

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent.

DOCKETS UE-240006 AND
UG-240007

PUBLIC COUNSEL’S MOTION
FOR RELIEF FROM ORDER 02
PREHEARING CONFERENCE
ORDER

I. INTRODUCTION

1. With increasing sophistication of software for reviewing voluminous records, practice before the Washington Utilities and Transportation Commission (Commission) is increasingly paper free. The Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) requests the Commission continue its recent practice of not requiring paper copies of submissions in general rate cases. Although relatively slight, there is an administrative and ecological burden from providing five paper copies. Public Counsel believes that the public interest is adequately served by maintaining the electronic filing system. If the Commission requires paper copies, Public Counsel requests certain modifications to the Prehearing Conference Order, Order 2.¹

¹ *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-240006 and UG-240007, Order 02, ¶ 13 (Feb. 27, 2024).

II. RELIEF REQUESTED

2. Public Counsel respectfully requests that the Commission lift or modify the Order's requirement to provide "5 paper copies of all submissions" and exercise its authority in WAC 480-07-510 to require no paper copies. In the alternative, Public Counsel requests modification of the Order's paper copy requirement in the following ways:
 1. Clarify that, consistent with WAC 480-07-510, the requirement to file paper copies applies to testimony, exhibits, and briefs, rather than "all submissions." Other submissions such as procedural and discovery motions, filed copies of protective orders, cover letters and certificates of services, would not require five paper copies.
 2. Modify the ¶ 13(d) of the Order, to permit sponsoring parties to provide paper copies of testimony and exhibits expected to be used in the evidentiary hearing on September 16, 2024, the date on which the joint issues matrix and exhibit lists are due.
 3. Clarify that, consistent with WAC 480-07-510, the exhibits consisting of databases, spreadsheets, or models, the "paper copy" may reference the native file if the paper copy would exceed five pages.

III. STATEMENT OF FACTS

3. Beginning in March 2020, the Commission utilized its authority to modify the procedural rules to lift the requirement to file paper copies in the context of the COVID-19 pandemic.² For the last four years, even in large general rate cases like Avista's (the Company's), the

² See e.g. *Wash. Utils & Transp. Comm'n v. Cascade Nat'l Gas Corp*, Docket UG-210755, Order 3, ¶12(c) (Oct. 26, 2021).

Commission has continued to suspend the paper copy requirements.³ With four years of an unplanned experiment with all electronic filings and pleadings, the Commission has sufficient experience to evaluate whether the administrative burden on all parties of submitted five paper copies is beneficial to the Commission’s procedure in disposing of rate cases.

4. On February 27, 2024, ALJ James Brown II issued Prehearing Conference Order, Order 2, providing that in paragraph 13(d), “The Commission is requiring **5 paper copies** of all submissions, including: testimony, exhibits, and briefs in this case.” This requirement differs slightly from the regulatory provision contained in WAC 480-07-510, which requires “[t]he company and all parties” to file five paper copies of all testimony and exhibits, but exempts databases, spreadsheets or models where the printed copy would exceed five pages and would render the data, spreadsheet or model unusable. This order also varied slightly from the Commission’s prior practice in Avista’s general rate case, which had been to require three paper copies.⁴
5. On March 1st, Public Counsel conferred, via email, with the parties who had intervened in this matter regarding the issue of resuming the practice of providing paper copies of all submissions. NWECA, AWEC, Walmart, and UTC Staff indicated each would support an elimination of the paper copy requirement and Avista indicated it had no objection.
6. Public Counsel, which has a relatively small staff, is capable of complying the requirement to provide five paper copies and will do so if the Commission concludes the practice

³ *Wash Utils & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053 & UE-220054 (Consolidated), Order 4, ¶ 9 (Mar. 1, 2022).

⁴ *See e.g. Wash Utils & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053 & UE-220054, Order 3, ¶ 17(c) (Feb. 16, 2022).

aids in the timely adjudication of general rate cases. However, the practice does impose fairly significant administrative time burdens on Public Counsel’s staff, particularly for cases as large as the current general rate case. Moreover, although the Public Counsel uses recycled paper stock, the amount of paper is likewise significant. And, for its own practice, Public Counsel has shifted almost entirely to an electronic practices. While Public Counsel staff may print and review particularly relevant sections of testimony, Public Counsel’s facility with software tools for online review of documents has rendered paper copies mostly obsolete.

7. To the extent that paper copies are useful, Public Counsel is also cognizant that initial filings for the Company and from the parties are not always critical for the Commissions adjudication of the general rate case because of the practice of partial settlements in these complex rate cases. In the last Avista general rate case, for example, the Commission noted, “Public Counsel’s arguments regarding cost of capital, like most of its opposition testimony, are presented in contrast to Avista’s initial filing....Public Counsel’s argument might have been more persuasive if it were focused on the its opposition to the Settlement terms that we must evaluate.”⁵ Although it remains possible that this rate case may be fully adjudicated, the more likely course is a partial settlement and narrowed issues. In such a setting, as the Commissioners noted in the last Avista general rate case, disputes on paper between initial rounds of testimony is less useful to the Commission in resolving adjudications. If paper copies are useful, they should be of filings that are more helpful to the Commission.

⁵ *Wash Utils & Transp. Comm’n v. Avista Corp.* Dockets UE-220053 & UE-220054, Final Order 10/4, ¶ 159 (Jan. 13, 2023).

IV. STATEMENT OF ISSUES

8. Should the Commission lift the requirement to provide paper copies where the Commission has been able to timely adjudicate cases without paper copies and the administrative burden does not outweigh the benefit?
9. In the alternative, should the Commission modify the requirement to provide paper copies to comply with the regulation and to delay the requirement of filing paper copies to that testimony and exhibits necessary for resolution of the matters in actual dispute?

V. ARGUMENT

10. Generally, the Commission's proceedings and formal filed records are submitted in electronic format.⁶ The Presiding Administrative Law Judge and Commission have clear authority to set the procedure for general rate cases, including the determination of whether paper copies are necessary.⁷ Moreover, in electric and natural general gas rate cases, the Commission regulations contain a default requirement that the company and parties file five paper copies of testimony and exhibits.⁸ The Commission, however, has the power to exempt or modify any procedural rules consistent with due process and the public interest.⁹
11. Public Counsel believes that the Commission should determine that the public interest is served by continuing to lift the requirement for the filing of paper copies of all submissions. For

⁶ WAC 480-07-140(5) ("The commission accepts only electronic versions of documents for formal filing. Unless required in a specific rule or order, the commission does not require a paper copy of the document.").

⁷ *See eg.* WAC 480-07-140(5), ("Unless specified b "WAC 480-07-460 ("The commission or presiding officer will establish by notice or in a prehearing conference order the number of paper copies, if any, and the deadlines for filing.").

⁸ WAC 480-07-510 ("The company all parties to an adjudication in a general rate proceeding must file all required documents in electronic form consistent with the requirements in WAC 480-07-140, and by the next day must file five paper copies of all testimony and exhibits unless the commission establishes a different number.").

⁹ WAC 480-07-110(1). Public Counsel is styling this as a motion to modify Order 2, rather than a petition as required under WAC 480-07-110(2) as Order 2 provides 10 days for written objection before it becomes final.

the past four years, the Commission has successfully operated without requiring paper copies of filings Granting Public Counsel’s motion would have no impact on the public’s access to the Commission or on the ability of the parties to litigate. The formal record will remain, as it is now, the electronic record. While everything about the pandemic is unfortunate, it has provided an opportunity for the Commission and the parties to engage in an all-electronic practice. These last four years have demonstrated that paper copies are not a requirement for successfully conducting Commission business.

12. Resolution of Public Counsel’s request requires weighing the benefits of paper copies to the Commission decision making against the administrative burden of providing copies on the parties. Public Counsel acknowledges that if the Commission finds significant benefit from the provision of paper copies, the administrative burdens imposed by complying with the rule do not meet the undue burden standard in WAC 480-07-110, and will comply with Order 2. If, however, the Commission is satisfied with the practice over the past four years, Public Counsel submits the burden of providing paper copies outweighs its benefit and lifting the condition would be in public interest. If it would be beneficial to the Commission, Public Counsel suggests that an oral hearing to hear the considered views of the parties on this issue may be appropriate.

13. Even if the Commission does not lift the paper copy requirement in this matter, Public Counsel requests certain modifications to the Order. First, the Order requires “all submissions” to have paper copies submitted. The relevant regulation, WAC 480-07-510, however, requires only testimony and exhibits to have paper copies. The regulation would not require paper copies of procedural motions, discovery motions, or miscellaneous filings like comments, cover letters, or certificates of service. Public Counsel may be misreading the breadth of the Order’s intended

meaning, but as written, “all submissions” is broader than the regulation. Public Counsel requests that the Order be clarified, consistent with WAC 480-07-510, to require paper copies of testimony, exhibits, and post-hearing briefs rather than all submissions.

14. Additionally, WAC 480-07-510 exempts certain parts of the exhibits from paper filing; spreadsheets and databases that require more than five pages to print. The utility of spreadsheets is maximized when viewed in native format. Public Counsel requests that the Order be clarified to include the same exemption as in WAC 480-07-510 for spreadsheets, databases, and models.

15. The nature of general rate cases also militates in favor of modifying the requirement that paper copies be provided within a day of the electronic filing. As the last Avista general rate case illustrates, a general rate case can change significantly between initial filing and the evidentiary hearing. To the extent that paper copies are useful, they are most useful for review in preparation of the issues actually litigated. If there is a settlement, the settling parties will offer separate testimony, and the Commission has conveyed its expectation that the parties focus on the terms of the settlement rather than the initial filing.

16. Public counsel, therefore, requests that the parties be required to file paper copies of the exhibits and testimony expected to be at issue in the hearing at a point after the issues are narrowed. Public Counsel proposes September 16, two weeks before the evidentiary hearing as that is when the joint issues matrix is filed and exhibits identified for hearing. Public Counsel also proposes that the paper copy requirement be limited to the testimony and exhibits on which the parties intend to rely. The remaining record will continue to be available via the electronic filings, and would be available for consultation by the parties, Commissioners, and Administrative Law Judges in that format. Delaying the provision of paper copies until after the

settlement process is complete will increase the utility of the paper copies to issues actually being litigated.

17. Public Counsel also notes that there is a potential conflict between the Order's directions in paragraph 14 for filing cross examination exhibits, which requires a single paper copy of redacted versions of confidential exhibits. Presumably, this one copy would not need to be in addition to the five copies required in paragraph 13(c). Public Counsel requests a clarification of this potential conflict.

VI. CONCLUSION

18. Prior to the pandemic, Public Counsel would not have imagined requesting relief from the standard legal practice of requiring paper copies. The last four years have, however, taught that even complex and voluminous filings can be successfully reviewed and used in complex litigation and administrative procedures. The functional change in practice justifies modifying the procedural rules to further limit the need for consuming reams of paper in rate cases. Public Counsel stands ready to express its views in a public hearing, if the Commission wishes to hear more fully from the parties on this issue.

DATED this 7th, day of March, 2024.

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