

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

WASHINGTON UTILITIES AND)	DOCKET NO. UG-041515
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER NO. 07
)	
v.)	
)	
AVISTA CORPORATION, d/b/a)	FINAL ORDER REJECTING
AVISTA UTILITIES,)	TARIFFS; AUTHORIZING
)	REFILING; CANCELLING
Respondent.)	HEARING
.....)	

1 **SYNOPSIS:** *The Commission approves, for permanent application, tariff revisions now in effect on a temporary basis. The order rejects tariff revisions originally filed in this docket seeking an increase of \$8.6 million, and directs the Company to file tariffs to continue in effect a lower temporary rate increase of \$5.77 million, consistent with a multiparty settlement agreement offered by Avista, Commission Staff, and the Northwest Industrial Gas Users. The settlement makes permanent a temporary rate increase, already in effect, of \$5.77 million in Avista’s gas-service revenue.*

2 **PROCEEDING.** Docket No. UG-041515 involves a filing on August 20, 2004, of Avista Corporation, d/b/a Avista Utilities (“Avista” in this order), of tariff revisions seeking an increase in its rates and charges for providing utility service in the State of Washington in the amount of \$8.6 million, or 6.2%.

3 The Commission convened a settlement presentation hearing at Olympia, Washington on October 22, 2004, pursuant to due and proper notice to all interested parties, before Chairwoman Marilyn Showalter, Commissioners Richard Hemstad and Patrick Oshie, and Administrative Law Judge C. Robert Wallis.

- 4 **APPEARANCES.** David Meyer, attorney, Spokane, Washington, represents respondent Avista Utilities. Ed Finklea, attorney, Portland, Oregon, appeared for the Northwest Industrial Gas Users (“NWIGU”). Chuck Eberdt, director, appeared for the Energy Project/The Opportunity Council. Robert Cromwell, Assistant Attorney General, Seattle, Washington, appeared on behalf of the Public Counsel section of the Attorney General Division. Gregory J. Trautman, Assistant Attorney General, Olympia, appeared for Commission Staff.
- 5 **SETTLEMENT.** Counsel for Commission Staff and the Company indicated at the initial prehearing conference on September 23, 2004, that those two parties had engaged in preliminary settlement discussions, and that they appeared close to an agreement in principle subject to completion of a Commission Staff audit of Company records related to the proposed increase. They indicated a desire that, if parties agreed, rates become effective on November 1, 2004, to be in effect for the 2004-2005 heating season. All parties indicated an open mind with regard to settlement, and all consented to a temporary hiatus in the procedural schedule to permit the parties to concentrate on resolving matters. The parties scheduled a settlement conference, which was held on October 5, 2004, with all parties attending.
- 6 The Commission convened a prehearing conference on October 11, 2004, for a progress report to the Commission on settlement discussions. At the conference, the parties announced a settlement in principle among three of the parties: the Company, the Commission Staff, and the Northwest Industrial Gas Users (NWIGU). The three parties agreed to a level of permanent rates to be implemented on November 1, 2004, or, in the event the rates were not allowed to become permanently effective then, the Company and Commission Staff agreed to temporary implementation of the proposed settlement rates on November 1,

2004, subject to refund to the extent that lower permanent rates were subsequently adopted.¹

7 No party opposed the proposed settlement; Public Counsel and The Energy Project stated that they had not engaged in a review sufficient to determine whether they would support or oppose the proposal. They strongly opposed *implementation* of the settlement, however, arguing that they had not had adequate time to review the proposal.

8 **HEARING.** The Commission convened a hearing on October 22, 2004, for presentation of the multi-party settlement. It received testimony from Kelly Norwood, on behalf of Avista; Ken Elgin, on behalf of Commission Staff, and Paula Pyron, on behalf of NWIGU. The witnesses were available for cross-examination by all parties.

9 **TESTIMONY SUPPORTING SETTLEMENT.** The witnesses described the settlement proposal and their reasons for reaching and supporting it. Commission Staff noted that, for purposes of settlement, the Company agreed to the rate of return believed appropriate by Commission staff, agreed with Staff to the level of *pro forma* adjustments; and agreed to forego certain adjustments to its results of operations. Ms. Pyron spoke in support of the settlement proposal, citing advantages in avoiding litigation and in the concessions agreed by the Company. The result is a transparent settlement in which the basis for the calculation of rates is clear.

10 **HEARING FOR PUBLIC TESTIMONY.** The Commission convened a hearing for public testimony at Spokane, Washington, on October 28, 2004. At the hearing, three witnesses appeared. The witnesses all opposed a rate increase; winter is a difficult time for retirees and low-income persons who are faced with increasing costs of heat and power, as well as other costs, with few opportunities

¹ NWIGU did not oppose temporary implementation of the settlement rate while the Commission reviewed its merits for permanent application.

for increased incomes. Mr. Eberdt also spoke to these issues at the settlement hearing. We understand and acknowledge the burdens of increased rates on lower-income and fixed-income persons and on the agencies that serve them. In a time of rising costs and reduced tax revenue, it is a concern to many caring people. It is essential that rates be no higher than necessary.

11 **POST-PRESENTATION ACTIONS.** Order No. 5 ruled that the Commission could not properly adopt the proposed settlement for “permanent” effect on November 1, 2004, over the opposition of parties² who did not receive a reasonable opportunity to inquire into or to oppose the proposal, if they choose to do so. The Commission refused to consider the settlement for approval on a permanent basis until all parties had a meaningful opportunity to participate by engaging in discovery, presenting testimony, cross-examining opponents’ testimony, and arguing the matter to the Commission.³ The Commission confirmed a schedule for the conclusion of the proceeding to which the parties had agreed during the settlement presentation.

12 **IMMEDIATE IMPLEMENTATION PENDING SETTLEMENT REVIEW.** The Commission in Order No. 5 on November 3, 2004, approved the proposed rates for immediate implementation pending review of the settlement, over the objections of Public Counsel and The Energy Project. Public Counsel sought interlocutory review of the order; the Commission entered Order No. 6 on November 2, 2004, modifying the order, in part, but rejecting arguments addressed to immediate implementation.

13 **WAIVER OF RIGHT TO OPPOSE.** Public Counsel and The Energy Project advised the Commission on December 22, 2004, and December 27, 2004,

² In this docket, all parties have a sufficient interest in the outcome that they possess the right to contest the proposed settlement.

³ *Fischer v. Public Service Commission of Missouri*, 645 S. W. 2d 39, 43 (1982). See also, *Popowsky v. Pennsylvania Public Utility Comm’n*, 805 A.2d 637, 643 (2002); *Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 555 N.E. 2d 693 (1989).

respectively, that they waived further rights to oppose the adoption on a permanent basis of the settlement proposal and the rates contained therein.

14 The parties made it clear that they did not support the proposal, but freely waived their right to mount further opposition against it.⁴ With no party asking for the opportunity to oppose the proposal, the Commission may now determine the appropriate procedure for further consideration of the proposal and, on concluding that process, act upon it.

15 **PROCEDURAL REQUIREMENTS.** Here, we find that the settlement presentation and public hearing provided adequate opportunity for the proponents of settlement to make a case for it and for the Commission to inquire into the proposal and receive public comment upon it. Therefore, we determine that no further process is required.

16 **MERITS OF THE PROPOSAL.** We find that the evidence is sufficient to determine that the settlement is consistent with the public interest and that the proposed rates are fair, just, and reasonable, as required by RCW 80.04.130.

17 We find that the evidence regarding the Company's results of operations demonstrates that a deficiency exists between its existing rates and the revenues required. The record therefore demonstrates that the proposed rates are required to satisfy the revenue deficiency, as set out in the table on the following page.

⁴ Public Counsel expressed concern that it had insufficient time to employ an adequate number of consultants and to inquire deeply into the proposal. However, he made no request for a continuance based on specific circumstances (See, *e.g.*, Order No. 6, footnote 9, page 9).

AVISTA UTILITIES

Adjustment Summary
Washington Gas-UG-041515
Twelve Months Ended December 31, 2003

		Washington Gas	
Column	Description	NOI	Rate Base
<u>STANDARD COMMISSION BASIS ADJUSTMENTS</u>			
b	Per Results Report	\$7,051	\$147,614
c	Deferred FIT Rate Base	0	(22,570)
d	Deferred Gain on Office Building	0	(246)
e	Gas Inventory	0	4,568
f	Weatherization and DSM Investment	0	2,275
g	Customer Advances	0	(14)
	Actual	7,051	131,627
h	Revenue Normalization & Gas Cost Adjust	1,273	0
i	Eliminate B & O Taxes	(78)	0
j	Property Tax	88	0
k	Uncollectible Expense	43	0
l	Regulatory Expense Adjustment	19	0
m	Injuries and Damages	10	0
n	FIT	(171)	0
o	Restate Debt Interest	(966)	0
p	Payroll Clearing	(61)	0
q	WUTC Staff Audit Adjustments	31	0
r	Eliminate A/R Expenses	81	0
s	Office Space Charges to Subs	4	0
t	Restate Excise/Franchise Taxes	677	0
u	Lease Expense Adjustment	(20)	0
v	Depreciation Correcting Adjustment	124	289
	Restated Total	\$8,105	\$131,916
1	Pro Forma Rate Base		\$131,916
2	Proposed Rate of Return		8.680%
3	Net Operating Income Requirement		\$11,450
4	Adjusted Net Operating Income		\$8,105
5	Net Operating Income Deficiency		\$3,345
6	Conversion Factor		0.6220703
7	Revenue Requirement		\$5,377
8	Total General Business Revenues		\$139,052
9	Percentage Revenue Increase		3.87%

18 **CONCLUSION.** In this decision, we have examined the support for the proposed rates. We conclude that the proposed settlement rates as filed with the Commission on October 15, 2004, should be permitted to become effective on a permanent basis, until changed pursuant to law. The temporary rates allowed in Order No. 5 were subject to refund if permanent rates were approved at a lower level than the temporary rates authorized. Because the rates we find to be appropriate are the same as those permitted on a temporary basis, no refund will be required

19 The tariff revisions suspended in the Commission's order of September 8, 2004, are rejected. To implement this decision, the Company should within fifteen days after the date of this order file permanent tariffs reflecting this decision with a stated effective date no earlier than three business days following the date of filing. Upon review demonstrating that the tariffs will continue existing rates on a permanent basis, the tariffs may be accepted by letter from the Executive Secretary. The tariffs, when accepted, will on their stated effective date or the date of acceptance, whichever is later, supersede the interim tariffs now in effect. The result will be a continuation of rates at their existing levels.

20 The Commission has set out above its detailed findings and conclusions based upon the evidence of record and the applicable law. Here it sets out a summary of those findings and conclusions. To the extent necessary, the following findings and conclusions incorporate the specific findings and conclusions, above.

FINDINGS AND CONCLUSIONS

21 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington and is vested with the authority to regulate the rates, rules, practices, and accounts of public service companies, including gas companies.

- 22 (2) Respondent Avista Corporation, doing business as Avista Utilities, is engaged in business as a gas company within the state of Washington as a public service company.
- 23 (3) On August 20, 2004, Avista Utilities filed proposed tariff changes to become effective on September 20, 2004. The proposal would increase the Company's rates and charges for natural gas service in the State of Washington by \$8.6 million per year, or 6.2%.
- 24 (4) Avista, NWIGU, and Commission Staff filed a multi-party settlement agreement on October 15, 2004, including proposed tariffs that would implement a rate increase of \$5.77 million annually, or 3.87%, that the settling parties asked the Commission to approve for effect on November 1, 2004. The Commission allowed the proposed rates to become effective on a temporary basis, subject to refund, on November 1, 2004, pending a review of their fairness, justness, and reasonableness for application on a permanent basis. Parties not joining in the proposed settlement waived objections to Commission adoption of the proposed settlement.
- 25 (5) The proposed settlement rates are lower than the filed rates that the Commission suspended.
- 26 (6) The Company's results of operations and rate base for settlement purposes are set out in Table I in the text of this Order. The proposed calculation is supported by the credible testimony of witnesses Kelly Norwood and Ken Elgin.
- 27 (7) Based on the financial results presented in Table 1, the Company has a revenue deficiency of \$5.377 million per year. The tariffs filed with the proposed settlement agreement will produce additional revenue for the company of \$5.377 million per year.

- 28 (8) Public Counsel and The Energy Project on December 22 and 27, 2004,
respectively, waived all rights they possessed as parties to oppose the
adoption of the proposed multi-party settlement agreement and the rates
proposed therein.
- 29 (9) The proposed settlement is consistent with the public interest and the
rates proposed therein are fair, just, and reasonable.

CONCLUSIONS OF LAW

- 30 (1) The Commission has jurisdiction over the subject matter of this
proceeding and the parties of record herein.
- 31 (2) The tariffs suspended in this docket on September 8, 2004, are not fair,
just, or reasonable and should be rejected by the Commission.
- 32 (3) The rates proposed in the settlement agreement, which are now in effect
on a temporary basis, are fair, just, and reasonable. The Company should
be allowed to file tariffs stating rates at the level identified in the
settlement agreement, to continue uninterrupted the rates now effective
on a temporary basis.

ORDER

33 THE COMMISSION ORDERS That:

- 34 (1) The Commission rejects the tariffs filed in this docket on August 20, 2004.

- 35 (2) Avista must within fifteen days after the date of this order file tariffs to implement on a permanent basis the rates now effective, pursuant to the procedures set out above in this order at paragraph 19.

DATED at Olympia, Washington and effective this 4th day of January 2005.

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. 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 or RCW 81.04.200 and WAC 480-07-870.