

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UE-061411
	)	
AVISTA CORPORATION, D/B/A	)	ORDER 04
AVISTA UTILITIES,	)	
	)	
For an Order Approving Avista's	)	ORDER GRANTING
Update of its Base Power Supply and	)	MOTION TO DISMISS
Transmission Costs.	)	
	)	
.....	)	

- 1 **SYNOPSIS:** *In this order the Commission grants a motion by Public Counsel and Intervenor Industrial Customers of Northwest Utilities (ICNU) to deny Avista's petition and reject the accompanying tariffs for failure to comply with Commission rules and order requiring a general rate case. The Commission encourages expedited refiling if Avista seeks to pursue its proposal.*
  
- 2 **NATURE OF PROCEEDING.** Docket UE-061411 involves a request by Avista Corporation for approval to update its base power supply production and transmission costs. The petition and tariff amendments were filed on August 31, 2006. Public Counsel and ICNU filed a dispositive motion to dismiss the petition on October 27, 2006. Avista and Commission Staff answered on November 15, 2006, and Public Counsel and ICNU replied on November 27, 2006. This order addresses only the motion.
  
- 3 **APPEARANCES.** David Meyer, attorney, Spokane, Washington, represents Avista Corporation (Avista). Judith Krebs, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Robert D. Cedarbaum, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff). Melinda Davison and Bradley Van Cleve, attorneys, Davison Van Cleve, Portland, Oregon, represents Industrial Customers of Northwest Utilities (ICNU).

## I. PETITION TO UPDATE POWER AND TRANSMISSION COSTS

- 4 Avista on August 31, 2006, filed a petition for authority to “update” the company’s base power supply and transmission costs (“PTC”). It said this update would show increases in its costs of operation, relative to its adjusted revenues, caused by increased investments in its generating plants and transmission facilities, and continuing high power supply costs. Avista filed tariffs to achieve an annual increase of \$28.9 million, or 8.8% overall (9.7% for residential customers).
- 5 As proposed, the PTC procedure would modify Avista’s existing Energy Recovery Mechanism (ERM), an accounting mechanism which allows the difference between certain actual power costs and “baseline” power costs to be deferred on an annual basis, and allows Avista to file true-up rate surcharges to recover or credit deferral balances when costs vary beyond identified thresholds. The PTC would periodically adjust the ERM by including new power and transmission costs, reflecting its investment in new generating and transmission facilities.
- 6 The tariffs filed and suspended in this docket bring it clearly within the rule’s definition of a general rate case,<sup>1</sup> as it proposes rates that impose more than 3% overall (here it is 8.8%) and more than 3% for any customer class (here, it is 9.7% for residential customers).

## II. MOTION TO DISMISS

- 7 ICNU and Public Counsel join to present a motion to dismiss the petition and reject the proposed tariffs. The essence of their argument is that the evidence, taken in the light most favorable to the respondent, fails to state a claim on which relief could be granted because the filing does not comply with the rules governing general rate case filings, violates basic and consistently-applied principles of ratemaking, and does not comply with a Commission order requiring the Company to address certain topics in its next general rate case.

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<sup>1</sup> WAC 480-07-505 General rate proceedings — Definition. (1) Rate filings that are considered general rate proceedings. A general rate proceeding filing is a filing by any regulated company specified in WAC 480-07-500 for an increase in rates that meets any of the following criteria: (a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more. (b) Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.

8 **A. Compliance with GRC rules.** Public Counsel and ICNU argue that this filing fails to comply with the Commission's rules on general rate case filings, which require the review of proposed tariff increases of 3% or greater in conjunction with a detailed review of the company's overall operations.<sup>2</sup>

9 Avista argues that the filing is not intended to be a general rate case filing, but is merely a limited filing similar to the power cost only rate case, or PCORC, approved for Puget Sound Energy.<sup>3</sup> It urges the Commission to avoid an overly rigid and restrictive reading of the rule.

10 Avista argues further that its filing is *equivalent* in content to a general rate case. It argues that its cost information, although elements are calculated for different periods in different ways, is sufficiently comprehensive to describe accurately Company operations for purposes of the filing.

11 The relevant definition of a general rate case is the magnitude of the filing, not its purpose. There is no denying that Avista's petition and its accompanying tariffs present, by definition, a general rate case—the proposed increase exceeds the break-point for GRC requirements (3%) by nearly three times.

12 We disagree with Avista's assertion that the failures to comply with the GRC rules are minor or insignificant. While the most recent rate case was filed and decided in 2005, it was based on a 2004 test year. Results of operations and other financial indicia during a complete 2005 test year would have been available when Avista filed its petition on August 31, and calendar 2006 test year results will be available soon. The use of different reference points and different methodologies to update various measures undermines confidence that the purpose of the GRC rule would be met. The GRC rules, and the rate case analysis that is based on the rules, are designed to

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<sup>2</sup> The GRC rules are founded on the principle that companies operate in a dynamic environment, and because changes over the course of time in the relationships between costs and revenues affect a company's need for revenue or its need to review and reduce costs, the Commission should not review significant tariffs as single, isolated events. Our discussion here, therefore, also responds to movants' argument against single-issue ratemaking.

<sup>3</sup> Puget Sound Energy also has a cost adjustment mechanism, called the Power Cost Adjustment, or PCA. It is similar to Avista's ERM. The principal difference is that PSE may adjust the baseline costs in its PCA through the PCORC. The PCORC resulted from a global settlement in a general rate case (GRC) at a time when PSE was experiencing financial challenges. That rate case setting allowed the parties (in the proposed settlement) and the Commission (in its order) to craft a carefully-considered process, tailored to PSE's situation and its unique needs, with well-defined parameters and conditions that protect both PSE's customers and its shareholders. See, *WUTC v. Puget Sound Energy*, Ninth Supplemental Order, Dockets UE-011570 and UG-011571 (consolidated) and Third Supplemental Order, Docket UE-011411 (2002).

produce a complete picture of the company's financial situation at a given point in time. Avista's filing clearly does not comply with these rules nor achieve this result.

13 Avista's petition makes no contention about the Company's financial need for the revenues to be generated by the PTC, aside from presenting asserted performance figures based on a mélange of actual 2004, *pro forma* 2006, and projected 2007 results. Furthermore, Avista's petition proposes no limitations on its ability to seek PTC increases in the future, nor any requirement to tie such tracking to a general rate case in which the appropriateness of the revised data could be tested. Neither does it address with updated evidence its costs of capital (apart from noting a slight reduction in debt costs resulting from the repurchase of outstanding debt instruments).

14 Now we turn to the question of whether Avista should be exempted from our GRC rule.

#### **B. Exemption from the General Rate Case filing rules.**

15 **1. Standards for granting exemptions.** Notable by its absence from the Company and Staff presentations is any discussion of why the Commission *should* exercise its discretion to allow the case to go forward. Staff does not address WAC 480-07-110(2)(c), which sets a standard for allowing exemptions from rules:

\* \* \* whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

16 Staff presents no legal or policy arguments for denying the motion, except to state that the Commission does have discretion to accept a filing that fails to comply with applicable rules. Staff merely contrasts the existence of discretion with the motion's observation that there is no claim presented on which relief could be granted. Avista adds little to the discussion.

17 We conclude that the problems are so pervasive in the filing and there are so many barriers to an adequate analysis (especially on the allotted time schedule), that we cannot properly exercise our discretion to waive or exempt Avista from the rule.

18 **2. Fairness argument.** Avista states that it is entitled to a PTC proceeding simply because we have allowed Puget Sound Energy to update PCAs through its PCORC, and it would be unfair to prevent Avista from use of a similar process to update ERM costs.

19 We reject Avista’s premise. Avista confuses the results of an adjudicative order with a long-standing rule. Rules are standards that are applicable to all similarly situated persons.<sup>4</sup> An adjudicative order, however, applies the generally applicable principles of rules and laws to resolve a specific dispute between parties. Absent some other factor, it is not binding on, or available to, others as a matter of right and the Commission need only explain its reasons for failing to act similarly in cases that appear to involve like circumstances.

20 **3. Specific exemption for periodic rate adjustment mechanisms.** Avista points to WAC 480-07-505(2)(a)<sup>5</sup> and argues that its filing falls within a specific exemption from the GRC filing requirements. Avista argues that rejection of its proposal means that no such filing—the ERM, the PCA, the PCORC—could be permitted any longer.

21 Again, we disagree. The rule provides an exemption for periodic rate adjustments pursuant to a process approved by the Commission, such as the ERM, the PCA and the PCORC. Avista's apparent interpretation—that its proposed rate adjustment “may be authorized by the Commission.”—would render the condition meaningless, as any conceivable proposal could be authorized. The rule’s citation to examples of PCA’s and purchased gas adjustments is intended to clarify and affirm the need for prior review and Commission approval of a specific proposed rate adjustment process, to qualify for the exemption in the rule.

22 That said, Avista does have every right (as did PSE) to *seek* authorization of a PTC process. The origins of PSE’s PCORC demonstrate an appropriate means of doing so. If Avista wishes to pursue its proposal, it must ask authority for the periodic rate adjustment mechanism in a general rate case, presenting evidence and argument clearly defining the proposal, identifying appropriate conditions on its operation, showing how it benefits both ratepayers and stockholders, addressing the costs and

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<sup>4</sup> Regulations “of general applicability” are rules. *RCW 34.05.010(16)*

<sup>5</sup> WAC 480-07-505(2)(a) reads as follows: (2) Rate filings under Title 80 RCW that are not considered general rate proceedings. The following proceedings are not considered general rate increases even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations: (a) Periodic rate adjustments for electric and natural gas companies that may be authorized by the commission (e.g., power cost adjustments and purchased gas cost adjustments).

benefits of the process based on performance in a test year and analyzing the effect of an ERM/PTC process on the allowed rate of return.

23 **C. Compliance with ERM-related requirements.** In approving a settlement in Avista's most recent ERM docket, UE-060181, the Commission accepted a provision that requires Avista to address several matters in its next general rate case.<sup>6</sup>

24 Public Counsel and ICNU argue that because this is a general rate case, Avista's filing should be rejected for its failure to address the required topics.

25 As we note above, we agree that the current filing is a general rate case, and Avista has not provided the information and analysis required in the stipulations we adopted. The Commission instructed Avista in its most recent ERM proceeding to present information about the effect of the ERM (which may reduce financial risk by reducing the effect of power costs) on the company's required rate of return on equity. This filing contains no such information.

26 These requirements reflected our desire for a review of several ERM attributes in the context of a complete rate case. Instead, Avista proposes a change in the ERM process that would extend its scope and financial impact, without addressing the items required in our order. We believe the Avista PTC proposal magnifies the need to have full general rate case information in reviewing the process for approval.

27 The Company's failure to comply with the ERM requirement is another reason to reject this filing.

### III. CONCLUSION

28 We conclude that the filing is by definition a general rate case and that it fails to comply with applicable rules. While we have discretion to grant an exemption from the rules and from the order in UE-060181, we decline to do so. The flaws in the filing are considerable and no adequate reasons have been provided to warrant granting an exemption despite its flaws.

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<sup>6</sup> The settlement agreement, and a provision in the order accepting the settlement, required the following: The parties agree to defer until Avista's next general rate proceeding for the following four issues: 1. The cost of capital impact of the ERM. 2. The prudence of the Company's hedging strategy for power purchases and purchases of gas used for power generation, on a prospective basis. 3. Consideration of the allocation of common costs related to the retail revenue credit. 4. Consideration of a production property adjustment.

29 Therefore, we grant the motion to dismiss and deny the petition to allow an update of power production and transmission costs in calculating the ERM. Periodic rate adjustments such as the PCORC or the PTC must be considered initially in the context of a general rate case where their effects and their parameters can be carefully considered and clearly defined using the matching principle and traditional regulatory tools. We reaffirm the ERM order's requirements that Avista address specific issues in its next general rate case, including the effect of the ERM (and a PTC, if it is proposed) on the Company's required return on equity.

30 We also acknowledge that the parties have expended considerable time and resources in preparing for hearing on this proposal. If Avista desires to continue its pursuit of a PTC process to update its ERM, and perfects a general rate case filing with all required information promptly, we will be receptive to requests to preserve the current efforts. If Avista makes such a filing, we will schedule it to be heard as expeditiously as is consistent with a full and fair consideration of the issues.

#### **IV. ORDER**

31 The Commission grants the motion to dismiss this proceeding. In doing so, the Commission denies the petition for a periodic power production and transmission cost update proceeding and rejects the tariffs that were proposed to implement it.

DATED at Olympia, Washington, and effective December 26, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES:** This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.