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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION  
3   In re the Matter of                    )   Docket No. UE-010395  
4    )   Volume IV  
5   AVISTA CORPORATION, d/b/a            )   Pages 109 - 124  
6   AVISTA UTILITIES,                    )  
7    )  
8   Request Regarding the Recovery)  
9   of Power Costs Through the            )  
10  Deferral Mechanism,                   )  
11  \_\_\_\_\_)

12                   A hearing in the above matter was held on  
13  September 4, 2001, at 9:30 a.m., at 1300 South Evergreen  
14  Park Drive Southwest, Room 206, Olympia, Washington,  
15  before Administrative Law Judge DENNIS MOSS.

16                   The parties were present as follows:  
17                   THE COMMISSION, by DONALD J. TROTTER and JONATHAN  
18  C. THOMPSON, Assistant Attorneys General, 1400 South  
19  Evergreen Park Drive Southwest, Olympia, Washington  
20  98504-0128.

21                   THE PUBLIC, by SIMON FFITCH, Assistant Attorney  
22  General, 900 Fourth Avenue, Suite 2000, Seattle,  
23  Washington 98164.

24                   INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, by  
25  BRADLEY VAN CLEVE, Attorney at Law, Davison VanCleve,  
26  P.C., 1000 Southwest Broadway, Suite 2460, Portland,  
27  Oregon 97205.

28                   AVISTA, by DAVID MEYER, Attorney at Law, E. 1411  
29  Mission Avenue, Spokane, Washington 99203.

30                   BP ENERGY COMPANY, via bridge line by DONALD  
31  BROOKHYSER, Attorney at Law, Alcanter & Kahl, LLP, 1300  
32  Southwest Fifth Avenue, Suite 1750, Portland, Oregon  
33  97201.

34  
35  Joan E. Kinn, CCR, RPR Court Reporter

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P R O C E E D I N G S

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JUDGE MOSS: Good morning, everyone. We are convened for our final prehearing conference in this phase of the proceeding in Docket Number UE-010395 styled In re the matter of Avista Corporation doing business as Avista Utilities, Request Regarding the Recovery of Power Costs Through the Deferral Mechanism.

Our purpose today is to get organized for the hearing, and I don't think we will be here terribly long, because you all have done a great job of preparing everything in advance. I appreciate that both the Industrial Customers of Northwest Utilities and the Public Counsel's office provided me over the weekend copies of their exhibit list, and I have incorporated those into the preliminary list, and I have distributed this morning the updated list. I have also been handed this morning Staff's list of cross-examination and exhibits, and we will add those in as well.

We will take short form of appearances. I think everyone who is present has previously entered an appearance in the proceeding, and so I will just ask you to give your name and the party you represent. And then I have several matters to discuss with you, a couple of preliminary matters. Then we will discuss the witness order, cross-examination order. We will exchange and

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1 mark our cross-examination exhibits and then conduct any  
2 other business that might facilitate the hearing  
3 process. So with that, let's begin with the company on  
4 appearances.

5 MR. MEYER: Thank you. On behalf of Avista,  
6 David Meyer.

7 MR. VAN CLEVE: Brad Van Cleve on behalf of  
8 the Industrial Customers of Northwest Utilities.

9 MR. FFITCH: Simon ffitch for the office of  
10 Public Counsel, Assistant Attorney General.

11 MR. TROTTER: Donald T. Trotter, Assistant  
12 Attorney General, and Jonathan Thompson, Assistant  
13 Attorney General, for the Commission Staff.

14 JUDGE MOSS: And, Mr. Brookhauser, why don't  
15 you enter your appearance.

16 MR. BROOKHAUSER: Donald Brookhauser on  
17 behalf of BP Energy.

18 JUDGE MOSS: All right, and I will just share  
19 with the parties, Mr. Brookhouser, that you sent me an  
20 E-mail that I received this morning, in fact, it's dated  
21 this morning, that indicates BP Energy does not intend  
22 to participate actively in the hearing phase but wishes  
23 to reserve its right to participate in the post hearing  
24 process, including briefs if ordered.

25 MR. BROOKHAUSEN: That's correct, Your Honor,

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1 and I had E-mailed a copy of that to all the parties.

2 JUDGE MOSS: Okay.

3 MR. BROOKHAUSEN: They probably have not had  
4 a chance yet.

5 JUDGE MOSS: Sure, I think it's effective  
6 enough to share that with the parties this morning, and  
7 I will say it is my practice to require parties who do  
8 wish to participate in hearings to appear in person. In  
9 light of the fact that BP Energy does not intend to  
10 participate actively in the hearing, we will have the  
11 conference bridge available, and you can simply monitor  
12 the proceeding without being present, if that is your  
13 preference.

14 MR. BROOKHAUSER: Thank you.

15 JUDGE MOSS: All right.

16 In terms of preliminary matters, I have two.  
17 One is that we are running up against the stated  
18 effective date of September 15th. While it is  
19 conceivable that we will finish this hearing process and  
20 enter an order prior to that date, I would say it is  
21 more likely than not that that will slip a few days  
22 given our tentative schedule for briefs on the 12th.  
23 That might press things a bit much. As a precautionary  
24 matter therefore, I have alerted the commissioners to  
25 the possibility of entering a suspension order that

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1 would cover us for whatever period of days is required  
2 beyond the 15th to get that order entered. So there is  
3 nothing of particular significance about the suspension  
4 order other than the fact that it is a necessary legal  
5 step in order to preserve the status quo pending the  
6 Commission's entry of an order in this phase of the  
7 proceeding. I have prepared the order. It has not been  
8 signed or entered, but I wanted to give the parties a  
9 heads up in case anybody had any questions or comments.  
10 I wouldn't want to take anybody by surprise. Okay, so  
11 that point is understood.

12 All right, the next matter I have is that the  
13 Commission has recently hired on a part-time basis, I'm  
14 not sure what the official status is, part-time,  
15 temporary, or whatnot, but anyway Bob Damron, who is a  
16 former Commission employee, he's an accounting expert,  
17 and the Commission has employed him in the capacity of  
18 accounting advisor to the judges. It's a role that has  
19 long gone unfilled and that we have gobbled around for  
20 some years, so we're very pleased to have Mr. Damron  
21 join us in that capacity. We may or may not wish to use  
22 Mr. Damron's services in connection with this phase of  
23 the proceeding. It really depends on whether there are  
24 accounting issues that are of such level of  
25 sophistication that they require that sort of expertise

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1 that we on the Bench perhaps do not possess.

2           The reason I raise this this morning is that  
3 early on, I believe it was at the time Avista filed its  
4 petition in this phase of the proceeding, Mr. Damron was  
5 asked by the office of Public Counsel to review the  
6 filing, and he did so. There was, my impression,  
7 Mr. ffitch, you can correct me on this if I'm wrong, but  
8 my impression is that this was preliminary review at a  
9 time when Public Counsel was deciding what it was going  
10 to do with the case. My understanding is that  
11 Mr. Damron did review the filing and have some perhaps  
12 telephone contact with your office, and that was the  
13 extent of the engagement. There was, in fact, no  
14 engagement?

15           MR. FFITCH: There was no engagement. We  
16 sent Mr. Damron information about the filing, as we  
17 often do when we're talking with consultants trying to  
18 decide which consultants to proceed with in a given  
19 case. And he did provide us with a written statement or  
20 short reaction piece sort of consistent with a  
21 preliminary discussion of how, you know, issues in the  
22 case basically and how he might, you know, work as a  
23 consultant for us. We did not retain Mr. Damron.

24           JUDGE MOSS: All right. I wanted to raise  
25 this and ask if anyone in light of this prior contact

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1 regarding this case, if there would be any objection to  
2 Mr. Damron advising the Bench. And if there is, then we  
3 won't use him. And if there is not, then we will retain  
4 that option to ourselves in case we need some input on  
5 an accounting issue of such level of sophistication that  
6 we do not feel comfortable without that kind of advice.

7 Mr. Meyer, principally in your court here.

8 MR. MEYER: It is, and that puts us in a  
9 little bit of a difficult position, not having seen the  
10 extent to which Mr. Damron has expressed views,  
11 preliminary though they may be, on certain issues. On  
12 the one hand, you know, we applaud the notion of having  
13 whatever advice you need or the Commission needs.  
14 That's not at issue. I think that's a fine idea. We do  
15 have some concerns though even on an appearance basis  
16 that if an individual has been retained and has, in  
17 fact, expressed, albeit preliminary but views  
18 nonetheless, I just think it creates a real appearance  
19 problem.

20 JUDGE MOSS: Well, that's my concern as well,  
21 and I would not want to leave that appearance problem in  
22 place. I want to be clear, and I think Mr. ffitich  
23 confirmed this, Mr. Damron was not retained. It was  
24 just a preliminary.

25 MR. MEYER: I understand.

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1                   JUDGE MOSS: But if the company is  
2 uncomfortable with that on an appearance of fairness  
3 basis, then we will simply erect that Chinese Wall as  
4 they sometimes call it and work in that fashion. I will  
5 share with you as well in the interest of a full  
6 discussion, I don't have a clue what interaction there  
7 was between them. Mr. Damron and I have not discussed  
8 that at all, and I'm the only one in the case that's had  
9 any contact with him about this possibility, so we have  
10 had no substantive exchange.

11                   MR. MEYER: Okay. No, I appreciate that, and  
12 I surely hope you and the Commission understands that  
13 we're not trying to get in the way of good accounting  
14 advice being shared, you know.

15                   JUDGE MOSS: Well, let's just carry this  
16 question through the morning, and perhaps you will have  
17 an opportunity to consult with your client, and we will  
18 make a final decision at the end of the morning. Is  
19 that all right?

20                   MR. MEYER: That sounds fine.

21                   JUDGE MOSS: Okay.

22                   That brings us to on my agenda, at least, a  
23 discussion of the witness order. And I did receive one  
24 E-mail from Industrial Customers indicating, or perhaps  
25 it was from Public Counsel, I don't recall, but anyway



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1 Mr. Thornton apparently has some availability issues.  
2 Only available tomorrow?

3 MR. VAN CLEVE: That's correct, Your Honor.

4 JUDGE MOSS: So we're going to need to  
5 accommodate that. Any there any other witness  
6 constraints that we need to accommodate?

7 Okay, then we're more or less free to do it  
8 as we choose. Typically we would hear from the company  
9 witnesses first. I guess we have seven total.

10 Let's be off the record.

11 (Discussion off the record.)

12 JUDGE MOSS: We have had half an hour or so  
13 off the record to take care of the business of  
14 distributing exhibits and pre-marking them. We have  
15 prepared with the parties both preliminarily to today  
16 and this morning an exhibit list. I will call it still  
17 a preliminary exhibit list since, of course, it won't  
18 become final until the end of our evidentiary hearings.  
19 But it was by and large fairly complete as of this  
20 morning, and we have now added to it the  
21 cross-examination exhibits and gone over with the  
22 parties the pre-marked numbers that those exhibits will  
23 be assigned. And I'm not going to read those into the  
24 record. I will maintain the exhibit list, and at the  
25 end, the exhibit list will reflect the appropriate

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1 number and the admission or not of the various exhibits.  
2 Mr. ffitch has committed to bringing us sets  
3 of exhibits this afternoon, hopefully by 1:00, and that  
4 will complete the exchange of exhibits, with the one  
5 additional point that Mr. Trotter has indicated that one  
6 of his exhibits is lacking some pages, and he will  
7 furnish those.

8 We have to take up, I think we should go  
9 ahead and take up the matter of errata to the company's  
10 testimony. Mr. Meyer has indicated a couple of points  
11 in the testimonies that need some editorial changes or  
12 perhaps substantive changes. Mr. Meyer has distributed  
13 an errata sheet with respect to witness Brian  
14 Hirschhorn's testimony, and I think everybody can follow  
15 that and simply make substitutions in their own sets,  
16 and we will not have to go through this again on the  
17 stand. And with respect to other witnesses, Mr. Meyer,  
18 you said you had a couple of changes you could indicate  
19 for us now, and we could make those in our sets.

20 MR. MEYER: Yes. Mr. Ely direct, page 10.

21 JUDGE MOSS: Give us all a minute to catch  
22 up.

23 Page 10 you say?

24 MR. MEYER: Yes, please.

25 JUDGE MOSS: All right, I am with you.

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1 MR. MEYER: Okay, I think everyone is there,  
2 at line 10, the figure of 22% should read 25.7%.  
3 JUDGE MOSS: All right. Next one.  
4 MR. MEYER: Norwood direct.  
5 JUDGE MOSS: Page?  
6 MR. MEYER: Page 24, line 10. Okay, the  
7 figure of 13.6 million should read 10.4 million.  
8 JUDGE MOSS: All right.  
9 MR. MEYER: Next is Peterson direct at page  
10 8, line 11, the parenthetical at the end of that line  
11 triple B, there should be a minus added at the end of  
12 the reference to triple B, so it's triple B minus with a  
13 negative outlook for its senior unsecured debt.  
14 Then we will make a corresponding change to  
15 his exhibit, okay, where it says RRP-1, let's see what  
16 that's been marked as, it's page 4 of RRP-1, which was  
17 marked 201. Let me know when you're all there.  
18 JUDGE MOSS: I am there.  
19 MR. MEYER: Okay, and it's a table of credit  
20 ratings. If you look to line 1, last two columns under  
21 Standard & Poor's, the column E which is secured,  
22 instead of a triple B plus, that should be a triple B.  
23 Strike the word or the sign plus, so it's triple B  
24 negative.  
25 JUDGE MOSS: I'm trying to catch up with you

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1 here. Oh, here we are, it's the fourth page.  
2 MR. MEYER: Fourth page, yes.  
3 JUDGE MOSS: Okay.  
4 MR. MEYER: And that's column E, it used to  
5 be triple B plus, it should now be triple B. And column  
6 F --  
7 JUDGE MOSS: And that's throughout the  
8 column?  
9 MR. MEYER: No. Column F, line 1 should be  
10 triple B minus instead of triple B.  
11 JUDGE MOSS: Okay, I apologize for not  
12 following you here.  
13 MR. MEYER: Okay.  
14 JUDGE MOSS: But in column E.  
15 MR. MEYER: Yes.  
16 JUDGE MOSS: The line 1, eliminate the plus?  
17 MR. MEYER: That is correct.  
18 JUDGE MOSS: But leave the plus at lines 3  
19 and 4?  
20 MR. MEYER: Yes.  
21 JUDGE MOSS: And then similarly on F, the  
22 negative sign line 1, but no negative sign at lines 3 or  
23 4?  
24 MR. MEYER: Correct.  
25 JUDGE MOSS: Okay.

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1                   MR. MEYER: So those are the changes, the  
2 edits if you will, that we have to our direct and  
3 rebuttal.

4                   MR. FFITCH: I'm sorry, Mr. Meyer, line 1,  
5 column F, triple B minus, has that changed?

6                   MR. MEYER: Yes.

7                   JUDGE MOSS: And that completes all your  
8 errata?

9                   MR. MEYER: It does.

10                  JUDGE MOSS: Anybody else have errata to the  
11 witnesses' testimony?

12                  And if something comes up, if you find a typo  
13 or something, we can take care of it on the stand as we  
14 often do.

15                  All right, am I missing anything? Do we have  
16 any other business to conduct this morning?

17                  Mr. Trotter.

18                  MR. TROTTER: I have a question. The  
19 Commission has tentatively set a briefing schedule for  
20 briefs to be filed on the 12th as a tentative date, and  
21 I just wanted to know if that's been firmed up or not.

22                  JUDGE MOSS: Well, I marked that date as  
23 tentative, because what we discussed at the prehearing  
24 conference was whether we would have briefs or not. At  
25 that time, Mr. ffitch indicated that it would be his

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1 strong preference to have that, and I said at the time  
2 that we would defer a final decision on that until the  
3 hearing. And typically I like to reserve those  
4 decisions until the end. But to the extent people are  
5 still feeling strongly that they want to have briefs,  
6 that would be the date.

7 And, Mr. Ffitch, has anything changed?

8 MR. FFITCH: On the contrary, Your Honor, I  
9 feel even more strongly now.

10 JUDGE MOSS: If that is possible, Mr. ffitch.  
11 All right, fine. Yeah, I think we can probably count on  
12 that.

13 MR. TROTTER: Okay.

14 JUDGE MOSS: Anything else?

15 MR. FFITCH: Just one other item Your Honor,  
16 Mr. Lazar has been retained to assist Public Counsel for  
17 the hearing phase, and we have a signed expert agreement  
18 from the protective order which we will be filing and  
19 distributing copies of for folks.

20 JUDGE MOSS: Okay.

21 And I suppose we should close the business I  
22 raised earlier, the question of Mr. Damron's  
23 availability to consult with the Bench. Have you had an  
24 opportunity to speak with your client about that; is  
25 your position the same?

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1                   MR. MEYER: We're still discussing it, and I  
2 might want to visit a bit more with Simon on that issue.  
3                   JUDGE MOSS: Okay. Could we do that now, or  
4 should we give you more time than that and come back to  
5 this?  
6                   MR. MEYER: Well, could we come back to this  
7 in the morning tomorrow?  
8                   JUDGE MOSS: We could.  
9                   MR. MEYER: Or do you need to have an answer  
10 today?  
11                   JUDGE MOSS: I do not.  
12                   MR. MEYER: Okay, may we do that?  
13                   JUDGE MOSS: Yes, we may.  
14                   MR. MEYER: Okay.  
15                   JUDGE MOSS: Any other business that we can  
16 conduct today that will expedite our proceedings over  
17 the next couple of days?  
18                   All right, seeing no indication that there  
19 is, or Mr. ffitch, you're leaning forward?  
20                   MR. FFITCH: Just checking my notes, but I  
21 have nothing, Your Honor.  
22                   JUDGE MOSS: Okay, good.  
23                   All right, well, thank you all very much,  
24 appreciate your assistance in getting things in good  
25 order, and we will see you tomorrow at -- what time did

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1 we say we would start?

2 MR. TROTTER: 9:00.

3 JUDGE MOSS: Mr. Trotter is so certain with  
4 himself, I'm not even going to check my notes. 9:00,  
5 see you there.

6 (Hearing adjourned at 10:35 a.m.)

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