BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION, d/b/a AVISTA UTILITIES, Respondent.	)	DOCKETS UE-090134 and UG-090135 *(consolidated)*
In the Matter of the Petition of AVISTA CORPORATION, d/b/a AVISTA UTILITIES, For an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated With the Mechanism.	)	DOCKET UG-060518 (*consolidated*)

BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

NOVEMBER 10, 2009

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 1

III. ARGUMENT 2

1. The Partial Settlement Stipulation should be approved by the Commission 2

2. The Schedule 93 Surcharge Should be Reduced on the Effective Date of New Rates 3

3. ICNU Position on Contested Issues 5

IV. CONCLUSION 9

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submits this Brief requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") adopt the all party Partial Settlement Stipulation ("Settlement"), between Avista Corporation ("Avista" or the "Company"), Staff, Public Counsel, the Energy Project and the Northwest Industrial Gas Users ("NWIGU").

2 ICNU is not taking a substantive position on most of the remaining disputed issues in this proceeding; however, ICNU is providing comments on some of the principles involved. Specifically, the Commission should consider the history of affiliate dealings between Avista and its unregulated affiliates, as well as the poor factual support Avista has provided for the proposed Lancaster transaction. ICNU also recommends that the power cost surcharge (Schedule 93) be reduced to the amount necessary to amortize the remaining balance over one year. Finally, the Commission should consider the fact that Avista's customers have suffered almost annual rate increases, when deciding the remaining contested revenue requirement issues.

II. BACKGROUND

3 On January 23, 2009, Avista filed a general rate case (UE-090134) with the Commission, requesting an electric rate increase of $69.8 million, or 16%. On August 17, 2009, Staff, Public Counsel, ICNU and other intervenors filed direct

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

testimony. In addition, all parties conducted settlement discussions in this docket on July 24, 2009, and during the week of August 24-28, 2009. As a result of these discussions, Avista, Staff, Public Counsel, ICNU, NWIGU, and The Energy Project entered into the Partial Settlement Stipulation. The only other party in the case, the NW Energy Coalition, does not oppose the Partial Settlement Stipulation.

4 The Partial Settlement Stipulation resolves issues in this docket related to cost of capital, power supply, rate spread and rate design, and funding for the low-income ratepayer assistance program. The Partial Settlement Stipulation resolves all of the issues raised by ICNU in its testimony; however, a number of issues raised by Staff and Public Counsel remain contested. A hearing was held regarding the Partial Settlement Stipulation and the remaining contested issues during the week of October 5, 2009.

III. ARGUMENT

1. The Partial Settlement Stipulation should be approved by the Commission

5 The Partial Settlement Stipulation resolves all of the issues that ICNU raised in testimony. The settlement on each of these issues produces a reasonable result that is supported by a fully developed administrative record. In addition, the Partial Settlement Stipulation was entered into after extensive settlement negotiations among all parties to this docket. Below is a summary of the support for each issue:

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

- **Power Costs** – The parties have agreed to adopt most of the adjustments proposed by Mr. Buckley and Mr. Schoenbeck, which represents a reasonable compromise on Avista's overall net power costs. Mr. Buckley and Mr. Schoenbeck recommended reducing the Washington allocated net power expense by $27.4 million,[1/] and the Partial Settlement Stipulation set the power supply adjustments at $27.5 million.[2/]

- **Cost of Capital** – The parties have agreed to keep Avista's return on equity ("ROE") at the current 10.2% level. We believe this is reasonable, because it very close to the 10.1% ROE recommended by Mr. Gorman.[3/] Also, the parties are free to argue for a lower ROE if decoupling is continued.[4/]

- **Rate Spread** – The parties have agreed on an equal percentage spread of the rate increase. This is reasonable given the fact that Avista is nearing completion of a new cost study. Until the study is complete, the rate spread keeps each customer class in its current revenue to cost position. Both Staff and ICNU supported an equal percentage rate spread.[5/]

- **Schedule 25 Rate Design** – Schedule 25 is the rate schedule applicable to Avista's largest customers. The parties agreed to changes in the Schedule 25 rate design, which more closely align the rates with costs within the large customer class. The settlement regarding Schedule 25 rate design is consistent with the changes proposed by Mr. Schoenbeck.[6/]

2. The Schedule 93 Surcharge Should be Reduced on the Effective Date of New Rates

6 ICNU supports Avista's modified proposal to reduce the power cost surcharge (Schedule 93) on the effective date of new rates. Under this proposal, the rate would be set at the amount necessary to recover the remaining deferral

---

1/ Exh. No. APB/DWS-1T at 2:16.
2/ Exh. No. B-1, Attachment A at 1.
3/ Exh. No. MPG-1T at 2:5.
4/ Exh. No. JT-1T at 2:11-13.
5/ Exh. No. DWS-1T at 4:18-19; Exh. No. JH-1T at 2:16-18.
6/ Exh. No. DWS-1T at 15:2-16.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

balance over a 12-month period.[7/] Avista's customers have paid a power cost surcharge since October 1, 2001.[8/] In June of 2002, the Commission approved a settlement that allowed the surcharge to be used to pay off deferrals from the 2001 energy crisis, as well as excess power costs deferred under the energy recovery mechanism ("ERM").[9/] As Public Counsel's witness noted, ratepayers have been paying rates in excess of the cost of providing electric service for more than eight years.[10/] ICNU agrees with other parties who have advocated for a theoretical separation between the rate increase sought in this case and the termination of the surcharge.[11/] Nevertheless, the Commission's decision should be primarily based on the impact to customers.

7 Staff proposes to allow Schedule 93 to terminate when the deferred balance reaches zero, which is expected to occur in January or February 2010,[12/] instead of when new rates are implemented in December 2009.[13/] The balance is expected to be in the range of $4.5 million when new rates are implemented.[14/] ICNU is in agreement that Schedule 93 should be terminated; however, it would be confusing for customers to have rates go up significantly in December, only to fall by 9% sometime in February or later. In the interest of maintaining rate stability, the Commission should allow only one rate change.

7/ Exh. No. KON-1T at 30.
8/ WUTC v. Avista, Docket No. UE-011595, Fifth Supplemental Order at 5-8.
9/ WUTC v. Avista, Docket No. UE-011595, Fifth Supplemental Order at 1.
10/ Exh. No. KDW-1T at 4-5.
11/ Exh. No. MPP-1T at 14; Exh. No. KDW-1T at 4-5.
12/ TR. 499.
13/ Exh. No. MPP-1T at 14.
14/ Exh. No. KON-1T at 31.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

8 The best solution is to reduce the Schedule 93 surcharge on the effective date of new rates.

3. ICNU Position on Contested Issues

9 ICNU did not sponsor a witness on the remaining contested issues in this case, nor did ICNU participate in the hearings on these issues. As a result, ICNU is not recommending a specific outcome on these issues; however, ICNU's silence on these issues should not be construed as support for the Company's position. ICNU urges the Commission to seriously consider the adjustments proposed by Staff and Public Counsel.

10 There are two things the Commission should consider in resolving the contested issues. First, Avista's customers have experienced near annual rate increases over the last 9 years, including a 9.1% increase that went into effect on January 1, 2009. Avista's litigation position would increase base rates by an additional 9%, making the overall increase in base rates in excess of 18% within one year. Fortunately, these rate increases will be partially offset by the reduction in the ERM surcharge. However, as noted above, Avista's customers have been paying off the ERM balance for more than 8 years, which means rates have been in excess of cost for nearly a decade. The Commission should err on the side of the customers that have born this burden for so many years.

11 The second factor the Commission should consider is the history of unfortunate affiliate dealings between Avista and it unregulated affiliates. Avista has consciously put the Commission in a difficult position with respect to the

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Lancaster transaction. According to Avista, the Commission must approve a potentially beneficial long-term tolling arrangement that will impose substantial costs on ratepayers in 2010, or face the potential sale of the asset to the highest bidder.[15/] Avista knew in 2007 that it intended to assign the Lancaster tolling agreement from Avista Turbine to Avista Utilities.[16/] Staff agrees that this proposed assignment is an affiliate transaction.[17/] At that point, Avista should have filed an affiliated interest application with the Commission seeking approval of the transfer pursuant to RCW 80.16.020. That would have given the Commission the opportunity to develop a complete evidentiary record to consider the prudence of the transaction. Instead, Avista included the costs of the agreement in this rate case, without any written contract to support it. At hearing, it became clear that this was simply an oral offer between affiliated entities.[18/]

12 Avista's handling of the Lancaster situation bears an unfortunate resemblance to an affiliate arrangement that was criticized by the Commission in the 1999 rate case. In that case, Avista entered into a convoluted affiliate arrangement to cash out the value of a capacity sale to Portland General Electric Company ("PGE"). However, Avista did not seek prior approval of the arrangement, and it filed its rate case assuming that the transaction had not been cashed out. The Commission stated the following:

15/ TR. 777: 20-24.
16/ TR. 778: 17-24.
17/ TR. 945:13.
18/ TR. 827-828.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

> The Commission is troubled by Avista's handling of the PGE test year buydown transactions. The Company did not disclose this transaction in its case-in-chief and it was only through the diligence of the Staff and ICNU investigations that the nature and details of this transaction came fully to light. Even after ICNU and Staff raised the statutory requirement to file for approval of transactions with affiliated interests, the Company continued to assert in its Brief that it was not required to file or even notify the Commission of this set of arrangements. In fact, it never addresses the question specifically of whether it was required to request approval from the Commission to enter a transaction with an affiliated interest.[19/]

13 Similarly, Avista filed this case based on the assumption that the Lancaster contract would be assigned to Avista utilities, when in fact there is no contractual commitment to do so. Like the PGE transaction, Avista included the Lancaster transaction in its rate filing, even though it did not have prior approval of the affiliate transaction.[20/] In addition, the Lancaster transaction was apparently dreamed up by senior officers who were not present at the hearing and whose motives were unknown.[21/] There were many questions posed at the hearing regarding the fact that Avista specifically determined that starting the transaction in 2011 would be more beneficial to ratepayers than starting in 2010. When

---

19/ Docket No. UE 991606, Third Supplemental Order at ¶ 67.
20/ TR. 768, 814, 828, 922.
21/ TR. 808-809.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

asked whether Avista negotiated for a later start date, the witnesses had no answer.[22/]

14 Unfortunately, affiliate transactions were likewise a problem during the 2001 energy crisis. For that reason, the ERM Stipulation specifically prohibited transactions between Avista Energy and Avista Utilities.[23/] Avista now tries to claim that the assignment of the Lancaster agreement from Avista Energy to Avista Turbine to Avista Utilities does not violate this prohibition through a narrow reading of the word "commodity."[24/] This narrow reading of the word "commodity" is inconsistent with the parties intent in creating the prohibition, which was to prevent transactions between Avista Energy and Avista Utilities, because of the potential for affiliate abuses. At the hearing related to the adoption of the ERM, Mr. Norwood testified with respect to the prohibition on transactions with Avista Energy that "there wouldn't be further transactions that would go into the ERM until that deferral balance goes to zero."[25/] Avista admitted at hearing that the cost of the Lancaster tolling agreement would in fact go into the ERM.[26/] Thus, the Lancaster tolling arrangement is the type of transaction that was intended to be prohibited.

22// TR. 830.
23/ WUTC v. Avista, Docket No. UE-011595, Settlement Stipulation at 7.
24/ TR. 820.
25/ WUTC v. Avista, Docket No. UE-011595, Hearing Transcript, Volume IV at 227: 13-15.
26 TR. 922, see also TR. 963.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

15 Ultimately, the Commission should adopt a result on Lancaster that provides the most benefit to customers, while sending a message to Avista that ignoring the rules applicable to affiliate transactions will not be tolerated.

IV. CONCLUSION

16 The Commission should adopt the Partial Settlement Stipulation, because it proposes a reasonable resolution of cost of capital, power costs, rate spread/rate design and low income issues. To promote rate stability, the Schedule 93 surcharge should be reduced on the effective date of the rate change from this case. Finally, the Commission should give serious consideration to the adjustments proposed by Staff and Public Counsel.

Dated in Portland, Oregon, this 10th day of November, 2009.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ S. Bradley Van Cleve

S. Bradley Van Cleve
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
ias@dvclaw.com
Of Attorneys for Industrial Customers
of Northwest Utilities