BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES Respondent.	DOCKETS UE-140188 and UG-140189 (*Consolidated*) COMMISSION STAFF RESPONSE TO PUBLIC COUNSEL MOTION TO STRIKE CERTAIN TESTIMONY AND EXHIBITS FILED BY AVISTA

1 Commission Staff opposes Public Counsel's motion asking the Commission to strike certain testimony and exhibits filed by Avista, relating to the Company's 2016 attrition study.

2 Using Rule of Evidence 401 and a 1994 court decision on trial court evidentiary rulings, Public Counsel argues that because this evidence applies to a period "after the rate effective period," it is "beyond the scope of this proceeding," and thus it is "irrelevant and inadmissible."[1] Without offering even one supporting fact, Public Counsel concludes this evidence will "mislead, distract, confuse, waste time, and is too remote."[2]

3 Public Counsel is wrong on all counts.

[1] Motion at 2, ¶ 4, and accompanying footnotes.
[2] Motion at 2, ¶ 5, citing *Pub. Util. Dist. No. 1 of Klickitat Cy. v. Int'l Ins. Co.,* 124 Wn.2d 789, 813-14 (1994)). While the court did not decide that case under the law applicable to the Commission, the Court recognized that "[a]dmission of evidence is well within the trail court's discretion." 124 Wn.2d at 813 (citation omitted). The APA grants the Commission even broader discretion, given the deferential language in RCW 34.05.452(1), quoted in ¶ 4 of this Response.

4 First, the applicable provision of law is RCW 34.05.452(1), which states that the Commission "*may* exclude evidence that is irrelevant, immaterial or unduly repetitious." (Emphasis added).[3]

5 Second, even though the applicable law does not require the Commission to exclude irrelevant evidence, the evidence Public Counsel now elects to challenge is relevant. At the barest of minima, this evidence supports the fact that for Avista, attrition is not limited to the test year or the rate year, but rather, it is an ongoing phenomenon. If attrition were limited to the rate year, that could justify a variety of different regulatory responses, including no response.

6 In other words, rather than misleading, distracting, confusing, wasting time or being too remote, this evidence will actually aid the Commission in addressing attrition issues in this case.[4]

7 In conclusion, the evidence challenged by Public Counsel is relevant. The Commission should consider this evidence in the context of the entire record to be presented in this case. In the meantime, the Commission should deny Public Counsel's motion.

Dated this 14th day of July 2014.

Respectfully submitted,

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[3] In relevant part, Commission rules (WAC 480-07-495(1) second ¶) reiterate this APA standard.
[4] While Staff may challenge the weight of this evidence, Staff finds no basis to challenge its admissibility.