

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION DBA
AVISTA UTILITIES,

Respondent.

DOCKET UE-151148

ORDER 04

FINAL ORDER CONDITIONALLY
APPROVING AND ADOPTING
SETTLEMENT AGREEMENT

- ¹ **PROCEEDING.** On May 29, 2015, Avista Corporation dba Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) proposed tariff revisions to the Company’s tariff WN U-28. Avista requested a reduction in rates and charges in Schedule 91, the electric tariff rider which provides funding for demand side management programs as well as evaluation, measurement, and verification.
- ² **SUMMARY:** The Commission conditionally approves and adopts the multiparty settlement stipulation (Settlement) entered into by Avista, the Commission’s regulatory staff (Staff),¹ and the Public Counsel Division of the Washington State Attorney General’s Office (Public Counsel, collectively with Staff and Avista, Settling Parties).²
- ³ **PARTY REPRESENTATIVES:** David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, represents Avista. Simon J. ffitich, Senior Assistant Attorney General, Seattle, Washington, represents Public Counsel. Patrick J. Oshie, Assistant Attorney General, Olympia, represents Staff. Jesse E. Cowell, Davison Van Cleve, PC, Portland, Oregon, represents ICNU.

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² While the Industrial Customers of Northwest Utilities (ICNU) did not join in the Settlement, it likewise does not oppose the agreement.

MEMORANDUM

4 **BACKGROUND.** On May 29, 2015, Avista filed its proposed tariff revisions to Schedule 91 of Tariff WN U-28 in order to comply with WAC 480-109-130(1), which provides:

Utilities must file with the Commission for recovery of all expected conservation cost changes and amortization of deferred balances no later than June 1st of each year with a requested effective date at least sixty days after the filing.

5 In its filing, the Company explains that its electric demand side management (DSM) Schedule 91 is intended “to match future revenue with budgeted expenditures ... [and] includes a true-up feature that reconciles the previous periods’ actual expenditures and collections.”³ The last true-up occurred in April 2013, when the Schedule 91 balance was approximately \$5 million underfunded.⁴ At that time, Avista filed to increase Schedule 91 rates by \$11 million over two years to recover the underfunded balance.⁵ Avista asserts that, as of April 30, 2015, Schedule 91 was underfunded by less than \$200,000, and the Company states that this “balance indicates that the present Schedule 91 tariff rider rates collected the underfunded balance over the two-year period as projected.”⁶ Thus, Avista recommends decreasing the rates collected under Schedule 91 by approximately \$3.4 million or 0.7 percent in overall billed rates.⁷

6 In its Open Meeting memorandum to the Commission, Staff recommended issuing a complaint and order suspending the proposed tariff revisions in Schedule 91 but allowing the rates to temporarily go into effect, subject to revision, and setting the matter for hearing.⁸ On July 27, 2015, Public Counsel filed comments in this proceeding, expressing support for Staff’s recommendation.⁹

³ Cover Letter from Avista to Commission at 2 (May 29, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2 and 4.

⁸ Staff memo to the Commission at 1 (July 30, 2015). Staff supports its recommendation based in part on the results of a comprehensive audit performed on June 7, 2015. *Id.*

⁹ Public Counsel Comments at 1 (July 27, 2015).

- 7 Avista filed revised tariff sheets on July 28, 2015, correcting the misallocation of a reimbursement received from Washington State University (WSU) and removing the \$2,500 sponsorship of a fundraiser from Schedule 91.¹⁰
- 8 On July 30, 2015, the Commission issued a Complaint and Order Suspending Tariff Revision, Allowing Rates on a Temporary Basis, Subject to Revision (Order 01). On September 21, 2015, the Commission convened a prehearing conference before Administrative Law Judge Marguerite E. Friedlander at the Commission's headquarters in Olympia, Washington. At that time, the Commission granted ICNU's intervention, limited to the issues raised in Order 01, and encouraged the parties to continue their ongoing settlement discussions with an informal status conference scheduled for October 15, 2015, to advise the Commission of the progress of settlement discussions.¹¹
- 9 Avista informed the Commission on October 15, 2015, that all parties had reached an agreement in principle resolving all contested issues, and the parties would file the written agreement no later than October 29, 2015. The Settling Parties filed the multiparty settlement stipulation (Settlement) on October 29, 2015, attached to this Order as Appendix A and incorporated herein. The Settlement purports to resolve all of the contested issues raised by Staff and Public Counsel in this proceeding. Along with the Settlement, the Settling Parties filed a Joint Motion for an Order Approving the Settlement and Attachment A to the Settlement. The Settling Parties did not provide testimony or other supporting documentation for the Settlement, instead explaining that the narrative in Section IV of the Settlement satisfies the requirement of supporting documentation.¹² The Commission requested and, on January 22, 2016, received supporting testimony and exhibits from the Settling Parties.

SETTLEMENT

I. NWEC Fundraiser Expenditure

- 10 Staff performed an on-site audit on June 7, 2015, where it comprehensively reviewed 34 electric and natural gas line items.¹³ Two issues surfaced for Staff from this on-site audit. The first issue is that Avista sponsored a fundraiser for the Northwest Energy Coalition

¹⁰ Cover letter to Avista's revised tariff sheets

¹¹ Order 02, ¶ 8 (September 25, 2015).

¹² Settlement, n.3.

¹³ Staff memo to the Commission at 1 (July 30, 2015).

(NWEC) and booked \$2,500 in expense to the program.¹⁴ The Company filed revised tariff sheets on July 28, 2015, removing the \$2,500 fundraising expenditure and adjusted the rider balance accordingly.¹⁵

II. WSU Reimbursement Allocation

- 11 The second issue raised by Staff's on-site audit is that the Company improperly booked over \$300,000 in gas reimbursements from a collaborative project with WSU to the electric program over a two-year period.¹⁶ The Company provided documentation that it reallocated the WSU reimbursement to the natural gas program as of July 28, 2015.¹⁷

III. Cessation of Opower HERs

- 12 Staff stated that Avista stopped issuing home energy reports (HERs) for its Opower program in January 2015, because of technical difficulties with its new billing system.¹⁸ According to Staff, the Company did not expect to resume providing HERs until at least the end of August 2015, for a total of at least eight months of non-service, while Avista has continued to collect revenues for this program from customers totaling over \$295,000.¹⁹ Staff expressed concern with both the impact of this eight-month lapse in reports on the three-year Opower program's efficacy and the lack of any communication by Avista to its Advisory Group regarding this problem until May 1, 2015.²⁰
- 13 Avista extracted data files that met the Opower specifications and sent the information to Opower by the end of June 2015 for analysis and reporting.²¹ Opower resumed its reporting on August 14, 2015, and Avista asserts that the level of customer savings has remained relatively stable through the eight month reporting interruption.²² As part of the Settlement, Avista agrees to refund \$211,589, the costs associated with the HERs

¹⁴ *Id.* at 2.

¹⁵ Settlement at 3.

¹⁶ *Id.* Avista received \$311,153 in reimbursements from WSU in 2013 and 2014. *Id.* at 4.

¹⁷ Staff memo to the Commission at 4 (July 30, 2015).

¹⁸ *Id.* at 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ Settlement at 4.

²² *Id.* at 5.

cessation, to customers.²³ Avista also intends to extend the study period for the Opower program to provide additional HERs after the program's initial three-year period.²⁴

14 While supporting the Settlement by stating that “the Company has taken initial steps that will lead to a better, more transparent and robust conservation program,”²⁵ Staff and Public Counsel acknowledge that “there is more work to be done, and we still have ongoing concerns and issues that we will monitor as members of the Company’s advisory group and in matters that come before the Commission.”²⁶ Staff and Public Counsel point to Avista’s monthly newsletter to Advisory Group members as a necessary tool “to monitor [the Company’s] spending and acquisition levels.”²⁷ Further, they state that the Company has begun to document Advisory Group meeting discussions and requests from members for discussion of specific topics.²⁸ The Commission will have an opportunity to review Avista’s Opower program communications and engagement with its Advisory Group as part of the Company’s Biennial Conservation Report, scheduled for filing in June 2016.²⁹

15 In describing measures it has taken to improve communications with its Advisory Group, Avista asserts that its management staff meet “weekly to discuss the status and issues of ongoing programs ... [providing] increased visibility to issues ... [that] can be brought forward to the Advisory Group as needed.”³⁰ In addition to these weekly management meetings and quarterly conservation newsletters, the Company asserts that its outreach to the Advisory Group includes in-person meetings at least twice per year and several webinars annually at which the company identifies large projects and provides a detailed analysis of the results of demand side management operations on a monthly and annual basis.³¹

²³ *Id.*

²⁴ *Id.* Any expenditures associated with the program extension will remain in the tariff rider balancing account as a regulatory liability that the Company may seek recovery of as part of its 2016-2017 conservation tariff and true-up filing. *Id.* at 6.

²⁵ Joint Testimony of Bradley T. Cebulko and Mary M. Kimball, on behalf of Staff and Public Counsel, respectively, at 3:14-16 (January 22, 2016).

²⁶ *Id.* at 3:16-18.

²⁷ *Id.* at 9:8-10, 9:13-14.

²⁸ *Id.* at 10:14-16.

²⁹ *Id.* at 5:7-9.

³⁰ Testimony of Kevin J. Christie, on behalf of Avista at 4:5-7 (January 22, 2016).

³¹ *Id.* at 5:6-9.

IV. Schedule 191 – Natural Gas Program Rates

16 One issue the Settlement addresses that was not initially raised by the parties is a modification to the natural gas program tariff, Schedule 191. Avista’s July 2015 stakeholder newsletter revised the amount of shortfall in this account from \$500,000 to \$1,200,000, a substantial increase in underfunding.³² Subsequent to this update from the Company, Staff and Public Counsel expressed concern that Schedule 191 might need an adjustment.³³

17 By August 2015, this deficit had grown to \$1.5 million, and on September 22, 2015, Avista proposed to its Advisory Group an increase in Schedule 191 rates.³⁴ The Company filed revised Schedule 191 tariff sheets on October 2, 2015, with the effect of the rate increase negating the underfunding by July 2017.³⁵

V. Opower Program Eligibility

18 In its comments, Public Counsel suggested Avista is relying inappropriately on customer-provided information on the Company’s weatherization rebate forms in violation of the eligibility requirement that a contractor certify an existing condition.³⁶ Avista agrees that its program eligibility requirements needed to be modified to correct the inconsistency, and the Company’s program eligibility requirements no longer refer to contractor certification.³⁷

VI. Premature Incentive Payments

19 Public Counsel raised a concern that a large non-residential construction project received an incentive of \$482,020 after the heating, ventilation, and air conditioning (HVAC) controls were in place but prior to the controls being fully programmed.³⁸ Avista explained that, in September 2013, the Company switched to performance-based

³² Settlement at 6.

³³ *Id.*

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 7.

³⁶ Public Counsel Comments at 1 (July 27, 2015).

³⁷ Settlement at 7.

³⁸ Public Counsel Comments at 1 (July 27, 2015).

contracts for HVAC controls due to “2012 Cadmus Impact results for HVAC measures and some poor performing controls projects where the owners chose to use the system differently than the specified controls plan.”³⁹ Customer incentives, therefore, are not paid until the Company has sufficient confirmation of energy savings consistent with the requirements of the contract.⁴⁰ This resolves the concern raised by Public Counsel of a project qualifying for an incentive payment prior to it being fully installed and verified.⁴¹

VII. Inclusion of the Date Expenditures Are Authorized

20 Public Counsel has suggested that Avista’s procedures for authorizing expenditures should be modified to require not only a signature of the appropriate person (e.g. manager, director, or officer) but also the date that such authorization was provided.⁴² Avista agrees to revise its expenditure authorization procedures to require, not only the signature of the individuals authorizing and approving the expenses, but also the date the expenditure is authorized.⁴³

DISCUSSION AND DECISION

21 Staff and Public Counsel raised significant issues about both the operations of Avista’s conservation program and the transparency of the events surrounding the cessation of the Opower HERs. Overall, we are pleased with the steps the Settling Parties have taken in resolving these areas of concern. Avista addressed some issues quickly (the NWECC fundraiser and the WSU misallocated reimbursement), while other issues (e.g., Avista’s failure to timely notify either its Advisory Group or the Commission of the Opower hiatus and refinement of Avista’s conservation program processes) admittedly will require more time. Mr. Christie’s testimony demonstrates that since the July 30, 2015, Open Meeting, Avista has continued to work on rectifying the concerns raised by Staff and Public Counsel. We believe the public interest would best be served if, in addition to the Settlement provisions, the Company provided an update on its progress resolving these issues in the testimony it files with its Biennial Conservation Report by June 1, 2016, in Docket UE-132045. Specifically, Avista should provide the Commission a progress update on the administration of its DSM program, addressing at a minimum: (1) Avista’s efforts to improve the management of its DSM program since January 2016, (2)

³⁹ Settlement at 8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.*

⁴² Public Counsel Comments at 1 (July 27, 2015).

⁴³ Settlement at 9.

Avista's attempts to improve its systems for monitoring DSM spending levels and conservation acquisition since January 2016, and (3) an update on the membership, attendance, and activities of the Company's Advisory Group since January 2016.

- 22 In evaluating a settlement agreement, the Commission must “determine whether a proposed settlement meets all pertinent legal and policy standards.”⁴⁴ Settlements may be approved “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the [C]ommission.”⁴⁵
- 23 Conditioned upon the Company filing a progress report in its testimony accompanying the Biennial Conservation Report due June 1, 2016, we approve and accept the Settlement as lawful, supported by an appropriate record, and in the public interest in light of the information available to the Commission.

FINDINGS OF FACT

- 24 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 25 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical and natural gas companies.
- 26 (2) Avista Corporation dba Avista Utilities (Avista or Company) is a “public service company,” an “electrical company,” and a “gas company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. Avista provides electric and natural gas utility services to customers in Washington.

⁴⁴ WAC 480-07-740.

⁴⁵ WAC 480-07-750(1).

- 27 (3) On May 29, 2015, Avista proposed tariff revisions to the Company's tariff WN U-28, requesting a reduction in rates and charges in Schedule 91, the electric tariff rider which provides funding for demand side management programs as well as evaluation, measurement, and verification.
- 28 (4) Staff, in its Open Meeting memorandum to the Commission, recommended issuing a complaint and order suspending the proposed tariff revisions in Schedule 91 but allowing the rates to temporarily go into effect, subject to revision, and setting the matter for hearing.
- 29 (5) On July 27, 2015, the Public Counsel Division of the Washington State Attorney General's Office (Public Counsel) filed comments in support of Staff's recommendation.
- 30 (6) Avista filed revised tariff sheets on July 28, 2015, reallocating the WSU reimbursements from the electric program to the natural gas program and removing the \$2,500 sponsorship of the NWECA fundraiser from Schedule 91.
- 31 (7) At its July 30, 2015, Open Meeting, the Commission voted to enter a complaint and order suspending the proposed tariff revisions in Schedule 91 but allowing the rates to temporarily go into effect, subject to revision, and setting the matter for hearing.
- 32 (8) On September 21, 2015, the Commission convened a prehearing conference in this proceeding. At that time, the Commission granted ICNU's intervention, limited to the issues raised in Order 01, and encouraged the parties to continue their ongoing settlement discussions with an informal status conference scheduled for October 15, 2015, to advise the Commission of the progress of settlement discussions.
- 33 (9) Avista, Staff, and Public Counsel (collectively with Avista and Staff, Settling Parties) filed a multiparty settlement stipulation (Settlement) on October 29, 2015, attached to this Order as Appendix A and incorporated by reference. The Industrial Customers of Northwest Utilities did not join the Settlement but do not oppose it.
- 34 (10) The Settlement addresses all of the seven concerns raised by Staff and Public Counsel regarding Avista's May 29, 2015, tariff revision filing.

- 35 (11) On January 22, 2016, the Settling Parties provided testimony in support of the Settlement including details of the Company's efforts to improve both the management of its electric and natural gas conservation programs and Avista's communications with its Advisory Group.

CONCLUSIONS OF LAW

36 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 37 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 38 (2) Pursuant to WAC 480-07-750, the Commission will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission.
- 39 (3) With the condition listed in paragraph 21, the Settlement is lawful, its terms are supported by an appropriate record, and the result is consistent with the public interest in light of all the information available to the Commission.
- 40 (4) The Commission should conditionally approve and adopt the Settlement, attached to this Order as Appendix A and incorporated by reference in this Order, as a reasonable resolution of the issues presented.
- 41 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 42 (1) The Multiparty Settlement Stipulation filed by Avista, Staff, and Public Counsel, attached to this Order as Appendix A and incorporated by reference, is approved and adopted subject to the condition listed in paragraph 21 above.

- 43 (2) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective February 26, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 and WAC 480-07-870.

**APPENDIX A
(Multiparty Settlement Stipulation)**