

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a AVISTA  
UTILITIES,

Respondent.

DOCKETS UE-190334 and  
UG-190335 (*Consolidated*)

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a AVISTA  
UTILITIES,

Respondent.

DOCKET UE-190222

COMMISSION STAFF AND  
ALLIANCE OF WESTERN  
ENERGY CONSUMER'S JOINT  
RESPONSE IN OPPOSITION TO  
AVISTA'S MOTION TO  
CONSOLIDATE

**I. INTRODUCTION**

*I* Staff of the Washington Utilities and Transportation Commission (“Staff”) and the Alliance of Western Energy Consumers (“AWEC”) (jointly referred to as the “Parties” or “Joint Parties”) file this joint response in opposition to Avista Corporation’s d/b/a Avista Utilities’ (“Avista” or the “Company”) Motion for Consolidation of Proceedings Pursuant to WAC 480-07-320, filed in Docket UE-190222, dated May 2, 2018 (“Motion”). The Public Counsel Unit of the Attorney General’s Office writes separately but supports the Parties’ position. The Parties oppose consolidating Docket UE-190222 with Dockets UE-190334 and

UG-190335 (Avista’s pending GRC) and respectfully request that the Commission deny the Motion.

## **II. PROCEDURAL HISTORY**

2           On March 29, 2019, Avista submitted its annual Energy Recovery Mechanism (“ERM”) filing in Docket UE-190222 (“2019 ERM”). The 2019 ERM filing was made pursuant to the Settlement Stipulation in Docket UE-011595, which requires Avista to make annual filings on or before April 1 of each year in order to provide an opportunity for the Commission and other interested parties to review the prudence of and audit the ERM deferral entries for the prior calendar year.

3           The 2019 ERM filing also sought a tariff adjustment to rebate back to ratepayers approximately \$34.4 million, in accordance with the Multiparty Settlement Stipulation in Docket UE-120436. This Stipulation stated that if the cumulative, year-end deferral balance in the ERM exceeds plus or minus \$30 million, the Company will file a tariff change to either implement a surcharge or rebate the balance back to ratepayers. In its 2019 ERM filing, Avista requested that the \$34.4 million rebate to customers be made over a three-year amortization period beginning on July 1, 2019.<sup>1</sup>

4           On April 30, 2019, Avista filed a general rate case (“GRC”) with the Commission in Dockets UE-190334 and UG-190335. As part of its electric rate request, Avista sought to increase base revenues by \$45.8 million, effective April 1, 2020, with an additional increase of \$18.9 million, effective April 1, 2021.

5           On May 2, 2019, Avista filed the instant Motion, seeking to consolidate its recently-filed GRC with its 2019 ERM filing. Through consolidation, Avista seeks to offset the

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<sup>1</sup> The Settlement Stipulation in Docket UE-011595 states that the “rate adjustment shall be in effect for a twelve-month period.”

proposed electric rate increase of \$45.8 million in its GRC with the \$34.4 million ERM rebate owed to ratepayers. The Joint Parties oppose Avista’s Motion.

6           On May 8, 2019, the Commission issued a notice extending the deadline for responses to Avista’s motion to consolidate to May 15, 2019.

### III. DISCUSSION

7           The Commission, “in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related.” WAC 480-07-320. “In determining whether to exercise such discretion, the Commission considers not just the extent to which the factual and legal issues are related but whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.”<sup>2</sup>

8           The Joint Parties request that the Commission exercise its discretion to deny the Motion because: (A) The 2019 ERM Filing and GRC are unrelated and independent Commission processes; (B) Granting the Motion would create burdensome procedural consequences that have no corresponding benefit; and (C) Denying the Motion would allow the Parties more procedural options with regard to the prudency determination of an outage that took place at Colstrip Units 3 and 4 in the summer of 2018 (“2018 Colstrip Outage”).

**A. The Motion should be denied because the 2019 ERM Filing and GRC are unrelated and independent Commission processes**

9           In Docket UE-011595, the Commission issued its Fifth Supplemental Order, which approved and adopted the Settlement Stipulation in that docket. The Settlement Stipulation created the ERM, which allows for positive or negative adjustments to Avista’s rates to account for fluctuations in power costs outside of an authorized band for power-cost

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<sup>2</sup> Docket UE-111048, Order 04 ¶ 8.

recovery in base rates. The ERM has its own reporting procedures for the accrual of monthly deferrals and its own Commission procedure for annual review of those deferrals that is independent from a GRC. Moreover, the scope of the ERM is primarily to review Avista's power costs that have already been incurred, whereas the objective of a GRC is to establish just and reasonable rates overall for Avista going forward. The fact that the Commission established a process for review and approval of annual ERM deferrals that is separate and independent from GRCs argues that the facts and principles of law for the two processes are, by their very nature, unrelated, weighing heavily against consolidation pursuant to WAC 480-07-320.

10           The Commission has taken note of how cost recovery mechanisms and rate cases are unrelated and independent in the past. For instance, in Docket UG-110723, the Commission denied a motion to consolidate PSE's Pipeline Integrity Program ("PIP")<sup>3</sup> with PSE's rate case. In rejecting the motion to consolidate the Commission stated in Order 04: "While consolidated review could be beneficial, *the PIP and each other tracker mechanism must stand or fall on its own merits, both factual and legal.*"<sup>4</sup>

11           Consolidating the 2019 ERM filing and the GRC could undermine the separate nature of these proceedings. It also could create an expectation that other mechanisms be consolidated into rate cases, and not be treated separately as intended. Consolidation also risks "unduly delay[ing] the resolution of more or all of the proceedings."<sup>5</sup> The GRC can last for up to an 11-month period from the date it was filed. The ERM filing does not

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<sup>3</sup> In Docket UE-11048, Order 04 ¶ 2, the Commission stated: "The PIP is a new cost recovery method intended to enhance pipeline safety by proving for the expedited recovery the Company's investment in new plant to implement certain reliability, integrity, and safety programs related to PSE's natural gas delivery system."

<sup>4</sup> (Emphasis added). In Order 04, the Commission explicitly rejected the argument that the PIP and rate case should be consolidated due to the factual and legal similarities between the two proceedings.

<sup>5</sup> Docket UE-111048, Order 04 ¶ 8.

necessarily need an 11-month review process, and consolidation assures that ratepayers have to wait more than 15 months before receiving monies the Company over-collected over the past several years. The Commission should deny the Motion in light of these concerns and the applicable legal standard in WAC 480-07-320.

**B. Granting the Motion would Create Burdensome Procedural Consequences that have no Corresponding Benefit**

12 Avista argues that consolidation should be granted so the ERM deferral balance can be used to offset proposed electric rate increases.<sup>6</sup> In support of this argument, Avista cites two prior dockets (UE-120436 and UE-140188) in which the Commission approved settlements that returned ERM deferral balances to ratepayers to offset electric rate increases.<sup>7</sup> Neither UE-120436 nor UE-140188 was consolidated with ERM filings and are thus distinguishable.<sup>8</sup> Despite not being consolidated, the Commission approved the settlements in both these dockets. Thus, Avista's assertion that the ERM docket need be consolidated with the GRC in order to use ERM rebate dollars to offset a proposed rate increase is demonstrably false; the consolidation of the GRC and 2019 ERM filing is not a condition precedent for the Commission to approve a settlement that uses ERM balances to

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<sup>6</sup> Specifically, Avista states in the Motion that the ERM rebate balance of \$34.4 million can be used "to mitigate the first year impacts on April 1, 2020 of a proposed electric increase of \$45.8 million."

<sup>7</sup> UE-120436, Order 09, ¶ 97 (Commission approving a settlement where \$4.4 million would be returned to ratepayers from the ERM deferral balance to offset a \$13.650 million increase to 2013 electric rates. The Settlement also authorized \$9 million to be returned to ratepayers from the ERM deferral balance to offset a \$14.038 million increase to electric rates); UE-140188, Order 05, ¶ 17 (Commission approving Settlement that stated "the Parties agree that a credit of \$3 million from the existing [ ] ERM deferral balance will be returned to electric customers to help mitigate the 2015 rate increase for calendar year 2015.").

<sup>8</sup> UE-120436 and UE-140188 did not involve situations where the deferral balance exceeded the \$30 million trigger. As stated above, in the Stipulation in Docket UE-120436, Avista agreed to pay a rebate to ratepayers (over a period of 12 months) once the deferral balance reached \$30 million. Therefore, even in the absence of a similar settlement, electric rates can be offset by the \$34.4 million being returned to ratepayers (via rebate) over a 12-month period pursuant to Docket UE-120436.

offset electric rate increases. Denying the Motion would not preclude such a settlement in either UE-190222 or UE-190334.

13 Further, consolidation expands the scope of issues considered within a general rate case, yet with no increase in the GRC timeline. This would tax the resources parties are able to devote to the case and, as a result, threatens to diminish the quality of analysis and recommendations parties can provide to the record. Consolidating would also limit the discovery options available to the Commission and the Joint Parties and could potentially prejudice the investigation. Under the ERM, the “90-day review period [to review Company deferral information] may be extended by agreement of the parties participating in the review, or by Commission order.”<sup>9</sup> Consolidating the proceedings at this juncture would preclude the Commission from extending the 90-day ERM review period to a review period other than that required for the general rate case. Conversely, denying consolidation will allow the Joint Parties to focus squarely on ERM prudency issues in a separate docket having its own defined procedural schedule, greater flexibility in determining the course of discovery, and would avoid adding unnecessary complexity to the GRC.

14 In Docket UE-170484, Order 01, the Commission acknowledged the procedural consequences of consolidation when it rejected Avista’s Power Cost Rate Adjustment (PCRA) filing, as opposed to consolidating it with the GRC:

[C]onsolidating the PCRA filing with the GRC is not an appropriate outcome because it would create burdensome procedural consequences with no corresponding benefit. The effect of rejecting rather than consolidating the filings is simply that the parties and the Administrative Law Judge will *avoid the unnecessary process and expense of resources that consolidation would require in an already tight timeline for the GRC*, including the need to address two separate effective dates in a single proceeding. (Emphasis added.)

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<sup>9</sup> Docket UE-111595, Settlement Stipulation.

15           As stated above and *infra* in Part (C) of this pleading, consolidating the 2019 ERM filing with the GRC would create burdensome procedural consequences in both dockets. Furthermore, as previously stated above, there is no benefit to consolidating the dockets because consolidation is not a condition precedent to using ERM deferral balances to offset rate increases. Avista cited no other basis for consolidation in its Motion. The Commission should deny the Motion to prevent burdensome procedural consequences with no corresponding benefit.

**C. Denying the Motion would Allow the Joint Parties more Procedural Options with Regard to the Prudency Determination of the Costs Associated with 2018 Colstrip Outage as it Affects each of the Regulated Investor-Owned Utilities**

16           On April 30, 2019, PSE filed its Power Cost Adjustment (“PCA”), Docket UE-190324. Similar to the 2019 ERM filing here, PSE provided testimony regarding the 2018 Colstrip Outage. The Joint Parties have already issued several data requests on the 2019 ERM filing to determine if the 2018 Colstrip Outage was caused by imprudent action and will be propounding similar discovery in PSE’s PCA proceeding. Staff also anticipates directing similar data requests to Pacific Power and Light Company when it files its Power Cost Adjustment Mechanism (“PCAM”) on or before June 1, 2019.<sup>10</sup>

17           At this point, Staff has not yet completed its review of the prudence of costs associated with the 2018 Colstrip Outage, and is unable to state with certainty the amount of time necessary to perform a thorough review. If the Commission were to find that an adjudication is necessary to determine the prudence of the costs associated with the outage, it could consider the option of consolidating Dockets UE-190222, UE-190324, and the

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<sup>10</sup> See UE-140762, Order 9 (Commission approving the implementation of the PCAM, which requires Pacific Power and Light Company to make annual filing “on or before June 1 of each year for the Commission to confirm and approve the deferred PCAM balances for the previous year.”).

forthcoming PCAM annual filings into one proceeding as each addresses the same event: the 2018 Colstrip Outage. The Joint Parties do not recommend consolidation of these dockets at this time, but granting Avista's Motion effectively would eliminate this procedural option. The Commission should deny Avista's Motion and afford itself greater procedural options in this context.

#### IV. CONCLUSION


18 For the above reasons, the Commission should deny Avista's Motion to Consolidate its GRC with the 2019 ERM.


DATED this 15<sup>th</sup> day of May, 2019

WASHINGTON UTILITIES AND  
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