

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a
AVISTA UTILITIES,

Respondent.

DOCKETS UE-160228 and
UG-160229 (*Consolidated*)

COMMISSION STAFF'S ANSWER
TO AVISTA'S PETITION FOR
RECONSIDERATION OR
REHEARING

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Answers to Petition for Reconsideration or Rehearing, Commission Staff (Staff) submits this Answer to Avista Corporation's (Avista's) Petition for Reconsideration or Rehearing. Staff accepts the Commission's determination in Order 06 and does not support changing the decision. In Order 06, the Commission determined that Avista Corporation ("Avista" or "Company") had not met its burden of proof to show that its proposed rates would be fair, just, reasonable, and sufficient. This outcome is reasonable, given the evidence, and need not be disturbed. While Staff does not believe that reconsideration or a rehearing is warranted, we do agree that the decision could be clarified in one specific area. We will address the Company's petition issue by issue.

II. BACKGROUND

2 In Order 06, the Commission reiterated the attrition standard it announced in the last Avista general rate case, quoting, "we do require that utilities requesting an attrition adjustment demonstrate that the cause of the mismatch between revenues, rate base and expenses is not

within the utility's control."¹ Simply put, the Commission found that Avista had not presented evidence sufficient to meet this standard. The Commission identified three primary problems with Avista's case, which led the Commission to determine that Avista had not demonstrated that it needs an attrition adjustment. First, the Commission found that, because Avista had not prepared results based on traditional modified historical test year analysis, Avista could not demonstrate that the modified test year relationships would fail to hold during the rate year.² In other words, Avista could not show that there was a mismatch because it did not provide credible evidence of its pro forma results.

3 Second, the Commission found that Avista had also failed to carry its burden to show the existence of attrition because Avista is not experiencing underearning. Rather, the evidence convinced the Commission that Avista was earning "at, near, or even in excess of, its authorized return."³

4 Finally, the Commission was not persuaded that Avista's increasing rate of capital investment and increasing expenses are beyond Avista's control.⁴ The Commission noted that Avista had cited in its brief only to Staff's testimony that "the growth rates in [Avista's] expenses and capital investments are largely the result of factors that *appear* to be outside of the control of the utility."⁵ Staff stands by the objectivity of its analysis and its statistical representations of a reasonably likely future. That said, Staff recognizes that statistical representations of the future do not supersede the requirement that companies requesting a rate

¹ Order 06 at ¶ 52, quoting *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-150204 and UG-150205, Order 05, ¶ 110 (Jan. 6, 2016) (Order 05).

² Order 06 at ¶¶ 62-63.

³ Order 06 at ¶ 66.

⁴ Order 06 at ¶ 70.

⁵ Order 06 at ¶ 70.

increase justify costs. Staff accepts that its analysis of statistical information did not satisfy the Commission on the issue of Avista's degree of control over the procurement of new plant.

III. RESPONSE TO GROUNDS FOR RECONSIDERATION

5 What follows is Staff's response to specific issues identified in Avista's petition.

Issue No. 1: Existing Rates Are Insufficient to Provide the Company With a Reasonable Opportunity to Earn Its Authorized Return

6 The Company argues that the Commission did not fully examine the evidence for attrition, and as a result has not set rates that are fair, just, reasonable and sufficient. Avista essentially is arguing here that the Commission's decision in Order 06 of Dockets UE-160228 and UG-160229 is inconsistent with its decision in Order 05 of Dockets UE-150204 and UG-150205. Staff disagrees with Avista's argument.

7 First, Avista repeatedly cites to the "new normal" when describing the circumstances underlying diverging rates of growth in revenues and expenses. Avista cites to language in the previous Commission order that refers to "an environment of low load growth" as representing the "new normal,"⁶ but confuses "circumstances" to include increased capital investments. Increased capital investments is not a circumstance. Staff does not interpret Order 06 of the present docket to mean that the Commission now denies that low load growth persists. Those circumstances are indeed the "new normal," at least for now. Rather, the Commission's determination in Order 06 rests on the finding that the projected increase in capital investments has not been shown to be necessary nor have the conditions underlying that increase been shown to be out of the Company's control.

8 Further, in Order 05 of Dockets UE-150204 and UG-150205, the Commission commented specifically on Avista's failure to demonstrate that the continued high level of

⁶ Petition at ¶ 9.

capital investments was outside of the Company's control: "[T]here is some, but not complete, evidence to demonstrate that the circumstances driving attrition are outside of the Company's control..."⁷ In the specific case of electric distribution investments, the Commission stated that "the Company has not met its burden to show that its proposed investments are based in circumstances beyond its control."⁸

9 While the Commission ultimately authorized an attrition allowance in the last case, it also announced a standard for showing attrition. The Commission made it clear that in future cases Avista would need to present stronger evidence that capital investments and cost increases are beyond the Company's control. Therefore, the Company's claim that the Commission "applied the same standards to the same type of evidence in both cases"⁹ is incorrect. The Commission's decision to provide an attrition allowance in the last case should not have been understood to mean that the Commission will continue to provide an attrition allowance if Avista fails to provide sufficient evidence to meet the Commission's standard. In the Commission's judgment, that standard was not met in the present case.¹⁰

Issue No. 2: Use of the Modified Historical Test Year

10 Avista argues that, contrary to Order 06, the Company presented a pro forma study in accordance with Order 05. As a result, the Company believes it has met the requirement that a pro forma study is presented as part of any attrition study. Avista seeks to have the Commission acknowledge that the Company provided an appropriate pro forma study. Staff believes that the Company's argument on this issue has merit and that further guidance from the Commission could be helpful.

⁷ Order 05 at ¶ 129.

⁸ Order 05 at ¶ 136.

⁹ Petition at ¶ 13.

¹⁰ See Order 06 at ¶ 70.

11 Avista's dispute with Order 06 seems to center on whether Exhibit Nos. JSS-2 and JSS-3 contain modified historical test year studies with limited pro forma adjustments. The documents themselves are titled "WASHINGTON ELECTRIC RESULTS – PRO FORMA AND CROSS CHECK STUDIES" and "WASHINGTON NATURAL GAS – PRO FORMA AND CROSS CHECK STUDIES," respectively. While the documents do contain both the pro forma and cross check studies, consistent with the document titles, they are confusing and arguably represent something other than mere results with limited pro forma adjustments.

12 The Company did make some efforts at demarking where the modified historical test year with limited pro forma adjustments ends, and where the cross-check elements begin. For example, in Exhibit No. JSS-2, page 10, the subtotal for the pro forma study portion of the exhibit is presented, and on Exhibit No. JSS-1T, pages 5-6, Ms. Smith explains the pro forma portion of her exhibit. Overall, however, Staff believes that the Company's presentation here is needlessly confusing. For example, on page 3 of Exhibit No. JSS-2, the Company's pro forma results are presented almost as if an afterthought. Confusingly, Line 1 refers to "Pro Forma Rate Base" and Line 12 refers to "Pro Forma Study Rate Base." The lack of clarity in the presentation may explain the Commission's finding that Avista did not provide an adequate modified historical test year pro forma study.

Issue No. 3: The Recent Earnings of Avista

13 The Company seeks to have the Commission reconsider its order to recognize that, absent an attrition adjustment, the Company will return to chronic under-earning during the rate-effective period. Staff does not support the Company's position on this issue.

14 In Order 06, the Commission found that the recent performance of the Company does not show chronic under-earning, and that the absence of this showing "militates against the use of an

attrition adjustment in this case.”¹¹ The Company, in contrast, believes that the recent performance of Avista in achieving its authorized rate of return supports the use of an attrition adjustment. Avista’s argument rests on the belief that rates during 2013-2015 were set with a de facto attrition adjustment. However, the Commission only explicitly authorized an attrition adjustment in the 2015 general rate case, and its effects on the Company’s ability to achieve its authorized rate of return cannot be considered until the 2016 Commission Basis Report is received. Therefore, the relevance of Avista’s recent earnings depends on whether rates in effect during 2013-2015 included an attrition adjustment or not. However, even if the rates then in effect included an attrition adjustment, it may be impossible to know whether it was the attrition allowance itself that allowed Avista to earn its authorized rate of return or whether the Company simply managed its costs to align with the total revenue it was allowed.

15 It is important to note that the claims that Avista has made regarding a possible Washington jurisdiction return on equity of 6.8%¹² rely in turn on the claims the Company has made regarding the rate base balances used to make this calculation. For example, for electric service the Company uses the “Attrition Adjusted / Cross Check” total rate base figure found in Exhibit No. JSS-2, page 12. Use of this figure requires accepting the Company’s attrition study results. This is problematic because the Commission did not find there was sufficient evidence to show that growth in rate base and expenses is outside of Avista’s control.¹³ In other words, Avista’s argument relies on exactly that evidence that the Commission found to be unreliable.

¹¹ Order 06 at ¶ 66.

¹² Petition at ¶ 29.

¹³ See Order 06 at ¶ 69.

Issue No. 4: The Proformed Test Period Studies Do Not Show That Existing Revenues Are Sufficient

16 The Company argues that the results of a traditional modified historical test year study do not reflect the revenues that would be sufficient for the rate-effective period. Staff does not support the Company's position on this issue.

17 It is important to keep in mind that, pursuant to RCW 80.04.130 (4), Avista has the burden to show that any rate increase it proposes is just and reasonable. If a public service company does not meet its burden of proof, existing rates remain in place. In Order 06, the Commission found that Avista had not met its burden to show that it required the increased rates it proposed. These proposed rates rely on an attrition adjustment.¹⁴ The Commission found that Avista's case did not contain sufficient evidence of attrition. Without sufficient evidence, the Commission could not determine whether there would be a mismatch of earnings and expenditures and, if so, the extent of the mismatch.¹⁵

18 While Staff testified that there was likely to be a mismatch, the burden to justify the Company's proposed rates is on the Company. The Commission found that the Company had not met its burden, but it did not stop there.

19 In Order 06, the Commission discussed the modified historical test year presentations from the parties and found that, taken together, they indicated that a "revenue sufficiency for electric operations would be at least equally likely as finding a revenue deficiency" and that the parties' pro forma results for gas operations all showed a sufficiency.¹⁶ Accordingly, the Commission did consider the evidence, giving it the weight it deemed appropriate, and the evidence suggested to the Commission that existing revenues were sufficient.

¹⁴ Order 06 at ¶¶ 59-61.

¹⁵ Order 06 at ¶ 62.

¹⁶ Order 06 at ¶ 65.

Issue No. 5: Costs Beyond Company Control

20 Avista argues that the Commission erred in determining that the Company did not adequately support claims that escalating costs are beyond the Company's control. Staff does not support the Company's position on this issue.

21 As the Petition makes clear, the Company provided ample testimony to the record on this issue. The Commission has simply found that the evidence provided was insufficient to support an attrition adjustment.

Issue No. 6: Self-fulfilling Prophecy

22 The Company argues that the Commission should recognize that there is no evidence of record that cost projections will result in a self-fulfilling prophecy.¹⁷ Staff does not support Avista's position on this issue.

23 In Staff's interpretation, the Commission is simply noting that Avista has some ability to manage its capital expenditures according to its allowed revenues. To the extent that allowed revenues are calculated using projections of the future, the Company will manage expenses within its control to align with projections. If Avista can meet the Commission's standard for attrition and show that its capital investments are beyond its ability to control, then clearly those costs cannot be "managed" and the Company will banish the specter of the "self-fulfilling prophecy."

¹⁷ Specifically, in Order 06 at ¶ 68, the Commission reiterated:

[A]uthorizing a practice that simply projects future levels of expense and capital expenditures . . . may, as multiple commenters point out, "become a 'self-fulfilling prophecy' where there is an incentive for rates of capital expenditure to be driven by an effort to match earlier projections.

Quoting Order 05 at ¶ 119.

Issue No. 7: Increasing Pace of Capital Expenditures

24 The Company argues that the Commission should recognize that the “pace” of the Company’s capital additions is not materially increasing. Staff does not support the Company’s position on this issue.

25 The Company’s argument is a semantic one. “Pace” refers to a rate of change; an increasing pace of capital additions means that the rate at which capital additions are being made is itself increasing. However, given the context, the Commission appears to have been referring simply to the increase in total overall level of rate base over time. Semantics notwithstanding, the Company’s practice of requesting after-attrition adjustments, representing plant growth over and above the statistical rate of growth in its attrition models, demonstrates that the Company itself is arguing that the pace of capital additions is indeed increasing. The Commission statement that Avista is disputing here is in fact supported by the Company’s own attrition studies and promoted through the narrative of the Company’s case.

Issue No. 8: No Commission Findings Related to Modified Historical Test Year Adjustments and Results

26 Avista argues that the Commission’s Order should recognize the Company’s specific test year adjustments as part of the revenue requirement determination process in this case. Staff does not support the Company’s position on this issue.

27 Avista seems to believe that, because the Commission did not accept the Company’s presentation of its modified historical test year with limited pro forma adjustments, the Commission did not consider *any* adjustments. This is not the case.

28 The Commission clearly recognized and considered the modified historical test year presentations of other parties, including Staff. For example, Staff’s electric modified historical

test year suggested a revenue reduction of more than \$4.5 million,¹⁸ and for gas, a revenue reduction of more than \$3 million.¹⁹ Instead of reducing the Company's revenues by more than \$7 million, the Commission decided to maintain current rates.

29 While the Commission does not make any findings in Order 06 regarding particular adjustments, it does find that the end results of various parties' pro forma studies, taken as a whole, show that existing rates are sufficient for the Company. This is discussed above in Issue No. 4.

III. A REHEARING IS NOT WARRANTED

30 Avista requests a rehearing in the event the Commission does not grant reconsideration. A rehearing, however, is not appropriate in this proceeding.

31 Rehearings are governed by RCW 80.04.200, which provides some guidance on the purpose of a rehearing. Generally a rehearing may be granted on the basis of "changed conditions since the issuance of such order," or a result "injuriously affecting the petitioner which was not considered or anticipated at the former hearing," or when "the effect of such order has been such as was not contemplated by the commission or the petitioner." In addition, a rehearing may be granted "for any good and sufficient cause which for any reason was not considered and determined in such former hearing." Avista's petition does not credibly set forth any of these grounds.

32 Avista received a full hearing and already had the opportunity to place any issue before the Commission. Moreover, the Company had Order 05 from the previous rate case to guide its filing. It also received feedback from other parties to its case in the response round of testimony, which the Company had an opportunity to rebut in the following round of written testimony.

¹⁸ Exh. No. JH-2, p. 10.

¹⁹ Exh. No. JH-3, p. 10.

Finally, the Company also had an evidentiary hearing at which it could have further supported its claims. The Company had control of the issues in this case and had all of the process it was due.

33 The Company argues that the outcome was not anticipated by it or the financial community.²⁰ There is always a risk, however, that a utility proposing a rate increase will not receive what it proposes. That Avista did not expect the result does not constitute grounds for a rehearing. Also, despite Avista's suggestion that the financial community was surprised by the decision, a quick online search indicates that financial markets do not seem to have responded in a sharply negative way to Order 06. As of January 12th, Avista Corp stock was trading at \$39.15 per share.²¹ This falls directly in the middle of the Company's 52-week low of \$34.31 and the 52-week high of \$45.22.²²

34 It is true that the Company's stock price has fallen since Order 06 was issued. However, it is not at all clear that the majority of the fall in the Company's stock price was due to the order itself, or the Company's characterization of the impacts of the order in its Form 8-K filing with the Securities and Exchange Commission.²³ In fact, Avista Corp's share price increased on December 15 (1.24% for the day)²⁴, the day the order was entered. By close of markets on

²⁰ Petition at ¶ 59.

²¹ Google Finance, Avista Corporation Common Stock for January 12, 2017, <https://www.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=0&chfdeh=0&chdet=1484259117598&chddm=391&chls=IntervalBasedLine&q=NYSE:AVA&ntsp=0&ei=Iv93WNC1HYejAGq06y4BQ> (accessed January 12, 2017). Printout included as Attachment A.

²² *Id.*

²³ Avista Securities and Exchange Commission Form 8-K, available at <https://www.sec.gov/Archives/edgar/data/104918/000010491816000286/wagrdecision8-kdecember16.htm> (accessed January 10, 2017).

²⁴ Avista's stock closed at \$41.65 on December 14, and closed at \$42.17 on December 15, 2016. Google Finance, Avista Corporation Common Stock for December 14-16, 2016. <https://www.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=0&chfdeh=0&chdet=1481922000000&chddm=1173&chls=IntervalBasedLine&q=NYSE:AVA&ntsp=0&ei=yAd4WLnEck-jAGWhrDYCAhttps://www.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=0&chfdeh=0&chdet=1481922000000&chddm=1173&chls=IntervalBasedLine&q=NYSE:AVA&ntsp=0&ei=yAd4WLnEck-jAGWhrDYCA> (accessed January 12, 2017).

December 16, Avista Corp's share price fell approximately 2.18% from close on December 14, or 3.39% from close on December 15.²⁵ Avista's share price, however, remains well within lines of where the stock has traded over the past year.

35 In a prior case, the Commission considered putative reactions of financial analysts to a Commission decision and found that they did not justify a rehearing. In 2001, the Commission considered a petition for reconsideration or rehearing of a decision dismissing a PSE filing.²⁶ The Commission rejected PSE's argument that the financial community deemed PSE to be financially vulnerable following the Commission's decision and that, therefore, a rehearing should be granted. The Commission found it was unclear what information the financial analysts were relying on and that there was not enough information to understand exactly how PSE was allegedly affected. The Commission also noted that the situation did not seem to be as dire as PSE claimed.²⁷

36 In the instant case, like in the PSE case, Avista has provided insufficient information on the effect of the order on the financial community's opinion of Avista or if any opinion has even affected Avista. As in the PSE case, speculation cannot overcome the Company's failure to meet its burden,²⁸ and speculation is not grounds for rehearing.

²⁵ Google Finance, Avista Corp. Common Stock from December 13, 2016 to December 23, 2016: https://www.google.com/finance?chdnp=1&chdd=1&chds=1&chdv=1&chvs=maximized&chdeh=0&chfdeh=0&chdet=148252680000&chddm=3519&chls=IntervalBasedLine&q=NYSE:AVA&ntsp=0&ei=90psWLiNLYyJjAG_34_4Dg (accessed January 10, 2017). **Note:** Price shown in bold letters is the price for the current date. Printout included as Attachment B.

²⁶ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket No. UE-011163, and *In Re Petition of Puget Sound Energy for an Order Authorizing Deferral of Certain Electric Energy Supply Costs*, Docket No. UE-011170, Seventh Supplemental Order, *Order Denying Reconsideration or Rehearing* (Oct. 24, 2001) (PSE Order).

²⁷ PSE Order at ¶ 43.

²⁸ See PSE Order at ¶ 44.

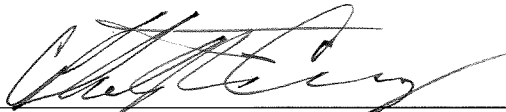
IV. CONCLUSION

37 The Commission had sufficient evidentiary grounds to find that Avista failed to meet its burden of proof with respect to its proposed rate increase. The appropriate remedy is not to reconsider the case or to re-do the case but for Avista to follow the Commission's guidance and present sufficient testimony in its next general rate case.

DATED this 13th day of January 2017.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

FO ✓ 

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

Attachment A

Avista Corp (NYSE:AVA)

Add to portfolio

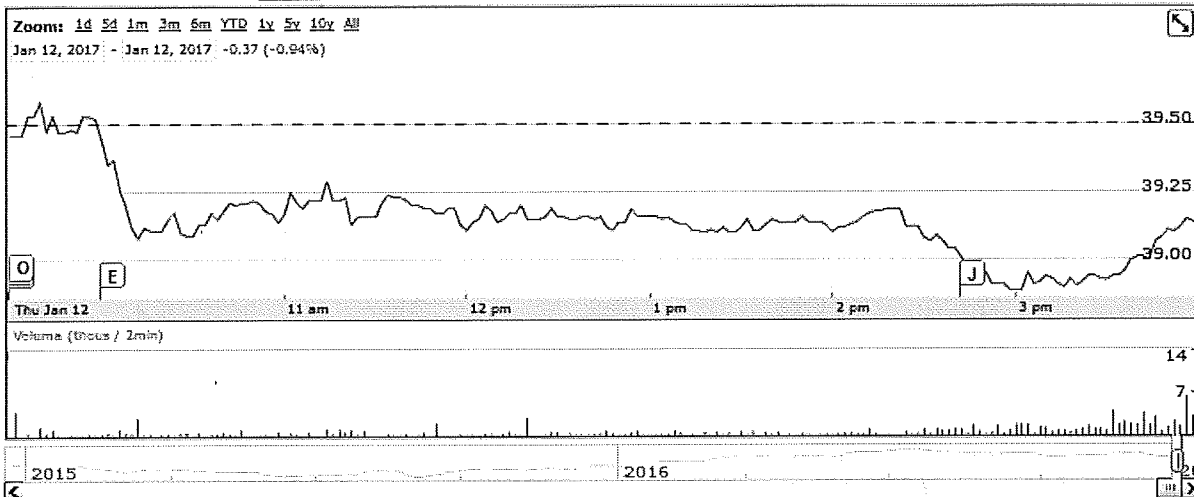
39.15 -0.35 (-0.89%)

After Hours: 39.15 0.00 (0.00%)
 Jan 12, 4:49PM EST
 NYSE real-time data - Disclaimer
 Currency in USD

Range 38.88 - 39.61 Div/yield 0.34/3.50
 52 week 34.31 - 45.22 EPS 2.06
 Open 39.47 Shares 64.18M
 Vol / Avg 216,136.00/416,894.00 Beta 0.35
 Mkt cap 2.54B Inst. own 69%
 P/E 18.97

G+1 5

Compare: Dow Jones S&P 500 NWE IDA BKH PCG PPWLO XEL POR more >



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Volume delayed by 15 mins.
 Prices are not from all markets.
 Sources include SIX.

Related companies

Show:

		Valuation				
	Company name	Price	Change	Chg %	d m y	Mkt Cap
AVA	Avista Corp	39.15	-0.35	-0.89%		2.54B
NWE	NorthWestern Corp	57.22	-0.19	-0.33%		2.80B
IDA	IDACORP Inc	79.09	0.00	0.00%		4.03B
BKH	Black Hills Corp	60.95	-0.23	-0.38%		3.25B
PCG	PG&E Corporation	60.61	-0.27	-0.44%		31.06B
PPWLO	PacifiCorp	112.00	0.00	0.00%		6.05M
XEL	Xcel Energy Inc	40.85	+0.16	0.39%		20.96B
POR	Portland General ...	43.53	-0.12	-0.27%		3.91B
PCG-A	Pacific Gas & Ele...	31.04	-0.14	-0.45%		131.33M
BRKA	Berkshire Hathawa...	242,849.91	-310.09	-0.13%		400.12B
WEC	WEC Energy Group Inc	58.70	+0.05	0.09%		18.70B

Sector: Utilities > Industry: Multiline Utilities - NEC

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Attachment B

Finance

Avista Corp (NYSE:AVA)

Add to portfolio

Company

- Summary
- News
- Option chain
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39.10 +0.08 (0.21%)

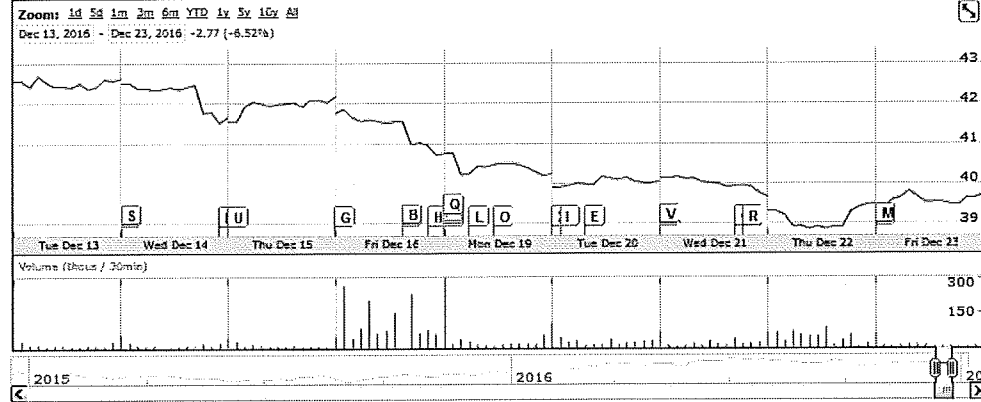
After Hours: 39.10 0.00 (0.00%)
 Jan 10, 4:51PM EST
 NYSE real-time data - Disclaimer
 Currency in USD

Range 38.53 - 39.28
 52 week 34.31 - 45.22
 Open 38.98
 Vol / Avg. 275,753.00/412,393.00
 MKT cap 2.47B
 P/E 18.95

Div/yield 0.34/3.50
 EPS 2.06
 Shares 64.18M
 Beta 0.35
 Inst. own 70%

G+1 S

Compare: Dow Jones S&P 500 NWE IDA BKH PCG PPWLO XEL POR more >



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Volume delayed by 15 mins.
 Prices are not from all markets.
 Sources include SIX.

- Markets
 - News
 - Portfolios
 - Stock screener
 - Google Domestic Trends
 - Recent Quotes (180 days)
- AVA 39.10 +0.080
 VIX 11.48 -0.070
- Create portfolio from quotes

Related companies

Show:

Add or remove columns

		Valuation				
	Company name	Price	Change	Chg %	d m y	Mkt Cap
AVA	Avista Corp	39.10	+0.08	0.21%		2.47B
NWE	NorthWestern Corp	56.77	+0.36	0.64%		2.69B
IDA	IDACORP Inc	78.31	+0.33	0.42%		3.86B
BKH	Black Hills Corp	61.03	-0.13	-0.21%		3.24B
PCG	PG&E Corporation	60.07	-0.23	-0.38%		29.92B
PPWLO	PacifiCorp	112.00	0.00	0.00%		6.05M
XEL	Xcel Energy Inc	40.29	-0.01	-0.02%		20.16B
POR	Portland General ...	43.22	+0.23	0.54%		3.79B
PCG-A	Pacific Gas & Ele...	31.18	+0.16	0.53%		130.64M
BRKA	Berkshire Hathawa...	242,077.00	-1,034.00	-0.43%		393.16B
WEC	WEC Energy Group Inc	58.10	+0.12	0.21%		18.09B

Sector: Utilities > Industry: Multiline Utilities - NFC

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