

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p>Complainant,</p> <p>v.</p> <p>AVISTA CORPORATION d/b/a AVISTA UTILITIES,</p> <p>Respondent</p>	<p>DOCKETS UE-220053, UG-220054, UE-210854 (<i>Consolidated</i>)</p> <p>ORDER 11 / 05</p> <p>DENYING PETITION FOR RECONSIDERATION</p>
<p>In the Matter of the Electric Service Reliability Reporting Plan of</p> <p>AVISTA CORPORATION d/b/a AVISTA UTILITIES</p>	

BACKGROUND

- 1 On December 12, 2022, the Washington Utilities and Transportation Commission (Commission) entered its Final Order 10/04, Rejecting Tariff Sheets; Granting Petition; Approving and Adopting Full Multiparty Settlement Stipulation Subject to Conditions; Authorizing and Requiring Compliance Filing (Order 10/04) in the above-captioned docket. Order 10/04 resolved all contested issues in Avista Corporation’s d/b/a Avista Utilities (Avista or Company) general rate case (GRC) and required Avista to file revised tariff pages consistent with the Commission’s decisions contained therein.
- 2 On December 22, 2022, the Public Counsel Unit of the Washington Attorney General’s Office filed a Petition for Reconsideration of Order 10/04 (Petition). In its Petition, Public Counsel requests the Commission reconsider the following language in Paragraph 180 of Order 10/04 related to Public Counsel’s strategy and arguments:

[the] 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 [Full Multiparty Settlement Stipulation's (Settlement)] 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 be considered in a fully litigated proceeding or a settlement that enumerated specific adjustments.¹

- 3 On December 30, 2022, pursuant to Washington Administrative Code (WAC) 480-07-850, the Commission issued a notice authorizing all parties to respond to the Petition by January 13, 2023, and indicating that it would issue a decision on the Petition by February 1, 2023.
- 4 On January 13, 2023, Avista and Commission staff (Staff) each filed with the Commission separate responses to the Petition. Avista and Staff both oppose Public Counsel's Petition.

DISCUSSION AND DECISION

- 5 We deny Public Counsel's Petition for the reasons discussed below.
- 6 The Commission may approve a settlement with a revenue requirement that is results-only if the Commission finds that such a settlement meets the Commission's standards,

¹ *Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-220053, UG-220054, UE-210854 (*Consolidated*) Final Order 10/04, Rejecting Tariff Sheets, Granting Petition, Approving and Adopting Full Multiparty Settlement Stipulation Subject to Conditions, Authorizing and Requiring Compliance Filing, ¶ 180 (Dec. 12, 2022) (emphasis added to identify specific language disputed by Public Counsel); Public Counsel's Petition at 1-2, ¶ 1.

and is consistent with legal precedent.² Such results-only terms are not novel, and the Commission has approved many settlements that include such terms, often with various combinations of parties in support and in opposition. Ratemaking is not an exact science and the Washington Supreme Court has observed that “the economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result.”³ It is the total effect, or the end results, of a rate case order that we must consider and not the specific method used to reach the result.⁴ In Order 10/04, we determined that the end results produced by the Settlement, modified by certain conditions, represent a reasonable and balanced compromise of the issues, are well supported by the evidence, and provide for rates that are equitable, fair, just, reasonable and sufficient.⁵

- 7 When evaluating settlements, we consider the entire record, including the initial filing, and determine whether the Settlement meets the standard of review: whether, in light of all information available to the Commission, the Settlement is lawful, supported by an appropriate record, and consistent with the public interest. We also examine the Settlement to determine whether it meets Commission standards and produces end results that are equitable, fair, just, reasonable, and sufficient. We determined in Order 10/04 that the Settlement meets those standards, and were not persuaded by Public Counsel that the Settlement was unlawful, unsupported by an appropriate record, or inconsistent with the public interest.
- 8 Public Counsel asserts that the language of Order 10/04 “appears to deny Public Counsel the right to offer evidence in opposition to a settlement”⁶ and “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).”⁷ We disagree. Avista’s response to the Petition accurately observes that “nowhere does Public Counsel assert that the

² See, e.g., *Bluefield Waterworks & Improvement v. Pub. Serv. Comm’n of W. Va.*, 262 U.S. 679 (1923); *Federal Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944);

³ *US West. Communs., Inc. v. Wash. Utils. & Transp. Comm’n*, 134 Wash. 2d 48, 70 (1997) (quoting *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989)).

⁴ *US West Communs., Inc. v. Utils. & Transp. Comm’n*, 134 Wn.2d 48, 70 (1997) (citing *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. at 602; *Duquesne Light Co. v. Barasch*, 488 U.S. at 314).

⁵ Order 10/04 at 73, ¶ 202.

⁶ Public Counsel’s Petition at 3, ¶ 3.

⁷ *Id.* at 7, ¶ 10.

Commission's own rules for addressing contested settlements were violated.”⁸ Indeed, Public Counsel was afforded every opportunity to exercise its rights to oppose the Settlement. Public Counsel presented evidence in opposition to the Settlement, examined witnesses, and presented its arguments. In rebuttal, Avista also provided substantial evidence contradicting Public Counsel's presentation.⁹

- 9 Public Counsel argues that Order 10/04 sets a new standard for evaluating a Settlement with a results-only revenue requirement that is nearly impossible for opposing parties to achieve.¹⁰ Again, we disagree. Order 10/04 preserves the Commission's standard of review and offers no additional standard for the review of a Settlement containing results-only revenue requirement terms. In response to the Petition, Staff states that

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 We agree. Any party opposing a settlement must show that the settlement fails to meet the Commission's standards, as stated previously, and present an alternative supported by the record. As we explained in detail in Order 10/04, we are not persuaded by Public Counsel's arguments that the Settlement fails to meet the Commission's standards or that the alternative it presented should be adopted and the Settlement conditioned, modified, or rejected.¹¹ An effective opposition to a Settlement with a results-only revenue requirement must focus, as the Commission must, on the Settlement and on the results-focused revenue requirement in order to be persuasive.

- 11 A company's initial filing is part of the record that informs any Commission decision. Thus, reference and opposition to the initial filing may be included in a convincing

⁸ Avista's Response at 2, ¶ 3; *see also id.* at 3-4, ¶¶ 4-7.

⁹ *See id.* at 3, ¶ 5.

¹⁰ *See* Public Counsel's Petition at 8-9, ¶ 14.

¹¹ *See, e.g.,* Order 10/04 at 63-67, ¶¶ 173-83. The Commission explains elsewhere in Sections A and B of Order 10/04 its determinations that the many other portions of the Settlement also meet the Commission's standards.

argument that shows a settlement fails to meet Commission standards. For example, in Cascade Natural Gas Company's (Cascade) recent GRC, the Commission considered a settlement that *adopted and enumerated* many of the revenue requirement adjustments Cascade presented in its initial filing. As we explained in Order 10/04, this case is unlike and quite distinct from the recent Cascade GRC. Here, the Settling Parties adopted none of the revenue requirement adjustments Avista presented in its initial filing. Public Counsel's presentation focused on objections to specific adjustments to the initial filing, constructing an alternative to the settlement, which we found to be unpersuasive.

- 12 As Order 10/04 explains, we were not persuaded or convinced by Public Counsel that the revenue requirement terms of the Settlement, taken in aggregate and in consideration of the Settlement as a whole, were unlawful, unsupported, inconsistent with the public interest, or would produce end results that were inequitable, unfair, unjust, unreasonable, or insufficient. Neither were we persuaded or convinced that Public Counsel's alternative revenue requirement should be adopted and the Settlement either modified, conditioned, or rejected.

ORDER

- 13 THE COMMISSION denies the Petition for Reconsideration of Order 10/04 filed with the Commission on December 22, 2022, by the Public Counsel Unit of the Washington Attorney General's Office.

DATED at Lacey, Washington, and effective January 30, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

MILT DOUMIT, Commissioner