

**Docket Nos. UE-190334 and UG-190335 (Consolidated) -
Vol. I**

WUTC v. Avista Corporation d/b/a Avista Utilities

May 24, 2019



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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)
Complainant,)
v.) DOCKETS UE-190334 and UG-190335) (Consolidated)
AVISTA CORPORATION, d/b/a)
AVISTA UTILITIES,)
Respondent.)

PREHEARING CONFERENCE, VOLUME I
Pages 1 through 46

2:29 p.m.
May 24, 2019
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Olympia, Washington

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* * * * *

<p style="text-align: right;">Page 5</p> <p>1 OLYMPIA, WASHINGTON; MAY 24, 2019 2 2:29 p.m. 3 -o0o- 4 5 JUDGE O'CONNELL: Okay. Let's be on the 6 record. 7 Good afternoon. The time is approximately 8 2:30 p.m. My name is Andrew O'Connell. I am an 9 administrative law judge with the Washington Utilities 10 and Transportation Commission, and I will be presiding 11 in this matter, along with the commissioners. 12 We're here today for a prehearing conference 13 in consolidated dockets UE-190334 and UG-190335, which 14 is Avista's 2019 general rate case. 15 Avista has filed a motion to consolidate 16 docket UE-190222 concerning Avista's energy recovery 17 mechanism. The Commission has reviewed the motion as 18 well as responses to the motion to consolidate and has 19 decided to consolidate that docket with the GRC dockets. 20 I will issue an order memorializing this decision and 21 outline the procedure going forward in these dockets. 22 So I intend to take appearances next, but 23 before I do, I want to foreshadow some questions I have 24 for Mr. Meyer, and I expect that they are unexpected. 25 So I wanted to ask them now so that you can prepare and</p>	<p style="text-align: right;">Page 7</p> <p>1 JUDGE O'CONNELL: And Public Counsel. 2 MS. SUETAKE: Nina Suetake for Public 3 Counsel. And on the line we also have Lisa Gafken for 4 Public Counsel for the ERM. 5 JUDGE O'CONNELL: Okay. Thank you. 6 And for the Alliance of Western Energy 7 Consumers. 8 MR. PEPPE: Good afternoon, your Honor. 9 Tyler Pepple for the Alliance of Western Energy 10 Consumers. 11 JUDGE O'CONNELL: For the Energy Project. 12 MR. FFITCH: Good afternoon, your Honor. 13 Simon ffitich for the Energy Project. 14 JUDGE O'CONNELL: For Sierra Club. 15 MS. LOARIE: This is Jessica Yarnall Loarie 16 for the Sierra Club. 17 JUDGE O'CONNELL: And for the Northwest 18 Energy Coalition. 19 MR. SANGER: Irion Sanger and Marie Barlow. 20 JUDGE O'CONNELL: And for Northwest Citizens 21 Power Coalition. 22 MR. BELL: Should I come up? 23 JUDGE O'CONNELL: Yeah, if you would, 24 please. Come sit in front of a microphone. I think we 25 have one available.</p>
<p style="text-align: right;">Page 6</p> <p>1 kind of think about those questions. 2 The first is: Given that we are going to be 3 consolidating the ERM filing with the GRC, I'd like to 4 hear what proposal you would have for sharing any of the 5 data requests and responses that have already been 6 issued in the ERM docket, and how those would be 7 numbered and identified, and how we would clearly 8 designate them. And then additionally, how Avista would 9 propose we reconcile some duplicative identifications 10 and markings on testimony and exhibits that are, at 11 least currently appear in both cases. 12 And for example, I am thinking of an exhibit 13 that Mr. Ehrbar has sponsored in both dockets that is 14 marked as Exhibit PDE-2. And there may be others. 15 Okay. Let's move forward with appearances. 16 And let's begin with the company. 17 MR. MEYER: Thank you, your Honor. David 18 Meyer for Avista. 19 JUDGE O'CONNELL: And short appearances are 20 sufficient. We have, I believe, all of the information 21 on -- in the docket for all of the representatives. 22 And from staff. 23 MS. CAMERON-RULKOWSKI: Jennifer 24 Cameron-Rulkowski, Assistant Attorney General appearing 25 on behalf of Commission staff.</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. BELL: Thank you, your Honor. 2 MR. FFITCH: Your Honor, I'm not sure that 3 one's working. That's why I moved, so here. 4 MR. BELL: We'll just share then. 5 My name is Michael R. Bell, and I'm the 6 treasurer for the Northwest Citizens Power Coalition. 7 JUDGE O'CONNELL: Is there anyone else in 8 the room or on the bridge line who wishes to make an 9 appearance? Okay. Hearing nothing, let's move on. 10 Brings us to petitions for intervention. 11 Are there any petitions for intervention other than the 12 ones that have been filed in writing? Hearing none, 13 let's proceed. 14 I've read the petitions to intervene: One 15 on behalf of the Alliance of Western Energy Consumers; 16 one on behalf of the Sierra Club; one on behalf of the 17 Energy Project; one on behalf of the Northwest Energy 18 Coalition; and one on behalf of Northwest Citizens Power 19 Coalition. I'm unaware of any written objections to 20 these petitions. Are there any objections? 21 MR. MEYER: There may be, your Honor. Only 22 with respect to the Citizen Coalition. And I would like 23 to first better understand the type of issues that they 24 would be raising, sort of things they would be looking 25 at. So this would be in aid of an objection. So if you</p>

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1 might inquire as to those things of this representative.
2 JUDGE O'CONNELL: Sure.
3 Before I do that, are there any objections
4 to any of the other intervenors who have petitioned for
5 intervention?
6 MS. CAMERON-RULKOWSKI: Your Honor, staff
7 also has a question for the Northwest Citizens Power
8 Coalition.
9 JUDGE O'CONNELL: Yes.
10 MS. CAMERON-RULKOWSKI: We don't have
11 objections to the other intervenors. May I state that
12 question at this time?
13 JUDGE O'CONNELL: Please just hold on one
14 moment.
15 But as to all of the other intervenors, my
16 understanding, from going around the room and hearing to
17 the bridge line, is that there are no other objections
18 or questions about petitions to intervene?
19 MR. MEYER: Yes, from Avista.
20 JUDGE O'CONNELL: So to those petitions to
21 intervene, the ones for AWEC, Sierra Club, the Energy
22 Project, and Northwest Energy Coalition, those will be
23 granted.
24 Let's -- let's move on to the Northwest
25 Citizens Power Coalition. Mr. Bell, can you please

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1 state the interest of the Northwest Power -- Citizens
2 Power Coalition in this case.
3 MR. BELL: Well, the Northwest Citizens
4 Power Coalition was created by a group of concerned
5 representatives back at the time Avista was wanting to
6 transfer ownership to Hydro One. And that got our
7 attention.
8 The intervenors at the time were supposed to
9 represent, safeguard the Avista customers and the broad
10 public interest, and had approved that deal. And our
11 group was opposed to that deal. It was obviously not in
12 the best interests of the rate payers.
13 And we appreciate the WUTC staff and
14 commissioners to not approve that, and they stated why
15 that it was not in the best interest of the rate payers,
16 and at that point we decided that we need proper
17 representation before these proceedings as an
18 intervenor. And we just felt like the existing
19 intervenors had not properly safeguarded the Avista
20 customers or the broad public interest in that
21 proceeding, and so we've since taken on our -- that
22 responsibility I guess.
23 JUDGE O'CONNELL: And but you're aware that
24 that acquisition is not at issue --
25 MR. BELL: That's correct.

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1 JUDGE O'CONNELL: -- in this case.
2 MR. BELL: That's correct. But that doesn't
3 take away from the fact that someone needs to be acting
4 in the best interest of the rate payers, the Avista rate
5 payers and the common public interest, besides the WUTC
6 staff and commissioners.
7 JUDGE O'CONNELL: Okay.
8 Ms. Cameron, yes, Ms. Suetake, I actually
9 would like to hear from Public Counsel, but --
10 MS. SUETAKE: Sorry, I'm just told the
11 bridge line can't hear that mic very well.
12 MR. BELL: Let me -- does that work?
13 MS. SUETAKE: I don't think it's on.
14 JUDGE O'CONNELL: There is a red light that
15 should illuminate on.
16 MR. MEYER: Mine works, has been working.
17 MR. BELL: Okay. This one's not working and
18 this one's not either apparently. Okay.
19 JUDGE O'CONNELL: Has everyone here been
20 informed that we're moving to a new building soon? I'm
21 told that we will not have the same sort of technical
22 difficulties.
23 Mr. Bell, if you could, briefly, for those
24 who are on the bridge line, and I apologize for asking
25 you to resay it again, explain, briefly, your interest

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1 in this proceeding.
2 MR. BELL: Thank you, your Honor.
3 My name's Michael Bell. I'm the treasurer
4 for Northwest Citizens Power Coalition. Our
5 organization was started at the time that Avista was in
6 the process of transferring ownership to Hydro One, and
7 we felt that that was not in the best interests of the
8 rate payers. And the existing intervenors at the time
9 approved that deal, which was a little disheartening on
10 our parts since we felt it was not in the best interests
11 of the rate payers and that they were not complying with
12 their primary responsibility of safeguarding the rate
13 payers.
14 As a result, we formed and decided that, on
15 any new actions involving rates and Avista and anything
16 along those lines, we would step in and request
17 intervenor status so that we could protect the interests
18 of the Avista rate payers.
19 And we appreciate the WUTC staff and
20 commissioners who denied that request to merge with
21 Hydro One, and we believe that they were the only ones
22 standing in in a position to safeguard the Avista
23 customers. And so with that, we're requesting
24 intervenor status.
25 JUDGE O'CONNELL: Is there a particular

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1 subset of rate payers that you are representing? Or it
2 sounds like you may be offering to represent all the
3 Avista rate payers.
4 MR. BELL: Right now our -- all of our
5 members are Washington Avista customers. And so we're
6 representing those, and we have new members all the
7 time.
8 JUDGE O'CONNELL: And are these residential
9 customers?
10 MR. BELL: They are. They are. And I
11 appreciate you clarifying that, sir.
12 JUDGE O'CONNELL: Okay.
13 Ms. Cameron-Rulkowski, you mentioned that
14 you had a question.
15 MS. CAMERON-RULKOWSKI: I do. Thank you,
16 your Honor.
17 Mr. Bell, I had actually a couple of
18 questions. The one I was concerned about is that this
19 case is a general rate case, and it is quite different
20 from the Hydro One merger proceeding. And we -- you do
21 have an advocate in the form of Public Counsel who is a
22 statutory party, not an intervenor.
23 And so what I was wondering is if you could
24 explain why you think Public Counsel would not be able
25 to represent the interests of the rate payers in a

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1 general rate case, which -- which is a pretty technical
2 case. And so that was my one question.
3 And then the also -- also something that I
4 didn't see in -- in the petition was a statement about
5 whether the coalition intended to broaden the issues in
6 this proceeding. And this is a corollary to
7 Judge O'Connell's question about whether there were
8 particular issues that you were interested in. It
9 sounds like your issues are general.
10 And the other question is: Would you be
11 willing to coordinate your efforts with Public Counsel,
12 if that's something that Public Counsel is interested
13 in, so that we don't have a duplicative efforts.
14 JUDGE O'CONNELL: So Mr. Bell, before you I
15 think address some of the concerns raised by
16 Ms. Cameron-Rulkowski, I -- I think that,
17 Ms. Cameron-Rulkowski, your questions were, at least to
18 start, in lieu of making an objection; is that correct
19 I'm understanding?
20 MS. CAMERON-RULKOWSKI: That's correct, your
21 Honor.
22 JUDGE O'CONNELL: Okay.
23 Mr. Bell, before you provide some more
24 information to explain more about the interests that
25 you're representing, I think it would be beneficial if

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1 we heard from Public Counsel and Ms. Suetake or
2 Ms. Gafken, if you could explain the role of Public
3 Counsel and the interests that you represent.
4 MS. SUETAKE: Thank you, your Honor.
5 Public Counsel is here by statutory right as
6 a party representing small business and residential rate
7 payers. I am aware that -- that the party before us is
8 slightly disappointed with our representation of
9 small -- of residential customers in Avista's territory.
10 We are neutral on your petition. We do not
11 object to your petition at all. We understand that all
12 parties have the ability to petition for intervention
13 here, and it is while not -- while not a right of
14 parties, the Commission obviously has the discretion to
15 afford you party status.
16 We -- if the Commission grants party status,
17 we would, however, object to being required to
18 coordinate. I'm sure you're aware that Public Counsel's
19 presentation is on very technical natures, and I'm not
20 sure if our presentation of testimony would be able to
21 be coordinated with an outside party.
22 We absolutely welcome your participation in
23 settlement negotiations and the like, but I think it
24 would be difficult for us to coordinate all of our
25 positions.

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1 JUDGE O'CONNELL: So Ms. Suetake, do you see
2 the interest that Public Counsel represents as being
3 distinct from the one you've heard is going to be
4 represented by the Northwest Coalition of Power
5 Consumers? Citizens Power Coalition. I apologize.
6 MS. SUETAKE: No, I don't. I do not believe
7 that we are distinct in that. We do represent
8 residential rate payers, and our interests align to the
9 extent that I understand your position.
10 JUDGE O'CONNELL: Okay. Before I turn back
11 to Mr. Bell, Mr. Meyer, did you have anything that arose
12 from those questions? Is there an objection that you
13 have to this intervenor's intervention?
14 MR. MEYER: Yes, just a few additional
15 comments. And first is: We want to hear from our
16 customers, and so even though I will object to their
17 intervention -- I'll explain why in just a moment -- I
18 don't want there to be any confusion about whether we do
19 or don't listen and take into account what our customers
20 have to say.
21 The company has many outreach efforts. It
22 stays in touch with its customers and appreciates the
23 dialogue. So let there be no confusion on the record
24 about that.
25 What I am concerned about though is -- is

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1 what this does to this process. In listening to the
2 responses to your questions and those of others,
3 Mr. Bell has not identified any distinct or specific
4 issue that cannot or will not presumably be addressed by
5 other parties also charged with representing his
6 constituency, most notably Public Counsel.
7 I think you just heard from Public Counsel
8 that it was her belief that she represents the interests
9 of this customer group. So it's duplicative and there
10 are other avenues for this customer group and other
11 customer groups to be heard.
12 And we hold typically two to three public
13 hearings throughout the service area. It's not at all
14 unusual for customer groups, whether it's the Committee
15 on Aging or whether it's SNAP or other well-formed
16 organizations who have specific interests to appear,
17 testify, and have their voices heard.
18 So I just, I think the precedent is bad
19 precedent, unless the -- unless Mr. Bell can identify
20 specific interests that won't already be sufficiently
21 addressed by others. So with that, I object.
22 JUDGE O'CONNELL: Okay. Mr. Bell, I would
23 like to hear from you again, and I have a couple
24 questions that I hope will help clarify further your
25 position. I'm interested in learning how your

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1 participation as a party in this proceeding will benefit
2 the Commission's decision-making.
3 MR. BELL: Well, I'm -- first of all, let me
4 just say that our participation would be in coordination
5 with the WUTC and others that are representing the rate
6 payers. But we have -- before I go further, let me just
7 say that this is a complex area. There's no doubt about
8 it.
9 I'm a retired CPA. I worked in healthcare
10 for 35 years. I had my own practice, 20 employees, and
11 I worked almost exclusively with hospitals that get
12 cost-based reimbursement. So the methodology we're
13 using here is a little bit different, but it's not much
14 different than what I worked in for 35 years.
15 There are some major issues that I'd like to
16 see addressed, and our primary concern is to make sure
17 the rate payers are not paying any more than they
18 absolutely have to, and that we've got somebody looking
19 out for our interest.
20 But I've reviewed some of the documentation
21 provided by Avista, and -- and there are a number of
22 things that I have -- have concerns about, and I'd like
23 to either be heard or to get answers to some of the
24 questions that I've got.
25 Would you like a list of those, your Honor?

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1 JUDGE O'CONNELL: I think that actually
2 brings up a question that I had for you that
3 Ms. Cameron-Rulkowski also brought up, which is: To
4 what extent do you intend to be participating in this
5 proceeding? Are there any limits on the issues or any
6 particular issues that you're wishing to address?
7 MR. BELL: Well, I've got a list of a number
8 of issues that I'd like to have addressed and perhaps
9 have some answers to. And that can be done in
10 coordination with -- with the WUTC staff and other
11 representatives of the consumers or it can be done
12 separate, but I'm not interested in -- in interfering in
13 the proceedings. I'm merely interested in making sure
14 that there are certain questions that are addressed and
15 addressed properly.
16 JUDGE O'CONNELL: Can you briefly provide
17 those general issues that you're talking about.
18 MR. BELL: Sure. Currently Avista has about
19 \$450 million in non-property excess deferred tax
20 liability to the rate payers and have -- they've
21 documented that a payback period for that would be about
22 36 years. I've researched that issue and the FERC is
23 suggesting that a payback period would be about 5 years,
24 not 36 years. I'd like to see that addressed.
25 One of our members at the time we formed was

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1 the Spokane County treasurer, and he was outspoken about
2 the Avista/Hydro One deal. And -- and at the time we
3 were discussing that issue with -- with Avista during
4 one of its efforts to communicate with customers, they
5 contributed a hundred thousand dollars to his opponent
6 in the Spokane County commissioner election. He had --
7 his term as county treasurer had expired or would be
8 expiring because of a term limit and he was running for
9 county commissioner. And they contributed a hundred
10 thousand dollars to his opponent's campaign. I'd like
11 to know where that and all the other contributions that
12 are made by Avista to politicians show up in these
13 reports, because I'd like to see that they're in the
14 non-rate payer cost category, not in the rate payer cost
15 category.
16 There's a lot of marketing going on. Avista
17 does a lot of work on trying to sell everybody on the
18 fact that they do a great job, they've got a great
19 system, and there's a ton of money being spent on
20 marketing. And when I was in healthcare, if you want to
21 market to tell people what services are available to
22 you, that's one thing. If you want to just market to
23 say "We're a great company and we do a great job" and
24 it's more along those lines, that's not a allowable cost
25 and I'd like to see some distinction made between

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1 marketing that the rate payers have to pay for and what
2 the rate payers are not supposed to be paying for.
3 There's also the deferred power cost. It
4 exceeded the \$30 million limit this year, and Avista's
5 indicated they would like to repay that 3.4 million to
6 the rate payers. I'd like to see Avista bring that
7 power cost deferral down to zero rather than maintaining
8 it at the \$30 million pretty much tax-free loan from the
9 rate payers.
10 So those are several of the -- of the main
11 issues that we've got. And I'm about a quarter of the
12 way through reading the rate documentation. I applaud
13 Avista, it certainly passes the weight test. But
14 there's a lot of information there and I'd like to read
15 through it further to understand exactly what they're
16 requesting and what documentation they have.
17 JUDGE O'CONNELL: Okay. So the issues I
18 think you've identified so far that I've written down
19 are: The pay back of the protected excess deferred
20 federal income tax, that period of payback; whether
21 political contributions and marketing are included in
22 rates; and the issue regarding the ERM filing, the
23 energy recovery mechanism, and the \$34.4 million balance
24 there.
25 But I also hear that there may be other

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1 issues that you have. You know, in looking at the
2 filing, you may be interested in other issues that you
3 discover.
4 MR. BELL: That's correct, your Honor. And
5 there's also additional issues at future time periods.
6 The green bill that was just passed by the state
7 legislature talks about penalties for utilities that are
8 not in compliance with the green bill. And of course
9 I've talked to the WUTC staff and they clearly indicated
10 penalties are not an allowable cost for rate-setting
11 purposes.
12 However, the same bill, Avista and the other
13 IOUs, investor-owned utilities, inserted or had
14 politicians insert other clauses in there that say you
15 can pay an alternative compliance payment in lieu of the
16 penalty, and an alternative compliance payment could be
17 run through the rate system. And there's also a
18 provision in there that says that if there is an
19 alternative compliance payment made, it's not required
20 to be disclosed to the rate payers.
21 And so in the future we would also want to
22 monitor whether there are any alternative compliance
23 payments being passed on to the rate payers, that that
24 won't happen for several years.
25 JUDGE O'CONNELL: Thank you.

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1 Ms. Cameron-Rulkowski, in hearing further
2 explanation from Mr. Bell, does staff have an objection
3 after hearing some of those clarifications?
4 MS. CAMERON-RULKOWSKI: Your Honor, I don't
5 think staff is going to object, but I think I would
6 point out that many of the issues that Mr. Bell raised
7 actually have easy answers or are already settled at
8 least as far as staff is concerned.
9 The penalty or the alternative compliance
10 penalty as -- as you mentioned, Mr. Bell, will not be an
11 issue in this rate case.
12 The ERM balance is, once the company reaches
13 a certain trigger point, then it needs to be -- the
14 excess balance needs to be passed back. That certainly
15 is something that's going to be looked at closely in
16 this -- in this proceeding that all parties are
17 interested in.
18 The excess deferred income tax return
19 period, I believe that is set by the -- by the IRS. I
20 think we've -- we've gone over that issue a couple of
21 times here at the Commission. And some of the other
22 issues that you mentioned, I don't think they -- they go
23 into rates anyway.
24 So I guess what I would -- what I would --
25 if the Commission grants your intervention, grants the

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1 intervention, I would... I would ask that the Northwest
2 Citizens Power Coalition carefully consider any
3 discovery that it issues so that it is not duplicative
4 of issues that the -- that the parties have already
5 addressed and -- and become more of -- more of an -- of
6 an effort that is -- that is not needed to actually
7 resolve the issues in the rate case.
8 MR. BELL: Your Honor? Sorry.
9 JUDGE O'CONNELL: Mr. Bell.
10 MR. BELL: Thank you, your Honor. I have
11 one more comment about the deferred tax liability.
12 Actually there are two categories of deferred tax
13 liability. One is related to property, and the IRS has
14 made it real clear that it has to be paid back at a
15 certain timetable, and if you violate that, you're in
16 big trouble. So I understand that.
17 The other is non-property deferred tax
18 liability. That's the 450 million that I'm talking
19 about. The other approximately 450 million is related
20 to property, so we've got two separate issues here.
21 The non-property \$450 million liability
22 though, the IRS does not discuss that. And the -- the
23 federal energy regulation, regulatory Commission has
24 indicated that a five-year period is a reasonable period
25 for paying back a non-property deferred tax liability.

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1 So I just wanted to clarify that and just make sure that
2 that's on the record.
3 There's one other issue that I -- I didn't
4 flip enough pages to find. Currently the Avista folks
5 are asking for a 9.8 to 10.8 percent return for their
6 shareholders claiming that owning stock in a monopoly
7 utility is a risky business and that they need a 9.8 to
8 10.8 percent return on their investment.
9 Personally, as a rate payer, I can't get 9.8
10 to 10 percent on anything that I invest in without some
11 difficulty. You have to be fairly well off to do that.
12 I find that 9.8 to 10.8 percent is outrageous, and
13 that's another issue that I would want some resolution
14 of.
15 Thank you, your Honor.
16 JUDGE O'CONNELL: Thank you, Mr. Bell.
17 I'm -- I'm aware of all these issues that
18 you've brought up, including the excess deferred income
19 tax issues and the others which includes the return on
20 equity that you just mentioned. I have --
21 I'm going to come back to you, Mr. Meyer.
22 MR. MEYER: Okay.
23 JUDGE O'CONNELL: But I've read all your
24 petition to intervene, I've heard the concerns and the
25 objection from Avista, and I'm going to take the

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1 arguments under advisement as to whether you should be
2 allowed party status in this case. I'm going to confer
3 with the commissioners, and it's my intent that we will
4 make a decision regarding your party status in the
5 prehearing conference order that I will issue in the
6 next few coming days. It will probably be next week.
7 MR. BELL: Thank you, your Honor.
8 JUDGE O'CONNELL: Mr. Meyer, is there
9 anything else that you'd like to add?
10 MR. MEYER: Yes, even in light of that.
11 JUDGE O'CONNELL: Okay.
12 MR. MEYER: Number one, thank you for taking
13 the time to open those books up and dig into it. And
14 clearly you're not done, but you've identified four or
15 five technical issues, the last one being, we would
16 argue, is more of a matter of argument about what's a
17 fair return, that sort of thing.
18 But those are the kind of -- at least the
19 first several questions were the sort of questions we
20 routinely see in the discovery process. We get
21 literally a thousand or more discovery requests from
22 each of the parties around here. And so one way to
23 possibly navigate through this is: As you complete your
24 work and as technical issues pop up, Avista would have
25 no objection to you working, let's say through staff or

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1 some other party who could propound, who could put those
2 discovery questions after they help you edit and refine
3 those, put those to Avista, we'll respond.
4 Now, you may not like the response. That
5 doesn't mean staff has to agree with the position you
6 might be taking. But at least you'll have that
7 information, because I'm hearing as much as anything
8 just you need to understand a lot of these.
9 So I don't mean to cheat you out of your
10 opportunity to learn more about what's behind the case
11 and why we feel the way we do. I just want to give you
12 an avenue that works in this process for you to have
13 that information. At the end of the day, if you're not
14 satisfied, you still disagree, and you well may disagree
15 with the answers that we give to that discovery, that's
16 when the public hearing process, you know, can be your
17 friend, because you'll say, "Look, I've reviewed all
18 this stuff and we still don't -- still don't agree."
19 Fair enough. So I'm just trying to give you
20 an avenue to participate in a way that really works in
21 this process.
22 MS. SUETAKE: Your Honor, I have a question
23 actually for Avista.
24 David, are you suggesting something less
25 than party status, but with discovery rights? I'm a

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1 little confused as to what your objection is and what
2 you're --
3 MR. MEYER: No, it's -- I'm not suggesting
4 some in-between status. I'm simply saying you have
5 established parties participate, and my guess is that if
6 you were to give them questions that you think are of
7 interest, they will look at those and say, "Well, okay.
8 We'll -- you know, fair enough. We'll ask that of
9 Avista and get an answer."
10 You'll get the answer, and what becomes of
11 that answer, you know, it doesn't create an issue until
12 it becomes an issue. I'm just -- see what I'm getting
13 after here?
14 JUDGE O'CONNELL: Ms. Cameron-Rulkowski.
15 MS. CAMERON-RULKOWSKI: Your Honor, staff
16 does not -- does not agree to coordinate its discovery
17 with any other party.
18 JUDGE O'CONNELL: I understand.
19 To Public Counsel and to Commission staff,
20 when someone who is not a party to the case is
21 interested nonetheless and submits public comments to
22 either Public Counsel or to Commission staff, do you at
23 times interact with or take those comments and utilize
24 them in crafting your own? And I'm curious as to your
25 experience in previous proceedings and whether that is

<p style="text-align: right;">Page 29</p> <p>1 something that has been done. 2 MS. SUETAKE: Your Honor, Public Counsel 3 does read all of the public comments that come in. I 4 personally have not been here long enough to have 5 experienced whether we've used those. 6 If Ms. Gafken is still on the line, I would 7 welcome her input. 8 MS. GAFKEN: This is Lisa Gafken. 9 As Ms. Suetake has mentioned, we do review 10 all of the comments that come in. They tend to be more 11 opinion pieces, you know, expressing what they feel 12 about the proposal more so than a list of substantive 13 issues that they want more information on. Or what I'm 14 trying to say is: It doesn't provide an avenue really 15 for discovery, at least in my experience. 16 You know, I suppose if that's opened up now, 17 we might see more of that. But really the customer 18 comments are an avenue for some of the -- the person 19 who's not mired in the technical aspects of the -- of 20 the case to express their opinion and get their points 21 of view heard. 22 As everyone knows, those then go into the 23 record as part of an exhibit and become part of the 24 evidentiary record. But we -- we have not in the past 25 coordinated our discovery with -- with customers. And I</p>	<p style="text-align: right;">Page 31</p> <p>1 take it under advisement, the arguments for and against 2 granting intervenor status to the Northwest Citizens 3 Power Coalition. And I will include in the prehearing 4 order a decision on that matter. 5 Briefly, before I have some other things 6 that we need to cover at this prehearing conference, but 7 I have been given a draft procedural schedule by 8 Commission staff for this general rate case. 9 Has -- has Mr. Bell been shown this draft 10 schedule? 11 MS. CAMERON-RULKOWSKI: He has not, your 12 Honor. I'm going to distribute it to -- one to him 13 right now. 14 JUDGE O'CONNELL: Please. I think that 15 would be appropriate considering that the Commission has 16 yet to make a decision whether to include him or not. I 17 would like Mr. Bell to be able to see the important 18 dates that are being proposed, in particular the 19 evidentiary hearing dates as well as, if they are -- if 20 they are granted intervenor status, the dates for filing 21 of testimony and cross-answering testimony. 22 Before we get to that, let me back up. The 23 company requested a protective order when it filed its 24 general rate case, and a protective order has already 25 been issued. But as it regards docket UE-190222, that</p>
<p style="text-align: right;">Page 30</p> <p>1 would agree with staff's position that I don't know that 2 we're in the best position or any party is really in the 3 best position to coordinate their discovery based on 4 another entity's information desires. 5 JUDGE O'CONNELL: I understand. 6 And Ms. Cameron-Rulkowski, before I return 7 to you, let me say that there are Commission rules that 8 provide for the Commission to take a particularly 9 relevant or savvy public comment that is submitted in 10 any proceeding and accept it into the record as an 11 exhibit. And I am aware of that. 12 Ms. Cameron-Rulkowski, returning to you. 13 MS. CAMERON-RULKOWSKI: I wanted to clarify 14 that staff -- the public comments are all compiled 15 typically at the end of the process, and so it is not -- 16 so staff -- staff will oftentimes read them as they -- 17 as they come in, but they do not typically make their 18 way into staff testimony. 19 As Public -- counsel for Public Counsel 20 mentioned, oftentimes they are more along the line of 21 opinion pieces. However, there have been instances 22 where public comment has made it into the Commission 23 order. So that has -- that has happened as well. 24 JUDGE O'CONNELL: Okay. Thank you. 25 Well, as I've already stated, I'm going to</p>	<p style="text-align: right;">Page 32</p> <p>1 docket does not yet have a protective order. 2 Mr. Meyer, from my review of that filing, 3 it's my understanding that the company, if you haven't 4 already stated that you would like a protective order, I 5 notice that there are things that are marked as 6 confidential. So I wanted to ask if it's correct that 7 you would like to have a protective order apply in that 8 docket. 9 MR. MEYER: Yes, I wanted to bring that 10 issue up. I'm glad you have. I would be satisfied 11 making the general rate case protective order apply as 12 well or you can just issue a fresh protective order in 13 the ERM docket itself. Maybe that's the cleanest way of 14 doing it. 15 JUDGE O'CONNELL: Okay. Well, the way I see 16 this is that if I issue a protective order just in the 17 ERM docket, that would require everyone who has already 18 signed an agreement of confidentiality in the general 19 rate case and anyone who has yet to file or sign an 20 agreement, everyone would have to sign another agreement 21 in the ERM docket. 22 MR. MEYER: Sure. Either way is fine. 23 JUDGE O'CONNELL: Well, I think that we can 24 make it simpler and cleaner. And I intend then to issue 25 a modified order 02 in these consolidated dockets, so</p>

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1 all three dockets -- 193334, 190335, and 190222 -- which
 2 will then incorporate all of those dockets.
 3 I -- I realize that for those who have
 4 already signed a confidentiality agreement, it would
 5 require those people to re-sign another confidentiality
 6 agreement, which if those people were interested in
 7 whatever is marked as confidential in the ERM docket,
 8 but I think it will make going forward simpler for all
 9 parties and the Commission.
 10 Is there any objection to doing it that way?
 11 Okay. Hearing none, that I am going to memorialize that
 12 in the prehearing conference order and I will be issuing
 13 a modified order 02 with that modification.
 14 I also want to remind the parties that
 15 filing and service are all done electronically now
 16 according to Commission rule. However, in this case,
 17 the Commission is also going to require the filing of an
 18 original and three paper copies for internal
 19 distributions. So if the filings include information
 20 designated as confidential, please file the original and
 21 three copies of the fully unredacted version. No paper
 22 copy is necessary for any partly redacted or fully
 23 redacted version. So please file those versions only in
 24 electronic format.
 25 If any party has yet to designate a lead

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1 representative for service, please do so in email to me
 2 as soon as possible. Also if you would like to add
 3 anyone, names or addresses or other representatives or
 4 support staff who should relieve -- receive electronic
 5 courtesy copies of all documents, please email me that
 6 as well. My email is andrew.j.oconnell, that's spelled
 7 o-c-o-n-n-e-l-l, @utc.wa.gov. I'm sorry, w-a-g-o-v.
 8 Now I'd like to address the procedural
 9 schedule, the draft that I've been provided. Is
 10 there -- among the parties that have already seen
 11 this -- and Mr. Bell, I'll come to you in a moment --
 12 are all the parties, is this a consensus proposal?
 13 MS. CAMERON-RULKOWSKI: Yes, your Honor. I
 14 believe it works for everyone. I will simply note that
 15 in the prehearing conference right before this one, we
 16 did develop a separate schedule for the remand
 17 proceeding, and so that one item, remand settlement
 18 conference on August 6th, can be stricken.
 19 JUDGE O'CONNELL: Are there any other
 20 strikes that are relevant arising from that other
 21 proceeding?
 22 MS. CAMERON-RULKOWSKI: I don't see any,
 23 your Honor.
 24 JUDGE O'CONNELL: Okay.
 25 Okay. So I see here that an evidentiary

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1 hearing is planned for December 11th through possibly
 2 December 13th. And I am aware that the Commission's
 3 calendars are available as well as the hearing room for
 4 those dates.
 5 As far as all of the other dates proposed,
 6 I'm going to confirm with the Commission's calendars,
 7 make sure there is no conflict. And if there is not, I
 8 will approve and incorporate into the prehearing
 9 conference order.
 10 MS. CAMERON-RULKOWSKI: Your Honor.
 11 JUDGE O'CONNELL: But before I -- before I
 12 do that, I'd like to hear from Mr. Bell if there's any
 13 conflict from you as to the hearing date in particular
 14 and the other dates that might apply to you as an
 15 intervenor if you are granted intervenor status.
 16 MR. BELL: I have no objections. Thank you,
 17 your Honor.
 18 JUDGE O'CONNELL: Okay. Thank you.
 19 Ms. Cameron-Rulkowski.
 20 MS. CAMERON-RULKOWSKI: Your Honor, I'm
 21 sorry, there's another date that needs to be stricken.
 22 JUDGE O'CONNELL: Okay, please.
 23 MS. CAMERON-RULKOWSKI: It's right before
 24 the remand settlement conference, Avista files remand
 25 testimony and exhibits. And a note about the proposed

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1 hearing dates. We had originally set a somewhat longer
 2 period for hearing thinking that we might have a remand
 3 in there. I would propose we need that longer period,
 4 because now we have the ERM consolidated with the
 5 general rate case.
 6 JUDGE O'CONNELL: Is there any objection
 7 from the other parties?
 8 MS. SUETAKE: No, your Honor.
 9 JUDGE O'CONNELL: Hearing none.
 10 Okay. Now to return to the few other
 11 housekeeping items I had. Data requests: During
 12 proceedings at the Commission, I'm aware that the
 13 parties often request that any data requests and
 14 responses are shared with every other party. I intend
 15 to include this as a requirement in the prehearing
 16 conference order.
 17 Is there any objection to that inclusion?
 18 MR. MEYER: No objection.
 19 JUDGE O'CONNELL: Hearing no objection, I
 20 will include that in the prehearing conference order.
 21 Mr. Meyer, the two questions I had for
 22 Avista at the outset of the hearing, I'm aware that for
 23 the docket UE-190222, the ERM filing, there may have
 24 already been data requests asked and answered of the
 25 company. How would you propose we facilitate sharing

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1 that information?
2 MR. MEYER: Okay. Perhaps the cleanest way
3 to do it is we will -- in fact we talked about it
4 briefly before these prehearing conferences. We will
5 provide copies of those responses to all other parties.
6 There is some confidential information, so some of this
7 may take a little bit of time while people execute who
8 have not executed their protective order agreements, but
9 we will provide those. So they will have in front of
10 them response to staff DRX; okay. Then they can make
11 whatever use they want to make of that.
12 So that covers what's been done till now.
13 Going forward of course they would propound their own
14 identified DRs. So I think everyone will get caught up
15 that way.
16 JUDGE O'CONNELL: Okay. Is there going to
17 be an issue with the numbering of those DRs?
18 MR. MEYER: I don't think so. There are not
19 that many that we can't, at the time of actual hearing,
20 make clear that, if Public Counsel wants to make use of
21 staff DR7, that that won't be clear on the record. It's
22 manageable.
23 JUDGE O'CONNELL: Okay. Commission staff?
24 MS. CAMERON-RULKOWSKI: Your Honor, we
25 already have discovery in the general rate case, and so

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1 I believe staff would refer to these as the -- the
2 informal ERM data request 1 through 13, something like
3 that.
4 JUDGE O'CONNELL: Okay. As long as we can
5 clearly mark it so that it's easy for identification,
6 especially if it is ends up being offered as an exhibit
7 in the proceeding. I want to avoid as much confusion as
8 I can.
9 So next about the testimony exhibits --
10 MR. MEYER: Yeah.
11 JUDGE O'CONNELL: -- and the overlap that
12 there may be between the two proceedings. Do you have
13 thoughts on how you'd like to clearly organize those?
14 MR. MEYER: Well, first thought that comes
15 to mind is if we're dealing, for example, with a
16 Mr. Ehrbar testimony, just simply a parenthetical ERM
17 and a close parens after the exhibit designation, if
18 that's what it pertains to.
19 JUDGE O'CONNELL: Okay. Would that be
20 easier and simpler and would avoid confusion just as
21 well as having to renumber and resubmit those exhibits?
22 MR. MEYER: In other words, are you
23 suggesting why not just resubmit and --
24 JUDGE O'CONNELL: And I'm curious as to the
25 difficulty with doing that and the concerns for doing

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1 that and whether your proposal would be just as clear
2 and efficient.
3 MR. MEYER: Yeah, either way. Fortunately
4 the items of testimony that have been filed in the ERM
5 docket are relatively few. And so it's not as if we are
6 republishing a whole mass of material. So if you'd
7 like, we can go ahead and republish those with some sort
8 of designator like "ERM" after the witness exhibit
9 number.
10 Is that what you have in mind?
11 JUDGE O'CONNELL: Perhaps. And perhaps that
12 might be the easiest.
13 Let me ask Commission staff, because it
14 sounds like discovery has already been going on in the
15 ERM filing and that there have been data requests that
16 are already going to have to have a designation. Will
17 it be -- I'm assuming that some of those data requests
18 refer to exhibits and testimony presented in that
19 filing.
20 In consideration of that, do you think it
21 would be clearer and easier to follow if we simply, when
22 we are referring to them, from now on have the
23 parenthetical after the designation that indicates
24 "ERM", Ms. Cameron-Rulkowski?
25 MS. CAMERON-RULKOWSKI: Not for data

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1 requests. We'll just continue to issue data requests,
2 and if they pertain to the ERM, they'll simply be
3 numbered consecutively as formal data requests within
4 the consolidated dockets going forward. So and
5 whichever issue they go to, they'll be used as exhibits
6 or not, so we don't need an additional designation for
7 discovery.
8 In terms of the exhibits that have already
9 been filed, I think whatever the -- whatever the
10 Commission, whatever your Honor would like to do, we'll
11 go ahead and follow along. I think we can keep track of
12 everything. We have so far.
13 JUDGE O'CONNELL: Okay. I think Mr. Meyer's
14 suggestion of adding a, for lack of a better word, a
15 suffix to the end with a parenthetical with an "ERM"
16 would be sufficient and distinguishing, for example,
17 Mr. Ehrbar's Exhibit Number 2 from the, his Exhibit
18 Number 2 in the general rate case.
19 And I'm not going to require at this time
20 that you re-file them with that designation, but I think
21 when they're being referred to either in response
22 testimony or rebuttal testimony, there should be an
23 indication of which exhibit is being referred to.
24 Does that make sense?
25 MS. CAMERON-RULKOWSKI: That makes sense,

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1 your Honor. And we'd be happy to refer to the exhibits
2 and to the company exhibits in that way when staff does
3 present its testimony. We may have one witness who
4 testifies about several issues, including the ERM, and
5 so we wouldn't want to add that designation to the
6 response testimony in exhibits.
7 JUDGE O'CONNELL: I apologize. Not for the
8 responsive testimony, but -- and I understand how that
9 may have been confusing when I said it. I was
10 anticipating that if there is responsive testimony that
11 addresses the ERM, inside that testimony and any
12 exhibits that go with it, that the testimony provided by
13 a witness would refer to the ERM exhibits with a
14 parenthetical so that we can keep clear whether that
15 witness who may be testifying about issues other than
16 the ERM, which documents that witness is referring to.
17 MS. CAMERON-RULKOWSKI: And so your Honor is
18 referring just to the company's testimony exhibits, only
19 the company testimony and exhibits would have the "ERM"
20 suffix; is that correct?
21 JUDGE O'CONNELL: Correct. Because that
22 would be the only thing at this time that would overlap;
23 correct?
24 MR. MEYER: But as we work our way through
25 the proceeding and we have staff intervenor testimony on

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1 the ERM and we have the company rebuttal that deals with
2 ERM issues, suddenly they become intertwined again,
3 unless we keep that descriptor involved.
4 MS. CAMERON-RULKOWSKI: If I may, I don't
5 think we would have the duplication of exhibit numbers
6 at that point. I would hope we could just go on
7 numbering the company exhibits consecutively from
8 wherever that witness last left off.
9 JUDGE O'CONNELL: As consolidated dockets
10 from the effective date of the prehearing conference
11 order, for all intents and purposes, they are the same
12 proceeding.
13 MR. MEYER: And my only thought there was
14 it's fine either way. I just wanted, as we ultimately
15 go through the record and review it all, we can -- it's
16 easy for us to keep in mind that this bit of testimony,
17 if it's confined as to ERM and again it's ERM stuff or
18 that's general rate case stuff. So either way is fine.
19 Your choice.
20 JUDGE O'CONNELL: Okay.
21 MS. CAMERON-RULKOWSKI: If Mr. Meyer wishes
22 to withdraw Avista's motion for consolidation, we could
23 consider that.
24 MR. MEYER: Well, there's a thought. No.
25 MS. CAMERON-RULKOWSKI: Getting late in the

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1 afternoon.
2 JUDGE O'CONNELL: I will -- I'll address
3 what we've talked about as far as identification and
4 marking of the -- the ERM documents, and I'll try and
5 make it clear in the prehearing conference order what my
6 expectations and the Commission's expectations are going
7 forward.
8 MR. FFITCH: Your Honor.
9 JUDGE O'CONNELL: Yes, Mr. ffitich.
10 MR. FFITCH: I have a related question, if I
11 could interject it here. The parties who are not
12 previously intervenors in the ERM matter because of the
13 consolidation, am I correct in assuming that now we
14 are -- Energy Project or other similar parties are full
15 parties with respect to ERM matters as well, so that if
16 we wanted to, and I have no idea at this point whether
17 we want -- we want to weigh in on ERM issues, but if we
18 choose to do so, we don't have to take any further
19 action formally to intervene in the ERM docket?
20 And then I guess that's a question. Because
21 of the consolidation, we are now deemed to be members
22 or, excuse me, intervenors in the ERM docket as well as
23 the general rate case docket.
24 JUDGE O'CONNELL: That is correct. You'll
25 be intervenor in the ERM docket as well. However,

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1 because I understand that there -- it can be a little
2 complicated, I am going to provide the notice in the
3 prehearing conference order that extends the time period
4 for filing as an intervenor in the consolidated dockets
5 in order to give a fair opportunity for someone who was
6 interested in intervening in the ERM docket, but didn't
7 get the opportunity prior to this time.
8 So yes, as being a party in the general rate
9 case and the consolidation of that with the ERM filing,
10 you will be a party for all of those dockets.
11 MR. FFITCH: Thank you, your Honor.
12 Appreciate your clarification.
13 JUDGE O'CONNELL: Is there anything else
14 that we need to address before we adjourn today? Is
15 there --
16 MR. SANGER: Yes, Judge. This is Irion
17 Sanger on the line. I -- I just wanted to clarify my
18 understanding of the new protective order.
19 We have not yet submitted protective order
20 signature pages. My understanding is you'll be issuing
21 a new protective order for all three proceedings, and
22 probably the best course of action for us would be to
23 wait for that new protective order and sign those
24 confidentiality agreements and file them, and there's no
25 need for us to file confidentiality agreements on the

1 earlier protective order.
2 JUDGE O'CONNELL: I think your understanding
3 is correct, Mr. Sanger, yes.
4 MR. SANGER: Great. Thanks a lot.
5 JUDGE O'CONNELL: Is there anything else?
6 MR. MEYER: Just to say -- say thank you,
7 your Honor, for patiently working your way through this
8 procedural snarl, the two combined cases, so --
9 And the parties as well, thank you.
10 JUDGE O'CONNELL: Okay. Yes, thank you all.
11 I hope traffic is better going back than it was coming
12 down. And safe travels to you all.
13 We'll be off the record.
14 (Proceedings concluded at 3:29 p.m.)

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1 C E R T I F I C A T E

2
3 STATE OF WASHINGTON
4 COUNTY OF KING

5
6 I, Kathleen Hamilton, a Certified Shorthand
7 Reporter and Notary Public in and for the State of
8 Washington, do hereby certify that the foregoing
9 transcript of the proceedings on MAY 24, 2019, is true
10 and accurate to the best of my knowledge, skill and
11 ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and seal this 10TH day of JUNE, 2019.

14
15
16 
17 KATHLEEN HAMILTON, RPR, CRR, CCR



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