

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

| | | |
|----------------------------|---|-----------------------------------|
| WASHINGTON UTILITIES AND |) | DOCKETS UE-110876 and |
| TRANSPORTATION COMMISSION, |) | UG-110877 (<i>Consolidated</i>) |
| |) | |
| Complainant, |) | ORDER 06 |
| |) | |
| v. |) | FINAL ORDER REJECTING TARIFF |
| |) | SHEETS; APPROVING AND |
| AVISTA CORPORATION d/b/a |) | ADOPTING SETTLEMENT |
| AVISTA UTILITIES, |) | STIPULATION; REQUIRING |
| |) | COMPLIANCE AND SUBSEQUENT |
| Respondent. |) | FILINGS |
| |) | |

Synopsis: The Commission rejects revised tariff sheets filed by Avista on May 16, 2011, which would have increased the Company’s electric rates by \$38.3 million and natural gas rates by \$6.2 million. The Commission instead approves and adopts a Settlement that allows Avista to increase electric rates by \$20 million, an average of 4.6 percent, and that increase Avista’s natural gas rates by \$3.75 million, an average of 2.4 percent. The Commission finds the rates resulting from these increases to be fair, just, reasonable, and sufficient. In authorizing these rates, the Commission also approves the parties’ proposal to increase the funding for the low income rate assistance program by \$550,000. This Order also directs Avista to make a subsequent filing containing specific data related to the compensation packages of Avista executives by February 29, 2012.

SUMMARY

1 **NATURE OF PROCEEDINGS:** On May 16, 2011, Avista Corporation d/b/a Avista Utilities (Avista or the Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service in Docket UE-110876 and revisions to its currently effective Tariff WN U-29, Gas Service in Docket UG-110877 for a general rate increase for electric and gas service. Avista’s initial filing requested an electric rate increase of \$38.3 million, or 9.1 percent overall, and a gas rate increase of \$6.2

million or 4.0 percent overall. The Commission, by Order 01, suspended the operation of the general tariff revisions and shortly thereafter consolidated the dockets for hearing.

2 **PARTY REPRESENTATIVES:** David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, represents Avista. Sarah Shifley, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Donald T. Trotter, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹ S. Bradley Van Cleve and Irion Sanger, Davison Van Cleve, P.C., Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU). Ronald Roseman, Seattle, Washington, represents The Energy Project. Chad Stokes and Tommy Brooks, Cable Huston Benedict Haagensen & Lloyd LLP, Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Todd D. True, Attorney with Earthjustice, Seattle, Washington, represents the NW Energy Coalition (NWEK).²

3 **SETTLEMENT STIPULATION:** On September 30, 2011, Avista, Staff, Public Counsel, NWIGU, ICNU, and The Energy Project filed a Settlement Stipulation (Settlement), which is attached to this Order as Appendix A, resolving all of the contested issues as among these parties.³ The Settlement proposes an increase in Avista's electric revenue requirement by \$20 million and its natural gas revenue requirement by \$3.75 million. In addition, the Settlement reduces the Company's rate of return for purposes of booking Allowance For Funds Used During Construction (AFUDC), and as necessary for compliance filings, from 7.91 percent to 7.62 percent. Testimony in support of the Settlement was filed on October 11, 2011.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² NWEK was originally represented by David S. Johnson. However, on July 28, 2011, the Commission was notified that Mr. Johnson was withdrawing as counsel for the organization. On September 8, 2011, Mr. True filed a Notice of Appearance on behalf of NWEK.

³ The only remaining party, NWEK, did not join in the Settlement since it intends to present testimony and pursue further litigation on the issue of electric decoupling. However, NWEK does not oppose the Settlement.

4 **COMMISSION DETERMINATIONS:** Based on the record in this matter, we conclude that it is in the public interest for the Commission to approve and adopt the Settlement, subject to the compliance and other filing requirements set forth below. After examining the testimony in support of the Settlement and testimony provided by the settling parties at the evidentiary hearing, we find the parties' proposal to allow Avista to recover \$20 million in additional electric revenues and \$3.75 million in additional natural gas revenues is reasonable. In reaching this conclusion, we recognize that the Settlement is a result of compromises each party has made with regard to their differing interests and the extensive investigation and review into the Company's initial filing that preceded the Settlement. While each party agrees with the end result, they differ on the rationale for arriving at that result. The Company's new rates will be effective no earlier than January 1, 2012.

MEMORANDUM

I. Background and Procedural History

5 Avista filed revised tariff sheets on May 16, 2011, that, if allowed to go into effect, would have raised the Company's rates for electric and natural gas customers in Washington by respectively, \$38,300,000 (9.1 percent overall) and \$6,200,000 (4.0 percent overall). The tariff revisions proposed an effective date of June 15, 2011. The Commission suspended operation of the tariffs in Order 01, entered on June 1, 2011.

6 These dockets were consolidated in Order 02, entered on June 6, 2011. After convening a prehearing conference on June 16, 2011, the Commission entered Order 04 setting forth the procedural schedule.⁴ The Commission also raised the issue of full decoupling for Avista's electric and natural gas operations at the prehearing conference.⁵

⁴ Order 03, entered on June 17, 2011, is a protective order.

⁵ The Commission issued a bench request to Staff for "a discussion of the critical elements that a full decoupling proposal should contain, consistent with the [Commission's] Decoupling Policy Statement, including consideration of lost sales revenues that are potentially offset by avoided costs and other benefits." Bench Request No. 1 (June 28, 2011).

- 7 On August 18, 2011, the Commission entered Order 05, which granted a Joint Motion for Clarification on Forum for Resolution of DSM Prudence (Joint Motion) filed by Staff, Public Counsel and Avista. By granting the Joint Motion, the Commission removed the prudency review of Avista's electric and natural gas demand side management expenditures from this proceeding.
- 8 On September 30, 2011, the parties filed a Settlement by which they proposed resolution of all rate-related issues raised in the Company's initial filing.⁶ The NWECA did not join in the Settlement, but does not oppose its terms. Instead, the NWECA proposed to address separately the issue of decoupling raised in this proceeding. The Commission accepted this proposal and established a separate process to address the decoupling issue in a subsequent hearing.⁷ On October 11, 2011, the parties filed joint testimony in support of the Settlement.
- 9 On November 8-9, 2011, the Commission conducted an evidentiary hearing on the Settlement in Spokane, Washington. The hearing provided the Commission an opportunity to inquire into the terms and conditions of the Settlement through a panel of witnesses sponsored by the settling parties. In addition, the Commission provided members of the public three opportunities to present testimony on the Settlement. These public comment hearings occurred on November 8, 2011, in Spokane Valley, and Spokane, Washington, and on November 9, 2011, in Pullman, Washington. In total, twenty-four customers presented oral testimony. Members of the public also submitted to the Commission 395 written comments. The majority of the commenters opposed the requested rate increases.⁸

⁶ The settling parties have characterized the Settlement as a partial, multiparty settlement. Pursuant to WAC 480-07-730, a partial settlement is an agreement of all parties on some issues, and a multiparty settlement is an agreement of some parties on one or more issues. The settling parties assert that the NWECA does not oppose the terms of the Settlement but prefers to preserve electric decoupling for further litigation.

⁷ The Commission convened a second prehearing conference on October 10, 2011, to address the procedural issues raised by the filing of the Settlement. At the prehearing conference, the Commission informed the parties that the procedural schedule set out in Order 04 would be vacated and that a new evidentiary hearing would be scheduled. In addition, since the parties agreed that the Commission could rule on the Settlement without resolving the issue of decoupling, the Commission indicated that the proceeding would be bifurcated into two phases with the Commission taking up decoupling at a later date.

⁸ See Exh. No. 3.

II. Proposed Settlement

10 Prior to settlement negotiations, the parties conducted a careful and considered analysis of the Company's initial filing. Not only did the parties commence discovery early in this proceeding,⁹ they propounded over 870 data requests to Avista on a variety of issues.¹⁰ Commission Staff conducted a comprehensive audit of the Company's filing, including its per books numbers, test-year results of operations, cost of service models, proposed rate spread and rate design, capital structure, and rate of return.¹¹ The Settlement is the end-product of extensive negotiations and "give-and-take" between the parties and their differing interests.¹² The settling parties, including Avista, necessarily had to make compromises in their positions on some items in order to pursue issues they had prioritized higher. We discuss each of the major Settlement provisions below.

11 *Revenue Requirement.* Avista's initial filing requested a revenue increase in electric base rates of \$38.3 million, or 9.1 percent overall, and a revenue increase in natural gas base rates of \$6.2 million, or 4.0 percent overall.¹³ The settling parties agreed to a substantial reduction in the Company's rate increase, by nearly one-half the requested amount: \$20 million¹⁴ for electric operations and \$3.75 million for natural gas operations.¹⁵ This would result in an overall 4.6 percent increase in electric rates and an overall 2.4 percent increase in natural gas rates. The revenue increase can be attributed to several factors but is largely driven by the Company's need for new

⁹ Norwood, TR 135:18-19.

¹⁰ Exh. No. 2, 9:8.

¹¹ Schooley, TR 136:11. *See* Exh. No. 2, 23:15-17.

¹² Exh. No. 2, 9:1-4.

¹³ Exh. No. 1, ¶ 4.

¹⁴ *Id.*

¹⁵ *Id.*

infrastructure for its electric operations, as well as increased operations and maintenance (O&M) costs and additional storage for the Company's gas operations.

- 12 *Cost of Capital.* Avista originally sought an overall rate of return (ROR) of 8.23 percent with a return on equity (ROE) of 10.9 percent.¹⁶ Its request would have provided an increase in the currently authorized ROE of 10.2 percent, and an increase over the currently authorized ROR of 7.91 percent approved in Avista's last general rate case in November 2010. The parties agreed in the Settlement to a 7.62 percent ROR for use in booking AFUDC expenses and other compliance filings, a reduction relative to both the Company's proposed and currently authorized returns.¹⁷ The parties did not reach agreement on a specific capital structure or assign values to the various cost of capital components.¹⁸
- 13 *Electric Energy Efficiency Load Adjustment.* In its initial filing, Avista requested an electric energy efficiency load adjustment (EELA) to restate the weather-normalized test year loads for retail electric consumers "to reflect the Company's measurement of the impact of programmatic electric energy efficiency efforts."¹⁹ Public Counsel, in particular, cites to the inappropriateness of this proposed recovery mechanism from a policy standpoint because it would have instituted a surcharge on consumers for conserving energy and from a rate impact perspective since consumers would have seen the increase on their bills.²⁰ Commission Staff also explains that the proposed adjustment was problematic and "introduc[ed] a level of complexity that doesn't seem necessary."²¹ The settling parties could not agree on the EELA, and the Settlement removes the mechanism from consideration.

¹⁶ Morris, Exh. No. SLM-1T, at 13:4.

¹⁷ Exh. No. 1, ¶ 5. See, *WUTC v. Avista Corp.*, Dockets UE-100467 and UG-100468, Order 07 ¶ 19 (November 19, 2010). Avista's currently authorized return on equity is 10.2 percent with 46.50 percent equity in the capital structure. *Id.*

¹⁸ *Id.* The Company's capital structure typically includes equity, long term debt and short term debt, each of which has a cost. Overall return depends on the relative amount of each component in the capital structure and its cost.

¹⁹ *Id.*, ¶ 6(a).

²⁰ Exh. No. 2, 34:3-4.

²¹ Schooley, TR 159:7-8.

- 14 *Vegetation Management Expenses.* During the test year, Avista spent less than the \$4.025 million included in rates for vegetation management. The settling parties agree that the minimum annual spending level allowed for recovery effective January 1, 2012, should be reduced to the amount actually spent during the test year, \$3.908 million, and that any future unspent amounts during a given year should be applied in the subsequent year or credited back to customers.²² Under questioning from the bench, Avista confirms that this lesser amount will still allow the Company to comply with vegetation management standards set out by the North American Electric Reliability Corporation (NERC).²³
- 15 *Administrative and General Expenses.* The settling parties agree to administrative and general (A&G) expense adjustments that removed \$1.235 million from Avista's electric operations and \$138,000 from the Company's natural gas operations.²⁴ Some of these adjustments include:
- Allocation of executive labor costs to non-utility operations related to actual executive time spent on such;
 - Level of executive incentive compensation, and costs associated with administration of the supplemental executive retirement plan;
 - Extrapolation of certain A&G error rates identified through Avista's internal accounting audit; and
 - Incorrectly-booked A&G expenses identified during discovery in this case.²⁵

The Settlement also requires Avista to continue to perform annual accounting audits and provide the parties a report containing the audit results.²⁶ Public Counsel asserts

²² Exh. No. 1, ¶ 6(b).

²³ Norwood, TR 184:2-6.

²⁴ Exh. No. 1, ¶ 6(c).

²⁵ *Id.*

²⁶ *Id.*, ¶ 15.

that this requirement should prevent any future inappropriate allocations of A&G expenses.²⁷

- 16 At hearing, Mr. Norwood testified that the 2010 test year was well under way by the time the Company implemented accounting policies designed to correct these persistent errors.²⁸ Public Counsel, the Company's most outspoken critic with regard to Avista's internal auditing practices, acknowledged that it understood that the accounting difficulties would take more than a year to fix.²⁹
- 17 *Bonneville Power Administration Parallel Operation Agreement.* The Settlement provides that Washington's share of a certain settlement agreement with the Bonneville Power Administration (BPA), \$767,000, will be reflected in the Company's transmission revenues over a three-year amortization period.³⁰ Specifically, the Settlement provides that during the first year, 2012, Avista's transmission revenues will be increased by \$256,000 to reflect one-third of Washington's share of the BPA settlement proceeds.³¹

²⁷ Exh. No. 2, 32:4-5.

²⁸ Norwood, TR 164:6-18. Without the scrutiny given the Company's accounting practices and the Settlement's consequent reduction of its as-filed A&G expenses, the persistence of these accounting errors would cause us to question the Company's representation of costs in its entire filing. We note that the Settlement includes a provision requiring an "annual internal audit for accounting practices in each of the three years," and look forward to reviewing those results. While we recognize that it did not have a full year to implement internal accounting audit policies between our last rate order and the test year in this proceeding, we expect to see a marked improvement in the Company's recordkeeping as Avista's annual accounting audits and resulting reports are prepared in subsequent years. We further expect the Company to demonstrate in the next rate case that it has effectively dealt with the accounting issues highlighted by the settling parties.

²⁹ Daeschel, TR 162:24-163:11.

³⁰ Exh. No. 1, ¶ 6(d). Avista and BPA entered into a settlement agreement during 2010 to resolve the issue of payment for BPA's prior usage of Avista's transmission system. BPA agreed to pay Avista a one-time amount of \$1,177,000. Washington's allocated share is \$767,000. This amount was not booked to Avista's pro forma transmission revenues in the Company's direct case. *Id.*

³¹ *Id.*

- 18 *Transmission Line Ratings Plan.* The settling parties agree to amortize expenses associated with the Transmission Line Ratings Confirmation Plan (Plan) over a three-year period commencing in 2012.³² For each of the three years, Avista will amortize approximately \$640,000 and will not apply a carrying charge on the unamortized balance.³³
- 19 *Jackson Prairie Storage.* The Settlement includes additional Jackson Prairie working gas inventory applicable to Washington operations and additional O&M costs in base rates. Recovery of these additional costs will no longer occur in future purchase gas adjustment filings.³⁴ NWIGU supports this recognition of Jackson Prairie's capacity addition as appropriate.³⁵
- 20 *Deferred Accounting Mechanism for Coyote Springs 2 and Colstrip 3 and 4.* The settling parties propose deferral of highly variable maintenance costs associated with Coyote Springs 2 (CS2)³⁶ natural gas-fired generating plant located near Boardman, Oregon and the Company's fifteen percent ownership share of the Colstrip 3 and 4 coal-fired generating plants located in southeastern Montana.³⁷ The Settlement establishes the Company's baseline maintenance expenses at \$9.123 million for 2009 and \$6.419 million for 2010 based on actual maintenance expenses for those years.³⁸

³² *Id.*, ¶ 6(e). Avista designed this Plan to address certain NERC standards. *Id.* Avista estimates the cost of the Plan at \$2,945,000 system wide, with the Washington portion at \$1,919,000. *Id.*

³³ *Id.*

³⁴ *Id.*, ¶ 6(f). In Dockets UE-100467 and UG-100468, the parties agreed that the additional Jackson Prairie working gas inventory and the additional O&M costs should be deferred and recovered in Avista's future PGA filings beginning with Avista's fall 2011 PGA filing. *Id.* In addition, the parties agree that the deferred costs that were incurred prior to January 1, 2012, should be recovered in a PGA filing. *Id.* The Settlement provides that the 13 percent allocation, reflecting the May 1, 2011, capacity addition, is appropriate. *Id.*

³⁵ Exh. No. 2, 27:14-15.

³⁶ Exh. No. 1, ¶ 10.

³⁷ *Id.*

³⁸ Future years' baselines will include Federal Energy Regulatory Commission (FERC) Maintenance Accounts 551-554 and Company Organization Code C06 for CS2 and FERC Maintenance Accounts 510-514 and Company Organization Code N06 for Colstrip 3 and 4. Baselines for future years will not include internal Company labor. *Id.* The deferral amount is

Avista could defer, on an annual basis, the expenses over and above the baseline.³⁹ The Company would then amortize the deferred amounts over a four-year period, beginning in January of the year following the year the expenses were deferred.⁴⁰ Carrying charges would not be applied to the unamortized balance.⁴¹

- 21 The settling parties explain that the expenses this provision addresses are largely costs imposed on the Company “by contract by the third-party operators of these plants.”⁴² In addition, they reiterate that the deferred amounts are solely comprised of maintenance expenses that go beyond the baseline.⁴³
- 22 Mr. Norwood, on behalf of Avista, explained at hearing that the deferral provides a smoothing of these expenses, projected to be in the millions of dollars, for both consumers and the Company.⁴⁴ In practice, the deferred amounts for any given year would be recovered over the four year period with consumers paying more of an average over time, rather than a larger lump sum.⁴⁵ ICNU and NWIGU both characterize the proposal as a normalizing of rates that would prevent year-to-year fluctuations in rates.⁴⁶ This smoothing effect, coupled with the absence of a carrying

arrived at by comparing the actual, non-fuel, maintenance expenses for the plants with the amount of the same expenses in the baseline. *Id.* Actual maintenance expenses incurred in the test year would still be recovered up to the baseline and any expense over the baseline would be deferred. *Id.*

³⁹ Exh. No. 2, 17:13-16 and n. 7.

⁴⁰ *Id.*, 18:1-2.

⁴¹ *Id.*, 18:3.

⁴² *Id.*, 24:16-17. *See* Norwood, TR 187:3-5.

⁴³ *Id.*, 24:18.

⁴⁴ Norwood, TR 168:11-12. Mr. Norwood pointed to CS2 and explained that the Company expects maintenance costs for 2012 to be approximately \$11 million, which is a \$7 million increase above 2011 maintenance levels. *Id.*, TR 168:2-6.

⁴⁵ *Id.*, TR 168:17-19.

⁴⁶ Schoenbeck, TR 169:24-170:2.

charge and the focus on maintenance expenses only, led the parties to support the deferral proposal.⁴⁷

- 23 Staff acknowledges that other regulated public utilities, *i.e.*, Puget Sound Energy, Inc. and PacifiCorp, also hold an interest in the Colstrip plants.⁴⁸ While Staff does not view this provision as setting a precedent requiring similar treatment among the other utilities, it asserts that “many of the companies are looking down [the road] in terms of trying to smooth their expenses in order to mitigate the need for them to be requesting rates every year as well.”⁴⁹ Importantly, Avista conceded at hearing that any deferred amounts would not automatically be approved and that there would be an opportunity for the parties and the Commission to review the deferred expenses that occur in a given test year for prudence in the next general rate case.⁵⁰
- 24 *Rate Spread/Rate Design.* The Settlement provides for a 10 percent movement toward rate parity⁵¹ by spreading the \$20 million electric revenue requirement among rate schedules based on the cost of service results in Avista’s initial filing.⁵² With regard to the natural gas rate spread, the settling parties agree to apply the revenue

⁴⁷ *Id.*, TR 170:1-3. Unlike the settlement agreement Avista entered into in Idaho, the Company would not defer operational expenses incurred at these plants. Norwood, TR 185:22-186:2.

⁴⁸ Schooley, TR 175:9-10.

⁴⁹ *Id.*, TR 175:16-18.

⁵⁰ Norwood, TR 192:8-13. *See also* Exh. No. 1, ¶ 10 and Schooley, TR 212:21-23.

⁵¹ Rate parity occurs when customer classes are charged rates based upon the utility’s cost to serve that class. As happens frequently, one class may pay less than the amount it costs to serve their members due to subsidization by another class. For example, Schedule 25 demand charges were, according to Avista’s cost of service study, lower than their cost-based rate level. The rate design anticipated in the Settlement would increase Schedule 25’s demand charges to move this class closer to a cost-based rate level, and therefore, closer to rate parity. Exh. No. 2, 26:7-11.

⁵² Exh. No. 1, ¶ 11(a). The Settlement establishes, however, that the parties do not agree on a specific cost of service methodology and do not approve any change in methodology in future rate cases.

requirement in an equal percentage of margin increase to all natural gas schedules, with the exception of Schedule 146, Transportation Service.⁵³

25 Residential consumers will also not experience an increase in their \$6.00 basic fee for electric and natural gas service.⁵⁴ For electric customers, with the exception of Schedule 25, Extra Large General Service, any increases to electric customer, energy, and demand charges would be as proposed in Avista's initial filing.⁵⁵ Schedule 25 customers would see an increase in the basic charge from \$12,500 to \$14,000 for the first 3,000 kilo volt amperes (kVa) or less, and the parties agree that the first two energy blocks should see a uniform percentage increase.⁵⁶ The increase to the third energy block rate would be 0.5 times the percentage increase applied to the first two blocks.⁵⁷ The settling parties agree to an increase in the demand charge from \$4.00 to \$4.25 for kVa over 3,000 per month, and an increase in the Primary Voltage Discount for 115 kV from \$1.30 to \$1.35 per kVa per month.⁵⁸

26 With regard to natural gas operations, the parties agree to an increase in the Basic Charge from \$225 to \$250 per month for Schedule 146, Transportation Service, and a uniform percentage increase to all blocks within Schedule 146.⁵⁹ Under the Settlement, the rate design for other natural gas schedules would be as proposed by Avista in its initial filing.⁶⁰ NWIGU supports this move toward rate parity.⁶¹

⁵³ *Id.*, ¶ 12(a). Transportation Service customers are allocated two-thirds of the increase they would receive as an equal share with the other schedules, and the remaining one-third would be allocated, based on margin, among the other schedules. *Id.*

⁵⁴ *Id.*, ¶¶ 11(b)(i) and 12(b)(i).

⁵⁵ Exh. No. 2, 19:21-23.

⁵⁶ Exh. No. 1, ¶ 11(b)(ii).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*, ¶ 12(b)(ii).

⁶⁰ *Id.*, ¶ 12(b)(iii).

⁶¹ Exh. No. 2, 27:21-28:1.

- 27 *Low Income Rate Assistance Program Increase.* The settling parties provide for an increase in annual funding for the Low Income Rate Assistance Program (LIRAP) by \$370,000 through an adjustment to the LIRAP portion of Avista’s tariff riders, Schedules 91 and 191.⁶² The Settlement also provides for the reallocation of \$180,000 from Conservation Education to low-income energy bill assistance, bringing the overall increase to \$550,000.⁶³
- 28 *Effectiveness of New Rates.* The settling parties propose that the resulting new rates take effect on January 1, 2012.⁶⁴ Avista agrees not to file another general rate case in Washington prior to April 1, 2012.⁶⁵ Given the typical ten-month evaluation and processing period for rate requests, Avista’s pledge not to file a subsequent rate request prior to April 1, 2012, provides price certainty for residential and business consumers by keeping rates stable during the 2012 calendar year.⁶⁶ Businesses in particular benefit from price certainty when preparing their budgets for the upcoming year.⁶⁷

III. Discussion and Decision

- 29 The Commission’s statutory duty, in the context of a general rate case, is to balance the needs of the public to have safe and reliable electric service at reasonable rates with the financial ability of the utility to prospectively provide such service. In fulfilling its statutory duty, the Commission must establish rates that are “fair, just, reasonable and sufficient.”⁶⁸ The rates must be fair to both customers and the utility, just in that the rates are based solely on the record in this case following the principles of due process of law, reasonable in light of the range of potential outcomes presented

⁶² Exh. No. 1, ¶ 13.

⁶³ *Id.*

⁶⁴ *Id.*, ¶ 14.

⁶⁵ *Id.*, ¶ 15.

⁶⁶ Schoenbeck, TR 138:24-139:4.

⁶⁷ Exh. No. 2, 25:18-19.

⁶⁸ RCW 80.28.010(1); RCW 80.28.020.

in the record, and sufficient to meet the financial needs of the utility to cover its expenses and attract capital on reasonable terms.⁶⁹

30 Pursuant to WAC 480-07-750(1), the Commission examines and “will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the [C]ommission.” Based on our review of the evidentiary record, we have the authority to approve the Settlement as filed, approve the Settlement subject to conditions, or reject the Settlement.⁷⁰

31 The parties recommend in the Settlement that we approve \$20 million in additional electric revenues and \$3.75 million in additional natural gas revenues for the Company. As a whole, the Settlement’s recommended revenue increase presents a substantial downward adjustment from the Company’s original filing.⁷¹ It also reflects an effort by the parties to levelize certain expenses, which has the immediate effect of reducing cost to ratepayers. Given the parties’ representations as to the thoroughness of their audit and review processes and the extensive negotiations that followed,⁷² we believe the Settlement provides sufficient overall benefit for us to conclude that, when viewed in whole, the compromise is reasonable in terms of its end results and supported by the record before us.

32 We recognize that the rate increases required by the Settlement are significant from the perspective of Avista’s customers who will pay for them in rates.⁷³ However we

⁶⁹ *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

⁷⁰ WAC 480-07-750(2).

⁷¹ As noted above, Avista’s initial filing request \$38.3 million and \$6.2 million in additional electric and natural gas revenue, respectively.

⁷² See paragraph 10 above.

⁷³ Of particular note, we are pleased with the increased monies dedicated to LIRAP funding. With the ever-growing number of households seeking assistance with their energy bills, these additional funds come at a critical time when charities and community organizations are stretching every dollar to help aid the public. Mr. Larry Stuckart, a representative of the Spokane Neighborhood Action Partners (SNAP) indicated at the public comment hearing in Spokane Valley that SNAP had taken applications from 1,804 households between October 10, 2011, and November 4, 2011. Stuckart, TR 100:12-17. Mr. Stuckart explained that, “[t]he recession in

are convinced that the rates proposed by this agreement are fair, just, reasonable and sufficient and comply with the requirements set forth in our governing law.⁷⁴ That said, we are reluctant to raise rates in this economic environment, but conclude that the evidence and Settlement presented by parties, who represent the diversified interests of all ratepayer classes, compel this result. This does not mean that we are completely satisfied with our decision. While not sufficient to reject the deal made by the parties, there are two points of lingering concern in the context of this “black box” settlement that we believe need additional attention.

33 First, we require further review of the proposed deferred accounting mechanism for maintenance costs at Coyote Springs and Colstrip. While we approve this mechanism as part of the Settlement, we do so conditionally, as discussed below.

34 Second, we have concerns with respect to the evidence Avista presented in connection with executive compensation. Given this, we expressly condition our approval of the Settlement by requiring a subsequent filing that will provide the Commission with additional information on this subject.⁷⁵

a. Deferred Accounting of Highly Variable Maintenance Expenses

35 As perhaps became clear as a result of our questioning from the bench, we have some apprehension about this provision within the Settlement. Certainly, Mr. Norwood explained that the units are on regular, but distinct, maintenance cycles, with the Colstrip units being cycled for maintenance ever three years and CS2 cycled every four years.⁷⁶ He explained that the deferral then provides a smoothing effect on the

Spokane is especially brutal as the weather gets colder and sets in – when winter sets in, things are bad. In the past several years, the majority of our non-senior clients have been the working poor.” Stuckart, TR 101:23-102:1. This is particularly true given the uncertainty associated with the federal funding of the Low Income Home Energy Assistance Program (LIHEAP). Exh. No. 2, 38:4-9.

⁷⁴ RCW 80.28.020.

⁷⁵ WAC 480-07-885.

⁷⁶ Norwood, TR 167:22-168:8.

impact additional maintenance costs have on ratepayers on a prospective basis.⁷⁷ As the plants are cycled for maintenance in any given year, Avista expects its maintenance costs to spike, and without a deferral mechanism, could result in a spike in rates for consumers.

- 36 This issue is one of such importance that it deserves more attention than it will necessarily receive as the result of its inclusion in a Settlement. This particular mechanism has never been examined, let alone approved, by the Commission in a prior rate case. Further, as Staff acknowledged two other public utilities that we regulate hold a stake in the Colstrip units and could also be affected by highly variable maintenance costs associated with those units.⁷⁸ We also have some concern about the scope of expenses that could be included in this accounting provision.
- 37 We approve the deferral mechanism as a part of the overall Settlement package, but only because it appears to reduce immediate costs to ratepayers and it will only operate provisionally. The fact that Avista will not collect a return on the deferred amount, as well as the reasonableness of a smoothing of only maintenance expenses above the baseline, allow us to conclude that approval on a provisional basis is appropriate. The Company has also indicated that we can revisit the mechanism at a future time without undue administrative difficulty.⁷⁹ By providing this limited approval of the mechanism, we caution the parties and, especially Avista, that we will revisit this issue on an expanded basis and in a future proceeding, possibly on an industry-wide basis so that other public utilities affected by the expenses at these units might also participate. If this proceeding has not commenced prior to Avista's next

⁷⁷ Norwood, TR 168:11-19. Mr. Schoenbeck also described this 'smoothing effect' at the evidentiary hearing. *See* Schoenbeck, TR 169:2-12.

⁷⁸ Schooley, TR 175:9-10.

⁷⁹ COMMISSIONER JONES: If the Commission were to approve this on a pilot basis, a year or so, and then we – since you're filing about every 18 months, we have a chance to review these things frequently. And in the next case we were to reject it, say it's really not working the way it is, wouldn't that create an issue on for – the company on a[n] earnings perspective?

MR. NORWOOD: If the Commission were to choose to not approve it at some point in the future, it would be important that the opportunity would be there to recover the dollars that are already deferred. And so if there's an understanding that what's already been deferred would be amortized, then that would not create an accounting issue.

rate filing, we expect the Company to include a proposal for such a tracker in that initial filing so that we can evaluate whether or not to terminate the provisional mechanism.

b. Executive Compensation

38 At several points during these proceedings, we found our attention focused on the question of executive compensation. We were struck, for example, by the public comment testimony offered by Ms. Dawn Voelker, an Avista customer who resides in Spokane Valley. It is worth quoting at length:

One of Avista's business principles is integrity; to do what is right. Where is integrity of constantly raising our natural gas and electricity rates, all the while they are netting millions of dollars? How can the top executives who are making hundreds of thousands of dollars and the CEO who is making millions of dollars display to the consumer integrity and ask us to pay more? Would they be willing to take a cut in their salary for the sake of integrity?

Our state and country is in a recession. Cuts are being made across the board. Yes, Avista is adding to its programs to help those who need assistance. But what about the middle income families who do not qualify?

We are the ones caught in the middle. We sit in our house with jackets and blankets on, because we can't afford to turn our heat up.

To come out of the recession, people need to have extra money to spend on services and goods, but when all of our extra income goes to pay for the rising cost of our energy bill, consumers will not be paying for the extra goods and services to help bring us out of the recession.

* * *

Avista executives receive bonuses each year for reaching goals. Even when bad decisions are made which results in a loss, are bonuses still given out?

Should we receive a rate increase because their net income was lower as a result of a bad decision? Where is integrity in that?⁸⁰

- 39 We also find significance in Mr. Norwood’s testimony that the questions of what allocation between utility and nonutility operations is appropriate for executive compensation, and what level of executive compensation should be allowed for recovery in rates, are not questions of “rule or law.”⁸¹ Instead, he testified, “[i]t’s a difference of opinion, which we’ll probably see that [in the] next case, also.”⁸² We wish to emphasize that our opinion on these questions is informed by the public comment testimony we heard from Avista’s customers, as well as by other factors that militate in favor of reducing the amount of executive compensation ratepayers are required to bear.
- 40 Appearing on the panel of witnesses supporting the Settlement, Ms. Daeschel testified that one of the factors significant to garnering Public Counsel’s support is that the negotiated \$1.373 million adjustment to the Company’s A&G expenses includes a reduction in the amount of executive compensation that Avista would be allowed to recover in rates.⁸³ This reduction, however, was a question of how much executive compensation should be allocated to utility operations, not the overall level of the compensation paid to the Company’s executives.⁸⁴
- 41 Neither the testimony offered in Avista’s direct case, or that offered by the parties in support of the Settlement, would allow us to further reduce executive salaries beyond the reductions already provided for by the Settlement.

⁸⁰ Voelker, TR. 104:4 – 105:11. *See also* Gow, TR. 233:18 – 234:6; Jolly, TR. 244:8 – 10; Cain, TR. 251:22 – 253:2.

⁸¹ *See* Norwood/Goltz, TR. 200:2 – 14. Ms. Karen S. Feltes, in Avista’s direct case, described in very general terms the Company’s executive compensation plan. Feltes, Exh. No. KSF-1T, at 7-8, 18. *See also* Andrews, Exh. No. EMA-1T, at 29:16-30:3.

⁸² Norwood, TR: 200:9 – 11.

⁸³ Daeschel, TR. 140:15 – 18.

⁸⁴ Daeschel/Goltz, TR. 206:24 – 207:24.

42 Accordingly, we order the Company to file with the Commission in this proceeding by February 29, 2012, the following information:⁸⁵

- A description of current executive compensation, including but not limited to base salary, non-equity incentive pay, and incentive pay. This description should state what elements and amounts are included in rates for the Company and what elements and amounts are not recovered through rates.
- A description of how levels of executive compensation are set. This description should include discussion of the basis for selecting ostensibly comparable utilities that were surveyed, state what those survey results showed, and explain how the results relate to Avista. Avista is also required to state whether executive compensation paid by any Pacific Northwest investor-owned (e.g., Puget Sound Energy, PacifiCorp, et cetera) or publicly-owned utilities (e.g., Seattle City Light, Tacoma Power, Public Utility District No. 1 of Snohomish County, and the Bonneville Power Administration) were considered and, if not, explain why not.
- A discussion of Avista's perspective on whether and, if so, why, the existing levels of executive compensation are appropriate for recovery in utility rates.

43 We also require the Company to update this information at the time it files its next general rate case so that the Company's testimony can be evaluated for the prudence of Avista's executive compensation expense both in terms of the levels of compensation and the allocation of its recovery from utility customers.

44 Our intent here is to ensure that by the next rate case, if not before, Commission Staff, Public Counsel, and others will have sufficient information to evaluate whether there should be some further adjustment to the Company's revenue requirement with respect to the recovery of executive compensation in the future.

⁸⁵ Much of this information has been provided the Commission in this and previous proceedings. Our purpose here is to ensure that we have complete and up-to-date information as well as some new information to better inform the Commission and the parties.

FINDINGS OF FACT

- 45 Having discussed above in detail the evidence received in this proceeding concerning
all material matters, and having stated findings and conclusions upon issues in dispute
among the parties and the reasons therefore, the Commission now makes and enters
the following summary of those facts, incorporating by reference pertinent portions of
the preceding detailed findings:
- 46 (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 gas
and electrical companies.
- 47 (2) Avista is a “public service company,” an “electrical company,” and “gas
company” as those terms are defined in RCW 80.04.010 and used in Title 80
RCW. Avista provides electric and natural gas utility service to customers in
Washington.
- 48 (3) On May 16, 2011, Avista filed certain revisions to its currently effective tariffs
for electric and natural gas services.
- 49 (4) The Commission suspended the operation of the proposed tariff revisions
pending an investigation and hearing and consolidated the Company’s
proposed tariff revisions.
- 50 (5) On September 30, 2011, the parties filed a Settlement Stipulation that, if
approved, would resolve the contested issues raised in Avista’s initial filing.
- 51 (6) Avista’s existing rates for electric and natural gas service provided in
Washington are insufficient to yield reasonable compensation for the services
rendered.
- 52 (7) It is in the public interest to increase the Low Income Rate Assistance Program
portion of Schedules 91 and 191 as specified in the Settlement.

- 53 (8) The rates, terms, and conditions of service that result from adoption of the Settlement attached to and incorporated into the body of this Order result in rates for Avista's electric and natural gas services that are fair, just, reasonable, and sufficient.
- 54 (9) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory.

CONCLUSIONS OF LAW

55 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 56 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 57 (2) The rates proposed by tariff revisions filed by Avista on May 16, 2011, and suspended by prior Commission order, were not shown to be fair, just or reasonable and should be rejected.
- 58 (3) Avista's existing rates for electric service provided in Washington are insufficient to yield reasonable compensation for the service rendered.
- 59 (4) Avista requires relief with respect to the rates it charges for electric and natural gas services provided in Washington.
- 60 (5) The Settlement filed by the parties to this proceeding on September 30, 2011, if approved, would result in rates for Avista that are fair, just, reasonable, and sufficient, and are neither unduly preferential nor discriminatory.
- 61 (6) The Settlement, which is attached to this Order as Appendix A, should be approved by the Commission as a reasonable resolution of the issues presented.

- 62 (7) The Low Income Rate Assistance Program portion of Schedules 91 and 191
should be increased in Avista's electric and natural gas tariffs to levels
specified in the Settlement.
- 63 (8) Approval and adoption of the Settlement is in the public interest.
- 64 (9) Avista should be required to make such compliance and subsequent filings as
are necessary to effectuate the terms of this Order.
- 65 (10) The Commission Secretary should be authorized to accept by letter, with
copies to all parties to this proceeding, a filing that complies with the
requirements of this Order.
- 66 (11) The Commission should retain jurisdiction over the subject matters and the
parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 67 (1) The proposed tariff revisions Avista Corporation, d/b/a Avista Utilities, filed
on May 16, 2011, and suspended by prior Commission order, are rejected.
- 68 (2) The Settlement filed by the parties on September 30, 2011, which is attached
to this Order as Appendix A, is approved and adopted as being in the public
interest.
- 69 (3) Avista is required to make a compliance filing including such new and revised
tariff sheets as are necessary to implement the requirements of this Order. The
stated effective date of the revised tariff sheets shall be January 1, 2012, in
accordance with the terms of the Settlement. Avista must make its compliance
filing sufficiently in advance of January 1, 2012, to afford Staff a reasonable
opportunity to review the filing and to inform the Commission whether Staff
finds the revised tariff sheets fully conform to the requirements of this Order.

- 70 (4) Avista shall make a subsequent filing with executive compensation data in accordance with paragraph 44 above by February 29, 2012.
- 71 (5) Avista will adjust the Low Income Rate Assistance Program included in Schedules 91 and 191 to provide an increase in annual funding of \$370,000 and reallocate \$180,000 of existing annual funding currently allocated to Conservation Education to direct low-income energy assistance.
- 72 (6) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, such filings as Avista makes to comply with the terms of this Order.
- 73 (7) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective December 16, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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.

Appendix A Settlement Stipulation