

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS UE-140188 and
TRANSPORTATION COMMISSION,)	UG-140189 (<i>Consolidated</i>)
)	
Complainant,)	ORDER 04
)	
v.)	
)	ORDER DENYING PUBLIC
AVISTA CORPORATION, DBA)	COUNSEL’S MOTION TO
AVISTA UTILITIES,)	STRIKE AVISTA’S 2016
)	ATTRITION STUDY
)	TESTIMONY AND EXHIBITS
Respondent.)	
)	
.....)	

- 1 **NATURE OF PROCEEDING.** On February 4, 2014, Avista Corporation, dba Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service. The Company requests authority to increase charges and rates for electric service by approximately \$18.2 million or 3.8 percent. This matter has been designated by the Commission as Docket UE-140188.

- 2 Also on February 4, 2014, Avista filed revisions to its currently effective Tariff WN U-29, Natural Gas Service. In this filing, Avista seeks to increase rates for natural gas service by approximately \$12.1 million or 7.8 percent. This matter has been designated as Docket UG-140189. In Order 01, Complaint and Order Suspending Tariff Revisions and Order of Consolidation, the Commission suspended these tariff revisions and consolidated Dockets UE-140188 and UG-140189 for hearing.

- 3 **MOTION TO STRIKE TESTIMONY AND EXHIBITS.** On July 2, 2014, the Public Counsel Division of the Washington State Attorney General’s Office (Public Counsel) filed a Motion to Strike Certain Testimony and Exhibits Filed by Avista (Motion). Specifically, Public Counsel asks that the Commission strike without prejudice testimony and exhibits relating to Avista’s 2016 attrition study. Public

Counsel asserts that Avista has included the 2016 attrition study “for information only,” and the Company does not rely on the 2016 attrition study for rate recovery.¹ Public Counsel argues that the data is irrelevant and inadmissible as it could “mislead, distract, confuse, waste time, or be too remote.”²

4 **RESPONSES TO MOTION.** On July 15, 2014, the Commission’s regulatory staff (Staff),³ the Industrial Customers of Northwest Utilities (ICNU), and Avista filed responses to Public Counsel’s Motion. Both Avista and Staff assert that Public Counsel has failed to provide evidence demonstrating the inadmissibility of the attrition study.⁴ Staff contends that the applicable law in deciding Public Counsel’s Motion is RCW 34.05.452(1), which allows, but does not require, the Commission to “exclude evidence that is irrelevant, immaterial, or unduly repetitious.”⁵ On the contrary, Staff argues that the 2016 attrition study is relevant in showing that attrition in an ongoing problem.⁶ Avista echoes this argument, stating that “[t]he occurrence of attrition is not related to a discrete, single year.”⁷

5 The Company also states that the Thurston County Superior Court recently accepted Public Counsel’s argument that Puget Sound Energy’s (PSE) rate plan had insufficient evidence to support it, and PSE had failed to meet its burden of proof.⁸ Avista states that Public Counsel’s current attempt at having the Commission strike its 2016 attrition study testimony and exhibits is ironic since it:

¹ Public Counsel’s Motion, ¶ 2.

² *Id.*, ¶ 5 (citing *Public Utility District No. 1 of Klickitat County v. International Ins. Co.*, 124 Wn.2d 789, 813-14 (1994)).

³ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

⁴ Avista’s Response, ¶ 2 and Staff’s Response, ¶ 2.

⁵ Staff’s Response, ¶ 4.

⁶ *Id.*, ¶ 5.

⁷ Avista’s Response, ¶ 3.

⁸ *Id.*, ¶ 6 (citing *Industrial Customers of Northwest Utilities v. WUTC and Wash. State Attorney General’s Office v. WUTC*, Thurston County Case Nos. 13-2-01576-2 and 13-2-01582-7 (June 4, 2014)).

is trying to prevent the building of an evidentiary record that might support, not only the 2015 attrition adjustment (demonstrating that it is not just an [sic] a single year occurrence), but also any rate plan that might be proposed in this case that would extend beyond the rate year.⁹

6 ICNU disagrees, arguing that Avista is seeking rate relief for 2015, not 2016, and the 2016 attrition study “confuses the issues in this case without providing any incremental benefits.”¹⁰ ICNU contends that it already has concerns about the known and measurable quality of Avista’s alleged 2015 rate year capital additions; remote projects unrelated to the rates in question only exacerbate the speculative nature of Avista’s rate filing.¹¹ ICNU also asserts that the Commission’s decisions are to be based on a fully developed record, and none of the parties has suggested that 2016 rates will be considered in this proceeding.¹²

7 **DECISION.** RCW 34.05.452(1) provides that:

Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

8 Given the multiple year rate plans that have developed in previous cases, Public Counsel and ICNU are incorrect in assuming that a 2016 attrition study is, *prima facie*, immaterial and irrelevant. Further, other than conclusory statements, Public

⁹ *Id.*

¹⁰ ICNU’s Response, ¶ 2.

¹¹ *Id.*, ¶ 5.

¹² *Id.*, ¶ 7.

Counsel fails to provide any evidence of the study will mislead, distract, confuse, waste time, or be too remote, thus justifying exclusion.

9 It appears both Public Counsel and ICNU confuse the Commission's admission of an exhibit into the record with the weight such an exhibit is given. Even though evidence may be admissible, and to be clear, the 2016 attrition study has not been admitted into the evidentiary record at this time, the Commission will only give it the weight it feels appropriate in light of the evidence received.

10 Public Counsel's Motion should be denied.

ORDER

11 **THE COMMISSION ORDERS That** Public Counsel's Motion to Strike Certain Testimony and Exhibits Filed by Avista is **DENIED**.

Dated at Olympia, Washington, and effective July 21, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge