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*) AVISTA CORPORATION'S RESPONSE TO PUBLIC COUNSEL'S PETITION FOR RECONSIDERATION

COMES NOW, Avista Corporation (hereinafter "Avista" or the "Company") and respectfully responds to Public Counsel's Petition For Reconsideration of Order 10/04 (hereinafter "Petition").[1]

I. INTRODUCTION

1 For reasons discussed below, Public Counsel, in its Petition, misapprehends what was decided in Order 10/04, and wrongly concludes that it was effectively denied the opportunity to meaningfully contest the approved Settlement Agreement. In doing so, Public Counsel ignored the procedural due process rights and safeguards that were afforded it and the full opportunity presented to it to provide a complete evidentiary record to buttress its position. In the end, Public Counsel's evidence and argument were simply not persuasive. In the words of the Commission,

[1] On December 30, 2022, the Commission issued its Notice inviting parties to respond to the Petition and setting a date by which it will act on the Petition (on or before February 1, 2023).

"Public Counsel's presentation is neither persuasive nor well-founded." (Order at ¶180)[2] It is the "end result" that matters, not the method by which rates are determined.[3]

II. PUBLIC COUNSEL WAS NOT DENIED THE RIGHT TO OFFER EVIDENCE IN OPPOSITION TO THE SETTLEMENT

2 In its Petition, Public Counsel contends that "[t]he 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." (Petition at ¶4) It goes on to conclude that the decision will "effectively block or prevent parties in future cases from exercising their rights to oppose settlement under WAC 480-07-740(3)(c)." (Ibid.) In the process, Public Counsel ignores the difference between presenting a full and complete record in support of its position (which it did), and ultimately persuading the Commission (which it did not).

3 Nowhere does Public Counsel assert that the Commission's own rules for addressing contested settlements were violated. Indeed, the provisions of WAC 480-07-740 governing contested settlements were assiduously followed: The Settling Parties supported the Settlement with Joint Testimony. Public Counsel submitted its case in opposition, consisting of 6 witnesses, and 104 exhibits. This was followed by the Reply Testimony of the Settling Parties, consisting of 8 witnesses and 6 exhibits. This was all on top of the initial filing of the Company, consisting of 20 witnesses and 62 exhibits. All in all, the transcript ran to 444 pages.

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[2] Indeed, adoption of Public Counsel's proposals would result in a return on equity (ROE) of 6.5% in 2023 and 5.9% in 2024, or 290-350 basis points lower than the currently authorized 9.4% ROE for electric operations. For natural gas, the corresponding ROEs produced would be 7.6% and 7.3%. Clearly, Public Counsel's position was a non-starter. (Exh. PDE-2T, 7:6-10)

[3] WUTC v. Avista Corp., Docket No. UE-050482/UG-050483, Order No. 05 (December 21, 2005).

4 Public Counsel was provided with an evidentiary hearing, with unfettered discretion to examine witnesses, followed by the opportunity to submit written briefs. This all contributed to a complete, extensive, and robust record on which to make a decision. Public Counsel can point to no denial of a full and fair opportunity to present its case. (If that were true, this Petition would present an entirely different situation.)

5 Not once does Public Counsel even mention the fact that the Company submitted extensive, point-by-point rebuttal of every revenue requirement issue raised by Public Counsel. It conveniently ignores the fact that all the issues were "fully joined" and presented to the Commission. In this manner, the Commission was allowed to assess the overall strength of Public Counsel's case in light of the Settlement's outcome.[4]

6 Instead, Public Counsel chooses to focus only on the "initial filing" of the Company, arguing that "it was insufficient, in and of itself, to justify the rate increase." (Petition at ¶5) As such, it ignores all of the record evidence, which persuaded the Commission that the "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." (Order at ¶¶ 175, 180)

[4] The Commission observed that, "[t]aking into consideration our rejection of Public Counsel's cost of capital proposals, the revenue requirement proposed by Public Counsel is similar to the agreed revenue requirement that it could be calculated by selecting and rejecting some, but not all, of Public Counsel's adjustments." (Order at ¶175) The revenue requirement summary presented in Table 7 of the Order (Order at ¶172), reveals that $23M of Public Counsel's reductions from Avista's initial filing results from its proposed (but rejected) ROR reduction. Another $12.1M of its recommended reduction in Rate Year 1 relates to its rejected EIM adjustment. Most of the remaining electric rate base revenue requirement reductions in Years 1 ($7.2M) and 2 ($8.7M) proposed by Public Counsel were based on a singular – and fully rebutted – assumption that 2023 and 2024 rate base escalation should be limited to only CPI levels of increase (versus reasonably projected). (See Avista Post-Hearing Brief, at pp. 23-27) Clearly, even a cursory examination of even a few of the larger (and questionable or outright rejected) components of Public Counsel's case demonstrates that the revenue requirement of the Settlement was within the "zone of reasonableness."

7 The Commission instead recognized that the Company's "initial filing" provided "essential context" for evaluating the Settlement; but that was not the end of the story: Rather, after the issues were "fully joined" through the contested settlement process, the Commission could further assess the overall reasonableness of the Settlement. Accordingly, Public Counsel's focus only on the initial filing of the Company is entirely misplaced.

III. THE COMMISSION COULD HAVE, BUT CHOSE NOT TO, FURTHER CONDITION OR REJECT THE SETTLEMENT IF IT WAS PERSUADED BY PUBLIC COUNSEL

8 The Commission obviously gave serious consideration to the arguments of all parties and exercised its right to "condition" the Settlement's approval in several ways.[5] In short, the Commission was not a "passive participant" in the process. It was actively engaged in evaluating the terms of the Settlement to assure that it was ultimately "in the public interest." Could it have also elected to "condition" the Settlement in any number of other ways, or reject it entirely, in light of all of the evidence? Of course it could.[6] But it chose not to do so, based on its assessment of the entire record and after considering Public Counsel's arguments. For example, it could have "conditioned" the Settlement as it did in this case, or even by adjusting the overall revenue requirement by removing the impact of a contested adjustment (e.g., Rate of Return), subject, of course, to all Settling Parties agreeing to such a further reduction (irrespective of how it might have been addressed in the "negotiated" Settlement). Or the Commission could have identified

[5] These "conditions" (all of which were accepted by the Settling Parties) related to the establishment of a Commission-led collaborative process for the distributional equity analysis (Order at ¶278); demonstration of the impact of funding through the IRA and IIJA on provisional capital projects (Order at ¶85); reporting on performance matters to the Commission, with opportunity for party comment (Order, ¶99); and demonstrational use of IRA and IIJA funding, if available, for low-income interests (Order, ¶112).

[6] WAC 480-07-750(2) provides three paths for Commission resolution of a contested settlement: (1) approve without conditions; (2) approve with conditions; or (3) reject it in its entirety. Here, the Commission chose the second path.

particular issues raised by Public Counsel as needing further review and discussion, either in this case or in the next filing, and direct the parties to reconvene to do so. Finally, of course, the Commission could have simply concluded that Public Counsel had raised too many issues that were not sufficiently addressed, and simply rejected the Settlement in its entirety. The Commission chose none of these paths; instead it evaluated the overall Settlement in light of all of the evidence and found that it produced rates that were "equitable, fair, just, reasonable, and sufficient." (Order at ¶182)

9 The Commission was understandably reluctant to "unpack" a carefully negotiated balanced Settlement, noting "the delicate balance struck between the Settling Parties in consideration of the revenue requirement and non-revenue related items." (Order at ¶173) But that does not mean that it could not have rejected the Settlement in its entirety, if it had substantial concerns based on the entire record.[7] That, of course, is the ultimate remedy.

10 The power to reject or otherwise "condition" a settlement are effective remedies or safeguards for Public Counsel or any other party contesting a Settlement. These remedies have been exercised by the Commission before. The Commission could condition or simply reject a settlement where sufficient concerns have been raised or where parties were otherwise denied a reasonable opportunity to participate in the settlement process.[8]

[7] There is yet another irony at work in this case. Public Counsel was the beneficiary of many of the provisions of the Settlement with which it agreed (performance measures, low-income concessions) all of which were part of the careful "balance" struck in the Settlement.

[8] In the instant case, Public Counsel makes no claim that it was denied the opportunity to fully participate in the settlement process.

IV. THE INTERESTS OF PUBLIC COUNSEL HAVE NOT BEEN PREJUDICED BY THE OUTCOME

11 As is customary with the approval of any "results-oriented" settlement, no party is foreclosed from later challenging particular items of rate base or expense. And this case is no exception. The Commission, in its Order, made that abundantly clear:

> By approving the proposed revenue requirement, the rate base approved in Avista's most recent rate case remains undisturbed and no determination relating to prudence or any party's proposed adjustments would be affected.

(Order at ¶174)[9] Accordingly, Public Counsel remains free to again contest these issues in a future proceeding. Indeed, the Commission reminded Public Counsel and others:

> We fully expect, encourage, and welcome Public Counsel's and other ratepayer representatives' engagement in the evaluating investments in the provisional capital review process during the MYRP reporting periods, in the Docket U-210590 performance-based ratemaking collaborative, as the regulation of Washington's investor-owned utilities continues to move towards more performance-based regulation as required by statute. (emphasis added). (Order at ¶182)

12 By way of further reassurance, the Commission reminded the parties that:

> . . . [W]e are not merely approving rates that will remain static without oversight of Avista's performance. We assure Public Counsel and Avista's customers that the regulation of Avista going forward will be quite the opposite. For all capital additions during the MYRP, Avista will annually file in these consolidated dockets support for the additions that will be reviewed by the parties and the Commission to determine if any refunds are due customers. (Ibid.)

13 Simply put, the approval of a results-oriented settlement will not deprive Public Counsel of the right to revisit arguments and secure refunds for customers if appropriate. They are not denied a remedy.

[9] See also, WUTC v. Avista Corp., Dkt. No(s). UE-190334, UG-190335, and UE-190222 (Order 09).

V. PUBLIC COUNSEL'S POSITION WOULD UPEND THE SETTLEMENT PROCESS GENERALLY, AND WOULD UNDERMINE THE OBJECTIVES OF THE RATE PLAN LEGISLATION

14 Public policy favors settlement of contested cases where appropriate. Settlements lead to administrative efficiency and ensure (by definition) that the settling parties have found common ground, subject to Commission approval. In the sphere of ratemaking, negotiations take into account manifold concessions, including economic, financial, equity and public policy. And that is why ratemaking is often characterized as "more art than science."

15 All parties, including Public Counsel, have seen the value of give-and-take in the past through the settlement process and have previously arrived at "results-driven" settlements. What Public Counsel now argues will leave the settlement process in shambles, with long-term ramifications for all.

16 Public Counsel essentially contends that the Commission must tear apart a carefully negotiated settlement and reach a separate determination on each and every item contested by a party.[10] This would make the settlement process unworkable, because any party could force a litigated determination of every contested issue, irrespective of a settlement on that issue by the other parties. This is also antithetical to the objectives of the Rate Plan legislation, which lays out a process for incorporating and reviewing changes in rate base over time and providing "cross-checks" in the process. This new regulatory regime, as discussed above, will enable any party to subsequently review capital additions and argue for refunds.

[10] Public Counsel argues that the Commission must "determine which, if any, of Public Counsel's positions were adopted or considered in negotiations of the Settling Parties when arriving at the agreed revenue requirement." Petition, at ¶1.

17 At the end of the day, Public Counsel's arguments lead to an absurd, non-sensical result that would impede the settlement process generally and call into question the very purpose of WAC 480-07-740, et. seq., dealing with "contested" settlements.

VI. LONG-STANDING TENETS OF RATEMAKING MUST BE HONORED

18 At the heart of all of this is the legal prescription that the "end result" of ratemaking must produce rates that are "just, reasonable, and sufficient" and that is enshrined in Hope and Bluefield and in RCW 80.28.020.[11] Commissions are given latitude to craft rates that fall within the "zone of reasonableness." It is "end result" that matters, not the method by which rates are determined.[12] This is particularly important, as of late, as many new considerations come into play, including equity and additional customer protections for disadvantaged communities. The Settlement has achieved that delicate balance, and Public Counsel should not be allowed to disturb it.

RESPECTFULLY SUBMITTED this 13th day of January, 2023.

/s/ David J. Meyer
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[11] FPC v. Hope Natural Gas Co, 320 U.S. 591 (1944); Bluefield Waterworks & Improvement Co. v. Public Serv. Comm'n, 262 U.S. 679 (1923); Duquesne Light Co. v. Barasch, 109 S.Ct. 609 (1989).
[12] WUTC v. Avista Corp., Docket No. UE-050482/UG-050483, Order No. 05 (December 21, 2005).