

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	
)	DOCKETS UE-150204 and
Complainant,)	UG-150205 (<i>Consolidated</i>)
)	
v.)	MOTION/PETITION FOR A WAIVER
)	OF RULES TO ALLOW FOR AN
AVISTA CORPORATION, dba)	ANSWER TO ICNU AND PUBLIC
AVISTA UTILITIES,)	COUNSEL’S MOTION FOR
)	CLARIFICATION, AND COMMISSION
Respondent.)	STAFF’S MOTION TO RECONSIDER
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I. MOTION/PETITION FOR A WAIVER OF RULES TO ALLOW FOR AN ANSWER

1 Pursuant to WAC 480-07-110, WAC 480-07-370, and WAC 480-07-375, Avista Corporation (“Avista” or “Company”) seeks a waiver of WAC 480-07-835(3) and WAC 480-07-850(3) which, in both instances, provide that no party may file an answer to a Motion for Clarification or a Petition for Reconsideration unless requested by the Commission.¹ For the reasons set forth in this pleading, good cause exists for waiving this limitation on the opportunity for the Company to respond. The public interest will be served by providing the Company with an opportunity to respond, given the undue hardship on the Company were its views not considered and the Commission were to modify its order to reflect the calculations of the electric revenue requirement proffered by Staff and ICNU/Public Counsel in their

¹ WAC 480-07-110(1) provides that the “Commission may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions, without following the process identified in Subsection (2) of this section.” Subsection 2 otherwise provides for the filing of a written petition identifying the rule for which an exemption is sought, and providing a full explanation of the reason for requesting the exemption. Because this request is made in the context of an ongoing adjudicative proceeding (Docket Nos. UE-150204 and UG-150205), the additional procedure set forth in subsection 2 need not apply; nevertheless, Avista has styled this pleading as a Motion/Petition to avoid any dispute as to the procedural posture of its request.

Motion to Reconsider and Motion for Clarification, respectively.² As demonstrated below, the “end result” of a reduction of \$27.4 million (calculated by Staff), or a revenue decrease of \$19.8 million (calculated by ICNU/Public Counsel), would not produce rates that are just, fair, reasonable and sufficient (RCW 80.20.010).

2 Avista does not challenge the end result of Order 05, which produced an \$8.1 million reduction to electric revenues, and believes that such a result would provide the Company with a reasonable opportunity to earn its authorized rate of return.

3 Please direct all correspondence related to this filing as follows:

David J. Meyer, Esq.
Vice President and Chief Counsel for
Regulatory & Governmental Affairs
Avista Corp.
P. O. Box 3727
1411 E. Mission Avenue, MSC 27
Spokane, Washington 99220-3727
Telephone: (509) 495-4316
Facsimile: (509) 495-8851
E-mail: david.meyer@avistacorp.com

Kelly Norwood
Vice President
State and Federal Regulation
Avista Corp.
P. O. Box 3727
1411 E. Mission Avenue, MSC 27
Spokane, Washington 99220-3727
Telephone: (509) 495-4267
Facsimile: (509) 495-8851
E-mail: kelly.norwood@avistacorp.com

II. INTRODUCTION

4 On January 6, 2016 the Commission issued its final order (Order 05 in the above-referenced dockets) in Avista’s electric and natural gas general rate cases, which were originally filed by the Company on February 9, 2015. The Order approved an electric revenue

² Staff’s Motion to Reconsider, filed on January 19, 2016, provides calculations suggesting that the Commission should revise Avista’s electric revenue requirement to reflect a decrease of \$27.4 million (instead of the decrease of \$8.1 million ordered by the Commission in its Order 05 in this docket). In its January 26, 2016 response to Bench Request No. 19, Staff clarified that, “The Commission now has the opportunity and authority to revisit its analysis, and at its discretion, confirm, explain, or alter its decision as it believes necessary.” The Joint Motion for Clarification of ICNU/Public Counsel, also filed on January 19, 2016, while it does “not seek to change the outcome of any issues resolved in Order 05,” it otherwise seeks clarification of an “attrition adjustment calculation in Order 05.” (See paragraph 2 of Joint Motion)

decrease of \$8.1 million (1.6%), and a natural gas revenue increase of \$10.8 million (7.4%).
The new rates became effective January 11, 2016.

5 On January 19, 2016, ICNU and the Public Counsel filed a Joint Motion for Clarification
with the Commission. In their Motion, ICNU and Public Counsel requested that the
Commission clarify the calculation of the electric attrition adjustment and the end-result
revenue decrease of \$8.1 million. ICNU and Public Counsel provided their own calculations
in their Motion, and suggested that the revenue decrease should have been \$19.8 million based
on their reading of the Commission’s Order. They do not, however, seek to change the
outcome of any issues resolved in Order 05.³

6 On January 19, the Commission Staff filed a Motion to Reconsider with the Commission.
In its Motion, the Commission Staff provided calculations and explanations that suggested that
the electric revenue decrease should have been a revenue decrease of \$27.4 million instead of
\$8.1 million, based on their reading of the Order. Subsequently, in its January 26, 2016
response to Bench Request No. 19, Staff clarified that “The Commission now has the
opportunity and authority to revisit its analysis, and at its discretion, confirm, explain, or alter
its decision as it believes necessary.”

7 None of the parties in their Motions raised issues with the Commission’s decision on the
natural gas revenue increase of \$10.8 million.

A. Order Conference

8 On the afternoon of January 6, 2016, Avista requested an “order conference” pursuant to
WAC 480-07-840 to seek clarification related to the derivation of the Commission-approved

³ To do so would have required the filing of a Petition for Reconsideration. (See WAC 480-07-835 and WAC 480-07-850).

revenue adjustments. The conference was convened by Administrative Law Judge Marguerite Friedlander, and was held at 3:00 pm on January 6th, the same day in which the Order was issued. Participants on the call included Judge Friedlander, a representative of the Commissioner’s Policy and Accounting Advisors (“Advisory Staff”) ⁴ who was knowledgeable of the derivation of the approved revenue requirement, and representatives of all the parties (Commission Staff, ICNU, Public Counsel, and the Northwest Industrial Gas Users), with the exception of The Energy Project.

9 During the call, a number of questions were asked related to the derivation of the electric revenue decrease of \$8.1 million. Among the questions asked was a question by Commission Staff related to the significant difference between the attrition adjustment proposed by Commission Staff and that approved by the Commission. Advisory Staff provided an explanation supporting the derivation of the attrition adjustment adopted in the Order. A representative of ICNU asked whether the updated Power Supply adjustment of \$12.3 million had been incorporated into the \$8.1 million revenue decrease. Advisory Staff affirmed that it was included in the calculation.⁵

B. Compliance Filing

10 Following the clarifications from the order conference, Avista prepared a compliance filing and submitted tariffs to comply with the Commission’s Order. The filing was submitted

⁴ The Advisory Staff operate independently of the Commission Staff, and do not discuss the merits of this proceeding with the Commission Staff, or any other party, without giving notice and opportunity for all parties to participate.

⁵ Among the purposes of an order conference under WAC 480-07-840, is to “propose technical changes that may be required to correct the application of principle to data” or “correct patent error.”

on January 7, 2016, and new electric and natural gas rates were reviewed, approved and became effective January 11, 2016.

III. AVISTA'S RESPONSE TO THE MOTIONS

A. The Electric Revenue Decrease of \$8.1 Million

11 The Commission-approved electric revenue decrease of \$8.1 million is a larger decrease than the decrease proposed and supported by Avista at the time the record closed in this docket. In its rebuttal filing, Avista presented an updated electric revenue requirement calculation showing the need for an electric revenue increase of \$3.6 million.⁶ As explained on page 34 of Mr. Norwood's rebuttal testimony, this \$3.6 revenue requirement was predicated upon Commission approval of deferred accounting treatment related to the 2016 major maintenance for thermal generation:⁷

If Avista's proposal on rebuttal to defer and amortize (normalize) the "hours-based" thermal maintenance is rejected by the Commission, then Avista's electric revenue requirement on rebuttal would increase from \$3.6 million to \$6.6 million in order to provide recovery for these increased costs in 2016. (emphasis added)

12 The Commission's Order 05 did not approve the proposed accounting treatment, and therefore, Avista's demonstrated need for revenue relief in 2016 became \$6.6 million,⁸ i.e., since the \$3.0 million was not approved for recovery through deferred accounting, the Company needs to recover it through base revenues.

13 The Power Supply update filed by the Company on October 29, 2015, in compliance with the Multiparty Settlement Stipulation, produced a reduction to Avista's overall revenue

⁶ Exhibit No. KON-1T, p. 34.

⁷ Exhibit No. KON-1T, p. 34, n. 24.

⁸ See Order 05, ¶ 53. The effect of the Commission's Order 05 is to normalize the cost for customers, but not the Company.

requirement of \$12.3 million.⁹ This update reduced the Company’s proposed revenue requirement from a \$6.6 million revenue increase, to a revenue decrease of \$5.7 million (\$6.6 million increase, minus \$12.3 million = \$5.7 million decrease).

14 By comparison, the Commission’s \$8.1 million electric revenue decrease in Order 05 was a greater decrease than the \$5.7 decrease demonstrated by the Company (which included the Power Supply update). In its Order the Commission spent considerable time discussing the importance of the “end result” of the final electric and natural gas revenue adjustments, and the Commission concluded that an \$8.1 million electric decrease was a reasonable end result.

15 Table No. 1 below shows the electric revenue adjustment proposals of each of the parties at the time the record closed in this docket, both prior to and after the \$12.3 million power supply update that was filed by Avista on October 29, 2015. The revenue decrease of \$8.1 million ordered by the Commission in Order 05 is also provided for comparison purposes.

Table No. 1 - Proposed Electric Revenue Requirement (Litigation Positions)
(\$ in millions)

	<u>Avista</u>	<u>Commission</u>	<u>Commission Staff</u>	<u>ICNU</u>	<u>PC</u>
Prior to Power Supply Update	\$6.6 ¹⁰		(\$6.2) ¹¹	(\$17.4) ¹²	(\$29.7) ¹³
Power Supply Update	<u>(\$12.3)</u>		<u>(\$12.3)</u>	<u>(\$12.3)</u>	<u>(\$12.3)</u>
After Power Supply Update	(\$5.7)	(\$8.1)	(\$18.5)	(\$29.7)	(\$42.0)

16 Although there can be debate regarding the “building blocks” that lead to the end result, the \$8.1 million revenue decrease is clearly within the bounds of reasonableness when

⁹ Order 05, ¶ 12.

¹⁰ See ¶11 – 13 in this pleading.

¹¹ Exhibit No. KON-1T, p. 18, ln 24.

¹² Exhibit No. KON-1T, p. 31, ln 5.

¹³ Ibid.

compared with the lesser \$5.7 million decrease demonstrated by Avista. Both of these revenue decrease amounts (the Commission's \$8.1 million and Avista's proposed \$5.7 million) incorporate the 9.5% return on equity (ROE) and the capital structure supported by the parties in the Multiparty Settlement Stipulation. The larger \$8.1 million revenue decrease approved by the Commission makes it incumbent upon Avista to manage its costs in 2016 in order to have the opportunity to actually earn that 9.5% ROE. From Avista's perspective, this difference of \$8.1 million vs. the \$5.7 million reduction is within the bounds of reasonableness and is a manageable difference for the Company, in its efforts to actually earn its authorized return.

17 Avista agrees with the Commission's characterization of ICNU and Public Counsel's revenue decrease litigation proposals of \$29.7 million and \$42.0 million, respectively, from the table above, as being "drastic"¹⁴ and "even more severe".¹⁵ Staff's revenue decrease litigation proposal of \$18.5 million also would not provide Avista with a reasonable opportunity to earn the authorized return for 2016, as demonstrated by the record.

18 Furthermore, if the Commission were to adopt an "end result" of a \$19.8 million electric revenue decrease as calculated by ICNU and Public Counsel in their Motion, or the \$27.4 million revenue decrease as calculated by Commission Staff in its Motion, the magnitude of these revenue decreases would not come close to providing a reasonable opportunity for Avista to earn the agreed-upon 9.5% authorized ROE for 2016.

19 In the current case there were settlement discussions among the parties on the overall revenue requirement, but a settlement was not reached. From the Company's perspective, this was due in large part to the large difference in the positions of the parties, and Avista's view

¹⁴ Order 05, ¶ 134.

¹⁵ Order 05, ¶ 132.

that the proposals of the parties would not provide a reasonable opportunity for the Company to earn close to the authorized return for 2016.

B. The End Result

20 As mentioned above, the Commission, appropriately, spent considerable time in its Order emphasizing the importance of the “end result” of its order. In particular, in paragraph 132, on page 49, of its Order 05 the Commission stated as follows (emphasis added):

Were we to reject an attrition adjustment for electric revenue requirement in this case, the result under Staff’s modified historical test year pro forma analysis would be a reduction in electric revenue requirement of more than \$20 million.¹⁶ Public Counsel and the intervenors recommend even more severe reductions based solely on a modified test year analysis with known and measurable pro forma adjustments. We cannot reasonably conclude such an end result would be appropriate under the standards in *Hope* and *Bluefield*. The Commission’s responsibility to set rates that are fair, just, reasonable, and sufficient turns not on the particular rate making methodology it selects, i.e., modified historical test year or attrition, but on its outcome, or “end results.”¹⁷ Indeed, the Supreme Court in *Hope* determined that the Federal Power Commission (FPC) “was not bound to the use of any single formula or combination of formulae in determining rates.”¹⁸ The Court explained that:

Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the [Federal Power] Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.¹⁹ (emphasis added)

21 As the Commission pointed out, the U.S. Supreme Court determined that, “it is the result reached not the method employed which is controlling. It is not the theory but the impact of

¹⁶ Exhibit No. CSH-2 at 1 (Revised Oct. 13, 2015).

¹⁷ See *Fed. Power Comm 'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) (the methods by which government regulators determine a utility’s rate are inconsequential so long as the *end result* is fair).

¹⁸ *Id.* at 602.

¹⁹ *Id.* This language became known as the “end result” test.

the rate order which counts.” (Supra) The Court even went on to state that, “The fact that the method employed to reach that result may contain infirmities is not then important.” (Supra) In the case of Avista, even if one were to conclude that there may be “infirmities” within the method employed, it would not, and should not, lead to a conclusion that the end result is not just and reasonable.

22 The Commission, in its Order²⁰, went on to reference the *Permian Basin* case and stated, in part, “In the *Permian Basin* case, another FPC case often cited with *Hope*, the United States Supreme Court embraced the end result test”.²¹ The Commission’s footnote to this statement provides further emphasis on the importance of the “end result” test, as opposed to limiting its “inquiries” to the “computation of costs of service.”²² The referenced footnote states, in part:

The Court stated: “The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about prospective responses of the capital market; it is instead obliged at each step of the regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress.” (Ibid.)

Mindful of its responsibilities, this Commission concluded:

These are the fundamental principles that have long guided the Commission when it determines rates for a jurisdictional utility such as Avista. A drastic rate reduction, such as proposed by parties that urge us to reject an attrition adjustment, would run afoul of these principles.²³ (emphasis added)

²⁰ Order 05, ¶133.

²¹ See Order 05, supra, at ¶133, n. 196 - *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 791–92, 88 S. Ct. 1344, 1372–73, 20 L. Ed. 2d 312 (1968) (*Permian Basin*). The Court stated: “The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about prospective responses of the capital market; it is instead obliged at each step of the regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress. Accordingly, the ‘end result’ of the Commission’s order must be measured as much by the success with which they protect those interests as by the effectiveness with which they ‘maintain credit ... and ... attract capital’.” 390 U.S. at 791. See also, *People’s Organization for Washington Energy Resources v. Washington Utilities & Transportation Comm’n*, 104 Wn.2d 798, 811-12, 711 P.2d 319 (1985) (*POWER*) (quoting *Permian Basin*).

²² Order 05, n. 196.

²³ Order 05, ¶134.

23 The magnitude of the electric revenue decreases calculated by ICNU and Public Counsel (\$19.8 million), and the Commission Staff (\$27.4 million) are “drastic” when compared with the \$5.7 million decrease supported by Avista, and the \$8.1 million decrease approved as a reasonable end result by this Commission. If the Commission were to adopt an “end result” of a \$19.8 million electric revenue decrease as calculated by ICNU and Public Counsel, or the \$27.4 million revenue calculated by Commission Staff, Avista would not have a reasonable opportunity to earn its authorized return for 2016, as shown below.

C. Avista’s ROE Opportunity in 2016 if Amounts in Motions are Adopted

24 Table No. 2 below illustrates Avista’s earnings opportunity for 2016 for its electric operations in Washington if the revenue decreases calculated by ICNU/Public Counsel and the Commission Staff were to be adopted by the Commission. The table is in the same format as contained within Mr. Norwood’s Rebuttal Testimony showing the impact on ROE of the parties’ original positions, but updated to reflect the impact of their Motions and is reproduced from page 31 of Mr. Norwood’s testimony (Exhibit KON-1T).²⁴ All of the numbers are derived from evidence of record, or simply represent mathematical calculations based on these source numbers.

²⁴ See Exhibit No. KON-1T, p. 31.

Table No. 2

	\$Millions	
	ICNU/PC Electric	Commission Staff Electric
a. ICNU/PC/ Staff Calculated Revenue Rqmt (1)	(\$19.8)	(\$27.4)
b. Avista Updated Revenue Rqmt (2)	(\$5.7)	(\$5.7)
c. Shortfall from ICNU/PC/ Staff Calculations (3)	(\$14.1)	(\$21.7)
d. After-Tax Shortfall (4)	(\$8.7)	(\$13.5)
e. Rate Base (5)	\$1,393.0	\$1,393.0
f. Equity Portion of Rate Base (48.5%) (6)	\$675.6	\$675.6
g. May 1, 2015 Stipulated ROE (7)	9.50%	9.50%
h. ROE Shortfall (8)	(1.29%)	(2.00%)
i. ROE Earnings Opportunity (9)	8.21%	7.50%

1. Source: ICNU/Public Counsel Joint Motion p. 3, and Staff Motion p. 1.
2. Source: Explained in Paragraph 13 of this pleading.
3. Source: line a – line b
4. Source: The Company used a revenue conversion factor of 0.62018 for electric to compute the after-tax shortfall. (See Exhibit No. KON-1T, p. 31, n. 21.)
5. Source: KON-1T, p. 31, l. 10.
6. Source: KON-1T, p. 31, l. 11.
7. Source: KON-1T, p. 31, l. 13.
8. Source: line d ÷ line f
9. Source: line g – line h

25 The first line of Table No. 2 above reflects the calculated electric revenue decreases of ICNU/Public Counsel and Commission Staff of \$19.8 million and \$27.4 million, respectively. The second line reflects Avista’s proposed revenue decrease of \$5.7 million, as explained earlier. All other information and calculations in the table are consistent with the original table in Mr. Norwood’s testimony (Exhibit KON-1T).

26 The table shows that if the Commission were to adopt the ICNU/Public Counsel calculated revenue decrease of \$19.8 million, it would provide an ROE earnings opportunity for Avista for 2016 of only 8.21%, as compared with the 9.5% authorized ROE. For the Commission Staff’s calculated decrease of \$27.4 million, it would only provide an ROE

earnings opportunity for Avista of 7.50%. Neither of these outcomes would provide a reasonable end result and would not provide the Company with a reasonable opportunity to earn the agreed-upon ROE of 9.5% in 2016.

D. Results in 2013 and 2014 Underscore the Importance of a Sufficient Attrition Adjustment in Producing a Reasonable End Result

27 The importance of recognizing attrition was acknowledged by the Commission in Dockets UE-120436 and UG-120437.²⁵ Avista entered into, and supported, that settlement in those dockets because the end result was expected to provide an earned return close to the Commission-authorized return for the two-year rate period. The earned ROEs for Avista for 2013 and 2014 of 9.5% and 9.9%,²⁶ respectively, for Avista's combined electric and natural gas operations in Washington, are an after-the-fact confirmation that the earlier revenue increases granted based on recognition of attrition provided earned returns very close to the then-authorized ROE of 9.8%.²⁷

28 The point is this: Avista agreed to and supported the settlement agreement that led to the new retail rates for 2013 and 2014, because there was an expectation that the end-result would provide an earned return close to the Commission-authorized return – and it did. As indicated

²⁵Docket Nos. UE-120436 and UG-120437, Order 14, ¶70 (December 26, 2012).

²⁶ Exhibit No. KON-1T, p. 13.

²⁷ Even if one were to look solely at the Washington electric after-the-fact earnings results, the differences between the normalized earned returns for 2013 and 2014 and the authorized return were within a reasonable range. The electric earned return in 2013 was 9.9% vs the authorized return of 9.8%. For 2014, as Avista explained in this docket, the pension and post-retirement medical expense took an unexpected drop in 2014, but then went back up in 2015 to a level similar to 2013. Cross Exhibit No. 9, Attachment A shows expense for 2013, 2014, and 2015 of \$18.7 million, \$14.1 million, and \$18.7 million, respectively. The decrease in 2014 was related to favorable returns on the fund balances in 2014 (TR 197:22 – 198:3), and changes in interest rates and discount rates (TR 203:25 – 204:4). Removing this one-year aberration in expense for 2014, which was beyond the control of the Company, reduces the normalized ROE for Washington electric operations from 10.6% to 10.2%. The \$4.6 million drop from 2013 to 2014 is equal to 42 basis points on ROE. For Avista's electric operations, 10 basis points on ROE is equal to \$1.1 million in revenue requirement (0.1% x \$675.6 million from Table 2, line f. ÷ 0.62018 from Table 2, line d., Note 4.) \$4.6 million ÷ \$1.1 million = 42 basis points or 0.42% ROE. This 10.2% ROE is reasonably close to the 9.8% authorized level.

earlier, the settlement discussions among the parties on the overall revenue requirement in the current case, however, did not yield a settlement agreement. We believe this was due in large part to the large difference in the positions of the parties, and Avista's view that the proposals of the parties would not provide a reasonable opportunity for the Company to earn close to the authorized return for 2016.


29 Nevertheless, in this case, the Commission's \$8.1 million revenue decrease in Order 05, however it was derived, provides an "end result" that is reasonable and will provide Avista a reasonable opportunity to earn the authorized return in 2016.

IV. CONCLUSION

30 Avista believes that Order 05 produces an "end-result" that is within the range of reasonableness, albeit providing somewhat less electric rate relief than demonstrated by the Company. Should the Commission determine that the approved electric revenue requirement decrease of \$8.1 million should be further reduced, the Company requests the additional opportunity to be heard and/or a reopening of the record if necessary.

RESPECTFULLY SUBMITTED this 28th day of January 2016

AVISTA CORPORATION

By:  _____
David J. Meyer
VP, Chief Counsel for Regulatory and
Governmental Affairs