BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, (Consolidated)
Complainant, ) DOCKETS UE-220053 and UG-220054

vs. ) VIRTUAL PREHEARING CONFERENCE

AVISTA CORPORATION, d/b/a AVISTA UTILITIES, Respondent.

ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

(All participants appeared via videoconference.)

DATE TAKEN: February 28, 2022
REPORTED BY: ROSE DETLOFF, RPR, CCR #21036100

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LACEY, WASHINGTON; FEBRUARY 28, 2022

1:36 p.m. - 000-

PROCEEDINGS

JUDGE O'CONNELL: Let's be on the record.

Good afternoon. The time is approximately 1:30 p.m. My name is Andrew O'Connell. I am an administrative law judge with the Washington Utilities and Transportation Commission, and I'll be presiding in this matter along with the Commissioners.

We are here today for a second virtual prehearing conference in Avista's 2022 general rate case, which is consolidated Dockets UE-220053 and UG-220054.

Okay. Let's take appearances on the record, starting with the Company.

MR. MEYER: Good afternoon, Your Honor.

David Meyer on behalf of Avista.

JUDGE O'CONNELL: Thank you.

And for Staff?

JUDGE O'CONNELL: Thank you.

MS. CAMERON-RULKOWSKI: Good afternoon, Your Honor. Jennifer Cameron-Rulkowski, Assistant Attorney General, appearing on behalf of Staff.

And with me today is Jeff Roberson, also

Assistant Attorney General.

JUDGE O'CONNELL: Thank you.

Mr. Meyer?

MR. MEYER: Yes, Your Honor. And for Public Counsel?

JUDGE O'CONNELL: Thank you.

MS. SUETAKE: Good afternoon. Nina Suetake, Assistant Attorney General for Public Counsel Unit. And today, I'm joined by Assistant Attorney General, Ann Paisner.

JUDGE O'CONNELL: Thank you.

For the Alliance of Western Energy Consumers?

JUDGE O'CONNELL: Thank you.

Mr. Pepple?

MR. PEPPLE: Good afternoon, Judge O'Connell. Tyler Pepple for the Alliance of Western Energy Consumers.

JUDGE O'CONNELL: Thank you.

For Northwest Energy Coalition?

JUDGE O'CONNELL: Thank you.

Mr. Sanger?

MR. SANGER: Good afternoon, Your Honor. The Energy Project.

JUDGE O'CONNELL: Thank you.

MS. SMITH: Good morning, Your Honor. Gloria Smith, for Sierra Club.

JUDGE O'CONNELL: Thank you.

For Small Business Utility Advocates?

JUDGE O'CONNELL: Thank you.


JUDGE O'CONNELL: Thank you.

And for Walmart?

MS. BALDWIN: Thank you. This is Vicki Baldwin on behalf of Walmart.

JUDGE O'CONNELL: Thank you.

I mentioned briefly before we went on the record that there were three things I wanted to address at this conference.

First, I want to address Walmart's late-filed petition to intervene. I want to then address paper copies for some time, and now for this case, the copies to be filed in this docket. Thank you, Mr. Zakai for pointing that out for me. And in the e-mails with the parties as recently as this morning, I had indicated to you that paper copies would be required only for testimony and exhibits. I'm going to grant Walmart's petition to intervene and memorialize that decision in the record along with the Commissioners.

And for Public Counsel?

JUDGE O'CONNELL: Thank you.

Okay. Hearing no objection from any of the parties, I'm going to grant Walmart's petition to intervene. Neither objected to Walmart's intervention.

Next, I want to address paper copies in this case. In the prehearing conference order, there was confusion about when the Commission will require paper copies to be filed in this docket. Thank you, Mr. Zakai and Ms. Suetake, for pointing that out for me. And in the e-mails with the parties as recently as this morning, I had indicated to you that paper copies would be required only for testimony and exhibits. I'm going to alter that guidance again today.

The Commission has been moving away from paper copies of filings in this case with new direction. And last, I wanted to discuss intervenor funding and set certain finite deadlines for those items.

So first, regarding Walmart, I have reviewed Walmart's petition, and I am also aware that Walmart has a history of participating in general rate cases before the Commission. The Commission received responses from Avista and Staff to Walmart's late-filed petition to intervene. Neither objected to Walmart's intervention. Before I make a decision, does any party want to be heard regarding Walmart's petition?

MR. ZAKAI: Your Honor, The Energy Project does not object to Walmart's intervening.


JUDGE O'CONNELL: Thank you.

Okay. Hearing no objection from any of the parties, I'm going to grant Walmart's petition to intervene and memorialize that decision in the record that there were three things I wanted to address at this conference.

First, I want to address Walmart's late-filed petition to intervene. I want to then address paper copies of filings in this case with new direction. And last, I wanted to discuss intervenor funding and set certain finite deadlines for those items.

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MR. ZAKAI: Your Honor, The Energy Project does not object to Walmart's intervening.

Thank you Mr. Zakai.

JUDGE O'CONNELL: Thank you.

Okay. Hearing no objection from any of the parties, I'm going to grant Walmart's petition to intervene and memorialize that decision in the prehearing conference order.

I am also going to update the contact list that was contained in Appendix A to the first prehearing conference order with the contact information for Small Business Utility Advocates. The Commission has been moving away from paper copies of filings in this case with new direction. And last, I wanted to discuss intervenor funding and set certain finite deadlines for those items.

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MR. ZAKAI: Your Honor, The Energy Project does not object to Walmart's intervening.

Thank you Mr. Zakai.

JUDGE O'CONNELL: Thank you.

Okay. Hearing no objection from any of the parties, I'm going to grant Walmart's petition to intervene and memorialize that decision in the prehearing conference order.

I am also going to update the contact list that was contained in Appendix A to the first prehearing conference order with the contact information for Walmart as well as certain corrections to any of the e-mails that were contained in that list. And if there are any corrections that need to be made that I've not already been made aware of, please e-mail me and let me know.

Next, I want to address paper copies in this case. In the prehearing conference order, there was confusion about when the Commission will require paper copies to be filed in this docket. Thank you, Mr. Zakai and Ms. Suetake, for pointing that out for me. And in the e-mails with the parties as recently as this morning, I had indicated to you that paper copies would be required only for testimony and exhibits. I'm going to alter that guidance again today.

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MR. ZAKAI: Your Honor, The Energy Project does not object to Walmart's intervening.


JUDGE O'CONNELL: Thank you.

Okay. Hearing no objection from any of the parties, I'm going to grant Walmart's petition to intervene and memorialize that decision in the prehearing conference order.

I am also going to update the contact list that was contained in Appendix A to the first prehearing conference order with the contact information for Walmart as well as certain corrections to any of the e-mails that were contained in that list. And if there are any corrections that need to be made that I've not already been made aware of, please e-mail me and let me know.

Next, I want to address paper copies in this case. In the prehearing conference order, there was confusion about when the Commission will require paper copies to be filed in this docket. Thank you, Mr. Zakai and Ms. Suetake, for pointing that out for me. And in the e-mails with the parties as recently as this morning, I had indicated to you that paper copies would be required only for testimony and exhibits. I'm going to alter that guidance again today.

The Commission has been moving away from paper copies of filings in this case with new direction. And last, I wanted to discuss intervenor funding and set certain finite deadlines for those items.
And I will memorialize that decision in the second prehearing conference order as well. My understanding is that this will be consistent with other general rate cases going on at this time. And I do think there’s value to having the same filing requirements across the proceedings that are going on at the same time, especially given the size and importance of both of the cases.

Are there any questions regarding paper copies or filing requirements of any kind? Okay. Now I’ll move on to the schedule for intervenor funding filings. I want to -- I think I understand the deadlines that need to be set and the filings to expect from the parties, but I do believe that -- even though I have reviewed the intervenor funding agreement and the Commission order approving that agreement, I want to hear from the parties to make sure that I haven’t missed anything and that we are addressing everything that we need to at the correct time.

Now, my understanding is that a number of the deadlines become triggered when the Commission takes action. So, for example, the budget -- the filing of budgets is to be filed 30 days after the Commission makes the decision on case certification.

Let me back up a step, and I apologize for jumping ahead of myself. In the agreement, it says that case certification and the notice from the parties should be filed with the Commission by the prehearing conference or at a date and time specified by the Commission because it allows that flexibility for the Commission to establish a different deadline than the prehearing conference. In this case, I intend to set a future date not too far in the future for the filing of case certification and notices from the parties.

I’m also aware that the PSE general rate case is occurring concurrently, and they’re going to be similar filings in both cases. I want to make sure that we keep this case on track, and because Avista’s case was filed first, I want to give some separation in the time of deadlines between when things are filed in this case and when things will be filed in the PSE general rate case.

So my thinking and my -- I’d like to ask the parties if it is reasonable to set a deadline date of one week from today, next Monday, as a filing deadline for case certification and notices from the parties.

Let me first start with -- I would like to hear from the Company, Mr. Meyer. Perhaps I should ask the parties who expect to be making these filings if that amount of time would be sufficient.

And Mr. Pepple, I am aware that AWEC has already filed, and thank you. And I’m going to allow AWEC to amend its filing if you decide it’s necessary. Would either of the parties like to be heard about that deadline?


That’s reasonable. The Energy Project is prepared to file today, if necessary, because we thought going into today that that would be the requirement, so we have everything ready to go at your request.

But I’m not sure about the other parties. So we certainly would want to leave enough time to make sure that other parties are able to comply with the funding agreement’s requirements.

JUDGE O’CONNELL: Let me turn to Northwest Energy Coalition, Sierra Club, and AWEC.

Mr. Sanger?

MR. SANGER: Thank you.

Sierra Club won’t be seeking intervenor funding filings. I want to -- I think I understand the deadlines that need to be set and the filing requirements of any kind.

Now, my understanding is that a number of the deadlines become triggered when the Commission takes action. So, for example, the budget -- the filing of budgets is to be filed 30 days after the Commission makes the decision on case certification.

the middle of next week to be able to gather everything up and make the filing if we decide to seek intervenor funding.

JUDGE O’CONNELL: Okay, thank you.

Okay. For the Alliance of Western Energy Consumers, Mr. Pepple?

MR. PEPPLE: Well, Judge, as you noted, we’ve already filed. So we’ll defer to other parties in terms of what they believe is reasonable.

JUDGE O’CONNELL: Okay, thank you.

For the Sierra Club, Gloria?

MS. SMITH: Thank you, Your Honor.

Sierra Club won’t be seeking intervenor funding.

JUDGE O’CONNELL: Okay, thank you.

And for Small Business Utility Advocates, Jeff?

MR. WINMILL: Hi, Your Honor.

Yes, next week is appropriate. We’re also prepared to file today as necessary.

One thing that we would notice -- that maybe like, I think, Sierra Club -- we are still attempting to identify experts among other things. So I guess that will be addressed in the budget that’s due 30 days following the certification.

But nonetheless, we’re prepared to file by next
week.

JUDGE O'CONNELL: Thank you. Yes, my understanding is that there's an expectation the Commission will try to issue a decision within 14 days after receiving the case certification and notices from the parties. And then once the Commission makes that determination, it will trigger a 30-day window for the filing of the budgets.

MR. WINMILL: Thank you.

JUDGE O'CONNELL: Yes, thank you. And I'm saying this out loud in the hopes that if I'm mistaken, that someone is going to correct me.

MR. ZAKAI: Yes, Your Honor, if you'd like to --

JUDGE O'CONNELL: Go ahead, Mr. Zakai.

MR. ZAKAI: Thank you, Judge O'Connell.

Yeah, as I read the Participant Funding Agreement, Section 6.3, the deadline is 30 days after the prehearing conference by default. But if no prehearing conference is held, then the deadline is 30 days after the Commission decides on the request for case certification.

Of course the agreement also preserves the Commission's discretion to set any other date as the Commission designates. And in this particular circumstance, TEP thinks it would be reasonable to set the date as 30 days after the Commission decides on case certification.

JUDGE O'CONNELL: Okay, thank you.

I have not specifically asked Walmart of all the intervenors, so I am going to direct my next question to Walmart.

Ms. Baldwin, is Walmart planning to seek intervenor funding?

MS. BALDWIN: No, we do not. I do not believe we're eligible, but we do not.

JUDGE O'CONNELL: Okay, thank you.

Mr. Meyer, let me come back to the Company. You've been very much involved with the development of the agreement. I would appreciate hearing from you about the filing deadlines and how this is expected to work.

MR. MEYER: Thank you. I think the process that you've laid out works. You're giving -- the Commission's giving all kinds of flexibility here. And so we don't have any problem with a seven-day deadline for those who haven't filed their petition and notice of intent.

And then after that, there's a 14-day period within which the Commission should act on those -- on the petition and notice of intent. And then I think a fair reading of the agreement -- as was just discussed -- 30 days, and then after that decision, which is the 14-day period decision, for the filing of the proposed budget.

JUDGE O'CONNELL: Okay.

MR. MEYER: Now -- okay, go ahead.

JUDGE O'CONNELL: No, Mr. Meyer, please go ahead.

MR. MEYER: Then, of course, the Commission has to act on the proposed budget that gets filed, and that needs to be within 30 days of the proposed budget. So that's the last shoe to fall, if you will.

JUDGE O'CONNELL: Is there also -- is there a date that we need to set closer to the end of the case about confirming the budgets? Or is that something that happens even after the general rate case is concluded?

MR. MEYER: Well, it's after. And so you'll act on the proposed budgets, and if there are conflicts with overlapping budgets, you'll recognize that in your decision. But you will act on it and approve those budgets.

And leaving aside for a moment changes to the budget or interim funding, when the case concludes, then there's a period of time within which -- and I think it's 60 days -- in which parties must submit their request for funding. And that request for funding will contain all of the documentation of what they actually spent, not what they proposed to spend. And that gets reviewed for items following -- which then, you issue an order approving that itemized budget, and then we pay according to that order.

JUDGE O'CONNELL: Okay. Let me turn back again to the other parties.

The Energy Project, I know that you've been involved quite a bit with the development of this agreement. Is this something that is expected by the parties -- is the Commission supposed to include something in the final order discussing the submission of funding requests?

MR. MEYER: Who is that for?

JUDGE O'CONNELL: Mr. Meyer or Mr. Zakai.

MR. PEPPLE: Judge O'Connell, if you don't mind -- I'm happy to let Mr. Zakai speak.

I think Mr. ffitch was more involved in the funding agreement for The Energy Project, but I worked with him pretty closely, so I'm happy to also respond to that if you like.

JUDGE O'CONNELL: I apologize for putting anyone on the spot. I am just trying to plan for what I
need to make sure is on my radar. So yes, please, Mr. Pepple, go ahead.

MR. ZAKAI: I'm happy to defer to Mr. Pepple. Thank you.

MR. PEPPLE: So my understanding is you would not need to put anything in the final order for the case.

Essentially, how it works is that parties will submit the proposed budget, as Mr. Meyer said. The Commission will rule on that proposed budget, but that does not authorize any funding at that point. It's only at the end of the case, within 60 days after the final order has become nonappealable, the party will submit a request for payment, and then they will itemize all of those expenses.

And then after receiving the request for payment, then the Commission would issue an order either approving or denying the request. So that would be a separate order.

JUDGE O'CONNELL: Okay. So I think -- and I'm going to open up for anyone who would like to be heard in just a moment.

But I think my next step is to include in the second prehearing conference the filing deadline for request for payment, and then they will itemize all of those expenses.

MR. ZAKAI: This is Yochi Zakai for The Energy Project.

I think it would be appropriate for the prehearing conference order to also designate when the proposed budgets are due because I think without the Commission explicitly designating another time, the date by default would be 30 days after this prehearing conference.

JUDGE O'CONNELL: Okay, thank you. I will specify in the prehearing conference order that it will be due 30 days after the Commission makes its decision. Is there anything else I need to be clear about in the order as far as the intervenor funding issue and scheduling goes?

MR. MEYER: Not as far as scheduling goes.

This is a matter of some discretion, but clearly the intervenor funding agreement recognizes that parties will try and cooperate among themselves so not to overlap and not to spend, you know -- let me start over.

They will cooperate in arriving at budgets because you'll have several lines for that participation, not the disadvantaged prioritized fund, but the other one. So just some kind of encouragement for the parties to meet and confer as soon as possible to discuss budgets. That happens in Oregon, and I think it happens pretty well at least in the Avista dockets.

JUDGE O'CONNELL: Thank you.

For the record, that was Mr. Meyer.

I had not planned on including in the schedule any conference of the parties who are intending to submit budgets.

Mr. Meyer, is that -- are you recommending that I consider doing that?

MR. MEYER: Well, I wasn't suggesting that it be as formal as directing the parties to meet, but just some kind of expectation that the parties will attempt to coordinate their spending in some way. It's not binding. There's no requirement, but just -- it's a hope and a prayer.

JUDGE O'CONNELL: I attended the Commission's open meeting last Thursday in which this was brought up, and I do remember that at least being a topic that was mentioned -- that the parties were going to cooperate.

Is there, in the agreement, language that requires such cooperation, Mr. Meyer? I'm asking because I don't recall and I'd like to ask.

MR. MEYER: Yeah, that's a fair question.

JUDGE O'CONNELL: Okay, thank you. I will.

MR. ZAKAI: If I may assist, Your Honor. Mr. Zakai.

MR. ZAKAI: Yes, Your Honor. Section 6.6 of the agreement asks for parties to cooperate including before submitting proposed budgets. I think that it's adequately -- the need for cooperation is adequately included in the agreement.

Commission direction is always welcome, but if you do not feel so inclined to provide that, the agreement already includes sufficient encouragement.

JUDGE O'CONNELL: Okay. Thank you.

Well, we've covered everything that I had intended to bring up for the parties to be heard about. But I want to open the discussion up to the parties for if there's anything else that we should discuss as it regards to intervenor funding at this second prehearing conference.

MR. WINMILL: Your Honor, Jeff Winmill, on
JUDGE O'CONNELL: Go ahead, Jeff.

MR. WINMILL: I had a question that perhaps may be -- I don't know if you could answer, Your Honor, or perhaps some of the other parties.

But SBUA is not currently a signatory to the interim funding agreement that was approved by the Commission or -- and it looks like filed in this docket.

Would the appropriate thing to do, then, for SBUA to file a signature page to that agreement in this docket, or perhaps in a different one? Does that make sense?

JUDGE O'CONNELL: Yes, I understand your question.

The only thing I know for sure is that, yes, you should submit a signature page. I think it would be sufficient for you to submit in this docket. However, the intervenor funding agreement was approved in another docket.

MR. WINMILL: Yeah, that's my question.

JUDGE O'CONNELL: Let me turn to Mr. Meyer. My understanding from listening to the open meeting was that the updated agreement and updated signature pages were submitted in that docket that was addressed at the open meeting; is that correct?

MR. MEYER: That is correct. The reason I submitted last Friday what I had in hand was to make sure that in this docket, this rate case docket, there was something of record informing you and all the parties of their obligations. I just recommend that you file your signature page in both dockets at this point.

Next time around, when we have a little more experience, then maybe the parties can just have one on file with the underlying intervenor funding agreement.

MR. WINMILL: That's perfect. Thank you, David.

JUDGE O'CONNELL: Thank you, Mr. Meyer.

MR. ZAKAI: Your Honor, if I could address this issue as well.

JUDGE O'CONNELL: Please go ahead.

Mr. Zakai.

MR. ZAKAI: Yes. At least I think from The Energy Project's perspective, we contemplated that all signatory pages would be in the generic docket only, and that the funding agreement itself only needs to be in the generic docket only. And then the Commission's order can reference that docket which approved the participant funding agreement and has all those filings.

From a practical perspective, I would encourage the Commission and parties to think about what it means to have such an agreement and signature pages filed in each general rate case before it, and for the purposes of administrative efficiency, that might not be necessary. Thank you.

JUDGE O'CONNELL: Thank you, Mr. Zakai.

That makes good sense to me to keep it all in that one generic docket.

So for SBUA, Jeff, please do -- if you sign -- if you were to submit the signature page, please include it in that generic docket.

MR. WINMILL: Will do, sir.

JUDGE O'CONNELL: Okay.

Okay. Is there anything --

MR. MEYER: Your Honor?

JUDGE O'CONNELL: Mr. Meyer.

MR. MEYER: And that resolution is just fine by me, but if -- and it's really -- it's not a matter of a special concern to Avista, but there are parties, even in this case, that may not have been parties to that generic docket. And they may want to -- so they won't be served with a petition by any other party in the generic case -- or not petition, but a signature page in the generic case.

If that matters that they are not aware of another signature page being filed in the generic case,

Mr. Zakai.

MR. ZAKAI: Thank you, Your Honor.

Next time around, when we have a little more experience, then maybe the parties can just have one on file with the underlying intervenor funding agreement.

JUDGE O'CONNELL: Okay, thank you.

My understanding from listening to the open meeting was that the updated agreement and signature pages were submitted in that docket that was addressed at the open meeting; is that correct?

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From a practical perspective, I would encourage the Commission and parties to think about what it means to have such an agreement and signature pages filed in each general rate case before it, and for the purposes of administrative efficiency, that might not be necessary. Thank you.

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MR. WINMILL: Will do, sir.

JUDGE O'CONNELL: Okay.

Okay. Is there anything --

MR. MEYER: Your Honor?

JUDGE O'CONNELL: Mr. Meyer.

MR. MEYER: And that resolution is just fine by me, but if -- and it's really -- it's not a matter of a special concern to Avista, but there are parties, even in this case, that may not have been parties to that generic docket. And they may want to -- so they won't be served with a petition by any other party in the generic case -- or not petition, but a signature page in the generic case.

If that matters that they are not aware of another signature page being filed in the generic case,
file their notice of intent to request their fund grant, the agreement requires that that document be served on all parties in the proceeding.

So, for example, in this general rate case, if a party decides to request a case certification and request participant funding, that that notice of intent would be served on all parties in this case. And that would provide, I believe, all parties in this case sufficient notice as was intended by the agreement.

JUDGE O'CONNELL: Mr. Zakai, I noticed in the requirements for what should be submitted along with case certification a number of items that the party needs to address. And I believe there's also something there that allows the Commission to ask for something else.

Is there -- and correct me if I'm wrong about that -- and, also, is one of those things that must be included in the case certification request -- does it have to show -- do the parties have to show a signature page to the agreement?

MR. ZAKAI: I do not believe that there's a specific requirement for showing a signature page to this agreement. I would be interested in hearing from AWEC how the similar process works in Oregon as well to hear that perspective.

But in the agreement before this Commission here in Washington State, I don't see that requirement to show the signature page.

JUDGE O'CONNELL: Before we go to you Mr. Pepple, Mr. Meyer, it was your original suggestion that we ask the parties to file a signature page in both dockets. I don't recall seeing a requirement for the signature page to be filed along with case certification, but I'm going to wonder out loud for the parties whether it wouldn't be appropriate to have that included along with the request for case certification.

So I would like to hear from the parties, and Mr. Meyer, can you please go first.

MR. MEYER: Oh, okay. I think we're making this harder than we need to, and maybe a couple of iterations into this as we get more practice with this, we can decide how we want to work it.

But for -- I think it's very easy just to file that one signature page in both dockets. That way we can all keep track of who's in and who's not, and we don't have to wait around to figure that out until we check both dockets.

So either way, it will work. It really will.

But it just seems to me it would be pretty easy to do it in both for this case and be done with it.
STATE OF WASHINGTON
COUNTY OF KING

I, Rose Detloff, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

ROSE DETLOFF, RPR, CCR #21036100

My commission expires:
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