

**Exh. DCG-1T
Docket UE-200115
Witness: David C. Gomez**

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of

DOCKET UE-200115

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**

TESTIMONY OF

David C. Gomez

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Vote Sharing Agreement after the Sale of Colstrip Unit 4; and
Environmental Remediation*

October 2, 2020

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1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is David C. Gomez. My business address is 621 Woodland Square Loop
5 S.E., Lacey, Washington 98503. My business mailing address is P.O. Box 47250,
6 Olympia, Washington 98504-7250. My business email address is
7 david.gomez@utc.wa.gov.

8

9 **Q. By whom are you employed and in what capacity?**

10 A. I am employed by the Washington Utilities and Transportation Commission
11 (Commission) as the Assistant Power Supply Manager in the Energy Section of the
12 Regulatory Services Division. I attained this position on July 1, 2012. Prior to my
13 current position, I was the Deputy Assistant Director in the Solid Waste and Water
14 Section of the Regulatory Services Division.

15

16 **Q. How long have you been employed by the Commission?**

17 A. I have been employed by the Commission since May 2007.

18

19 **Q. Please state your educational and professional background.**

20 A. I hold a Bachelor of Arts degree in Business from Hamline University and a Masters
21 of Business Administration degree from the University of Saint Thomas; both
22 universities are located in Saint Paul, Minnesota.

1 Before joining the Commission, my relevant professional experience
2 consisted of 31 years in a variety of fields, including management, contracting,
3 supply chain, procurement, operations and engineering. I hold professional
4 certifications from the Institute for Supply Management (ISM); APICS – The
5 Association for Operations Management; Universal Public Procurement Council
6 (UPPC); and QAI Global Institute (Software Testing).

7
8 **Q. What are your duties with the Commission?**

9 A. I perform accounting and financial analysis of regulated utility companies, as well as
10 legislative and policy analysis. I presented testimony on behalf of Commission Staff
11 in Docket UE-121373, regarding the Coal Transition Power Purchase Agreement
12 between Puget Sound Energy and TransAlta Centralia Generation LLC; Dockets
13 UE-130043, UE-140762 and UE-191024, Pacific Power’s 2013, 2014 and 2019
14 General Rate Cases (GRC); Puget Sound Energy’s 2013, 2014 and 2016 Power Cost
15 Only Rate Cases (PCORCs) and 2017, 2018 and 2019 GRCs. I also have provided
16 testimony in Avista’s last five general rate cases: Dockets UE-140188, UE-150204,
17 UE-160228, UE-170485 and UE-190334. Additionally, I have provided Staff
18 recommendations to the Commission at numerous open meetings, and worked on
19 various Commission rulemakings.

1 broad public interest implications. Most significantly, it appears that: (1)
2 Northwestern and Talen retain their ability to block the retirement of Unit 3, and (2)
3 Northwestern will exercise considerable control over future Unit 4 budgets which
4 may result in excessive costs being passed onto PSE ratepayers through the PPAs as
5 increased environmental liabilities for PSE—which are incompatible with CETA.

6 Contrary to PSE’s assertions otherwise, the post-sale VSA between PSE,
7 NorthWestern, and now Talen (hereafter “VSA_{1 (proposed)}”), when taken together with
8 the existing Colstrip VSA between Talen and NorthWestern (hereafter “VSA₂
9 (existing)”) and the O&O Agreement, does not preclude the possibility of future
10 disagreements among the Colstrip owners over major decisions, like decisions on
11 unit retirement and budget authorization.

12
13 **Q. How is your testimony organized?**

14 A. First, I provide background regarding Colstrip’s two Vote Sharing Agreements
15 (VSAs): VSA_{1 (proposed)} and VSA_{2 (existing)}. Then, to stress test the various voting
16 processes at Colstrip, I employ two “Hypothetical Voting Scenarios”: 1) A
17 hypothetical vote on a Unit 3 Retirement Proposal; and 2) A hypothetical vote on a
18 Unit 4 Budget Proposal. I then flow-chart the two Hypothetical Voting Scenarios
19 through the various processes specified under VSA_{1 (proposed)}, VSA_{2 (existing)} and O&O
20 Agreement. Through each step, I explain in my testimony what might happen
21 through these processes, which is not to say they will happen. While one may argue
22 that my approach relies on speculation, I believe it is a practical one for testing the
23 validity of PSE’s claim that the VSA_{1 (proposed)} resolves the ambiguity regarding a

1 future Colstrip Unit 3 & 4 Project Committee (Project Committee) vote to retire Unit
2 3. Additionally, Staff's approach is helpful in evaluating possible outcomes from
3 these same processes in future Project Committee budget votes which will determine
4 the amount and timing of PSE's continued liabilities for Unit 4 after the sale. These
5 liabilities include PSE's pre-sale share of all environmental remediation costs,
6 including those that arise as the result of continued operation and other future
7 decisions.

8
9 **Q. Have you prepared any exhibits in support of your testimony?**

10 A. Yes. I prepared Exhibits DCG-2 through DCG-9.

11
12 **III. VOTE SHARING AGREEMENTS**

13
14 **A. Background Behind Colstrip's Various VSAs**

15
16 **Q. What is the purpose of the O&O Agreement?**

17 A. The O&O Agreement establishes the terms and conditions relating to the ownership,
18 operations and maintenance of Unit 3 & 4. Most important, from the standpoint of
19 my examination, the O&O Agreement calls out the duties and rights of the owners
20 with respect to the function of the Project Committee which facilitates "...effective
21 cooperation, interchange of information and efficient management of the Project."⁴

22

⁴ Roberts, Exh. RJR-3 at 19 (Subsection 17(a)).

1 **Q. What exactly is a Vote Sharing Agreement and why is it necessary when all of**
2 **the Colstrip owners are parties to the O&O Agreement?**

3 A. A Vote Sharing Agreement is a construct that enables the Project Committee to
4 function with five members, as originally contemplated by the O&O Agreement,
5 while simultaneously preserving the interests of all six-owners with respect to voting
6 rights on proposals before the committee.

7
8 **Q. How did Colstrip Unit 3 & 4's first Vote Sharing Agreement, VSA₂ (existing), come**
9 **about?**

10 A. Colstrip Unit 3 & 4's first Vote Sharing Agreement, VSA₂ (existing), came about after
11 PPL Montana (now Talen) acquired all rights, title and interest in Unit 3 from
12 Montana Power Company (now NorthWestern) in December of 1999.⁵ Prior to
13 Talen's acquisition of Unit 3, the Colstrip Unit 3 & 4 ownership consortium was
14 comprised of five members.⁶ Table 1 below summarizes the project shares among
15 the various owners prior to the sale of Unit 3 to Talen.

⁵ Roberts, Exh. RJR-21 at 1 (Recitals, Section B).

⁶ As shown in the table below, Colstrip Units 3 and 4 currently have a complex ownership structure with six different entities owning a part of the facility.

1

Table 1; Colstrip Project Shares Prior to the Sale of Unit 3 to Talen

Unit and Project Shares; Prior to the Sale of Unit 3 to Talen			
Colstrip Owner	Unit 3 Share [A]	Unit 4 Share [B]	Project Share [C] = ([A] + [B]) ÷ 2
Avista Corporation	15.00%	15.00%	15.00%
NorthWestern Energy (Operator)	30.00%	30.00%	30.00%
PacifiCorp	10.00%	10.00%	10.00%
Portland General Electric Company	20.00%	20.00%	20.00%
Puget Sound Energy, Inc.	25.00%	25.00%	25.00%
Talen Montana, LLC	0.00%	0.00%	0.00%
TOTAL	100.00%	100.00%	100.00%

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However, after the sale of Unit 3, Colstrip Units 3 & 4 had six owners with Talen having no ownership interest in Unit 4 and NorthWestern having no ownership interest in Unit 3. With the ownership consortium increasing from five members to six, but the O&O Agreement specifying that only five members of the Project Committee can vote on a single proposal,⁷ a Vote Sharing Agreement between Talen and NorthWestern was necessary to coordinate votes on unit-specific proposals.⁸ Table 2 below summarizes the project shares among the various owners after the sale of Unit 3 to Talen.

⁷ Roberts, Exh. RJR-3 at 51 (Subsection 2(k)).

⁸ VSA₂ (existing) essentially controls the operator vote (Talen) in unit specific proposals. Under Section 17(f) of the O&O Agreement, in order for a proposal before the Project Committee to be approved it requires the support of the Operator. This O&O Agreement term essentially conveys a veto right to the Operator.

1

Table 2; Colstrip Project Shares after the Sale of Unit 3 to Talen

Unit and Project Shares; After the Sale of Unit 3 to Talen			
Colstrip Owner	Unit 3 Share [A]	Unit 4 Share [B]	Project Share [C] = ([A] + [B]) ÷ 2
Avista Corporation	15.00%	15.00%	15.00%
NorthWestern Energy	0.00%	30.00%	15.00%
PacifiCorp	10.00%	10.00%	10.00%
Portland General Electric Company	20.00%	20.00%	20.00%
Puget Sound Energy, Inc.	25.00%	25.00%	25.00%
Talen Montana, LLC (Operator)	30.00%	0.00%	15.00%
TOTAL	100.00%	100.00%	100.00%

2

3

4 **Q. Does VSA₁ (proposed) serve the same basic function as VSA₂ (existing)?**

5 A Yes, although the primary purpose of VSA₁ (proposed) is to coordinate the Project
6 Committee votes among the parties of the Unit 4 sale while the primary purpose of
7 VSA₂ (existing) is to coordinate the votes among the parties to the 1999 Unit 3 sale.⁹
8 Both VSAs serve the same basic function in that, depending on the proposal before
9 the five-member Project Committee on which votes are required, the VSAs specify
10 the party or parties entitled to cast that vote.

11

12 **B. Importance Of VSA₁ (proposed) To The Realization Of Benefits From The**
13 **Proposed Sale**

14 **Q. How does VSA₁ (proposed) factor into the public interest question in this case?**

15 A. PSE claims VSA₁ (proposed) is important to PSE for two principal reasons. First, it
16 provides the Company with certainty with respect to whether one or more of the Unit
17 3 & 4 owners will invoke the unanimity requirements under Section 19 of the O&O

⁹ Roberts, Exh. RJR-16 (VSA₁ (proposed)); Roberts, Exh. RJR-21 (VSA₂ (existing)).

1 Agreement and effectively block any proposal before the Project Committee to
2 decommission and remediate Unit 3 at the appropriate time. Second, VSA₁ (proposed)
3 preserves PSE's pre-sale voting rights in future Project Committee proposals
4 regarding the Company's retained liabilities in Unit 4.¹⁰

5 In other words, PSE suggests that VSA₁ (proposed):

- 6 1. Facilitates the closure of Unit 3; and
- 7 2. Enables PSE to constrain environmental remediation costs.

8 As such, assessing the validity of these two claims is critical to two primary
9 public interest questions posed by this case: 1) Does this sale pave PSE's path to
10 compliance with the CETA's 2025 no coal mandate?; and 2) Does this sale mitigate
11 risks to ratepayers, including the risk of escalating remediation costs?
12

13 **Q. There have been recent issues regarding decision making at Colstrip. Does the**
14 **VSA₁ (proposed) represent a step toward resolving these problems?**

15 A. No. Over the last three years there have been decisions made by the Project
16 Committee that have resulted in two multi-million dollar disallowances by the
17 Commission. The first for the installation of SmartBurn on Units 3 and 4 and the
18 second for replacement power costs related to the 2018 outage and derate of Units 3
19 and 4.¹¹ In the decision to disallow the costs of the 2018 outage, the Commission
20 commented on the lack of contemporaneous records and general opaqueness
21 regarding Colstrip Project Committee decisions. In neither its Application nor the

¹⁰ Roberts, Exh. RJR-1CT at 35:3-6; Roberts, Exh. RJR-9T at 49:23-26.

¹¹ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529 and UG-190530, Order 08, 61-62, ¶¶197-199 (July 8, 2020); *In the Matter of the Investigation of Avista Corp., et al., Regarding Prudency of Outage and Replacement Power Costs*, Docket UE-190882, Order 05 (March 20, 2020).

1 testimony of PSE Witness Roberts does PSE discuss these past failings on the part of
2 the Project Committee or how VSA₁ (proposed) would cure similar problems.

3

4 **Q. Have other Colstrip owners expressed concerns about the post-sale voting**
5 **process?**

6 A. Yes. In the redacted version of NorthWestern's July 2020 Board meeting notes,
7 NorthWestern reported to its Board that Talen, Avista, PGE, and Pacific Power &
8 Light had all expressed concerns over the transaction's implications on the plant's
9 future operations and decision making.¹² However, with pertinent information
10 redacted, Staff does not know what these concerns are with any specificity.

11 With the exception of Talen, these same owners are all parties to this case
12 and it is vitally important that the owners divulge these referenced concerns, and
13 their proposed recommendations to resolve them by filing responsive testimony.
14 However, they may choose not to file responsive testimony and, for whatever reason,
15 remain silent on their individual or collective concerns regarding changes to the
16 Colstrip voting process. Staff recommends that the Commission not interpret silence
17 on the part of these owners as a tacit endorsement of this deal.

18

19 **Q. What point should we be taking away from this?**

20 A. Each party's performance under both VSAs is critically important to this transaction
21 and to Washington customers because the VSAs, in conjunction with the O&O
22 Agreement, define how Colstrip's assets will be governed post-sale. In other words,

¹² Gomez, Exh. DCG-7 at 17, ¶1. Note that Talen had also expressed these concerns prior to exercising its right of first refusal under Section 24 of the O&O Agreement.

1 the VSAs are vital components to the overall process by which various owners in
2 Colstrip may vote to approve or reject investments or operating proposals pertaining
3 to Colstrip. While the matter before the Commission relates primarily to the transfers
4 of PSE's share of Unit 4 and a portion of the Colstrip Transmission System, the
5 VSAs that will result from the post-sale ownership arrangement impact not only Unit
6 4, but also decisions regarding Unit 3 and Common facilities. Therefore, the
7 examination of whether the sale of Unit 4 is consistent with the public interest cannot
8 be accomplished without an examination of the VSAs and their impact on the
9 continued operation of both Units 3 and 4.

10
11 **C. Stress-Testing The VSAs – Hypothetical Voting Scenarios**

12
13 **Q. What is Section 19 of the O&O Agreement?**

14 A. Section 19 of the O&O Agreement concerns itself with an extraordinary event,
15 “damage to the project” which results in its inoperability and thereby triggers, among
16 the owners, a decision point; to either retire the project or repair it.¹³ Robert’s
17 reference to arguments among the owners that, any decision regarding the closure or
18 decommissioning of one or both units must be unanimous,¹⁴ is in reference to this
19 section’s unanimity requirements which I will go through in more detail later in my
20 testimony.

21

¹³ Roberts, Exh. RJR-3 at 23.

¹⁴ Roberts, Exh. RJR-9T at 49–50.

1 **Q. Can you summarize the potential initial disagreements among the owners**
2 **regarding the applicability of Section 19 to a Unit 3 retirement proposal?**

3 A. Yes. The first area of disagreement among the owners is Section 19's reference to
4 "Project" and whether the section would apply to a unit specific proposal like the
5 retirement of Unit 3. The second, is whether a retirement proposal constitutes a
6 damage event thereby invoking Section 19. My examination does not provide an
7 opinion with regards to these two issues and, for the purposes of my hypothetical
8 examples below, I assume that Section 19 could apply in the case of a Unit 3
9 retirement vote.

10

11 **Q. What is Section 17 of the O&O Agreement?**

12 A. Section 17 establishes the Project Committee whose purpose is to "...facilitate
13 effective cooperation, interchange of information and efficient management of the
14 project on a prompt and orderly basis. Section 17 also specifies how proposals are
15 brought to the committee and voted on.¹⁵

16

17 **Q. What is a Project Share?**

18 A. Subsection 2(b) of the O&O Agreement defines "Project Share" as "...the sum of the
19 percentages of undivided interest in the Project."¹⁶ Therefore, an owner's Project
20 Share [C] is equal to its Unit 3 ownership percentage share [A] plus its Unit 4
21 ownership percentage share [B] divided by 2 or $([C] = ([A] + [B]) \div 2)$.

22

¹⁵ Roberts, Exh. RJR-3 at 19.

¹⁶ Roberts, Exh. RJR-3 at 6.

1 **Q. Please explain the process you employed to test PSE witness Robert's claim that**
2 **VSA₁ (proposed) provides certainty regarding Unit 3's retirement.**

3 A. Roberts infers that VSA₁ (proposed) resolves the ambiguity as to whether Section 19 of
4 the O&O Agreement applies in the case of a Unit 3 retirement proposal and conveys
5 certainty that one or more owners would not invoke this section and effectively block
6 a decision to retire the unit.¹⁷ To test this claim, I employed a Unit 3 hypothetical
7 voting scenario and flow charted the processes specified under VSA₁ (proposed), VSA₂
8 (existing) and Sections 17 and 19 of the O&O Agreement.

9
10 **Q. Did you use the same hypothetical scenario approach to evaluate how VSA₁**
11 **(proposed) might impact future Unit 4 budgets?**

12 A. Yes. Beyond supposedly resolving the ambiguities in the O&O Agreement as they
13 relate to a Unit 3 retirement proposal, VSA₁ (proposed) will also apply to future Project
14 Committee budget votes whose outcome will determine the amount and timing of
15 PSE's retained liabilities at Colstrip which include environmental remediation costs
16 for Unit 4. My second hypothetical voting scenario on a Unit 4 budget proposal tests
17 PSE's claim that VSA₁ (proposed) ensures the Company will cast the shared vote in
18 budget proposals regarding both the amount and timing of environmental
19 remediation at Colstrip Unit 4. Additionally, I will show how a Unit 4 budget
20 proposal before the Project Committee may also trigger a Section 19 event.

21

¹⁷ Roberts, Exh. RJR-9T 49-51.

1 **Q. What are “the processes specified under VSA₁ (proposed), VSA₂ (existing) and**
2 **Sections 17 and 19 of the O&O Agreement” that you are using to evaluate your**
3 **Hypothetical Voting Scenarios?**

4 A. The VSAs contain virtually identical processes that are separate and distinct from the
5 Project Committee procedures contained in Section 17 and involve only the parties
6 to the VSAs. The primary procedural difference between VSA₁ (proposed), and VSA₂
7 (existing) is in how proposals are classified for the purposes of casting the shared vote
8 and the permitted objections to those classifications by parties to the VSAs. The
9 VSAs also contain a separate dispute resolution processes than the one specified in
10 the O&O Agreement.¹⁸ Section 19’s process is bifurcated and includes separate
11 voting procedures and outcomes depending on the dollar amount of repairs compared
12 to the depreciated value of the project/unit.

13
14 **Q. Have you prepared an exhibit for the flow charts you created under these**
15 **hypothetical scenarios?**

16 A. Yes. Please see Gomez Exh. No. DCG-6. This exhibit contains the flow charts for
17 the hypothetical scenarios and creates a visual representation of the decision-making
18 process at Colstrip after the proposed transaction for the sale of Unit 4 closes. Exh.
19 No. DCG-6 is organized as follows:

- 20 **• Colstrip O&O Agreement, Section 17 Examples**
- 21 **○ Scenario 1**, a Unit 3 Retirement Proposal; and
 - 22 **○ Scenario 2**, a Unit 4 Budget Proposal

¹⁸ Robert, RJR-2 at 23 (Section 18 – Arbitration).

- 1 • **Colstrip O&O Agreement, Section 19 Examples**
- 2 ○ **Scenario 1**, a Unit 3 Retirement Proposal; and
- 3 ○ **Scenario 2**, a Unit 4 Budget Proposal
- 4 • **VSA₁ (proposed) and VSA₂ (existing) Vote Sharing Process Examples**
- 5 ○ **Scenario 1**, a Unit 3 Retirement Proposal; and
- 6 ○ **Scenario 2**, a Unit 4 Budget Proposal
- 7 • **Vote Sharing Agreement Matrixes**
- 8 ○ **VSA₁ (proposed)** - PSE, Talen and Northwestern Vote Sharing
- 9 Agreement Matrix; and
- 10 ○ **VSA₂ (existing)** - Talen and Northwestern Vote Sharing
- 11 Agreement Matrix

12

13 **D. Hypothetical Voting Scenario No. 1; Unit 3 Retirement Proposal**

14

15 **Q. Starting with Section 17 of the Colstrip O&O Agreement, can you walk us**

16 **through your exhibit DCG-6?**

17 A. Yes. My starting point is the process described in Section 17 of the O&O Agreement

18 which establishes the Colstrip Project Committee. Under my Hypothetical Voting

19 Scenario 1, I start with a proposal submitted to the Operator by two non-Operator

20 owners for a Project Committee vote to retire Unit 3 (hereinafter referred to as “Unit

21 3 retirement proposal”) as specified in Subsection 17(i) of the O&O Agreement.

22

1 **1. Colstrip O&O Agreement Subsection 17(i)**

2
3 **Q. Can you briefly describe how a proposal to retire Unit 3 could be brought to a**
4 **vote before the Project Committee?**

5 A. As specified in Subsection 17(i) of the O&O Agreement, two Project Committee
6 members, that are not the Operator, can bring forth any proposal that conforms to
7 certain requirements:

8 (i) Two Committee members appointed to the Project Users other than the
9 Operator may submit to the Committee any proposal which conforms with the
10 requirements imposed on the Operator under Section 17(g)¹⁹ by serving a copy
11 of such proposal on all the Committee members.²⁰

12
13 After submitting a non-operator proposal to retire Unit 3, Talen, as the Operator,
14 would be required to submit one or more alternative proposals to be voted on by the
15 owners prior to any Project Committee vote on the non-Operator proposal.²¹

16
17 **Q. What happens after the Project Committee’s vote on Talen’s alternative**
18 **proposals under this subsection?**

19 A. Subsection 17(i) of the O&O Agreement specifies that a Project Committee vote on
20 Talen’s alternative proposals would come *before* a vote on the non-operator Unit 3
21 retirement proposal. If Talen’s alternatives are approved by the Project Committee,
22 then the Unit 3 retirement proposal is dismissed. Conversely, if Talen’s alternatives

¹⁹ Section 17(g) of the O&O Agreement states:

All proposals of Operator regarding the Construction, *operation* and maintenance of the Project submitted to the Committee under any provisions of the Project Agreements shall include.... (Roberts, Exh. RJR-3 at 18 (emphasis added)).

²⁰ Roberts, Exh. RJR-3 at 20 (emphasis added).

²¹ Roberts, Exh. RJR-3 at 22 (“Within 15 days after receipt of such proposal [to retire Unit 3], Operator [Talen] *shall submit one or more written alternative proposals*.”) (emphasis added).

1 are rejected by the Project Committee, the owners would then vote on the non-
2 operator Unit 3 retirement proposal.²²

3

4 **Q. Under this scenario, does Talen command a strong voting position?**

5 A. Yes. Regardless of whether the sale of Unit 4 closes, VSA₂ (existing) conveys control of
6 the operator vote to Talen for Project Committee votes relating to Unit 3.²³ In all
7 cases under subsection 17(i), for any proposal to be approved by the Project
8 Committee requires Talen’s support (operator vote) and two Project Committee
9 members so that the votes in the affirmative represent 55 percent of the total Project
10 Shares, otherwise the proposal is dead.²⁴

11

12 **Q. What if none of the proposals are approved by a vote of the Project Committee?**

13 A. Then either Talen and/or the two owners who initiated the non-operator Unit 3
14 retirement proposal could request arbitration. In the case of both Talen’s alternatives
15 and the non-operator Unit 3 retirement proposal being referred to arbitration, the
16 Arbiter would first consider Talen’s alternatives and determine if they are in
17 accordance with Prudent Utility Practice.²⁵ If the Arbiter determines that Talen’s

²² Roberts, Exh. RJR-3 at 22–23.

²³ Barring any challenge by NorthWestern under the VSA₂ (existing’s) vote sharing process. *See* Roberts, Exh. RJR-21 at 1.

²⁴ Roberts, Exh. RJR-3 at 20–21 (Subsection 17(f)(i)).

²⁵ Roberts, Exh. RJR-3 at 3. Subsection 1(r) of the Colstrip O&O Agreement defines “Prudent Utility Practice” as:

...either any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto or any of the practices, methods or acts, which, in the exercise of reasonable judgement in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs, including recreational facilities, and any other programs or facilities, reasonable

1 alternatives are in accordance with Prudent Utility Practice, then the alternatives are
2 adopted and the non-operator Unit 3 retirement proposal is dismissed. On the other
3 hand, if the Arbiter finds Talen’s alternatives are not consistent with Prudent Utility
4 Practice, then, and only then, will the Arbiter consider the non-operator Unit 3
5 retirement proposal.²⁶

6
7 **Q. Has Talen’s exercise of “prudent utility practice” resulted in an imprudent**
8 **action at Colstrip?**

9 A. Yes. In prefiled direct testimony of Charles L. Tack, Pacific Power & Light’s
10 witness in the 2018 Colstrip outage and derate case, he characterized the actions of
11 Talen before and after the outage as being “consistent with prudent utility
12 practice.”²⁷ The Commission decided otherwise in that case.²⁸ This demonstrates that
13 a Colstrip arbitration decision based on the O&O Agreement’s standard of “prudent
14 utility practice” does not necessarily mean that the Commission would reach the
15 same conclusion under its own prudence standard.

16

designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. Prudent Utility Practice shall also include those practices, methods or acts that are required by applicable laws and final orders or regulations of regulatory agencies having jurisdiction.

²⁶ Roberts, Exh. RJR-3 at 22 (Subsection 17(i)).

²⁷ Gomez, Exh. DCG-8 at 13:1-14.

²⁸ *In the Matter of the Investigation of Avista Corp., et al., Regarding Prudence of Outage and Replacement Power Costs*, Docket UE-190882, Order 05 (March 20, 2020).

1 **Q. After going through your Subsection 17(i) hypothetical example, what do you**
2 **conclude?**

3 A. I conclude that Talen does not need to invoke Section 19 to block a vote on retiring
4 Unit 3. Further, that VSA₁ (proposed) does not mitigate the possibility under Subsection
5 17(i) that Talen can block a retirement proposal made by two non-operator owners
6 and replace the proposal with an alternative proposal. Such proposals from Talen
7 could include keeping Unit 3 in service beyond the date contemplated by the non-
8 Operator owners' retirement proposal.

9

10 **2. Colstrip O&O Agreement Section 19**

11

12 **Q. Why is the application of Section 19 important for the Commission to consider**
13 **when evaluating the Proposed Transactions in this Docket?**

14 A. Section 19 is important for the Commission to consider because it could pose an
15 insurmountable obstacle to a non-operator Unit 3 retirement proposal. If this were to
16 occur, it would undermine the certainty surrounding Unit 3's retirement as inferred
17 by PSE's witness Roberts.²⁹ Specifically, after a non-operator Unit 3 retirement
18 proposal is made (pursuant to Section 17(i)) any Colstrip Owner (not just
19 Northwestern) could argue that such a proposal constitutes a damage event and is
20 therefore subject to Section 19. If a Unit 3 retirement proposal is indeed subject to
21 Section 19, the proposal could only be successful if it receives unanimous support
22 from all the Colstrip Owners. If there is not unanimous support among the owners,

²⁹ Roberts, Exh. RJR-9T at 49–50.

1 the proposal will then be subject to Section 19's requirements, which may result in
2 the continued operation of Unit 3 beyond the date contemplated on the proposal.
3 This could result in the Unit 3's owners (including PSE, Avista, and Pacific Power)
4 being responsible for costs associated with maintaining and repairing Unit 3.

5 However, as I describe earlier in my testimony, it is not certain that Section
6 19 would even apply to a Unit 3 retirement proposal—due to ambiguity in the O&O
7 Agreement. Regardless, my testimony will assume that Section 19 is applicable to a
8 Unit 3 retirement proposal.

9
10 **Q. In your Hypothetical Voting Scenario No. 1, did you flow chart the application**
11 **of Section 19 to a Unit 3 retirement proposal?**

12 A. Yes.

13
14 **Q. Can you please explain the unanimity requirement needed to retire a unit under**
15 **Section 19?**

16 A. Yes. Section 19 states that if there is any damage to the Project, the Project can end if
17 the Colstrip Owners *unanimously agree* to end it pursuant to Section 31 of the O&O
18 Agreement. Section 31 explains how the Operator is to retire the Project:

19 When the Project can no longer be made capable of producing
20 electricity consistent with Prudent Utility Practice or the requirements
21 of governmental agencies having jurisdiction, or when part or all the
22 Project is removed from service, the Operator shall....³⁰
23

24 Section 31 references no voting requirements within itself. However, Section
25 19's reference to *unanimous agreement* under Section 31, infers that Section 31 is

³⁰ Roberts, Exh. RJR-3 at 30.

1 only applicable if all the Colstrip Owners agree to end the Project. There is no
2 evidence to suggest that there would likely be a unanimous agreement to retire Unit
3 3. Accordingly, my testimony will continue and explain what would happen under
4 Section 19 in the absence of unanimous agreement to retire Unit 3.

5
6 **Q. Assuming that there is not a unanimous agreement to retire Unit 3, what**
7 **happens to a Unit 3 retirement proposal under Section 19?**

8 A. The application of Section 19 will trigger two events. The first event is the
9 determination of the dollar amount that represents twenty percent of the depreciated
10 value of Unit 3.^{31 32} The second event is that Talen will provide the Colstrip Owners
11 a repair budget for Unit 3.³³ After receiving Talen’s budget, the estimated amount of
12 repairs within this budget is compared to the dollar amount that represents twenty
13 percent of the depreciated value of Unit 3.

14
15 **Q. Why is the estimated amount of repairs compared to the dollar amount that**
16 **represents twenty percent of the depreciated value of Unit 3?**

17 A. This comparison determines which one of the two voting processes under Section 19
18 are applicable. Specifically, the applicable voting process is dependent on whether

³¹ Roberts, Exh. RJR-3 at 25. Section 19(c) of the O&O Agreement states: “Solely for the purposes of this Section 19, the depreciated value of the Project at any time shall be based on the original Costs of Construction of the Project (excluding allowance for funds used during construction), including additions and less retirements, depreciated on a straight-line basis using a composite life of 35 years.”

³² Gomez, Exh. DCG-3 at 1–2. PSE’s response to NRDC DR No. 19 provides its estimate of the depreciated value of both units; \$63.5 million, which Staff extrapolates to an estimated total plant depreciated value of \$254 million. *See* (\$63.5 million/25% = \$254 million). Applying twenty percent to the \$254 million results in an estimated amount representing twenty percent of the depreciated value for both Units 3 and 4 of about \$50 million.

³³ In the case of a Unit 3 retirement proposal, under Subsection 19(a) of the O&O Agreement, Talen, as operator, prepares the repair budget which may also be a source of controversy and dispute among the owners. *See* Roberts, Exh. RJR-3 at 21.

1 the cost associated with repairing Unit 3 is *above or below* the dollar amount that
2 represents twenty percent of the unit’s depreciated value.³⁴ However, as I previously
3 discussed, neither of these voting processes are applicable if all the owners
4 unanimously agree to retire Unit 3.

5
6 **Q. Please describe the two different voting processes that could occur if Section 19**
7 **is applied to a Unit 3 retirement proposal.**

8 A. The first voting process occurs if the cost to repair the unit is below twenty percent
9 of the unit’s depreciated value—and all of the owners do not unanimously agree to
10 retire Unit 3. If this takes place, the Project Committee would vote as specified under
11 Section 17(f) of the O&O Agreement³⁵ on Talen’s repair budget.³⁶ Pursuant to this
12 first voting process, the Unit 3 retirement proposal would not be voted on.³⁷

13 Conversely, the second voting process occurs if the cost to repair the unit is
14 over 20 percent of the unit’s depreciated value—and all of the owners do not
15 unanimously agree to retire Unit 3. If this takes place Talen, as Operator, would
16 provide the Project Committee its estimate of the “Fair Market Value” of the unit
17 (terminated without repair) and its estimate to effectuate the repairs.³⁸ At this point,
18 the Project Committee members have only two options: 1) Approve Talen’s plan and

³⁴ Roberts, Exh. RJR-3 at 23–25.

³⁵ Under Section 17(f) of the Colstrip O&O Agreement, in order for a proposal before the Project Committee to pass, it requires an affirmative vote by the Operator (Talen) and two other committee members. In addition, the votes in the affirmative must total 55 percent of the total project shares. Roberts, Exh. RJR-3 at 18.

³⁶This vote would presumably occur under a different classification definition in VSA₁ (proposed) than the original proposal’s classification: “Unit 3 Decommissioning Proposal.” Later in my testimony, I will explain the implications of separate controversies among the parties to the Vote Sharing Agreements and how they can result in changes to the proposal’s classification, which can affect the party casting a particular proposal vote.

³⁷ Roberts, Exh. RJR-3 at 23–25.

³⁸ *Id.*

1 budget to repair the unit and keep it in operation; or 2) Reject Talen’s plan and
 2 budget to repair the unit which results in: a) a reduction of their Project Shares, and
 3 b) an obligation to pay for repair of the unit, albeit at the reduced Project Share
 4 amount. An example of certain Committee members selecting option 2 above is
 5 provided in the table below:

Section 19 Ownership Share Adjustment Hypothetical Example					
Formula = $V/V+C$, where:					
<p>V = Fair Market Value of the Project if it were terminated without repair as unanimously agreed to by the Project Committee or through Arbitration; and</p> <p>C = Estimated cost of repair. Shares are further adjusted once costs are known.</p> <p>Assuming, for this example, a Fair Market Value of \$50 million and cost of repair of \$20 million, then those owners who do not approve of Talen’s Repair Proposal will have their Project Shares reduced to 71% of their original share percentage (share percentages after the sale).</p>					
Owner	Project Share after Sale	Owner’s Share of Repair Cost <i>before</i> Share Reduction (million)	Vote on Talen’s Repair Proposal	Project Shares After Adjustment Under Section 19(b)(ii)	Owner’s Share of Repair Cost <i>after</i> Share Reduction (million)
Avista	15%	\$3.0	No	11%	\$2.2
NorthWestern	21.25%	\$4.3	Yes	24.75%	\$5.0
PacifiCorp	10%	\$2.0	No	7%	\$1.4
Portland General	20%	\$4.0	Yes	23.50%	\$4.7
PSE	12.50%	\$2.5	No	9%	\$1.8
Talen Montana	21.25%	\$4.3	Yes	24.75%	\$5.0

6

7

1 **Q. Regardless of the option selected under Section 19’s second voting process, can**
2 **this result in bad outcomes for Washington’s regulated Colstrip Owners?**

3 A. Yes. Let’s say under option 1, a Washington regulated utility votes in favor of
4 Talen’s repair budget. This could result in these utilities being forced to absorb costs
5 for Unit 3 that may not be recoverable in rates after 2025 as a result of CETA. Under
6 Option 2, if the Washington regulated utility votes against Talen’s budget it would
7 result in a reduction of their Project Shares, while at the same time they would
8 continue to have an obligation to pay for the repair at the lower Project Share
9 amount. Under either option, the Unit 3 retirement proposal would likely *not* be
10 successful and result in the continued operation of the unit for the foreseeable future.

11
12 **Q. What makes you believe that PSE is uncertain as to what Talen’s plans are for**
13 **Unit 3?**

14 A. In his supplemental testimony, Roberts reiterates his assurance that VSA₁ (proposed)
15 removes any “veto right” of NorthWestern Energy under the Colstrip Units 3 & 4
16 Ownership and Operation Agreement with respect to any vote regarding the closure
17 and decommissioning of Colstrip Unit 3.³⁹ For Staff, the omission of Talen from
18 Robert’s statement in supplemental testimony suggests that PSE also has doubts as to
19 how Talen would react to a proposal to retire Unit 3. For Staff, this is a cause for
20 concern.

21

³⁹ Roberts, Exh. RJR-9T at 50:15–18; Roberts, Exh. RJR-1CT at 36:3–6.

1 **Q. After having examined what may happen if Section 19 were to be applied to a**
2 **non-operator proposal to retire Unit 3, do you agree with PSE’s witness**
3 **Robert’s claim that VSA₁ (proposed) has resolved the possibility that the unanimity**
4 **requirements under that section will be invoked?⁴⁰**

5 A. No. In Docket No. 2019.12.101 – CU4 Capacity Acquisition, which is currently
6 before the Montana Public Service Commission (Montana Commission),
7 NorthWestern states; “...the Ownership and Operation Agreement requires
8 unanimous vote of the owners to decommission a unit. NorthWestern has no
9 ownership interest in Unit 3 and no ‘veto right’ on decommissioning that unit.”⁴¹
10 Staff interprets NorthWestern’s response to mean that a quid pro quo exists between
11 PSE and NorthWestern, whereby NorthWestern will not interfere with a Unit 3
12 closure proposal by invoking its rights under Section 19. However, under a non-
13 operator proposal to retire Unit 3, Talen and/or the other Colstrip owners are not
14 bound by such a tacit agreement to not launch just such a challenge. Therefore, I
15 disagree with Robert’s inference that VSA₁ (proposed) removes the possibility that this
16 section would not be invoked under a Unit 3 decommissioning proposal.

17

⁴⁰ Roberts, Exh. RJR-9T at 49–50. Roberts states:
Argument could be made that any decision regarding closure or decommissioning on one or both units
must be unanimous.

Northwestern Energy would likely be the owner with the most difficulty approving the closure or
decommission of Colstrip Unit 3 due to political and economic pressures in the State of Montana. At
best, the owners of Colstrip Units 3 & 4 would have been subject to potentially length and costly
litigation to determine the question of whether unanimous consent were required under the Colstrip
Units 3 & 4 Ownership and Operation Agreement to close of decommission Colstrip Unit 3. . . .

⁴¹ Gomez, Exh. DCG-2 at 4.

1 **Q. Can you again explain why Section 19 is important for the Commission to**
2 **consider in evaluating whether the Proposed Transactions in this docket are in**
3 **the public interest?**

4 A. Earlier in my testimony, I identified the two primary public interest questions posed
5 by this case: 1) Does this sale pave PSE's path to full compliance with the CETA's
6 2025 no coal mandate?; and 2) Does this sale mitigate risks to ratepayers, including
7 the risk of escalating remediation costs? My examination of the possible negative
8 outcomes which may result from the application of Section 19 to a Unit 3 retirement
9 proposal would likely not accelerate PSE's path toward CETA compliance and
10 possibly lead to millions of dollars in stranded costs for Washington's regulated
11 utility owners.

12
13 **Q. Can you provide an example of a Unit 3 stranded cost?**

14 A. Yes. In legal actions brought by Sierra Club, MEIC and Earthjustice related to the
15 Clean Air Act and the plant's wastewater ponds, Colstrip 3 & 4 are required to
16 transition to a dry ash disposal system for coal combustion residuals no later than
17 July 1, 2022.⁴² For Staff, the due date of this requirement should represent to the
18 Colstrip ownership consortium as the appropriate time to retire Unit 3. However, the
19 application of Section 19, may result in Washington's regulated utilities being forced
20 to shoulder additional investment in this unit, like dry ash disposal, with little
21 possibility that these costs would be recoverable in rates.

22

⁴² Gomez, Exh. DCG-9 at K3.

1 **Q. Is there any way to ascertain, prior to any final Commission order in this**
2 **docket, if the Colstrip owners are leaning towards retiring Unit 3?**

3 A. Yes. Unit 3’s major maintenance outage is tentatively scheduled for 2021. In Section
4 10 of the O&O Agreement, the Operator (Talen) submits its proposed 2021 budget to
5 the owners by September 1, 2020 with a vote on the final budget to occur no later
6 than November 1, 2020.⁴³ In Staff’s view, if the Owners are of the consensus to
7 retire Unit 3, then it should be reflected in the amounts budgeted for that unit’s major
8 maintenance and capital in the final approved 2021 Colstrip budget. As the current
9 procedural schedule does not provide an opportunity to allow the parties in this case
10 to conduct discovery and provide testimony on this subject, Staff recommends that
11 the Commission issue bench requests regarding Colstrip’s final 2021 budget and
12 what that means for Colstrip Unit 3 & 4’s future. Later in my testimony I discuss
13 Staff’s concerns with Colstrip’s 2021 budget in greater detail.

14

15 **3. Vote sharing processes under the VSAs**

16

17 **Q. In your Hypothetical Voting Scenario No. 1, did you flow chart the separate**
18 **Vote Sharing processes under the VSAs?**

19 A. Yes.

20

⁴³ Roberts, Exh. RJR at 12–13.

1 **Q. What did you learn as a result?**

2 A. Under my Hypothetical Voting Scenario No. 1, the primary area of potential
3 controversy and dispute among the parties involves the classification of the proposal
4 and who gets to cast the shared vote. In both VSA₁ (proposed) and VSA₂ (existing), Article
5 3, Section 3.1(a), there is a matrix which identifies the party casting the shared vote
6 depending on the proposals classification. Both of these matrices are included in
7 Exh. No. DCG-6. In other words, the classification of a proposal is important
8 because it decides which party to the VSAs gets to cast the shared vote in a Unit 3
9 retirement proposal.

10

11 **Q. Why are possible disputes regarding the classification of a proposal important**
12 **for the Commission to consider in evaluating the Proposed Transactions in this**
13 **docket?**

14 A. Possible disputes regarding classification rebuts the testimony of PSE witness
15 Roberts that the VSA provides certainty with regard to the Shared Vote on a Unit 3
16 Decommissioning Proposal. Specifically, my testimony will rebut the following
17 assertion made by Roberts:

18 “The Vote Sharing Agreement . . . provid[es] PSE the sole right to vote
19 on the Shared Vote on any issue with respect to a Unit 3
20 Decommissioning Proposal.”⁴⁴
21

⁴⁴ Robert, Exh. RJR-9T at 50: 13–15.

1 **Q. Can you identify the general steps involved with a classification dispute in both**
2 **VSA₁ (proposed) and VSA₂ (existing)?**

3 A. Yes. For both VSAs, Article 3, Section 3.1(b) governs the process for handling
4 classification disputes between the parties.⁴⁵ The section specifies that the parties are
5 to cooperate and consult each other in the casting of the shared vote on proposals
6 before the Project Committee. However, if the parties are unable to agree on how to
7 classify the proposal for the purposes of determining which party casts the shared
8 vote, the matter is finally and exclusively resolved through arbitration.⁴⁶

9
10 **Q. Let's say that Talen, NorthWestern and PSE agree on the classification for a**
11 **proposal to retire Unit 3, a Unit 3 Decommissioning Proposal. Under Section 3.1**
12 **of VSA₁ (proposed), can either NorthWestern or Talen mount any more challenges**
13 **to the proposal?**

14 A. Yes. According to Section 3.1(a), either or both NorthWestern and Talen are entitled
15 to raise a Prudency Objection with respect to any Unit 3 Decommissioning Proposal.
16 Under VSA₁ (proposed), a Prudency Objection to a Unit 3 retirement proposal is
17 resolved via a Prudency Poll. Section 3.2 of VSA₁ (proposed) describes how the
18 Prudency Poll (poll) is conducted and what happens as a result.⁴⁷

⁴⁵ Roberts, Exh. RJR-16 at 16 (VSA₁ (proposed)); Roberts, Exh. RJR-21 at 8 (VSA₂ (existing)).

⁴⁶ VSA₁ (proposed), Article 4, Section 4.1 states that the negotiations among the parties, prior to requesting arbitration, are "confidential and shall be treated as compromise and settlement negotiations, and no oral or documentary representations or offers made by the Parties during such negotiations shall be admissible for any purpose in any subsequent proceedings."

⁴⁷ Roberts, Exh. RJR-16 at 11, 15-16.

1 **Q. Can you briefly describe how the poll works under VSA₁ (proposed)?**

2 A. In the case of a Unit 3 Decommissioning Proposal, PSE would request that the
3 Project Committee conduct a poll of the Colstrip owners regarding how they intend
4 to vote on the proposal (approve or disapprove). The poll is conducted among all of
5 the Colstrip owners (based on their Project Shares after the sale) with the result
6 determining how the shared vote under VSA₁ (proposed) will be cast.⁴⁸

7
8 **Q. Can Staff predict the likelihood of a classification dispute under VSA₁ (proposed) in
9 a non-operator proposal to retire Unit 3?**

10 A. No. Prior to Talen's exercise of its Right of First Refusal (ROFR), NorthWestern and
11 PSE's interests in the future of both units were in alignment. NorthWestern would
12 control Unit 4's future in exchange for it not interfering with any Unit 3 retirement
13 proposal. With Talen now a party to VSA₁ (proposed), it is unclear to Staff as to what
14 their position will be relative to a Unit 3 retirement proposal, especially since Talen
15 has asserted that its ROFR rights extend to the Colstrip Transmission System (CTS)
16 which is currently subject to an arbitration.

⁴⁸ Subsection 3.2(c) of VSA₁ (proposed) - The poll's results should not be confused with the actual Project Committee vote on the proposal which may result in an owner taking a different position than what they indicated in the poll. An owner taking a different position in the actual vote on the proposal than what they indicated in the poll does not invalidate the poll's results in determining who gets to cast the shared vote.

1 **Q. As a result of your analysis, do you agree with Robert’s statement that VSA₁**
2 **(proposed) conveys to PSE the sole right to vote on a Unit 3 retirement proposal?**

3 A. Yes, provided that Talen and NorthWestern don’t challenge that right under the
4 processes I just described.

5

6 **E. Hypothetical Voting Scenario No. 2; Unit 4 Budget Proposal**

7

8 **Q. Having walked through the hypothetical vote on a non-operator proposal to**
9 **retire Unit 3, please explain why you decided to apply a hypothetical voting**
10 **scenario in the case of a Unit 4 budget proposal?**

11 A. Future Project Committee decisions, regarding Unit 4 budgets, will establish the
12 level of O&M Base in PSE’s separate PPAs with Talen and NorthWestern.
13 Additionally, these future Project Committee budget decisions on Unit 4 may affect
14 Avista and Pacific Power’s obligations—who remain owners if the Commission
15 approves the Unit 4 sale in this docket. In Staff’s assessment, the public interest
16 questions which apply to a Commission decision in this case should also consider
17 how the processes specified in VSA₁ (proposed), VSA₂ (existing) and the O&O Agreement
18 may function under this scenario.

19

1 **1. Colstrip O&O Agreement Subsection 17(f)**

2

3 **Q. In Hypothetical Voting Scenario No. 1, you refer to Subsection 17(i). Why are**
4 **you referring to Subsection 17(f) instead in your Hypothetical Voting Scenario**
5 **No. 2?**

6 A. Subsection 17(i) relates to a proposal initiated by two non-operator owners. Section
7 10 of the O&O Agreement specifies that budget proposals at Colstrip are initiated by
8 the operator, in this case Talen. Therefore, Subsection 17(f) would typically apply in
9 this hypothetical example—not Subsection 17(i).⁴⁹

10

11 **Q. What votes are required to pass a budget proposal under Subsection 17(f)?**

12 A. Subsection 17(f) specifies that, for any proposal to be approved, it must receive the
13 support of the Operator and at least two other Project Committee members, with the
14 total votes in the affirmative equaling at least 55% of the total Project Shares.⁵⁰

15

16 **Q. If the sale of Unit 4 closes, can NorthWestern command a strong vote position**
17 **with regard to Unit 4's future?**

18 A. Yes, provided Talen and NorthWestern agree in how to cast the shared vote in VSA₁
19 (proposed) and VSA₂ (existing), NorthWestern would control the Operator vote (VSA₂
20 (existing) = 30 percent) and the shared vote with Talen and PSE (VSA₁ (proposed) = 25
21 percent).

22

⁴⁹ See Roberts, Exh. RJR-3 at 20–23.

⁵⁰ Roberts, Exh. RJR-3 at 20.

1 **Q. What does that mean in terms of a vote on a Unit 4 budget proposal?**

2 A. This voting position allows NorthWestern to meet two of the three requirements to
3 pass a Unit 4 budget proposal under Section 17(f) of the O&O Agreement (Operator
4 vote plus a 55 percent Project Share majority).⁵¹ NorthWestern would therefore only
5 need the support of one more owner (Avista, Pacific Power, or PGE) to pass any
6 Unit 4 budget proposal.

7
8 **Q. How does this all relate to the public interest questions in this case?**

9 A. As I mentioned earlier, if the proposed sale is approved by the Commission, it
10 creates an expectation that this decision would result in Washington's regulated
11 utilities (all being owners in Colstrip Units 3 & 4) either accelerating their path
12 and/or lowering their costs to comply with the requirements under CETA. However,
13 approval of the sale conveys to NorthWestern a Project Share majority in proposals
14 relating to Unit 4. As NorthWestern's current depreciation schedule for Unit 4
15 extends through 2042⁵² and PGE is not required under Oregon State law to cease
16 serving customers from its share of Unit 3 & 4 generation until 2030,⁵³ the
17 possibility exists that NorthWestern (with the support of PGE) will have all it needs
18 to approve any future Unit 4 budget proposal which can include costs which are
19 incompatible with CETA. This may have implications with regard to the ability of
20 Washington's regulated utilities to recover these costs after 2025.

21

⁵¹ Roberts, Exh. RJR-3 at 20.

⁵² Gomez, Exh. DCG-10 at 10.

⁵³ ORS 757.518(2) ("On or before January 1, 2030, an electric company shall eliminate coal-fired resources from its allocation of electricity").

1 **2. Colstrip O&O Agreement Section 19**

2

3 **Q. If neither Avista, Pacific nor PGE support NorthWestern’s Unit 4 Budget**
4 **Proposal, can NorthWestern then invoke Section 19 of the O&O Agreement?**

5 A. Yes, NorthWestern could likely invoke this section of the O&O Agreement in a Unit
6 4 budget proposal that includes the replacement of a major component which,
7 without its replacement, the unit would be inoperable. Again, as I mentioned earlier
8 in my testimony, the threshold issues of what constitutes a damage event and
9 whether the section’s reference to “Project” would apply to unit specific proposals
10 before the Project Committee are in play here also.

11 By way of example, take the failing superheat section of Unit 4’s boiler
12 which, in PSE’s last GRC, Roberts provided an estimate of \$20 million to replace
13 this major component.⁵⁴ Without its replacement, Unit 4 would otherwise become
14 inoperable. While some of Unit 4’s owners may see this as an appropriate time to
15 consider retirement of the unit—NorthWestern may not. In that case, having not met
16 one of the three conditions under Section 17(i) to approve a budget that includes
17 replacement of the superheat section, its only option may be to resort to Section 19.

18

19 **Q. Would Section 19 function the same as you described earlier in your testimony**
20 **under Hypothetical Voting Scenario No. 1; Unit 3 Retirement Proposal?**

21 A. Yes.

22

⁵⁴ Gomez, Exh. DCG-4 at 10:14-22.

1 **Q. Assuming that the repair costs of Unit 4’s boiler exceeds twenty percent of the**
2 **unit’s depreciated value and all of the owners do not unanimously agree to**
3 **retire the unit. What happens under Section 19?**

4 A. Talen, as Operator, provides the Project Committee its estimate of the “Fair Market
5 Value” of the unit (terminated without repair) and its estimate to effectuate repairs
6 (cost to replace the superheat section). At this point in the Section 19 process, the
7 Project Committee members would only have two options: 1) Approve Talen’s plan
8 and budget to repair the unit and keep it in operation; or 2) Reject Talen’s plan and
9 budget to repair the unit which results in: a) a reduction of their Project Shares, and
10 b) an obligation to pay for repair of the unit, albeit at the reduced Project Share
11 amount.

12
13 **Q. In your example above, could either of the two options available to the Project**
14 **Committee members under Section 19 result in outcomes contrary to the Public**
15 **Interest in Washington State?**

16 A. Yes. Under both option 1 and option 2, Washington’s regulated utility shareholders
17 may be forced to absorb costs for Unit 4 that cannot be recovered after 2025 as a
18 result of CETA. Under Option 2, Washington’s regulated utilities would see a
19 reduction of their Project Shares which erodes their voting position on future
20 proposals.

21

1 **3. Vote sharing processes under the VSAs**

2

3 **Q. Is the Vote Sharing Processes in Hypothetical Voting Scenario No. 2 the same as**
4 **in Hypothetical Voting Scenario No. 1?**

5 A. Yes, except in how classification objections and disputes are handled. Additionally,
6 the shared vote in a Unit 4 proposal is cast jointly by Talen and NorthWestern, as
7 opposed to NorthWestern solely casting the shared vote prior to Talen’s entry into
8 the deal. In my Hypothetical Voting Scenario No. 2, I assume that the classification
9 under VSA_{1 (proposed)} would be a “Unit 4 Budget Proposal.” However, it is entirely
10 possible that a Unit 4 budget proposal may also fit into a number of other
11 classifications contained in Article 3, Section 3.1(a) of VSA_{1 (proposed)}.⁵⁵

12

13 **Q. Can you identify which other classifications may apply to your Hypothetical**
14 **Voting Scenario No. 2?**

15 A. In reading the classifications contained in Article 3, Section 3.1(a) of VSA_{1 (proposed)} it
16 is not entirely clear if a Unit 4 Budget Proposal would, under certain circumstances,
17 also fit the following classifications contained in the section:

- 18 • **Colstrip 4 Proposal** - A proposal, other than a Unit 3 Decommissioning
19 Proposal or Remediation Proposal, that relates primarily to Colstrip Unit 4, but
20 not to proposals concerning the Common Facilities;
21
- 22 • **Mixed Proposal; Other than for Replacement of Talen as Operator** - A
23 Mixed Proposal Other than for Replacement of Talen as Operator shall include,
24 but is not limited to, budget proposals for years for which there are no planned
25 maintenance outages and budget proposals for years for which there are planned
26 maintenance outages for both Unit 3 and Unit 4 which are of the exact same
27 scheduled duration; and
28

⁵⁵ Roberts, Exh. RJR-16 at 11–15.

- 1 • **Remediation Proposal** - A Proposal primarily concerning the remediation of
2 ground water or soil contamination located at Colstrip Unit 3 or Colstrip Unit 4
3 as required under applicable Laws.
4

5 Under a Colstrip 4 Proposal and Mixed Proposal both Talen and
6 NorthWestern jointly cast the shared vote and PSE cast the shared vote in proposals
7 classified as remediation.
8

9 **Q. You mention that depending on the proposal’s classification objections and**
10 **disputes over these classifications in VSA₁ (proposed) are handled differently, can**
11 **you explain this statement?**

12 A. Yes. Referring back to the matrix in Article 3, Section 3.1(a) of VSA₁ (proposed), it lists
13 the permissible objections under each proposal classification.⁵⁶ In the case of a Unit
14 4 Budget Proposal there are no permissible objections and if Talen and
15 NorthWestern fail to agree on how to cast the shared vote, the shared vote is not cast.
16 In a Mixed Proposal; Other than for the Replacement of Talen as Operator, the only
17 classification objection allowed; Prudency, can be raised by PSE alone. PSE’s
18 classification objection is resolved via a prudency poll which I described earlier in
19 my testimony. In this same Mixed Proposal however, Talen and NorthWestern
20 cannot raise a classification objection at all and if Talen and NorthWestern fail to
21 agree on how to cast the shared vote, then the shared vote is not cast.
22

⁵⁶ Roberts, Exh. RJR-16 at 11–15.

1 **Q. How do the proposal classifications contained in the VSA₁ (proposed) square with**
2 **Colstrip’s budget process in the O&O Agreement and Staff’s experience with**
3 **Colstrip Unit 3 & 4 budgets?**

4 A. According to Section 10 of the Colstrip O&O Agreement, the Operator (Talen) is to
5 submit a budget to the Colstrip Project Committee by September 1 of each year of its
6 estimated “Costs of Operation” for the following operating year (beginning January
7 1) for both units and common facilities. Section 10 goes on to say that the Colstrip
8 Project Committee shall approve such budget or a revised budget by November 1.⁵⁷

9 The process described in Section 10, which results in a single Unit 3 & 4
10 budget for both units and common facilities, is consistent with Staff’s experience in
11 the numerous cases before the Commission involving Colstrip budgets. However, in
12 VSA₁ (proposed), the classification descriptions seem to imply a unit discrete budgeting
13 process at Colstrip, which Staff has never seen before and which appears to be
14 inconsistent with Section 10 of the O&O Agreement. Both Roberts’ direct and
15 supplementary testimonies fail to address this apparent inconsistency and how the
16 proposal classifications contained in VSA₁ (proposed) mirror the budgeting process in
17 the O&O Agreement.

18
19 **Q. Why is this important?**

20 A. Without a clear understanding of how the budgeting process specified in Section 10
21 of the O&O Agreement will function alongside the proposal classifications described
22 in VSA₁ (proposed), Staff cannot say unequivocally that PSE’s voting rights with regard

⁵⁷ Roberts, Exh. RJR-3 at 10–11.

1 to environmental remediation costs on Unit 4 may somehow be thwarted by how
2 Colstrip budgets are classified in the future.

3
4 **IV. TALEN'S 2021 UNIT 3 & 4 BUDGET**

5
6 **Q. Turning now to Talen's projected 2021 budget for Colstrip Units 3 and 4, what**
7 **does the Colstrip Unit 4 Purchase and Sale Agreement say about the vote on**
8 **Talen's 2021 Colstrip budget?**

9 A. Subsection 7.1(b)(iv) of both Roberts Exh. No. RJR-16 - Amended Colstrip Unit 4
10 Purchase and Sale Agreement between NorthWestern Energy and PSE and Exh. No.
11 RJR-18 - Colstrip Unit 4 Purchase and Sale Agreement between Talen and PSE
12 specify how the parties will vote on proposals before the Project Committee prior to
13 the close of the transaction. The subsection specifies three proposal classifications
14 and, depending on the proposal's classification, how the 25 percent Unit 4 shared
15 vote will be cast (a pre-close VSA).

16
17 **Q. Under this pre-close VSA, who gets to vote on Talen's 2021 budget?**

18 A. In response to Staff discovery, PSE indicated that Talen's 2021 budget proposal
19 would be classified as a proposal relating to both Colstrip Units 3 & 4 and/or
20 Common Facilities.⁵⁸ Accordingly, PSE is required to consult with NorthWestern
21 and Talen prior to casting its vote on the budget.

22

⁵⁸Gomez, Exh. DCG-5C at 4 (Response to Item d).

1 **Q. What else did you discover as a result of PSE’s response to your data request?**

2 A. Comparing the 2020–2025 budget amounts contained in the prefiled direct
3 supplementary testimony of PSE witness Song (confidential Exh. No. CLS-9C) and
4 the amounts included in PSE’s response to Staff Data Request No. 42, Confidential
5 Attachment A (Gomez Exh. No. DCG-5C), I find a number of differences worth
6 noting.

7 First, Talen’s budget references an “Alternative Budget,” yet PSE has not
8 provided an explanation in either Song’s or Robert’s initial or supplementary
9 testimonies as to the purpose of this Alternative Budget and what that means for the
10 closing of this transaction and the upcoming Project Committee’s vote on next year’s
11 budget. Second, there are costs for a 2021 overhaul and other capital costs which do
12 not appear in Song’s exhibit.

13
14 **Q. Why is this development important in this case?**

15 A. Staff brings up the upcoming Talen budget vote because of the possibility that
16 significant decisions relative to the future of both units will occur prior to the close
17 of this transaction.

18
19 **Q. Earlier in your testimony you recommended the Commission issue bench**
20 **requests regarding the final approved Colstrip’s 2021 budget. Do your concerns**
21 **over the contents of Talen’s proposed Colstrip 2021 budget above provide**
22 **further support for Staff’s recommendation?**

1 A. Yes. It is vital that, in considering whether to approve this transaction, the
2 Commission receive the best and latest information possible about Colstrip so as to
3 inform the record in this case.
4

5 **V. ENVIRONMENTAL REMEDIATION COSTS**
6

7 **Q. What do you see as the main environmental issue in this case with regard to**
8 **Unit 4?**

9 A. The main Unit 4 environmental remediation issue for Staff, in this case, is how long
10 the unit will continue to operate and generate ash waste beyond 2025. While PSE
11 represents its voting rights under VSA₁ (proposed) as giving it control over both the
12 timing and amount of costs associated with its future environmental liabilities at
13 Colstrip, the real incremental driver of these liabilities, continued operation of Unit 4
14 will not be under its control.
15

16 **Q. How about Unit 3?**

17 A. While there may have been a trade-off between giving control of Unit 4 to
18 NorthWestern and gaining “certainty” regarding a closure date for Unit 3, Talen’s
19 entry into the deal erases all that. My analysis of the two VSAs and the O&O
20 Agreement under my Hypothetical Voting Scenario No. 1, illustrates a number of
21 ways that a Unit 3 decommissioning proposal could fail, thereby prolonging the life
22 of Unit 3 and thereby increasing Washington ratepayer’s environmental liabilities for
23 Unit 3. While Staff may have been inclined to give PSE the benefit of doubt that
24 NorthWestern would not interfere, now that Talen has asserted its ROFR rights and

1 staked a claim to a share of the CTS, we cannot rule out that they are *not* planning to
2 entertain a proposal to retire Unit 3 anytime soon. Of additional concern to Staff,
3 both from an environmental and operational perspective, is Talen's separate Coal
4 Supply Agreement (CSA) with Westmoreland Rosebud Mining LLC
5 (Westmoreland).⁵⁹

6
7 **Q. Why does Staff have concerns about Talen's CSA with Westmoreland?**

8 A. Because of the possibility that Talen may be pursuing the tax benefits associated
9 with pre-combustion coal fuel additives which would incent more generation and
10 introduce an unknown variable to Colstrip's emissions. While prior to the sale,
11 Talen's ability to implement its alternate fuel strategy was confined to Unit 3, if this
12 sale closes and Talen gets an ownership share in Unit 4, these risks may also extend
13 to Unit 4 also.

14
15 **Q. Are decommissioning and remediation costs fully known?**

16 A. No. While there are various estimates regarding a dry ash disposal system and other
17 decommissioning and remediation costs, Talen and the Montana Department of
18 Environmental Quality are in the initial planning stages of that effort. As such, any
19 cost estimate for decommissioning and remediation only reflects PSE's best
20 estimate.

21

⁵⁹ Gomez, Exh. DCG-7 at 15.

1 **VI. RECOMMENDED CONDITIONS**

2
3 **Q. In the event the Commission approves the sale of Colstrip Unit 4, do you have**
4 **any conditions that you would like to offer for the Commission’s consideration?**

5 A. Yes. Specifically, I offer a set of conditions in the event the Commission believes
6 facilitating the retirement of Colstrip Unit 3 is a public interest benefit associated
7 with the sale of Unit 4. As I describe above, contrary to PSE’s claims otherwise,
8 Staff does not believe the post-sale VSA resolves uncertainties with respect to the
9 decision-making process for Colstrip, in particular with respect to decisions
10 regarding the closure of Unit 3. It is Staff’s opinion that, without targeted
11 Commission action, progress toward closure of Unit 3 is highly uncertain. Therefore,
12 as a condition to its approval of the transfer, the Commission should require that
13 PSE:

- 14 1. Initiate negotiations with the other Colstrip owners within 10 business days
15 of the close of this transaction for the purpose of putting forward a Colstrip
16 Project Committee proposal that arrives at an agreed upon retirement date for
17 Unit 3 (PSE’s Unit 3 retirement proposal). The vote on PSE’s Unit 3
18 Retirement Proposal is to occur prior to the Colstrip Project Committee’s
19 vote on the 2022 budget (on or before November 1, 2021). Unit 3’s
20 retirement date on PSE’s Unit 3 retirement proposal will avoid the need for
21 the Colstrip owners to install and operate a dry ash disposal system for Unit
22 3’s combustion residuals and/or any other major maintenance item intended
23 to prolong the life of Unit 3 beyond the end of 2022;

- 1 2. Within 20 business days of the close of this transaction, PSE will request that
2 the Project Committee conduct a poll among the Colstrip owners (a tally of
3 all six owners' project shares after the sale and without regard to the various
4 vote share agreements in place) for the purposes of indicating how they
5 would vote under PSE's Unit 3 retirement proposal. PSE will then provide
6 the Commission, as a compliance filing in this docket, with the results of the
7 poll and report to the Commission monthly on the progress of these
8 negotiations until such time the Colstrip Project Committee votes on PSE's
9 Unit 3 retirement proposal;
- 10 3. At the conclusion of a vote of the Colstrip Project Committee on a PSE Unit
11 3 retirement proposal to retire Unit 3, PSE will provide the Commission, as a
12 compliance filing in this docket, with all (but not limited to) Project
13 Committee materials, records of discussions, documents, analysis, vote
14 results, counter proposals and presentations which relate to PSE's Unit 3
15 retirement proposal; and
- 16 4. Regardless of the outcome of the vote on PSE's Unit 3 Retirement Proposal,
17 at the time that the Colstrip 2022 budget for Units 3 and 4 are approved by
18 the members of the Project Committee (as specified in the O&O Agreement),
19 PSE will provide the Commission with the final approved 2022 budget along
20 with a report explaining both capital and expense line items contained in the
21 approved budget for both units as a compliance filing in this docket.

22

1 **Q. What happens if PSE is unsuccessful in satisfying the conditions above?**

2 A. The same as if they were successful. The Company's shareholders bear the risk that
3 any future investment in Unit 3 may be disallowed by the Commission either through
4 the annual power cost review, a General Rate Case (GRC) or a Power Cost Only
5 Rate Case (PCORC). However, failure on the part of PSE to effectuate these three
6 conditions would clearly signal to the Commission that the deal between the
7 Company, Talen and NorthWestern has failed to deliver on its promise regarding
8 certainty of anything at Colstrip.

9

10 **Q. How about Unit 4?**

11 A. The commencement of energy deliveries to PSE under the PPAs with Talen and
12 Northwestern occur once the transactions close. As the costs relating to the PPA in
13 year one occur almost entirely within the 2021 calendar year, Staff recommends that
14 the Commission evaluate the prudence of PSE's PPA with Northwestern and Talen
15 in the PCA annual review which the Company is required to file by May 1, 2022. At
16 that time, Staff can review the results of PSE's Unit 3 retirement proposal vote and
17 the 2022 expenditures approved by the Project Committee in the November 1, 2021
18 budget vote for the purposes of determining the prudence of the PPA's O&M base.

19

20 **Q. Does this conclude your testimony?**

21 A. Yes.