

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. UE-200115

EXH. JRT-2

JASON R. THACKSTON

REPRESENTING AVISTA CORPORATION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**Docket UE-200115
Puget Sound Energy
Application Authorizing Sale of PSE Interest in Colstrip Unit 4**

WUTC STAFF DATA REQUEST NO. 024:

For the matters listed within Section 17(f), please provide an answer to the following questions. When answering these questions presume that the transaction in this docket is approved, Talen is successful in exercising its right of first refusal, and PSE sells its interest in Colstrip Unit 4 to both NorthWestern and Talen.

- a. Could Talen cast a vote that would meet the “Operator’s Committee member” requirement in Section 17(f)?
- b. Could NorthWestern cast a vote that would meet the “Operator’s Committee member” requirement within Section 17(f)?
- c. Could Talen cast a vote that would meet one of the two “other Committee members” requirement in Section 17(f)?
- d. Could NorthWestern cast a vote that would meet one of the two “other Committee members” requirement in Section 17(f)?
- e. Could Northwestern vote in favor of a matter and meet both the “Operator’s Committee member” and meet one of the two “other Committee members” requirements in Section 17(f)?
- f. Could Talen vote in favor of a matter and meet both the “Operator’s Committee member” and meet one of the two “other Committee members” requirements in section 17(f)?
- g. Could Talen and NorthWestern vote together to meet the “55% of the total project shares” requirement in Section 17(f)?

First Revised Response:

Puget Sound Energy (“PSE”) objects to WUTC Staff Data Request No. 024 on the grounds that it:

- (i) seeks information that is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence;
- (ii) seeks a legal conclusion concerning the terms and conditions of the Colstrip Units #3 and #4 Ownership and Operation Agreement; and
- (iii) calls for PSE to guess and speculate.

Subject to and without waiving these objections, PSE provides the following response.

Section 17 of the Colstrip Units #3 & #4 Ownership and Operation Agreement, dated as of May 6, 1981 (the "Ownership and Operation Agreement"), provides for a Project Committee.¹ The purpose of the Project Committee is "to facilitate effective cooperation, interchange of information and efficient management of the Project, on a prompt and orderly basis."² The Ownership and Operation Agreement defines the word "Project" as follows:

"Project" means the coal-fired steam electric generating project known as Colstrip Units #3 and #4 Steam Electric Generating Project, consisting of two units, each of 700 megawatt nominal rating, the Common Facilities and related facilities, real property and property rights (including, but not limited to, the real property described in Exhibit "A" hereto) located near Colstrip, Montana. The Project shall not include the Transmission System defined in Section 2(p) of the Transmission Agreement.³

The Project Committee cannot consist of more than five (5) members on any issue that requires a vote.⁴ Each party to the Ownership and Operation Agreement may appoint one (1) member to the Project Committee.⁵ Each Project Committee member shall have the right to vote the Project Share⁶ of the party that appointed such member.⁷

Currently, the Project Committee has six (6) members, each of whom represents one of the six parties to the Ownership and Operation Agreement. Although there are six (6) members of the Project Committee, the terms and conditions of the Ownership and Operation Agreement restricts the number of votes to five (5) votes on any given issue.

¹ Please see the Second Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-3, for a copy of the Ownership and Operation Agreement.

² Roberts, Exh. RJR-3, at 19 (quoting from section 17(a) of the Ownership and Operation Agreement).
³ *Id.* at 4 (quoting section 1(n) of the Ownership and Operation Agreement).

⁴ See *id.* at 19 (section 17(a) of the Ownership and Operation Agreement).

⁵ See *id.*

⁶ The "Project Share" is the sum of the percentages of undivided interest in the Project: (i) owned by (and not leased to another Person) a Project User; and (ii) leased by an owner to such Project User. See Roberts, Exh. RJR-3, at 6 (section (b) of the Ownership and Operation Agreement).

⁷ See *id.* (section 17(a) of the Ownership and Operation Agreement).

NorthWestern Corporation (“NorthWestern”) and Talen Montana, LLC (“Talen Montana”) share one (1) of the five (5) Project Committee votes pursuant to the terms and conditions of the Amended and Restated Project Committee Vote Sharing Agreement, dated as of October 16, 2009 (the “Amended and Restated Vote Sharing Agreement”).

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

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

Party	Project Share	Committee Members	Committee Vote
Avista Corporation (“Avista”)	15% (15% interest in each of Colstrip Units 3 and 4)	1	1
NorthWestern	15% (30% interest in Colstrip Unit 4 only)	1	Shared Vote 1 ⁸
PacifiCorp	10% (10% interest in each of Colstrip Units 3 and 4)	1	1
Portland General Electric (“Portland General”)	20% (20% interest in each of Colstrip Units 3 and 4)	1	1
PSE	25% (25% interest in each of Colstrip Units 3 and 4)	1	1
Talen Montana	15% (30% interest in Colstrip Unit 3 only)	1	Shared Vote 1 ⁹

The member of the Project Committee representing the Operator acts as the chair of the Project Committee.¹⁰ Talen Montana is the current Operator of Colstrip Units 3 & 4, and the member of the Project Committee representing Talen Montana serves as the chair of the Project Committee.

Section 17(f) of the Ownership and Operation Agreement requires Talen Montana, as Operator, to submit certain matters “to the Committee for approval, which approval must be by a vote of Operator’s Committee member, plus at least two other Committee

⁸ Shared with Talen Montana.

⁹ Shared with NorthWestern.

¹⁰ Roberts, Exh. RJR-3, at 20 (section 17(c) of the Ownership and Operation Agreement).

members so that the Committee members voting for approval represent at least 55% of the total Project Share”¹¹

If PSE were to sell its interests in Colstrip Unit 4, then each of NorthWestern and Talen Montana would acquire an undivided 12.5 percent of Colstrip Unit 4, which represents an additional 6.25 percent Project Share. Additionally, upon the sale of PSE’s interests in Colstrip Unit 4 to NorthWestern and Talen Montana, each of PSE, NorthWestern, and Talen Montana would enter into a vote sharing agreement or vote sharing agreements with respect to the vote currently controlled by PSE. Table 2 below presents the composition of the Project Committee after the sale of PSE’s interests in Colstrip Unit 4 to NorthWestern and Talen Montana.

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

Party	Project Share	Committee Members	Committee Vote
Avista	15% (15% interest in each of Colstrip Units 3 and 4)	1	1
NorthWestern	21.25% (42.5% interest in Colstrip Unit 4 only)	1	Shared Vote 1 ¹² Shared Vote 2 ¹³
PacifiCorp	10% (10% interest in each of Colstrip Units 3 and 4)	1	1
Portland General	20% (20% interest in each of Colstrip Units 3 and 4)	1	1
PSE	12.5% (25% interest in Colstrip Unit 3 only)	1	Shared Vote 2 ¹⁴
Talen Montana	21.25% (30% interest in Colstrip Unit 3 and 12.5% interest in Colstrip Unit 4)	1	Shared Vote 1 ¹⁵ Shared Vote 2 ¹⁶

Please see the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75, for a copy of the draft Vote Sharing Agreement between PSE and NorthWestern. Please note that this draft anticipated an acquisition by NorthWestern of all of PSE’s 25 percent ownership interest in Colstrip Unit 4. Now that Talen Montana

¹¹ Roberts, Exh. RJR-3, at 20 (section 17(f) of the Ownership and Operation Agreement).

¹² Shared with Talen Montana.

¹³ Shared with PSE and Talen Montana.

¹⁴ Shared with NorthWestern and Talen Montana.

¹⁵ Shared with NorthWestern.

¹⁶ Shared with NorthWestern and PSE

has exercised its right of first refusal pursuant to the terms and conditions of the Colstrip Unit #3 & #4 Ownership Agreement, Northwestern would acquire half (12.5 percent) of the 25 percent ownership interest in Colstrip Unit 4 currently owned by PSE.

- a. Yes. A vote cast by the member of the Project Committee representing Talen Montana could, under certain circumstances, meet the “Operator’s Committee member” requirement within section 17(f) of the Ownership and Operation Agreement.
- b. Yes. A vote cast by the member of the Project Committee representing NorthWestern could, under certain circumstances, meet the “Operator’s Committee member” requirement within section 17(f) of the Ownership and Operation Agreement.
- c. Yes. A vote cast by the member of the Project Committee representing Talen Montana could, under certain circumstances, meet the “two other Committee members” to which section 17(f) of the Ownership and Operation Agreement refers.

Under certain circumstances, as set forth in the new vote sharing agreement or vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75, the member of the Project Committee representing Talen Montana could be the party casting the shared vote governed by such new vote sharing agreements and could, therefore, cast a vote of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement.

- d. Yes. A vote cast by the member of the Project Committee representing NorthWestern could, under certain circumstances, meet the “two other Committee members” to which section 17(f) of the Ownership and Operation Agreement refers.

Under certain circumstances, as set forth in the new vote sharing agreement or vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75, the member of the Project Committee representing NorthWestern could be the party casting the shared vote governed by such new vote sharing agreements and could, therefore, cast a vote of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement.

- e. Yes. The member of the Project Committee representing NorthWestern on a proposal could, under certain circumstances, cast two votes and meet both the “Operator’s Committee member” and be one of the two “other Committee

members” for purposes of the requirements in section 17(f) of the Ownership and Operation Agreement if such member representing NorthWestern has, with respect to the proposal in question, the right to cast both

- (i) the vote shared by Northwestern and Talen Montana pursuant to the terms and conditions of the Amended and Restated Vote Sharing Agreement (i.e., the vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement); and
- (ii) the vote shared by PSE, Northwestern, and Talen Montana pursuant to the terms and conditions of new vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75 (i.e., a vote of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement).

f. Yes. The member of the Project Committee representing Talen Montana on a proposal could, under certain circumstances, cast two votes and meet both the “Operator’s Committee member” and be one of the two “other Committee members” for purposes of the requirements in section 17(f) of the Ownership and Operation Agreement if such member representing Talen Montana has, with respect to the proposal in question, the right to cast both

- (i) the vote shared by Northwestern and Talen Montana pursuant to the terms and conditions of the Amended and Restated Vote Sharing Agreement (i.e., the vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement); and
- (ii) the vote shared by PSE, Northwestern, and Talen Montana pursuant to the terms and conditions of new vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75 (i.e., a vote of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement).

g. Under no circumstances can NorthWestern or Talen Montana, either acting individually or in concert, vote and cast “a vote of Operator’s Committee member,

plus *at least two other Committee members* so that the Committee members voting for approval represent at least 55% of the total Project Share”¹⁷

Each of NorthWestern and Talen Montana has the right, under certain circumstances, to cast a vote on a proposal pursuant to the terms of (i) the Amended and Restated Vote Sharing Agreement and (ii) the new vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75. As discussed above, the shared vote governed by the Amended and Restated Vote Sharing Agreement represents the vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement, and shared vote governed by the terms and conditions of new vote sharing agreements in the form provided in the Fifth Exhibit to the Prefiled Direct Testimony of Ronald J. Roberts, Exh. RJR-6, at 61-75, represents a vote of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement.

Given that NorthWestern and Talen Montana share each of these two votes, there is no possibility that NorthWestern and Talen Montana could, either unilaterally or in concert, to cast

- (i) the vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement; *and*
- (ii) two (2) votes of the Project Committee other than a vote of the Operator’s Committee member for purposes of section 17(f) of the Ownership and Operation Agreement.

¹⁷ Roberts, Exh. RJR-3, at 20 (section 17(f) of the Ownership and Operation Agreement) (emphasis added).