

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION**

In re the Matter of	)	
WASHINGTON UTILITIES AND	)	DOCKET NO. UE-030751
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	SETTLEMENT STIPULATION
vs.	)	
	)	
AVISTA CORPORATION d/b/a AVISTA	)	
UTILITIES,	)	
	)	
Respondent.	)	

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This Settlement Stipulation is entered into this \_\_\_\_ day of December 2003, by and between the following parties to the above docket: Avista Corp. ("Company"), the Staff of the Washington Utilities and Transportation Commission ("Staff"), and the Industrial Customers of Northwest Utilities ("ICNU") (hereinafter referred to as the "Signing Parties"). The Public Counsel Section of the Attorney General's Office, the Citizens' Utility Alliance of Washington ("CUA") and the Spokane Neighborhood Action Program ("SNAP") are not parties to this settlement.

The Signing Parties agree this Settlement Stipulation is in the public interest and resolves all issues as between themselves in this docket. The Signing Parties understand this Settlement Stipulation is subject to Commission approval.

**I. INTRODUCTION**

The Company made its first annual filing for review of the Energy Recovery Mechanism ("ERM") deferrals on March 28, 2003, as called for by the settlement stipulation approved by the

Commission in its Fifth Supplemental Order in Docket No. UE-011595 (“UE-011595 Stipulation”). The Company’s March 28, 2003 filing addressed amounts deferred under the ERM from July 1, 2002 to December 31, 2002. The Commission Staff, Public Counsel and ICNU filed a joint motion for a pre-hearing conference on May 8, 2003, requesting that the Company be required to make a more comprehensive filing demonstrating the prudence of its power cost deferrals and that a procedural schedule be established to permit a full review of that filing. On May 28, 2003, the Commission issued a pre-hearing conference order establishing a schedule in this proceeding and setting the matter for an evidentiary hearing. Pursuant to the schedule adopted by the Commission, the Company submitted pre-filed direct testimony on June 23, 2003. Staff, Public Counsel/SNAP/CUA, and ICNU submitted pre-filed testimony and exhibits in response on August 25, 2003. The matter was ultimately set for hearing on October 15-17, 2003, but this hearing was postponed in order to allow Public Counsel/SNAP/CUA the opportunity to submit supplemental testimony. Public Counsel/SNAP/CUA filed supplemental testimony on November 21, 2003, and an associated motion to allow the submission of the testimony was granted on December 2, 2003. The Company filed supplemental rebuttal on December 8, 2003. Following informal settlement discussions, the Signing Parties have entered into this Settlement Stipulation resolving all issues as between themselves in Docket UE-030751.

## **II. CONTESTED ISSUES**

### **A. Enron Contract Buyout Deferral**

In its filing, the Company proposed to recover through the ERM the net costs associated with the buyout of a multi-year purchase power contract with Enron. The Company had recorded the total discounted net cost associated with the contract settlement as a current purchased power expense for the month of October 2002. That was the month that the transaction was finalized and a cash payment was made to Enron. Staff and ICNU have

recommended that the termination costs be amortized over the original delivery period of the energy contract (2004 to 2006), rather than be recorded in the single month of the settlement transaction.

**B. Impact of Delayed Availability of Coyote Springs II**

Staff and ICNU have proposed an adjustment to the ERM deferral balance related to the unavailability of the Coyote Springs II (“CSII”) generating plant during the 2002 ERM review period. Commercial operation of the Company’s CSII combustion turbine project, originally scheduled for commercial operation in mid-2002 was delayed by the bankruptcy of Enron, as well as a series of events related to the failure of the original generator step-up transformer. The CSII generating plant began commercial operation July 1, 2003.

**C. Sale of Natural Gas Acquired for Thermal Generation**

Public Counsel/SNAP/CUA has proposed an adjustment to the deferral balance related to the sale of natural gas originally acquired for thermal generation. The natural gas was subsequently re-sold at prices below the original purchase cost of the gas, resulting in a net increase in costs. The Company asserts that the decisions to re-sell the natural gas were made by the Company based upon sound economic analysis and its projected load/resource balance. Public Counsel/SNAP/CUA raised an issue regarding the timing of the Company’s decisions, and whether more economic decisions could have been made. An adjustment to the ERM balance has been proposed by Public Counsel/SNAP/CUA based upon an analysis of alternative timing of the sale of the natural gas. Staff recommended that any future re-sales associated with the natural gas be limited to shorter-term month-ahead transactions. Staff and ICNU did not recommend an adjustment to the deferral balances related to the re-sale of natural gas for the 2002 review period.

**D. Procedures Governing Future Review of ERM Balances.**

Avista's March 28, 2003 and June 23, 2003 filings in this Docket represent the Company's first annual filing with the Commission "to review the prudence of and audit the ERM deferral entries for the prior calendar year" pursuant to the UE-011595 Stipulation. Certain parties recommended that future filings contain more detailed testimony and supporting documentation to facilitate Staff and Intervenor review of any future deferrals made under the ERM mechanism. Certain parties also recommended that further clarification regarding "ordinary" and "extraordinary" variations in power supply expenses in the context of the annual ERM review be made.

**E. Procedures Associated with Execution of Power Supply Transactions.**

Public Counsel/SNAP/CUA recommended that Avista provide more definition of its strategy or decision-making process for closing out of future "long" power supply positions that are known to be "out-of-market," and which would otherwise increase future ERM deferral balances. The underlying assumption would be that additional documentation of the Company's decision making process would be utilized in future ERM prudence and review filings.

**III. SETTLEMENT STIPULATION**

As between the Signing Parties, this settlement resolves all issues for the ERM review period from July 1, 2002 to December 31, 2002. *In addition*, Section III, paragraph E resolves deferral issues related to the delay in commercial operation of the CS II generating plant through the period ending June 30, 2003. The Signing Parties agree as follows:

**A. ERM Deferral Balance Reduction**

During the six-month period of July 1, 2002 through December 31, 2002, actual net power costs exceeded authorized net power costs for the Washington jurisdiction by \$24,778,509. Of that amount, \$18,250,659 was deferred and \$6,527,850 was absorbed by

shareholders. Carrying costs amounted to \$167,889 for the period, resulting in total deferrals of \$18,418,548. For purposes of settlement, the Signing Parties agree to reduce the original deferral balance of \$18,418,548 by \$3,246,000, resulting in a final ERM deferral balance of \$15,172,548 for the July 1, 2002 to December 31, 2002 period. The Signing Parties agree that this final ERM deferral balance shall ultimately be recovered in rates through the Power Cost Surcharge in Schedule 93 and in accordance with the UE-011595 Stipulation.<sup>1</sup>

**B. Enron Contract Amortization**

The Company, as part of this overall settlement stipulation, agrees to amortize the Enron contract termination costs over the original delivery period of the energy contract (2004 to 2006). The stipulated Enron buyout payment of \$921,000<sup>2</sup> would be removed from the deferral account and recorded as a regulatory asset. A carrying charge on the regulatory asset would be recorded at the same rate as the carrying charge used for ERM deferrals. A levelized amortization, including interest, would be recorded during the 36-month period from January 2004 through December 2006. The monthly amortization expense level would be treated as recoverable costs in ERM calculations subject to the deadband and 90/10 sharing.

**C. Documentation Included in Future ERM Filings**

The Company agrees to provide, in future ERM annual review filings, relevant explanation, supporting documents, workpapers, studies, and analyses related to the costs

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<sup>1</sup> In addition to amounts already absorbed by the Company during the deferral period, an additional \$2,325,000 would be removed from the deferral balance and written off by the Company in 2003. The amount of \$921,000 associated with the Enron contract buyout will be transferred from the ERM deferral to another regulatory asset for subsequent amortization as described in Section III, paragraph B.

<sup>2</sup> The \$921,000 amount would be removed from the ERM balance and recorded as a regulatory asset in Account 182.30-Other Regulatory Assets. A carrying charge would be recorded on the regulatory asset at the same rate as the ERM interest rate. A levelized amortization, including interest, of the regulatory asset would be recorded in Account 555-Purchased Power, during the 36-month period from January 2004 through December 2006. The amortization amounts would be treated as recoverable costs in the ERM calculations during the amortization period. As the regulatory asset would reflect only 90% of the deferred contract buyout cost and associated interest on the 90% amount, the amortization amounts would be grossed-up to a 100% level for ERM calculations. ERM deadband

included in the ERM deferrals. This includes all studies and analysis that support the Company's decisions to enter into alternative arrangements or agreements (for example, but not limited to, contract buyouts or buydowns) that affect the power supply accounts tracked in the ERM. In addition, Avista will continue to provide the same monthly reports that have been provided since the mechanism's inception and will identify the major factors or events that cause entries to the deferral account. As a result of the review of the monthly reports, or other information provided by the Company in response to the monthly reports, the parties can notify the Company of any costs or issues that they believe require specific testimony in the annual review filing supporting the decision to request recovery of those costs through the ERM. The parties may propose a technical conference to be held after the close of the deferral period in order to identify and clarify relevant issues, as well as possibly expedite the annual review process. Finally, Avista agrees to file testimony justifying the prudence of any deferral balance that is included in an annual ERM deferral filing.

**D. Definition of Procedures Associated with Wholesale Transactions**

There are a number of factors that the Company considers in its decision to enter into wholesale transactions such as: forecast of loads and resources and the net system requirements; forward variability of loads; forward variability of hydroelectric generation; current forward market electric and natural gas price curves; cost to generate electric power through the most economic available generator in the Company's resource stack; counterparty credit restrictions; point of delivery and liquidity (number of viable counterparties able to transact); actual prices available from viable counterparties; fit of the transaction within standard market product terms and conditions; layering of transactions over a time period; and volumetric net position limits

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calculations and the 90%/10% sharing would then be applied to the grossed-up 100% amortization amounts during the 2004 to 2006 period.

contained in the Company's Risk Policy. The Company also recognizes the important strategic goal of minimizing, as much as possible, net costs to customers from long positions, to the extent that they are out-of-market.

The Company agrees to continue to systematically document key factors relevant to its major wholesale transaction decisions. Among the relevant documents that will be available for future review will be: Electric/Gas Transaction Records, Position Reports, Long-Term Physical Electric Load and Resource Tabulation, Forward Market Electric and Natural Gas Price Curves, Electric/Gas-Heat Rate Transaction Worksheets, Price Quote Worksheets and Credit Reports. The relevant documents listed in the preceding sentence in no way limits the information that the parties can request or review in future proceedings.

**E. Coyote Springs II**

In regards to the specific issue identified previously in Section II, paragraph B, the delayed availability of the CSII generation plant and its impact on the ERM balance, the Signing Parties agree that the cost impact to the ERM balance related to the delay in the commercial operation date of CSII is resolved through June 30, 2003, which corresponds to the plant's commercial operation date of July 1, 2003. The Signing Parties acknowledge that resolution of this issue extends beyond the current ERM review period ending December 31, 2002.

**IV. EFFECT OF THE SETTLEMENT STIPULATION AND PROCEDURE**

**A. Binding on Signing Parties**

The Signing Parties agree to support the terms of the Settlement Stipulation throughout this proceeding, including any appeal, and recommend that the Commission issue an order adopting the settlement contained herein. The Signing Parties understand that this Settlement Stipulation is subject to Commission approval. The Signing Parties agree that this Settlement Stipulation represents a compromise in the positions of the Signing Parties. As such, conduct,

statements and documents disclosed in the negotiation of this Settlement Stipulation shall not be admissible evidence in this or any other proceeding.

**B. Integrated Terms of Settlement**

The Signing Parties have negotiated this Settlement Stipulation as an integrated document. Accordingly, the Signing Parties recommend that the Commission adopt this Settlement Stipulation in its entirety. Each Signing Party has participated in the drafting of this Settlement Stipulation, so it should not be construed in favor of, or against, any particular Signing Party.

**C. Procedure**

The Signing Parties shall cooperate in submitting this Settlement Stipulation promptly to the Commission for acceptance. The Signing Parties shall make available a witness or witnesses in support of this Settlement Stipulation. The Signing Parties agree to cooperate, in good faith, in the development of such other information as may be necessary to support and explain the basis of this Settlement Stipulation and to supplement the record accordingly.

The Signing Parties agree to stipulate into evidence their testimony and exhibits marked at the pre-hearing conference in this docket.

If the Commission rejects all or any material portion of this Settlement Stipulation, or adds additional material conditions, each Signing Party reserves the right, upon written notice to the Commission and all parties to this proceeding within seven (7) days of the date of the Commission's Order, to withdraw from the Settlement Stipulation. If any Signing Party exercises its right of withdrawal, this Settlement Stipulation shall be void and of no effect, and the Signing Parties will support a joint motion for an expedited procedural schedule to address the issues that would otherwise have been settled herein.



**D. No Precedent**

The Signing Parties enter into this Settlement Stipulation to avoid further expense, uncertainty, and delay. By executing this Settlement Stipulation, no Signing Party shall be deemed to have accepted or consented to the facts, principles, methods or theories employed in arriving at the Settlement Stipulation, and except to the extent expressly set forth in the Settlement Stipulation, no Signing Party shall be deemed to have agreed that such a Settlement Stipulation is appropriate for resolving any issues in any other proceeding.

**E. Public Interest**

The Signing Parties agree that this Settlement Stipulation is in the public interest and results in an overall fair, just, and reasonable outcome.

**F. Execution**

This Settlement Stipulation may be executed by the Signing Parties in several counterparts and as executed shall constitute one agreement.

Entered into this \_\_\_\_\_ day of December 2003.

By: \_\_\_\_\_  
David J. Meyer  
Senior Vice President and General Counsel  
for Avista Corp.

Entered into this \_\_\_\_\_ day of December 2003.

By: \_\_\_\_\_  
Donald T. Trotter  
Assistant Attorney General  
For the Staff of Washington Utilities and  
Transportation Commission

Entered into this \_\_\_\_\_ day of December 2003.

By: \_\_\_\_\_  
S. Bradley Van Cleve, Attorney  
Industrial Customers of Northwest Utilities  
(ICNU)