

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a
AVISTA UTILITES,

Respondent.

DOCKETS UE-170485 and
UG-170486 (*Consolidated*)

COMMENTS OF THE ENERGY
PROJECT REGARDING AVISTA'S
RESPONSE TO BENCH REQUEST
NO. 1

1 The Energy Project files these comments pursuant to the Commission's Notice of
Opportunity To Respond, dated January 2, 2018, in this docket.

2 The Energy Project has not filed revenue requirement testimony in this docket and will
not address the specific accounting and tax implications of the Tax Cuts and Jobs Act (TCJA).¹
Other parties with accounting analysts and experts will certainly be addressing those issues. The
Energy Project's purpose in filing these comments is to urge the Commission to take all
necessary and appropriate actions to ensure that the benefits of the utility tax reductions are
provided expeditiously and fully to Avista ratepayers.² The Energy Project further recommends
that the Commission adopt procedures that further these outcomes for customers, as discussed in
more detail below.

3 The Energy Project commends the Commission for acting promptly, within days after
the passage of the TCJA, to determine the impact of the tax cuts by issuing Bench Request No. 1.
This is consistent with the approach of regulators in many parts of country.³ Ensuring that the

¹ H.R.1, signed by President Trump on December 22, 2017.

² Avista states its intent that "all of the benefits associated with the costs paid by customers related to the TCJA will be returned to customers [.]" Avista Response to Bench Request No. 1, at 1.

³ "Power companies got a tax cut. Will your bill reflect it?" New York Times, January 9, 2018.
<https://www.nytimes.com/2018/01/09/business/economy/tax-cut-power.html>.

tax cuts are captured and promptly passed on will provide a substantial and meaningful benefit to Avista's residential customers, including the substantial percentage of customers who are low income.

4

A number of utilities in other states have acted swiftly to pass on the tax cuts to their customers, even when the company is not involved in pending rate proceedings. For example, Arizona Public Service Company filed January 8 to return \$119 million to customers (\$4.68 per month for an average customer), effective February 1, 2018, based on the reduction in the marginal statutory rate from 35 percent to 21 percent.⁴ The Illinois Commerce Commission granted a petition by Commonwealth Edison to pass through over \$200 million in estimated tax savings effective for billings in February 2018.⁵ On January 5, 2018, Baltimore Gas & Electric (BG&E) filed to reduce its distribution rates approximately \$82 million, effective February 1, 2018. The BG&E filing incorporates the effect of the excess deferred income tax liability (changes to ADIT balances). In the Eversource Energy rate case in Massachusetts, where new rates for a five-year rate plan are set to take effect in February 2018, the Massachusetts Attorney General has filed a motion to reopen the record and implement specific rate adjustments which would have the effect of a net reduction in Eversource rates.⁶

⁴ "APS now seeking rate decrease thanks to federal tax cuts," Arizona Republic, January 9, 2018. <https://www.azcentral.com/story/money/business/energy/2018/01/09/aps-now-seeking-rate-decrease-thanks-federal-tax-cuts/1018865001/>. The reduction would be approximately \$119 million initially, to take effect in February 2018, with the company indicating that further smaller reductions could be offered once the more detailed changes associated with amortization of ADIT are fully understood. *Id. See, In the Matter of the Application of Arizona Public Service Company To Implement Tax Expense Adjustor Mechanism*, Arizona Corporation Commission, Docket E-01345A-18-0003, Application at 2. APS had established a tax adjustment mechanism in anticipation of the tax law change.

⁵ *Commonwealth Edison Company, Verified Petition for Special Permission to File and Put Into Effect on Less Than 45 Days' Notice, Tariffs Accelerating Bill Credits Attributable to Federal Tax Reform*, Illinois Commerce Commission, Docket 18-0034, Order, January 18, 2018 (ComEd operates under a formula rate plan under which rates would be trued up when the precise level of tax benefits is known, Verified Petition of ComEd, ¶ 12).

⁶ *In the Matter of NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource Energy*, Mass. Department of Public Utilities, Docket 17-05, Attorney General's Motion For Reconsideration and To Reopen Hearings, December 20, 2017, pp. 1-2.

5

The Energy Project supports the Commission allowing the time needed to determine the impact of the TCJA on Avista's rate request prior to issuing a final order in this docket. Federal tax obligations are a standard input to the revenue requirement determination in a rate case. In that regard, this case is no different than any other rate case, except for the timing issue. Here, the Company, the parties, the Commission, and Avista customers have become aware of a major known and measurable change to the federal tax input relatively late in the proceeding, with four months remaining before the suspension date. Fair, just, reasonable, and sufficient rates cannot be set without taking the new tax levels into account. The Energy Project agrees with Avista that the tax benefit should be passed through to customers at the same time as any rate changes that take effect from this docket to avoid multiple changes up and down.⁷

6

Given the timing of this development, there is a question about the best way to procedurally deal with the new information. A challenge is posed by Avista's Response to Bench Request No. 1, which states that Avista believes it will not be able to complete its analysis and provide an estimated impact on the revenue requirement impact until March 30, 2018.⁸ This date falls over one month after the date for final briefs in the case, and just a little over three weeks before the statutory suspension deadline. Based on the initial estimates of the rate impact, it appears the Avista March 30 filing will likely significantly change the complexion of its revenue requirement. It would be appropriate for the Commission to allow a reasonable time for analysis and for party responses to the new Avista revenue requirement filing. Under Avista's proposal, this would have to be accomplished in substantially less than 26 days, given that sufficient time would also have to be allowed for Commission review of the new Avista filing, any party responses, and final order preparation. This may not be workable from a practical standpoint, and may also pose fairness problems for parties. It is important to The Energy

⁷ Avista Response to Bench Request No. 1, at 4. It is not clear that Avista's proposal for a separate "rebate" mechanism for the tax benefit is necessary. Adjustments related to federal tax issues are normally incorporated in the overall revenue requirement determination.

⁸ *Id.*, at 3.

Project that parties with accounting experts be provided adequate time to review and respond to Avista's new revenue requirement filing, to ensure the best possible record for a Commission decision in this case.

7 From statements by Avista at the end of the evidentiary hearing on January 17, however, it appears the Avista may have specific information about the effects of the tax law changes by late February. If that is the case, it would be reasonable for the Commission to require Avista to revise its rate filing at that time. If the Commission were to require that Avista's revised revenue requirement be filed by the end of February, that would allow approximately 60 days prior to the suspension date for party review and response, and for Commission final determination. In the event that Avista is not able or willing to file before March 30, it would not be unreasonable for the Commission to request that Avista agree to an extension of the suspension date for its filing to allow for a fair and sufficient review process by Staff, Public Counsel and the other intervenors.

8 Because the current post-hearing briefing date is February 22, The Energy Project also respectfully requests that parties be allowed an opportunity to file supplemental briefs addressing the new Avista revenue requirement filing, as part of any additional process established by the Commission.

9 Respectfully submitted this 26th day of January, 2018.

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