

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation of

AVISTA CORPORATION d/b/a
AVISTA UTILITIES, PUGET SOUND
ENERGY, and PACIFIC POWER &
LIGHT COMPANY

Regarding Prudency of Outage and
Replacement Power Costs

DOCKET UE-190882

ORDER 03

PROCEDURAL ORDER; NOTICE OF
HEARING
(Set for January 30, 2020, at 9:30
a.m.)

- 1 **NATURE OF PROCEEDING.** On October 24, 2019, the Utilities and Transportation Commission (Commission) issued Order 06/02/02/01 (Initiation Order), ordering Commission staff (Staff) to open an investigation into the prudency of decisions made and actions taken by each company – Avista Corporation d/b/a Avista Utilities (Avista), Pacific Power & Light Company (Pacific Power), and Puget Sound Energy (PSE) (collectively, the Companies) – providing electric service to Washington customers leading up to the 2018 Colstrip outage and the costs incurred by each company to acquire replacement power.¹ Each of the Companies 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.
- 2 The Commissioners will preside in this matter along with Administrative Law Judge Andrew J. O’Connell. This Order governs the procedures in this proceeding going forward.

¹ Dockets UE-190222, UE-190334, UG-190335 (*consolidated*), and Dockets UE-190324, UE-190458, and UE190882, Order 06/02/02/01 Denying Motion to Sever and Consolidate; Initiating Investigation; Modifying Procedural Schedule; Setting Procedural Schedule, 10, ¶ 44 (Oct. 24, 2019) [hereinafter “Initiation Order”].

- 3 **INITIATION.** The Commission exercised its discretion and authority to place all portions from the Companies' initial filings in Dockets UE-190222, UE-190458, and UE-190324 pertaining to the prudence of decision making leading up to the 2018 Colstrip outage and the costs incurred to acquire replacement power into this proceeding, Docket UE-190882, as the Companies' initial filing on those limited issues.
- 4 **PREHEARING CONFERENCE.** The Commission finds that a prehearing conference is unnecessary under the circumstances presented in this matter. The Initiation Order, this Order, and Order 02, Confidential Protective Order with Special Provisions in Docket UE-190882 (Oct. 28, 2019) (Order 02 or Protective Order) sufficiently address all issues addressed at a prehearing conference and provide a process for resolution of any petitions to intervene.
- 5 **REPRESENTATIVES.**² David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, represents Avista. Ajay Kumar, Senior Attorney, Pacific Power, Portland, Oregon, and Katherine McDowell, McDowell Rackner Gibson PC, Portland, Oregon, represent Pacific Power. Donna Barnett, Perkins Coie, Bellevue, Washington, represents PSE. Joe M. Dallas, and Daniel J. Teimouri, Assistant Attorneys General, Olympia, Washington, represent Staff.³ Lisa W. Gafken and Nina Suetake, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel). Contact information for the representatives of parties, as of the date of this Order, is attached as Appendix A to this Order. If there is any additional person or support staff that should be added, please send an email with the pertinent information to the presiding administrative law judge (andrew.j.oconnell@utc.wa.gov).
- 6 **PETITIONS FOR INTERVENTION.** In the Initiation Order, the Commission set a deadline of October 30, 2019, for filing petitions to intervene. Additionally, the

² The Companies' representatives were either indicated in their initial filings or in a separate notice of appearance in Dockets UE-190222, UE-190324, and UE-190458. The Commission exercised its authority to place the initial filings related to the prudence of the 2018 Colstrip outage and replacement power costs into this docket. Accordingly, we include the company representatives designated in those dockets as representatives here.

³ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Commission set a deadline of November 1, 2019, for any responses objecting to a petition to intervene. AWEC filed a petition to intervene on October 25, 2019. The Commission will issue an order ruling on all petitions to intervene after the deadline for responses has passed.

- 7 **PROTECTIVE ORDER.** The Protective Order in this docket allows for two tiers of confidentiality: one tier for “Confidential Information” as defined in rule; and, another tier designated as “Company-confidential Information” that includes a special degree of protection for confidential information related to the prudence of decision making leading up to the 2018 power outage at Units 3 and 4 of the Colstrip generating station that may be shared between Avista, Pacific Power, and PSE for the purpose of promoting the Companies’ cooperation and coordination when disclosing information. Attorneys and experts that request access to both “Confidential Information” and “Company-confidential Information” should submit two non-disclosure agreements (“Confidential Information”: Exhibit A for Attorneys, Exhibit B for Experts; and, “Company-confidential Information”: Exhibit C for Attorneys, Exhibit D for Experts). If an attorney or expert only requests access to one of the protected types of information (either “Confidential Information” or “Company-confidential Information”), then a single non-disclosure agreement need only be submitted.
- 8 **DISCOVERY.** Discovery will be conducted according to the requirements and restrictions set out in paragraphs 28-30 in the Initiation Order, the procedural schedule attached to the Initiation Order, the Protective Order, this Order, and the Commission’s discovery rules, WAC 480-07-400 – 425. The Commission outlines certain requirements for discovery in this Order, however, which may modify the Commission’s discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively to avoid having to bring discovery matters forward for formal resolution.
- 9 The Commission has the statutory authority and right to inspect, at any and all times, “the accounts, books, papers, and documents of any public service company.”⁴ Discovery, however, must seek only information that is relevant to the issues, or that may lead to the production of information relevant to the issues, in this docket. Additionally, discovery must not be used for any improper purpose, such as to harass or to cause unnecessary

⁴ RCW 80.04.070.

delay or needless increase in the costs of litigation. The Commission may impose sanctions or penalties for failure to abide by these, and other, rules and requirements.⁵

- 10 The Commission's rules require that parties make good faith efforts to resolve discovery disputes informally. In this proceeding, if those good faith efforts cannot resolve the discovery dispute within 24 hours, the Commission expects and permits parties to file a motion. Responses to such motions must be filed within 2 business days thereafter. The Commission expects such motions to be unnecessary in most instances due to the Commission's statutory authority to inspect the Companies' accounts, books, papers, and documents at any and all times.⁶
- 11 The Commission requires the parties to share every data request and response with all parties, subject to any confidentiality limitations contained in Commission rule or the protective order issued in this docket. This may result in the substance of responses containing "Confidential Information" not being shared between the Companies, as intended by the protective order, while permitting responses containing "Company-confidential Information" to be shared between the Companies.
- 12 Any responses to data requests already provided in Dockets UE-190222, UE-190324, and UE-190458, pertaining to the subject matter of this docket must be provided to the parties by November 7, 2019, subject to any confidentiality limitations contained in Commission rule or the protective order issued in this docket. Any data requests and responses thereto already issued or provided in Dockets UE-190222, UE-190324, and UE-190458, pertaining to the subject matter of this docket will be referred to with the addition of a suffix indicating the docket from which it came after the appropriate identification. *For example:* "UTC Staff Data Request No. 1 (UE-190324)." For the purpose of increasing clarity and the Commission's ability to distinguish data requests in this docket from any other, data requests issued by any party in this docket should begin numbering at 301 and need not indicate the docket number in a suffix for reference. *For example:* "UTC Staff Data Request No. 301." For any data requests that have already been sent in this docket, the Commission requests that the requestor renumber any such data requests as an administrative correction that will not modify the substance or date of the request.
- 13 Similarly, for exhibits and testimony already filed in Dockets UE-190222, UE-190324, or UE-190458, those exhibits or testimony will be referred to with the addition of a suffix

⁵ See RCW 80.04.380; WAC 480-07-400(3); WAC 480-07-425(2).

⁶ See RCW 80.04.070.

indicating the docket in which it was filed after the appropriate identification. *For example:* “Ehrbar, Exh. PDE-1T (UE-190222)” or “Wilding, Exh. MGW-1T (UE-190458).” No suffix is necessary to refer to testimony or exhibits filed in this docket after October 24, 2019.

- 14 **EXHIBITS PLACED IN DOCKET.** In the Initiation Order, the Commission exercised its authority to place the initial filings related to the prudency of the 2018 Colstrip outage and replacement power costs into this docket. Appendix B, attached to this Order, indicates the testimony and exhibits in the initial filings in Dockets UE-190222, UE-190324, and UE-190458 that are placed into Docket UE-190882 as initial filings by the Companies. The Commission will move copies of the electronic versions of the testimony and exhibits indicated in Appendix B to Docket UE-190882, preserving all confidentiality designations. Only those portions of the testimony and exhibits that are related to the prudency of the 2018 Colstrip outage and replacement power costs will be considered as part of this proceeding. All other testimony and exhibits will remain in Dockets UE-190222, UE-190324, and UE-190458 for resolution in those adjudicative proceedings.
- 15 When numbering exhibits and creating filenames for the electronic versions of exhibits, parties should indicate whether the exhibit or electronic file includes “Confidential Information” or “Company-confidential Information.” Parties should include a “C,” “(C),” “CC,” or “(CC)” as appropriate in the numbering of the exhibit and the filename of the electronic version. *For example:* “Wetherbee, Exh. PKW-1CT,” or “NEW-PSE-PCA 17-Exh PKW-1CT-4-30-19(C).pdf,” “Gomez, Exh. DCG-1CCT” or “UTC Staff Exh DCG-1CCT-13-32-2245(CC).pdf.”
- 16 **PROCEDURAL SCHEDULE.** The Commission set a procedural schedule for this matter in the Initiation Order. It is adopted and attached to this Order as Appendix C.
- 17 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other prefiled materials in compliance with paragraph 15, above, and all of the following requirements:
- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Documents that include information designated as “Confidential Information” or

“Company-confidential Information” must comply with the requirements in WAC 480-07-160, this Order, and the Protective Order in this docket.

- (b) The Commission accepts only electronic versions of documents for formal filing. The Commission requires electronic copies to be in searchable .pdf format (adobe acrobat or comparable software), or to otherwise comply with WAC 480-07-140(6)(a). Parties must submit documents electronically through the Commission’s web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov provided the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).
- (c) Parties must also file an **original and three (3) paper copies** (with original signatures, if applicable) of all unredacted documents with the Commission by 5 p.m. on the next business day following the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. If any of the exhibits contain information designated as “Confidential Information” or “Company-confidential Information,” parties need only file an electronic copy or copies of the redacted version(s) in searchable .pdf (adobe acrobat or comparable software) of each such exhibit. All hard copy filings must be mailed or otherwise delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.
- (d) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160, this Order, and the Protective Order in this docket for documents that include information designated as “Confidential Information” or “Company-confidential Information.”
- (e) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (andrew.j.oconnell@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

- 18 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on January 24, 2020**. The Commission requires electronic copies in searchable .pdf (adobe acrobat or comparable software), **an original, and three (3) paper copies of the exhibits**. If any of the exhibits contain information designated as “Confidential Information” or “Company-confidential Information,” parties need only file an electronic copy or copies of the redacted version in searchable .pdf (adobe acrobat or comparable software) of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross-examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.
- 19 **EXHIBIT LISTS.** With each submission of prefiled testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits by **5 p.m. on January 24, 2020**.
- 20 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge (andrew.j.oconnell@utc.wa.gov) and the other parties by **5 p.m. on January 24, 2020**.
- 21 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this docket on **January 30, 2020, at 9:30 a.m.** in the Commission’s Richard Hemstad Hearing Room, 621 Woodland Square Loop S.E., Lacey, Washington.
- 22 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (rayne.pearson@utc.wa.gov or 360-664-1136).
- 23 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on**

the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.

DATED at Olympia, Washington, and effective October 31, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**APPENDIX A
PARTIES' REPRESENTATIVES
DOCKETS UE-190334, UG-190335, UE-190222**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Avista	David J. Meyer, Esq. VP and Chief Counsel for Regulatory and Governmental Affairs Avista Corp. P.O. Box 3727 1411 E. Mission Avenue, MSC-27 Spokane, WA 99220-3727	(509) 495-4316	david.meyer@avistacorp.com
	Patrick D. Ehrbar Director of Regulatory Affairs	(509) 495-8620	patrick.ehrbar@avistacorp.com
	Avista Staff		avistadockets@avistacorp.com
Pacific Power	Ajay Kumar Senior Attorney, Pacific Power 825 NE Multnomah Street, Ste. 2000 Portland, OR 97232	(503) 813-5161	ajay.kumar@pacificcorp.com
	Katherine A. McDowell McDowell Rackner Gibson PC 419 SW 11th Ave., Ste. 400 Portland, OR 97205	(503) 595-3924	katherine@mrg-law.com
	Ariel Son	(503) 813-5410	
	Etta Lockey Pacific Power	(503) 813-5701	etta.lockey@pacificcorp.com datarequest@pacificcorp.com
			dbarnett@perkinscoie.com
PSE	Donna L. Barnett Perkins Coie The PSE Building 10885 NE Fourth Street, Ste. 700 Bellevue, WA 98004-5579	(425) 635-1419	dbarnett@perkinscoie.com
Commission Staff	Joe M. Dallas Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504	(360) 664-1192	joe.dallas@utc.wa.gov
	Daniel J. Teimouri	(360) 664-1189	daniel.teimouri@utc.wa.gov
	Chris McGuire	(360) 664-1310	chris.mcguire@utc.wa.gov
	Krista Gross Betsy DeMarco		krista.gross@utc.wa.gov betsy.demarco@utc.wa.gov

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Public Counsel	Lisa W. Gafken Assistant Attorney General Washington State Attorney General's Office Public Counsel Unit 800 5th Avenue, Suite 2000 Seattle, WA 98104-3188	(206) 464-6595	lisaw4@atg.wa.gov
	Nina Suetake	(206) 464-6451	NinaS@atg.wa.gov
	Sarah Laycock	(206) 389-3879	sarah.laycock@atg.wa.gov
	Chanda Mak	(206) 389-3972	chanda.mak@atg.wa.gov
	Kevin Burdet	(206) 464-6215	kevin.burdet@atg.wa.gov
	Public Counsel Filing		PCCSeaEF@atg.wa.gov

**APPENDIX B
INITIAL FILINGS INCORPORATED
DOCKET UE-190882**

DOCKET	WITNESS	EXHIBIT
UE-190222	Thomas C. Dempsey	TCD-1T
		TCD-2
		TCD-3
	Patrick D. Ehrbar	PDE-1T
	William G. Johnson	WGJ-1T
UE-190324	Ronald J. Roberts	RJR-1T
		RJR-2
		RJR-3
	Paul K. Wetherbee	PKW-1CT
UE-190458	Michael G. Wilding	MGW-1T

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

EVENT	DATE
Order Initiating Investigation (Order 01) ⁷	October 24, 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.

⁷ Response time to data requests will be 3 business days.