

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

AVISTA CORPORATION, d/b/a  
AVISTA UTILITIES

Request Regarding the Recovery of Power  
Costs Through The Deferral Mechanism.

DOCKET NO. UE-010395

PUBLIC COUNSEL PETITION FOR  
RECONSIDERATION AND  
CLARIFICATION

**I. INTRODUCTION**

On September 24, 2001, the Commission issued its Sixth Supplemental Order Rejecting Tariff Filing; Granting Temporary Relief, Subject to Refund; And Authorizing and Requiring Compliance Filing (Order). Pursuant to WAC 480-09-810, Public Counsel files this Petition for Reconsideration and Clarification on the following issues.

**II. PETITIONS FOR RECONSIDERATION**

**A. The Deferral Should Be Terminated As Of September 30, Not December 31, 2001.**

Public Counsel requests the Commission reconsider its decision to extend the deferral mechanism to December 2001.<sup>1</sup> The deferral should be terminated as of September 30, 2001.

The Commission expressed approval of ICNU witness Schoenbeck's focus on actual deferred power costs as a basis for establishing the surcharge . Order, ¶ 71. It concluded, accordingly, that "the rate surcharge should be based on Avista's deferred power costs incurred through September 30, 2001." Order, ¶ 72. The Commission was persuaded by Staff's arguments that the deferral mechanism should be terminated at an early date, but declined to terminate the deferral "retroactively," as of June 30, 2001. Order, ¶ 86.

Termination of the deferral as of September 30 is preferable for several reasons:

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<sup>1</sup> Staff has sought clarification on whether the Order extends the mechanism to December 1 or December 31, 2001.

(1) It is consistent with the basis for the surcharge – which is tied to actual or reasonably known costs, Order, ¶72;

(2) Avista should not be permitted to continue use of the mechanism when it has abandoned the commitment on which the original extension was based, i.e., avoidance of a rate increase. Avista’s petition is in reality a petition to terminate the Stipulation. Avista’s petition herein removes the condition for the extension and the fundamental premise of the Stipulation and adopting order – “avoid[ing] the necessity for the Commission to consider any increase in Avista’s retail rates [.] *First Supplemental Order*, ¶ 18;

(3) Extension of the mechanism through year’s end significantly increases the size of the deferral from \$186 million (as of September 30) to \$198 million;

(4) Extension of this flawed mechanism simply compounds the problems which have already resulted from its use. Past experience can only raise questions about Avista’s ability to manage and mitigate the size of its deferral balances. The company’s past projections regarding its deferred costs have been markedly inaccurate;

(5) No reason appears in the decision why the termination need necessarily be tied to the general rate case filing. Indeed, the Commission Order recognizes that the company will have the opportunity to incorporate costs from October onward into its general rate case filing. Order, ¶ 72. This, coupled with the surcharge and an extension through September 30 should address Avista’s need for financial reassurance. Conversely, unnecessarily increasing the amount in the deferred cost account may well have the effect of contributing to the size of the “problem” which Avista claims it has in the eyes of investors, while simultaneously exposing ratepayers to more risk.

**B. The Amount of the Surcharge Should Be Reconsidered Or Clarified**

The Commission states in its Order:

We find Avista should be authorized to initiate a temporary rate increase in the form of a surcharge to all of its electric rate schedules in a uniform amount of 25 percent beginning on October 1, 2001[footnote omitted]. Order, ¶ 83.

The Order does not contain calculations, a methodology or a detailed rationale for the 25 percent surcharge figure, nor does the Order tie the surcharge amount to any exhibits or other evidence in the record. Public Counsel requests reconsideration of the surcharge amount, and adoption of a surcharge consistent with the recommendations set forth in Appendix A to Public Counsel's post-hearing brief in this docket. Since the Sixth Supplemental Order reviews and rejects both Avista's and Staff's recommended surcharge amounts, the only recommendations supported by the record are those of Public Counsel and ICNU.

In the alternative, Public Counsel seeks clarification as to the evidentiary basis of the 25 percent surcharge adopted in the Order.

### **III. REQUESTS FOR CLARIFICATION**

#### **A. Refund Record-keeping**

Public Counsel requests clarification as to refund methodology and tracking. The Order establishes that the surcharge is subject to refund, Order, ¶ 107, and requires Avista to make monthly reports regarding "the amount of the surcharge revenues billed and collected from customers under each of its rate schedules." Order, ¶ 83. Public Counsel is concerned that the Order does not put in place sufficient record-keeping requirements to allow for accurate and equitable distribution of refunds. There are at least two competing readings of paragraph 83. The first would have Avista track surcharge revenues by rate schedule, the second on the basis of revenues collected from customers. This difference is crucial if customers are to be made whole through any potential refund. The first reading implies an average refund methodology under which each customer in a class would receive a pro rata share of any refund, regardless of that customer's payment of the surcharge. The second reading would provide customer specific

refunds, if any were ordered. Public Counsel submits that the second approach is more equitable to customers since it makes them whole for their actual payments.<sup>2</sup>

Public Counsel, therefore, urges the Commission to clarify that Avista is required to keep records adequate to allow payment of customer-specific refunds, in the event that recovery of any deferred costs is disallowed.

## **B. Establish Interest Rate**

The Commission states in its Order that any refunds will be paid with interest. In order to avoid future litigation regarding the appropriate interest rate, Public Counsel requests that the Commission clarify that the refund be calculated at Avista's rate of return. This is the appropriate measure, since Avista has been allowed to defer costs at its authorized rate of return.

## **C. Clarify Issues and Burden of Proof For Rate Case**

Public Counsel seeks clarification of the issues to be addressed in the general rate case and clarification as to the burden of proof on those issues.

### **1. "Second Supplemental Order"/Docket UE-00972 Issues**

The Commission Order mandates that Avista's general rate filing "is required to address all issues reserved by the Commission's Second Supplemental Order of August 14, 2001. Order, ¶¶ 85, 112. Paragraph 14 of the Second Supplemental Order contains a non-exclusive list of four "[s]pecific issues that will be considered in a subsequent phase of this proceeding, or in other proceedings Avista proposes to initiate via filings later this year[.]"<sup>3</sup> The issues listed are:

- a) the prudence of the power costs incurred or to be incurred by the Company;
- b) the optimization of Company-owned resources to the benefit of its retail customers;
- c) the appropriateness of recovery of power costs through a deferral mechanism and;

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<sup>2</sup> The Commission itself advocated for customer-specific refund tracking in connection with the 1995 U S West rate case refund process.

<sup>3</sup> Paragraph 20 of the Sixth Supplemental Order restates paragraph 14 of the Second Supplemental Order verbatim. The general reference to consideration of issues in a "subsequent phase" or "other proceedings Avista proposes to initiate" could create uncertainty when compared with Ordering Paragraph 112.

d) a proposal for cost of capital offsets to recognize any shift in risk from shareholders to ratepayers.

Public Counsel requests that the Commission clarify that Avista's general rate filing is required to address all issues reserved or otherwise stated in paragraph 14 of the Second Supplemental Order, notwithstanding the open-ended language referring to a "subsequent phase" or "other proceedings Avista proposes to initiate."

Public Counsel further notes that the issues listed in the Second Supplemental Order, ¶14, are included in the issues which the Commission required Avista to address as a condition of approving its modified deferral mechanism. *Order Granting Request to Modify Power Cost Deferral Mechanism*, Docket No. UE-000972 (January 24, 2001), ¶¶ 3, 7. In addition, the Commission required the company to provide a plan to mitigate the deferred power costs, *Id.*, ¶ 7, and to provide monthly reports including all calculations and accounting entries related to the deferrals. *Id.* ¶ 8. This statement of the issues was, in turn, an elaboration on the issues stated in the Commission's initial order approving the deferral mechanism. *Order Approving Establishment of A Deferral Mechanism To Track Power Cost Expenses*, Docket UE-000972 (August 9, 2000)(Initial Order), Ordering Paragraph 3, p.2. Public Counsel requests clarification that paragraph 111 of the Sixth Supplemental Order does not amend or rescind the referenced provisions of the prior orders in Docket No. UE-000972. Further, Public Counsel requests clarification that Avista is required to continue to provide monthly reports per the January 24 order for the duration of the deferred account.

## **2. Power supply case**

In Avista's most recent rate case order, the Commission directed the company to file by December 1, 2001, a power supply case to address certain power costs and power cost models. *WUTC v. Avista Corporation*, Docket Nos. UE-991606, UG-991607, Third Supplemental Order, ¶¶ 138-144 (containing a list of required ingredients for the filing, ¶¶ 139-141. In the *First Supplemental Order Approving and Adopting Settlement Stipulation* in this docket, pursuant to

the stipulation of the parties, the Commission extended the filing date for the power supply case to require the filing to be made on or before April 1, 2002. *Id.*, ¶ 29. Public Counsel assumes that power supply issues will now be included in Avista's general rate filing and addressed as part of the general rate case. Public Counsel seeks clarification that Avista is required to comply with the referenced power supply case requirements as part of its mandated general rate case.

### **3. Burden of proof.**

Finally, Public Counsel requests clarification that Avista has the burden of proof as to the issues discussed above. In its Initial Order approving the deferral mechanism the Commission expressly stated:

The Company has the burden of proof in any such proceeding regarding these matters to show that the costs were reasonable incurred, that Company-owned resources have been optimized to the benefit of retail customers, and that recovery of these costs through a deferral mechanism is appropriate. Initial Order, Ordering Paragraph 3, p.2.

Public Counsel requests that the Commission reaffirm that Avista bears the burden of proof as to all issues to be addressed in the rate case, including the issues referred to above (the "Second Supplemental Order" issues as clarified).

## **IV. CONCLUSION**

For the foregoing reasons, Public Counsel requests that the Commission reconsider or clarify the Sixth Supplemental Order as specifically set forth above.

DATED this \_\_\_\_ day of October, 2001.

Respectfully submitted,

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Public Counsel Section