

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NOS. UE-150204
	)	AND UG-150205
	)	
Complainant,	)	
	)	NORTHWEST INDUSTRIAL GAS
v.	)	USERS' RESPONSE TO STAFF'S
	)	MOTION FOR LEAVE TO FILE
AVISTA CORPORATION	)	SUPPLEMENTAL ARGUMENT ON
d/b/a AVISTA UTILITIES	)	BRIEF
	)	
Respondent.	)	

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1. Pursuant to WAC 480-07-375(1)(d), Northwest Industrial Gas Users (“NWIGU”) moves to strike Commission Staff’s Motion for Leave to File Supplemental Argument on Brief (the “Motion”).

**I. INTRODUCTION**

2. Commission Staff (“Staff”) wishes to file a Supplemental Argument on Brief (the “Supplemental Argument”) so that they may present their argument “more clearly and forcefully.” (Motion, ¶2, Supplemental Argument, ¶1). This motion has no procedural basis in the Washington Administrative Code and fails to meet the basic criteria for content of motions. Accordingly, the Motion should be denied and stricken.

**II. DISCUSSION**

3. There is no basis in the Washington Administrative Code for a party to reiterate through supplemental briefing a position it has already taken simply because the reiteration is more clear

and forceful. To the contrary, to do so would be both procedurally improper and incredibly unfair to the other parties in this action.

4. Staff's motion fails to cite a rule that would allow it to file a supplemental brief for the sole purpose of reiterating its position (after the benefit of reading the other parties briefs). WAC 480-07-375(1)(d), which Staff cites to in its motion, relates to evidentiary motions and allows "requests to limit or add to the record in a proceeding." The rule lists motions to strike, motions in limine, and motions requesting to file supplemental or additional testimony as example motions in this category. *Id.* Staff, however, is not seeking to limit or add to the record. In fact, Staff specifically states, "We offer no new or additional evidence, only an enhanced emphasis of the key elements of our argument." (Supplemental Argument, ¶2). There is no procedural basis under WAC 480-07-375(1)(d) to add additional arguments, only additional evidence. Accordingly, this motion is procedurally improper to the extent it is based on that rule.

5. WAC 480-07-395(5) similarly fails as a basis for a motion that simply reiterates what has already been argued. WAC 480-07-395(5) allows a party to "amend" pleadings, motions, or other documents on such terms that will promote fair and just results. Staff is asking to "reiterate" its argument "more clearly and forcefully." (Motion, ¶2, Supplemental Argument, ¶1). The motion does not result in an amendment to Staff's earlier brief and is instead a stand-alone argument on a single issue. Staff's request to supplement its earlier argument certainly does not promote fair and just results. Staff has not learned any new information that would affect their existing brief—except the arguments of other parties. Staff is not supplementing any factual or legal authority. It is merely trying to submit a new brief on an issue that has already been briefed. Staff specifically acknowledges that its proffered supplemental argument

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SUPPLEMENTAL ARGUMENT ON BRIEF

“reiterates [its] support of an attrition allowance” (Supplemental Argument, ¶6). Staff offers “no new or additional evidence, only an enhanced emphasis of the key elements” of its argument. In other words, Staff wishes to be given an exclusive opportunity to take a second bite at the apple while the other parties must rely on prior submittals. The Supplemental Argument is not the kind of amendment WAC 480-07-395(5) contemplates and is therefore procedurally improper.

6. Staff’s request further fails as a motion because no representation is made as to material facts or legal issues to be decided. WAC 480-07-395(c)(iii)(B)-(C) requires the body of a motion to include both a statement of facts and a statement of issues. A statement of facts is a “succinct statement of the facts that the moving party contends are material to the requested remedy.” WAC 480-07-395(c)(iii)(B). A statement of issues is a “concise statement of the legal issue or issues upon which the commission is requested to rule.” WAC 480-07-395(c)(iii)(C). Staff provides a succinct statement of the facts—that it has requested its attorney to “present argument more clearly and forcefully on the issue of attrition”—but says nothing as to why that fact is material to the requested relief. (Motion, ¶2.) Likewise, no specific legal issues are discussed in the motion beyond perhaps a broad reference to attrition. Staff only broadly identifies “the issue of attrition” in its motion. (Motion, ¶2.) In short, Staff fails to meet even the basic criteria for motions filed under the Washington Administrative Code, and the Motion should be denied as improper.

### III. CONCLUSION

7. Granting the Staff’s Motion to present the argument they have already presented “more clearly and forcefully” erodes the procedural safeguards of the Washington Administrative Code

and leads to unjust and unfair results. There is no procedural basis for a supplemental argument that is neither evidentiary nor an amendment. Accordingly, Staff's Motion should be denied.

Dated: December 8, 2015

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by electronic mail and by mailing a copy properly addressed with first class postage prepaid.

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