

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	DOCKETS UE-190334, UG-190335, and UE-190222 (<i>Consolidated</i>)
v.	ORDER 06
AVISTA CORPORATION d/b/a AVISTA UTILITIES	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	DOCKET UE-190324
v.	ORDER 02
PUGET SOUND ENERGY	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	DOCKET UE-190458
v.	ORDER 02
PACIFIC POWER & LIGHT COMPANY	
In the Matter of the Investigation of	DOCKET UE-190882
AVISTA CORPORATION d/b/a AVISTA UTILITIES, PUGET SOUND ENERGY, and PACIFIC POWER & LIGHT COMPANY	ORDER 01
Regarding Prudency of Outage and Replacement Power Costs	DENYING MOTION TO SEVER AND CONSOLIDATE; INITIATING INVESTIGATION; MODIFYING PROCEDURAL SCHEDULE; SETTING PROCEDURAL SCHEDULE

BACKGROUND

- 1 On April 30, 2019, Avista Corporation, d/b/a Avista Utilities (Avista or Company), filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service, in Docket UE-190334 and revisions to its currently effective Tariff WN U-29, Natural Gas, in Docket UG-190335.
- 2 On March 29, 2019, Avista filed with the Commission tariff revisions designed to rebate to customers approximately \$34.4 million in Docket UE-190222, referenced as its Energy Recovery Mechanism (ERM) filing.
- 3 On May 30, 2019, the Commission issued Order 03, consolidating Dockets UE-190334, UG-190335, and UE-190222.
- 4 On September 26, 2019, Commission staff (Staff) filed with the Commission a motion that, among other things, requests to sever Avista's ERM filing in Docket UE-190222 from Avista's general rate case (GRC) and consolidate it with other dockets addressing the power cost adjustment (PCA) mechanism for Puget Sound Energy (PSE) in Docket UE-190324 and the power cost adjustment mechanism (PCAM) of Pacific Power & Light Company (Pacific Power) in Docket UE-190458 (collectively, the Companies). Staff argues that all three filings share common issues related to a 2018 outage at Units 3 and 4 of the Colstrip coal fired generating station, facilities commonly owned by Avista, PSE, and Pacific Power. Staff asserts that it has been difficult to obtain information from all companies, which has been complicated by the parties placing different confidential designations on the same information. Staff argues that consolidating all three dockets would best facilitate resolution of these issues.
- 5 In its motion, Staff moved to suspend the October 3, 2019, testimony filing deadline in Docket UE-190222 pending the Commission's decision on Staff's other motions. Staff indicated that the non-company parties did not oppose its motion to suspend the testimony filing deadline.
- 6 On October 1, 2019, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) filed a response supporting Staff's motion to suspend the filing deadline.
- 7 On October 1, 2019, Avista filed a response opposing Staff's motion to suspend the filing deadline. Avista argued that "any commonality among the three separate power cost

filings would occur, if at all, only with respect to the limited issue relating to the causes of the Colstrip outage in 2018. . .” and that the Commission cannot know whether sufficient commonality exists between the proceedings to justify consolidation without first reviewing Staff’s and other parties’ testimony.¹

8 On October 2, 2019, the Commission granted the Staff’s motion to suspend the October 3, 2019, testimony filing deadline in Docket UE-190222.

9 On October 7, 2019, Avista filed a response opposing the remainder of Staff’s motion. Avista argues that consolidating its ERM with the PCA and PCAM would result in “a procedural quagmire as the Commission seeks to juggle all of the issues, most which will be unique to each company and many of which may involve the need to protect confidential information . . . from the public and PSE and Pacific Power and vice versa.” Avista also argues that consolidation would not lead to judicial economy or any efficiency of resources, as Staff claims, but would actually create additional burden because “there is really only one issue that conceivably could be in common – i.e., causes for the Colstrip outage. But the consequences of that for each company are unique.” Avista also expressed the difficulty of preserving the confidentiality of its proprietary information in a consolidated proceeding with PSE and Pacific Power.

10 On October 8, 2019, Public Counsel filed a response supporting the remainder of Staff’s motion. Public Counsel argues that many of the reasons that justified consolidating Avista’s ERM with its GRC (related facts and principles of law, efficient use of resources, alignment of rate impacts to customers) now support severing the ERM from the GRC and consolidating it with the PCA and PCAM. Public Counsel argues that the ERM, PCA, and PCAM share related facts and principles of law – even more so than the ERM with Avista’s GRC – and consolidation would provide greater resource efficiency to examine whether the 2018 Colstrip outage was prudent. Public Counsel argues that it believes the transparency and adequacy of review provided by consolidation outweighs the concern regarding ERM and GRC rates going into effect at different times. Last, Public Counsel also expresses concerns about the confidentiality issues presented in Staff’s motion.

11 On October 10, 2019, PSE filed a response opposing Staff’s motion. PSE argues that there is only one factual similarity – the power outage at Colstrip in 2018 – and that the

¹ Avista’s Response at 3-4, ¶¶ 4-5.

single similarity does not justify consolidation of the ERM, PCA, and PCAM, which involve unique facts, different parties, and distinct issues. PSE argues that consolidation would not resolve Staff's concerns about discovery because the information Staff seeks is in the possession of an unregulated entity: Talen MT. Additionally, consolidation would result in further discovery delays because "Avista, Pacific Power and PSE will necessarily be required to reach consensus on every response to every data request and agree on the confidentiality designation for each document produced." PSE also argues that consolidation would not resolve the confidentiality issues Staff identifies because Avista, Pacific Power, and PSE are separate entities and may not possess the same documents or hold the same opinions regarding what constitutes valuable commercial information.

12 On October 10, 2019, Pacific Power filed a response opposing Staff's motion. Pacific Power argues that Staff's motion is a reconsideration of its response (dated May 15, 2019) to Avista's motion to consolidate its ERM with its GRC and that the Commission is foreclosed from now consolidating the ERM, PCA, and PCAM. Pacific Power, like Avista and PSE, argues that there are many discrete issues presented in its PCAM that are unrelated to the 2018 Colstrip outage. Pacific Power also argues that prudence should not be determined jointly, but independently because prudence depends upon the unique situation of, and specific actions taken by, each of the companies.² Pacific Power argues that consolidation would not resolve discovery and confidentiality issues because each company would remain responsible for its own discovery responses and confidential designations. Pacific Power also argues that consolidation would thwart the opportunity for settlement in each of the dockets.

13 On October 15, 2019, the Commission convened a hearing on Staff's motion with all parties to Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*) as well as PSE and Pacific Power. All parties waived their right to seven days' notice of the hearing.

14 At the hearing on Staff's motion, the parties reached a consensus on very few points. All parties agreed that the Commission should have all of the information it needs to make a

² Pacific Power states: "In the context of the 2018 Colstrip Unit 4 outage, the relevant question is whether Pacific Power acted prudently in its capacity as a non-operating, minority owner of Colstrip Unit 4. Because Pacific Power is differently situated than Avista or PSE, the prudence inquiry in Pacific Power's case is different than in Avista's and PSE's cases." Response at 8, ¶ 19.

fully informed and correct decision. Although the companies and Staff did not agree on the context (consolidated or separate dockets), all support the idea of the Commission issuing a protective order or orders that would afford two levels of confidentiality: one protecting confidential information from public disclosure but not from the other companies, and one protecting information not only from public disclosure but also from the other companies. The Companies believe that these protective orders in each of the separate (unconsolidated) dockets would afford Staff and the Commission the ability to gather information in any docket and use it in the other dockets. Staff believes that such a two-tiered protective order in a consolidated docket would resolve the concerns the companies expressed related to protecting proprietary information from the other companies.

DISCUSSION AND DECISION

- 15 We deny Staff's motion to sever the ERM from Avista's GRC and consolidate it with PSE's PCA and Pacific Power's PCAM. We determine that PSE's PCA and Pacific Power's PCAM should be suspended and set for adjudication, and we will issue orders to that effect in Docket UE-190324 and Docket UE-190458, respectively. We determine that it is necessary to require Staff to initiate an investigation into the 2018 outage at the Colstrip generating station to assess the prudence of decisions made and actions taken by Avista, PSE, and Pacific Power as co-owners of Colstrip, as well as the additional costs incurred by the companies to acquire replacement power as a result of the outage. The investigation should include an evaluation of how much, if any, costs for replacement power should be included in the companies' power cost mechanisms.
- 16 Staff's investigation will produce a full, complete, and common assembly of information regarding the 2018 Colstrip outage, which will allow the Commission to make a fully informed prudence decision. Although we deny the motion to consolidate, we find that initiating an investigation is the only other practical avenue to obtain the information necessary for the Commission to carry out its regulatory obligations.
- 17 **CONSOLIDATION.** The Commission has discretion, but is not required, to consolidate two or more proceedings that share related facts or principles of law. The Commission may also sever consolidated proceedings.
- 18 The ERM, PCA, and PCAM share related facts and principles of law. The events and decisions leading up to the 2018 outage at the Colstrip generating station share related

facts between Avista, PSE, and Pacific Power as co-owners, and the Commission must decide the same legal issue in all three dockets related to the prudence of the decisions made and actions taken by each of the Companies and the costs incurred by each to acquire replacement power. We are persuaded by other factors, however, that consolidating the ERM, PCA, and PCAM is neither appropriate nor necessary to resolve these issues.

- 19 We accept the Companies' argument that the ERM, PCA, and PCAM each have numerous, discrete, and unique issues specific to each company, and that the prudence of the Colstrip outage and replacement power costs is only one of many issues in each docket. We also accept that attempting to consolidate dockets that contain such a diverse set of issues would present many procedural complications that can be avoided by keeping the dockets separate. Last, we accept that, due to the diversity of multiple issues, the complexity of confidentiality designations for each of the companies would be burdensome. Even with these difficulties, keeping the ERM, PCA and PCAM dockets separate is the best option to evaluate the separate and distinct issues in each company's filing. We emphasize, however, that we must ensure the Commission obtains all of the information we need to make a fully informed decision about the prudence of the 2018 Colstrip outage and the resulting costs incurred to acquire replacement power.
- 20 We deny Staff's motion to sever Avista's ERM from its GRC and consolidate it with the PCA and PCAM. Accordingly, we modify the procedural schedule in Avista's ERM and GRC, Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*), as identified in Appendix A to this Order. We make these modifications to afford the parties, including Avista, the opportunity to rebut or cross-answer any responsive testimony and exhibits in light of our earlier decision to suspend the response testimony deadline.
- 21 Any party intending to file responsive testimony in Avista's ERM should be required to file, according to the prehearing conference order in Docket UE-190222, any testimony and exhibits unrelated to the prudence of decision making leading up to the outage at Colstrip in 2018 and the costs incurred to acquire replacement power costs **by October 28, 2019, at 5 p.m.** We modify the response time to data requests unrelated to the prudence of decision making leading up to the outage at Colstrip in 2018 and the costs incurred to acquire replacement power costs in Docket UE-190222 as indicated in Appendix A.

- 22 We require Avista to file any rebuttal testimony and exhibits and non-company parties to file any cross-answering testimony and exhibits unrelated to the 2018 Colstrip outage in Docket UE-190222 **by December 13, 2019, at 5 p.m.** We also set December 20, 2019, as the discovery deadline – the last day to issue data requests – in Docket UE-190222. We require all cross-examination estimates, witness lists, and exhibits in Docket UE-190222 unrelated to the 2018 Colstrip outage to be filed with the Commission **by December 31, 2019, at 5 p.m.** We will hold an evidentiary hearing for all matters unrelated to the 2018 Colstrip outage in Docket UE-190222 on **January 8, 2020, at 9:30 a.m.** All other portions of the procedural schedule in Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*) remain unchanged.
- 23 **INVESTIGATION.** The Commission, on its own motion, directs Staff to initiate an investigation in Docket UE-190882 to evaluate the prudence of the 2018 Colstrip outage and the costs incurred to acquire replacement power. This investigation will be limited in scope and not include the numerous, discrete issues contained in the separate power cost dockets. Because it is limited in scope, we expect the investigation will afford the Commission a comprehensive understanding of Avista’s, PSE’s, and Pacific Power’s decision making as co-owners of Colstrip leading up to the 2018 outage and the resulting costs of replacement power.
- 24 As the only other party with a stated interest in the prudence issues related to the 2018 outage, we assume Public Counsel will participate in Docket UE-190882 and conduct its own discovery. We will consider petitions to intervene in Staff’s investigation by other parties only if they are submitted to the Commission in writing by November 5, 2019, at 5 p.m.
- 25 We exercise our discretion and authority to place all portions from the initial filings of Avista, PSE, and Pacific Power in Dockets UE-190222, UE-190324, and UE-190458, respectively, pertaining to the prudence of decision making leading up to the 2018 Colstrip outage and the costs incurred to acquire replacement power into Docket UE-190882 as the Companies’ initial filing on those limited issues. Each of the co-owners has the burden to show that its decision making leading up to the outage was prudent, and that the increased replacement costs were prudently incurred. We then require Staff, Public Counsel, and any other party granted intervention to file in Docket UE-190882 testimony and exhibits regarding their prudence evaluation and recommendation. As Staff suggested at the hearing on its motion, we expect Staff to

present a single narrative of the outage with individual assessments and prudence recommendations for each of the Companies, if necessary.

26 Subsequent to Staff's and Public Counsel's filing, we will afford the Companies an opportunity to provide rebuttal testimony and exhibits. Last, we intend to hold a hearing on the narrow question of prudence related to the 2018 Colstrip outage. At that hearing, we will admit evidence, hear cross-examination of any witnesses, hear any other matters related to the limited scope of Staff's investigation, and permit the parties to make closing arguments.

27 The determination or determinations we make in Docket UE-190882 regarding the prudence issues related to the 2018 Colstrip outage will be binding in Dockets UE-190222, UE-190324, and UE-190458.

28 **Two-tiered Protective Order.** We accept the parties' proposal to issue a two-tiered protective order. Accordingly, we will enter an order in Docket UE-190882 implementing this two-tier protection of confidential information, as described by the parties.

29 **Scope and Procedural Schedule.** Docket UE-190882 will be limited to only the issues of prudence regarding the 2018 Colstrip outage and the acquisition of replacement power costs. All parties are expected, therefore, to focus their efforts and complete their evaluations on an expedited schedule. In consideration of the discovery and informal discovery already undertaken, we will afford Staff and Public Counsel several weeks to compile discovery, testimony, and exhibits to support their recommendations. Similarly, we require the Companies to file any rebuttal testimonies and exhibits within the same timeframe. We, therefore, adopt the procedural schedule attached to this Order as Appendix B for Staff's investigation, Docket UE-190882.

30 **Discovery.** We determine that discovery should be conducted in Docket UE-190882 pursuant to the Commission's discovery rules found in WAC 480-07-400 – 425, with one exception: we modify the response time to data requests as indicated in Appendix B. Due to the expedited schedule, we limit the time for responses to any data requests to 3 business days. Further, we expect that any controversy concerning responses to data requests, whether a motion to compel or an in-camera review of evidence by the assigned administrative law judge, will be brought swiftly to the Commission for resolution.

FINDINGS AND CONCLUSIONS

- 31 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.
- 32 (2) Avista, PSE, and Pacific Power are each a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010, and as those terms are otherwise used in Title 80 RCW. Avista, PSE, and Pacific Power are each engaged in Washington in the business of supplying utility services and commodities to the public for compensation.
- 33 (3) The Commission has discretion to consolidate proceedings in which facts or principles of law are related. The Commission also has discretion to sever proceedings.³
- 34 (4) Dockets UE-190222, UE-190324, and UE-190458 share related facts and issues of law regarding the prudence of decision making leading up to the 2018 Colstrip outage and the costs incurred to acquire replacement power. Each docket also includes numerous, unrelated, discrete, and unique issues.
- 35 (5) The Commission should deny Commission staff’s motion to sever Docket UE-190222 from Dockets UE-190334 and UG-190335 and consolidate it with Docket UE-190324 and Docket UE-190458 because their unrelated facts and principles of law in those dockets outweigh their commonalities.
- 36 (6) The Commission should determine a reasonable and appropriate schedule in Docket UE-190222 for the timing of responses to data requests, filing response testimony, filing rebuttal and cross-answering testimony, a discovery deadline, submitting exhibits lists, cross-examination exhibits, witnesses lists, time estimates, exhibits errata, and evidentiary hearing.
- 37 (7) The Commission should order Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*) to proceed according to the modified procedural schedule attached to this Order as Appendix A.

³ WAC 480-07-320.

- 38 (8) It is imperative that the Commission have all relevant information necessary to make a fully informed decision regarding the prudence of the decisions made by Avista, PSE, and Pacific Power leading up to the 2018 Colstrip outage and the costs incurred by each to acquire replacement power. This information cannot be gathered practically in separate proceedings, and a single proceeding is, therefore, necessary to better facilitate resolution of these narrow and limited issues.
- 39 (9) The Commission should require Staff to conduct an investigation in Docket UE-190882 into the prudence of decisions made and actions taken by each company providing electric service to Washington customers leading up to the 2018 Colstrip outage and the costs incurred by each company to acquire replacement power.
- 40 (10) The Commission should require Docket UE--190882 to proceed according to the schedule attached to this Order as Appendix B and with the requirements and restrictions outlined in Paragraphs 28-30.
- 41 (11) The Commission should provide notice that it will hold an evidentiary hearing in Docket UE-190882 beginning January 15, 2020, at 9:30 a.m. in the Commission's Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.

ORDER

THE COMMISSION ORDERS:

- 42 (1) Commission staff's motion to sever Docket UE-190222 from Dockets UE-190334 and UG-190335 and consolidate it with Docket UE-190324 and Docket UE-190458 is denied.
- 43 (2) Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*) will proceed according to the modified procedural schedule attached to this Order as Appendix A.
- 44 (3) Commission staff is required to initiate an investigation in Docket UE-190882 into the prudence of decisions made and actions taken by each company providing electric service to Washington customers leading up to the 2018 Colstrip outage and the costs incurred by each company to acquire replacement power.

- 45 (4) Docket UE-190882 will proceed according to the procedural schedule attached to this Order as Appendix B and with the requirements and restrictions outlined in Paragraphs 28-30.
- 46 (5) The Commission will hold an evidentiary hearing in Docket UE-190882 beginning January 15, 2020, at 9:30 a.m. in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.

DATED at Lacey, Washington, and effective October 24, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*
ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

APPENDIX A
PROCEDURAL SCHEDULE
DOCKETS UE-190334, UG-190335, UE-190222
modified October 24, 2019

EVENT	DATE
Prehearing Conference	May 24, 2019
Modified Protective Order (Order 02 (Modified))	May 30, 2019
Prehearing Conference Order (Order 03)	May 30, 2019
Deadline for Petitions to Intervene	June 19, 2019
Deadline for Responses to Petitions to Intervene	June 25, 2019
Initial Settlement Conference ⁴	September 19, 2019
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits ⁵	October 3, 2019⁶
Avista Circulates Joint Issues Matrix	October 10, 2019
<u>Docket UE-190222: Staff, Public Counsel, and Intervenor Response Testimony and Exhibits⁷</u>	<u>October 28, 2019</u>
Settlement Conference	October 29, 2019
Avista Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits ⁸	November 21, 2019

⁴ Per WAC 480-07-700(3)(a), parties may reschedule a settlement conference included in the procedural schedule without seeking to modify the schedule if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

⁵ Response time to data requests relating to this testimony will be 7 business days.

⁶ Deadline for Response Testimony in Docket UE-190222 suspended pursuant to Order 04.

⁷ Response time to data requests relating to this testimony will be 5 business days.

⁸ Response time to data requests relating to this testimony will be 5 business days.

Notice Issued for Public Comment Hearing	At least 30 days prior to Public Comment Hearing
Public Comment Hearing	October 28, 2019
Discovery Deadline – Last Day to Issue Data Requests ⁹	November 26, 2019
Avista Files Joint Issues Matrix	December 3, 2019
Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata	December 5, 2019
Evidentiary Hearing	December 11, 2019 at 9:30 a.m.
<u>Docket UE-190222: Avista Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits¹⁰</u>	<u>December 13, 2019</u>
<u>Docket UE-190222: Discovery Deadline – Last Day to Issue Data Requests¹¹</u>	<u>December 20, 2019</u>
<u>Docket UE-190222: Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata</u>	<u>December 31, 2019</u>
<u>Docket UE-190222: Evidentiary Hearing</u>	<u>January 8, 2020 at 9:30 a.m.</u>
Post-Hearing Briefs and Updated Joint Issues Matrix ¹²	February 5, 2020
Suspension Date	April 1, 2020

⁹ Response time to data requests will be 5 business days.

¹⁰ Response time to data requests relating to this testimony will be 3 business days.

¹¹ Response time to data requests will be 3 business days.

¹² Dockets UE-190334, UG-190335, and UE-190222 (*consolidated*).

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UE-190882**

EVENT	DATE
Order Initiating Investigation (Order 01) ¹³	October 23, 2019
Deadline for Petitions to Intervene	October 30, 2019
Deadline for Responses to Petitions to Intervene	November 1, 2019
Staff, Public Counsel, and Intervenor Response Testimony and Exhibits	December 3, 2019
Avista, PSE, and Pacific Power (separately) Rebuttal Testimony and Exhibits; Staff, Public Counsel, and Intervenor Cross-Answering Testimony and Exhibits	January 8, 2020
Discovery Deadline – Last Day to Issue Data Requests	January 20, 2020
Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata	January 24, 2020
Evidentiary Hearing	January 30, 2020 at 9:30 a.m.

¹³ Response time to data requests will be 3 business days.