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November 10, 2009

VIA FEDERAL EXPRESS

Carol Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: WUTC v. Avista Corporation d/b/a Avista Utilities,
Docket Nos. UE-090134, UG-090135 and UG-060518 (Consolidated)

Dear Ms. Washburn:

Please find original and 17 copies of the Post Hearing Brief of the Northwest Industrial Gas Users.

Thank you for your assistance in this matter.

Very truly yours,

Chad M. Stokes

CMS:ca
Enclosures
cc: Master Service List via Federal Express (with enclosure)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMSSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES, Respondent.	DOCKET NO. UE-090134 and DOCKET NO. 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 NO. UG-060518 (consolidated)

POST HEARING BRIEF OF THE NORTHWEST INDUSTRIAL GAS USERS

November 10, 2009

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I. INTRODUCTION

1. Pursuant to Washington Administration Code (WAC) 480-07-395, the Northwest Industrial Gas Users (NWIGU) file this Post Hearing Brief in the above referenced consolidated dockets related to Avista Corporation's d/b/a Avista Utilities (Avista or Company) general rate and decoupling proceedings. NWIGU is a signatory to the Partial Settlement Stipulation pending before the Washington Utilities and Transportation Commission (WUTC or Commission) to resolve issues related to cost of capital, power supply, rate spread and rate design and low income ratepayer assistance in these consolidated proceedings.[1] NWIGU urges the Commission to approve the Partial Settlement Stipulation in its entirety.

2. The Partial Settlement Stipulation did not address certain revenue requirement issues, power supply (Lancaster), Schedule 101 gas rate design (including the level of the fixed customer charge on that schedule), and decoupling issues (or the potential adjustment downward of Avista's return on equity in the event of decoupling approval). On the contested revenue requirement issues, NWIGU supports the positions of Staff and Public Counsel. NWIGU concurs with the recommendations in this proceeding of Staff's revenue requirement witness, Mr. Danny Kermode,[2] and Public Counsel's revenue requirement witness, Mr. Hugh Larkin,[3] and urges the Commission to find that the general rate increase justified for Avista's natural gas operations to be no more than $613,000[4] as determined by Staff or at the most, the $869,000[5] determined by Public Counsel. NWIGU's positions on particular contested revenue requirement issues are more fully detailed below.

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[1] Exh. No. B-1, Partial Settlement Stipulation re: Cost of Capital, Power Supply, Rate Spread and Rate Design, and Low-Income Ratepayer Assistance.
[2] Exh. No. DPK-1T.
[3] Exh. No. HL-1T.
[4] Exh. No. DPK-1T (Errata dated 11/6); Exh. No. B-4.
[5] Exh. No. B-5, HL-6, Schedule A (Gas), Revised 10/19/09.

3. Decoupling is by no means a new or novel concept. Proponents of decoupling argue that it is necessary to remove a utility's disincentive to encourage conservation. Indeed, a decoupling mechanism allows a utility to recover the margin revenue associated with an assumed fixed sales volume regardless of actual sales, which may well vary due to influences other than a utility's conservation efforts. NWIGU is not an advocate for decoupling in this proceeding. Given that industrial loads are appropriately not within the scope of Avista's Schedule 101 pilot, which Avista seeks to extend on a permanent basis with other modifications in this proceeding but which modifications do not include industrial schedules (and for which no party has sought industrial inclusion), NWIGU respectfully reserves its right to address industrial customers' concerns in the event that the Commission considers any other type of conservation incentive program, broader scope decoupling mechanism, or return on equity adder for conservation efforts, if others pursue such concepts with industrial application in the future before this Commission. For the record in this proceeding, NWIGU remains adamantly opposed to any type of such extension to industrial customers as doing so would make the utility whole for much more than just lost margins from conservation efforts, with insulation for all swings in regional business and wholesale downturns in the economy.

4. In the event that the Commission decides to approve Avista's decoupling mechanism as modified in this proceeding, NWIGU urges the Commission to lower Avista's rate of return on equity (ROE) so that Avista's capital structure is adjusted appropriately to reflect the associated lower risk of the utility. NWIGU finds the 25 basis point recommendation of Public Counsel to be a reasonable reflection of this lower risk.[6]

[6] Exh. No. MPG-1T, p.7, line 18 - p.8, line 11.

A. The Partial Settlement Stipulation Should Be Approved

5. NWIGU believes the Partial Settlement Stipulation is in the public interest and recommends the Commission approve the settlement because the best interests of Avista's natural gas customers are served by the underlying fair compromise on certain revenue requirement and rate spread and design issues. NWIGU also finds the Partial Settlement Stipulation to be in the public interest as the spread of the gas rate increase is done in a manner that is consistent with the results of both the Company's cost of service analysis and the cost of service analysis performed by NWIGU.[7] Under the Partial Settlement Stipulation, it is important from NWIGU's perspective that Schedule 146 is moved towards its relative cost of service. Moving rates closer to cost is appropriate, and is a significant reason NWIGU supports the Partial Settlement Stipulation.

B. The Commission Should Adopt the Revenue Requirement Adjustments Proposed by Staff and Public Counsel

6. NWIGU urges the Commission to carefully review many of the revenue requirement adjustments proposed by Staff and Public Counsel at hearing. In the last several years, Avista has filed annual rate cases, which has taken a toll on Avista's Washington customers. Like many communities, Avista's service territory in Washington has been severely hit by this recession, and Avista's proposed rate increase stands out in many respects with the contested revenue requirements as an unfounded attempt to pass through costs beyond the historical test period to its customers, contrary to this Commission's regulations and precedent. Mere estimates of future expenses at the time a rate case is filed should not be included in any increased revenue requirement.

[7] Exh. No. DWS-5T.

7. Many of Avista's customers, residential, commercial and industrial alike, are struggling to make ends meet and to stretch already thin budgets. A utility rate hike in this economic environment should not be taken lightly, and especially with regard to items that are sought beyond the test year as the utility chose the timing of its filing for this case, just as it will choose the timing of its next case. Accordingly, NWIGU supports the litigation positions of Staff and Public Counsel on the contested revenue requirement issues, and agrees with Staff that the rate increase that has been justified by the Company for gas operations is no more than $613,000.[8]

8. In this Brief, NWIGU is highlighting items of particular concern to industrial customers by reference to those Adjustment Numbers for which NWIGU has particular policy concerns that it wishes to address. NWIGU does not disagree with the positions taken by Staff and Public Counsel on the other test year and pro forma revenue requirement adjustment items noted by them at hearing and in the record testimony, even though they are not specifically addressed in this Brief.

1. Board of Directors Meetings (R-21)

9. NWIGU agrees with Public Counsel and Staff that Avista's revenue requirement associated with expenses for its directors' meetings is too high and that the Commission should reduce that item. Simply put, extravagance during tough economic times is particularly not appropriate for ratepayer recovery. Although Avista agrees that some of the expenses it used in the test year are better-characterized as non-utility expenses, other expenses are worth noting. For example, there is no reasonable explanation for nearly $9,000 spent on Valentine's Day candy for the board.[9] Similarly, although board meetings may need to take place in various locations, cruises on Lake Coeur D'Alene do not justify large expenditures for procuring meeting

[8] Exh. No. DPK-1T (Errata dated 11/6); Exh. No. B-4.
[9] Andrews, TR 573:22-25.

places.[10] Finally, while members of the board may need to eat while attending board meetings, Avista is unable to identify the need for $12,138 in catering costs that were incurred during the board's 2007 meeting in Washington, D.C.[11] This is especially true in light of the fact that Avista was unable to explain conclusively whether such costs were just for catering.[12] Neither does it assuage NWIGU's concerns that Avista was not able to explain conclusively if such charges were just for the board, or for the board and members of the staff.[13] While these expenses may not be significant in the overall picture, they add up.

10. In WAC 480-07-510, the Commission specifies its required methodology for adjusting test year data in setting rates. Public Counsel's and Staff's proposed adjustments to the excessive board expenses, as well as Public Counsel's adjustment to the D&O insurance and directors fees (which are better correlated on a fifty/fifty basis) are all appropriate restating actual adjustments that the Commission should adopt so that these costs conform to a basis acceptable for ratemaking under WAC 480-07-510(3).

2. D& O Insurance and Board of Director Fees

11. It is fundamentally wrong to have customers bear expenses that should be shared equally with Avista's shareholders. The record evidence supports Public Counsel's recommendation that the expenses for Avista's Directors & Officers insurance as well as board compensation be reduced by 50% so that there is an equal sharing of these expenses between ratepayers and shareholders.[14] The record indicates that the activities of Avista's board of directors go well beyond activities related to Avista's ratepayers. Specifically, directors participate in activities

[10] Andrews, TR 574:8-10.
[11] Andrews, TR 570:14-18.
[12] Andrews, TR 570:21-23.
[13] Andrews, TR 572:1-3.
[14] Exh. No. HL-1T, p 21-23

that are related to their own interests, that are related only to the interests of shareholders, and that are related to non-utility subsidiaries and affiliates.[15]

12. First, directors participate in activities that relate to their own interests because they set their own compensation and decide the amount of quarterly dividends deriving from the stock they are required to own in the Company.[16] Avista's directors also participate in activities that relate to the interests of Avista Corporation's other shareholders. Shareholders, not ratepayers, elect the board.[17] Members of the board, in turn, attend and preside over shareholder meetings.[18] At those meetings, directors consult with major shareholders and consider shareholder proposals.[19]

13. Finally, Avista acknowledges that its directors participate in activities that relate to non-utility subsidiaries and affiliates. As stated by Ms. Andrews, "through Avista Capital we do have additional subsidiaries that roll up to the corporation."[20] In light of the scope of activities in which Avista's board participates that do not relate to ratepayers, there is no justification for ratepayers to assume the full cost of the D&O insurance. Neither is Avista's offer of a 90% allocation, similar to its allocation for senior officers, sufficiently supportable as that simply does not reflect the dominant shareholder scope of the board functions. The fifty/fifty sharing proposed by Public Counsel is fair and reasonable based on the record evidence.

3. Labor Non-Executive (PF-1)

14. NWIGU supports Staff's rejection of Avista's pro forma adjustment to its Non-Executive wages. Avista's proposed adjustment fails to meet the Commission's allowance criteria. As

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[15] Andrews, TR 568:16-21.

[16] Andrews, TR 559:12 (establishing that directors ultimately decide how much they are going to get paid); Andrews, TR 564:5 to 565:8 (establishing that directors are required to own 9,500 shares of stock, for which they receive quarterly dividends, the amount of which the directors determine).

[17] Andrews, TR 562:5-8.

[18] Andrews, TR 566:6-14.

[19] Andrews, TR 566:20-25.

provided in WAC 480-07-510, pro forma adjustments are not merely estimates added to test year results, but must be grounded in historical data.[21] The Commission should not approve the Company's 2010 pro forma non-executive adjustment based on what "might" happen in the future. There are certainly no cost of living adjustments occurring in a recession for anyone else, and possible increases just do not suffice for legitimate ratepayer burden.

4. Post Test-Year Capital Additions for 2009 (PF-5)

15. NWIGU supports Staff's position on Post Test Year Capital Additions for 2009. Avista proposes pro forma adjustments for Post Test Year Plant Additions for 2009 which add nearly $12.8 million to its gas rate base.[22] These post test period add-ons are not consistent with Commission precedent and should be rejected.

16. WAC 480-09-330(2) (b) (ii) defines pro forma adjustments as "those adjustments that give effect for the test period to all known and measurable changes that are not offset by other factors." The Company argues that the pro forma post test year adjustments are appropriate here because its alleged capital costs are growing faster than recovery through embedded depreciation expense.[23] As noted by Staff, this situation often results from an aggressive infrastructure growth and/or replacement program.[24] This is not to say, however, that Avista is correct.

17. Staff witness Kermode correctly applies prior Commission decisions in Staff's review of Avista's proposal. This Commission has held that attrition adjustments like these must be supported by extraordinary circumstances to depart from fundamental test year ratemaking principles.[25] There are no such extraordinary circumstances applicable here.

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[20] Andrews, TR 565:22.
[21] Exh. No. AMCL-1T.
[22] Exh. No. DPK-1T, p. 28, lines 5-6.
[23] Exh. No. DBD-1T, p.7, lines 4-6.
[24] Exh. No. DPK-1T, p 29, lines 7-9.
[25] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE 060266 and UG 060267, 255 PUR 4th 287 (2007), Order 08 at 16.

18. Avista's proposed pro forma of 2009 utility plant that was not used in the test period both violates the matching principle, is not known and measurable, and creates a mismatch of revenues, expenses and services.[26] Pro forma adjustments must consider all material impacts and off-setting factors.[27] The failure of Avista to address these impacts and offsets demands the rejection of Avista's proposals not only for its 2009 capital additions, but also for its attempted stretching of the 2008 test year plant with PF-4 to a pro forma amount three months after the end of the actual period.

5. Incentive Pay (PF-7)

19. In this economy, revenue requirement items like Incentive Pay should receive close scrutiny. Avista proposes to base employee incentive payouts on a six-year average of the company's prior incentive payouts.[28] Using the six year average, however, is inappropriate and inflates the actual trend. The six-year average is not reflective of what Avista's payout in future years will be. NWIGU supports Staff's Pro Forma Incentive Adjustment as detailed in Ms. LaRue's testimony.[29]

20. As acknowledged by Avista, actual employee incentive payouts have varied widely since 1999, including two years where the payout was zero.[30] As Avista further acknowledged, data provided by Avista reflects the fact that since 2005 there has been a steady trend downward in incentive payouts.[31] This downward trend makes sense because the incentive payout is based, in part, on O&M savings the Company achieves. As the low-hanging fruit gets picked, further

[26] Exh. No.DPK-1T, p. 35, lines 6-8.
[27] *Id.* p.35, lines 12-13.
[28] Exh. No. EMA-1T, p.29, line 14 – p.30, line 6.
[29] Exh. No. AMCL-1T, p.11, line 12 – p.12, line 2.
[30] Andrews, TR 529:10.
[31] Andrews, TR 530:1-4.

O&M savings will be more and more difficult to come by. Thus, Avista's use of a six-year average has the effect of inappropriately inflating what incentive payouts are likely to be.

6. Information Services (PF-8)

21. Like many proposed adjustments in the Avista case, the proposed adjustment for Information Services is not "known and measurable" and should be denied. As illustrated by Staff, the adjustment assumes "planned" 2010 costs above the test year costs, and are more correctly characterized as "budgeted" costs.[32] Because the adjustment does not represent an adjustment for known and measurable changes to the test year for its gas operations, and does not include all offsetting factors, this adjustment is wholly improper.[33]

7. American Gas Association Dues

22. NWIGU supports Public Counsel's proposed adjustments to the American Gas Association (AGA) dues.[34] It is inappropriate to include dues for lobbying, advocacy or promotional activities that are incidental to and not essential for the provision of gas service. If Avista chooses to remain a member of the AGA, this portion of the dues should be a shareholder expense and not something that comes out of ratepayer dollars.

C. If the Commission Permanently Approves Avista's Decoupling Pilot, the Commission Should Reduce Avista's ROE

23. In the event the Commission determines that Avista has met its burden of showing the decoupling mechanism enhanced Avista's conservation efforts in a cost effective manner, NWIGU urges the Commission to address an appropriate level of reduction to Avista's ROE. To that end, the Partial Settlement Stipulation provides that if decoupling is approved, parties are

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[32] Exh. No. DPK-1T, p 44, lines 7-15.
[33] *Id.*, lines 16-19.
[34] Exh. No. HL-1T, p. 25.

free to argue for a lower ROE. The justification for a lower ROE is ably outlined by Public Counsel's witness Gorman.[35]

24. The decoupling mechanism proposed by Avista would decrease the variability of the Company's earnings by inherently shifting risk to ratepayers, without any countervailing risk adjustments.[36] Thus, Avista's decoupling mechanism has all upside potential for the Company and its shareholders, but without proper reflection of the reduced costs that should be reflected in capital costs for ratepayers. Traditionally, the utility takes the risk of per customer margin values decreasing, in exchange for the opportunity to earn a profit that compensates the Company for an appropriate level of risk. If permanently approved, Avista's decoupling mechanism would guarantee a per customer margin value for a significant portion of its revenues, despite actual demand, and thus makes the company less risky. When a utility becomes less risky, the company's cost of capital should be lowered to account for reduced investor expectations.[37]

25. If permanently adopted, the decoupling mechanism makes it much more likely that Avista will recover its revenue requirement set in this case. The ROE of 10.2 percent agreed to by the parties, however, assumed that no decoupling mechanism was in place, and that Avista had a risk of under recovery.[38] The approval of Avista's decoupling proposal, without a reduction in the Company's cost of capital, would allow the Company to over earn, compared to utilities of similar risks. Avista is not entitled to a mandatory right of profit, nor is it entitled to an unfair and unreasonable rate of return. Part of the risk facing the Company is the risk of per

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[35] Exh. No. MPG-1T, p.7, line 18 - p.8, line 11.

[36] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE 060266 and UG 060267, 255 PUR 4th 287 (2007), Order 08 at p. 22.

[37] *See, e.g. Portland General Electric*, OPUC Docket No. UE 197, Order No. 09-020, pp. 28-29 (Jan., 22 2009) (Where the Oregon Public Utility Commission determined that PGE's decoupling mechanism warranted a reduction of PGE's authorized ROE by ten (10) basis points to reflect the reduction in the Company's risk).

[38] Exh. No. JT-1T at p. 2 (The Partial Settlement Stipulation calls for an overall rate of return of 8.25 percent with a common equity ratio of 46.5 percent and a 10.2 percent return on equity. Parties remain free to recommend a lower ROE based on the adoption of decoupling or another risk reduction mechanism).

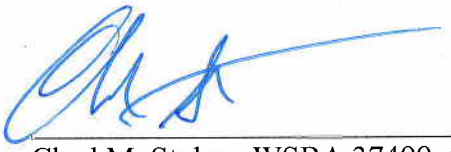
customer margin values decreasing and under earning. If a significant portion of this risk goes away, then the Company's ROE should be adjusted downward. Failure to adjust the ROE would provide a windfall for the Company and its shareholders.

II. CONCLUSION

26. NWIGU asks that the Commission approve the Partial Settlement Stipulation in its entirety and supports the positions of Staff and Public Counsel on those contested revenue requirement issues that were raised at hearing and not included in the Partial Settlement Stipulation. In addition, if this Commission decides to approve Avista's decoupling mechanism, NWIGU urges the Commission to lower the Company's ROE to account for the lower risk facing the Company.

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by FedEx a copy properly addressed with first class postage prepaid.

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