

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. UE-200115

DIRECT TESTIMONY OF

JASON R. THACKSTON

REPRESENTING AVISTA CORPORATION

1           **Q.    Please state your name, employer and business address.**

2           A.    My name is Jason R. Thackston. I am employed as the Senior Vice President  
3 of Energy Resources at Avista Corporation, located at 1411 East Mission Avenue, Spokane,  
4 Washington.

5           **Q.    Would you briefly describe your educational and professional**  
6 **background?**

7           A.    Yes. I graduated from Whitworth University in 1992 with a Bachelor of Arts  
8 in International Studies and an emphasis in Business Management. I received a Master of  
9 Business Administration from Gonzaga University in 2000. I joined the Company in 1996 as  
10 a Corporate Treasury Analyst. I have held several different positions at Avista, including  
11 roles in Finance and Accounting, Internal Audit, Risk Management, Power Supply, and Gas  
12 Supply. I was appointed Vice President of Finance in June 2009 and have since held the roles  
13 of Vice President of Energy Delivery and Vice President of Customer Solutions before  
14 assuming my role as Vice President of Energy Resources in January 2013. I was promoted to  
15 Senior Vice President of Energy Resources in January 2014. The Energy Resources group is  
16 primarily responsible for producing or procuring the electricity and natural gas to serve our  
17 customers' needs, including the construction, operation, and maintenance of our generation  
18 facilities and the optimization of those electric and natural gas facilities for the benefit of our  
19 customers.

20           **Q.    What is the scope of your testimony in this proceeding?**

21           A.    In my testimony, I discuss certain scenarios that Avista, for its part, has been  
22 thinking through as it relates to the various versions of the vote sharing agreements associated  
23 with the potential transaction at issue in this proceeding, and specifically the impacts of those

1 vote sharing agreements on the remaining Colstrip owners. As I discuss in more detail later,  
2 assuming the Committee established by the O&O Agreement (as defined below) can vote to  
3 shut down one or both Colstrip units, currently Avista, PGE, PSE, and PacifiCorp can achieve  
4 the 55 percent threshold to approve a shutdown proposal without NorthWestern's  
5 concurrence. After the Three-Party VSA (as defined below) becomes effective, the owners  
6 cannot achieve the necessary 55 percent threshold on a Unit 4 Decommissioning Proposal  
7 without NorthWestern's concurrence. In other words, NorthWestern will have the power to  
8 unilaterally prevent a Unit 4 Decommissioning Proposal from being approved by the  
9 Committee.

10 **Q. Are you sponsoring any exhibits?**

11 A. Yes. Exh. JRT-2 is Puget Sound Energy, Inc.'s ("PSE's") first revised  
12 response to WUTC Staff Data Request No. 24 ("Data Request No. 24"). Exhs. JRT-3 and  
13 JRT-4 are NorthWestern Energy's ("NorthWestern") response to NRDC Data Request Nos.  
14 001 and 009, respectively ("Data Request NRDC-001" and "Data Request NRDC-009",  
15 respectively).<sup>1</sup>

16 **Q. Do the vote sharing agreements that were filed in this proceeding create**  
17 **any issues that the Commission should be aware of in this proceeding?**

18 A. Yes. Avista was initially concerned that the original vote sharing agreement  
19 ("Original VSA") that was filed in this proceeding as part of the Fifth Exhibit  
20 (Nonconfidential) to the Prefiled Direct Testimony of Ronald J. Roberts on behalf of Puget

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<sup>1</sup> NorthWestern submitted its response to Data Request NRDC-001 and Data Request No. NRDC-009 in Montana Public Service Commission Docket No. 2019.12.101. References to section 13(f) of the O&O Agreement in Data Request NRDC-009 appear to be in error. For purposes of this testimony, I assume that all references to section 13(f) in Data Request NRDC-009 are intended to refer to section 17(f) of the O&O Agreement.

1 Sound Energy<sup>2</sup> could allocate voting rights under the Ownership and Operating Agreement  
2 for Colstrip Units #3 & #4 (“O&O Agreement”)<sup>3</sup> in manner that would allow NorthWestern  
3 and Talen, either individually or collectively, to make decisions regarding Unit 4 over the  
4 other owners’ objections. The O&O Agreement provides that most issues regarding the  
5 ownership and operation of the Project are submitted to and voted on by the Committee as  
6 follows:

7 Operator shall submit each of the matters listed below to the Committee for  
8 approval, which approval must be by a vote of Operator’s Committee member,  
9 plus at least two other Committee members so that the Committee members  
10 voting for approval represent at least 55% of the total Project Shares[.]<sup>4</sup>  
11

12 Avista understands that NorthWestern and Talen have a pre-existing vote sharing  
13 agreement (“Talen/NWE VSA”) that allocates the vote equivalent to 30 percent of the total  
14 Project Shares of Colstrip Units 3 and 4 to Talen or NorthWestern depending on the specific  
15 proposal at issue.<sup>5</sup> It is Avista’s understanding that the shared vote that is cast under the  
16 Talen/NWE VSA is the Operator committee member vote. Accordingly, under the  
17 Talen/NWE VSA, NorthWestern has the right, in certain circumstances (generally with regard  
18 to Unit 4), to cast the shared vote as the Operator.

19 Under the Original VSA that was submitted in this proceeding prior to Talen  
20 exercising its right of first refusal, NorthWestern would have also had the right, in most

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<sup>2</sup> Exhibit RJR-6 at 61-75.

<sup>3</sup> The O&O Agreement was filed in this proceeding as the Second Exhibit (Nonconfidential) to the Prefiled Direct Testimony of Ronald J. Roberts on Behalf of Puget Sound Energy, Exh. RJR-3.

<sup>4</sup> See Exh. RJR-3 at 20.

<sup>5</sup> The Amended and Restated Project Committee Vote Sharing Agreement between NorthWestern and Talen (the “Talen/NWE VSA”) was submitted in this proceeding as the Twelfth Exhibit to the Prefiled Direct Supplemental Testimony of Ronald J. Roberts, Exh. RJR-21.

1 circumstances, to cast PSE's vote as PSE's Committee member.<sup>6</sup> In sum, prior to Talen's  
2 exercise of its right of first refusal, it appeared that NorthWestern could, in some  
3 circumstances, unilaterally satisfy (i) the Operator vote (under the Talen/NEW VSA), (ii) one  
4 other Committee member vote (under the Original VSA), and (iii) the 55 percent threshold  
5 necessary to approve a proposal under the O&O Agreement. There was some concern that  
6 NorthWestern could also satisfy the two other Committee member requirement, in which case  
7 NorthWestern could unilaterally approve proposals over the other owners' objections.

8 **Q. Was that concern resolved?**

9 A. This issue was generally resolved. In its revised response to Data Request No.  
10 24, PSE clarified that, NorthWestern and Talen can, in some circumstances, satisfy the  
11 Operator, one other Committee member, or two Committee member requirements.<sup>7</sup> It also  
12 appears that, at least under certain circumstances, NorthWestern can unilaterally satisfy the  
13 55 percent threshold. However, PSE clarified in its revised response to Data Request No. 24  
14 that: "Under no circumstances can NorthWestern or Talen Montana, either acting individually  
15 or in concert, vote and cast "a vote of Operator's Committee member, plus *at least two other*  
16 *Committee members* so that the Committee members voting for approval represent at least  
17 55% of the total Project Share . . . ."<sup>8</sup> NorthWestern provided similar clarification in its  
18 response to Data Request NRDC-009 in the proceeding that is pending before the Montana  
19 Public Service Commission. PSE's revised response to Data Request No. 24 is attached hereto

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<sup>6</sup> See Exh. RJR-6 at 67-69. Under the Original VSA, PSE was to cast the Shared Vote only with regard to Colstrip 3, Unit 3 Budget, Unit 3 Decommissioning, and Remediation proposals. NorthWestern had the right to cast the Shared Vote on all other proposals, including Mixed Proposals. *Id.*

<sup>7</sup> Revised Response to Data Request No. 24 at subparts (a)-(f).

<sup>8</sup> Revised Response to Data Request No. 24 at subpart (g) (emphasis in original) (citing Exh. RJR-3, at 20 (section 17(f) of the Ownership and Operation Agreement).

1 as Exh. JRT-2. NorthWestern's response to Data Request NRDC-009 is attached hereto as  
2 Exh. JRT-4.

3 Avista appreciates PSE's and NorthWestern's clarifications on this issue. To the  
4 extent that the Three-Party VSA (as defined below) is applied in a manner consistent with  
5 PSE's and NorthWestern's responses to those data requests, the issue of whether  
6 NorthWestern and/or Talen can, either individually or collectively, pass proposals over the  
7 objections of the other owners is largely resolved. That is, based on Avista's understanding  
8 of the Three-Party VSA, as clarified by PSE's and NorthWestern's responses to data requests,  
9 neither NorthWestern nor Talen, individually or collectively, can pass a proposal without at  
10 least one other owner's concurrence.

11 **Q. Did Talen's exercise of its ROFR result in a change to the Original VSA?**

12 A. Yes. After Talen exercised its ROFR, PSE, Talen and NorthWestern replaced  
13 the Original VSA with a new three-party vote sharing agreement that PSE submitted as part  
14 of the Seventh Exhibit to the Prefiled Supplemental Direct Testimony of Ronald J. Roberts on  
15 Behalf of Puget Sound Energy ("Three-Party VSA").<sup>9</sup> Under the Three-Party VSA, in those  
16 circumstances where PSE does not retain its Committee member's vote, PSE's Committee  
17 member vote is shared by NorthWestern and Talen. As Avista understands the Three-Party  
18 VSA, when PSE's Committee member vote is allocated to Talen/NorthWestern,  
19 NorthWestern and Talen must agree on the vote or PSE's Committee member vote is not cast.  
20 In any event, PSE's Committee member vote still only counts as one Committee member vote.  
21 As a result, Avista understands that neither NorthWestern nor Talen, individually or

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<sup>9</sup> Exh. RJR-16 at 5-22.

1 collectively, can approve any proposal under the O&O Agreement without at least one other  
2 owner's concurrence.

3 **Q. Does the Vote Sharing Agreement create any other issues?**

4 A. Potentially. While it appears that neither NorthWestern nor Talen (individually  
5 or collectively) can unilaterally approve any proposal under the O&O Agreement,  
6 NorthWestern in particular may have the ability to unilaterally block certain proposals.

7 Both the Original VSA and the Three-Party VSA include definitions of "Unit 3  
8 Decommissioning Proposal" and "Unit 4 Decommissioning Proposal" and purport to allocate  
9 PSE's vote on such proposals.<sup>10</sup> While the definitions of these proposals is slightly different  
10 in the Original VSA and the Three-Party VSA, in both vote sharing agreements these  
11 proposals expressly include proposals regarding "the decommissioning, mothballing, closure,  
12 retirement, deactivation, shut down, deconstruction, removal, or demolition of all or a portion  
13 of" Colstrip Unit 3 or Colstrip Unit 4, as applicable.<sup>11</sup> The inclusion of specific proposals for  
14 the "closure, retirement, deactivation, shut down" of one or both Colstrip units, and the  
15 express allocation of PSE's Committee member vote on such proposals, raises a substantial  
16 question whether, under the O&O Agreement, the Committee can vote to shut down one or  
17 both Colstrip units.<sup>12</sup>

18 **Q. Does Avista have a position on whether, under the O&O Agreement, the**  
19 **Committee can vote to shut down one or both Colstrip units?**

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<sup>10</sup> Exh. RJR-6 at 64; Exh. RJR-16 at 8-9.

<sup>11</sup> *Id.*

<sup>12</sup> Compare RJR-09T at 49:21-50:18 (noting that arguments can be made that decommissioning requires a unanimous decision, but indicating that the Committee may be able to vote on Unit 3 Decommissioning Proposal) with NorthWestern's response to Data Request NRDC-001 (stating that unanimous vote of the owners is required to decommission a unit).

1           A.     No. Avista is not taking a position on this issue at this time. The express  
2 inclusion of a Unit 3 and Unit 4 Decommissioning Proposal raises a substantial question  
3 whether the Committee can vote to shut down of one or both units.<sup>13</sup> To the extent that the  
4 owners have differing views on this issue, this issue may need to be resolved through  
5 arbitration between the owners.

6           **Q.     Please explain why the issue of whether the Committee can vote to shut**  
7 **down one or both Colstrip units is important in this proceeding.**

8           A.     If it is ultimately determined that the Committee can vote to shut down one or  
9 both Colstrip units, the allocation under the Three-Party VSA of PSE's vote to Talen and  
10 NorthWestern could make it more difficult for the other owners, including two Washington-  
11 jurisdictional utilities (Avista and PacifiCorp), to achieve the necessary votes to shut down  
12 one or both Colstrip units.

13          **Q.     Please explain.**

14          A.     The primary concern is with regard to Unit 4. As noted above, one requirement  
15 for a proposal to be approved by the Committee is that Committee members accounting for at  
16 least 55 percent of the Project Shares vote to approve such proposal. The current allocation  
17 of Project Shares for voting purposes are as follows:

18	Talen/NorthWestern: <sup>14</sup>	30%
19	PSE:	25%
20	PGE:	20%
21	Avista:	15%
22	PacifiCorp:	10%
23		

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<sup>13</sup> See *id.*

<sup>14</sup> Talen is the Operator and currently owns 30% of Unit 3. NorthWestern currently owns 30% of Unit 4. Under the Talen/NWE VSA, Avista understands that either Talen or NorthWestern is allocated the Operator vote which accounts for a 30% Project Share.



1           Currently (that is, in the absence of the Three-Party VSA), Avista, PSE, PGE and  
 2 PacifiCorp can, without the Talen/NorthWestern vote, achieve the 55 percent threshold that  
 3 is one of the requirements that must be satisfied for a proposal to be approved by the  
 4 Committee.

5           Once the Three-Party VSA is effective, the allocation of Project Shares for voting  
 6 purposes will be as follows:

7	Talen/NorthWestern: <sup>15</sup>	30%
8	PSE/NorthWestern/Talen: <sup>16</sup>	25%
9	PGE:	20%
10	Avista:	15%
11	PacifiCorp:	10%

12  
 13           Importantly, under the Three-Party VSA, PSE's Committee member vote on a Unit 4  
 14 Decommissioning Proposal will be allocated to Talen and NorthWestern—PSE will no longer  
 15 have the right to cast its vote on such proposal.<sup>17</sup> The other Colstrip owners (Avista, PGE,  
 16 and PacifiCorp) will only account for 45 percent of the Project Shares and, therefore, cannot  
 17 achieve the required 55 percent threshold. Because NorthWestern is allocated the shared vote  
 18 under the Talen/NWE VSA for Colstrip 4 Proposals<sup>18</sup> and the Shared Vote under the Three-  
 19 Party VSA is not cast on a Unit 4 Decommissioning Proposal unless Talen and NorthWestern

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<sup>15</sup> This remains unchanged. Talen is the Operator and currently owns 30% of Unit 3. NorthWestern owns 30% of Unit 4. Under the Talen/NWE VSA, either Talen or NorthWestern is allocated the Operator vote which accounts for a 30% Project Share.

<sup>16</sup> Under the Three-Party VSA, PSE's Committee member vote is shared by PSE, NorthWestern and Talen. Generally speaking, under most scenarios—except those specifically associated with Colstrip Unit 3—the PSE Committee member vote is allocated to Talen and NorthWestern. Where the PSE Committee member vote is allocated to Talen and NorthWestern, Talen and NorthWestern generally must agree on the vote or the vote will not be cast. *See* RJR-16 at 12-14; RJR-9T at 48.

<sup>17</sup> Exh. RJR-16 at 9-10.

<sup>18</sup> Exh. RJR-21.

1 agree on such vote,<sup>19</sup> a Unit 4 Decommissioning Proposal cannot be approved over  
2 NorthWestern's objection.

3 In sum, assuming the Committee can vote to shut down one or both Colstrip units,  
4 currently Avista, PGE, PSE, and PacifiCorp can achieve the 55 percent threshold to approve  
5 a shutdown proposal without NorthWestern's concurrence. After the Three-Party VSA  
6 becomes effective, the owners cannot achieve the necessary 55 percent threshold on a Unit 4  
7 Decommissioning Proposal without NorthWestern's concurrence. In other words,  
8 NorthWestern will have the power to unilaterally prevent a Unit 4 Decommissioning Proposal  
9 from being approved by the Committee.

10 **Q. Is the issue the same for a Unit 3 Decommissioning Proposal?**

11 A. Not necessarily. Under the Three-Party VSA, PSE retains its Committee  
12 member's vote for a Unit 3 Decommissioning Proposal.<sup>20</sup> Accordingly, Avista, PGE, PSE,  
13 and PacifiCorp can achieve the 55 percent threshold for a Unit 3 Decommissioning Proposal  
14 without NorthWestern's concurrence. However, it is important to note that the Three-Party  
15 VSA may have significantly narrowed the definition of a "Unit 3 Decommissioning Proposal"  
16 compared to the definition in the Original VSA. Specifically, in the Original VSA, "Unit 3  
17 Decommissioning Proposal" was defined as follows:

18 *"Unit 3 Decommissioning Proposal"* means a Proposal regarding the  
19 decommissioning, mothballing, closure, retirement, deactivation, shut down,  
20 deconstruction, removal, or demolition of all or a portion of Colstrip Unit 3.<sup>21</sup>  
21

22 The Three-Party VSA generally retained this definition, but importantly added the

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<sup>19</sup> Exh. RJR-16 at 13-14.

<sup>20</sup> Exh. RJR-16 at 14.

<sup>21</sup> Exh. RJR-6 at 64.

1 word “alone” at the end of the definition so the new definition of “Unit 3 Decommissioning  
2 Proposal” in the Three Party VSA reads as follows:

3 *“Unit 3 Decommissioning Proposal”* means a Proposal regarding the  
4 decommissioning, mothballing, closure, retirement, deactivation, shut down,  
5 deconstruction, removal, or demolition of all or a portion of Colstrip Unit 3  
6 **alone.**<sup>22</sup>  
7

8 The addition of the word “alone” may be significant because a proposal to shut down Colstrip  
9 Unit 3 that also includes any other facilities (common facilities, for example) may be a “Mixed  
10 Proposal” and not a “Unit 3 Decommissioning Proposal.” If it is determined that such a  
11 proposal is a “Mixed Proposal” then PSE’s Committee member vote is allocated to  
12 NorthWestern and Talen and, under such circumstances, NorthWestern’s concurrence  
13 ~~may~~would be required to approve a proposal to shut down Colstrip Unit 3.<sup>23</sup>

14 **Q. Is the Operator required to vote in favor of a Unit 3 or Unit 4**  
15 **Decommissioning Proposal and, if so, doesn’t that mean you need Talen or**  
16 **NorthWestern (depending on how the Operator vote is allocated under the Talen/NWE**  
17 **VSA) to vote to approve such a proposal in any event?**

18 A. This is an open issue. As noted above, Section 17(f) of the O&O Agreement  
19 states:

20 Operator shall submit each of the matters listed below to the Committee for  
21 approval, which approval must be by a vote of Operator’s Committee member,  
22 plus at least two other Committee members so that the Committee members  
23 voting for approval represent at least 55% of the total Project Shares[.]<sup>24</sup>  
24

25 This provision of the O&O Agreement can potentially be read at least two different ways.

<sup>22</sup> Exh. RJR-16 at 8 (italics in original, bold emphasis added).

<sup>23</sup> See Exh. RJR-16 at 7, 12.

<sup>24</sup> Exh. RJR-3 at 20.

1 Under one interpretation, the Operator must vote for approval for any proposal to be approved.  
2 PSE appears to assume this interpretation in this proceeding.<sup>25</sup> Alternatively, this provision  
3 could potentially be read to simply require the Operator to vote and, so long as the Operator  
4 and two other Committee members vote, and the 55 percent threshold is reached, the proposal  
5 can be approved without regard to whether the Operator voted for or against such proposal.

6 **Q. Does Avista have a position on whether the Operator is required to vote**  
7 **for approval or simply is required to vote for a proposal to be approved?**

8 A. Avista is not taking a position on this issue at this time. As with the issue of  
9 whether the Committee can vote on a proposal to shut down one or both Colstrip units, this  
10 issue may need to be resolved by the owners through arbitration.

11 **Q. Does this conclude your pre-filed direct testimony?**

12 A. Yes it does.

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<sup>25</sup> See Prefiled Supplemental Direct Testimony (Nonconfidential) of Ronald J. Roberts on Behalf of Puget Sound Energy, Exh. RJR-9T at 43.