

# **WUTC v. Avista Corporation d/b/a Avista Utilities**

**Docket No. UE-240006, UG-240007 - Vol. I**

**February 20, 2024**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
vs.	)	DOCKETS UE-240006
	)	UG-240007
	)	(Consolidated)
	)	
AVISTA CORPORATION, d/b/a	)	
AVISTA UTILITIES,	)	
	)	
Respondent.	)	PAGES 1 - 20
	)	

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PREHEARING CONFERENCE - VOL. I  
February 20, 2024  
BEFORE ADMINISTRATIVE LAW JUDGES  
JAMES E. BROWN II & PAIGE DOYLE

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Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, Washington 98504

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FAPR, RPR, WA CCR 2731

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A P P E A R A N C E S (Cont.)

FOR THE SIERRA CLUB:

Gloria Smith  
Sierra Club  
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1 February 20, 2024 - 9:34 a.m.

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4 JUDGE BROWN: Good morning. We're here  
5 for a prehearing conference for Docket UE-200046 and  
6 UG-240007, which is captioned Washington Utilities and  
7 Transportation Commission versus Avista Corporation.

8 I am the -- one of the administrative law  
9 judges on this matter, James E. Brown, II, and I will be  
10 co-presiding in this matter with Administrative Law  
11 Judge Paige Doyle in conjunction with the commissioners.

12 So let's start by taking appearances. So  
13 let's begin with Avista.

14 ATTORNEY MEYER: Thank you, your Honor.  
15 Am I being heard?

16 JUDGE BROWN: I can hear you just fine.

17 ATTORNEY MEYER: Very good. Thank you.

18 I'll give you the short form appearance:  
19 David Meyer for Avista Corporation. All the particulars  
20 of our contact information are contained within our  
21 filing. Thank you.

22 JUDGE BROWN: Okay. And give me -- and  
23 next I have staff.

24 ATTORNEY ROBERSON: Good morning,  
25 (inaudible) for staff, Jeff Roberson, AAG. Like Avista,

1 our contact information is with our notice of  
2 appearance.

3 JUDGE BROWN: Okay. All right. I see  
4 other representatives from commission staff in here.  
5 And I'm aware of who they are.

6 So let's move to public counsel.

7 ATTORNEY ROBINSON O'NEILL: Good morning,  
8 your Honor. Tad Robinson O'Neill on behalf of public  
9 counsel.

10 JUDGE BROWN: Good morning, Mr. O'Neill.  
11 Okay.

12 And now let's move to petitions to  
13 intervene. I have several parties, I think numbering  
14 about five. I have Walmart; Sierra Club; Northwest  
15 Energy Coalition; Alliance of Western Energy Consumers,  
16 AWEC; and The Energy Project.

17 And are there any other petitioners for  
18 intervention other than the ones that I've seen or have  
19 received in writing?

20 All right. Hearing none, let's move  
21 forward at this point. I've reviewed the five petitions  
22 to intervene. Again, Walmart, Sierra Club, Northwest  
23 Energy Coalition, Alliance of Western Energy Consumers,  
24 and The Energy Project.

25 I haven't seen any written objections on

1 the record. Does anyone object to these intervenors?

2 Okay. Hearing none, the petition is  
3 granted. It will be reflected in the prehearing  
4 conference order that we did grant intervention to those  
5 five parties.

6 Now let's move to the procedural schedule.  
7 And basically, before the call today, the parties  
8 provided a proposed procedural schedule. And there  
9 appear to be no conflicts with regard to my calendar,  
10 Judge Doyle's calendar, nor the commission's calendar.

11 Would one of the parties like to read the  
12 procedural schedule into the record at this point?

13 ATTORNEY MEYER: Your Honor, I'd be happy  
14 to do that. If there's a shorter way of doing it, just  
15 marking this proposed as an exhibit to this prehearing,  
16 would that suffice?

17 JUDGE BROWN: I can accept it as an  
18 exhibit for the prehearing. It will definitely appear  
19 as -- in the prehearing conference order and be  
20 reflected. So I have it in front of me now. Unless  
21 there are any objections to that?

22 All right. Hearing none, we'll move  
23 forward from the procedural schedule. And I see that  
24 parties have agreed to five business days response time  
25 for data requests. And are there any additional

1 comments from the parties recording eResponse time for  
2 data requests?

3 ATTORNEY MEYER: Just a clarification,  
4 your Honor.

5 JUDGE BROWN: Yes.

6 ATTORNEY MEYER: That five business day  
7 turnaround is later on in the procedural schedule.

8 JUDGE BROWN: Ah, okay.

9 ATTORNEY MEYER: Yeah. There are  
10 footnotes to the proposed schedule that set forth the  
11 intervals.

12 JUDGE BROWN: Seven business days  
13 initially, correct? Or did I miss something else?

14 ATTORNEY MEYER: Let's see. Footnote 3  
15 relates to -- just looking for it here. Oh, yes. After  
16 the July 3 date for staff and public counsel response,  
17 testimony, and exhibits, there, there's a reference to a  
18 response time to data requests being seven business  
19 days.

20 Before that is -- it's the customary ten  
21 business days.

22 JUDGE BROWN: It's the customary? I  
23 couldn't hear you.

24 ATTORNEY MEYER: Ten business days.

25 JUDGE BROWN: Ten business days.



1                   ATTORNEY MEYER: Yes. So it goes ten,  
2 seven, and five.

3                   JUDGE BROWN: Okay. All right. Now it's  
4 clear. I've just got to (inaudible). Okay. All right.  
5 I'll make a note of that.

6                   I'm sorry. I was focused on the Footnote  
7 3, actually Footnote 4 and 5 initially. Thank you for  
8 cuing me to Footnote 3. All right. So that will be ten  
9 business days. All right. I will definitely make a  
10 note of that so that it's clear in the prehearing  
11 conference order.

12                   And I take it there are no objections to  
13 that? No? Hearing none --

14                   ATTORNEY ZAKAI: No objection, your Honor,  
15 but I do have an additional point on discovery for  
16 discussion this morning.

17                   JUDGE BROWN: Go ahead. I'm listening.

18                   ATTORNEY ZAKAI: Okay. Thank you.

19                   And I think this is primarily directed  
20 towards the parties. We had some e-mail discussion on  
21 this, but I don't feel like we really reached a  
22 resolution.

23                   In past cases, we had categorized data  
24 requests by issue. And staff had said that if other  
25 parties don't object, they wanted to end that process.

1 The Energy Project indicated that we found it helpful,  
2 but if nobody else wanted to continue it, we wouldn't  
3 insist on continuing it.

4 But, you know, I'd welcome hearing from  
5 other parties if this is a practice that they would like  
6 to continue or not.

7 JUDGE BROWN: Okay. I will listen to any  
8 feedback from other parties if they would like to  
9 respond to The Energy Project's comments.

10 ATTORNEY MOSER: Good morning, Judge.  
11 This is Summer Moser on behalf of the Alliance of  
12 Western Energy Consumers. And we do have a preference  
13 for discontinuing the practice. On our end, given the  
14 volume of data requests that we issue, it is  
15 administratively burdensome. And that burden does  
16 outweigh the benefit that we see from including those  
17 headings. So we would prefer not include those going  
18 forward.

19 JUDGE BROWN: Okay.

20 ATTORNEY ROBERSON: For the record,  
21 staff's position is the same. We issue a lot of data  
22 requests that the burdens of tagging and sorting far  
23 outweigh any efficiency gains we're getting from seeing  
24 the responses come back or in order.

25 JUDGE BROWN: Okay. All right.

1           ATTORNEY SMITH: This is Gloria Smith from  
2 Sierra Club. We found it challenging to categorize our  
3 data requests, and we received some criticism from doing  
4 it improperly. So we too would like to see the process  
5 go away. Thank you.

6           ATTORNEY RIVAS: And, your Honor, this is  
7 Diego Rivas from The Northwest Energy Coalition. I  
8 understand the reasonings the other parties have laid  
9 out for removing it.

10           I think we would be more in line with The  
11 Energy Project. We find it helpful to go through the  
12 issues categorically, be able to filter out a lot of the  
13 information that comes in, some of the issues that we  
14 may not be involved in. So we find the practice  
15 helpful, but are also not insisting at this point.

16           JUDGE BROWN: Okay. Okay. So you're not  
17 interested in maintaining the practice? Just so I'm  
18 clear.

19           ATTORNEY RIVAS: No. We would recommend  
20 that the practice continue. We find the practice  
21 helpful.

22           JUDGE BROWN: All right. All right. I  
23 just wanted to make sure I'm clear.

24           All right. So it seems we have three --  
25 four parties not in favor of keeping the practice and

1 two parties in favor of keeping or maintaining the  
2 practice correct? Or am I miss counting?

3 Let me ponder this, and I will address it  
4 in the order. I think there are --I understand both  
5 aspects of this argument. It is helpful based on  
6 subject matter as far as the commission is concerned,  
7 but I also understand efficiency. Let me give it some  
8 thought, and I will address it in the prehearing  
9 conference order.

10 Any objections to that? No. Okay.

11 And the next matter, I see the parties  
12 have agreed for mutual discovery; that all parties will  
13 receive each data request at the time they are  
14 propounded, and each data request response at the time  
15 it is served on the requester. Is that accurate?

16 Any further comments on that?

17 And moving to protective orders, I saw  
18 there was a motion for a protective order. That motion  
19 will be granted, and I will issue a protective order  
20 companion to the prehearing conference order.

21 Now we're moving to electronic filing and  
22 electronic service. The commission requires electronic  
23 filing of documents for formal proceedings. And the  
24 commission's rules provide for electronic service of  
25 documents. The commission will serve parties

1 electronically, and the parties will serve each other  
2 electronically.

3 And designated persons for service, any  
4 person, or rather any party that has not yet designated  
5 a lead representative for service, please do so via  
6 e-mail as soon as possible. And my e-mail is -- rather,  
7 our emails are james.brown@utc.wa.gov and  
8 paige.doyle@utc.wa.gov.

9 ATTORNEY MEYER: Your Honor?

10 JUDGE BROWN: Yes.

11 ATTORNEY MEYER: As is often done, the  
12 bench then consolidates all of these requests for  
13 additional names to be added to that electronic service  
14 list. Will you be doing that and providing that to the  
15 parties, or are the parties just kind of to keep track  
16 on their own of requests that are being made?

17 JUDGE BROWN: I believe the practice is  
18 once they're submitted, then the lists are updated from  
19 our side and accessible to the parties once they're  
20 updated.

21 THE WITNESS: Thank you.

22 JUDGE BROWN: And errata sheets. Under  
23 WAC 480-07-461 (b), the deadline for filing errata  
24 sheets may be established in the prehearing conference  
25 order. Does anyone have any objection or objections to

1 setting a deadline a week prior to the evidentiary  
2 hearing in this matter?

3 Hearing none, we will incorporate that  
4 date into the prehearing conference order as well.  
5 And --

6 ATTORNEY ZAKAI: Okay. Your Honor?

7 JUDGE BROWN: This is Yochi Zakai for The  
8 Energy Project again.

9 No objection. I would just hope that we  
10 could also get errata sheets as soon as possible if  
11 errors are noticed. Here, I think it would be  
12 burdensome if an error was discovered early in the case  
13 and the errata was not filed until the time that you  
14 specified.

15 JUDGE BROWN: Okay. I see what you're  
16 saying. I guess -- not I guess, but the parties -- I'll  
17 ask that the parties make a good faith effort to ensure  
18 that errata sheets are forwarded as expeditiously as  
19 possible so that there's no delay, and any errors can be  
20 caught, addressed, and definitely for the sake of  
21 administrative economy, so this matter can move forward  
22 expeditiously, and everyone has the information that  
23 they need and that we have the information we need to  
24 render a decision. So I'm asking that the parties  
25 respect that please, going forward.

1           And one other matter -- well, let me  
2 circle back to your request. I know I said I was going  
3 to put it in the order, but I've been giving it further  
4 thought as we're going through the rest of the items.  
5 And I agree. I think we should leave the process in  
6 place as is. In other words, I agree with you, Energy  
7 Project, on this with regard to the data request  
8 exchanges. And by subject matter, correct? That was  
9 your request?

10           ATTORNEY ZAKAI: Yes.

11           JUDGE BROWN: Okay. All right. I'm going  
12 to ask that the parties maintain the practice as is, and  
13 just keep the practice as is with regard to exchanging  
14 data requests by subject.

15           Any feedback from the parties? No?

16           Is there anything else we need to address  
17 today? Any questions?

18           ATTORNEY ROBINSON O'NEILL: This is Tad  
19 Robinson O'Neill from the public counsel. On the  
20 proposed schedule, the public comment hearing is set as  
21 TBD.

22           JUDGE BROWN: Yes.

23           ATTORNEY ROBINSON O'NEILL: I have floated  
24 the weeks of August 26 or of September 16. I don't know  
25 what the schedule is for the commission, but either of

1 those weeks would work for public counsel.

2 I didn't receive any responses from the  
3 rest of the parties.

4 JUDGE BROWN: All right. What were those  
5 weeks again? August 16?

6 ATTORNEY ROBINSON O'NEILL: August 26 or  
7 September 16.

8 ATTORNEY ROBERSON: Judge Brown, for  
9 staff, I can have someone cover it, but I'm out of  
10 country the week of August 26.

11 So I would have a preference for September  
12 16, or the week of September 16.

13 JUDGE BROWN: Okay. Let me circle back to  
14 the -- okay. That's actually two weeks out. September  
15 16 is actually two weeks out from (inaudible). And  
16 August 26. All right.

17 Does anyone object to or have any issue  
18 with September 16, the week of September 16 for  
19 the public comment hearing? All right.

20 And Mr. Robinson O'Neill, quick question.  
21 That's any day that week of the 16th?

22 ATTORNEY ROBINSON O'NEILL: My preference  
23 is for Tuesdays or Thursdays, but that's my own personal  
24 schedule. I can arrange coverage one way or the other.

25 JUDGE BROWN: Okay.



1                   ATTORNEY ROBINSON O'NEILL: And obviously,  
2 the availability of the commission is the governing  
3 factor.

4                   JUDGE BROWN: Okay.

5                   ATTORNEY MEYER: Just a point of  
6 clarification. Any of those dates are fine for Avista.  
7 But what are the mechanics of this?

8                   Is this to be virtual, is it to be in  
9 person? How do you mean to conduct this?

10                  ATTORNEY ROBINSON O'NEILL: At this time,  
11 we're requesting a virtual public comment hearing.

12                  ATTORNEY MEYER: All right.

13                  JUDGE BROWN: Are there any objections to  
14 the form of the comment hearing?

15                  Any thoughts on a virtual comment  
16 hearing?

17                  All right. I am looking at -- okay. I am  
18 looking at the -- okay. Let me back up for a second.  
19 I'm bouncing back and forth between the week of the 16th  
20 -- okay. All right. Let's do September 19, then. Any  
21 objections to that?

22                  We'll do the public comment hearing for  
23 September 19, and that will be reflected in the  
24 prehearing conference order.

25                  And is there anything else from the

1 parties at this point?

2 ATTORNEY MEYER: One other item.

3 JUDGE BROWN: Okay.

4 ATTORNEY MEYER: Thank you. Don't mean to  
5 prolong this. But at least as is customary on our end,  
6 we encourage the parties, when they propound discovery,  
7 to do it in smaller batches.

8 JUDGE BROWN: Okay.

9 ATTORNEY MEYER: And generally, the  
10 parties have been done pretty good about it. It's just  
11 when they come in avalanches, it's hard for us to keep  
12 to that turnaround time.

13 And we've already been getting some  
14 discovery. So far so good. No problem there. Happy to  
15 respond to it all. But just be mindful of it.

16 I think that -- what I suspect happens is  
17 that consultants will probably unload a bunch of  
18 proposed discovery on counsel, and then it gets all sent  
19 out, you know, 50 or 100 items at a time. So if that  
20 can be policed a little better by counsel, Avista would  
21 appreciate it.

22 JUDGE BROWN: All right. We'll ask the  
23 parties to be mindful of the size of their discovery  
24 batches, because that will also help and assist with the  
25 case moving forward expeditiously.

1 All right. Hearing no further comments --

2 ATTORNEY SMITH: Your Honor?

3 JUDGE BROWN: Every time I think I'm done,  
4 you pull me right back in. What is this?

5 All right. I'm listening. Thank you,  
6 Sierra Club.

7 ATTORNEY SMITH: Thank you. Point of  
8 clarification. So are you contemplating an in-person  
9 evidentiary hearing?

10 JUDGE BROWN: We have been conducting  
11 hybrid evidentiary hearings. So I anticipate there  
12 being an in-person element, of course, as well as hybrid  
13 where the hearing will be available online as well.

14 ATTORNEY SMITH: Okay. Thank you very  
15 much.

16 JUDGE BROWN: You're welcome.

17 I think that will probably be the practice  
18 going forward. So here we are.

19 And is there anything else from the  
20 parties at this point? I'm listening.

21 Okay. All right. Hearing nothing else,  
22 we will issue an order shortly containing the procedural  
23 schedule and other guidelines for the disposition of the  
24 case.

25 And we are adjourned. Thank you so much.

1                   And my prehearing conference should be  
2 coming out for you shortly, and we are now off the  
3 record.

4                   (Hearing concluded at 9:58 a.m.)

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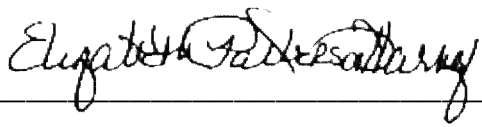

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STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify under penalty of perjury that the foregoing legal recordings were transcribed under my direction; that I received the electronic recording in the proprietary format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, 2024.

ELIZABETH PATTERSON HARVEY, CCR 2731