

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UG-021584
	)	
Complainant,	)	
	)	FOURTH SUPPLEMENTAL
v.	)	ORDER; APPROVING, IN PART,
	)	AND REJECTING IN PART
AVISTA CORPORATION d/b/a	)	SETTLEMENT AGREEMENT;
AVISTA UTILITIES,	)	AUTHORIZING COMPLIANCE
	)	FILING
Respondent.	)	
.....	)	

*Synopsis: The Commission approves in part, and rejects, in part, the settlement agreement.*

- 1     **Proceeding.** Docket No. UG-021584 involves a tariff filed by Avista Corporation d/b/a Avista Utilities (Avista) with certain tariff revisions that would modify and extend Avista Tariff Schedule 163, Avista’s “Natural Gas Benchmark Mechanism” (Benchmark Mechanism) for two years. The Benchmark Mechanism (current and proposed) establishes the natural gas costs for Purchased Gas Adjustment (PGA) deferral purposes.
  
- 2     **Appearances.** David Meyer, attorney, Spokane, Washington represents Avista. Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission.
  
- 3     **Commission.** The Commission approves in part, and rejects in part, the parties’ settlement agreement. The Commission incorporates the parties’ settlement agreement by reference and makes it a part of this Order, Appendix A, below. The Commission authorizes Avista to make any compliance filings required to effectuate the terms of this Order.

- 4     **Background.** Avista Utility currently procures natural gas under the Natural Gas Benchmark Mechanism (Benchmark Mechanism) included in its Tariff No. 163. The Benchmark Mechanism is designed to give Avista Energy, an affiliate of the utility, an incentive to procure least cost gas for Avista's customers. On December 2, 2002, and in its subsequently filed testimony in this case, Avista proposed the following modifications to its Benchmark Mechanism : 1) to extend the consideration of using storage in lieu of Tier 3 purchases; 2) to better define the audit trail to enable the Commission to verify gas costs charged to Avista customers; 3) to continue the Mechanism until March 31, 2007; 4) to institute an 80/20 symmetrical sharing mechanism for all aspects of the mechanism; 5) to guarantee customers a minimum of \$3 million in revenues from capacity release and off-system sales transactions (revenues above that amount would be subject to the 80/20 sharing mechanism); 6) and, to substitute payment of a \$900,000 annual management fee to Avista Energy, for a \$0.05 per dekatherm adder currently in effect.<sup>1</sup> The revised Mechanism in this proceeding is fundamentally the same as the existing Mechanism.
- 5     On January 29, 2002, the Commission suspended Avista's proposed Benchmark Mechanism tariff; extended the existing Tariff No. 163 until January 29, 2004; and set the matter for hearing.
- 6     Avista, Commission Staff, and Public Counsel filed testimony and exhibits according to an agreed filing schedule. The parties discussed settlement during a prehearing conference on September 19, 2003, and continued to discuss settlement, assisted by Administrative Law Division Director C. Robert Wallis, on September 22, 2003, the first day scheduled for evidentiary hearing. The parties reached agreement in principle on September 22, 2003 and presented the settlement agreement to the Commission on September 23, 2003. During the hearing on the settlement agreement, the parties stipulated to the admission of the settlement agreement as Exhibit No. 300. The parties also stipulated to the

---

<sup>1</sup> The company originally implemented the Benchmark Mechanism in September 1999 (Docket No. UG-990614). It included the \$0.05 per dekatherm adder charge and was scheduled to be in effect through March 2002. In November 2001 the company requested that the Benchmark Mechanism be extended through March 2005 (Docket No.UG-011500). The Benchmark Mechanism the company proposed in the November, 2001 filing modified the mechanism to include a gas procurement hedging strategy. The Commission approved only a one-year extension.

admission of all exhibits marked for identification at the September 19, 2003 prehearing conference.

7     **Brief Description of the Settlement Agreement.** The settlement agreement adopts the version of Tariff No. 163 contained in Exhibit No. 152, except as follows:

- (1) The expiration date would change from March 31, 2007 to March 31, 2005. (Section II. A. 1).
- (2) Customers would receive a minimum level of \$5 million in benefits from basin optimization, off system sales and capacity release revenues. The next \$1 million would go entirely to Avista customers. Any revenue above the \$6 million mark would be shared on the 80/20 basis described above. The minimum benefit levels would be calculated for every twelve-month period beginning with the proposed effective date, December 1, 2003, except that they would be calculated proportionally for the period ending March 31, 2005. (Section II. A. 2).
- (3) The parties agree to engage in good faith discussions from December 1, 2003 to March 31, 2005 to achieve consensus about a new incentive mechanism. If such a consensus is reached, the parties will file it with the Commission. If consensus is not reached, the gas procurement function as performed by Avista Energy will revert to the utility for two years. During that period, Avista Utility would be precluded from filing any form of mechanism that allowed the gas procurement function to be performed by an affiliate, or by a non-affiliated subsidiary. (Section II. A. 2. B., referred to as "Section 2B")

8     **Discussion and decision.** The Commission must determine whether the proposed settlement agreement results in rates that are fair, just, reasonable, and sufficient and is in the public interest. The Commission is persuaded that, for the most part, the provisions of the settlement agreement bring reasonable promise of benefit to Avista ratepayers by providing an incentive to both Avista and Avista Energy to obtain least-cost gas supplies. However, the Commission does not approve section 2B of the settlement agreement. The chief concern with this provision is its contradictory nature. On the one hand, the settlement asks the Commission to approve the tariffed Benchmark Mechanism as reasonable and in

the public interest for a period of two years. On the other hand, section 2B precludes the company from filing the same type of mechanism for a period of two years after the March 31, 2005 expiration of the Mechanism adopted in the settlement agreement. Given the volatility of the natural gas market, it seems unwise and unreasonable to preclude at this point in time, without allowing an opportunity for later Commission review, a strategy that the parties agree serves the public interest now, and that might serve the public interest at a future point in time.

- 9 For these reasons, the Commission finds the settlement agreement, except for section 2B, to be in the public interest and to provide rates that are fair, just, reasonable and sufficient. By terms of the settlement agreement, section III. C, the parties must notify the Commission within seven (7) days of the date of this order that they are withdrawing from the settlement agreement if the Commission fails to approve all of the agreement. We direct the parties also to notify the Commission within seven (7) days whether they accept the Commission's partial approval of the settlement agreement. If the parties accept our partial approval and agree to withdraw section 2B of the agreement, the company must file a new tariff that will be permitted to go into effect on December 1, 2003. Each party may subsequently argue that the revised tariff filed by Avista does not accurately reflect the settlement stipulation, but the parties must work together to resolve the issue before seeking redress from the Commission.

### **FINDINGS OF FACT**

- 10 The Commission now makes the following summary findings of fact:
- (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, and transfers of public service companies, including natural gas companies pursuant to RCW 80.01.040.
  - (2) Avista is a natural gas company and is a public service company subject to the jurisdiction of the Commission.

- (3) Avista filed on December 2, 2002, tariff revisions that provided for a Benchmark Mechanism that would affect the charges and rates for service to its customers.
- (4) On January 29, 2003, the Commission suspended the proposed tariff revisions on the grounds that Avista had not yet demonstrated that the revisions would result in a Benchmark Mechanism that is fair, just and reasonable.
- (5) On September 23, 2003, Avista, Commission Staff and Public Counsel entered into a settlement agreement that is attached to this Order as Appendix A and is incorporated by reference into this Order.
- (6) Except for the provision contained in section 2B of the settlement agreement, the Mechanism as modified by the settlement agreement establishes a fair, just and reasonable apportionment of risks and rewards between ratepayers and Avista Energy and will serve the public interest.

### **CONCLUSIONS OF LAW**

11 The Commission makes the following summary conclusions of law:

- (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding.
- (2) Except for section 2B of the settlement agreement, the revisions to Tariff No. 163 proposed in the settlement agreement result in rates that are fair, just, reasonable, and sufficient and should be approved and adopted by the Commission as a reasonable resolution of the issues presented in this docket.
- (3) Section 2B of the settlement agreement is not fair, just, and reasonable and should be rejected by the Commission.
- (4) The Commission should retain jurisdiction over the subject matter and parties to this proceeding to effectuate the terms of this Order.

**ORDER**

- 12 The Commission approves the settlement agreement filed by the parties and admitted into the record on September 23, 2002 except for section 2B. The settlement agreement is attached to this Order and incorporated by reference.
- 13 The Commission rejects section 2B of the settlement agreement.
- 14 The parties are directed to file with the Commission a statement of whether they accept the Commission's partial approval of the settlement agreement.
- 15 If the parties accept the partially approved settlement agreement, Avista must make a compliance filing indicating the parties have withdrawn section 2B of the settlement agreement and providing a revised tariff No. 163 reflecting the terms of this Order.
- 16 The Commission retains jurisdiction over the subject matter and the parties to effectuate the provisions of this order.

Dated at Olympia, Washington, and effective this 6<sup>th</sup> day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**

## **APPENDIX A**

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION

In re the Matter of	)	
	)	DOCKET NO. UG-021584
WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
AVISTA CORPORATION d/b/a	)	SETTLEMENT STIPULATION
AVISTA UTILITIES	)	
	)	
Respondent.	)	
	)	
.....	)	

1           This Settlement Stipulation is entered into this 23<sup>rd</sup> day of September 2003, by  
and between all parties to the above docket: Avista Corp. ("Company"), the Staff of the  
Washington Utilities and Transportation Commission, and the Public Counsel Section of  
the Attorney General's Office (jointly referred to as the "Parties" and individually  
referred to as a "Party").

2           The Parties agree this Settlement Stipulation is in the public interest and resolves  
all issues that are necessary to resolve in this docket. The Parties understand this  
Settlement Stipulation is subject to Commission approval.

**I. Introduction**

3           On December 2, 2002, the Company filed tariff revisions with the Commission  
extending the Company's "Benchmark Mechanism" for two additional years, with some



modifications. That filing was assigned Docket No. UG-021584. By its order dated January 29, 2003, the Commission suspended those tariff revisions, and permitted the Company's existing Benchmark Mechanism tariff to remain in effect until January 29, 2004, pending the Commission's decision in this docket. The matter was set for hearing.

4           In general terms, through the Benchmark Mechanism, Avista Energy serves as agent for Avista Utilities to acquire natural gas and manage gas storage and transportation assets for Avista Utilities' retail customers. The structure of the Mechanism, which is set forth in tariff Schedule 163 (Exhibit 152), describes the Company's gas procurement strategy, and includes a sharing of costs and benefits between Avista Utilities' Customers and Avista Energy on the various components of the Mechanism. A graphic description of the form of the Benchmark Mechanism proposed by the Company in its direct testimony in this docket, as its preferred form, is contained in Exhibit No. 2 in this docket, a copy of which is attached to this Settlement Stipulation.

## **II. Settlement Stipulation**

### **A. Continuation of the Benchmark Mechanism until March 31, 2005:**

5           The Parties agree that the Benchmark Mechanism may continue in the form proposed by the Company in this docket (which is set forth in tariff terms in the Company's Exhibit No. 152) with the changes described in Paragraph II.A.1 and 2, and subject to the conditions stated in Paragraph II.B, below. The changes are:

#### **1. Expiration date:**

6           Exhibit No. 152 has an expiration date of March 31, 2007 (Exhibit No. 152, page 1, "Term"). The Parties agree and stipulate that the expiration date will be changed to

March 31, 2005, which is the same expiration date contained in similar Company tariffs in Idaho and Oregon.

2. Sharing of Off-System Sales Revenues, Capacity Release Revenues, and Basin Optimization Benefits:

7           Exhibit No. 152 contains a guaranteed minimum level of total off-system sales and capacity release revenues of \$3 million, with sharing above that \$3 million at a level of 80% to Avista Utilities' Customers and 20% to Avista Energy. (Exhibit No. 152, page 11, Paragraph 4(a)). Basin optimization benefits are shared 80% to Avista Utilities' Customers and 20% to Avista Energy, but have no guaranteed minimum level of such benefits. (Exhibit No. 152, page 10, last Paragraph).

8           The Parties agree and stipulate that the guaranteed levels and sharing just described will be changed such that Avista Utilities' Customers will be guaranteed a minimum level of \$5 million in total revenues from basin optimization benefits, off-system sales and capacity release revenues, that the next \$1 million (\$5,000,001 to \$6,000,000) of such revenues will go 100% to Avista Utilities' Customers, and any such revenues above the \$6 million level will be shared at a level of 80% to Avista Utilities' Customers and 20% to Avista Energy. These dollar figures are for every twelve-month period starting on the effective date of the new tariff, and proportionally to March 31, 2005, should the tariff expire then. The effective date of the new tariff shall be December 1, 2003.

9           The Company will make such changes to Exhibit No. 152 as are necessary to make the changes agreed and stipulated above. The Company will file the new tariff in

this docket, and the parties agree that the new tariff can go into effect by operation of law, on less than statutory notice on December 1, 2003. Each Party reserves the right to argue that the revised tariff does not accurately reflect this Settlement Stipulation, but the Parties agree to work together to resolve that issue if possible, before seeking Commission action.

**B. Future of the Benchmark Mechanism**

10           During the period of time from December 1, 2003, to March 31, 2005, the Parties agree to engage in good faith discussions regarding gas purchase incentive mechanisms, with the goal of developing a mechanism that reflects the consensus of the Parties. If such a consensus mechanism is developed and filed with the Commission, the Parties agree to take appropriate actions in support of that mechanism. If such a consensus mechanism is not developed by March 31, 2005, the gas procurement function will revert to the Company from Avista Energy at that time, and the Company agrees that it would not file a gas purchase incentive mechanism involving an affiliated interest (as that term is used in RCW 80.16) or a non-affiliate subsidiary until after March 31, 2007. Nothing in this Settlement Stipulation prevents the Company from filing a gas purchase incentive mechanism that does not involve an affiliated interest or a non-affiliated interest subsidiary.

**III. Effect of the Settlement Stipulation and Procedure**

**A. Binding on Parties:**

11           The Parties agree to support the terms of the Settlement Stipulation as described herein. The Parties understand that this Settlement Stipulation is subject to Commission

approval. The Parties agree that this Settlement Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of this Settlement Stipulation shall not be admissible as evidence in this or any other proceeding.

B. Integrated Terms of Settlement:

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

C. Procedure:

13           The Parties shall cooperate in submitting this Settlement Stipulation promptly to the Commission for acceptance, so that it may be implemented on December 1, 2003. The Parties understand that a hearing to present the Settlement Stipulation is scheduled for September 23, 2003, and each Party shall make available to answer questions a witness or witnesses in support of this Settlement Stipulation. The 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 Parties agree the remaining procedural schedule in the docket may be suspended, and will jointly request that the Commission so order.

14           The parties agree to stipulate into evidence the testimony and exhibits marked at the September 19, 2003, prehearing conference in this docket.

15           If the Commission rejects all or any material portion of this Settlement Stipulation, or adds additional material conditions, each 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 Party exercises its right of withdrawal, this Settlement Stipulation shall be void and of no effect, and the Parties will support a joint motion to reinstate an expedited procedural schedule for those dates specifically suspended by the Commission pursuant to the above request. No Party shall seek to revise, alter or amend the Commission's Order without concurrence of all Parties.

D.     No Precedent:

16           The Parties enter into this Settlement Stipulation to avoid further expense, uncertainty, and delay. By executing this Settlement Stipulation, no 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 Party shall be deemed to have agreed that such a Settlement Stipulation is appropriate for resolving any issues in any other proceeding. This Stipulation does not affect the ability of the Staff of the Washington Utilities and Transportation Commission and the Public Counsel Section of the Attorney General's Office to contest any future filing of the Company other than with respect to the consensus mechanism described in Paragraph II.B.

E. Execution:

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

Entered into on September 23, 2003.

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

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

By: \_\_\_\_\_  
Robert W. Cromwell, Jr.  
Assistant Attorney General  
For the Public Counsel Section of the Attorney  
General's Office