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October 8, 2019

**SENT VIA WEB PORTAL and ABC LMI**

Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Olympia, Washington 98503

Re: *WUTC v. Avista Corp* (2019 General Rate Case and ERM)  
Docket UE-190334 and UG-190335, UE-190222

Dear Mr. Johnson:

Enclosed for filing in the above-referenced docket are the original and three copies of Public Counsel's Response to Staff Motion for Severance and Consolidation, and the Certificate of Service.

Sincerely,

*/s/ Lisa W. Gafken*

LISA W. GAFKEN, WSBA No. 31549  
Assistant Attorney General  
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(206) 464-6595

LWG/CM  
Enclosures

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COMMISSION

**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, UE-190222  
(*Consolidated*)

PUBLIC COUNSEL RESPONSE TO  
STAFF MOTION FOR SEVERANCE  
AND CONSOLIDATION

**I. INTRODUCTION**

1. On September 26, Commission Staff filed with the Utilities and Transportation Commission (“Commission”) a combined pleading that (1) responded to Puget Sound Energy’s Power Cost Adjustment filing (Docket UE-190324; “PSE PCA”), (2) responded to Pacific Power & Light’s Power Cost Adjustment Mechanism filing (Docket UE-190458; “Pacific’s PCAM”), (3) moved for severance of Avista’s Energy Recovery Mechanism (ERM) (Docket UE-190222; “Avista’s ERM”) from Avista’s general rate cases in Dockets UE-190334 and UG-190335, (4) requested commencement of adjudications for the PSE PCA and Pacific PCAM, (5) requested consolidation of the PSE PCA, Pacific PCAM, and Avista ERM (collective, “three power cost dockets”), (6) requested suspension of the Avista ERM’s testimony filing date, and (7) requested a prehearing conference to establish a procedural schedule for consolidated power cost dockets (“Staff’s September 26 Motion”).
2. The Commission granted Staff’s motion to suspend the deadline for response testimony regarding the ERM in Order 04 in Dockets UE-190334, UG-190335, and UE-190222

(*Consolidated*). The Commission also asked parties to the Avista ERM to respond to Staff’s

remaining motions prior to the October 10 deadline set in the Commission’s September 30th Notice of Opportunity to Respond. Public Counsel and Avista committed to filing responses by October 7 or 8 in a teleconference ALJ O’Connell held with parties on October 2.

3. Public Counsel supports Staff’s Motion for Severance and Consolidation and respectfully urges the Commission to grant the motions contained in Staff’s September 26 Motion. Avista’s ERM docket is currently consolidated with Avista’s general rate case (GRC) (Consolidated Dockets UE-190334 and UG-190335). The three power cost dockets present a unique situation where a single resource outage affected the three utility’s power costs. The outage involved the Colstrip coal-fired electric generation plant, which is owned (to varying degrees) by Avista, PSE, and Pacific Power. Colstrip is operated by Talen.<sup>1</sup>

## **II. MOTION FOR SEVERANCE AND CONSOLIDATION**

4. Staff’s motion for severance is intractably related to the motion for consolidation. If the motion to consolidate is granted, severance is necessary because the ERM docket is currently consolidated with Avista’s general rate case dockets.
5. Avista initially requested that its ERM be consolidated with the general rate case dockets. The Commission granted consolidation over the objections of Public Counsel, Commission Staff, and the Alliance of Western Energy Consumers (AWEC). The Commission held that consolidation was appropriate because the facts and principles of law were related, Commission and party resources would be efficiently used, and consolidation would align the rate impact for customers.<sup>2</sup>

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<sup>1</sup> See generally, Decl. of David Gomez (Sept. 26, 2019).

<sup>2</sup> Order 03 ¶ 6 (May 30, 2019).

6. Public Counsel, Commission Staff, and AWEC have conducted discovery and have information that can provide the basis of a recommendation to the Commission regarding Avista's ERM. The picture we have in this case may not be complete as there are two other companies involved who are not parties to the consolidated ERM and general rate case. Severing the ERM from the rate case and consolidating it with the PSE PCA and Pacific PCAM dockets rectifies this problem. Consolidation allows the Commission to have the best evidence applicable to a common resource outage, about which multiple parties have concerns.
7. Two of the three reasons cited by the Commission for consolidating the ERM with Avista's general rate case applies to severing the ERM and consolidating it with the other two power cost dockets. Namely, related facts and principles of law and resource efficiency. The facts and principles of law are more closely related with respect to the three power cost dockets than with Avista's ERM and its rate case. The same set of facts gave rise to increased power costs, and the same questions apply regarding whether the Colstrip outage was prudent. While the conclusions may or may not be the same as they relate to each individual utility, the inquiry and the underlying facts are the same.
8. Additionally, resource efficiency supports consolidation of the three power cost dockets. Having to litigate or otherwise address the Colstrip outage in three separate dockets is the opposite of efficiency. Indeed, Public Counsel did not file a Notice of Appearance in the PSE PCA or the Pacific PCAM dockets due to resource considerations. Public Counsel engaged in informal discovery regarding the PSE PCA. Public Counsel's engagement with Pacific Power's filing has been more limited. However, if the three power cost dockets are consolidated, Public Counsel will participate in the consolidated proceeding and has filed Notices of Appearance in all three dockets.

9. The third justification for consolidating the ERM with Avista’s general rate case does not directly apply to severing the ERM and consolidating it with the other two power cost proceedings; however, it does not require that the ERM continue to be consolidated with Avista’s general rate case. Severing the ERM from Avista’s rate cases may result in general rates and ERM rates going into effect at different times, but this does not render severance of the ERM unreasonable. Public Counsel is sensitive to rate impact on customers, but we also want transparency and adequate review. Avista’s ERM requires additional scrutiny. Severing the ERM and consolidating it with the other power cost dockets allows the focus to be on the Colstrip outage without also being required to address all of the rate case issues at the same time. Although Public Counsel is confident that the Commission will adjudicate all issues in the rate case, the balance weighs in favor of severing the ERM and consolidating it with the PSE PCA and Pacific PCAM.

### III. CONFIDENTIAL INFORMATION REGARDING COLSTRIP OUTAGE

10. Commission Staff expressed concern expressed in its September 26 Motion regarding the designation and use of confidential information.<sup>3</sup> Staff asserts that the three companies have provided inconsistent information, and some information has been designated confidential. Staff further asserts that the confidentiality designations “impairs Staff’s ability to use that confidential information in other dockets.” This is concerning to Public Counsel because the Commission should receive a common story regarding the outage event. If this is impaired because the three matters are considered separately, this may adversely impact the Commission’s ability to determine whether the utilities acted prudently. To ensure that the same facts regarding the

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<sup>3</sup> Staff’s September 26 Motion ¶¶ 33 – 36.  
PC RESPONSE TO STAFF MOTION  
DOCKETS UE-190334 and UG-190335,  
UE-190222 (*Consolidated*)

outage applies to all companies, Public Counsel believes consolidation is appropriate.

**IV. COMMENCING AN ADJUDICATION FOR THE PSE PCA AND PACIFIC  
PCAM IS APPROPRIATE.**

11. Because the decision to sever Avista's ERM is intertwined with the decision regarding whether consolidation of the three power cost dockets is appropriate, Public Counsel briefly addresses whether PSE's PCA and Pacific Power's PCAM should be considered in an adjudication. Neither the PSE PCA nor the Pacific PCAM are currently adjudications. Public Counsel recommends that the Commission grant Staff's request that the Commission commence adjudications. Additionally, Public Counsel recommends that the Commission grant Staff's motion to consolidate all three power cost dockets.
12. Adjudication is appropriate for the PSE PCA and Pacific PCAM dockets to allow parties to intervene and seek discovery from the companies. While parties other than Commission Staff may participate in informal proceedings, the ability to fully engage can be limited without the procedures afforded in an adjudication. Commission Staff has expressed difficulty regarding obtaining the necessary information with which to make a recommendation to the Commission.<sup>4</sup> Formal discovery, testimony, and Commission decision after hearing will allow the Commission to decide the prudence issues on a full and robust record.

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<sup>4</sup> Staff's September 26 Motion ¶¶ 21 and 26.  
PC RESPONSE TO STAFF MOTION  
DOCKETS UE-190334 and UG-190335,  
UE-190222 (*Consolidated*)

**V. CONCLUSION**

13. Public Counsel supports Commission Staff's motions to sever Avista's ERM, Docket UE-190222, from Avista's general rate case [UE-190334 and UG-190335, (*Consolidated*)] and to consolidate the ERM with the PSE PCA and Pacific PCAM dockets.

Dated this 8th day of October 2019.

ROBERT W. FERGUSON  
Attorney General

/s/ Lisa W. Gafken  
LISA W. GAFKEN  
Assistant Attorney General  
Public Counsel Unit Chief  
WSBA No. 31549

**CERTIFICATE OF SERVICE**

**DOCKET UE-190334 and UG-190335, UE-190222 (Consolidated)**  
***WUTC v. Avista Corp. d/b/a Avist Utilities***  
***(Avista 2019 GRC)***

**I HEREBY CERTIFY** that I have this day served ***Public Counsel Response to Staff Motion for Suspension*** upon all parties of record in this proceeding, by electronic transmission to the email address(es) or by mailing a true and correct copy, postage prepaid, to each party or party representative listed in the Commission's master service list for this docket.

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Dated at Seattle, Washington this 8th day of October 2019.

/s/ Chanda Mak  
CHANDA MAK  
Legal Assistant