

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, D/B/A
AVISTA UTILITIES,

Respondent.

DOCKETS UE-160228 and
UG-160229 (*Consolidated*)

ORDER 04

GRANTING MOTION TO
STRIKE

MEMORANDUM

- 1 On February 19, 2016, Avista Corporation, d/b/a Avista Utilities (Avista) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service in Docket UE-160228 and revisions to its currently effective Tariff WN U-29, Natural Gas Service in Docket UG-160229 designed to effect a general rate increase for electric and natural gas service. The as-filed tariff sheets included a stated effective date of March 21, 2016.
- 2 Among the issues raised by Avista's filing is the Company's proposed the deployment of advanced metering infrastructure (AMI) to approximately 253,000 electric, and 155,000 natural gas customers encompassing all of Avista's Washington service area.¹ Avista estimates in this case that AMI will cost approximately \$166.7 million in capital and \$123.4 million in operating expenses over the life of the AMI system.² According to Staff's review of Avista's prefiled direct testimony, Avista requests in this case recovery of AMI expenses in after-attrition adjustments of \$20.7 million for electric and \$9 million

¹ Rosentrater, Exh. No. HLR-1T at 9:6-8. Ms. Rosentrater notes that "[t]hese numbers reflect the estimated number of customers who will receive meters through the course of the deployment period."

² *Id.* at 20:8-10.

for gas service in both the 2017 and the 2018 rate periods.³ Staff, Public Counsel, the Energy Project, and the Industrial Customers of Northwest Utilities (ICNU), in their response testimonies all oppose Avista's proposed treatment of AMI, as presented by the Company's direct case.

- 3 On September 19, 2016, Avista filed rebuttal testimony. The Company's rebuttal filing includes testimony from Mr. Norwood and Ms. Andrews introducing a proposal for deferred accounting treatment related to AMI. Mr. Norwood requests that the Commission approve deferred accounting treatment for the AMI project, if the Commission does not approve recovery of the AMI costs as proposed by Avista in its direct case.⁴ Ms. Andrews describes the proposed deferred accounting treatment in her rebuttal testimony.⁵ The essence of the Company's proposal consists of the following:

The revenue requirement associated with the actual investment in AMI that transfers to plant in service between January 1, 2017 and June 30, 2018, would be deferred to preserve the opportunity for recovery in a future proceeding. This includes the costs of depreciation and the return on investment, including any related increases or reductions in O&M expenses.⁶

- 4 On October 4, 2016, Staff filed its Motion to Strike, or in the Alternative, Motion for Surrebuttal on Behalf of Commission Staff. Staff points out that Avista did not propose in its direct testimony the idea of deferred accounting treatment as an alternative for treatment of the costs associated with the AMI project. Nor did any party present response testimony that discussed this possibility. Staff argues that "Avista could have easily presented its proposal for deferred accounting treatment for the AMI project as an alternative in its direct testimony, which is where it belongs because it is direct testimony."⁷ Staff argues further that:

While it is routine for rebuttal testimony to contain updates and changes in position, it is another matter to introduce an entirely new proposal at the rebuttal phase. This new proposal is significant because, as the Company has made clear, the AMI project is a very large project, which may subject

³ Exh. No. DN-1T at 6:9-11 (citing Andrews, Exh. No. EMA-1T 29:13, 30:9-11, 30:19 - 31:3; Exh. No. EMA-2 at 5 (electric 2017 RR); Exh. No. EMA-3 at 5 (gas 2017 RR); Exh. No. EMA-2 at 5 (electric 2018 RR); Exh. No. EMA-3 at 5 (gas 2018 RR).

⁴ Norwood, Exh. No. KON-1T 35:15-17.

⁵ Andrews, Exh. No. EMA-6T 52:8 - 53:18.

⁶ *Id.* at 52:13-17.

⁷ Staff Motion to Strike ¶ 9.

both Avista and its ratepayers to substantial risk. Further, the proposal to defer “revenue requirement” is unorthodox, unlike the Company’s proposed accounting treatment for the Montana Riverbed lease, which requests authorization to defer an annual expense. Finally, deferred accounting treatment creates a regulatory asset and a greater expectation of recovery; which, as a practical matter, makes it more difficult for non-Company parties who ultimately conduct the prudence investigation to contest prudence. For these reasons, it is especially inappropriate to introduce this deferred accounting proposal during the rebuttal phase for such a significant project.⁸

5 Staff argues in the alternative that if the Commission does not grant its motion to strike, parties should be given an opportunity to file surrebuttal testimony. Staff proposes that such testimony be filed one week after the hearing, now scheduled for October 12, 2016, and proposes that there be a supplemental hearing on only this issue. Staff states, however, that it is also prepared to rely on oral surrebuttal at hearing.

6 Public Counsel and the Energy Project support Commission Staff’s Motion to Strike Avista’s rebuttal testimony. They argue, in the alternative, that absent surrebuttal, parties are not able to present their point of view or critique Avista’s proposed alternative treatment of AMI costs and have no opportunity at this stage of the proceeding, to present alternative proposals or recommendations in response to Avista’s proposals. Public Counsel and the Energy Project opine that oral surrebuttal during the scheduled hearing would be most efficient, but these parties also find acceptable the option of written surrebuttal one week after the hearing.

7 Avista answered Staff’s motion on October 7, 2016. Avista states that it “objects to Staff’s Motion to Strike, as well as its alternative Motion for Surrebuttal Testimony.” Avista argues that Staff’s motion should be denied because Staff waited until one week prior to hearing before filing its motion. Avista argues:

[W]hat the Commission is left with is a Motion on the eve of the evidentiary hearing in which Staff is suggesting, if its Motion is not granted to strike, that either written supplemental testimony be provided (together with a supplemental hearing after the evidentiary hearing scheduled to begin on October 12, 2016), or the creation of additional process during the scheduled hearing dates to allow for oral surrebuttal

⁸ Staff Motion to Strike ¶ 11 (footnote omitted).

testimony on the issue. Neither is appropriate at this juncture of the proceeding.⁹

Avista also criticizes Staff for not filing “the actual form of surrebuttal testimony that it is proposing” at the time it filed its motion. Avista concludes that “Staff’s Motion will disrupt the orderly processing of this proceeding.”¹⁰

- 8 Avista argues, in addition, that the Company’s proposal at the rebuttal stage for deferred accounting as an alternative to the relief it requested in its direct case does not constitute improper rebuttal. This is because, according to Avista:

Avista is not required to anticipate in its direct case the position of parties on AMI and suggest alternative resolutions addressing their concerns at that time. And that is because their concerns have yet to be expressed. Avista is not required to assume opposition to an issue in its direct case, or in the case of AMI, to assume the nature of that opposition.¹¹

Avista states that in its rebuttal case, the Company did no more than respond to opposition put forth by other parties in their response testimonies “with an alternative solution to address the concerns expressed by parties with regard to the recovery of any AMI costs.”¹²

- 9 Avista argues finally that granting Staff’s motion to strike would deprive the Commission of a constructive alternative.¹³

DISCUSSION AND DECISION

- 10 We reject Avista’s arguments that Staff’s motion was untimely filed, or improper because it should have included the form of testimony Staff proposes as an alternative to striking the subject surrebuttal testimony by the Company. There is neither a deadline established in the procedural schedule of this case, nor any requirement in the Commission’s procedural rules that establishes timing requirements for prehearing motions such as Staff’s motion to strike testimony.¹⁴ There likewise is no requirement that a motion for

9 Avista Answer ¶ 3 (emphasis in original).

10 *Id.* ¶ 5.

11 *Id.* ¶ 6 (emphasis in original).

12 *Id.* ¶ 7.

13 Avista Answer ¶ 8.

14 *See* WAC 480-07-375(1)d and (3).

surrebuttal testimony include the form of testimony the party requests an opportunity to file.

- 11 We also determine that Avista's substantive arguments are not well-taken. Avista made proposals concerning its planned AMI deployment in its last prior general rate case, Dockets UE-150204 and UG-150205 (consolidated) that are similar to the proposals it makes in its direct case in this proceeding. Staff, Public Counsel, the Energy Project, and ICNU opposed the Company on this issue in that case. Avista could have, and should have, anticipated similar opposition again in this case. Certainly, Avista cannot say it was surprised by such opposition. Regardless, Avista could have asked for alternative relief in its direct case, yet failed to do so.
- 12 The Commission has consistently given guidance, over many years, that a utility that does not distribute to other parties its updated background material and work papers in time for the parties to present evidence on a major issue, fails to follow acceptable procedure. This being the Commission's practice, it is even less acceptable for a party to present an alternative request for relief for the first time at the rebuttal stage of a proceeding. It remains today a disfavored practice for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present it. The Commission expects the company to present its proposals in its direct case.¹⁵
- 13 Avista's final argument that the Commission would somehow be deprived of a constructive alternative is wide of the mark. Indeed, the Commission discussed in its final order in Dockets UE-150204 and UG-150205 that "[i]f the Company decides to procure a new metering system, it may file a well-supported accounting petition on a timely basis to avoid a write-off."¹⁶ While this referred to Avista's request for deferred accounting for its net investment in meters that would be replaced as part of the AMI implementation, the discussion, and other discussion in Order 05,¹⁷ is equally applicable to the costs belatedly proposed for deferred accounting treatment in this general rate case.
- 14 We agree with Avista's point, quoted above, that neither written supplemental testimony together with a supplemental hearing after the evidentiary hearing scheduled to begin on October 12, 2016, nor the creation of additional process during the scheduled hearing

15 See, e.g., *WUTC v. Puget Sound Power & Light Co.*, Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order at 79 (January 1990) ("The Commission is concerned that the company waited to present its alternative rate design proposal until rebuttal. This tactic is unacceptable, since it severely limits the opportunity for other parties to examine the proposal. In future cases, the company will be expected to present its proposals in its direct case.").

16 *WUTC v. Avista*, Dockets UE-150204 and UG-150205 (consolidated), Order 05 ¶199 (January 6, 2016).

17 See, *id.* ¶¶ 196-97.

dates to allow for oral surrebuttal testimony on the issue is appropriate at this juncture of the proceeding.

ORDER

- 15 The Commission, for the reasons stated in the body of this Order, grants Staff’s Motion to Strike.
- 16 The Commission orders further that Avista is required to refile at the commencement of the scheduled evidentiary hearing in this proceeding the rebuttal testimonies of Mr. Norwood (Exhibit No. KON-1T) and Ms. Andrews (Exhibit No. EMA-6T), with the indicated portions of such testimony struck through, as follows:

Norwood, Exhibit No. KON-1T

- 7:13-15 – strike “for two unique issues” and “Advanced Metering Infrastructure (AMI) and”
- 29:13-22 – strike references to AMI: strike “two” in line 14; strike “Advanced Metering Infrastructure, and” in lines 17 to 18.
- 35:10-11 – strike “or deferred accounting treatment is approved for the project”
- 35:12 - 36:24
- 44:6-8 – strike “of deferred accounting with respect to both AMI expenditures and” and “for both matters”
- 44:16-18 – strike “for AMI and”
- 44:20 – strike “AMI and”
- 45, Table 7 – strike references to AMI on line 3 of the table, and recalculate revenue requirement
- 46:7-8 – strike “for the 2017 costs associated with the Advanced Metering Infrastructure (AMI) project”

Andrews, Exhibit No. EMA-6T

- 1:30 – strike “AMI and”
- 1:31
- 3:13 – strike “the Advanced Metering Infrastructure (AMI) project and”
- 5:39 – strike “the Advanced Metering Infrastructure (AMI) project and”
- 33, note 44
- 51:29-30 – strike “AMI and”
- 52:2-3 – strike “Advanced Metering Infrastructure, and”

- 52:10 - 53:18

Dated at Olympia, Washington, and effective October 10, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Senior Review Judge