

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

AVISTA CORPORATION dba AVISTA
UTILITIES, Revises Tariff WN U-28, Power
Cost Rate Adjustment Schedule 93.

DOCKET NO. UE-170484

**PUBLIC COUNSEL'S RESPONSE IN
SUPPORT OF INDUSTRIAL
CUSTOMERS OF NORTHWEST
UTILITIES' MOTION TO DISMISS;
AND ALTERNATIVE MOTION TO
CONSOLIDATE WITH GENERAL
RATE CASE FILING**

I. INTRODUCTION AND RELIEF REQUESTED

1. The Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") submits this response requesting the Washington State Utilities and Transportation Commission ("Commission") grant Industrial Customers of Northwest Utilities' ("ICNU") Motion to Dismiss and Alternate Motion to Consolidate with General Rate Case Filing ("ICNU Motion").
2. To the extent not covered here, Public Counsel incorporates by reference ICNU's rationale for requesting dismissal of the Company's filing. The Commission recently found Avista Corporation's ("Avista" or "the Company") existing rates continue to be fair, just, reasonable, and sufficient for the 2017 rate year. As a result, the Company has failed to state a claim upon which the Commission may grant proposed Power Cost Rate Adjustment ("PCRA") relief, effective September 1, 2017. Further, additional reasons are set forth below why the Commission should grant ICNU's Motion to Dismiss. Accordingly, pursuant to WAC 480-07-380(1), Public Counsel supports ICNU's Motion.

II. BACKGROUND

A. Avista Seeks a Rate Increase with a Proposed Tariff and Seeks to Update Schedule 93

3. On February 27, 2017, the Commission found that for the period of January 1, 2017 through June 30, 2018, Avista's existing rates were fair, just, reasonable, and sufficient. Existing rates would remain in effect from the date of the order, effectively denying Avista's petition for reconsideration and its alternative petition for rehearing.¹

4. Two months later, the Commission upheld its decision finding that the rates were sufficient through the requested mid-2018 rate period, affirming that the Commission had not committed an error of law in the 2016 GRC final order.²

5. Avista now seeks an Electric Energy Cost Adjustment Rider (EECAR) which is designed to update its Power Cost Rate Adjustment Schedule, with new rates going into effect on September 1, 2017. Avista proposes that the new rates expire upon completion of its concurrently filed general rate case, at which time Avista would seek the proposed rates to be approved through the general rate case. Avista proposes that the rates would continue once approved through the general rate proceeding effective May 1, 2018. In essence, Avista seeks \$15 million of the total \$16.6 million increase to be effective on September 1, 2017.³

¹ *WUTC v. Avista Corp.*, Dockets UE-160228 and UG-160229 (*Consolidated*), Order 06 ¶ 6 (Dec. 15, 2016).

² *WUTC v. Avista Corp.*, Dockets UE-160228 and UG-160229 (*Consolidated*), Order 07 ¶ 12 (Feb. 27, 2017).

³ Avista Cover Letter, PCRA Filing, at 3.

III. ARGUMENT

6. Although Avista frames its request as a request to update its power costs,⁴ Avista's PCRA request is a tacit request for interim rate relief, yet a request without any recognizable legal, factual, or policy basis. Avista has filed no petition for interim relief, provided no supporting testimony or evidence, or made any effort to present the request in the framework that the Commission has consistently employed for granting interim relief. Avista alleges no financial emergency, no imminent harm to shareholders or ratepayers, and no gross hardship or inequity. The Company offers no supporting facts to suggest that interim relief is warranted on such a basis.

7. Interim rate relief, as this Commission has consistently found, is to be granted sparingly, as a form of extraordinary relief only when the Commission determines after careful consideration of an evidentiary record and an adequate hearing that it is in the public interest.

A. Avista Has Not Presented A Proper Request for Interim Rate Relief

8. Avista has neither alleged that an interim rate increase is necessary to maintain the Company's financial health pending a final rate decision, nor have they offered any evidence in

⁴Avista has not historically filed Power Cost Only Rate Cases, similar to those filed by Puget Sound Energy. If Avista wishes to file such cases, it may present a proposal to the Commission in a general rate case, present evidence and arguments clearly defining the proposal, identify conditions of operation, show benefits to ratepayers and shareholders, address the costs and benefits, and analyze the effect that the process would have on the allowed rate of return. *WUTC v. Avista Corp.*, Docket UE-061411, Order 04, Order Granting Motion to Dismiss ¶ 22 (Dec. 26, 2006). The Commission has noted a fundamental difference between Puget Sound Energy's Power Cost Adjustment Mechanism and Avista's Energy Recovery Mechanism (ERM) in that Puget Sound Energy's mechanism allows it to update the baseline costs through a Power Cost Only Rate Case. Avista's ERM does not. *Id.* ¶ 9, n.3; *See WUTC v. Puget Sound Energy*, Dockets UE-011570 and UG-011571 (*Consolidated*) Ninth Supplemental Order, and Docket UE-011411, Third Supplemental Order, (Mar. 28, 2002).

the record to support a granting of emergency rate relief within the framework of the “PNB factors,” or any other framework.⁵ The PNB factors are:

- An opportunity for adequate hearing;
- A demonstration that an actual emergency exists or that interim rates are necessary to prevent gross hardship or gross inequity;
- The failure to earn the authorized rate of return is not sufficient, standing alone, to justify the grant of interim relief;
- Examination of key financial indices;
- Jeopardy to the utility or detriment to ratepayers; and
- Whether the relief is in the public interest.⁶

9. Public Counsel acknowledges that the Commission is not bound by any specific PNB factor when considering granting or denying interim rate relief. Additionally, the Commission has made clear that these factors are not ‘standards’ to be applied mechanically, and that not all factors are applicable to all companies. Notably, the Commission previously held that, “[t]he ultimate test in determining whether to grant interim rates is whether this interim relief is sufficiently necessary to be consistent with the public interest.”⁷

10. The dearth of regulatory authority for the request is highlighted by contrasting this request with Avista’s request for interim relief in 2001.⁸ In that case, the Company provided detailed testimony and evidence to the Commission of the severity of its financial condition. Ultimately, after a hearing on that evidence, the Commission was persuaded that a grant of interim or temporary relief was “made necessary by extraordinary circumstances.”⁹ Furthermore, the Commission found that “in the economic and other circumstances Avista currently faces, the

⁵ *WUTC v. Pacific N.W. Bell Tel. Co.*, Docket U-72-30, Second Supp. Order (Oct. 10, 1972) (“PNB”).

⁶ *Id.* See also *Avista Corporation, Request Regarding the Recovery of Power Costs Through the Deferral Mechanism*, Docket UE-010395 (WUTC Sept. 24, 2001). They are set out in full in Appendix A.

⁷ See *WUTC v. Verizon Northwest*, Docket 040788, Order No. 05 ¶ 30 (Jul. 2, 2004).

⁸ *In Re Avista Corporation*, Docket UE-010395, Sixth Supplemental Order (Sept. 24, 2001) (“Avista Interim Order”).

⁹ *Id.*, ¶ 5.

Company's financial health is continuing to decline very swiftly... [T]he denial of temporary relief would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders."¹⁰ Avista attempts no such showing here.

11. The Commission previously issued an order denying interim relief to Verizon.¹¹ The Commission based its decision on an exhaustive examination of the criteria for interim relief, as applied to Verizon's claims of serious financial jeopardy, gross hardship, and inequity. Verizon presented extensive testimony and evidence, discovery was conducted, evidentiary hearings were held, and briefs were filed, all on an expedited schedule. In the end, the Commission held that Verizon had not carried its burden of proof, finding:

We have reviewed the Company's needs, and find no evidence that the Company will face financial difficulty maintaining existing operations during the period until the Commission can resolve issues in the general rate proceeding... In other words failure to grant the requested interim increase will have no substantial adverse effect on the Company, on its intrastate operations, or on the public. There is no financial emergency to be staved off. According to the evidence of record, disaster has neither struck the intrastate operations, nor is it imminent, nor is difficulty meeting financial or service requirements of the intrastate operations over the interim period an objective possibility.¹²

12. In denying the request for interim relief, the Commission recognized the special nature of interim relief, stating:

The issue in this phase of the docket is easily framed. Has the Company established that the Commission should take the unusual – extraordinary – step of granting interim relief at the expense of ratepayers, until concluding a general rate proceeding in which the Company's operations will be thoroughly analyzed and its proper level of overall rates determined?¹³

¹⁰ *Id.*, ¶ 60.

¹¹ *WUTC v. Verizon Northwest.*, Docket UT-040788, Order Denying Request for Interim Rates, Order No. 11, (Oct. 15, 2004) ("Verizon Interim Order").

¹² *Id.*, ¶ 153 (emphasis added).

¹³ *Id.*, ¶ 17.

13. The Commission reaffirmed that the *PNB* factors provide a viable framework for analysis of interim requests, offering “regulatory predictability” to industry and stakeholders,¹⁴ and applied the factors to Verizon’s request.

14. The contrast between Verizon’s interim petition and Avista’s request in this docket could not be starker. Here, Avista offers no support for their request for interim relief, other than the notion that the Commission may have the discretion to grant it and that they wish it to be so. Avista does not even attempt to justify the request under *any* set of criteria discussed in the Verizon order.

B. Avista Has Not Shown Any Legal Basis for Implementing Interim Rates As Requested

15. The Commission’s enabling statute, RCW Title 80, contains no express authority for the Commission to grant interim or emergency rate relief. While the implicit authority to allow such relief has been judicially recognized,¹⁵ granting such relief has been limited to extraordinary situations in which there was a demonstrable financial emergency or compelling need that could not await the conclusion of the full rate review contemplated by the express statutory scheme. Most recently, as noted above, this issue was extensively briefed by the parties and carefully considered by the Commission in the Verizon decision.¹⁶

16. Avista has not pointed the Commission to any prior case in Washington where interim relief was requested with such cursory support, let alone granted or to any case where rates were

¹⁴*Id.*, ¶¶ 23, 24.

¹⁵ *Puget Sound Navigation Co. v. Dept. of Transp.*, 33 Wn.2d 448, 482, 206 P.2d 456 (1949)

¹⁶ Verizon Interim Order, ¶¶ 29-36.

increased on such a basis outside of a request for interim relief. It is simply impossible to reconcile the approach to interim rates Avista seeks with that taken in the Verizon case.

IV. CONCLUSION

17. Public Counsel respectfully requests the Commission enter an order rejecting Avista's request seeking an interim rate increase pending the Commission's decision in this docket.

DATED this 27th day of June 2017.

Respectfully submitted,

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Appendix A

The factors are:¹⁷

First, the Commission should exercise its authority to grant interim rate relief only after an opportunity for an adequate hearing.

Second, an interim increase is one sort of extraordinary remedy, and “should be granted only where *an actual emergency exists* or where *necessary to prevent gross hardship or gross inequity*.”

Third, the mere failure of the currently realized rate of return to equal that approved as adequate is not sufficient, standing alone, to justify the granting of interim relief.”

Fourth, The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage, and the growth, stability, or deterioration of each, together with the immediate and short-term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest.

Fifth, “In the current economic climate the financial health of a utility may decline very swiftly. Interim relief stands as a useful tool in an appropriate case to stave off impending disaster. However, this tool must be used with caution, and must be applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That is not to say that interim relief should be granted only after disaster has struck or is imminent, but neither should it

¹⁷ These factors are from the Commission’s PNB Order, *WUTC v. Pacific Northwest Bell*, Docket U-72-30, Second Supplemental Order at 13.

be granted in any case where full hearing can be had and the general case resolved without clear detriment to the utility.”

Sixth, “As in all matters, we must reach our conclusion with the statutory charge to the Commission in mind, that is, to ‘Regulate in the public interest.’ (RCW 80.01.040). This is our ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors.”