

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKET NO. UE-080416

and

DOCKET NO. UG-080417
(consolidated)

PUBLIC COUNSEL ANSWER TO
AVISTA MOTION FOR LEAVE TO
FILE SUPPLEMENTAL
TESTIMONY

I. INTRODUCTION

1. Public Counsel files this answer in opposition to Avista Corporation's (Avista or Company) Motion For Leave To File Supplemental Testimony and Exhibits in this proceeding (Motion). Public Counsel requests that the Motion be denied.

II. ARGUMENT

2. On March 4, 2008, Avista filed with the Commission proposed tariffs to increase its electric revenues by \$36.6 million and its natural gas revenues by \$6.6 million. The tariffs were suspended and set for hearing.¹ On July 28, 2008, Avista filed the above-referenced Motion. Avista's supplemental testimony purports to "revise the Company's justified electric revenue

¹ Complaint and Order Suspending Tariff Revisions and Order of Consolidation, Order 01 (Suspension Order).
PUBLIC COUNSEL ANSWER TO AVISTA MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY
DOCKET NOS. UE-080416 AND UG-080417

1

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

requirement upward from \$36.6 million to \$47.4 million.”² Avista has not, however, revised its tariff filing and does not request additional rate relief beyond its initial filing at \$36.6 million.³

3. Public Counsel respectfully requests that the Motion be denied. No valid purpose is served by allowing the supplemental testimony and exhibits. Because the new testimony increasing the revenue requirement goes beyond the scope of the proceeding as defined in the initial tariffs and the suspension order it is not necessary or relevant evidence and is, therefore, not admissible under WAC 480-07-495(1).

4. Supplementation of testimony which seeks a different higher revenue requirement introduces confusion into the issues in the case. For example, must Staff and intervenor testimony on Power Supply Expense, and any related alternative adjustments, focus on the Avista testimony as filed or on the testimony as supplemented, even though the numbers testified to are not intended to be recovered in rates?⁴ If the Commission accepts a Public Counsel adjustment, is that adjustment applied to the as-filed case or the new higher number? If the latter is the case, the effect is the same as Avista’s request had actually sought to have the full amount of the supplemental request included rates. In order for that to occur (inclusion in rates), it is Public Counsel’s position that Avista would have to refile its rate case with new tariffs.⁵

² Motion, ¶ 1.

³ *Id.*

⁴ Another issue with regard to the Power Cost supplement specifically is that Avista already has a mechanism for adjusting power costs, the Energy Recovery Mechanism (ERM)). While Avista may properly seek new power costs and adjust its baseline in an initial GRC filing, additional modification during the case raise the question of whether the ERM is being circumvented improperly. Power cost adjustments during a rate case, of course, avoid the application of the risk sharing bands in the ERM.

⁵ Public Counsel has addressed the issue of a “mid-case” increase in the revenue request that exceeds the initially proposed tariff amount in *WUTC v. PSE*, Docket No. UE-072300/UG-072301. *See*, Joint Response of Public Counsel, The Energy Project and ICNU to PSE Motion for Leave to Supplement Testimony, attached as Attachment A to this motion. The arguments on the question of tariff filing are incorporated in this Public Counsel Answer by this reference.

5. The Motion also raises legal questions. RCW 80. 28.010(1) requires electric rates to be “just, fair, reasonable and sufficient.” By filing evidence that shows a “justified” electric revenue requirement nearly 30 percent higher than the initial request, Avista is in effect asking the Commission to approve an insufficient rate. Avista has a choice. It can pursue the case as filed, or initiate a new rate case by filing new tariffs. The hybrid approach proposed in this motion should not be permitted. The fact that Avista has chosen neither to refile its proposed tariffs, nor to seek actual recovery of the amount in rates indicates that the additional revenue is not necessary for the Company to receive a sufficient level of revenue.
6. In addition, Avista’s supplementation of a total of eleven items of testimony and accompanying exhibits, based on seven different adjustments⁶ is burdensome for the other parties and the Commission. Parties and their witnesses will have to review the new testimony, if allowed, and potentially pursue discovery as to the supplementation. Discovery responses already received may no longer be accurate and will have to be supplemented. There is no reasonable basis for requiring parties to undertake this additional work if the new evidence is not intended to have an effect on the outcome, nor are the Commission’s interests in judicial economy well-served.
7. It may be that the purpose of the filing is to demonstrate to the Commission that the initial filing was reasonable or conservative. This is, in effect, an effort to bias the Commission’s judgment on the facts of initial filing, the only matter actually at issue, with a type of illustrative or contextual evidence. In order to respond, other parties will be forced to treat the new evidence as if it is part of the case, whether it affects rates or not. To ignore it is to risk that

⁶ Motion, ¶ 2.
PUBLIC COUNSEL ANSWER TO AVISTA MOT
FOR LEAVE TO FILE SUPPLEMENTAL
TESTIMONY
DOCKET NOS. UE-080416 AND UG-080417

8. it will be taken into account in weighing Avista's overall case with the impact of increasing the amount of the revenue requirement. Again, this is an unnecessary and burdensome diversion of parties' resources.

III. CONCLUSION

9. For the foregoing reasons, Public Counsel respectfully requests that the Avista motion to supplement be denied. In the event that the Commission decides to allow the supplemental filing, Public Counsel requests an extension of time to file its direct testimony from September 12 to September 19 in order to allow additional time to review the new evidence.⁷

10. Dated this 4th day of August, 2008.

ROBERT M. MCKENNA
Attorney General

Simon J. ffitch
Assistant Attorney General
Public Counsel

⁷ It is Public Counsel's understanding the Avista has no objection to this extension if it is permitted a five day extension to file its rebuttal. Public Counsel does not object to the rebuttal extension in the event the Commission decides to grant the Avista motion.