

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION)	DOCKET NO. UE-030751
COMMISSION,)	
)	ORDER NO. 05
Complainant,)	
)	
v.)	ORDER APPROVING AND
)	ADOPTING SETTLEMENT
AVISTA CORPORATION, d/b/a)	STIPULATION
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

Synopsis: The Commission approves and adopts the proposed Settlement Stipulation among the Company, Commission Staff, and ICNU as a full resolution of the issues raised in this proceeding.

1 **Proceedings:** Docket No. UE-030751 is the first Commission review of the prudence of Avista’s power cost deferrals under the Energy Recovery Mechanism (ERM) approved as part of the Stipulation adopted by the Commission on June 18, 2002.¹ The period under review in this proceeding covers July 1, 2002 through December 31, 2002.

2 **Parties:** David Meyer, attorney, Spokane, WA, represents Avista Corporation, d/b/a Avista Utilities (Avista). Donald Trotter, Assistant Attorney General, represents the Commission’s regulatory staff (Commission Staff). Robert Cromwell, Assistant Attorney General, Seattle, WA, represents the Public Counsel Section, Office of Attorney General (Public Counsel). Matthew Perkins, attorney, Portland, OR, represents Industrial Customers of Northwest Utilities (ICNU). John O’Rourke, Program Director for the Citizens’ Utility Alliance of WA (CUA or Alliance), Spokane, WA, represents the Alliance. Don André,

¹ WUTC v. Avista Corporation, d/b/a Avista Utilities, Docket No. UE-011595, Fifth Supplemental Order Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation; Authorizing and Requiring Compliance Filing, (June 18, 2002) (hereinafter referred to as the UE-011595 Stipulation).

Assistant Director of Spokane Neighborhood Action Programs (SNAP), Spokane, WA, represents SNAP.

- 3 **Multiparty settlement:** On December 10, 2003, Avista, Commission Staff, and ICNU (signing parties) filed a Settlement Stipulation (hereinafter referred to as the ERM Stipulation) that would resolve all issues as between themselves in this docket. The ERM Stipulation would reduce the proposed deferral balance by \$3.25 million, for a final ERM deferral balance of \$15.17 million. Public Counsel, CUA, and SNAP oppose the ERM Stipulation.

MEMORANDUM

I. Background

- 4 This proceeding is called for under the Settlement Stipulation approved by the Commission in its Fifth Supplemental Order in Docket No. UE-011595, dated June 18, 2002 (hereinafter referred to as the UE-011595 Stipulation). The UE-011595 Stipulation provided that Avista would implement an Energy Recovery Mechanism (ERM) in its electric operations beginning July 1, 2002, and that the Commission would conduct a prudence review of the costs deferred under the ERM each year.
- 5 Through the ERM certain differences between actual power supply costs incurred by Avista Utilities and the costs included in base retail rates are deferred for future review and opportunity for recovery or rebate through retail rates. The changes in power supply costs tracked in the ERM relate primarily to changes in electric wholesale market prices (including short-term and long-term power contracts), changes in the level of hydroelectric and thermal generation, and changes in fuel costs for thermal plants.
- 6 Under the ERM, 90% of the difference between actual and base power supply costs outside of a "Company Band" (Band) will be deferred to the Energy Cost Deferral Balance. The Company will absorb or benefit from the remaining 10%, positive or negative. The Band will be a symmetrical band of plus or minus \$9 million (WA jurisdictional share) on a calendar-year basis. Since only one-half of one year is under review in the present case, the Band is prorated for July through December 2002 resulting in a Washington jurisdictional Band of \$4.5 million for the partial year.

7 The UE-011595 Stipulation requires that the Company submit monthly reports to the Commission and the Parties which include the monthly ERM accounting journal together with backup work papers. The UE-011595 Stipulation also requires the Company to make an annual filing on or before April 1st of each year to provide opportunity for the Commission and interested parties to review the prudence of and audit the ERM deferral entries for the prior calendar year. The UE-011595 Stipulation contemplated a 90-day review period ending June 30th of each year, and provides that the 90-day review period may be extended by agreement of the parties participating in the review, or by Commission order.

II. Procedural History

8 On March 28, 2003, Avista submitted its first annual filing for review of the amounts deferred under the ERM from July 1, 2002, to December 31, 2002. The filing consisted of a two-page letter accompanied by two attachments. The first of these provided a summary of the costs Avista deferred each month from July 1, 2002 to December 31, 2002, and the total ERM deferral balance, after application of the deadband, sharing percentages, and carrying charges. The second attachment summarized on an annual basis the data on Avista's net fuel expense.

9 According to Avista's filing, for this review period, 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 the remaining \$6,527,850 was absorbed by the Company. Carrying costs amounted to \$167,889 for the period, resulting in total deferrals of \$18,418,548.

10 On May 8, 2003, Commission Staff, Public Counsel, and ICNU filed a joint motion for a prehearing conference to address procedures regarding a prudence review of Avista's power cost deferrals. The motion alleged that Avista's filing was not sufficient to thoroughly examine the Company's deferred power costs within the 90-day period contemplated by the UE-011595 Stipulation. The motion requested that Avista be required to make a more comprehensive filing demonstrating the prudence of its power cost deferrals, and that procedures be established to permit a full review of the filing.

11 On May 23, 2003, the Commission convened a prehearing conference before Administrative Law Judge Theodora Mace. The parties discussed the efficiencies gained by Avista filing direct testimony and evidence supporting the prudence

of its transactions. In addition, the parties agreed upon a procedural schedule in the event the Commission ordered Avista to make an evidentiary filing in this case. On May 27, 2003, the Commission entered a prehearing conference order that required Avista to make an evidentiary filing justifying the prudence of its deferrals, adopted the parties' agreed procedural schedule with hearings scheduled October 15-17, 2003, and extended the 90-day review period until the proceedings are completed.²

- 12 Pursuant to the schedule adopted by the Commission, Avista submitted pre-filed direct testimony on June 23, 2003. Commission Staff, ICNU, and Public Counsel/SNAP/CUA³, submitted pre-filed testimony and exhibits in response on August 25, 2003. Avista submitted prefiled rebuttal testimony on September 17, 2003.
- 13 On October 7, 2003, Public Counsel filed a Motion to Continue Hearing dates to allow its expert witness the opportunity to review additional data from Avista that may materially alter her testimony. No party objected to the continuance. The Commission granted Public Counsel's request and entered an order continuing the hearing to December 15-17, 2003.
- 14 On November 24, 2003, Public Counsel filed a Motion to Submit Supplemental Testimony because the review of the additional data from Avista materially altered the analysis of its expert. No party objected to the motion. The Commission granted the motion to file supplemental testimony by December 2, 2003, and afforded Avista the opportunity to file supplemental rebuttal testimony by December 8, 2003.
- 15 On December 10, 2003, Avista, Commission Staff, and ICNU filed a settlement stipulation that, if approved and adopted by the Commission, would resolve all the issues between those parties in this docket. Public Counsel, CUA, and SNAP did not join in the settlement stipulation.
- 16 On December 11, 2003, the Commission convened a prehearing conference before Administrative Law Judge Karen Caillé for purposes of marking exhibits and discussing a process for the settlement hearing. The parties agreed to the

² *WUTC v. Avista Corporation, d/b/a Avista Utilities, Docket UE -030751, Order No. 01, Prehearing Conference Order Establishing Schedule; Extending Review Period, May 27, 2003.*

³ On July 7, 2003, the Citizens' Utility Alliance of Washington (CUA) and Spokane Neighborhood Action Programs (SNAP) filed a joint petition to intervene, which the Commission granted.

following process for the settlement hearing. First, the parties agreed to stipulate into the record the pre-filed testimony and exhibits of the witnesses as well as the cross-examination exhibits proffered by Public Counsel. Second, the parties waived cross-examination of their respective witnesses for purposes of the settlement hearing only. Third, Public Counsel, SNAP, and CUA would orally present their objections to the ERM Settlement Stipulation before the Commission at the settlement hearing. *Tr. p. 9.* Public Counsel represented that it would object to the settlement in total. Public Counsel also represented that if the Commission accepted the settlement, that ruling would resolve the docket. Public Counsel stated that the three-step procedural process outlined above rests upon that principle. *Tr. pp. 10-11.* All exhibits were admitted into evidence as marked on the record without objection. *Tr. p. 20.*

- 17 On December 15, 2003, the Commission conducted a hearing on the proposed settlement before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Karen Caillé. The settling parties presented a panel of witnesses in support of the ERM Settlement Stipulation: Kelly Norwood testified on behalf of Avista; Alan Buckley testified on behalf of Commission Staff, and Donald Schoenbeck testified on behalf of ICNU. Public Counsel and Mr. O'Rourke orally presented their objections to the ERM Stipulation.

III. Settlement Stipulation.

- 18 The ERM Stipulation filed by Avista, ICNU, and Commission Staff would resolve all issues for the ERM review period from July 1, 2002 to December 31, 2002. In addition, Section III, paragraph E of the ERM Stipulation would resolve deferral issues related to the delay in commercial operation of the Coyote Springs II (CSII) generating plant through the period ending June 30, 2003. *Settlement Stipulation, Section III, par. E.* Public Counsel, CUA, and SNAP stated their objections to the ERM Stipulation during the settlement hearing. The ERM Stipulation is attached as Appendix A to this order.
- 19 Under the terms of the ERM Stipulation, 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 period July 1, 2002, to December 31, 2002. The ERM Stipulation apportions the \$3,246,000 reduction in the deferral balance into two categories: \$2,325,000 would be removed from the deferral balance and

written off by the Company in 2003⁴, and \$921,000 associated with the Enron contract buyout would be removed from the deferral account and recorded as a regulatory asset to reflect the agreement to amortize the Enron contract buyout costs over the original delivery period of the energy contract, 2004 to 2006. *Settlement Stipulation, Section III, par. B.*

- 20 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. *Settlement Stipulation, Section III, par. E.*
- 21 In that regard, Mssrs. Norwood and Schoenbeck, testifying for Avista and ICNU, respectively, explained at the settlement hearing that the CSII delay is a single issue, a twelve-month outage of the plant that continued through June 30, 2003. They noted that all of the events have occurred, and all the historical information related to the events is available through the monthly reports filed with the Commission. *Tr. p. 80.*
- 22 Mr. Schoenbeck also noted, and Mr. Buckley concurred, that the CSII issue resolved by the ERM stipulation is a very narrow issue, the variable costs associated with the 12-month delay. He testified that the issue of capital costs associated with CSII is not part of the settlement, and must be decided in a general rate case. Likewise, he pointed out that the settlement does not foreclose a challenge to all other spot market purchases that occurred during the period of January through June 2003. *Tr. p. 81.*
- 23 The ERM Stipulation addresses the documentation that the Company must provide in future ERM filings, including Avista's agreement to file testimony justifying the prudence of any deferral balance that is included in an annual ERM deferral filing. *Settlement Stipulation, Section III, par. C.* During the settlement hearing, Mr. Norwood underscored the Company's willingness to provide all necessary documentation. *Tr. p. 78.* Mr. Buckley noted that the purpose of the language in the settlement related to future ERM documentation is to emphasize that the Company has the burden of proof to justify the costs it includes in the ERM. *Tr. pp. 78-79.*

⁴ The ERM Stipulation does not identify the source of this write-down. The rationale for writing off \$2.3M appears to be a classic "black box" settlement.

24 Finally, the Company agrees under the ERM Stipulation to continue to systematically document key factors relevant to its major wholesale transaction decisions. *Settlement Stipulation, Section III, par. D.* The ERM Stipulation lists some of the relevant documents that the Company will provide in future ERM annual review filings, and specifically states that the list in no way limits the information that the parties can request or review in future proceedings. During the settlement hearing, Mr. Norwood reiterated the Company's commitment to document and provide more information around the process for making wholesale transaction decisions. *Tr. pp. 83-85.*

IV. Objections to Settlement Stipulation

25 Public Counsel and CUA presented their objections to the ERM Stipulation during the settlement hearing.⁵ Public Counsel recommends rejection of the settlement in total, and reestablishment of the procedural schedule. CUA also requests that the Commission reject the proposed settlement and address the issue of inclusion of only ordinary, versus extraordinary, costs in ERM proceedings.

26 Public Counsel argues that the \$3.2M reduction in the deferral balance proposed by the ERM stipulation is insufficient given the range of issues identified by the parties to this proceeding and the recommended disallowances. Public Counsel contends that "[i]t is inappropriate for ratepayers to bear the burden of \$15.2M in additional power supply costs for this period since it places too many costs associated with extraordinary events on ratepayers as compared to shareholders." *Tr. p. 35, ll. 13-17.*

27 Public Counsel argues that there are three factual issues regarding the allocation of costs that are improperly resolved by the settlement: the Enron contract buyout, the CSII failures, and the disposition of high-priced natural gas contracts. Public Counsel also recommends rejection of the settlement based upon policy concerns regarding "the apparent lack of a coherent strategy for the sale of high-priced gas contracts, and the failure of the settlement to provide forward-looking guidance on what are extraordinary costs and what are ordinary costs." *Tr. pp. 34-35.*

⁵ Public Counsel, CUA, and SNAP sponsored the testimony of Catherine M. Elder. Ms. Elder's testimony is limited to the issue of natural gas contract sales. Ms. Elder recommended a \$1.1M reduction in the deferral balance because selling on different days could have increased revenue by that amount.

- 28 Public Counsel argues that the Enron contract buyout⁶ and the CSII delays⁷ are extraordinary costs and that the deferral amount proposed in the ERM stipulation is insufficient and unfairly burdens ratepayers. In addition, Public Counsel contends that it is inappropriate for the settlement to include the CSII costs for the period of January through June of 2003, because that review period is not yet before the Commission. *Tr. p. 38*. Public Counsel also maintains that the costs associated with the disposition of high-priced natural gas contracts have not been adequately justified. *Tr. p. 46*. Public Counsel argues that had CSII been available, its more efficient heat rate would have resulted in \$12.5 million in cost savings.⁸ *Id.*
- 29 Public Counsel contends that the settlement also fails to resolve two important policy issues: Avista's lack of a coherent strategy to minimize costs associated with the disposition of the high-priced gas contracts, and differentiation between ordinary and extraordinary costs. *Tr. p. 55*. According to Public Counsel, since this is the first of a series of ERM reviews, the Commission should make these policy decisions now to provide guidance and direction for the following reviews. *Tr. pp. 62-63*.
- 30 CUA argues that the settlement leaves unanswered what belongs in the ERM because it does not address the issue of ordinary versus extraordinary costs. *Tr. p. 65*. CUA contends that the order establishing the ERM process specifically allowed for only ordinary costs to be included in the ERM. *Id.*

V. Discussion and Decision

- 31 The matter before us requires the Commission to determine whether the proposed ERM stipulation is lawful, the settlement terms are supported by an appropriate record, and the result is consistent with the public interest. *WAC 480-07-750*. We resolve this question by reviewing the ERM stipulation, the pleadings that form the record to date, the Fifth Supplemental Order in Docket No. UE-011595, and the presentations of the parties at the settlement hearing.

⁶ Public Counsel agrees with the accounting treatment of the Enron contract buyout that would amortize the costs over the delivery period of the contract. *Tr. pp.35-36*.

⁷ Ms. Elder's testimony does not address the prudence of delays associated with the availability of CSII. She does include analysis of Avista's net power supply expenses had CSII been available during the review period, in the event the Commission concluded the delays were a result of imprudent decisions. She recommended a disallowance of \$12.5 million. *Ex.TC-33, pp.19-23; Tr. 39*.

⁸ See footnote 7.

32 We find that the factual issues raised by Public Counsel received fair treatment in the ERM stipulation and their resolution in the stipulation is supported by the record as being in the public interest. Likewise, we find Public Counsel's and CUA's criticism of the settlement's failure to address certain policy issues unpersuasive. We address each of these parties' objections to the ERM stipulation below.

A. Enron Contract Buyout

33 Public Counsel argues that the Enron contract buyout "should clearly be viewed as an extraordinary cost that requires specific justification by Avista in an annual ERM filing to evaluate first whether [the] action was prudent, and second, whether recovery through the ERM is appropriate." *Tr. p. 36*. Ms. Elder, testifying on behalf of Public Counsel, CUA, and SNAP, does not address the prudence of the Enron contract buyout or whether recovery through the ERM is appropriate. In contrast, the testimony of Commission Staff and Avista supports a finding of prudence for those costs proposed to be capitalized and amortized in the ERM stipulation.⁹

34 *Commission Decision*. We find that the information of record supports the prudence of the decision to buy out the Enron contract and also supports the recovery of the buyout costs as proposed in the ERM stipulation.

B. Delay of Coyote Springs II

35 Public Counsel contends that the delays associated with CSII are extraordinary and require specific justification by Avista to evaluate the prudence of the actions and whether recovery through the ERM is appropriate. *Tr. p. 37*. While Ms. Elder does not address the prudence of the series of decisions related to the delay of CSII, Public Counsel raises the issue for the Commission's determination, and offers Ms. Elder's analysis of Avista's net power supply expenses for our consideration should we determine the delay to be imprudent.¹⁰

36 Public Counsel also objects to the settlement's proposed resolution of costs associated with CSII for the review period currently before the Commission and also for the 2003 review period. *Tr. p. 38*. Public Counsel argues that "the

⁹*Buckley, Ex. T56, p. 25.; Storro, Ex. T4, pp. 3-4*

¹⁰ *Tr. pp. 39, 45-49, Ex. TC33, pp. 19-23.*

settling parties purport to resolve costs associated with a review period not yet before you which would bind the Commission's subsequent review of this issue at that time." *Id.*

37 *Commission Decision.* The test of prudence is what would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision.¹¹ Applying that test to the record before us supports the prudence of the Company's decisions related to the delay of CSII¹² Likewise, we find that the ERM Stipulation fairly accounts for the costs of the CSII delay through June 30, 2003. Our review of the ERM stipulation and the record in this proceeding shows that the settlement's reduction in the ERM balance results in a figure close to the adjustment proposed by ICNU for the CSII delay, and greater than that proposed by Commission Staff.¹³ Moreover, during the hearing on the settlement we discussed the appropriateness of the resolution of costs through June 30, 2003, with Public Counsel and the witness panel.¹⁴ We are satisfied that the ERM stipulation's treatment of these costs results in a fair and efficient resolution of the issue. An important factor is the common set of facts bearing on both time periods (i.e., before and after January 1, 2003) raised by Public Counsel.

C. Natural Gas Contract Sales

38 Public Counsel argues that "the costs associated with the disposition of the high priced natural gas contracts. . . have not been adequately justified." *Tr. p. 46.* Public Counsel/CUA/SNAP jointly challenge Avista's disposition of its natural gas contracts. Ms. Elder recommended a \$1.1 million downward adjustment to the ERM balance. Her analysis compared Avista's actual results to the potential results had Avista sold the natural gas on other days, and determined that selling on different days could have increased revenue by \$1.1 million.¹⁵

39 *Commission Decision.* The record before us establishes that Avista adequately managed the fixed-priced gas contracts for the review period. Avista reduced power supply costs by \$4.4 million on a system basis. Exhibit 8 provides a

¹¹ *WUTC v. Cascade Natural Gas Corporation, Docket UG-941408, Third Supplemental Order (October 1995).*

¹² *Carlberg Ex. T26, pp.3-12; See Carlberg Ex. T26, Ex.27, and Ex. C28.*

¹³ *See Schoenbeck Ex. TC49; pp. 12-13, Ex. 54; Buckley Ex. T56 pp.57-60.*

¹⁴ *Tr. pp. 40-42; 79-80*

¹⁵ *Elder Ex. TC35.*

summary of the 23 transactions that resulted in these savings. Mr. Storro's testimony explains the decision-making process related to wholesale purchases and sales of electricity and natural gas.¹⁶ We find Ms. Elder's hindsight analysis inappropriate. To propose an adjustment based on what is known now versus what was known at the time, is inconsistent with the Commission's past findings that the decisions and the prudence of costs associated with those decisions should be based on the information that was known at the time.

D. Policy Issues

- 40 Public Counsel faults the ERM Stipulation because it fails to resolve two policy issues raised in testimony in this proceeding. Specifically, Public Counsel argues that the settlement should address Avista's lack of a strategy for the sale of high-priced gas contracts, and the differentiation between ordinary and extraordinary variations in power supply expenses. CUA joins in objection to the latter of these issues. Although Public Counsel and CUA contend that it is important to have a resolution on these issues to inform future ERM proceedings, they offer no reasonable solutions. *Tr. pp. 54-55.*
- 41 **Strategy for gas contracts.** Public Counsel contends that "this Commission is in the position to provide Avista guidance regarding its treatment of these out-of-market gas contracts." *Tr. p. 56.* Public Counsel criticizes Avista's daily decision strategy and suggests that the Commission recommend a more comprehensive strategy. *Id.* In addition, Public Counsel suggests that "given the amount of ratepayer money at issue, the company was obligated to more carefully document its decisions including its decisions to take no action and that it should have a strategy for mitigating costs which can be documented." *Tr. p. 60.*
- 42 *Commission Decision.* We do not see the urgency for a policy decision on this issue. The ERM stipulation addresses the procedures associated with wholesale transactions and lists a number of factors that the Company considers in making its decisions. *Stipulation at Section III. D., pp. 6-7.* The Company therein affirms its recognition of the "important strategic goal of minimizing, as much as possible, net costs to customer from long positions, to the extent that they are out of market," and agrees to continue to systematically document key factors relevant to its major wholesale transaction decisions. *Id at p. 7.*

¹⁶ See *Storro Exs. T4, T5, and T6.*

- 43 **Ordinary vs. Extraordinary Expenses.** Public Counsel and CUA object to the ERM Stipulation's failure to define what constitutes an ordinary as opposed to an extraordinary variation in power supply expenses. Both Public Counsel and CUA cite our Fifth Supplemental Order in Docket UE-011595 as holding that the ERM is only for the recovery of ordinary variations, not extraordinary variations in power costs. *Tr.* 62-65.
- 44 *Commission Decision.* As Commission Staff pointed out at the hearing on the ERM stipulation, the Fifth Supplemental Order did not preclude the Company from asking for extraordinary costs to be included in the ERM.¹⁷ The order required the Company to identify the extraordinary costs and prove that it is entitled to recovery. And that is what occurred in this proceeding. The Company identified certain unique items, parties asked for more information on those items, and ultimately the Company submitted testimony and exhibits in support of recovery.
- 45 A regulated utility deserves the opportunity to recover its prudently incurred costs of providing service. The fact that a cost is extraordinary does not, in and of itself, suggest that a disallowance of such costs is appropriate. If there is a showing that the extraordinary costs were not prudently incurred, or if there are other reasons that the costs not be borne by ratepayers, then a disallowance of all or a portion of the costs is appropriate.
- 46 In these ERM reviews, we do not consider it necessary or efficient to separately review, by separate docket, each and every item deemed an extraordinary cost. The consideration of supported extraordinary costs may be appropriate through the ERM process. Conversely, it may be that on occasion an extraordinary item may require separate review. This question will be considered by the Commission on a case-by-case basis. In the present review, we are not persuaded that a separately docketed review of these costs is necessary or appropriate.
- 47 We do not find it necessary or even advisable at this time to define what constitutes ordinary versus extraordinary variations in power supply expenses. We are satisfied with the process that occurred in this docket and note that the

¹⁷ *WUTC v. Avista Corporation, d/b/a Avista Utilities, Docket No. UE-011595, Fifth Supplemental Order Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation; Authorizing and Requiring Compliance Filing, (June 18, 2002), Par. 38 and 39.*

process for future ERM proceedings is memorialized in the ERM stipulation.
Stipulation at III. C. pp. 5-6.

48 Based on the record before us, we find that the issues raised in this first ERM proceeding are adequately addressed and resolved by the ERM stipulation. Under the circumstances, we are satisfied that the proposed ERM stipulation is fair and consistent with the public interest, and should be approved and adopted as a full resolution of the issues pending in Docket No. UE-030751.

FINDINGS OF FACT

49 Having discussed above all matters material to our decision, and having stated our general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

50 (1) The Washington Utilities and Transportation 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 electric companies.

51 (2) Avista is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. Avista is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

52 (3) Avista made its first annual filing for review of ERM deferrals on March 28, 2003, as called for by the settlement stipulation approved and adopted by the Commission in its Fifth Supplemental Order in Docket No. UE-011595.

53 (4) On December 10, 2003, Avista, Commission Staff and ICNU (signing parties) filed a Settlement Stipulation that resolves all issues as between themselves in this docket.

54 (5) Public Counsel, CUA, and SNAP oppose the Settlement Stipulation. Public Counsel and CUA stated their objections to the Settlement

Stipulation during a hearing on the proposed settlement on December 15, 2003.

CONCLUSIONS OF LAW

- 55 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- 56 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding. *Title 80 RCW.*
- 57 (2) The issues raised by Public Counsel and CUA in their objections to the Settlement Stipulation received fair treatment in the Settlement Stipulation and their resolution in the stipulation is supported by the record as being in the public interest.
- 58 (3) The Settlement Stipulation filed by the signing parties on December 10, 2003, which is attached to this Order as Appendix A, and incorporated by reference as if set forth in full in the body of this Order, should be approved and adopted by the Commission as a reasonable resolution of the issues presented. *WAC 480-07-730 through 750.*
- 59 (3) The Commission should retain jurisdiction over the subject matter and the Parties to this proceeding to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

- 60 THE COMMISSION ORDERS That the Settlement Stipulation filed by the signing parties on December 10, 2003, which is attached to this Order as Appendix A, and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted.
- 61 THE COMMISSION ORDERS FURTHER That it retains jurisdiction over the subject matter and the Parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 30th day of January 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission with respect to certain issues resolved. 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.