

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**AVISTA CORPORATION, d/b/a
AVISTA UTILITIES,**

Respondent.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**AVISTA CORPORATION d/b/a AVISTA
UTILITIES,**

Respondent.

**DOCKETS UE-120436/UG-120437
(consolidated)**

**DOCKETS UE-110876/UG-110877
(consolidated)**

BRIEF OF COMMISSION STAFF

December 7, 2012

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1 A significant element of the Settlement¹ is a rate plan that stabilizes Avista's rates through 2014.² Under this rate plan, Avista is barred from implementing any further general rate increase during that period.³ The Commission has requested briefing on the 2014 rate increase part of the rate plan.

2 As we explain below, the rate increases called for under the Settlement, including the 2014 increase, are fair, just and reasonable because: 1) they are well below the total amount of the Company's overall rate request; 2) they represent a reasonable exchange for the many ratepayer benefits of this Settlement; and 3) they provide an incentive for the Company to operate efficiently. The rate increase in 2014 is specifically supported by the evidence in this record. In any event, the rate changes under the Settlement will not be unfair, unjust or unreasonable (i.e., excessive) because the Company has agreed to refund any amount of revenue it collects above a return on equity of 9.8 percent.

3 For these reasons, the Settlement will result in rates that are fair, just and reasonable.

A. The 2014 Rate Changes are Well Within the Scope of the Company's Overall Revenue Request⁴

4 The Company's rate case filing requested \$50.071 million in additional revenues.⁵ As Avista witness Mr. Norwood explained, after all the data was reviewed and updated, the Company's case would justify even more: \$53.3 million in additional revenues.⁶ The rate increases called for in the Settlement in 2013 and 2014 total \$34.35 million,⁷ well within either

¹ Multiparty Settlement Stipulation, Exh. No. 5.

² Id. at 3-4, ¶¶ 4 & 5.

³ Id. at 12, ¶ 23.

⁴ Staff notes that Public Counsel analyzed these data using the rate of return figure contained in the Settlement. E.g., Dittmer, Exh. No. JRD-12CT at 8. However, that rate of return itself represents a substantial compromise. In other words, the "at risk" revenues in this case are much higher than Public Counsel wants the Commission to believe.

⁵ Andrews, Exh. No. EMA-1T at 4:12-19 (\$40.983 million for electric service and \$10.088 million for gas service).

⁶ Norwood, Exh. No. KON-7T at 7:6 to 8:16.

⁷ Multiparty Settlement Stipulation, Exh. No. 5 at 3, ¶¶ 4-5 (electric: \$13.650m + \$14.038m; gas: \$5.3 m + \$1.4m; total of all figures = \$34.35 million).

of these overall amounts. In other words, the 2014 rate increase is supported by record evidence for 2013 alone.

5 In 2000, The Commission approved a five-year rate plan for PacifiCorp on similar facts.⁸
In that case, the Commission did not require a separate showing that the three annual rate increases followed by two years of no rate changes were fair, just and reasonable based on a separate, rate base/rate of return analysis for each of the five years. Public Counsel signed and supported that settlement.

B. The 2014 Rate Increases are Appropriate in Light of the Overall Settlement Package

6 The Settlement is a package that reflects a bargained for exchange of benefits, even though some elements may not have a “dollar sign” attached to them.

7 For example, the Settlement calls for Avista to cease deferred accounting for major maintenance,⁹ consistent with the Commission’s clearly expressed criticisms of such accounting.¹⁰ Also, the Settlement changes the ERM rate adjustment trigger to \$30 million,¹¹ rather than eliminating the trigger in favor of annual ERM rate adjustments, as Avista had proposed.¹² And, the Settlement calls for a “stay out” under which Avista will file no general rate case with rates effective in 2014,¹³ providing ratepayers highly-valued rate certainty.¹⁴

⁸ *Utilities and Transp. Comm'n v. PacifiCorp*, Docket UE-991832, Third Supplemental Order (August 9, 2000) at ¶ 50. In that instance, PacifiCorp had filed a rate case seeking a rate increase to be implemented over a two-year period. The settlement established rates for five years. In Paragraph 50 of its order, the Commission noted that the overall revenues for the five-year period were less than what the utility had filed. The same situation applies here.

⁹ Multiparty Settlement Stipulation, Exh. No. 5 at 6, ¶ 15.

¹⁰ Ms. Breda’s direct testimony discusses the two Commission orders criticizing such deferred accounting. Exhibit No. KHB-1CT at 11:16 to 12:23. These criticisms formed the basis for Staff’s recommendation to terminate the mechanism. Id. See also Elgin, TR. 290:21 to 292:2.

¹¹ Multiparty Settlement Stipulation, Exh. No. 5 at 5, ¶ 10.

¹² Johnson, Exh. No. WGJ-1T at 23.

¹³ Multiparty Settlement Stipulation, Exh. No. 5 at 12, ¶ 23.

¹⁴ Norwood, Exh. No. KON-7T at 2:19-21; Deen, Exh. No. JT-1T at 32:14-20.

8 While the Settlement attaches no specific dollar values to these and all the other
substantial, un-quantified ratepayer benefits under the Settlement, that does not mean they have
zero value. Accordingly, while the rate change element of the Settlement has a specific dollar
value, it marks a fair exchange for the overall benefits conferred on ratepayers by the Settlement.

C. The 2014 Rate Changes are Further Supported by the Evidence Related to 2014

9 Although the amount of the 2014 rate increase is within the scope of the Company's rate
filing, Staff analyzed that rate increase in a different way. Staff considered many different
factors in determining the reasonableness of the 2014 rate increases.¹⁵ Fundamentally, Staff
concluded that Avista is very likely to experience considerable attrition in 2014, because rate
base is increasing at a substantial rate, and revenues are not keeping up.¹⁶

10 Bench Exhibit No. 8C confirms Staff's conclusion and it is consistent with the attrition
analysis Staff performed for the 2013 rate year.¹⁷ That exhibit shows continued modest growth
in utility operating revenues between 2013 and 2014, continued upward trends in non-fuel
expenses, and continued, substantial annual investments in facilities of some \$250 million, which
(obviously) causes rate base to increase. In other words, Exhibit 8C shows that 2014 is
consistent with Staff's attrition study's trended estimates of rate base, expenses and revenue,
between the 2011 test period and 2013 rate year.^{18 19}

¹⁵ Elgin Exh. No. KLE-7T at 6:8-7:5.

¹⁶ Id. at 7:6-8.

¹⁷ Breda, Exh. Nos. KHB-9C and KHB-10C.

¹⁸ Breda, Exh. No. KHB-1CT at 30:1-3 and at 31:23.

¹⁹ While Public Counsel complains these are total company figures (Dittmer, Exh. No. JRD-12T at 2:14-16), it is eminently reasonable to assume the allocations between services and jurisdictions remain similar and the rates of growth are proportional into 2014. Certainly Public Counsel offered nothing to the contrary. Furthermore, while Staff acknowledges that these data do not reflect the potential impact of the Company's just-announced early retirement offer, such efficiency gains are exactly the sort of actions the Company needs to take to earn a reasonable return under the rate plan. Elgin, Exh. No. KLE-7T at 8:3-10. Moreover, ratepayers will share in these benefits should Avista somehow break with history and earn in excess of 9.8 percent on equity (Norwood, Exh. No. KON-7T at 2:32-36), and because the next general rate case test period will reflect a full year's effect of whatever cost reductions the early retirement offer produces. Elgin, Exh. No. KLE-7T at 8:12-15; TR. 249:2-8.

11 The Commission’s decade-long rate case experience with Avista further confirms this
unfortunate, though real relationship between low load growth and high rate base growth is an
ongoing, rate pressure-causing phenomenon. Since 2001, Avista’s electric rates have increased
almost annually, averaging 8.6 percent, and since 2009, electric rates have increased 4.9 percent
per year on average.²⁰ Despite these non-stop rate increase requests, Avista has not over-
earned.²¹ A substantial cause of these annual increases is attrition.²²

12 While Public Counsel surely will try to coax the Commission into ignoring this evidence,
Staff could not ignore it, and the Commission should not ignore it.

D. The 2014 Rate Changes Provide Avista an Incentive to Operate Efficiently

13 As the Commission stated in *Utilities and Transportation Commission v. Verizon
Northwest Inc.*, Dockets UT-040788 and UT-040520: “We understand the nature of the
settlement process and believe that parties should have some latitude to experiment with creative
solutions to difficult problems.”²³ Staff views the Settlement as a creative solution that will
require Avista to manage its costs within a specific rate structure in order to earn a fair return,
while at the same time, providing ratepayers rate stability under which to manage their own
affairs. The Settlement breaks the seemingly endless cycle of contested rate cases and the
inherent uncertainty that presents for both the Company and its customers.²⁴

14 As Mr. Elgin summarized, while the record evidence clearly indicates substantial
ongoing attrition, “we need some kind of mechanism to incent the company to take actions on
the cost side. And rather than looking at 5 percent increases or 8 percent increases that we’ve

²⁰ Elgin, Exh. No. KLE-7T at 6:13-15; Exh. No. KLE-5.

²¹ Elgin, Exh. No. KLE-7T at 6:20-23, Morris, Exh. No. SLM-1T at 14, Illustration 5.

²² E.g., Morris, Exh. No. SLM-1T at 2:5-10; Norwood, Exh. No. KON-7T at 9:20-22.

²³ Order 15 in Docket UT-040788 and Order 03 in Docket UT-040520 (April 12, 2005) at 9, ¶ 25.

²⁴ Public Counsel’s insistence that customers have a right to a full statutory suspension period before a rate can be increased (Dittmer, Exh. No. JRD-12CT at 5:12 to 6:5; Daeschel, Exh. No. LD-1CT at 6:15 to 7:5) is not only poor public policy, it has no legal basis. *State ex rel. Puget Sound Navigation Co. v. Dep’t of Transp.*, 33 Wn.2d 448, 482 (1949) (commission has implied power to allow rates into effect subject to refund during suspension period).

experienced over the past ten years, a moderate increase in having a clear message to them to manage the business, reduce the costs and stop this cycle of increases was the right outcome.”²⁵ As Mr. Norwood confirmed, the rate plan itself is not enough for Avista to achieve a fair return; the Company must take action to operate more efficiently,²⁶ action which the Company is now aggressively taking.²⁷

15 In sum, the Settlement, including the 2014 rate increase, is a creative solution to a real problem, and it is worthy of the Commission’s favorable consideration for that reason.

D. The 2014 Rate Changes Will Not be Excessive in Light of the Company’s Refund Commitment²⁸

16 The 2014 rate increase will not produce unfair, unjust or unreasonable rates because Avista has committed to refund any amounts the Company collects in excess of a 9.8 percent return on equity (ROE), based on Commission-basis reporting.²⁹ This confirms the rates in the rate plan will be fair, just and reasonable, and not excessive.

Dated this 7th day of December 2012.

Respectfully submitted,

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²⁵ Elgin, TR. 248:16-24.

²⁶ Norwood, TR. 236:9-20.

²⁷ Norwood, Exh. No. JT-1T at 21:12-15 and Exh. No. KON-7T at 16:1-23.

²⁸ This is a unilateral Company commitment; it is not contained in the Settlement.

²⁹ Norwood, Exh. No. KON-7T at 23:3 to 24:2. As Staff explained, the 9.8 percent ROE is fair in light of the Settlement and the Commission’s recent PSE order. Elgin, Exh. No. KLE-7T at 11:11 to 12:5. In that testimony, Mr. Elgin acknowledged his own ROE estimate in this case is lower than 9.8 percent. However, he also notes the Commission has not accepted his analysis in other cases, and he is comfortable with the 9.8 percent figure in the context of this Settlement. See also Elgin, TR. 255:7-14.