April 9, 2021

MEMORANDUM

TO: The Public Service Commission
FROM: Robin Arnold, Bob Decker, Michael Dalton, Gary Duncan, Lucas Hamilton, Zack Rogala, Will Rosquist, and Neil Templeton
SUBJECT: Updated Analysis of SB 379, "Generally Revise Coal-Fired Generation Laws"

PURPOSE

This memo provides an updated summary and analysis of SB 379, which passed the Senate on April 8 after amendments were made to the bill.

SUMMARY AND ANALYSIS

Cuffe amendment

Staff distributed to the Commission an initial analysis of SB 379 on March 19, 2021, three days after the bill was introduced. On April 5, staff distributed a memo that focused on an amended version of the bill as offered by Sen. Mike Cuffe. Sen. Cuffe's amendment focused on New Section 1 of the bill, which describes the terms by which a utility may obtain cost recovery for the acquisition of an equity interest, lease, or power purchase agreement in one or more coal-fired generation units at Colstrip.

By removing the mandate in SB 379 that the Commission ratify any new Colstrip acquisition and restoring the Commission's authority to approve such a transaction, Sen. Cuffe's amendment took a small step toward retaining the Commission's regulatory oversight over asset acquisitions of public utilities. However, because the terms of establishing cost recovery for a utility's acquisition were—and remain—predetermined by New Section 1 of SB 379, staff continues to see significant problems with the bill.

A full analysis of the content and potential implications of New Section 1 in SB 379 may be found in the previous staff memos, but staff's fundamental concerns are twofold:

1) SB 379 removes much of the authority of the Commission—or any other public body—to review and approve the terms of an acquisition that achieves an appropriate balancing of customer and utility interests because the terms of an approval would be prescribed in the statute;
2) SB 379's prescribed cost-recovery terms for additional Colstrip acquisition, although ambiguous, will produce, by any plausible interpretation of the bill contemplated by staff, a guarantee of financial security for the utility and the assignment of risk and cost responsibility to ratepayers.

Staff emphasizes that the ambiguity of SB 379, particularly in New Section 1, prevents a definitive interpretation of the bill's intent and an unequivocal evaluation of its consequences. For example, in its memo of March 19, staff described a scenario of an acquisition by a utility of 185 MW of Colstrip Unit 4 from Puget Sound Energy (a scenario based on NorthWestern's proposal for such a purchase in 2020), which yielded an annual revenue requirement of $38 million in the first year (and associated cost-per-customer impact of approximately $100/year). Now, in light of bill amendments and having evaluated the scenario in more detail, staff estimates the scenario to require an annual revenue requirement of $33 million in the first year (or $86/year/customer). Staff estimates the revenue requirement for the 21-year assumed remaining life of Colstrip 4 (2022-2042) is $486 million (or $1,250/customer).

The ambiguity of New Section 1 (1)(b) and New Section 1 (2) renders alternative interpretations—and impacts on annual revenue requirement—plausible. For that reason, staff has evaluated an alternative interpretation of those two provisions of the bill that yields a revenue requirement of $22 million in the first year ($56/year/customer) and $238 million (or $611/customer) for the 21-year assumed remaining life. Staff finds that an analytical approach of evaluating differing plausible scenarios, while offering less conclusive figures, produces a range of possible impacts and places appropriate emphasis on the bill's ambiguity. The alternative calculations of annual revenue requirement for the described scenario are detailed in Attachment 1 of this memo. The resultant range in first-year revenue requirement is $22 - $33 million/year ($56 - $86/year/customer). The range for the 21-year assumed remaining life is $238 - $486 million ($611 - $1,250/customer).[1]

Staff reiterates its concern that, in any plausible interpretation of SB 379, a just and reasonable balancing of interests between utility and ratepayers is precluded, as utility customers will bear most of the burden of both risk and cost for the described Colstrip acquisition.

In this memo, staff raises an additional concern with New Section 1 of SB 379, as amended by the Senate Energy and Telecommunications Committee, one that escaped our attention in initially reviewing the bill.[2] New Section 1 (1)(b)(ii) may be interpreted to allow a utility to fully recover the decommissioning and remediation costs of an acquired Colstrip share that existed <u>before</u> the acquisition was executed.

Here again, ambiguity of bill text makes comprehension difficult, but staff interprets the provision to mean that the ratepayers of a utility acquiring a Colstrip share from an existing owner could be required to assume responsibility for paying the cleanup costs for the acquired

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[1] The revenue requirement estimates in this analysis do not include the operations, maintenance, or fuel expenses associated with an acquisition, nor do they include post-acquisition capital improvements, which are likely.

[2] See New Section 1(1)(b)(ii) found on page 2, lines 12–15 of SB 379.

share. Applying this interpretation to the NorthWestern/Puget Sound scenario described above, NorthWestern's acquisition could involve the assumption of cleanup costs for Puget's 185 MW share of Colstrip Unit 4. Although staff is not aware of utility-specific cleanup obligations for current Colstrip owners, Puget's cleanup obligation for Colstrip Unit 4 might be approximated as its portion of the cleanup costs estimated for the entire Colstrip facility by the Montana Department of Environmental Quality, i.e., $400-700 million.[3] Using that approach, NorthWestern's ratepayers could feasibly be obligated to assume Puget's allocated cost of approximately $35-$62 million.[4]

Regier amendment

Senator Keith Regier's amendment of SB 379 removes language related to a utility that is "regulated in accordance with this chapter that is already a joint owner of a coal-fired generating unit" and language related to an "additional" equity interest, lease, or power purchase agreement. The amendment also stipulates that until a utility's ownership interest is fully depreciated, only the existing owner may file an application with the Commission for closure of the coal-fired unit.

The intent of the first part of the amendment appears to allow potential acquisition of additional Colstrip ownership to utilities other than NorthWestern. However, the bill itself is still codified under Title 69, Chapter 8, which applies to NorthWestern and co-ops. Co-ops are not regulated by the Commission and therefore would not benefit from the requirements placed on Commission approval of an acquisition. Montana-Dakota Utilities is typically not included under Title 69, Chapter 8 regulations (although, on occasion, the Commission will apply concepts under Title 69, Chapter 8 to MDU through contested case dockets, such as net metering provisions and historic allowance of electricity supply cost tracking adjustments). In any event, because MDU has no existing ownership in Colstrip, it would not benefit from the recovery methodology described in New Section 1 (2) of the bill, which bases the recovery of a utility's new acquisition cost on the book value of the utility's *existing* ownership in Colstrip.

The second part of the Regier amendment prevents any party but the existing owner of an interest acquired through the provisions in New Section 1 of SB 379 from petitioning the Commission to close a coal-fired generating unit until the utility's ownership interest is fully depreciated. This would prevent third parties from filing contested case dockets to close the

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[3] The Montana Department of Environment Quality ("DEQ") has estimated a cost of $400-$700 million just to clean up the Colstrip ash ponds for units 1-4. *See Billings Gazette*, July 31, 2019. Importantly, this figure represents only known environmental liabilities, which both the DEQ and NorthWestern have indicated are not likely to represent the actual costs of remediation.

[4] 185 MW (Puget Unit 4)÷2094 MW (Colstrip total) x $400,000,000 (DEQ minimal est. for Colstrip total) = $35,339,064. Using the upper end of DEQ's estimate, i.e., $700,000,000, yields a Puget allocation of $61,843,361.

unit. Staff also notes that, as currently practiced by the Commission, a utility is responsible for deciding when to retire a generating unit (of any fuel type), and no order is necessary from the Commission unless the utility is seeking to recover stranded costs. The amendment to SB 379, like the introduced version of the bill, still requires continuous operation of units benefiting from the bill's cost recovery provisions until the Commission finds that closure of the unit is in the public interest.

No changes were made to the remainder of the bill, and staff's concerns and recommendation from the previous memoranda still apply to the current version of SB 379.

SB 379 Investment Related Annual Reveue Requirement Analysis - Year 1 & 21 Year Total (2022-2042)
Valuation per NEW SECTION Section 1(2)

	NWE Acquires Puget CU4 Share - 185 MW			NWE Acquires all Remaining CU4 Shares - 518 MW	
	NWE Filed for for the $1 Purchase Price As Net Book NWE Docket 2019.12.101	SB 379 Valuation Including Return + Depreciation	SB 379 Valuation Including Return Only	SB 379 Valuation Including Return + Depreciation	SB 379 Valuation Including Return Only
Plant in Service (MW *$1,343,456)	$1	$248,539,312	$248,539,312	$695,910,073	$695,910,073
Accumulated Depreciation	$0	$0	$0	$0	$0
Net Book	$1	$248,539,312	$248,539,312	$695,910,073	$695,910,073
Annual Pre-Tax Return 8.7%	$0.09	$21,622,920	$21,622,920	$60,544,176	$60,544,176
Annual Depreciation Exp. 21 Year Life	$0.05	$11,835,205	0	$33,138,575	$0
Total Year 1 Investment Revenue Requirement	**$0.13**	**$33,458,125**	**$21,622,920**	**$93,682,751**	**$60,544,176**
Cost per Customer	**$0.0000003**	**$86**	**$56**	**$241**	**$156**

21 Year Total Investment Revenue Requirement	**$1.96**	**$486,391,433**	**$237,852,121**	**$1,361,896,012**	**$665,985,940**
Cost per Customer	**$0.000005**	**$1,250**	**$611**	**$3,501**	**$1,712**

New Estimate of the Net Book of NWE's 30% share of CU4	
CU4 Net Book 12/31/2017	$339,293,876
Depreciation Expense for 2018-2020	$41,046,702
Estimated 12/31/2020 Net Book	$298,247,174
Net Book per MW (222 MW)	**$1,343,456**

CU4 Ownership	Percentage	MW
Puget Sound Energy (PSE)	25%	185
Portland General Electric (PGE)	20%	148
Talen	0%	0
Avista	15%	111
PacifiCorp	10%	74
NorthWestern	30%	222
Total		740