

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

WASHINGTON UTILITIES AND	)	DOCKETS UE-080416
TRANSPORTATION COMMISSION,	)	and UG-080417(<i>Consolidated</i>)
)	
Complainant,)	
	)	ORDER 04
v.)	
	)	GRANTING MOTION FOR LEAVE
AVISTA CORPORATION d/b/a	)	TO FILE SUPPLEMENTAL
AVISTA UTILITIES,	)	TESTIMONY; GRANTING
	)	MOTION TO ACCEPT LATE
Respondent.	)	FILING; AND GRANTING
	)	REQUEST FOR LEAVE TO FILE
.....	)	REPLY

MEMORANDUM

I. Motion for Leave To File Supplemental Testimony

1 On July 28, 2008, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed a motion seeking leave to file supplemental testimony. Avista’s supplemental testimony includes updates to Avista’s power costs for the 2009 rate year, corrects certain *pro forma* and restating adjustments from the original filing, and updates various adjustments based on more recent data than the information Avista had available at the time of the original filing. The supplemental testimony and exhibits revise the Company’s electric revenue requirement upward from \$36.6 million to \$47.4 million. The Company, however, has not revised its tariff filing to reflect these changes and is not requesting additional rate relief beyond the \$36.6 million.

II. Responses

- 2 On August 4, 2008, Commission Staff (Staff) filed a response indicating that it does not object to Avista's motion provided Staff and other parties are granted an additional week, or from September 12, 2008, to September 19, 2008, to submit prefiled testimony and exhibits. Staff argued that the additional week is necessary and justified because of the additional discovery and preparation burdens that Avista's filing places on Staff. Staff conferred with Avista regarding its request. Avista does not oppose Staff's proposal, but wishes to have the deadline for rebuttal and cross-answering testimony moved from October 15, 2009, to October 20, 2008. All other deadlines, including the hearing date, would remain unchanged.
- 3 On August 5, 2008, Public Counsel, filed its opposition to Avista's motion. Public Counsel argues that no purpose would be served by allowing the supplemental testimony and exhibits; it is not necessary or relevant evidence and creates confusion in these proceedings. Public Counsel further argues that Avista's motion raises legal questions and that Avista can either pursue the case as filed or initiate a new rate case by filing new tariffs, but that the hybrid approach proposed in the motion should not be permitted. In addition, Public Counsel argued that the supplementation of 11 items of testimony and accompanying exhibits, based on seven different adjustments, is burdensome for the other parties and the Commission. In conclusion, Public Counsel argues that the supplemental filing may be intended to demonstrate to the Commission that the original filing was reasonable or conservative or, in effect, bias the Commission's judgment.
- 4 On August 5, 2008, Public Counsel filed a motion to accept late filing. Public Counsel admits that its response to Avista's motion was due on August 4, 2008. The electronic copy of the motion, cover letter to David W. Danner, Executive Director and Secretary, and certificate of service, attached to an e-mail addressing the Records Center were sent on August 4, 2008, to all parties. However, the e-mail addresses for the Records Center and presiding Administrative Law Judge were inadvertently omitted. As soon as the error was discovered, an electronic filing correcting the error was submitted. Public Counsel contacted counsel for all parties and no party objects

to this motion. Public Counsel avers that there should not be prejudice to any party or the Commission because the error was corrected in less than 24 hours.

III. Replies

- 5 On August 7, 2008, Avista filed a request for leave to reply and its reply to Public Counsel's response. Avista argues that its motion does not raise legal issues because Avista clearly indicated that it was seeking to supplement the record to correct errors in its prefiled testimony and to update certain power supply costs, but that it is not seeking additional rate relief. Accordingly, the legal issues presented in the recent Puget Sound Energy general rate case are not applicable.¹ Avista asserts that it is not unusual for parties to justify a particular position, but request a different result. Avista contends that Public Counsel's argument regarding an attempt to bias the Commission's judgment is unusual if the Commission's interest is in having the best available evidence on which to base its decision. Avista concludes that the supplemental filing does not present a burden because the supplemental testimony and exhibits are presented in a manner that makes it easy for all parties to understand and there are only seven adjustments. Avista argues that this filing actually reduces the burden on other parties compared with having the parties update or correct Avista's original filing based on information made available to them only in data request responses. Avista notes that the net effect the adjustments is to increase the demonstrated need for rate relief (primarily based on increased fuel costs), but that four of the adjustments actually correct errors that would otherwise serve to lower the revenue requirement.
- 6 Avista does not object to extension of the deadline for other parties to these proceedings to submit prefiled responsive testimony and notes that if the request to move the deadline to September 19, 2008 is granted, Staff and intervenors will have nearly two months from the filing of the supplemental testimony to submit testimony.

¹ *Washington Utilities & Transportation Commission, Complainant, v. Puget Sound Energy, Inc., Respondent*, Dockets UE-072300 and UG-072301 (Consolidated).

IV. Discussion and Decision

- 7 We consider evidentiary motions under WAC 480-07-375(1)(d). In this case, Avista seeks to file supplemental testimony with substantive changes. Accordingly, Avista must seek leave to submit such changes. WAC 480-07-460(1)(b)(i). In addition, we consider the motion in light of the recent ruling in Order 08 entered in Puget Sound Energy’s (PSE) general rate case, Docket UE-072300 and UG-072301.² In the PSE proceeding, PSE’s motion to file supplemental testimony was granted with the presiding officer concluding that “[T]he Commission’s paramount interest is in having a full record with the best available evidence upon which to base its decisions.”³ The presiding officer went on to consider PSE’s motion by application of a balancing test considering the Commission’s interest in having current information against the parties’ needs to have an adequate opportunity to conduct discovery and prepare their own testimony and exhibits. Absent distinguishing circumstances, we apply the same test in these proceedings.
- 8 Avista’s supplemental testimony updates Avista’s power costs for the 2009 rate year, corrects certain *pro forma* and restating adjustments from the original filing, and updates various adjustments based on more recent data. The supplemental testimony submitted in these proceedings is not distinguishable from that filed in the PSE rate case. Accordingly, we apply the same balancing test. The supplemental testimony furthers the Commission’s interest in having a full and adequate record upon which to render its decisions. The testimony corrects known errors previously submitted in direct testimony and updates other testimony and exhibits with the most current information available.
- 9 The Commission’s interest is balanced against the needs of the other parties to have an adequate opportunity to conduct discovery and prepare their own testimony and exhibits. Avista’s supplemental filing is submitted well in advance of the current filing deadline for responsive testimony, so the parties should have an adequate opportunity to conduct discovery. We note that Avista’s supplemental filing includes

² See n. 1.

³ *Id.* at ¶10.

a CD with the confidential workpapers of certain witnesses.⁴ Submission of the workpapers in conjunction with the supplemental testimony and exhibits should aid in expediting the discovery process on the supplemental testimony. To the extent necessary, we require Avista to supplement its previous responses to data requests that are rendered moot by this filing in accordance with the discovery deadlines set forth in WAC 480-07-405.

10 Avista submitted its filing well in advance of the deadline for submitting responsive testimony. Submitting this information in advance of the deadline for filing responsive testimony rather than raising the modifications in rebuttal, allows the other parties to address the updated information in responsive testimony. We conclude that it would further the parties' interest in having an adequate amount of time to prepare testimony and exhibits to extend the deadlines for submitting prefiled responsive, rebuttal, and cross-answering testimony. The deadline for submitting responsive testimony is extended from September 12, 2008, to September 19, 2008. It is reasonable to also extend the deadline for filing rebuttal and cross-answering testimony from October 15, 2008 to October 20, 2008.

11 We consider the procedural motions to accept a late-filed response to the motion to file supplemental testimony and the motion to accept reply in accordance with WAC 480-07-375 and WAC 480-07-385. The parties stated good cause for the relief sought and granting the motions should not prejudice any party or the Commission. Accordingly, both are granted.

ORDER

THE COMMISSION ORDERS:

- 12 (1) Avista Utilities' Motion for Leave to File Supplemental Testimony and Exhibits is granted.
- 13 (2) Public Counsel's Motion to Accept Late Filing is granted.

⁴ Use of these confidential documents is governed by Order 03, Protective Order, entered April 3, 2008.

- 14 (3) Avista Utilities' Motion for Leave to File Reply is granted.
- 15 (4) The procedural schedule in these proceedings is modified to extend the deadline for filing responsive testimony from September 12, 2008, to September 19, 2008, and the date for rebuttal and cross-answering testimony from October 15, 2008, to October 20, 2008.

Dated at Olympia, Washington, and effective August 8, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge