

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a
AVISTA UTILITIES,

Respondent.

DOCKETS UE-200900, UG-200901,
UE-200894 (*Consolidated*)

ORDER 07 / 04

GRANTING MOTION TO STRIKE

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

BACKGROUND

- 1 On October 30, 2020, Avista Corporation, d/b/a Avista Utilities, (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective electric and natural gas service tariffs, Tariffs WN U-28 and WN U-29, in Dockets UE-200900 and UG-200901 that are designed to effect a general rate increase for its electric and natural gas services (general rate case, or GRC), and also an accounting petition in Docket UE-200894 for costs associated with its wildfire resiliency plan (Petition). On December 23, 2020, the Commission entered Order 04/01, consolidating the three dockets.

- 2 On July 16, 2021, the Commission directed Bench Request No. 11 (BR-11) to the Settling Parties (all Parties except Public Counsel), citing the partial multiparty settlement (Settlement) and specific sections of testimony by Avista witness Andrews. BR-11 requests that the Settling Parties confirm the amount agreed in the Settlement for the provisional portion of pro forma adjustment 3.18 and explain whether the Settling Parties had agreed on a process for retroactive review of that provisional portion. BR-11 also asked whether that agreed process was expected by the Settling Parties to also apply to other provisional adjustments if any were approved by the Commission.
- 3 On July 26, 2021, Avista filed with the Commission its response to BR-11.
- 4 On July 27, 2021, Commission staff (Staff) filed with the Commission its response to BR-11 and an Objection to Avista's Response to BR-11 and Motion to Strike Portions [of] the Response (Motion).
- 5 On July 28, 2021, Avista filed with the Commission its Answer to Staff's Motion to Strike (Response). Also on that date, the Alliance of Western Energy Consumers filed with the Commission its response to BR-11, largely agreeing with Staff.
- 6 On August 3, 2021, the Public Counsel Unit of the Washington Attorney General's Office filed with the Commission a letter supporting Staff's Motion.

DISCUSSION AND DECISION

- 7 A party may object to a bench request response within five days after filing and service of the response.¹ Staff objected and filed its Motion the day after Avista filed its response to BR-11. The Commission can permit or limit the admission of evidence into the record.² The Commission grants Staff's Motion as requested and strikes the identified portions of Avista's response to BR-11 as explained below.
- 8 Staff argues that Avista's response made two nonresponsive proposals in its response to BR-11: that the Commission include (1) "pro forma additions going into service between April and October 2021 in rate base subject to review and refund in [Avista's next

¹ WAC 480-07-405(7)(b).

² WAC 480-07-375(1)(d).

GRC];” and (2) “the unsigned labor union contract as a pro forma expense subject to review and refund in [its next GRC].”³

9 In its Response to Staff’s Motion, Avista states that it “is largely indifferent as to whether the contested language in its Response to [BR-11] appears here or in its Post-Hearing Brief -- just so long as what it proposes is entertained by the Commission.”⁴ Additionally, it argues that the language identified by Staff to be struck does not introduce or depend on any new evidence or testimony. Avista states: “[t]his is not new testimony, or even ‘testimony’ per se; rather it is a simple statement of position and advocacy based on the existing record.”⁵

10 Regarding Avista’s two proposals, Staff argues:

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. 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. 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.⁶

11 We agree with Staff that the portions of Avista’s response to BR-11 it identifies are outside the scope of BR-11, which was specifically framed to address pro forma capital additions going into service after the rate effective date consistent with our Policy Statement on Property that Becomes Used and Useful After Rate Effective Date (Policy

³ Motion at 2, ¶ 6.

⁴ Avista’s Response at 1, ¶ 2.

⁵ Avista’s Response at 3, ¶ 8.

⁶ Motion at 4, ¶ 10 (citations omitted).

Statement).⁷ Pro forma adjustments regarding plant in service prior to the rate effective date, from April to October 2021, and pro forma expenses that are not capital investments, like the labor union contract, are not provisional adjustments with the kind of retroactive review discussed in our Policy Statement and are not within the scope of BR-11. Accordingly, we determine that Staff's Motion should be granted, striking the portions of Avista's response identified by Staff.

- 12 We agree with Staff that the inclusion of Avista's proposals in its response to BR-11 is prejudicial to the Parties because it is beyond the scope of BR-11 and the Commission does not permit the opportunity of a bench request to make unresponsive and extraneous arguments. However, we note that the Parties may make legal arguments in their briefs *based upon the evidence and testimony already admitted to the record*. Legal briefs are themselves an artifact of additional advocacy on behalf of each party and their individual positions on contested issues. No party has requested that we place any additional restriction on the Parties' legal briefs at this time and we find no reason to do so on our own motion.

ORDER

- 13 THE COMMISSION ORDERS that Commission staff's motion to strike portions of Avista's response to Bench Request No. 11 is GRANTED as described in the body of this Order.

DATED at Lacey, Washington, and effective August 5, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL
Administrative Law Judge

⁷ See *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).