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, UG-190335, and UE-190222 (*Consolidated*) AVISTA'S RESPONSE IN OPPOSITION TO REQUEST FOR INTERLOCUTORY REVIEW

Pursuant to WAC 480-07-810(3), Avista Corporation ("Avista" or "Company"), files this response in opposition to the "Request For Interlocutory Review of Petition to Intervene of Northwest Citizens Power Coalition," filed on June 7, 2019 (hereafter referred to as the "Coalition").

I. INTRODUCTION

The Coalition is a newly-formed group of approximately 61 residential customers (since alleged to have grown to 132) served by Avista that was a result of dissatisfaction with Staff and Public Counsel representation of its interests in the recently-concluded Avista/Hydro One merger (Docket No. U-170970). Avista understands that it is essentially a sister organization to another nascent group of citizens who are separately exploring the formation of a public entity or Co-op, in order to acquire some or all of Avista's assets; they are, however, not one and the same, with apparently differing objectives.

The Coalition filed a petition to intervene, and argument on its intervention was heard at the Prehearing Conference held on May 24, 2019, before Administrative Law Judge Andrew J.

O'Connell. Avista objected to that intervention and continues to object. On May 30, 2019, Judge O'Connell issued his Prehearing Conference Order in which he denied the intervention of the Coalition for the reasons stated therein. On June 7, 2019, the Coalition filed its "Request for Interlocutory Review" (hereafter, "Request"). It is to that Request that Avista responds.

II. DISCUSSION OF MERITS OF INTERVENTION

The Coalition begins by re-asserting its dissatisfaction with positions taken by Staff and Public Counsel in the Avista/Hydro One merger docket (U-170970):

> NWCPC is disappointed with those organizations granted petitions to intervene for the purpose of safeguarding the Avista customers and broader public interests who encouraged the WUTC to approve the transfer of ownership. We are disappointed in the WUTC staff position that also encouraged the WUTC to approve the transfer of ownership of Avista and Hydro One. We believe those organizations granted intervenor status and the WUTC staff should have done more to safeguard the Avista consumers and broader public interest. As a result, NWCPC has taken it upon ourselves to ensure the safeguarding [of] the Avista customers and broader public interests. (Request at p.2)

That, of course, was a transfer of ownership proceeding addressing issues not directly relating to the setting of base rates, as in this general rate case (GRC), and with different issues and legal parameters. Nowhere has the Coalition made the case that Staff and Public Counsel have failed to meet their duties to represent the public interest in general rate proceedings such as this. Again, Judge O'Connell addressed this issue squarely in his decision:

> NWCPC's argument in support of its petition to intervene rests entirely on its dissatisfaction with Public Counsel's and other intervenors' roles in the proceeding concerning Avista's acquisition by Hydro One, which was denied by the Commission. NWCPC's dissatisfaction with Public Counsel and others' representation of the interests of Washington citizens is not sufficient to establish a substantial interest justifying intervention in this proceeding. (Order 03, at para. 17)

The Coalition should not be able to "bootstrap" its way into this proceeding by simply referencing its dissatisfaction with the prior merger docket. Even more to the point, Judge

O'Connell's decision squarely rejected the suggestion that Public Counsel could not otherwise address and protect the interests of the Coalition:

> ...Public Counsel explained that NWCPC did not have an interest separate and distinct from Public Counsel, the statutorily appointed representative for the people of the state of Washington in proceedings before the Commission such as GRCs. In other words, Public Counsel represents Avista's residential customers, including the 61 residential customers who comprise NWCPC.
>
> We agree with the Company and find that NWCPC has failed to show it has a substantial interest in this proceeding that is not already adequately represented by another party, or that its participation is in the public interest. By law, Public Counsel represents ratepayers in proceedings before the Commission. (Footnotes omitted) (Order 03, at para. 15)

Public Counsel agrees that it also represents the interests of residential ratepayers and that that the interests align with those of the Coalition, as far as Public Counsel is aware. This exchange between Judge O'Connell and Ms. Suetake, on behalf of Public Counsel, makes this very point:

> JUDGE O'CONNELL: So Ms. Suetake, do you see the interest that Public Counsel represents as being distinct from the one you've heard is going to be represented by the Northwest Coalition of Power Consumers? Citizens Power Coalition. I apologize.
>
> MS. SUETAKE: No, I don't. I do not believe that we are distinct in that. We do represent residential ratepayers, and our interests align to the extent that I understand your position. (TR.p.16, ll.1-9)

Nor has the Coalition identified any special interests or areas of expertise. (By way of contrast, the Commission did allow the Washington and North Idaho District Council of Laborers (WNIDCL) intervention in the Avista/Hydro One merger case, not because it had a "substantial interest" in the subject matter of the merger, but only because it might contribute directly to the issue of whether Avista's customers would continue to receive safe and reliable service (through flagging and traffic control around construction sites)). See Order 03, at para(s) 15-17, in Docket No. U-170970. Accordingly, Judge O'Connell was quite right in determining that the Coalition had failed to demonstrate that it would "provide any particular benefit to the public interest or aid

the Commission's decision-making." (Order 03, at para. 17) The Coalition clearly had the opportunity to rectify that shortcoming and make a case for its unique contributions in its Request – and it failed to do so.

Judge O'Connell, however, quite sensibly invited the Coalition to express its concerns by submitting public comments, which could be admitted into evidence if they had probative value. (Order 03, at para. 18) In addition, Judge O'Connell invited the Coalition to identify and communicate with Public Counsel concerning issues of interest—all of which would avoid "duplicative representation" and "procedural burdens." (Order 03 at para. 18)

The Coalition nevertheless persists, arguing that Staff and Public Counsel do not reside in Avista's service territory and "have no knowledge of local issues that may be applicable to the rate setting process." (Request at p. 3) This, of course, denigrates the wealth of experience gained by Staff and Public Counsel through many years of reviewing Avista's filings, and soliciting local public comment. Over time, this has led to a solid understanding of Avista's service territory. (In the last Avista GRC, 194 comments were received from local customers).[1] Local comments and the setting of multiple public hearings in the Avista service territory otherwise help assure that the Commission remains attuned to local concerns and sentiments.

Other arguments of the Coalition are not germane—but are disturbing. The Coalition argues that it is a non-partisan organization, and that its "members are not influenced by approximately $300,000 of Washington campaign contributions made by Avista in the 2018 calendar year." (Id. at p. 3) I trust that the Coalition is not inferring that this rate-setting process is partisan and influenced by campaign donations.

[1] Dockets UE-170485, et al., Order 07, ¶9.

Next, instead of trying to address the identified shortcomings of its petition to intervene, the Coalition launches on an exegesis of the "non-property related deferral tax liability period," taking issue with Staff. (Request at p. 3) The Coalition, of course, is free to explore the issues in this proceeding, or identify new ones, and have its say through the public comment process. Other well-organized groups in the Avista service territory have done so quite effectively through the years—e.g., the Northwest Community Council on Aging, the Spokane Neighborhood Action Program (SNAP).

Next, quite incredibly, the Coalition asserts that other intervenors such as the Sierra Club "have been deceived" by Avista and are "not technically knowledgeable." (Request at p. 4) The Coalition even asserts that the Sierra Club was misled into believing that the Company had "ensured closure of the Colstrip power plant at the end of its reduced useful life." (Id.) This reckless allegation, of course, is not true. The Sierra Club signed a Settlement Stipulation in the merger docket that expressly states the understanding of the parties, including the Sierra Club:

> The Parties acknowledge that there presently is no plan to close Colstrip Units 3 & 4 by a specific date, nor has Avista agreed to do so. The parties to the Settlement Stipulation in this docket (the "Parties") agree, however, to a depreciation schedule for Colstrip Units 3 & 4 that assumes a remaining useful life of those units through December 31, 2027… (Attachment A to Appendix A of Settlement Stipulation in U-170970, "Merger Commitment No. 76 (Colstrip)", dated March 27, 2018)

The Coalition has demonstrated that it is prone to unsupported allegations.

Moving on, the Coalition alludes to "successfully operated rate payor owned utility cooperatives", arguing that they maintain higher levels of customer satisfaction. (Id. at p. 4-5) This is wide of the mark: Wrong case, wrong issues, wrong time for such arguments.

Finally, the Coalition makes a final effort to disparage "IOU/Avista friendly politicians" who worked on the Clean Energy Law, and pledges to police any "alternative compliance

payments" paid for by customers. (Id. at p. 5) Of course, treatment of any "alternative compliance payments" will be reviewed thoroughly by Staff, Public Counsel, and all intervenors. They would do that, in due course, as part of their job as responsible public servants. Ultimately, this Commission will make such a determination as to the treatment of any compliance payments, but again, wrong case, wrong issue, and wrong time.

In closing, as Avista stated during the Prehearing Conference, it welcomes any interest shown by members of the public, especially those who take the time to understand the issues and contribute their opinions. Mr. Bell, who argued on behalf of the Coalition, has clearly spent time reviewing the filing and we applaud and encourage him and others to do that. In the end, his voice and that of the Coalition will be heard through the robust public comment process and in coordination with Public Counsel. The intervention should be denied.

Respectfully submitted, this 12th day of June, 2019

By: _____
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and Governmental Affairs