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December 7, 2012

VIA ELECTRONIC MAIL& ABC/LMI ON 3/19/12

David Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Washington Utilities and Transportation Commission v. Avista Corporation, d/b/a Avista Utilities,* Dockets UE-120436 and UG-120437, and Dockets UE-110876 and UG-110877 (Second Phase) *(Consolidated)*

Dear Mr. Danner:

Enclosed for filing please find the original and twenty (20) copies of Public Counsel's Brief, together with a Certificate of Service for filing in the above-entitled dockets.

Sincerely,

LISA W. GAFKEN
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Enclosures

cc: Service List (E-mail and U.S. Mail)
Marguerite Friedlander, ALJ (E-mail)

CERTIFICATE OF SERVICE
Dockets UE-120436, *et. al*

I hereby certify that a true and correct copy of the Brief of Public Counsel was sent to each of the parties of record shown below in sealed envelopes, via: U.S. Mail and E-Mail.

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DATED: December 7, 2012.

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES, Respondent.	)	DOCKETS UE-120436 and UG-120437 *(Consolidated)*
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES, Respondent.	)	DOCKETS UE-110876 and UG-110877 *(Consolidated)*

BRIEF OF PUBLIC COUNSEL

DECEMBER 7, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UTC CASES

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1. Pursuant to the Notice of Opportunity to File Limited Post-Hearing Briefs, Public Counsel submits this brief addressing whether 2014 rates proposed in the Settlement are fair, just, reasonable, and sufficient.[1] This brief concludes that they are not. Settling Parties have not provided coherent rationale or reliable evidentiary basis for 2014 rates.[2]

I. TRADITIONAL RATEMAKING STANDARDS FAIL TO JUSTIFY RATES

2. To the extent Settling Parties rely on traditional rate making principles to set 2014 rates, the record evidence fails to meet those principles.[3] "Long-established and well-understood ratemaking practices" require a company to present a historical test year with its rate request, which allows for audit of actual results of operations and captures the complex relationships among the utility's costs, revenues, and plant over a uniform time period.[4] In this case, Avista based its rate request on (1) a 2011 test year with proposed adjustments consistent with standard ratemaking principles and (2) Avista's 2013 attrition study.[5] Avista presented its filing as establishing revenue requirement for the 2013 rate year. Avista did not seek a 2014 rate increase.

3. Pro forma adjustments capturing expenses or investments outside the test year must be known and measurable and must be matched with offsetting factors to prevent distorting the test year relationships.[6] Known and measurable amounts "cannot be an estimate, a projection, the

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[1] This brief only addresses 2014 rates. Public Counsel does not concede that Settling Parties have sufficiently supported 2013 rates provided for in the Settlement. Many of the concerns discussed here apply to the 2013 rates.
[2] While a settlement is necessarily a compromise of litigation positions, rates must be based on the record, even when a settlement is "black box." In this case, the Settling Parties have doggedly refused to specify how the recommended revenue increases were, or could be, derived. Rather, they leave it to the Commission to find a basis for approving the settlement. Norwood, TR. 164:16 – 166:8. As a result, Public Counsel analyzes the Settlement under both traditional rate making and attrition principles.
[3] Avista's offer of a rate cap is irrelevant because the Commission's first task is to set fair, just, reasonable and sufficient rates. Exh. No. KON-7T at 2:32-36 (Norwood). Rates that do not meet this standard in the first instance are unlawful. Thus, this brief focuses on whether the proposed rates are fair, just, reasonable and sufficient as proposed.
[4] *WUTC v. Avista Corp., d/b/a Avista Utilities,* Dockets UE-090134/UG-090135, Order 10 ¶ 41 (December 22, 2009) (Avista 2009 GRC Order). *See also, WUTC v. Puget Sound Energy, Inc.,* Dockets UE-111048/UG-111049, Order 08 ¶¶ 97-98 (May 7, 2012) (PSE 2011 GRC Order) (referring to "hybrid test year").
[5] Exh. No. EMA-1T at 5:13-14, 40:16-17, 5:10 – 40:11, 40:13 – 64:4 (Andrews); Exh. No. MNL-1T at 4:2-3 (Lowry).
[6] Avista 2009 GRC Order ¶¶ 43, 46.

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product of a budgeted forecast, or some similar exercise of judgment – even informed judgment – concerning future revenue, expense or rate base."[7] Notwithstanding these standards, Settling Parties rely on forecasts, which do not provide adequate basis for setting 2014 rates and would not justify pro forma adjustments to a 2011 test year.

4. The Commission requested that the record include Avista's responses to two data requests referred to in testimony.[8] The resulting exhibits, Exhibits 7C and 8C, illustrate the unreliable nature of financial forecasts, which are built upon numerous assumptions and periodically updated.[9] To the extent Settling Parties rely upon extending 2013 forecasts to establish 2014 rates, the forecasts are unreliable and an improper basis on which to set rates.

5. The Settlement also runs afoul of the matching principle. The less that utility costs and offsetting factors are known and measurable, the greater the risk that test year relationships will be disturbed, making an adjustment less appropriate.[10] In this case, the revenue requirement and increases agreed to for 2014 are subject to greater uncertainty than 2013 rate year data. Notably, Avista announced an aggressive severance plan merely days after filing the Settlement with the Commission. Non-company parties were unaware of the severance plan and could not consider the plan's impact in crafting the Settlement.[11] Such impact would ordinarily be considered in developing the revenue requirement for the 2014 rate year.[12] Here, it was not.

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[7] Avista 2009 GRC Order ¶ 45. There are exceptions, such as power cost projections, but the exceptions are few and "demand a high degree of analytical rigor." *WUTC v. Puget Sound Energy, Inc.,* Dockets UE-090704/UG-090705, Order 11 ¶ 26 (April 2, 2010) (PSE 2009 GRC Order).

[8] TR. 159:7-21. These two exhibits were marked as Exh. Nos. 7C and 8C. Exh. No. 7C contains a financial forecast prepared in February 2012. Exh. No. 8C contains the February forecast and two financial forecasts prepared on August 21 ("preliminary") and August 28 ("final, updated"). Exh. No. 8C, p. 3, Att. E, Att. F, and Att. G.

[9] Avista's August 28 forecast shows a significantly smaller increase in projected non-fuel O&M expenses over the February forecast than does the August 21 forecast. Exh. No. 8C, Att. F, compared to Exh. No. 8C, Att. G. Mr. Norwood refers to the August 21 forecast in his rebuttal testimony. Exh. No. KON-7T at 17:19-21 and n.14. Avista acknowledges that the reductions from the August 21 O&M projections to the August 28 projections "were not identified." Exh. No. 8C, pp. 3-4.

[10] Avista 2009 GRC Order ¶ 47.

[11] Exh. No. MCD-14CX (Deen), Exh. No. MCD-15CX; Exh. No. CME-8CX (Eberdt); Exh. No. KLE-9CX (Eberdt); Deen, TR. 199:18 – 200:12; Elgin, TR. 189:17 – 190:18.

[12] Breda, TR. 323:17 – 324:2, 329:7-8. Both cost savings and implementation costs would be considered.

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6. Remoteness from the test year also affects whether a proposal is appropriate. "[A]ny proposed adjustment that becomes known and measurable more than a few months after the test year is inherently suspect and requires a greater showing, it if is to be allowed."[13] Mr. Norwood references historical and trend data to discuss Avista's potential 2014 revenue requirement.[14] Such references do not mitigate remoteness of information regarding revenues, costs, or plant that *might* exist two years after the end of the 2011 test year.

7. Further, no party developed a rate base for 2014 upon which a revenue requirement could be calculated, either on a total company or Washington jurisdiction basis.[15] To the extent that amounts included in 2014 rates are asserted to be for rate base additions, the additions must be used and useful. Generally, to be included in rates, plant must be in service prior to the end of the proceeding and no later than the suspension date.[16]

8. In this case, no new plant has been identified for Avista's 2014 rate base, or proven to be used and useful or prudent. At hearing, Chairman Goltz asked Avista whether the record included details regarding its 2013 and 2014 capital projects. Mr. Norwood answered that such detail was in Exhibit 7C.[17] Exhibit 7C, Attachment D contains 2012 and 2013 capital budget details, but 2014 capital budget detail is absent. Other data in Exhibit 7C show system-wide, not Washington-specific, forecasts without any project detail.[18] In any event, approving rates based on such data is tantamount to using a future test year, which the Commission recently rejected.[19]

9. Finally, focusing on only electric operations, absent attrition and adjusted to reflect the stipulated power supply and cost of capital, the maximum amount Avista can justify from the

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[13] PSE 2009 GRC Order ¶ 29.
[14] *See, e.g.* Exh. No. KON-7T at 14:10-14 (Norwood).
[15] Breda, TR. 313:3-22.
[16] Avista 2009 GRC Order ¶ 48.
[17] Norwood, TR. 257:6-20. The reference to Staff request 137 is also a reference to Exh. No. 7C.
[18] The information contained in Exh. No. 8C is similar in nature.
[19] PSE 2011 GRC Order ¶¶ 93 – 100.

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record is $709,000.[20] The maximum case under Staff's analysis would show that Avista is over-earning by $12,457,000,[21] and ICNU's maximum case would be for a revenue requirement decrease of $5,334,000.[22] It simply is not possible from these starting points to get to the agreed 2014 rate increases under any reasonable application of standard ratemaking principles.

II. RATES INCLUDE SUBSTANTIAL UNSUPPORTED IMPLICIT ATTRITION

10. Although the Commission recently invited companies to present evidence of attrition, it did not invite abandonment of attrition principles.[23] Here, a significant portion of Settlement rate increases, particularly for 2014, must be attributed to attrition, despite contrary assertions.[24] Settling Parties do not challenge Mr. Dittmer's calculations and are inconsistent on whether and to what extent attrition is the basis for stipulated revenue increases.[25] Attrition adjustments are not a standard part of ratemaking, but are "extraordinary measure[s], not generally included in general rate relief. A request for attrition should be based on extraordinary circumstances."[26]

11. Attrition analysis is complex and, by nature, uncertain due to the use of forecasts, trends, or budgets.[27] The assumptions used can cause results to vary widely. An attrition study gauges the likelihood that a company will achieve a fair return, thus it must be consistent with "standard rate making principles."[28] The analysis must be transparent and undertaken with caution.[29] The Settling Parties face significant obstacles to the extent they rely on attrition to support 2014 rates.

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[20] Exh. No. JRD-12CT at 7:6 – 9:3 (Dittmer); Exh. No. JRD-16.
[21] Exh. NO. JRD-16 (Dittmer), adjusting Staff's presentation to exclude attrition and to reflect the stipulated power supply and cost of capital. *See* Exh. No. KHB-1CT at 4:6-7 and 4:16-18 (Breda), over-earning at $20,378,000.
[22] Exh. No. JRD-16 (Dittmer), adjusting ICNU's presentation to to reflect the stipulated power supply and cost of capital. ICNU's filed case rejected attrition and advocated for a revenue requirement decrease of $7,728,888.
[23] PSE 2011 GRC Order ¶ 491.
[24] Exh. No. JRD-12CT at 2:4-13, 7:6 – 9:3 (Dittmer), Exh. No. JRD-16.
[25] Breda, TR. 313:23 – 315:23, 325:4-14; Elgin, TR. 245:18-25; Deen, TR. 234:9-12.
[26] *WUTC v. Pacific Power & Light Co.,* Cause No. U-86-02, Second Supplemental Order, 1986 Wash. UTC Lexis 7, 47-50. This order was the last known Commission order to allow an attrition adjustment.
[27] Exh. No. KHB-1CT at 25:5-16 (Breda).
[28] *Id.*, at 25:5-7.
[29] *Id.*, at 25:14; Exh. No. KLE-1T at 6:6-8 (Elgin).

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12. One critical flaw is no party offered a 2014 attrition study.[30] Ms. Breda's attrition study starts with a 2011 test year and develops attrition for the 2013 rate year. She did no study for 2014, did not develop a 2014 rate base, and did not consider the new severance plan's effect.[31] Avista similarly presented only a 2013 study and provided no study or rate base for 2014. Mr. Norwood relied instead on arguing that simply extending the trend analysis in the 2013 attrition study would result in a revenue increase for 2014.[32] However, this is not a substitute for a valid 2014 attrition study, or an appropriate use of the 2013 study.[33] As Ms. Breda notes, the 2013 attrition study may not be a framework going forward because facts and circumstances may justify a different approach for future studies.

13. The Settlement lacks transparency. There is no agreement on the amount or existence of attrition, and there is little clarity about assumptions employed by Settling Parties.[34] As argued earlier, the forecast information is utterly unreliable and inconsistent with standard ratemaking principles. Rather than presenting a cautious, soundly-supported approach to the first attrition request in 25 years, the Settlement presents an opaque result at odds with much of the evidence.

14. The "back of the envelope" ratemaking presented by Settling Parties to support rates simply does not comply with Washington law or Commission precedent, or well-established ratemaking principles. Accordingly, the Commission should reject the proposed 2014 rates.

DATED this 7th day of December, 2012.

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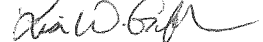

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[30] Breda, TR at 313:13-22.
[31] Breda, TR. 312:19 – 313:22.
[32] Exh. No. KON-7T at 10:8-16 (Norwood).
[33] As Ms. Breda notes, the 2013 attrition study may not be a framework going forward because facts and circumstances may justify a different approach for future studies. Exh. No. KHB-1CT at 38:4-11.
[34] *See,* Breda, TR. 315:4 – 318:19; Exh. No. KLE-1T at 6:1-6 (Elgin).

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