

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a
AVISTA UTILITIES,

Respondent.

DOCKETS UE-170485 and
UG-170486

PUBLIC COUNSEL'S COMMENTS
ON AVISTA'S RESPONSE TO
BENCH REQUEST NO. 1

1. Public Counsel submits comments on Avista's response to the Commission's Bench Request No. 1 pursuant to the January 2, 2018, Notice of Opportunity to Respond. Attached to these comments as Attachment A is an updated Exhibit MEG-3, which was sponsored by Public Counsel witness Mark Garrett and admitted into the record along with Mr. Garrett's testimonies and other exhibits. The updated Exhibit MEG-3 is provided to illustrate Public Counsel's estimation of the impact on Avista's rates resulting from the new Federal tax legislation, The Tax Cuts and Jobs Act (TCJA).

2. The TCJA affects Avista's request for revenue requirement as well as Avista's Accumulated Deferred Federal Income Tax (ADFIT) balances. Avista's requested revenue requirement will decrease as a result of the income tax rate reduction from 35 percent to 21 percent. Additionally, Avista has over-collected from customers excess ADFIT because Avista is currently collecting rates that include an imbedded income tax rate of 35 percent. This will result in an over-collection through at least the anticipated effective date for rates from this

general rate case.¹ Public Counsel agrees with Avista that the benefits from the tax legislation should be returned to customers,² and this should be accomplished expeditiously and completely.

I. IMPACT ON AVISTA'S REVENUE REQUIREMENT

3. Avista's income tax rate has decreased from 35 percent to 21 percent as a result of the TCJA. Public Counsel estimates that Avista's revenue requirement request will decrease from \$37.5 million (as presented in Avista's rebuttal case) to \$9.8 million.³ The Federal tax rate reduction decreases Avista's tax liability, based on Avista's presentation of rate base, by \$19.3 million dollars annually.⁴ Additionally, as discussed below, the tax legislation affects Avista's ADFIT, which Public Counsel estimates will reduce Avista's revenue requirement by \$8.4 million.⁵

4. The TCJA affects Public Counsel's recommendation regarding revenue requirement as well. Based on Public Counsel's analysis of Avista's rate base, the Federal tax rate reduction decreases Avista's annual tax liability by \$17.5 million. Avista's excess ADFIT reduces the revenue requirement by an additional \$8.4 million annually on average. The net effect reduces Public Counsel's revenue requirement from an increase of \$7.5 million to a decrease of \$18.5 million.

5. The Commission should include the reduction in tax rate into the rates ordered through this rate case to provide immediate effectiveness of the new tax rate. Public Counsel is

¹ Public Counsel assumes that the new tax rate will be reflected in Avista's rates going forward at the conclusion of this rate case.

² Avista's Response to Bench Request No. 1 at 1.

³ Attachment A at 1, line 10.

⁴ Attachment A at 1, line 8.

⁵ Attachment A at 1, line 9.

concerned about Avista's proposal to provide its analysis of the TCJA impact by March 30.⁶

While that timing appears to be acceptable to the Idaho Commission,⁷ the suspension date in this rate case is April 26, 2018. Public Counsel recommends that parties be allowed to respond to Avista's analysis, and receiving the analysis less than one month before the suspension date does not provide parties the opportunity to materially respond.

6. From testimony at the evidentiary hearing, Avista seems to be able to quantify the impact sometime sooner than March 30, perhaps by the end of February. It seems appropriate to require Avista to provide its analysis by then instead of waiting until March 30. If the Company is unable to provide its analysis earlier, it would be reasonable for the Commission to ask Avista to waive the statutory deadline to allow for proper process and analysis so that appropriate rates may be set.⁸

II. EXCESS ADFIT RESULTING FROM THE TCJA

7. As noted above, the TCJA will result in substantial excess ADFIT to be collected until the effective date of new rates that reflect the effects of the TCJA. The excess ADFIT will have to be returned to ratepayers. Avista, like other regulated utilities, has recorded ADFIT for the temporary timing differences between book and tax income. The Company's current ADFIT balance was collected from ratepayers based on a 35 percent tax rate, and would, absent the TCJA rate changes, be remitted to the IRS based on a 35 percent rate over time as the tax/book

⁶ Avista's Response to Bench Request No. 1 at 3.

⁷ Avista's Response to Bench Request No. 1 at 3, n.2.

⁸ Avista, at hearing, stated that it was uninterested in waiving the statutory suspension date. Under the circumstances, if it becomes necessary to allow more time to analyze the affect of the TCJA, Public Counsel would encourage Avista to reconsider its position on waiving the suspension date. Public Counsel agrees that the impact should occur along with any rate adjustment resulting from the rate case to avoid multiple rate changes from the customer's perspective.

timing differences reverse. However, under the new law, the ADFIT balance will be remitted to the IRS at a 21 percent tax rate, leaving a balance in ADFIT accounts that will never reverse.

This excess ADFIT must be returned to ratepayers.

8. Avista, most likely, will be required to follow the normalizations rules set forth in Section 203(e)(2)(B) of the 1986 Tax Reform Act, which prescribes that regulated utilities use the Average Rate Assumption Method (ARAM) to return excess deferred taxes to ratepayers. Under this method, the utility's revenue requirement will be reduced in the year that the temporary timing differences that gave rise to the turnaround of accumulated deferred taxes. The revenue requirement will be reduced by the difference between the tax rate used to accrue the ADFIT balance (35 percent) and the tax rate used to pay down the balance (21 percent).

9. Under the ARAM method, the level of temporary timing differences will slowly increase over time as more vintage year plant additions reach the point where book depreciation expense exceeds tax depreciation. This means that the book/tax turn around will not stay constant and the excess ADFIT flow back to ratepayers will correspondingly increase over time. This is an important fact to consider when choosing the ratemaking methodology to facilitate the return of excess ADFIT to ratepayers. For example, embedding a test year level in the cost of service, with nothing more, will result in under-recoveries for ratepayers, as actual amortizations levels increase throughout the rate-effective period.

10. Thus, the better approach for returning these over-collected income taxes to ratepayers is a tracker mechanism. This mechanism would record a regulatory liability for the difference between the level of turnaround of excess deferred income taxes included in rates and the actual level that occurs in subsequent years. This approach would insure that the full amount of

over-collected taxes is returned to ratepayers. The regulatory liability would then be amortized into rates in the Company's next rate case or through a rider mechanism that would start as soon as the Company has been able to quantify the excess ADFIT liability. Under either recovery approach, the tracker mechanism would need to extend into the future to continue to track the difference between the actual level of excess deferred taxes and the amount returned to ratepayers.

11. This difference will be significant because the level of excess ADFIT will increase steadily over time as more vintage year plant additions reach their turnaround point. Using a regulatory liability account to track the excess ADFIT coupled with a rider mechanism to return the money to ratepayers is the approach now being used in both Texas⁹ and Oklahoma.¹⁰ The rider mechanism is desirable because it allows the excess ADFIT to be returned to ratepayers efficiently and completely. Returning the excess ADFIT is necessary because it results from ratepayers making overpayments related to the tax rate.

III. CONCLUSION

12. Public Counsel is pleased that Avista intends to return the overall benefits to customers, and the Commission's fast action in issuing Bench Request No. 1 is an important step in determining the appropriate rate impact. Public Counsel recommends that the impact of the tax rate reduction be incorporated into the rate decision in this case. Public Counsel further recommends that the excess ADFIT be returned to customers via a rider mechanism that will

⁹ See for example Texas Public Utility Commission cases: Stipulation reached in Docket No. 46831 regarding the El Paso Electric Company rate case and the final order in Docket No. 46449 involving the SWEPCO rate case. Excerpts of both documents are attached hereto as Attachment B.

¹⁰ See for example the Direct Testimony of Mr. Donald R. Rowlett in Cause No. PUD 201700496 before the Oklahoma PUD. The excerpt is attached hereto as Attachment C.

return the excess ADFIT in its entirety to customers.

13. Public Counsel appreciates the opportunity to offer these comments. Public Counsel and our witness Mr. Mark Garrett will be available for a hearing, if necessary, on February 1, 2018.

DATED this 26th day of January, 2017.

ROBERT W. FERGUSON
Attorney General



LISA W. GAFKEN
Assistant Attorney General
Public Counsel Unit