

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES

Respondent.

DOCKETS UE-220053, UG-220054,
and UE-210854 (*Consolidated*)

PUBLIC COUNSEL’S PETITION
FOR RECONSIDERATION OF
ORDER 10/04

I. INTRODUCTION

1 In accordance with WAC 480-07-850, the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) respectfully petitions the Washington Utilities and Transportation Commission (WUTC or Commission) to reconsider two aspects of its ruling in Final Order 10/04 regarding Public Counsel’s opposition to the results-focused revenue requirement terms of the Full Multiparty Settlement Stipulation (Settlement)¹ as follows:

- 1) That for a results-focused settlement, Public Counsel’s approach of referencing the initial filing in “recommending adjustments to a results-only revenue requirement makes it difficult, if not impossible, for the Commission to effectuate any of Public Counsel’s positions” and “cannot serve as an appropriate basis to decrement the Settlement’s revenue requirement;” and

¹ Full Multiparty Settlement Stipulation (filed on June 28, 2022).

2) That in order to decrement results-focused revenue requirement terms in the settlement the Commission must “determine which, if any, of Public Counsel’s positions were already adopted or considered in negotiations of the Settling Parties when arriving at the agreed revenue requirement.”²

2

First, while Public Counsel presented adjustments for individual items in the revenue requirement from Avista’s initial filing, Public Counsel did so for the purpose of calculating a reasonable *overall* revenue requirement recommendation to compare to the amount stated in the Settlement Agreement. Given the “results-focused” nature of the Settlement, the terms and associated testimony lacked detailed support for the proposed revenue requirement. Public Counsel’s itemized adjustments were also offered to show that support was also lacking in the initial filing, in particular in the business case documents, for the increases proposed in the Settlement.³ If Public Counsel had not looked to information and details in Avista’s initial filing, Public Counsel would have had no way to offer evidence to support a total revenue requirement recommendation to compare to the Settlement’s revenue requirement, and would have no way to present evidence-based arguments that the Settlement was insufficiently supported.⁴ Public Counsel offered the individualized revenue item adjustments to calculate its overall revenue requirement recommendation to enable the Commission to judge the reasonableness of the revenue requirement in the Settlement, which the Commission recognizes was “results-focused

² *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053, UG-220054, UE-210854 (*consol.*) Order 10/04; Final Order ¶¶ 180, 181 (Dec. 12, 2022) (hereinafter Final Order 10/04).

³ Post-Hr’g Br. of Public Counsel, ¶¶ 28–30, 106 (filed Oct 21, 2022) (hereinafter Brief); *see also* Direct Testimony of Sebastian Coppola, Exh. SC-21; Elizabeth M. Andrews, Exh. EMA-21X.

⁴ *See* WAC 480-07-740(3)(a); WAC 480-07-740(3)(c).

and provide[d] no detail as to which adjustments may have been negotiated by the Settling Parties to reach the resulting agreements.”⁵ It is unclear in Final Order 10/04 why basing an overall revenue requirement recommendation on individual revenue items would limit how the Commission exercises its discretion under WAC 480-07-750(2) in decrementing revenue requirement.

3 Second, Public Counsel requests that the Commission reconsider the Settlement’s revenue requirement in comparison to Public Counsel’s overall revenue requirement recommendation, which was calculated by totaling the individualized adjustments. The individualized adjustments, were calculated solely for the purpose of reaching the total revenue requirement recommendation and demonstrating insufficient evidentiary support for the results-focused increase in the Settlement as required by WAC 480-07-740(3)(a).⁶ The Commission’s ruling in Final Order 10/04 appears to deny Public Counsel the right to offer evidence in opposition to a settlement contrary to WAC 480-07-740(c), because there would be no other way to oppose the results-focused revenue requirement in the Settlement Agreement with sufficient evidentiary support. Public Counsel requests that the Commission reconsider and clarify how its ruling that Public Counsel’s “presentation cannot serve as an appropriate basis to decrement the Settlement’s revenue requirement” in a manner such that results-focused revenue requirement agreements will not effectively block or prevent parties in future cases from exercising their rights to oppose settlements under WAC 480-07-740(3)(c).

⁵ Final Order 10/04, ¶ 180.

⁶ Coppola, Exh. SC-1CT at 8:17–9:11.

II. BACKGROUND

4 In testimony filed on July 29, 2022, Public Counsel witness Sebastian Coppola addressed the results-focused nature of the Settlement Agreement terms for revenue requirement. Coppola explained that because the settlement is results-focused, it did not present a full accounting and disclosure of important cost and revenue issues within Avista’s rate case filing.⁷ Because the Settlement only identified an overall rate of return of 7.03 percent as a component of the revenue requirement but specified no other components or rate base amounts, Coppola had only the information in the Company’s initial filing, which identified specific cost items, to provide some sort of context to analyze and evaluate the proposed revenue requirement increase terms in the settlement.⁸

5 Public Counsel discussed this approach again in its Initial Post-Hearing Brief, explaining that Public Counsel did so “to enable the Commission to determine reasonable rate increases for RY1 and RY2.”⁹ Public Counsel argued that various revenue requirement items in the initial request lacked record evidence to specify or explain what new or additional activities or projects could justify rate increases and merely described ongoing programs without specifying why additional revenue was required to continue these projects or programs.¹⁰ Public Counsel presented these arguments while referencing the Commission’s requirements that the utility

⁷ *Id.*

⁸ *Id.*

⁹ Brief, ¶ 28.

¹⁰ *Id.* ¶¶ 29, 30–79; *see also* Coppola, Exh. SC-21; Andrews, Exh. EMA-22X (Avista’s Response with Attachment A to Public Counsel’s Data Request No. 340).

bears the burden of proof in a rate case, and that settlement agreements must be supported by the record and result in rates that are fair, just, and reasonable.¹¹

6 Coppola provides a summary table of Public Counsel’s overall revenue requirement adjustments for rate years one and two for electric and gas in Table one on page 11 of his testimony. Then, starting on page 16 of his testimony, Coppola provides a comparison of the revenue reductions derived from the rates of return (ROR) requested in the initial filing (7.31 percent), recommended by Public Counsel (6.46 percent), and proposed in the settlement (7.03 percent). These comparisons enable the Commission to evaluate Public Counsel’s recommendations against all of the ROR percentages, and identify the portions of the proposed revenue requirements attributable to the ROR.

7 Final Order 10/04 addresses Public Counsel’s revenue requirement arguments primarily in paragraphs 180 and 181. The Commission characterizes the Settling Parties’ revenue requirement agreements as “results-focused and provid[ing] no detail as to which adjustments may have been negotiated by the Settling Parties to reach the resulting agreements.” The Commission also states that:

Public Counsel’s strategy of recommending adjustments to a results-only revenue requirement makes it difficult, if not impossible, for the Commission to effectuate any of Public Counsel’s positions because we cannot determine which, if any, of Public Counsel’s positions were already adopted or considered in the negotiations of the Settling Parties when arriving at the agreed revenue requirement. Thus, contrary to Public Counsel’s arguments, we find its presentation cannot serve as an appropriate basis to decrement the Settlement’s revenue requirement. We decline to break the results-only terms of the Settlement’s revenue requirement in order to specify or enumerate any of the adjustments proposed by Public Counsel that might

¹¹ Brief, ¶¶ 28–30, 106; WAC 480-07-540; WAC 480-07-740(3).

be considered in a fully litigated proceeding or a settlement that enumerated specific adjustments.¹²

8 The Commission also stated that “[i]n evaluating settlements, we consider the entire record” and that “the record for our consideration includes all initial testimony and exhibits, the Settlement and supporting testimony and exhibits, and the testimony and exhibits opposing the Settlement.”¹³ The Commission states that Avista’s initial filing provides “essential context for [the Commission’s] evaluation of what balance the Settling Parties have struck between their revenue requirement agreements and the Settlement’s other non-revenue terms.” Yet, the Commission then states:

Avista no longer supports the revenue requirement proposed in its initial filing. That filing does not provide insight into the formulation of the Settling Parties’ results-only revenue requirement agreements. Likewise Public Counsel’s arguments against Avista’s initial filing provide no insight into what reductions to the results-only revenue requirement agreements could be justified. In consideration of all the record evidence, we are persuaded that the many terms in the Settlement are fair, just, and reasonable and represent an appropriately negotiated balance between the needs of the company and the needs of its customers.¹⁴

III. PETITION FOR RECONSIDERATION

9 As set forth in WAC 480-07-850(1)(b), the Commission will grant a petition for reconsideration of a final order if the petition: 1) identifies each portion of the challenged order the party contends is erroneous or incomplete; 2) cites each portion of the record, statute,

¹² Final Order 10/04, ¶¶ 175, 180.

¹³ *Id.* ¶ 174.

¹⁴ *Id.* ¶ 181.

Commission rule, or other law on which the petition relies; and 3) presents a brief argument in support of the requested relief.¹⁵ If the Commission grants the petition, it may “modify its prior order or take other appropriate action.”¹⁶

10 Where the Commission states in its Order 10/04 that the granular calculations Public Counsel presented “cannot serve as an appropriate basis to decrement the Settlement’s revenue requirement,” in a results-focused revenue requirement agreement, the Commission prevents Public Counsel in this case, and any party opposing a settlement in the future, from exercising rights to oppose a settlement under WAC 480-07-740(c), particularly if it includes a results-focused revenue requirement. Public Counsel requests that the Commission reconsider this aspect of the revenue requirement ruling in Final Order 10/04 to avoid contradiction with the Commission’s rules at WAC 480-07-740(c).

11 As Public Counsel explains in its brief, the adjustments were calculated based on the initial request numbers because the settlement term on revenue requirement “does not provide a full accounting and disclosure of costs and revenue, and identifies only an overall rate of return of 7.03 percent as a component of the revenue requirement.”¹⁷ If Public Counsel was not able to look to evidence in the initial filing to make these arguments and to calculate adjustment in this way, there was no other way to challenge the results-focused revenue terms in the settlement in a reasoned manner and provide substantive evidence to support the challenge.

12 The Commission ruled that Public Counsel’s recommended revenue requirement

¹⁵ WAC 480-07-850(1)(b).

¹⁶ WAC 480-07-850(3).

¹⁷ Brief, ¶ 28.

calculations, “made it difficult, if not impossible, for the Commission to effectuate any of Public Counsel’s positions because we cannot determine which if any of Public Counsel’s position were already adopted or considered in the negotiations of the settling parties when arriving at the agreed revenue requirement.”¹⁸ The Commission rules, “contrary to Public Counsel’s arguments, we find its presentation cannot serve as an appropriate basis to decrement the settlement’s revenue requirement.”¹⁹

13 However, it is unclear why or how basing an overall revenue requirement recommendation on individual revenue items would necessarily require the Commission to decrement the revenue requirement in the Settlement in the same way. Under WAC 480-07-750(2) the Commission has broad discretion regarding how it may “approve the settlement, with or without conditions, or may reject it.” Public Counsel requests that the Commission also reconsider this aspect of Final Order 10/04. The Commission has discretion under WAC 480-07-750(2) to compare revenue requirement terms in a results-focused settlement to opposing party recommendations regardless of the portions attributable to ROR or other revenue requirement components.

14 Public Counsel requests that the Commission clarify how the standards for settlement agreements should be applied to “results-only” settlements going forward where the initial filing remains in the record as evidence. Without the ability to reference the initial filing that remains on record along with a proposed results-focused settlement, it is unclear how an opposing party

¹⁸ Final Order 10/04, ¶ 180.

¹⁹ *Id.*

may present a reasoned analysis rooted in the evidentiary record to calculate a reasonable revenue requirement recommendation. Due to the results-focused nature of the Settlement Agreement, Public Counsel was left to calculate a revenue requirement recommendation by considering individual revenue items in the initial filing to explain how Public Counsel arrived at a significantly lower revenue requirement.²⁰ If a results-focused revenue requirement agreement “provides no detail as to which adjustments may have been negotiated by the Settling Parties to reach the resulting agreements,” it should be acceptable for opposing parties to present evidence and a reasoned basis for an alternative revenue requirement, even though the agreed upon amount provided no detail itself on how the reduction was made. Otherwise, the Commission has effectively made it impossible for parties opposed to a settlement to fulfill their rights under WAC 480-07-740(3)(c).

15 If Public Counsel were to have proceeded as the Commission ruling recommends, it would lead to an absurd result. Public Counsel would have no basis to make any arguments founded in facts in the record to demonstrate whether or not a revenue requirement in a “results-focused” settlement agreement is reasonable. The Commission’s rules require parties who oppose settlements to “present evidence in support of their opposition to the settlement” and to present evidence “in support of their position on how the commission should resolve the disputed issues in the proceeding.”²¹ If Public Counsel, or other future parties who oppose results-focused settlements, are unable to point to evidence in the initial filing to provide context omitted by the

²⁰ Brief, ¶¶ 27–30, 106.

²¹ WAC 480-07-740(3)(c)(ii), (iv).

settlement and supporting joint testimony, there would be no other way to analyze the settlement where there is, as the Commission stated “no detail as to which adjustments may have been negotiated by the Settling Parties to reach the resulting agreements.”²² The Commission’s rationale would seem to prefer that Public Counsel offer an arbitrary total revenue requirement without detailed evidentiary support.

16 At the same time, the Commission’s decision indicates that the settlement represented a fair balance, which necessarily references Avista’s initial filing as the starting point for comparison to the Settlement terms on revenue requirement. It is thus unclear what Public Counsel might offer in the situation of a results-focused revenue requirement agreement to make its arguments regarding whether that agreement is fair, just, reasonable, and sufficient.

17 The Commission’s statement that the initial filing “does not provide insight into the formulation of the Settling Parties’ results-only revenue requirement agreements” appears to contradict the Commission’s statement earlier in the same paragraph that the initial filing provides “essential context” to evaluate the balance struck by the Settling Parties between the revenue requirement terms and the other non-revenue terms.²³

18 The Commission’s determination in Order 10/04 thus appears to set a precedent for future results-focused settlements to be virtually uncontestable by opposing parties, which appears to contradict WAC 480-07-740(3)(c). In addition, the status of a settlement on revenue requirement as “results-focused” should not prevent the Commission’s authority and ability to

²² Final Order 10/04, ¶ 180.

²³ *Id.* ¶ 181.

decrement the revenue requirement where the proposed revenue requirement is excessive, unfair, and unjustified in the record.²⁴ It remains unclear how an opposing party could challenge in an effective way any results-focused revenue requirement agreement in future cases.

IV. CONCLUSION

19 For the reasons described above, Public Counsel respectfully requests that the Commission reconsider its ruling in Final Order 10/04 that Public Counsel’s approach in calculating a revenue requirement recommendation cannot serve as a basis for the Commission to evaluate the reasonableness of a results-focused settlement and determine a decrement under WAC 480-07-750(2). Public Counsel also requests that the Commission reconsider and clarify how Order 10/04 does not prevent opposing parties to exercise their rights pursuant to WAC 480-07-740(3)(a) and (c) in the situation of a “results-focused” settlement.

DATED this 22nd day of December 2022.

ROBERT W. FERGUSON
Attorney General

/s/ *Ann Paisner*
ANN PAISNER, WSBA No. 50202
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Ann.Paisner@ATG.WA.GOV

²⁴ See WAC 480-07-750(2).