

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NOS. UE-150204
TRANSPORTATION COMMISSION,)	AND UG-150205
)	
Complainant,)	
)	NORTHWEST INDUSTRIAL GAS
v.)	USERS' POST-HEARING BRIEF
)	
AVISTA CORPORATION)	
d/b/a AVISTA UTILITIES)	
)	
Respondent.)	

November 4, 2015

I. INTRODUCTION

1. Pursuant to the Prehearing Conference Order dated March 16, 2016, Northwest Industrial Gas Users (“NWIGU”) submits this Post-hearing Brief.
2. NWIGU is a party to the Multiparty Settlement Stipulation (“Multiparty Settlement”) filed with the Washington Utilities and Transportation Commission (“Commission”) on May 1, 2105. For the reasons stated in the Joint Testimony in support of the Multiparty Settlement, NWIGU urges the Commission to approve the Multiparty Settlement, which resolves cost of capital, power supply, rate spread, and rate design.
3. In its original filing, Avista Corporation, d/b/a Avista Utilities (“Avista” or Company”) requested an increases in revenues of \$12.1 million for gas operations. Following testimony from NWIGU and other parties, Avista revised its gas revenue request and now seeks an increase of \$10 million making changes to its attrition analysis based on recommendations from Staff. As explained below, Avista’s requested gas increase is unique because it is based entirely on an attrition adjustment that forecasts costs over a two year period beginning at the end of the test period. Avista has failed to meet its burden of showing that the attrition adjustment is necessary to develop rates that are fair, just, reasonable, and sufficient. NWIGU opposes Avista’s proposed attrition based rate increase and requests that the Commission deny the request.

II. ARGUMENT

4. There is no dispute that rates for Washington utilities are typically developed using an historic test year modified with limited pro forma adjustments to reflect known and measureable changes. NWIGU supports the Commission’s use of a modified historic test year for purposes of general ratemaking. The fundamental principle of ratemaking is that rates should provide the utility with a reasonable opportunity to recover the costs incurred for providing service. The best measure of

a utility's costs is an analysis of the actual, verifiable costs it incurs, which can only be determined by the use of an historical test year.

5. As the Commission recently explained, when pro forma adjustments are added to the historic test year, those adjustment similarly are not to be based on “budgeted or projected changes,” and they typically account for changes that will occur within a short, reasonable time after the test year.¹ A future test year, in contrast, requires rates to be based on budgeted amounts, which are necessarily speculative. This is what Avista has proposed and its proposed gas rates are based entirely on speculative amounts.
6. Despite the long history of the Commission's use of a modified historic test year, the Commission has acknowledged that there has been a “relaxing” to its typical ratemaking approach during recent years as a means to address regulatory lag concerns.² For example, the Commission recently re-approved Puget Sound Energy's Expedited Rate Filing.³ The Commission also approved a two-step rate increase for Avista as part of its 2012 general rate case.⁴ The Commission has also experimented with other approaches, such as use of an end-of-period rate base instead of the typical average of monthly averages approach.
7. The Commission has further acknowledged that movement away from the modified historic test year approach is not without risk, and that it has yet to be proven effective. For example, the Commission expressed a concern that alternative approaches to ratemaking risk violating the matching principle.⁵ Similarly, even though alternative approaches such as attrition adjustments

¹ *WUTC v. Pacific Power and Light Company*, Docket UE 140762, Order 8 (Mar. 25, 2015)(“Docket UE 140762”) at ¶44.

² *Id.* at ¶44, n. 57.

³ *See In re Puget Sound Energy For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Docket UE 121697 (“ERF Docket”).

⁴ *See WUTC v. Avista Corp.*, Docket UE 120436, Order 09 (Dec. 26, 2012) (“Docket UE 120436”) at ¶¶10-11.

⁵ Docket UE 140762 at ¶44, n.57.

are intended to address regulatory lag or an erosion in earnings, companies the Commission regulates “continue to file regularly for general rate increases.”⁶

8. Indeed, use of Avista’s proposed attrition adjustment has only upside for the Company to the detriment of ratepayers. Utilities like Avista in a cycle of large capital investments generally file frequent rate cases. These utilities adjust rates to reflect greater amounts of invested capital and rate base. During times of heavy investment, a utility may be impacted by regulatory lag, but the Commission has on multiple occasions concluded that such lag is an acceptable part of ratemaking. This is a timing issue, and companies that stay out of rate cases are often over-earning which benefits shareholders. NWIGU believes that regulatory lag – to the extent it exists – is appropriately mitigated when a utility files frequent rate cases. The Commission has also made other efforts to decrease the impact of potential lag through tools such as pro forma adjustments or the use of end-of-period rate base.
9. One of the difficulties in addressing attrition arguments is the fact that no clear process exists for how to conduct an attrition analysis or how to apply an attrition adjustment if the analysis warrants one. Indeed, the Commission has not yet adopted a clear definition of attrition and uses that term broadly to refer to any situation in which a utility fails to achieve its allowed earnings.⁷ Even so, the Commission has approved attrition-like adjustments only after careful deliberation and in a way that will clearly protect ratepayers. Avista’s filing, however, does not adhere to any set of established principles on which the Commission has allowed prior attrition-like adjustments.
10. One common theme in the Commission’s prior orders, which is lacking here, is that the Commission has been willing to allow rate increases driven by attrition-like adjustments when the utility will also “stay out” and not file for another general rate revision for multiple years. This

⁶ *Id.*

⁷ *WUTC v. Puget Sound Energy*, Docket UE 111048, Order 08 (May 7, 2012) at ¶484, n.658.

was the approach Avista took in its 2012 general rate case when the Commission approved a settlement that imposed a two year stay out provision.⁸ Puget Sound Energy is similarly subject to a multi-year stay out with approval of its Expedited Rate Filing.⁹

11. Unlike those earlier cases, Avista proposes no stay-out period as part of its filing. To the contrary, a witness for Avista acknowledged during the hearing that it is a “reasonable expectation” that Avista will continue to file annual rate cases, even if the Commission approves its current filing.¹⁰ Some amount of regulatory lag is inherent in the ratemaking process.¹¹ And, Avista is in complete control of the timing of projects and when it files to increase rates. The impact of that lag is corrected each time a company files a general rate case, essentially resetting rates. When a company files annual rate cases, the most amount of regulatory lag it will experience is that which accrues during the time it takes to get through the general rate case proceeding. However, even that minimum amount of lag can be mitigated through other mechanisms such as end-of-period rate base and the use of pro forma adjustments. Avista has not adequately explained why it requires rates to be based on an attrition adjustment when it still plans on filing annual rate cases. Even taking Avista’s attrition analysis at face value, if low load growth results in costs that will increase faster than revenue, Avista can address that discrepancy immediately as it files its next annual rate case.
12. If the Commission determines that Avista is entitled to an attrition adjustment, it should impose a multi-year stay out provision. Such an approach would be consistent with the Commission’s earlier decisions and would be a reasonable trade-off for allowing the Company to collect revenue from rates that are based solely on projected expenditure. Without a multi-year stay out provision,

⁸ Docket UE 120436 at ¶40.

⁹ ERF Docket, Order 15 (June 29, 2015) at ¶157.

¹⁰ Norwood, TR 97:24.

¹¹ ERF Docket, Order 07 (June 25, 2013) at ¶34.

Avista can simply come in and file a new general rate case to update its rates to reflect accurate, actual costs.

13. Another flaw in Avista's filing is that it erodes the Company's incentive to find efficiencies. The Commission discussed this aspect of attrition-like adjustments as part of its final decision in PSE's Expedited Rate Filing:

The use of fixed annual escalation factors to adjust PSE's rates is a viable approach to reduce the impacts of regulatory lag and attrition during a multi-year general rate case stay-out period. The escalation factors provide PSE an improved opportunity to earn its authorized return, but are set at levels that will require PSE to improve the efficiency of its operations if it is to actually earn its authorized return. This is a critically important consideration underlying our approval of the rate plan.

Although PSE's experience over the past five years arguably justifies a delivery-related escalation factor as high as 4.06 percent for electric, PSE uses a 3.0 percent escalation factor. Similarly, for natural gas, although PSE's experience over the past five years arguably justifies an annual delivery-related escalation factor of 3.8 percent, PSE uses a 2.2 percent escalation factor.¹²

14. Put more simply, the Commission approved PSE's rate plan in that matter because the escalation factors behind that plan were "significantly lower than PSE's historical level of delivery expenses," and that approach was "critically important" to the Commission's decision.
15. In contrast, the rates that result from Avista's filing are based only on the Company's historical level of expenses and have not been adjusted downward from the results in its attrition analysis. Avista's attrition analysis identifies a revenue deficiency based on those historic levels and then uses the endpoint of that projection to develop its revenue requirement. Thus, Avista will collect revenue from rates even if it could reduce its expenses through efficiency measures.

¹² ERF Docket, Order 15 at ¶157 (emphasis added).

16. Perhaps the biggest flaw in Avista's proposed attrition approach, however, is that the filing almost completely abandons the notion that rates should be based on known and measurable costs and revenues. This is specifically illustrated in the way Avista developed its escalation factors that it applied to net plant and depreciation/amortization.
17. The escalation factors for net plant and depreciation/amortization expenses associated with the Company's gas operations appear in Avista's Attrition Study.¹³ The escalation factor for "Net Plant after DFIT" is 11.24% and the escalation factor for "Depreciation/Amortization" is 25.86%.¹⁴
18. The escalation factor for Net Plant after DFIT is calculated by determining a rate of growth between 2007 and 2014 (5.62%)¹⁵ and then applying that rate for two years to yield a total increase of 11.24%.¹⁶ Even if the Commission assumes this rate of growth in net plant is accurate, on its own it does not relate in any way to the amount the Company will actually spend on net plant in future years.
19. As acknowledged by Avista's witness, the amount the Company approves for spending on capital expenditures in 2016 is "not really an apples-to-apples comparison" with the amount of net plant calculated in the attrition study.¹⁷ In other words, while rates would be based solely on an amount calculated using historical trends forecast over the next two years, the amount the Company actually spends will be based on its normal spending process. That process involves a recommendation by senior management after evaluating how much should be spent on capital each year, followed by a decision from the Company's board of directors that may or may not comport

¹³ Exhibit No. EMA-7.

¹⁴ *Id.* pp 4-5.

¹⁵ *Id.* p.9

¹⁶ Andrews, TR 179:18, 184:1.

¹⁷ Andrews, TR 185:9.

with that recommendation.¹⁸ Even after approval by the board of directors, the Company's Capital Planning Group may revise which capital projects actually move forward and how much is spent on each.¹⁹

20. Under Avista's proposal, the Company is essentially promising to spend money on capital projects, but will collect revenue for those projects before their costs are known and measurable, and before any sort of prudence determination by the Commission.
21. The escalation factor for Depreciation/Amortization is calculated using the same method and involves determining a rate of growth between 2007 and 2014 (12.93%)²⁰ and then applying that rate for two years to yield a total increase of 25.86%. This calculation, however, is not an accurate representation of the Company's actual depreciation expense.
22. The Company's Depreciation/Amortization escalation factor should be reduced to be closer to the escalation factor used for net plant. As NWIGU's expert witness stated, gross plant must be tied directly to any increase to depreciation expense.²¹ In the Company's proposal, the relationship between depreciation and plant is not even close, with the Company seeking an increase in depreciation that is almost twice the increase in plant.
23. Avista seeks to explain this discrepancy by relying on factors such as recent "significant investment with a shorter life than in past years."²² The implication of this testimony is that certain types of plant investment may skew the Company's overall depreciation rate and prevent it from being tied directly to the overall amount of investment in plant. This explanation, however, illustrates the lack of precision in Avista's analysis. As Avista's witness acknowledged,

¹⁸ Norwood, TR 99:21.

¹⁹ Exhibit No. KON-1T at 9:3.

²⁰ Exhibit No. EMA-7 at p.10.

²¹ Exhibit No. MPG-1T at 17:29.

²² Tr. 183:3.

depreciation expense may vary across all types of capital expenditures, but within each category of capital, one would expect to see less variation.²³ While Avista’s attrition analysis analyzes subcategories of plant (e.g. distribution, storage and general), it calculates Depreciation/Amortization in total and Avista did not “separate it into separate categories or separate functional groups.”²⁴

24. If Avista’s study were more precise, and if Depreciation/Amortization expenses more closely related to net plant expenses, the resulting revenue requirement would be sharply reduced for that category of expenses. The Commission should not approve such an imprecise approach to a forecast.

III. CONCLUSION

25. Avista has not met its burden of demonstrating its proposed rates are fair, just, reasonable, and sufficient. The Commission has not yet completed its investigation on attrition, which has resulted in an absence of any clear guidance to utilities and stakeholders for analyzing and addressing attrition. Avista is taking advantage of that vacuum to propose a novel approach that veers from the Commission’s prior decisions allowing attrition-like adjustments.

26. Especially in light of the fact that Avista plans to file annual rate cases even with its proposed attrition adjustment, the Commission should reject the filing and require the Company to present a case that is based on known and measurable costs using the Commission’s traditional approach to ratemaking. In the alternative, the Commission can determine a reasonable adjustment to the Company’s gas rates based on the current record consistent with Public Counsel’s recommendation. If the Commission determines that an attrition adjustment is warranted, it should

²³ Andrews, TR183:13.

²⁴ Andrews, TR 83:14

at a minimum impose a multi-year stay out period, revise the escalation factors downward to force Avista to seek more efficiency measures, and revise the attrition adjustment so that Depreciation/Amortization expenses are more closely related to net plant expenses.

Dated: November 4, 2015

Respectfully submitted,



Chad M. Stokes, WSB 37499, OSB 00400
Tommy A. Brooks, WSB 40237, OSB 076071
Cable Huston LLP
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-mail: cstokes@cablehuston.com
tbrooks@cablehuston.com

Of Attorneys for the
Northwest Industrial Gas Users

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by electronic mail and by mailing a copy properly addressed with first class postage prepaid.

Patrick J. Oshie
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
poshie@utc.wa.gov

Kelly O. Norwood
VP, State and Federal Regulation
Avista Corporation
P.O. Box 3727
1411 E. Mission Ave., MSC-27
Spokane, WA 99220-3727
kelly.norwood@avistacorp.com;
AvistaDockets@avistacorp.com

Lisa W. Gafken
Assistant Attorney General
Office of the Attorney General
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
lisaw4@atg.wa.gov

Ronald L. Roseman
Attorney At Law
2011 - 14th Avenue East
Seattle, WA 98112
ronaldroseman@comcast.net

David J. Meyer, Esq.
VP and Chief Counsel for
Regulatory and Governmental Affairs
Avista Corporation
P.O. Box 3727
1411 E. Mission Ave., MSC-27
Spokane, WA 99220-3727
david.meyer@avistacorp.com
Melinda J. Davison
Davison Van Cleve
333 S.W. Taylor, Suite 400
Portland, OR 97204
mjd@dvclaw.com

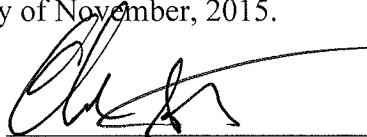
Simon J. ffitch
Senior Assistant Attorney General
Washington State Attorney General's
Office
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
simonf@atg.wa.gov

Finklea, Ed
Executive Director
NWIGU
545 Grandview Drive
Ashland, OR 97520
efinklea@nwigu.org

Eberdt, Charles M
Manager
The Energy Project
3406 Redwood Ave
Bellingham, WA 98225
CHUCK_EBERDT@oppco.org

Industrial Customers of Northwest
Utilities
Industrial Customers of Northwest
Utilities
818 SW 3rd Avenue
Portland, OR 97204

Dated in Portland, Oregon this 4th day of November, 2015.



Chad M. Stokes, WSBA 37499, OSB 00400
Tommy A. Brooks, WSBA 40237, OSB 076071
Cable Huston LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-mail: cstokes@cablehuston.com
tbrooks@cablehuston.com

Of Attorneys for the
Northwest Industrial Gas Users

4835-0849-3602, v. 1

PAGE 2 - CERTIFICATE OF SERVICE

CABLE HUSTON LLP
1001 SW FIFTH AVENUE, SUITE 2000
PORTLAND, OREGON 97204-1136
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176