

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of  
  
PUGET SOUND ENERGY

For an Order Authorizing the Sale of All  
of Puget Sound Energy's Interests in  
Colstrip Unit 4 and Certain of Puget  
Sound Energy's Interests in the Colstrip  
Transmission System

DOCKET UE-200115

ORDER 04

SECOND PREHEARING  
CONFERENCE ORDER

DENYING LATE-FILED PETITIONS  
TO INTERVENE

- 1 **NATURE OF PROCEEDING.** On February 19, 2020, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) an Application for an Order Authorizing the Sale of All of PSE's Interests in Colstrip Unit 4 and Certain of PSE's Interests in the Colstrip Transmission System (Application).
- 2 On March 13, 2020, the Commission held a prehearing conference in this matter. On March 23, 2020, the Commission entered Order 02, Prehearing Conference Order, which, among other things, established a procedural schedule.
- 3 On July 6, 2020, the Commission convened a status conference in this matter to resolve the expected supplemental filing by PSE and any appropriate modifications to the procedural schedule.
- 4 On July 9, 2020, the Commission issued a Notice Suspending Procedural Schedule until PSE made its supplemental filing.
- 5 On August 20, 2020, PSE filed with the Commission a Supplemental Application for an Order Authorizing the Sale of All of PSE's Interests in Colstrip Unit 4 and Certain of PSE's Interests in the Colstrip Transmission System (Supplemental Application).
- 6 PSE's Supplemental Application requests that the Commission authorize:

- (i) the sale of one-half of PSE's interests in Colstrip Unit 4 to NorthWestern Corporation (NorthWestern Energy)<sup>1</sup>
- (ii) the sale of one-half of PSE's interests in Colstrip Unit 4 to Talen Montana, LLC (Talen Montana);
- (iii) the sale of certain PSE interests in the Colstrip Transmission System to NorthWestern Energy;
- (iv) a power purchase agreement between PSE and NorthWestern Energy for 45 MW of the output of Colstrip Unit 4 with a term beginning on the date following closing and continuing for a period that expires at the earlier of 258 weeks after closing or December 31, 2025;
- (v) a power purchase agreement between PSE and Talen Montana for 45 MW of the output of Colstrip Unit 4 with a term beginning on the date following closing and continuing for a period that expires at the earlier of 258 weeks after closing or December 31, 2025; and,
- (vi) the accounting treatment proposed by PSE.

7 On August 24, 2020, the Northern Cheyenne Tribe filed with the Commission a late-filed petition to intervene.

8 On September 4, 2020, Jeff Jordan filed with the Commission a late-filed petition to intervene.

9 **SECOND CONFERENCE.** After PSE filed its Supplemental Application, the Commission convened a virtual second prehearing conference in this docket on September 8, 2020, before Administrative Law Judge Andrew J. O'Connell.

10 **APPEARANCES.** Sheree S. Carson, Jason Kuzma, and David Steele, Perkins Coie LLP, Bellevue, Washington, represent PSE. Lisa W. Gafken, Nina Suetake, and Ann Paisner, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel). Joe Dallas, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).<sup>2</sup> Tyler Pepple

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<sup>1</sup> "NorthWestern Corporation" is the entity's actual business name. In the Purchase and Sale Agreement, Roberts, Exhibit RJR-6, the entity is also referred to as "Northwestern." In PSE's Application and Supplemental Application, the entity is predominantly referred to as "NorthWestern Energy," but is also referred to as "NorthWestern Energy Corporation." We adopt, for now, the predominant short form of the entity's name used by PSE.

<sup>2</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 do

Davison Van Cleve, P.C., Portland, Oregon, represents Microsoft Corporation (Microsoft). Brent L. Coleman and Corrinne O. Milinovich, Davison Van Cleve, P.C., Portland, Oregon, represent the Alliance of Western Energy Consumers (AWEC). Irion Sanger, Marie Barlow, and Joni Slinger, Sanger Law P.C., Portland, Oregon, represent the NW Energy Coalition (NVEC) and Renewable Northwest (RNW). Jessica Yarnall Loarie and Andrea Issod, Senior Attorneys Sierra Club Environmental Law Program, Oakland, California, represent Sierra Club. Katherine White Tudor, Olympia, Washington, represents Natural Resources Defense Council (NRDC). David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, and Michael G. Andrea, Senior Counsel, Avista Corporation, d/b/a Avista Utilities (Avista), Spokane, Washington, represent Avista; Ajay Kumar, Senior Attorney, PacifiCorp, d/b/a Pacific Power & Light Company (PacifiCorp), Portland, Oregon, represents PacifiCorp. Loretta I. Mabinton and Douglas C. Tingey, Associate General Counsel, Portland General Electric (PGE), Portland, Oregon represent PGE. Brian Chestnut, Ziontz Chestnut, Seattle, Washington, represents the Northern Cheyenne Tribe. Jeff Jordan represents himself pro se.

11 **SCOPE OF PROCEEDING.** RCW 80.12.020(1) requires regulated utilities to secure from the Commission an order authorizing the sale of its properties and facilities, which are necessary or useful in the performance of its duties to the public.<sup>3</sup> The Commission will examine whether the utility's proposed transaction is in the public interest. The Commission will deny a utility's application for authorization if it finds the proposed transaction is not consistent with the public interest.<sup>4</sup> Therefore, we examine PSE's Application to determine whether the proposed transactions are consistent with the public interest.

12 **LATE-FILED PETITIONS FOR INTERVENTION.** On August 24, 2020, the Northern Cheyenne Tribe submitted a late-filed petition to intervene. On September 4, 2020, Jeff Jordan also submitted a late-filed petition to intervene.

13 PSE opposes both late-filed petitions. NVEC, RNW, and Sierra Club support the Northern Cheyenne Tribe's late-filed petition to intervene, and Public Counsel and

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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>3</sup> WAC 480-143-120.

<sup>4</sup> WAC 480-143-170.

NRDC neither support nor oppose it. No party other than PSE commented on Jordan's petition.

14 **Standard of Review.** The Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”<sup>5</sup> Commission rules provide the presiding officer with discretion to grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”<sup>6</sup> To determine whether a petitioner has a substantial interest in the proceeding, the Commission applies a “zone of interest test” that requires the petitioner to demonstrate that there is a nexus between the stated purpose of its intervention and an interest protected by a Washington statute within the Commission’s jurisdiction.<sup>7</sup> In the case of any late-filed petition to intervene, a petitioner must meet the standard explained above, but also make a showing of good cause, including a satisfactory explanation of why the petitioner did not timely file a petition to intervene.<sup>8</sup> We find that the Northern Cheyenne Tribe and Jeff Jordan have failed to meet their burdens for late-filed intervention. We address each petition in turn.

15 We find that Jeff Jordan failed to establish a substantial interest that is not already adequately represented in this proceeding, failed to show that his participation as a party is in the public interest, and failed to demonstrate good cause for his late-filed petition. Jordan expressly presents in his petition a “proposal to broaden the issues in the proceeding.” Additionally, Jordan states that his interest in this proceeding is related to accommodating the transmission of more renewable energy via the Colstrip Transmission System to Washington and fulfilling the intent of Washington’s Clean Energy Transformation Act (CETA). We decline to broaden the scope of this proceeding, which is limited to the Commission’s evaluation of whether granting the Application, as supplemented, and approving the proposed transactions is consistent with the public

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<sup>5</sup> RCW 34.05.443(1).

<sup>6</sup> WAC 480-07-355(3).

<sup>7</sup> *In re Joint Application of Verizon Commc’ns, Inc. and Frontier Commc’ns Corp. for an Order Declining to Assert Jurisdiction or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Nw., Inc.*, Docket UT-090842, Order 05, ¶ 14 (Sep. 10, 2009) [hereinafter Docket UT-090842].

<sup>8</sup> *See* WAC 480-07-355(1); WAC 480-07-355(3).

interest. Additionally, we find that Jordan failed to demonstrate that those interests he identifies that are within the scope of this proceeding are not adequately represented by any other party. To the contrary, Jordan's interests in renewable energy, resource adequacy, and fulfilling CETA's intent are either not within the scope of this proceeding or are adequately represented by multiple parties, including RNW, NWECA, Sierra Club, Public Counsel, and Staff. Jordan is, of course, invited to submit public comments into the record, either in writing or at the Commission's October 8, 2020, public comment hearing.

16 As to the Northern Cheyenne Tribe's petition, we find that the Tribe failed to establish good cause for its late-filed petition. We appreciate that the effects of the COVID-19 pandemic on the Tribe are significant, but that does not excuse a six-month delay in seeking intervention. Similarly, we find that the Northern Cheyenne Tribe has failed to meet its burden to demonstrate that it has a substantial interest in this proceeding, or that its participation as a party would be in the public interest. The Tribe's stated interests arise from its proximity to the plant, the employment benefits derived from its operation, and the economic and environmental impacts to the Tribe caused by a potential earlier or later closing date and subsequent decommissioning and environmental remediation. We determine that these interests, some of which are hypothetical, do not give rise to a substantial interest under Washington law and under the jurisdiction of the Commission. The Tribe's local interests are best advocated in the proceeding before the Montana Public Service Commission. The Tribe's stated interests also fall largely outside the scope of this proceeding. We reiterate that the scope of this proceeding is limited; it concerns only whether the Application and its proposed transactions are consistent with the public interest. The Tribe also advocates for its intervention, in part, because of the renewable energy it generates, arguing that the Tribe could potentially send energy to Washington via the Colstrip Transmission System. As we stated in a previous order, this proceeding is not an opportunity to promote a party's potential future commercial interests in the Colstrip Transmission System. Similar to our discussion of Jordan's late-filed petition, above, the Tribe's interests in renewable energy and environmental regulatory compliance are adequately represented by RNW, NWECA, Sierra Club, Public Counsel, and Staff.

17 Although we deny the Northern Cheyenne Tribe's late-filed petition to intervene, we believe the Tribe's input will be appropriate and valuable. We encourage the Tribe to file written comments describing its perspective on the impact of the proposed transactions, as well as on the plan for Colstrip operations, transmission, and eventual community

transition. All public comments received in this proceeding will be made part of the record.

18 **DISCOVERY.** Discovery for this proceeding will be conducted according to this Order, the procedural schedule attached to this Order as Appendix A, the Protective Order, and the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively to avoid having to bring discovery matters forward for formal resolution.

19 As ordered in the Prehearing Conference Order, the parties are required to share every data request and response with all parties, subject to any confidentiality limitations contained in Commission rule or the Protective Order.

20 The response time for data requests is modified and reduced to 5 business days, effective the date of this Order. After the filing of responsive testimony, the response time for data requests will be 3 business days for the remainder of the proceeding.

21 **PROCEDURAL SCHEDULE.** The Commission conveyed to the parties its intention to hold a hearing in this matter on November 23, 2020, with cross-answering and rebuttal testimony filed no later than October 22, 2020. With those limitations in mind, the parties were unable to present an agreed procedural schedule at the virtual second prehearing conference.

22 The primary obstacle to reaching consensus is the uncertainty related to the pending arbitration between PSE, NorthWestern Energy, and Talen Montana as it regards the Colstrip Transmission System. The Commission, however, makes no assumption regarding the outcome of the pending arbitration, and determines that the adjudication should move forward. If the pending arbitration results in any changes to the Supplemental Application, the Commission will, at that time, consider modifications to the procedural schedule to accommodate additional filing deadlines and a new date for the evidentiary hearing.

23 Accordingly, the Commission adopts the procedural schedule attached to this Order as Appendix A and sets a hearing date in this matter for November 23, 2020. The Commission finds that an October 2, 2020, deadline for responsive testimony is reasonable under the circumstances because it affords responding parties more than six weeks from the date PSE filed its Supplemental Application, which is a period greater than that proposed by the parties at the July 6, 2020, Status Conference. Moreover, much of the analysis the parties conducted on the initial Application should inform and

expedite the analysis of the Supplemental Application. The parties should confer to establish a mutually agreeable date for a settlement conference and submit that date to the Commission, via email to Judge O'Connell, by **5 p.m. on September 25, 2020**.

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**DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Documents that include information designated as confidential must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket.
- (b) The Commission accepts only electronic versions of documents for formal filing. The Commission requires electronic copies to be in searchable pdf format (adobe acrobat or comparable software), or to otherwise comply with WAC 480-07-140(6)(a). Parties must submit documents electronically through the Commission's web portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to [records@utc.wa.gov](mailto:records@utc.wa.gov) provided the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).
- (c) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160 and the Protective Order in this docket for documents that include information designated as confidential or highly confidential.
- (d) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge ([andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov)) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

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**EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m.** on

**November 17, 2020.** If any of the exhibits contain information designated as confidential or highly confidential, parties must also file an electronic copy in searchable pdf (adobe acrobat or comparable software) of each redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.

- 26 **EXHIBIT LISTS.** With each submission of prefiled testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. PSE will prepare and file its preliminary exhibit list for its initial filing, as supplemented, in this docket. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits by **5 p.m., November 17, 2020.**
- 27 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge ([andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov)) and the other parties by **5 p.m., November 17, 2020.**
- 28 **NOTICE OF HEARING.** Commission headquarters remain closed to the public due to the ongoing COVID-19 public health crisis. Accordingly, the Commission will hold a virtual evidentiary hearing in this matter on **November 23, 2020, at 9:30 a.m.** The Commission uses Microsoft Teams for virtual hearings. All parties and witnesses are required to appear using the Microsoft Teams web application. To attend the proceeding by telephone, please call 1-253-372-2181 and enter the Conference ID: 413 074 231#. To participate using the Microsoft Teams web application, please use the following link:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NDg0YzI3MDQtMTJiMS00NTk0LTg1YWUtMzYwZmU5OTIyOTA5%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22e087eca4-4cd8-416f-8fc0-53ed60dbc833%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDg0YzI3MDQtMTJiMS00NTk0LTg1YWUtMzYwZmU5OTIyOTA5%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22e087eca4-4cd8-416f-8fc0-53ed60dbc833%22%7d)

29 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division ([rayne.pearson@utc.wa.gov](mailto:rayne.pearson@utc.wa.gov) or 360-664-1136).

30 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.**

DATED at Lacey, Washington, and effective September 10, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*  
ANDREW J. O'CONNELL  
Administrative Law Judge

**APPENDIX A  
PROCEDURAL SCHEDULE  
DOCKET UE-200115**

<b>EVENT</b>	<b>DATE</b>
Applicant's Filing	<b>February 19, 2020; August 20, 2020</b>
Order 04	<b>September 10, 2020<sup>9</sup></b>
Settlement Conference	<b>TBD<sup>10</sup></b>
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits <sup>11</sup>	<b>October 2, 2020</b>
Public Comment Hearing(s)	<b>October 8, 2020</b>
Joint Applicants Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits	<b>October 22, 2020</b>
Discovery Deadline – Last Day to Issue Data Requests	<b>November 10, 2020</b>
Cross-Examination Exhibits, Witness Lists, and Time Estimates	<b>November 17, 2020</b>
Evidentiary Hearing	<b>November 23, 2020</b>

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<sup>9</sup> Response time to data requests will be 5 business days.

<sup>10</sup> Parties to submit date of settlement conference to the Commission by September 25, 2020.

<sup>11</sup> Response time to data requests will be 3 business days.