

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFIC POWER & LIGHT COMPANY, a
division of PacifiCorp

2019 Power Cost Adjustment Mechanism
Report

DOCKET UE-190458

**PACIFIC POWER & LIGHT COMPANY'S RESPONSE TO STAFF'S MOTION
FOR SEVERANCE AND CONSOLIDATION**

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I. INTRODUCTION

1. On September 26, 2019, Washington Utilities and Transportation Commission (Commission) Staff asked the Commission to convert both Pacific Power & Light Company's (Pacific Power) 2019 Power Cost Adjustment Mechanism (PCAM) filing and Puget Sound Energy's (PSE) 2019 Power Cost Adjustment (PCA) filing into adjudicative proceedings. Staff also asked the Commission to sever Avista Corporation's (Avista) 2019 Energy Recovery Mechanism (ERM) filing from Avista's 2019 general rate case (GRC), and to consolidate Avista's ERM proceeding, PSE's PCA proceeding, and Pacific Power's PCAM proceeding into a single docket to consider each company's prudence with respect to an outage at the Colstrip Units 3 and 4 in 2018.
2. Pacific Power does not oppose Staff's request to convert Pacific Power's PCAM filing into an adjudicative proceeding. For several reasons, however, the company opposes Staff's request to consolidate Pacific Power's PCAM proceeding with PSE's PCA and Avista's ERM. First, in May 2019, the Commission rejected Staff's related request to keep Avista's ERM separate from its GRC, in part to enable consolidation of these cases. The ERM, PCA, and PCAM have all moved forward as independent cases for many months, and consolidation at this point would complicate, not simplify, the resolution of each case.
3. Second, consolidating the three proceedings would not streamline the review and approval process because (a) each company's power cost filing includes a range of issues unrelated to the Colstrip outage; (b) each case would still require a separate inquiry into the specific facts associated with each company's approach to prudently managing its interest in the Colstrip facilities; and (c) consolidating the three cases would complicate and potentially

delay the discovery process, as each company may possess different documents and each remains responsible for protecting its own confidential information.

4. Third, each company has very different replacement power costs at issue, ranging from Pacific Power's \$0.5 million to PSE's \$12 million. The rate impacts of the filings also vary, as Pacific Power's filing does not trigger any rate change. For these reasons, and because the facts and circumstances of each company's interactions with the Colstrip facilities and the plant operator are different, consolidating these cases could thwart individual utility settlements. This is contrary to the stated goal of Staff's motion, which is to conserve resources and promote judicial economy. The difficulties inherent in Staff's approach may explain why, to the best of Pacific Power's knowledge, this Commission has never previously consolidated multiple utilities' adjudicative proceedings.

5. To address Staff's concerns about simultaneously litigating three power cost proceedings, the Commission can adopt schedules in each case that minimize overlap, resolving the cases in the order in which they were filed. By adopting this approach, the Commission would enable Staff to build off prior testimony and exhibits as applicable, while also ensuring that each company's prudence determination is not conflated or confused.

II. BACKGROUND

6. The Commission has authorized Pacific Power to track unexpected variances in power costs in its PCAM deferral account.¹ Costs tracked in this deferral account are presented for the Commission's review and approval in annual reports.² Pacific Power's report for calendar-year 2018 Washington-assigned costs was filed on June 3, 2019, in

¹ *Wash. Utils. and Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-140762, Order 09 ¶ 51 (May 26, 2015).

² UE-140762, Settlement Stipulation ¶ 9; Docket UE-140762, Order 09 (approving and adopting the Settlement Stipulation).

Docket UE-190458. Included in this report are costs associated with obtaining replacement power as a result of an environmental compliance outage at Colstrip Unit 4.

7. Pacific Power has a 10 percent ownership interest in Colstrip Units 3 and 4.³ In accordance with Order 08 in Docket UE-061546, Pacific Power's PCAM does not include any costs associated with Colstrip Unit 3.⁴ Approximately 74 megawatts (MW) of Colstrip Unit 4's capacity is included in Pacific Power's actual net power costs under the West Control Area Inter-Jurisdictional Allocation Methodology (WCA),⁵ 22.6 percent of which—or approximately 17 MW—was allocated to serve Washington customers in 2018.⁶
8. Between June 29 and September 4, 2018, Colstrip Unit 4 was taken offline as a result of tests showing that the unit was exceeding Mercury and Air Toxics Standard (MATS) limits.⁷ During this period, Colstrip Unit 4 was unavailable to produce energy and the energy that may otherwise have been produced by Colstrip Unit 4 was procured from other sources.⁸ The company estimated that replacement power costs resulted in an increase in 2018's variable power costs, on a Washington-allocated basis, of approximately \$0.5 million.⁹ To help bring Unit 4 back online as soon as possible, Pacific Power provided the unit's operator, Talen Montana (Talen), with support from both technical experts and management to help identify the problems and develop a response.¹⁰ Pacific Power

³ UE-190458, Exh. MWG-1T at 13:20-21 (Direct Testimony of Michael G. Wilding).

⁴ *Wash. Utils. and Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-061546, Order 08, App'x A ("Commission Determination of Revenue Requirement") (June 21, 2007) (removing costs associated with Colstrip Unit 3 from rates).

⁵ UE-190458, Exh. MWG-1T at 14:4-9 (Direct Testimony of Michael G. Wilding).

⁶ *Id.* at 14:9-12.

⁷ *Id.* at 14:13-23.

⁸ *Id.* at 15:10-19.

⁹ *Id.*

¹⁰ *Id.* at 15:4-9.

explained the nature of the outage and the company's role in helping restore Unit 4 to operations in its PCAM filing.¹¹

9. Following Pacific Power's filing, Staff conducted informal discovery and obtained a wide range of information concerning Colstrip operations, including time periods before and after the 2018 PCAM period,¹² and addressing both Colstrip Units 3 and 4.¹³ After Staff propounded an additional request asking Pacific Power to "admit or deny" that the company had produced "all contemporaneous documentation of all analyses and/or decision making in its or in Talen's possession,"¹⁴ Pacific Power requested an opportunity to meet personally with Staff in a workshop setting to better understand the nature of Staff's concerns and, correspondingly, the scope of Staff's inquiries concerning the 2018 outage.¹⁵ This workshop took place on September 20, 2019, via videoconference.¹⁶ At the workshop, Pacific Power offered to produce additional data and a narrative response to directly address Staff's concerns, which the company provided on October 2, 2019.

10. On September 26, 2019, Staff filed its request to convert Pacific Power's PCAM proceeding to an adjudicative proceeding, and to consolidate Pacific Power's PCAM with Avista's ERM and PSE's PCA filings.¹⁷ In its motion, Staff states that it is unable to recommend approval of Pacific Power's PCAM report because of "unresolved concerns" concerning one category of costs: the estimated replacement power costs associated with Colstrip Unit 4's 2018 environmental compliance outage.¹⁸ While Staff recognizes that the

¹¹ *Id.* at 13-16.

¹² UE-190458, Declaration of David C. Gomez, App'x C at 1, WUTC Data Request 1.

¹³ *See, e.g.*, UE-190458, Declaration of David C. Gomez, App'x C at 6, WUTC Data Request 5.

¹⁴ *Id.* at 22, WUTC Data Request 8.

¹⁵ UE-190458, Declaration of David C. Gomez at 11-12.

¹⁶ *Id.* at 12.

¹⁷ Staff's Motion for Severance and Consolidation ¶¶ 2-3.

¹⁸ *Id.* at ¶ 22.

actions taken by Pacific Power *in response to* the Unit 4 outage were prudent, Staff states that it does not yet have adequate information “to determine if the actions by Talen or Pacific Power *leading up to the* outage (or the outage itself) were imprudent.”¹⁹ Staff also expresses the belief that all three power cost filings “are dealing with the same underlying facts and principles of law—the prudence of the replacement power costs associated with the 2018 Colstrip outage,” and that therefore all three cases could be expeditiously handled in a single adjudicative proceeding.²⁰

III. DISCUSSION

A. Pacific Power Does Not Oppose Converting the PCAM Filing into an Adjudicative Proceeding.

11. Pacific Power does not object to Staff’s request that the company’s PCAM filing be converted to an adjudicative proceeding. In conjunction with opening this proceeding, Pacific Power respectfully requests that the Commission approve the company’s Motion for Protective Order, filed contemporaneously with Pacific Power’s PCAM filing.²¹

B. The Commission Should Decline to Consolidate the Three Different Power Cost Proceedings.

1. *The Commission Previously Denied Staff’s Related Request to Keep Avista’s ERM Separate from its GRC to Facilitate its Consolidation with Pacific Power’s PCAM and PSE’s PCA.*

12. In response to Avista’s motion to consolidate that company’s ERM and GRC proceedings, on May 15, 2019, Staff asked the Commission to keep Avista’s ERM separate from its GRC because, among other reasons, this would permit consolidation of Avista’s ERM with Pacific Power’s PCAM filing and PSE’s PCA.²² Staff, joined by the Alliance of

¹⁹ *Id.* at ¶ 26 (Staff’s emphasis).

²⁰ *Id.* at ¶ 29 (internal quotation and alteration marks omitted).

²¹ UE-190458, Pacific Power’s Motion for Standard Protective Order (June 3, 2019).

²² UE-190222, Avista’s Motion for Consolidation of Proceedings (May 2, 2019).

Western Energy Consumers (AWEC), argued that “denying the Motion would allow [for] more procedural options with regard to the prudence determination of an outage that took place at Colstrip Units 3 and 4 in the summer of 2018 (‘2018 Colstrip Outage’).”²³

Specifically, Staff and AWEC urged the Commission to “consider the option of consolidating [PSE’s PCA], [Avista’s ERM], and the forthcoming PCAM annual filings into one proceeding as each addresses the same event: the 2018 Colstrip Outage.”²⁴

13. On May 30, 2019, the Commission declined to adopt Staff’s and AWEC’s approach in Order 03, and instead concluded that consolidating Avista’s ERM with its GRC aligns any rate impact of the company’s rate case with the return of the ERM balance, thus “avoiding additional and frequent rate fluctuations.”²⁵ Against the urging of Staff and AWEC, the Commission did not consider the option of consolidating the utility’s separate power cost filings as a reason to deny Avista’s motion to consolidate its ERM with its GRC.

14. While not discussed explicitly in Order 03, the ruling effectively foreclosed the procedural option of a three-way consolidation, and each utility’s filing has proceeded separately since May 2019. Staff’s motion for consolidation at this late date invites duplication of the substantial efforts already undertaken in each company’s docket and therefore fails to meet the standard for consolidation.

15. Staff’s severance motion should be denied as an untimely motion for reconsideration of the Commission’s order granting consolidation of Avista’s ERM and GRC.²⁶ Anticipating this outcome, Staff proposes “[i]n the alternative, if the Commission decides not to grant

²³ UE-190222, Joint Response in Opposition to Avista’s Motion to Consolidate ¶ 8 (May 15, 2019).

²⁴ *Id.* at ¶ 17.

²⁵ UE-190222, Order 03 ¶ 6 (May 30, 2019).

²⁶ As a request to reconsider an interlocutory order, WAC 480-07-810 requires Staff to have filed for review “within ten days” of the Commission’s order.

severance of [Avista’s] ERM,” that the Commission nonetheless consolidate Pacific Power’s PCAM and PSE’s PCA into a single proceeding “for the same reasons articulated in this motion.”²⁷ However, consolidating two out of the three discrete power cost dockets would simply result in a “lose-lose” situation—inappropriately merging PSE’s PCA proceeding with Pacific Power’s PCAM, while also failing to ease Staff’s concerns about simultaneously litigating multiple power cost proceedings.

2. Consolidating the Power Cost Proceedings Would Not Result in Greater Judicial Efficiency.

16. Combining the three power cost dockets will not conserve resources because (a) each power cost filing includes a range of discrete issues unrelated to the Colstrip outage; (b) each company has different facts associated with how that company prudently managed its interest in the Colstrip facilities; and (c) discovery would be further complicated as each company would remain responsible for responding to requests for information and for ensuring that confidential information is adequately protected.

a. Each Company’s Power Cost Filing Includes Other Discrete Issues.

17. Staff premises its motion to consolidate on the fact that “all three companies are seeking recovery of the replacement power costs incurred from the 2018 Colstrip Outage[.]”²⁸ However, the Colstrip outage is only one of many factors that go into each company’s power cost filing—an event that, for Pacific Power, had a relatively minor impact on overall power costs. Colstrip Unit 4 provides less than three percent of the energy provided by resources included in the WCA.²⁹ By comparison, Pacific Power’s participation in the Energy Imbalance Market has a significant influence on the company’s power costs,

²⁷ Staff’s Motion for Severance and Consolidation ¶ 28 n.67.

²⁸ *Id.* at ¶ 28.

²⁹ UE-190458, Exh. MWG-1T at 15:21-22 (Direct Testimony of Michael G. Wilding).

but may not be a substantial factor for other utilities. Thus, regardless of whether the outage at Colstrip Unit 4 presents an issue in common among the companies' power cost filings, Staff's proposal would consolidate all aspects of these proceedings, creating unnecessary confusion regarding the issues for which there is no overlap at all.

b. Each Company's Prudence Depends on That Company's Actions.

18. Cost recovery in Pacific Power's power cost filing requires the company to demonstrate that its actions were prudent. The Commission's prudence inquiry concentrates on the *utility's* decision-making, and requires the utility to demonstrate that its actions were reasonably prudent under the circumstances.³⁰
19. In the context of the 2018 Colstrip Unit 4 outage, the relevant question is whether Pacific Power acted prudently in its capacity as a non-operating, minority owner of Colstrip Unit 4. Because Pacific Power is differently situated than Avista or PSE, the prudence inquiry in Pacific Power's case is different than in Avista's and PSE's cases. Each company has varying ownership interests in Unit 4, and each conducted its own due diligence and oversight of Talen's activities after learning of the unit's environmental compliance issues. Similarly, any discussion of the oversight or management of Colstrip Unit 3 is inapplicable to Pacific Power's PCAM filing, as energy from the company's 10-percent ownership interest in that unit is not included in Washington rates.
20. Staff's position that Pacific Power's PCAM, PSE's PCA, and Avista's ERM all involve "the same underlying facts" improperly conflates each utility's prudence with that of the plant operator.³¹ Staff appears to consider the relevant prudence question in each case to be not whether each utility acted prudently in its ownership capacity prior to the 2018 outage,

³⁰ UE-152253, Order 12 ¶ 94.

³¹ Staff's Motion for Severance and Consolidation ¶ 29.

but whether or not “the actions by *Talen* . . . were imprudent” as well.³² Staff reasons that, because *Talen* is the “contractor and agent” of each utility-owner,³³ “[t]he operation of the plant, while under *Talen*’s management, is still the responsibility of [the utility].”³⁴

21. Staff appears to be invoking common law principles of vicarious liability present in certain agent-principal contexts.³⁵ These principles are inapplicable in a prudence inquiry, which focuses on the reasonableness of the utility’s conduct, not the imputed conduct of a third party (such as a plant operator). This connection is even more attenuated in *Pacific Power*’s case, where it owns only 10 percent of Colstrip Unit 4. While Staff relies on two prior cases to support imputing *Talen*’s actions to *Pacific Power*, *PSE*, and *Avista*, neither case involved an assessment of the utility’s prudence.³⁶

22. On the contrary, in one of the cases cited by Staff, the Commission rejected a request by Public Counsel to require the utility to demonstrate that its system would be “foolproof,” and instead concluded that the appropriate standard for assessing a utility’s conduct is whether the utility exercises “adequate management and oversight” of third parties.³⁷ The relevant question remains whether *Pacific Power*’s decision-making in the period prior to the

³² *Id.* at ¶ 21 (emphasis added).

³³ *Id.* at ¶ 21 n.47.

³⁴ *Id.*

³⁵ See Declaration of David Gomez ¶ 11 (describing Staff’s concern with the “prudency” of *Talen*’s actions).

³⁶ In both cases, the Commission adopted settlements between the utility and Staff concerning safety violations, for which the Commission held each utility ultimately responsible. *Wash. Utils. and Transp. Comm’n v. Puget Sound Energy, Inc.*, Docket PG-060215, Order 02 ¶ 27 (Apr. 3, 2008); *Wash. Utils. and Transp. Comm’n v. Qwest Corp. d/b/a CenturyLink QC*, Docket UT-140597, Order 03 (Feb. 22, 2016).

³⁷ Docket UT-140597, Order 03 ¶ 25 (declining to heighten the standard of review for one utility’s prospective actions, while requiring the utility to bear ultimate responsibility for safety violations). Similarly, the Public Utility Commission of Oregon (OPUC) has directly addressed the issue raised by Staff, ruling that replacement power costs associated with an outage caused by a third-party operator may be recovered, unless the utility has the option to seek recovery from the responsible third party. *In re Portland Gen. Elec. Co.’s Gen. Rate Case*, OPUC Docket UE 88, Order No. 95-322 at 3 (Mar. 29, 1995) (partially disallowing cost recovery because the utility was “better situated to recover its costs from the manufacturer,” and further stating that “PGE’s behavior was not faulty”); *In re PacifiCorp dba Pacific Power 2008 Transition Adjustment Mechanism*, OPUC Docket UE 191, Order No. 07-446 at 20 (Oct. 17, 2007) (refusing to impute third-party negligence in a prudence inquiry).

Colstrip Unit 4 outage was prudent—an inquiry that is necessarily specific to its individual facts and circumstances.

c. Each Company Would Remain Responsible for its Discovery Responses and Confidential Information.

23. Consolidating Pacific Power’s PCAM, PSE’s PCA, and Avista’s ERM would not streamline the discovery process because each company must remain responsible for its own discovery responses and for ensuring the protection of its confidential information. Staff claims that consolidation would make the discovery process more efficient by applying “[a] single protective order” for all three power cost filings.³⁸ Maintaining three separate dockets, Staff contends, “could limit the amount of information Staff is able to provide the Commission in its respective recommendations”—presumably by restricting Staff’s ability to reference confidential information provided by one company in another company’s proceeding.

24. Consolidation would not avoid Staff’s concerns and, indeed, could complicate the confidentiality issue further. It is highly likely that certain information disclosed by one company will be confidential vis-à-vis the other companies. It would be both inappropriate and prejudicial to require disclosure of sensitive, internal information to other companies as part of resolving an individual company’s power cost filing.

25. Nor is consolidation necessary to resolve Staff’s concern. As a general matter, using confidential material disclosed in one proceeding in a separate proceeding is improper without first obtaining the disclosing company’s consent. However, Pacific Power would certainly consider reasonable requests to allow confidential information that Pacific Power discloses to be used in Avista’s or PSE’s proceedings, where necessary and appropriate. To

³⁸ Staff’s Motion for Severance and Consolidation ¶ 33.

the extent that Staff believes that one company's confidentiality designation is inappropriate, Staff will be able to present that concern formally through each company's individual adjudicative proceeding.

3. *Consolidating the Power Cost Proceedings May Interfere with Reasonable Settlement.*

26. Consolidating Pacific Power's PCAM, PSE's PCA, and Avista's ERM may also undermine efficient resolution of these cases by interfering with each company's ability to reach a reasonable settlement. As discussed above, the companies are differently situated with respect to the facts surrounding each company's conduct prior to the outage. The amount of costs involved also vary substantially—ranging from \$12 million to \$0.5 million.³⁹ Finally, Pacific Power's PCAM does not involve a rate adjustment—unlike Avista's ERM.⁴⁰ The Commission recognized that the rate impact of Avista's ERM supported consolidating the proceeding with that company's GRC, with the goal of avoiding unnecessary rate fluctuations.⁴¹ Tying these disparate proceedings and circumstances together into a single docket would interfere with the parties' flexible resolution of each case.

C. Staff's Concerns Could Be Addressed Through Careful Scheduling.

27. Pacific Power appreciates that litigating three power cost dockets simultaneously may strain Staff's resources, particularly alongside the other utilities' GRCs. To address these concerns while protecting the companies' ability to obtain individual resolutions of their filings, Pacific Power proposes that each company's filing be scheduled to minimize overlap, resolving the cases in the order in which they were filed—first Avista's ERM, then PSE's PCA, and then Pacific Power's PCAM.

³⁹ See *id.* at ¶ 8.

⁴⁰ UE-190458, Exh. MWG-1T at 3:12-18 (Direct Testimony of Michael G. Wilding).

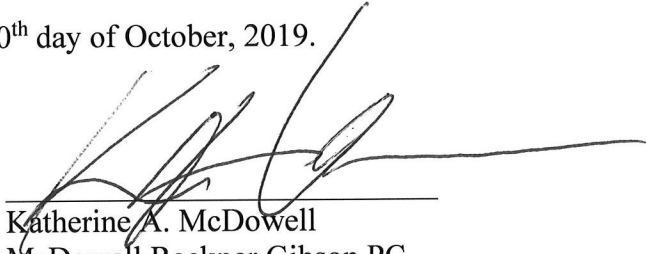
⁴¹ UE-190222, Order 03 ¶ 6.

28. By adopting this approach, the Commission would enable Staff to build off of prior testimony and exhibits as appropriate, allow Avista's ERM to be considered alongside that company's GRC, and permit Staff to conduct an appropriately individualized inquiry in each case as to that company's prudence.

IV. CONCLUSION

29. For the reasons set forth above, Pacific Power does not oppose Staff's request to convert Pacific Power's PCAM filing into an adjudicative proceeding, asks the Commission to approve Pacific Power's previously-filed Motion for Protective Order, and respectfully requests that the Commission decline to consolidate Pacific Power's PCAM filing with PSE's PCA and Avista's ERM.

Respectfully submitted this 10th day of October, 2019.



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