

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent.

DOCKETS UE-200900 and  
UG-200901 (*consolidated*)

In the Matter of the Petition of

AVISTA CORPORATION d/b/a  
AVISTA UTILITIES,

For an Accounting Order Authorizing  
Accounting and Ratemaking Treatment  
of Costs Associated With the Company's  
Wildfire Resiliency Plan

DOCKET UE-200894

COMMISSION STAFF'S  
OBJECTION TO AVISTA'S  
RESPONSE TO BENCH REQUEST  
NO. 11 AND  
MOTION TO STRIKE PORTIONS  
THE RESPONSE

**I. INTRODUCTION**

*I* On July 16, 2021, the Washington Utilities and Transportation Commission (Commission) issued Bench Request No. 11 (BR-11) directed to the Settling Parties.<sup>1</sup> Avista Corporation (“Avista” or “Company”) filed a response that injected two entirely new proposals into the case that are not responsive to the request. Commission Staff (Staff) objects to the new proposals in Avista’s response and moves the Commission to strike them from the record.

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<sup>1</sup> The Settling Parties include all of the parties to this docket except the Public Counsel Unit of the Washington State Attorney General’s Office.

## II. RELIEF REQUESTED

2           Staff respectfully requests that the Commission strike (1) two consecutive sentences on page 3 of Avista’s response, beginning, “In fact” and ending with “in Illustration No. 3, (Wildfire, EIM, Colstrip and AMI)” (footnotes omitted); and (2) the first full paragraph on page 4, beginning “In addition” and ending with “March 2021.”

## III. STATEMENT OF FACTS

3           The Commission’s BR-11 states as follows:

In the Settlement, the Settling Parties “agree to include EIM capital and expenses in base rates as proposed by Avista.”

(a) Avista witness Andrews’s testimony, Exh. EMA-1T at 28:14-16 and Exh. EMA-6T at 15:1-14, states that portions of the 3.17, 3.18, and 3.19 pro forma adjustments are provisional and related to projects that are estimated to be in service after the rate effective date. In Avista’s revised response to BR-1, “200900-01-894-AVA-RevisedBR1-Att-A-06-18- 2021,” spreadsheet “ADJ DETAIL-INPUT,” columns AX and AY, Avista’s electric revenue requirement model identifies and separately states the traditional and provisional portions of pro forma adjustment 3.18. Please simply confirm that the provisional portion of pro forma adjustment 3.18 identified in Avista’s response to BR-1 is the correct understanding of the Settling Parties.

(b) Avista witness Andrews’s testimony, Exh. EMA-1T at 29:16-23, outlines the review process for the provisional portion of the pro forma adjustments, including pro forma adjustment 3.18.

(i) Please confirm whether the Settling Parties agree to the review process outlined in Andrews’s testimony identified in (b), above, for the provisional portion of pro forma adjustment 3.18 and indicate whether the Settling Parties agree or expect a prudence determination to occur immediately after completion or in Avista’s next GRC.

(ii) Would that review process for the provisional portion of pro forma adjustment 3.18 agreed by the Settling Parties in the Settlement also apply to other provisional adjustments if the Commission approves any other provisional adjustments?

(iii) Please provide a non-binding estimate of when the Company expects it might file its next GRC. If the Company’s next GRC is filed more than a year after the effective date of this case, will Avista provide an annual report on any provisional pro forma adjustments approved by the Commission consistent with the Used and Useful Policy Statement?

4           On July 26, 2021, Avista filed a response to BR-11. On July 27, 2021, Staff filed a  
separate response to BR-11.

5           The bench request is divided into subparts (a) and (b). Both subparts cite to  
testimony by Avista witness Andrews that discusses pro forma capital additions going into  
service after the rate effective date of October 1, 2021. The Commission refers to the pro  
forma adjustments for these capital additions as “provisional.” In the first subsection, the  
bench request refers to “pro forma adjustments [that] are provisional and related to projects  
that are estimated to be in service after the rate effective date” and requests a confirmation  
specifically concerning “the provisional portion of pro forma adjustment 3.18” (subsection  
a). The next subsection concerns “the review process for the provisional portion of the pro  
forma adjustments” (subsection b) and asks specifically about “the review process . . . for  
the provisional portion of pro forma adjustment 3.18” (subsections b.i. and ii.).

6           In the course of Avista’s response, the Company makes two proposals: include pro  
forma additions going into service between April and October 2021 in rate base subject to  
review and refund in the next GRC (page 3), and include the unsigned labor union contract  
as a pro forma expense subject to review and refund in the next GRC (page 4). The  
Company did not include these proposals in its direct case or on rebuttal, and the bench  
request does not address pro forma adjustments for capital additions going into service prior  
to the rate effective date.

#### **IV. STATEMENT OF ISSUES**

7           Should the Commission strike portions of Avista’s response to BR-11 proposing  
review in its next rate case of pro forma adjustments from April to October 2021 and of an  
as yet unsigned labor union contract, given that BR-11 concerns the review of capital

addition projects only and not expenses and that the review pertains to adjustments going into service only *after* the rate effective date of October 1, 2021?

## V. EVIDENCE RELIED UPON

8 Staff relies on Avista’s response to BR-11 and on the prefiled written testimony on file in this proceeding.

## VI. ARGUMENT

9 Pursuant to WAC 480-07-405(7)(b), a party may object to a bench request response within five days after filing and service of the response. The Commission’s procedural rules at WAC 480-07-375(1)(d) authorize motions to strike material from the record. The Commission should strike from the record or decline to admit the text identified in the Relief Requested section because it is nonresponsive and prejudicial.

10 Avista’s new proposals are nonresponsive. The subject of BR-11 is “provisional” pro forma adjustments, which according to the testimony cited in the bench request refer to projects completed after the rate effective date and refer to four specific capital projects. Pro forma adjustments for plant going into service before October 1, 2021 (the rate effective date) are not “provisional” adjustments.<sup>2</sup> And the as-yet unsigned labor union contract involves an expense, not the type of capital investment that the Commission may value for ratemaking purposes as a provisional pro forma adjustment.<sup>3</sup> Therefore, the potential contract is not one of the “provisional” adjustments contemplated by the bench request. Because these proposals fall outside the scope of the request, they are extraneous, and it is prejudicial to the other parties to allow them into the record.

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<sup>2</sup> *In re the Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date, 7, ¶ 20 (Jan. 31, 2020).

<sup>3</sup> *Id.*

11 Not only are these proposals nonresponsive, they are prejudicial and should, therefore, be stricken from the record. Avista's proposal of a new treatment for 2021 pro forma adjustments, ostensibly in response to a bench request, is unfair to the other parties. All of the parties are allowed to present evidence and advocacy in particular procedural vehicles: testimony and briefing. Parties should not be allowed to raise new theories of their case spontaneously outside of the procedural vehicles available to the other parties.

12 Avista should not be allowed to introduce additional testimony and advocacy into the record in the guise of a bench request response. If the Commission declines to strike Avista's nonresponsive proposals, Staff requests that the Commission permit all of the other parties two additional pages in their respective briefs to address Avista's proposals.

## VII. CONCLUSION

13 The Commission should strike those portions of Avista's response detailed in the Relief Requested section of this motion. These portions are not responsive to the Commission's bench request and are prejudicial to the other parties. In the alternative, the parties other than Avista should be allowed two additional pages each to respond in their post-hearing briefs to Avista's new proposals.

DATED this 27th day of July 2021.

Respectfully submitted,

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