containing information designated as confidential by PSE and Avista, respectively, which cannot be shared with the other companies.

an agreed proposal by the parties. Among other things, the revised procedural schedule permitted Pacific Power to file supplemental testimony on December 5, 2019.

- 14 On February 14, 2020, the Commission held a hearing before Commissioner Rendahl and Commissioner Balasbas. Chair Danner was unavailable to participate during the hearing but reviewed the record and hearing transcript. The Commission granted AWEC's request to be excused from the evidentiary hearing because it offered no testimony, intended no cross-examination, and only further intended to monitor this proceeding.
- 15 The evidentiary hearing was divided between a non-confidential session and a company-confidential session. The Commission explained the important balance it must strike between its dual responsibilities to provide an open, public discussion of the issues before it and to protect against the unauthorized disclosure of information designated by parties as confidential. In keeping with the terms of the protective order in this proceeding, the hearing room was cleared of all persons not authorized for disclosure of company-confidential information and the Commission's conference bridge line was turned off during the company-confidential session.
- 16 Staff believes that the Companies' actions "leading up to the 2018 Colstrip outage reflect unreasonable and imprudent decision making," and recommends that the Commission "disallow the recovery of the replacement power costs incurred by the Companies."<sup>12</sup>
- 17 Public Counsel believes that Avista, Pacific Power, and PSE "have not adequately demonstrated the prudence" of their actions leading up to the 2018 Colstrip outage, and recommends that the Commission disallow recovery of the increased net power costs from Washington ratepayers.<sup>13</sup>
- 18 Avista argues that Talen acted prudently and communicated transparently during the events leading up to the outage.<sup>14</sup> Avista argued at hearing that the Montana Department of Environmental Quality (MDEQ) did not find the outage was foreseeable or that Talen acted imprudently and, therefore, Talen's prudent actions should impute prudence to Avista.<sup>15</sup>

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<sup>12</sup> Gomez, DCG-1CCT at 5:4-11.

<sup>13</sup> Allison, AA-1CCT at 3:3-19.

<sup>14</sup> Dempsey, Exh. TCD-1T at 7:5-15.

<sup>15</sup> Avista, TR at 261:7-262:10; 264:14-24.

- 19 Pacific Power argues that, as a minority (10 percent) owner of Colstrip Unit 4, it acted prudently in its management and oversight of Talen. According to Pacific Power, Staff and Public Counsel fail to distinguish between Talen's actions as operator and Pacific Power's actions as a minority owner bound by the constraints imposed by the Ownership and Operation Agreement (O&O Agreement).<sup>16</sup> Furthermore, Pacific Power argues that the Commission's order initiating this case clearly stated that the scope of the investigation encompasses only the owners' decision-making, and does not impute to the owners the actions taken by the third-party operator.<sup>17</sup> In closing argument at hearing, Pacific Power argued that Talen's actions were prudent, Pacific Power and its witness Tack acted appropriately, and that the outage was unforeseeable.<sup>18</sup>
- 20 PSE argues that the outage was not foreseeable, Talen acted prudently, and PSE acted prudently in its role as a co-owner.<sup>19</sup> Further, PSE argues that, as a co-owner, it has a very different role than Talen, the operator, in resolving elevated emissions levels. Last, PSE believes the Commission's standard of prudence for PSE should be as a co-owner, not as a plant manager, and the Commission's bar for prudence should not be based on outage prevention.<sup>20</sup> In closing argument at hearing, PSE argued that the Commission should rely upon and defer to operational judgments and decisions made by experts based on their specialized knowledge, which is what PSE argues it did leading up to the 2018 Colstrip outage.<sup>21</sup>
- 21 David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, represents Avista. Ajay Kumar, Senior Attorney, Pacific Power, and Katherine A. McDowell, McDowell Rackner Gibson PC, Portland, Oregon, represent Pacific Power. Donna L. Barnett, Perkins Coie, Bellevue, Washington, represents PSE. Joe M. Dallas, and Daniel J. Teimouri, Assistant Attorneys General, Olympia, Washington, represent Staff.<sup>22</sup> Lisa W. Gafken and Nina M. Suetake, Assistant

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<sup>16</sup> Wilding, Exh. MGW-3CCT at 2:13-3-10.

<sup>17</sup> Wilding, Exh. MGW-3CCT at 3:14-4:5.

<sup>18</sup> Pacific Power, TR at 268:22-269:6, 273:4-274:8, 274:23-275:16.

<sup>19</sup> Roberts, Exh. RJR-4CCT at 19:13-15, 21:16-22:4.

<sup>20</sup> Roberts, Exh. RJR-4CCT at 21:7-8.

<sup>21</sup> See PSE, TR at 277:2-279:11.

<sup>22</sup> In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors

Attorneys General, Seattle, Washington, represent Public Counsel. Tyler Pepple and Brent L. Coleman, Davison Van Cleve, P.C., Portland, Oregon, represent AWEC.

### BACKGROUND AND TIMELINE

- 22 The Colstrip plant must comply with emissions limits testing according to federal Mercury and Air Toxic Standards (MATS) and particulate matter (PM).<sup>23</sup> PM emissions are used as a surrogate for MATS and are conducted using reference method 5 (RM5) (MATS PM Testing).<sup>24</sup> Testing requirements and limits are identified in Colstrip's Title V Operating Permit, #0513-14 (Colstrip Air Quality Permit), issued by MDEQ.<sup>25</sup>
- 23 The Colstrip plant completes MATS PM Testing every quarter, or four times a year, and cannot exceed a test limit of 0.030 pounds per million British thermal units (lb/MMBtu) based on a weighted 30-day rolling average emissions rate of all four units at Colstrip.<sup>26</sup> MATS PM Testing began September 2016, when Colstrip demonstrated initial compliance.<sup>27</sup>

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do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

<sup>23</sup> MDEQ-Talen Consent Decree at 3-4, ¶ 11; *see* 40 C.F.R. Part 63, Subpart UUUUU – National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units. MDEQ filed a complaint and application for injunction against Talen for operating while out of compliance with the MATS PM emission standard and for failing to appropriately certify a compliance report. *See* MDEQ-Talen Consent Decree. On November 25, 2019, MDEQ and Talen settled the issue. As part of the MDEQ-Talen Consent Decree, the Operator agreed to comply with injunctive relief and pay a \$450,000 penalty. *See* Tack, Exh. CLT-12, Montana Department of Environmental Quality – Enforcement Division Penalty Calculation Worksheet for Talen Energy [hereinafter MDEQ Penalty Assessment].

<sup>24</sup> Dempsey, Exh. TCD-1T at 2:22-3:3; MDEQ-Talen Consent Decree at 5, ¶ 16; *see* Title V Operating Permit #0513-14, Montana Department of Environmental Quality at 10, 19, *available at* <http://deq.mt.gov/Portals/112/Air/AirQuality/Documents/ARMpermits/OP0513-14.pdf> [hereinafter Colstrip Air Quality Permit #0513-14]. The Colstrip Air Quality Permit #0513-14 expired during 2018 and a new permit with the same provisions regarding emissions limit, testing, and compliance monitoring became effective July 17, 2018. *See* MDEQ-Talen Consent Decree at 2, ¶ 7.

<sup>25</sup> Colstrip Air Quality Permit #0513-14; *see* MDEQ-Talen Consent Decree at 5, ¶ 16.

<sup>26</sup> MDEQ-Talen Consent Decree at 4-5, ¶¶ 13-14, 16; Dempsey, Exh. TCD-1T at 3:3-7; Roberts, Exh. RJR-4CCT at 17:4-5.

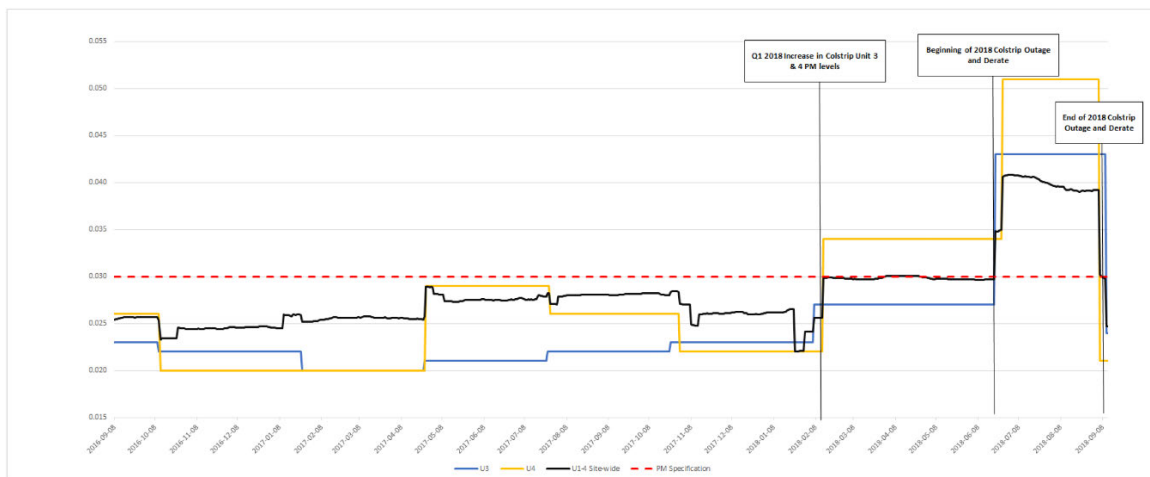
<sup>27</sup> Roberts, Exh. RJR-1T at 4:7-8; *see* Roberts, Exh. RJR-3; Colstrip Air Quality Permit #0513-14, Appendix I at I-7; MDEQ-Talen Consent Decree at 4, ¶ 13.



24 In between MATS PM Testing, the Colstrip Air Quality Permit prescribes a Compliance Assurance Monitoring Plan (CAM Plan) to help ensure compliance with emissions standards by monitoring Opacity, Particulate Matter Continuous Emission Monitors (PM CEMS), and scrubber plumb bob  $\Delta P$ .<sup>28</sup> These “alternative indicators” are continuously monitored and, typically, correlate with the MATS PM Testing and help predict whether the operating units will pass the next MATS PM Testing.<sup>29</sup>

25 Staff witness Gomez graphically presents in Exhibit DCG-4 the MATS PM Testing results for Units 3 and 4 along with Colstrip’s site-wide averaged emissions rate from August 2016 until September 2018, reproduced as Table 1, below.

26 **Table 1. Colstrip Units 3 and 4 MATS PM Testing and Site-Wide Results August 2016 – September 2018<sup>30</sup>**



27 The data in Table 1 indicate that Units 3 and 4 have consistently tested below the site-wide limit of 0.030 lb/MMBtu and Colstrip’s site-wide average since 2016.<sup>31</sup> The results

<sup>28</sup> Colstrip Air Quality Permit #0513-14, Appendix I at I-1, I-5.

<sup>29</sup> Colstrip Air Quality Permit #0513-14, Appendix I; Dempsey, TR at 103:3-23.

<sup>30</sup> Gomez, Exh. DCG-4.

<sup>31</sup> Prior to June 2018, MATS PM Testing for Unit 3 was above the site-wide average between January and February 2018, and MATS PM Testing for Unit 4 was above the site-wide average between: September and October 2016, May and July 2017, and February and June 2018.

from MATS PM Testing for Units 3 and 4 typically had the effect, therefore, of reducing Colstrip's average site-wide emissions rate.<sup>32</sup>

- 28 On February 14, 2018, Colstrip completed its first quarterly (Q1) MATS PM Testing, using results from all four Colstrip units. The Q1 MATS PM Testing indicated a site-wide emissions rate of 0.030 lb/MMBtu – the limit for the site. Whereas in the past Units 3 and 4 had tempered the site-wide result with their comparatively low emissions rates, the Q1 MATS PM Testing results for Units 3 and 4 were higher than had ever been recorded for those units.<sup>33</sup>
- 29 The Colstrip co-owners held owner and operator committee meetings (O&O Committee Meetings) on February 21, March 21, April 18, May 16, June 20, July 18, August 15, and September 19, 2018.<sup>34</sup> At every O&O Committee Meeting, Talen provides updates on operations and financials.<sup>35</sup>
- 30 At times from February 14, 2018, to June 27, 2018, including at the O&O Committee Meetings between February 21 and June 20, 2018, Talen communicated to the Companies its expectation and recurring recommendation that Colstrip would pass its second quarterly (Q2) MATS PM Testing.<sup>36</sup> This expectation was based upon

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<sup>32</sup> See also Gomez, Exh. DCG-10CC, Attachment 1.

<sup>33</sup> See Table 1 above and Table 2 below. For the first time since MATS PM Testing began, Unit 4 tested over the site-wide limit of 0.030 lb/MMBtu. The Q1 MATS PM Testing of Unit 2 (in addition to Units 3 and 4) was the highest that had ever been recorded since testing took effect in 2016. MDEQ Penalty Assessment at 2.

<sup>34</sup> Exh. BR-1CC; Dempsey, Exh. TCD-4T at 23:8-22, and Tack, Exh. CLT-1CCTr at 4:20, 7:15-16. The Colstrip co-owners are required to hold O&O Committee Meetings every quarter, but the co-owners' practice is to meet monthly. Tack, Exh. CLT-1CCTr at 3:3-5.

<sup>35</sup> Following these updates, the meetings move into executive session for more sensitive matters. Tack, Exh. CLT-1CCTr at 3:6-15.

<sup>36</sup> Dempsey, Exh. TCD-4T at 13:8-12, 14:1-18:19, 19:15-20:2, 21:18-21, 22:16-24:4; Roberts, Exh. 4CCT at 7:13-17, 8:1-16, 9:10-10:10, 19:3-7, 22:7-17; Tack, Exh. CLT-1CCTr at 7:15-8:3, 13:1-9, 18:5-10; TR at 226:21-230:6, 232:15-234:6. PSE witness Roberts did not attend the February 21, 2018, O&O Committee Meeting, but testified that he sent two deputies in his stead who reported back to him. Roberts, TR at 93:3-9. Avista witness Dempsey testified that he did not attend the February 21, 2018, O&O Committee Meeting and no other representative from Avista attended the meeting. Dempsey, TR at 90:3-91:7.

observations of the CAM Plan's alternative indicators and their historic correlation with PM emissions levels.<sup>37</sup>

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[REDACTED]

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On June 1, 2018, Talen gave notice to MDEQ that the Q2 MATS PM Testing for Units 3 and 4 would be delayed from June 5 and June 7, 2018, respectively, to later in June.<sup>39</sup>

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On June 21 and June 26, 2018, Talen completed the Q2 MATS PM Testing using results from only Colstrip Units 3 and 4.<sup>40</sup> Talen used coal from Area A for fuel in Units 3 and 4 during Q2 MATS PM Testing.<sup>41</sup> The Q2 MATS PM Testing indicated a site-wide emissions rate of 0.047 lb/MMBtu, an unprecedented exceedance of the site's 0.030 lb/MMBtu limit.

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<sup>37</sup> Tack, Exh. CLT-1CCTr at 6:3-16.

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[REDACTED]

Tack, TR at 234:12-238:3.

<sup>39</sup> Tack, Exh. CLT-8r; Tack, Exh. CLT-1CCTr at 7:4-10.

<sup>40</sup> Units 1 and 2 were off-line or had run under the 168-hour requirement for inclusion in quarterly MATS PM Testing. Roberts, Exh. RJR-1T at 4:16-21. On June 21, 2018, Unit 3 completed Q2 MATS PM Testing indicating an emissions rate of 0.043 lb/MMBtu. *Id.* On June 26, 2018, Unit 4 completed Q2 MATS PM Testing indicating an emissions rate of 0.051 lb/MMBtu. *Id.*

<sup>41</sup> Gomez, Exh. DCG-23, DCG-24.

- 34 On the following day, June 27, 2018, Talen contacted all co-owners for an emergency meeting, disclosed the Q2 MATS PM Testing failure of Units 3 and 4, and informed them that the units would go off-line.<sup>42</sup>
- 35 On June 28, 2018, Talen notified MDEQ of the noncompliant results of the Q2 MATS PM Testing. It took Unit 3 off-line and placed it out of service that day, June 28, 2018. It took Unit 4 off-line and placed it out of service on June 29, 2018. While the units continued to stay out of service until they showed compliance with the emissions limits for MATS PM Testing, Units 3 and 4 resumed operating on July 8, 2018, and July 17, 2018, respectively, for the limited purpose of inspection, evaluation, corrective action, and in-stack testing to determine compliance with emissions limits.<sup>43</sup>
- 36 In September 2018, Units 3 and 4 passed MATS PM Testing and were brought back in-service.<sup>44</sup>
- 37 A root cause analysis (RCA) conducted by a third party, Sologic LLC, determined that the elevated PM levels were due to a combination of factors and not one single cause.<sup>45</sup>
- 38 PSE witness Roberts provides the most comprehensive and updated data for the MATS PM Testing of Units 3 and 4 from August 2016 through October 2019.<sup>46</sup> Those data are presented graphically in Table 2, below. The MATS PM Testing results from Q1 2018

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<sup>42</sup> Tack, Exh. CLT-1CCTr at 10:17-20.

<sup>43</sup> MDEQ-Talen Consent Decree at 6-7, ¶¶ 19, 21; Roberts, Exh. RJR-1T at 5:3-12.

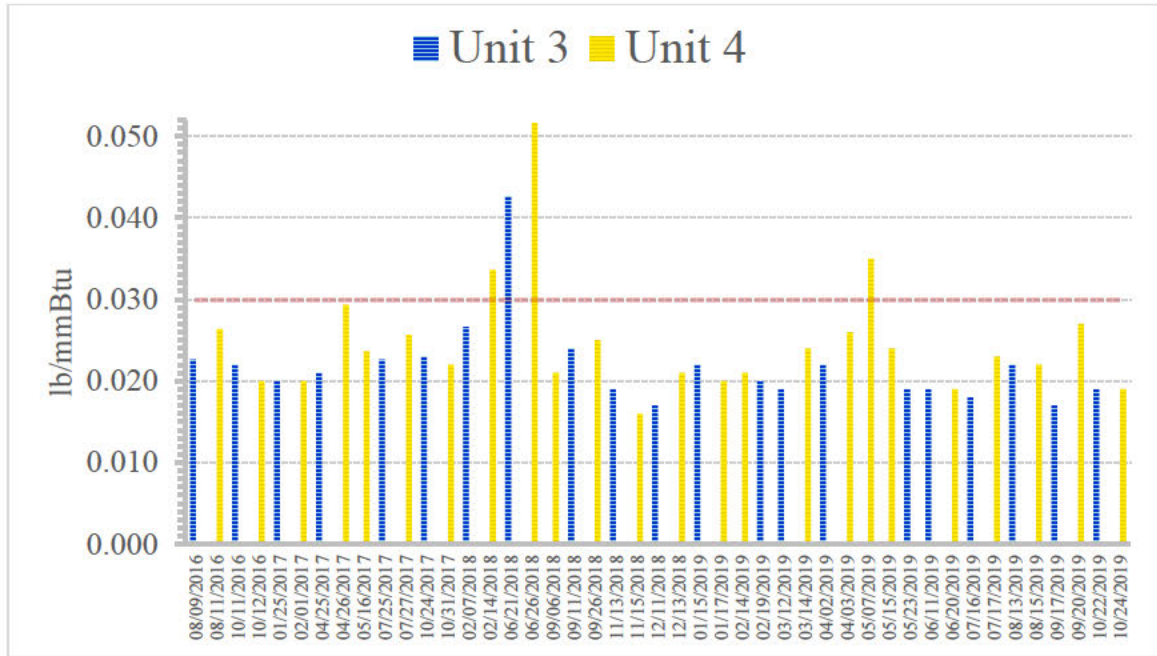
<sup>44</sup> Tack, Exh. CLT-1CCTr at 12:19-22. On September 6, 2018, Unit 4 completed MATS PM Testing indicating an emissions rate of 0.021 lb/MMBtu and a site-wide 30-day rolling weighted average of 0.030 lb/MMBtu. MDEQ-Talen Consent Decree at 8, ¶ 23; Roberts, Exh. RJR-1T at 6:2-4. On September 11, 2018, Unit 3 completed MATS PM Testing indicating an emissions rate of 0.024 lb/MMBtu and a site-wide 30-day rolling weighted average compliant with the emissions standard. MDEQ-Talen Consent Decree at 8, ¶ 25; Roberts, Exh. RJR-1T at 6:2-4. Unit 4 repeated the MATS PM Testing on September 26, 2018, which in combination with the other units' testing resulted in a site-wide 30-day rolling weighted average compliant with the emissions standard. MDEQ-Talen Consent Decree at 8, ¶ 25. All four units were in-service with compliant site-wide average emissions on September 26, 2018. *Id.*

<sup>45</sup> Tack, Exh. CLT-1CCTr at 13:15-14:2.

<sup>46</sup> Roberts, Exh. RJR-3; Roberts, Exh. 4CCT at 17:9-19.

and Q2 2018, the highest results from each unit, are notable deviations from otherwise consistent results.<sup>47</sup>

39 **TABLE 2. Colstrip Units 3 and 4 MATS PM Testing August 2016 – October 2019<sup>48</sup>**



**DISCUSSION AND DECISION**

40 This proceeding has no satisfactory answer or conclusion. Without an adequate showing by the Companies that their actions and decisions leading up to the 2018 Colstrip outage were prudent, we cannot allow the Companies to recover from ratepayers the costs incurred to acquire replacement power as a result of the outage. We explain below.

41 Regulated utilities bear the burden of proving that their decisions are prudent, just as they must demonstrate in rate cases that their proposed rates are just and reasonable.<sup>49</sup> Stated

<sup>47</sup> The May 7, 2019, result for Unit 4 was above the emissions limit, but on May 15, 2019, the MATS PM Testing indicated lower emissions levels that were more consistent with Unit 4’s historical results.

<sup>48</sup> See Roberts, Exh. RJR-3; Roberts, Exh. RJR-4CCT at 17:9-19.

<sup>49</sup> RCW 80-04-130(4); *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-152253, Order 12, 33, ¶ 94 (Sep. 1, 2016); *Wash. Utils. & Transp. Comm’n v. Cascade Natural Gas Corp.*, Docket UG-941408, 3rd Supp. Order, 3 (Oct. 30, 1995); *Wash. Utils. &*

differently, we must determine whether any of the Companies have met their burden to show that recovering from ratepayers the costs incurred to acquire replacement power as a result of the 2018 Colstrip outage is just and reasonable.

- 42 The Commission applies a reasonableness standard when reviewing the prudence of decisions relating to power costs.<sup>50</sup> The Commission's standard for evaluating prudence asks:

What would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true *at the time they made a decision*?<sup>51</sup>

Stated differently, the Commission may not use the benefit of hindsight when evaluating the prudence of the Companies' decision making leading up to the 2018 Colstrip outage. Rather, the Commission must determine what information was known or reasonably should have been known, when it was known, and how it was considered in the decision-making process. When evaluating prudence, therefore, the Commission must require from a regulated utility contemporaneous documentation of its decision making.<sup>52</sup> We find no reason to deviate from the Commission's prudence standard in this case.

- 43 Documentation and evidence of prudent decision making must be kept contemporaneously with a company's decision making or the Commission's ability to evaluate prudence is thwarted. Regulated companies bear the burden of proving their decisions were prudent. Here, the record contains insufficient contemporaneous documentation of the Companies' decision making in the period between the Q1 and Q2 MATS PM Testing. Accordingly, we base our decision on the Companies' failure to sufficiently demonstrate the prudence of their actions and decisions leading up to the

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*Transp. Comm'n v. Puget Sound Power & Light Co.*, Docket UE-921262 *et al.*, 11th Supp. Order (Sep. 21, 1993).

<sup>50</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12, 8, ¶ 19 (Apr. 7, 2004).

<sup>51</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. U-83-54, 4th Supp. Order, 32 (Sept. 28, 1984); *Pacific Power & Light Co.*, Docket UE-152253, Order 12 at 33, ¶ 94 (emphasis added).

<sup>52</sup> *Puget Sound Power & Light Co.*, Cause No. U-83-54, 4th Supp. Order, 32 (Sept. 28, 1984); *Pacific Power & Light Co.*, Docket UE-152253, Order 12 at 34-35, 39-40, ¶¶ 97-98, 110, 113-16.



2018 Colstrip outage. Given the lack of information in the record, we are unable to determine whether the Companies, or Talen, acted prudently.

***A. Pre-Outage Decision-Making***

44 The Companies have not provided for the record contemporaneous documentation permitting us to verify their decision making subsequent to Colstrip's Q1 MATS PM Testing, which was completed on February 14, 2018. The results of the Q1 MATS PM Testing were at the allowable limit of 0.030 lb/MMBtu and Units 2, 3, and 4 produced results higher than ever before. These were red flags or concerns that should reasonably have been recognized by the Companies.<sup>53</sup>

45 We expect that decisions were made or should have been made shortly after the Q1 MATS PM Testing regarding what action was appropriate and prudent to ensure that Colstrip would comply with Q2 MATS PM Testing. Such discussions and decisions might have arisen from disclosure of the Q1 MATS PM Testing results at the O&O Committee Meeting on February 21, 2018. We are frustrated by the lack of contemporaneous documentation from any of the Companies regarding this discussion or decision making. The O&O Committee Meeting minutes provided in response to Bench Request No. 1 are woefully uninformative and riddled with errors.<sup>54</sup> The minutes contain no indication that the co-owners discussed what actions were appropriate to ensure compliance with Q2 MATS PM Testing or that the Q1 MATS PM Testing results were even discussed at all.

46 The additional O&O Committee Meeting documentation produced along with Bench Request No. 1 raise further concerns that sufficient evidence of decision making by the co-owners leading up to the 2018 Colstrip outage has not been provided. [REDACTED]

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<sup>53</sup> Pacific Power's witness Tack testified at hearing that the Q1 MATS PM Testing results raised a red flag to him. Tack, TR at 95:22-24. Although Avista witness Dempsey did not attend the meeting and was not aware of the result for some time, he testified at hearing that the Q1 MATS PM Testing results did not raise a red flag to him because the results were within the limit. Dempsey, TR at 90:3-93:2. Yet PSE witness Roberts testified at hearing that the Q1 MATS PM Testing results did indeed raise concerns. Roberts, TR at 93:3-17.

<sup>54</sup> For example, Avista witness Dempsey testified at hearing that he did not attend the O&O Committee Meeting on February 21, 2018, and did not send any representative from Avista in his place, but the O&O Committee Meeting minutes from the February 21, 2018, indicate [REDACTED] Dempsey, TR at 90:3-91:7; Exh. BR-1CC.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] is at odds with the testimony presented in this proceeding by the Companies, which emphasizes that the co-owners and operator were certain Colstrip would pass its Q2 MATS PM Testing because the alternative indicators remained stable. Unfortunately, the record is devoid of contemporaneous documentation, or even sworn testimony, explaining [REDACTED]  
[REDACTED]  
[REDACTED]

47 In addition, the record contains insufficient contemporaneous documentation to determine when or whether the Companies knew of all significant matters at issue in this case. The co-owners executed the O&O Agreement for Units 3 and 4 in 1981 and that agreement is included in the record.<sup>57</sup> By its terms, Talen is required to use its best efforts to keep all members of the O&O Committee Meetings informed of all significant matters with respect to the operation and maintenance of Units 3 and 4.<sup>58</sup> Additionally, [REDACTED]  
[REDACTED]

[REDACTED]<sup>59</sup> This case lacks documentation that any co-owner asked Talen for any information regarding the operation and maintenance of Units 3 and 4 after the Q1 MATS PM Testing. We are unable to determine whether Talen conveyed any information related to these significant matters to the co-owners.

48 The Companies testify that they believed the alternative indicators continued to correlate with PM emissions levels and that they trusted Talen's expectation and recurring

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55 [REDACTED]

56 [REDACTED]

<sup>57</sup> Tack, Exh. CLT-2CCr, Ownership and Operation Agreement, Colstrip Units #3 & #4, 18, § 17(e) (May 6, 1981) [hereinafter O&O Agreement].

<sup>58</sup> O&O Agreement at Section 17(e); Dempsey, Exh. TCD-4T at 22:17-19. Section 17(e) of the O&O Agreement states [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>59</sup> *Id.*









prudence without contemporaneous documentation.<sup>70</sup> The Commission should be able to follow a company's decision-making process, knowing what the company considered, and the manner and circumstances under which the company made its considerations.<sup>71</sup>

54 The circumstances here require documentation of decision-making from the Companies' power operations and management teams. This case does not concern business-as-usual, daily operational decision making: it concerns decision making after a significant risk to the Companies' ability to continue operations at the Colstrip plant was indicated by the Q1 MATS PM Testing. We cannot verify prudent decision making under these circumstances by the Companies when no documentation of decision making or of the Companies' oversight of the Operator's actions were kept or provided to this record. We agree with Staff that, given the reasonable concern raised by the Q1 MATS PM Testing, we would have expected to see evidence of coordination and communication between the Companies and Talen.<sup>72</sup> Not only is there no contemporaneous documentation of such coordinated decision making in this case, the documentation provided in the record reveals concern for the lack of coordination and communication between Avista, Pacific Power, PSE, and Talen as co-owners and operator. Even on the cusp of the failed Q2 MATS PM Testing, with Talen conducting [REDACTED], there is no evidence from the June 20, 2018, O&O Committee Meeting that Talen and the Companies ever discussed or considered that Colstrip might fail its Q2 MATS PM Testing.

55 The Companies have argued that we cannot or should not apply our standard for contemporaneous documentation to operational decision making,<sup>73</sup> a position our colleague advocates in dissent while arguing that this Order extends the Commission's prudence standard to apply to Company operations. We disagree. Operational decision making has never been excluded from the Commission's prudence standard and our decision today applies that standard according to precedent. Indeed, the Commission has applied or considered the prudence standard in the context of operational decisions in two recent cases. These operational decisions did not involve business-as-usual, run-of-the-

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<sup>70</sup> See *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-152253, Order 12, 38, ¶ 107 (Sep. 1, 2016) (quoting *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Dockets UE-920433, UE-920499, and UE-921262 (*consolidated*), 19th Supp. Order, 16 (Sept. 27, 1994)).

<sup>71</sup> See *id.*

<sup>72</sup> See Gomez, Exh. DCG-1CCT at 47:21-26.

<sup>73</sup> See PSE, TR at 276:25-278:10, 306:3-11; Pacific Power, TR at 304:5-14.

mill decisions, but decisions involving operational activities or incidents that indicated significant risk to a company's operations and power costs.

56 In a recent power cost recovery proceeding involving Pacific Power, the parties to that proceeding reached a settlement resolving several disputes, and the Commission made no finding of prudence in accepting that settlement.<sup>74</sup> However, the Commission sought clarification at the hearing that the settlement “[made] no modification to the Commission’s prudence standards,” and also found in that order that the settlement’s provision requiring the company to retain email communications if no other records documented company decision-making would “enhance Pacific Power’s ability to demonstrate the prudence of its actions and [would] provide Staff and other parties with greater visibility into the Company’s *operations* for ratemaking purposes.”<sup>75</sup> Such documentation is lacking in the case before us now.

57 The Companies argue that the Commission’s decision regarding the 2013 Chehalis outage establishes that a prudence review can be satisfied by relying on after-the-fact expert witness testimony without supporting contemporaneous documentation of decision making.<sup>76</sup> This is incorrect. The circumstances in the Chehalis case are markedly different from those presented here. In 2013, Pacific Power’s Chehalis plant experienced a forced outage caused by the failure of a step-up transformer. The plant had experienced outages for similar reasons in 2006 and 2011. Following the 2011 outage, Pacific Power installed monitoring equipment on the generator step-up transformers specifically to “assess the risk of future failures—an action that exceeds standard industry practice.”<sup>77</sup> In short, Pacific Power, as the owner and operator of the Chehalis plant, recognized the red flags raised by the 2011 outage and decided to proactively address the concerns. We lack any evidence that such decisions, proactive or otherwise, were made in this case.

58 Here, the Q1 MATS PM Testing should have raised concerns that triggered, at a minimum, collaboration and communication regarding steps necessary to avoid a forced

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<sup>74</sup> *In the Matter of Pacific Power & Light Co., 2016 Power Cost Adjustment Mechanism Report*, Docket UE-170717, Order 03, 8, ¶¶ 23-24. (July 23, 2018).

<sup>75</sup> *Id.* at 8, 9, ¶¶ 23, 26 (emphasis added).

<sup>76</sup> *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-140762 *et al.*, Order 08, 43, ¶ 104 (Mar. 25, 2015).

<sup>77</sup> *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-140762 *et al.*, Order 08, at 42, ¶ 102. Pacific Power presented its witness Ralston, who was responsible for the operation and maintenance of Pacific Power’s generation fleet and had 28 years of experience in plant operations and maintenance, at the time. *Id.*

shutdown. This required consideration of more than business-as-usual, day-to-day operating and monitoring. We reject any suggestion that requiring contemporaneous documentation under such circumstances would hamper the utilities' ability to conduct efficient day-to-day operations. We do not intend to burden daily operations with a requirement to document the minutest of day-to-day decisions. Rather, we expect communications between plant owners and plant operators concerning significant operational decisions to be documented contemporaneously and produced to verify prudence.

59 We are concerned, given the evidence the Companies did provide, about the lack of communication between the Companies and Operator. However, contrary to our colleague's argument in his dissent, we do not rely on these documents to determine prudence or make any decision in hindsight about what the Companies should have done. Instead, we find that the lack of contemporary documentation prevents us from making a determination of prudence, and thus we cannot support asking ratepayers to pay the replacement power costs of the 2018 Colstrip outage. The only way to determine the reasonableness of a regulated company's actions at the time of a decision is through contemporary documentation.

60 Avista, Pacific Power, and PSE each failed to produce sufficient evidence of prudent decision making in their initial filings and, despite many opportunities to do so, have failed to remedy that deficiency. We determine, therefore, that ratepayers cannot be expected to bear the burden of the costs incurred by the Companies to procure replacement power after the 2018 Colstrip outage when the record lacks sufficient evidence of prudent decision making leading up to the outage.

### ***B. Post-Outage Costs***

61 The Companies incurred costs (1) associated with corrective, post-outage actions and (2) to acquire replacement power as a result of the 2018 Colstrip outage. First, the co-owners of Colstrip incurred a collective \$3.4 million in operations and maintenance and capital expense associated with corrective, post-outage actions.<sup>78</sup> No party challenges the prudence of these expenses or of the post-outage decisions and actions taken by any of the Companies.

62 We agree with the parties that the Companies should each be allowed to recover their share of these expenses. The Companies have produced documentation of post-outage

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<sup>78</sup> Gomez, Exh. DCG-1CCT at 5:17-6:3.

decisions and actions, which establishes the prudence of their response to the 2018 Colstrip outage that resulted in returning Units 3 and 4 to service in September 2018. We, therefore, determine that these post-outage costs were prudently incurred.

63 Avista's share of these expenses is \$507,360, corresponding with its 15 percent ownership share of Units 3 and 4.<sup>79</sup> Pacific Power's share of these expenses is \$338,240, corresponding with its 10 percent share in Units 3 and 4 and based upon the West Control Area Inter-Jurisdictional Allocation Methodology (WCA) Manual.<sup>80</sup> PSE's share of these expenses is \$845,602, corresponding with its 25 percent share in Units 3 and 4.<sup>81</sup> Accordingly, we authorize the Companies to recover the above amounts in operations and maintenance and capital expense associated with corrective, post-outage actions.

64 Second, we address whether the Companies should be allowed to recover the costs of acquiring replacement power as a result of the 2018 Colstrip outage. The Companies have failed to prove that these costs were incurred prudently. When a regulated company fails to meet its burden of proof, the Commission typically disallows the difference between the cost incurred as a result of the decisions made and the expense of the least cost option.<sup>82</sup> In this case, the most expensive option was incurred – a full shutdown of Units 3 and 4 during the peak of the summer when costs for replacement power were high. The lowest option would have been realized had Colstrip passed its Q2 MATS PM Testing and continued operation. The difference between these two options provides the proper calculation of expense that should be disallowed. We accept these calculations, based upon what costs the Companies could have expected to have incurred during normal operation during the summer peak in 2018, because they are supported by historical costs and expected plant operations. We reject all calculations based on the difference between the full shutdown of Units 3 and 4 during the peak in summer 2018 and a hypothetical shutdown that never occurred during the off-peak of spring 2018.

65 The parties have presented in the record before us their calculations of the difference between the costs to procure replacement power as a result of the full shutdown of

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<sup>79</sup> Gomez, Exh. BR-2r (Supplemental) at 1.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Pacific Power & Light Co.*, Docket UE-152253, Order 12 at 38-39, ¶ 110.

Units 3 and 4 during the summer peak in 2018 and the costs had Units 3 and 4 continued in service.<sup>83</sup>

- 66 We find that Avista witness Johnson's calculation of \$3.274 million (Washington's allocation), with the error correction discovered through data requests with Public Counsel witness Allison, is consistent with the method of calculation we describe above.<sup>84</sup> No party contests Pacific Power's calculation that it incurred \$457,000 to acquire replacement power as a result of the 2018 Colstrip outage. We find that Pacific Power witness Wilding's calculation is consistent with the method of calculation we describe above.<sup>85</sup> We also find that PSE witness Wetherbee's calculation, as updated in his rebuttal testimony, of \$11.7 million in costs incurred by PSE to acquire replacement power as a result of the 2018 Colstrip outage is consistent with the calculation method we describe above.<sup>86</sup>
- 67 Accordingly, we determine: Avista should not be authorized to recover from Washington ratepayers the \$3.274 million in replacement power costs resulting from the 2018 Colstrip outage; Pacific Power should not be authorized to recover from Washington ratepayers the \$457,000 in replacement power costs resulting from the 2018 Colstrip outage recovery; and, PSE should not be authorized to recover from Washington ratepayers the \$11.7 million in replacement power costs resulting from the 2018 Colstrip outage.
- 68 We leave for resolution in the Companies' separate power cost dockets how the post-outage costs allowed and disallowed for recovery from Washington ratepayers by this Order should interact with each of the Companies' separate power cost mechanisms.<sup>87</sup>

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<sup>83</sup> Wetherbee, Exh. PKW-1CTr at 15:3-9; Wetherbee, Exh. PKW-6T at 6:1-13; Wetherbee, Exh. PKW-7; Wetherbee, Exh. PKW-8CC; Johnson, Exh. WGJ-1T at 12:4-11; Johnson, Exh. WGJ-2T at 2:5-5:21; Johnson, Exh. WGJ-3; Wilding, Exh. MGW-1T at 15:10-19; Wilding, Exh. MGW-3CCT at 9:19-10:3; Gomez, Exh. DCG-1CCT at 5:7-11; Allison, Exh. AA-1CCT at 3:14-19, 5:1-6:4, 22:7-12; Allison, Exh. AA-4C.

<sup>84</sup> Johnson, Exh. WGJ-2T at 5:5-13; Johnson, Exh. WGJ-3; Allison, Exh. AA-3.

<sup>85</sup> Wilding, Exh. MGW-1T at 15:10-19; Wilding, Exh. MGW-3CCT at 9:19-10:3.

<sup>86</sup> Wetherbee, Exh. PKW-6T at 6:1-13; Wetherbee, Exh. PKW-7; Wetherbee, Exh. PKW-8CC.

<sup>87</sup> Avista's ERM is filed in Docket UE-190222, which is consolidated with its 2019 general rate case dockets UE-190334 and UG-190335; Pacific Power's PCAM is in Docket UE-190458; and, PSE's PCA Mechanism is in Docket UE-190324. However, PSE has a pending general rate case, in which their share of the \$3.4 million in operations and maintenance and capital expense associated with corrective, post-outage actions is at issue. *Wash. Utils. & Transp. Comm'n v.*

### FINDINGS OF FACT

- 69 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, transfers of property, and affiliated interests of public service companies, including electric companies.
- 70 (2) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 71 (3) Avista, Pacific Power, and PSE are each a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. Pacific Power, and PSE provide electric utility service to customers in Washington.
- 72 (4) On March 29, 2019, Avista filed with the Commission tariff revisions to its ERM designed to rebate to customers approximately \$34.4 million in Docket UE-190222. Portions of Avista’s filing address the 2018 Colstrip outage and the costs incurred to acquire replacement power as a result.
- 73 (5) On April 30, 2019, PSE filed testimony, exhibits, and supporting documentation in Docket UE-190324 related to power costs deferred under its PCA mechanism for the 12-month period beginning January 1, 2018, and ending December 31, 2018. Portions of PSE’s filing address the 2018 Colstrip outage and the costs incurred to acquire replacement power as a result.
- 74 (6) On June 3, 2019, Pacific Power filed testimony, exhibits, and supporting documentation in Docket UE-190458 related to power costs deferred under its PCAM for the 12-month period beginning January 1, 2018, and ending December 31, 2018. Portions of Pacific Power’s filing address the 2018 Colstrip outage and the costs incurred to acquire replacement power as a result.
- 75 (7) On October 24, 2019, the Commission issued Order 01 in this docket, initiating this proceeding in order to consider the limited issue of prudence of decisions

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*Puget Sound Energy*, Dockets UE-190529 and UG-190530 (*consolidated*). Staff witness Gomez testified at hearing in this proceeding, Docket UE-190882, that his recommendation to allow the recovery of PSE’s share of these costs should control. Gomez, TR at 164:15-165:13; 166:1-19. We, therefore, find that it is also reasonable for the Commission to resolve recovery of these post-outage costs in PSE’s general rate case, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991, and UG-190992 (*consolidated*).



made and actions taken by Avista, Pacific Power, and PSE, electric companies providing electric service to Washington customers and co-owners of Colstrip, leading up to the 2018 Colstrip outage and the costs incurred by each company to acquire replacement power. Order 01 ordered that relevant portions of the filings made in Dockets UE 190222, UE 190458, and UE 190324 be placed in this docket.

- 76 (8) Colstrip is a four-unit coal-fired power plant located in Colstrip, Montana. Avista, Pacific Power, and PSE are co-owners of Colstrip. Talen is both a co-owner and the operator of Colstrip.
- 77 (9) Avista owns 10.6 percent of Colstrip, or 15 percent of Unit 3 and 15 percent of Unit 4.
- 78 (10) Pacific Power owns 7.1 percent of Colstrip, or 10 percent of Unit 3 and 10 percent of Unit 4.
- 79 (11) PSE owns 32.3 percent of Colstrip, or 50 percent of Unit 1, 50 percent of Unit 2, 25 percent of Unit 3, and 25 percent of Unit 4.
- 80 (12) Colstrip must complete quarterly MATS PM Testing required by federal regulations and its Air Quality Permit, #0513-14, without exceeding a site-wide emissions rate of 0.030 lb/MMBtu based on a weighted 30-day rolling average emissions rate of all four units at Colstrip.
- 81 (13) On February 14, 2018, Colstrip completed its Q1 MATS PM Testing, indicating a site-wide emissions rate of 0.030 lb/MMBtu based on data from all four units. The results for Units 2, 3, and 4, however, were the highest ever then recorded.
- 82 (14) Colstrip's CAM Plan prescribes continuous monitoring of the alternative indicators to help ensure compliance with emissions standards because these alternative indicators often correlate with PM emissions. These alternative indicators continued to be monitored between the Q1 MATS PM Testing and the Q2 MATS PM Testing.
- 83 (15) O&O Committee Meetings were held on February 21, March 21, April 18, May 16, June 20, July 18, August 15, and September 19, 2018.
- 84 (16) [REDACTED]

[REDACTED]

- 85 (17) On June 1, 2018, Talen gave notice to MDEQ, delaying the Q2 MATS PM Testing for Units 3 and 4 from June 5 and June 7, 2018, respectively, until later in June.
- 86 (18) On June 26, 2018, Colstrip completed its Q2 MATS PM Testing, indicating a site-wide emissions rate of 0.047 lb/MMBtu based on data from only Colstrip units 3 and 4. The results from Units 3 and 4 were the highest ever recorded.
- 87 (19) Colstrip used coal from Area A, instead of Area C, as fuel for Units 3 and 4 during Q2 MATS PM Testing.
- 88 (20) On June 27, 2018, the co-owners held an emergency meeting to disclose the failed MATS PM Testing of Units 3 and 4.
- 89 (21) On June 28, 2018, Talen took Unit 3 off-line and placed it out of service.
- 90 (22) On June 29, 2018, Talen took Unit 4 off-line and placed it out of service.
- 91 (23) In September 2018, Units 3 and 4 passed MATS PM Testing and were brought back in-service.
- 92 (24) Avista, Pacific Power, and PSE have each failed to prove that its decisions and actions prior to the outage at the Colstrip plant in 2018 were prudent.
- 93 (25) Avista incurred \$3.274 million to acquire replacement power as a result of the 2018 Colstrip outage.
- 94 (26) Pacific Power incurred \$457,000 to acquire replacement power as a result of the 2018 Colstrip outage.
- 95 (27) PSE incurred \$11.7 million to acquire replacement power as a result of the 2018 Colstrip outage.
- 96 (28) Avista, Pacific Power, and PSE have each failed to prove that the costs it incurred to acquire replacement power as a result of the outage at the Colstrip plant in 2018 were prudent.

COMPANY CONFIDENTIAL PER PROTECTIVE ORDER - REDACTED

- 97 (29) No party challenges that the co-owners prudently incurred their share of \$3.4 million in operations and maintenance and capital expenses associated with corrective, post-outage actions.
- 98 (30) Avista incurred \$507,360 of the operations and maintenance and capital expense associated with corrective, post-outage actions, corresponding with its 15 percent ownership share of Units 3 and 4.
- 99 (31) Pacific Power incurred \$338,240 of the operations and maintenance and capital expense associated with corrective, post-outage actions, corresponding with its 10 percent ownership share of Units 3 and 4 and based upon the WAC Manual.
- 100 (32) PSE incurred \$845,602 of the operations and maintenance and capital expense associated with corrective, post-outage actions, corresponding with its 25 percent ownership share of Units 3 and 4.
- 101 (33) Avista, Pacific Power, and PSE each prudently incurred operations and maintenance and capital expenses associated with corrective, post-outage actions.

### **CONCLUSIONS OF LAW**

- 102 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 103 (2) Avista is an electric company and a public service company subject to Commission jurisdiction.
- 104 (3) Pacific Power is an electric company and a public service company subject to Commission jurisdiction.
- 105 (4) PSE is an electric company and a public service company subject to Commission jurisdiction.
- 106 (5) The Commission applies a reasonableness standard when reviewing the prudence of decisions relating to power costs.
- 107 (6) The Commission's standard for evaluating prudence asks what a reasonable board of directors and company management would have decided given what they knew or reasonably should have known to be true at the time they made a decision.

- 108 (7) When evaluating prudence, the Commission requires contemporaneous documentation of decision making.
- 109 (8) Each company has the burden of proving the prudence of its decisions.
- 110 (9) The Commission's determination of whether a company has carried its burden is based on the full evidentiary record.
- 111 (10) The Commission should not authorize Avista to recover from Washington ratepayers the \$3.274 million it incurred to acquire replacement power.
- 112 (11) The Commission should authorize Avista to recover from Washington ratepayers \$507,360 for Avista's share of operations and maintenance and capital expenses associated with corrective, post-outage actions.
- 113 (12) The Commission should not authorize Pacific Power to recover from Washington ratepayers the \$457,000 it incurred to acquire replacement power.
- 114 (13) The Commission should authorize Pacific Power to recover from Washington ratepayers \$338,240 for Pacific Power's share of operations and maintenance and capital expenses associated with corrective, post-outage actions.
- 115 (14) The Commission should not authorize PSE to recover from Washington ratepayers the \$11.7 million it incurred to acquire replacement power.
- 116 (15) The Commission should authorize PSE to recover from Washington ratepayers \$845,602 for PSE's share of operations and maintenance and capital expenses associated with corrective, post-outage actions.
- 117 (16) The Commission should retain jurisdiction over the subject matter and the Parties to effectuate the terms of this Order.

**ORDER**

**THE COMMISSION ORDERS:**

- 118 (1) Avista Corporation, d/b/a Avista Utilities, is not authorized to recover from Washington ratepayers \$3.274 million incurred to acquire replacement power costs resulting from the 2018 Colstrip outage because it has failed to show these costs were prudently incurred. Avista Corporation, d/b/a Avista Utilities, is

authorized to recover from Washington ratepayers \$507,360 for operations and maintenance and capital expenses associated with corrective, post-outage actions.

119 (2) Pacific Power & Light Company is not authorized to recover from Washington ratepayers \$457,000 incurred to acquire replacement power costs resulting from the 2018 Colstrip outage because it has failed to show these costs were prudently incurred. Pacific Power & Light Company is authorized to recover from Washington ratepayers \$338,240 for operations and maintenance and capital expenses associated with corrective, post-outage actions.

120 (3) Puget Sound Energy is not authorized to recover from Washington ratepayers \$11.7 million incurred to acquire replacement power costs resulting from the 2018 Colstrip outage because it has failed to show these costs were prudently incurred. Puget Sound Energy is authorized to recover from Washington ratepayers \$845,602 for operations and maintenance and capital expenses associated with corrective, post-outage actions.

121 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective March 20, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

### Dissenting Opinion of Commissioner Balasbas

- 122 I agree with my colleagues that this proceeding has no satisfactory answer or conclusion.<sup>88</sup> However, I respectfully disagree with my colleagues' decisions to extend the prudence standard to Company operations and disallow recovery of replacement power costs for Avista, PSE, and Pacific Power due to the 2018 Colstrip outage. Today's Order sets a bad precedent for how the Commission will evaluate prudence of Company operations. This will in turn negatively influence Company decision-making in the future and ultimately lead to higher costs for ratepayers.
- 123 There is no question a Company should act prudently in both their capital spending and operations. I believe there should be a difference in how the prudence standard is extended to operational decisions. The prudence standard requires the Commission to determine "what would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision."<sup>89</sup> Boiling down the issue before us in this proceeding: did the Companies, as co-owners of the Colstrip plant with a separate operator, act reasonably before and after the 2018 outage? I believe they did.
- 124 While my colleagues conclude the only way to determine prudence of operational decision making is with contemporaneous documentation, I believe a reasonable evaluation should also include elements of common sense, the necessary reliance on the expertise of employed or contracted utility personnel, and the testimony of credible witnesses. Our responsibility is to determine the reasonableness at the time of the Company's decisions and actions without relying on hindsight.
- 125 Today's decision is based on the advantage of hindsight rather than the fair evaluation of the reasonableness of the Companies' actions prior to and after the 2018 Colstrip outage regardless of the amount of available decision-making documentation. It is easy to pick apart and be "dissatisfied" with the Companies' operational decisions and actions almost two years after the fact. The record evidence demonstrates neither the Companies nor the Operator communicated well with each other about the failed PM MATS Testing in February or June 2018. However, this lack of communication and the Companies' reliance on the Operator to address the elevated PM emissions levels are not grounds for

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<sup>88</sup> *Supra* Final Order 05 at ¶ 40.

<sup>89</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. U-83-54, 4th Supp. Order, 32 (Sept. 28, 1984); *Pacific Power & Light Co.*, Docket UE-152253, Order 12 at 33, ¶ 94.

extending the same prudence standard for the acquisition of capital projects to operational decision making and the recovery of replacement power costs.

- 126 When the results of the February 2018 Q1 PM MATS Testing were known, the plant was still in compliance and within permitted levels. Although there was no margin for error in the following quarter's test, the Companies' reliance on the Operator's experience and recommendation to monitor alternative indicators that historically have correlated with PM emissions levels was reasonable at the time. We must also remember the credible testimony we received that PM emissions levels are only one of many variables that affect plant operations. In hindsight, and given what we know now, one could reasonably question the Companies' actions and level of engagement on the PM MATS Testing issue. However, at the time, the Companies' reliance on the Operator's monitoring of alternative indicators was the prudent course of action. Testimony offered at hearing by expert witnesses who were involved in the decision making is more than sufficient to support prudence notwithstanding the amount of available contemporaneous documentation.
- 127 Today's Order's insistence on contemporaneous documentation in operational decisions extends the Commission's authority into a speculative at best place where we will now substitute our judgment for that of company management. This is inappropriate.<sup>90</sup> Here, none of the Commissioners or witnesses for Staff and Public Counsel have operated a utility generation unit. The Companies own, operate, or manage generation assets and make real-time operational decisions sometimes in minutes. In an operational situation such as the one raised in this proceeding, our judgment should be limited to the reasonableness of the Companies' actions, not whether we would have made a different decision or engaged at a different level.
- 128 Taking today's Order to its logical conclusion, the Commission is now requiring Companies to keep contemporaneous documentation of real-time operational decisions. Are Companies now supposed to stop and write a memo each time operational decisions are made just in case the Commission decides to challenge that decision in the future? This is an absurd result and, while it may sound extreme, is not out of the question.
- 129 Today's Order also fails to recognize the unique ownership structure and relationships present in the O&O Agreement. Together, Avista, PSE and Pacific Power jointly own 50

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<sup>90</sup> *Wash. Utils. & Transp. Comm'n v. Cont'l Tel. Co. of the NW Inc.*, Case No. U-75-46, 44 (Apr. 2, 1976).



percent of Units 3 and 4.<sup>91</sup> Even voting as a bloc, these three Companies cannot fully influence all operational or capital decisions. Today's Order might be more straightforward if the ownership structure was majority-controlled by one or more of the Companies, but it is not.

- 130 I also find ironic that today's Order makes a distinction as to what costs are deemed prudent. If the Companies' actions were as unreasonable and lacking as my colleagues suggest, then why allow recovery of \$3.4 million of corrective and post-outage costs and not the replacement power costs? Both sets of costs were necessary even if the plant had shutdown at a different time of year. By disallowing the replacement power costs, the Commission is signaling to the Companies that necessary expenses to address outages in owned or managed generation assets will be questioned in the future regardless of the reasonableness of their actions.
- 131 We must also remember that ratepayers pay a specified level of power costs that is set by the Commission regardless of the actual costs incurred by the Company. In this case, disallowance for PSE falls within the "dead band" of their PCA Mechanism, meaning ratepayers would receive no benefit from this disallowance. The same is true for Pacific Power's \$457,000 in replacement power costs. While a disallowance of Avista's replacement power costs would benefit ratepayers via its ERM, the total amount represents just 2.5 percent of actual power costs in 2018.
- 132 I expect the Companies to act prudently in their operations. How the Commission determines prudence in operations needs to be carefully considered and weighed against the reasonableness of actions and the expertise of the companies. Unfortunately, today's Order creates a new precedent that will have negative and far reaching implications for the Companies and ratepayers. Failing to rely on the Company's expertise will force them to make decisions that will increase costs for ratepayers in the future.

JAY M. BALASBAS, Commissioner

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<sup>91</sup> Docket UE-160918, *2017 PSE Integrated Resource Plan*, Appendices A-P, Appendix K: Colstrip at K-4 (Nov. 2017).



**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.**