

**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)

STAFF’S RESPONSE TO MOTION
FOR RECONSIDERATION

I. INTRODUCTION

1 On December 12, 2022, the Commission issued Final Order 10/04 in these dockets.
On December 22, 2022, Public Counsel filed a motion for reconsideration of the final order.

II. RELIEF REQUESTED

2 Deny Public Counsel’s motion for reconsideration.

III. ARGUMENT

3 Public Counsel’s motion for reconsideration makes two requests. First, the motion requests reconsideration of statements made in the final order related to Public Counsel’s approach to opposing the settlement. Namely referencing, making adjustments to, and raising criticisms of, Avista’s initial filing.¹ Second, Public Counsel asks the Commission to reconsider another statement made in the order, which Public Counsel describes as follows:

“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

¹ Motion for Reconsideration at 1, ¶ 1 (Motion).

² Motion at 2, ¶ 1.

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Public Counsel goes on to state that these parts of the final order “... appears to deny Public Counsel the right to offer evidence in opposition to a settlement contrary to WAC 480-07-740(c)...”³ and that if the Final Order’s statements... are not revised, “there would be no other way to oppose the results-focused revenue requirement in the Settlement Agreement with sufficient evidentiary support.”⁴ Public Counsel therefore 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 Although Public Counsel’s motion focuses heavily on the reasoning in the final order, it does request reconsideration of the approval of the overall revenue requirement itself,⁶ and therefore is an appropriate request for reconsideration under Commission rules.⁷

A. Public Counsel Misreads the Commission’s Statements on Results-Only Settlements and the Insufficiency of Public Counsel’s Opposition to this Settlement in Particular

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The concerns raised in the motion to reconsider are based on a misinterpretation of the final order, which does not create a new, heightened evidentiary standard for “results-only” settlements. First, as a simple heuristic, consider the implausibility of the interpretation presented by the motion to reconsider. Public Counsel characterizes the final order as setting a standard of review that would make it virtually impossible to challenge results-only revenue requirement settlements, and in their words, “effectively block” parties

³ *Id.* at 3, ¶ 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 3, ¶ 3 (“...Public Counsel requests that the Commission reconsider the Settlement’s revenue requirement in comparison to Public Counsel’s overall revenue requirement recommendation...”).

⁷ Compare motion to reconsider with motion for clarification.

from opposing such settlements. If this reading of the final order were correct, it would be a radical (and completely inexplicable) shift in the Commission's review of proposed settlements. The motion's interpretation of the final order requires one to believe that the relevant passages signal that the Commission will effectively no longer review results-only revenue requirement settlements, a position that would be in clear contravention of the Commission's statutory duty. Prior to any analysis, this alone should cast serious doubt on whether the interpretation outlined in the motion to reconsider is correct.

B. There is no need to Clarify or Further Explain the Decision made by the Commission in Final Order 10/04 Because the Order does not set a new Standard for Reviewing Results-Only Settlements

6 When read as a whole, the relevant portions of Final Order do not support the interpretation presented in the motion to reconsider. Results-only settlements are not immune to challenge. They are in fact subject to the same process and evidentiary standards as all settlements the Commission considers.⁸ It is clear from the order that the Commission applied those traditional standards in this case.⁹ There is therefore no reason to reconsider or clarify the order.

7 Public Counsel characterizes the revenue requirement decision as preventing it from exercising its rights to oppose the results-only settlement.¹⁰ However, the motion does not point to any aspect of the decision (or previous Commission decisions within these dockets) which prevented it from exercising the rights enumerated under WAC 480-07-740(3)(c), which specifically grants the right to cross examine witnesses, present evidence, and present argument. Public Counsel was not prevented from doing any of these things, and Staff

⁸ See WAC 480-07-740 and WAC 480-07-750.

⁹ See Order at 63, ¶ 173.

¹⁰ Motion at 7, ¶ 10.

therefore understands Public Counsel’s argument to be that the order sets an unachievable standard, not that it was prevented from presenting evidence or argument in opposition to the settlement.

8 The relevant passages of the final order explain why Public Counsel’s opposition to the settlement was unpersuasive, and why the Commission approved the overall revenue requirement in the settlement. Part of that explanation, outlines what type of presentation would be persuasive when opposing a results-only revenue requirement settlement, but it does not set a new standard.

9 Public Counsel’s opposition was not persuasive because it ultimately failed to convince the Commission that the settlement’s overall revenue requirement was unreasonable, unjust, inequitable, or insufficient in light of all of the other information available to the Commission that supported the settlement. As the order makes clear,¹¹ a party can persuasively oppose a results-only settlement by presenting an alternate revenue requirement calculation that is fair, just, reasonable, equitable and sufficient, and also materially lower than the proposed settlement. Such a presentation could convince the Commission that, regardless of what was or was not included in the results-only settlement, the proposed settlement’s overall revenue requirement should be rejected or altered.

10 The discussion in paragraphs 173 to 183 of the final order did not state that when presenting an alternative revenue requirement a party could not employ or accept parts of a utility’s initial filing. The order merely points out that Public Counsel’s focus on individual adjustments to the initial filing was, on their own, insufficient. The goal for any party

¹¹ See Order at 64-65, ¶ 176 (“Instead, we must consider the aggregate and whether the results-only revenue requirement to which the Settling Parties agreed represents, when considered as part of the Settlement as a whole and balanced by the numerous non-revenue terms, a fair, just, and reasonable end result.”).

opposing a results-only revenue requirement settlement is to convince the Commission that an alternate revenue requirement is both meaningfully lower¹² and meets the Commission's rate setting standards. As the order explains, individual adjustments to aspects of an initial filing fail to offer the Commission much to consider on their own. Without a clear presentation of a complete alternative overall revenue requirement, arguing that a results-only settlement should be rejected based on the individual adjustments to the initial filing is a non sequitur.

11 In summary, the relevant passages do not state or imply that challenges to results-only settlements are effectively impossible. Public Counsel's opposition to the settlement "cannot serve as an appropriate basis to decrement" both because the Commission was not persuaded by Public Counsel's proposed adjustments to the initial filing, and because an effective opposition to a results-only revenue requirement settlement ultimately addresses the aggregate, not individual items or adjustments. It was the "strategy of recommending adjustments to a results-only revenue requirement" that the Commission found "difficult, if not impossible" to effectuate, again because opposition to a results-only revenue requirement settlement should focus on the aggregate in order to be persuasive. Nowhere does the order state that accepting or referencing aspects of an initial filing is fatal to an opposing party's argument against a results-only settlement, or that parts of an initial filing could not be used to present a convincing alternative revenue requirement. When read as a whole, the order indicates that the Commission was not convinced by the alternative overall revenue requirement that Public Counsel presented in this particular case, not that it could never be convinced.

¹² It could also be meaningfully higher, and there are of course other arguments that one could make to demonstrate that a settlement is insufficiently supported by the evidence.

C. The Motion to Reconsider is Futile Because the Commission Rejected the Individual Adjustments Public Counsel made to the Initial Filing, and Public Counsel does not Challenge those Conclusions in the Motion to Reconsider

12 Even if one were to accept the arguments in motion to reconsider, the challenge to the final order's actual decision on the overall revenue requirement is futile. The order outlines its reasons for rejecting the consequential individual adjustments to Avista's initial filing that Public Counsel presented. But the motion to reconsider does not request that the Commission reconsider the conclusions it reached on those individual adjustments. Therefore, even if one were to accept Public Counsel's position that an opposing party can (or should be able to) successfully challenge a results-only settlement by presenting adjustments to the initial filing, that would not change the Commission's actual decision on revenue requirement in this case.

13 Stated another way, because the Commission was not convinced by Public Counsel's individual adjustments to the initial filing, it is irrelevant whether adjustments to the initial filing that were convincing would or would not be sufficient to challenge the settlement. In this case, the Commission rejected Public Counsel's arguments on the consequential individual adjustments.¹³ With Public Counsel's positions on those individual adjustments rejected, it no longer has a basis to claim that the settlement's overall revenue requirement should be rejected under the Commission's ratemaking standards.

14 Because the arguments raised in the motion to reconsider, even if accepted, would not change the outcome of the decision, the motion is futile. Under commission rule, the purpose of a motion to reconsider is "to request that the commission change the outcome with respect to one or more determinations in a final order."¹⁴ The reconsideration requested

¹³ See *e.g.*, Order at 58, ¶ 159.

¹⁴ WAC 480-07-850(1)(a).

in the motion, even if granted, would not change the outcome of the Commission's determination on overall revenue requirement. While futility is not a concept explicitly stated as a basis for denying a motion to reconsider under commission rule, the underlying logic is just as sound here as it is elsewhere, and granting a futile motion to reconsider would not be in the public interest.

IV. CONCLUSION

15 Commission Staff requests that the Commission deny Public Counsel's motion for reconsideration. The motion is futile, since even granting the request would not change the outcome of the Commission's decision. Further, no reconsideration or clarification of the order is necessary. The issues raised by Public Counsel are based on a misreading of the order. The order does not set a new standard of review for results-only settlements or prevent opposing parties from presenting their case against results-only settlements. The Commission should therefore deny the motion.

DATED this 13th day of January, 2023.

Respectfully submitted,

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