

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a AVISTA
UTILITIES,

Respondent.

DOCKETS UE-160228 UG-160229

PUBLIC COUNSEL AND THE
ENERGY PROJECT'S JOINT
RESPONSE TO AVISTA
CORPORATION'S PETITION FOR
RECONSIDERATION OR, IN THE
ALTERNATIVE, FOR REHEARING

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Answers to Petition for Reconsideration or Rehearing dated December 27, 2016, Public Counsel and The Energy Project file this joint response to Avista's Petition for Reconsideration or, in the Alternative, for Rehearing (Petition). Public Counsel and The Energy Project oppose Avista's Petition and respectfully request the Commission reject both the request for reconsideration and alternate request for rehearing.

2. On December 15, 2016, the Commission issued Order 06 rejecting Avista's Tariff Filing.¹ Avista's proposed tariff would have increased rates for the Company's electric customers by 7.6%, raising \$38.6 million in additional revenue, and would have increased rates for Avista's natural gas customers by 2.8%, raising \$4.4 million in additional revenue.²

3. In denying the tariff, the Commission concluded that Avista failed to: (1) carry its burden to show that its current rates are not fully sufficient to meet its needs, and (2) demonstrate that it

¹ *WUTC v. Avista Corp.*, Dockets UE-160228 and UG-160229 (consolidated), Order 06, (Dec. 15, 2016).

² Order 06 ¶ 1.

requires an attrition adjustment to both its electric and natural gas rates, with increases effective January 1, 2017.³ Additionally, the Commission ruled that Avista's existing rates are fair, just, reasonable, and sufficient for electric service and natural gas service to remain in effect prospectively.⁴

4. On December 23, 2016, Avista filed a petition for the Commission to reconsider its findings in Order 06, or to reopen the record for a rehearing to argue additional evidence and to "explore alternative resolutions for rate relief." Avista cites RCW 34.05.470 and WAC 480-07-850 to support its request for reconsideration. For its request to rehear the merits of the case, Avista cites RCW 80.04.200 and WAC 480-07-870. WAC 480-07-830 governs requests to reopen, which Avista states the Commission should do "if necessary."⁵

II. STANDARDS FOR RECONSIDERATION AND REHEARING

5. With respect to petitions for reconsideration, the Commission requires that a party must do more than simply reargue an issue decided in a final order.⁶ The Commission will grant a petition for reconsideration only if the petitioner demonstrates that the order is erroneous or incomplete, and the petition must cite to portions of the record and laws or rules that support the request for reconsideration.⁷ The petition must also present sufficient argument to warrant a finding that the order is erroneous or incomplete.⁸

³ Order 06 ¶¶ 61-74.

⁴ Order 06 ¶ 74.

⁵ Petition ¶ 3.

⁶ *In re: QWEST Corp. and Eschelon Telecomm., Pursuant to 47 U.S.C. Section 252(b)*, Docket UT-063061, Order 19, *Order Denying Qwest's Pet. for Reconsideration* ¶ 7.

⁷ *Id.*

⁸ *Id.*

6. While Avista states which portions of the order it disagrees with, it fails to offer new evidence or argument to demonstrate that Order 06 is either erroneous or incomplete.⁹ This does not meet the standard for which reconsideration should be granted. Avista's disapproval of the results of Order 06 is not sufficient to compel the Commission to reconsider its rulings or to reopen the proceeding for rehearing.
7. With respect to rehearing, a public service company affected by a Commission order, "May, after the expiration of two years from the date of such order taking effect, petition the Commission for rehearing upon the matters involved in such order."¹⁰ While not obligated to rehear matters within two years of deciding an issue, the Commission may exercise discretion to do so.¹¹ The Commission should decline to exercise its discretion to rehear Avista's rate case because it decided the case based on the evidence in the record.
8. Additionally, a motion to reopen is appropriate after the close of the record and before entry of the final order.¹² Here, the Commission's final order was entered on December 15, 2016. Avista filed its petition to reopen the record on December 23, 2016, after entry of the final order. As a result, Avista's request to reopen the record to relitigate this matter is untimely under RCW 480-07-825 because the request is made after entry of Order 06, which is the Commission's final order in this case.

⁹ Avista suggests that the financial community has reacted negatively to the Commission's order. This is not evidence that requires reconsideration of the Commission's decision as it does not bear on whether the decision was correct or incorrect based on the record before the Commission.

¹⁰ RCW 80.04.200.

¹¹ RCW 80.04.200; *US West Comm'n., v. WUTC*, 134 Wn.2d 74 (1997); *WUTC v. Pac. Power & Light Co.*, Docket UE-140762, Order 08 ¶¶ 70-73 (Mar. 25, 2015).

¹² WAC 480-07-825; *See WUTC v. Avista Corp.*, Docket Nos. UE-150204 and UG-150205, Order 06. (Feb. 19, 2016)

III. DISCUSSION

A. Avista's Petition for Reconsideration should be Denied.

9. Avista challenges various rulings made in Order 06. This response will not address each challenge and silence should not be interpreted as agreement.
10. In its introduction, Avista discusses its efforts to keep customer bills low and points to natural gas bills declining from 2009 to 2016. It is important to note that commodity prices have declined sharply during that time period, accounting for the decline in customer bills.¹³ While Avista's PGA rate has declined, its margin rate set through its general rate cases has increased over this same time period. The decline in PGA rate accounts for the decline in customer bills.
11. Throughout its Petition, Avista cites two seminal US Supreme Court cases: *Hope*¹⁴ and *Bluefield*.¹⁵ *Hope* and *Bluefield* generally stand for the proposition that a regulator must set rates that are just and reasonable, and if the "end result" is just and reasonable, a regulator is not constitutionally required to use a particular methodology to reach the result. *Hope* and *Bluefield* do not stand for the proposition that regulators are permitted to engage in unprincipled ratemaking or that ratemaking is a "black box" exercise. Rather, the Commission is guided and bound by regulatory principles and statutory requirements in evaluating a utility's request for a rate increase.
12. In this case, Avista carried the burden of proof to demonstrate that the rate increases it sought were just and reasonable.¹⁶ The Commission weighed the evidence presented by Avista and the other parties in the case, including Public Counsel, The Energy Project, Commission Staff,

¹³ See Hancock, Cross Exh. No. CSH-13CX (showing as an example commodity prices at Henry Hub, a natural gas distribution hub in Louisiana).

¹⁴ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944).

¹⁵ *Bluefield Water Works & Imp. Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).

¹⁶ RCW 80.04.130(4)

Industrial Customers of Northwest Utilities, and Northwest Industrial Gas Users, and determined that the record did not demonstrate that the rates set in Dockets UE-150204 and UG-150205 were not fair, just, reasonable, or sufficient.¹⁷ Importantly, Order 06 recognizes that Avista failed to carry its burden to demonstrate that it needed a rate increase.¹⁸ The end results test does not require the Commission to ignore a utility's failure to carry its burden of proof.

13. Moreover, the Commission has rejected a utility's tariff filing when it has failed to meet its burden of proof. For example, in a 2005 Pacific Power & Light general rate case, the Commission rejected the utility's tariff filing because Pacific Power & Light failed to meet its burden of proof.¹⁹ Because the Commission could not determine new base rates, the Commission deemed the prior rates to be fair, just, reasonable, and sufficient.²⁰ In this case, the Commission similarly found that Avista failed to meet its burden of proof²¹ and deemed Avista's prior rates to be fair, just, reasonable, and sufficient. The Commission's treatment in this case is consistent with the end results test from *Hope* and *Bluefield*.

14. Many of Avista's arguments stem from Avista's disagreement with the Commission's decisions on various aspects of the rate case. Agency decisions are valid when they are lawful,

¹⁷ Order 06 ¶ 4.

¹⁸ Order 06 ¶ 61.

¹⁹ *WUTC v. Pac. Power & Light*, UE-050684, Order 04 ¶ 62 (April 17, 2006).

²⁰ *Id.* ¶ 62-66; RCW 80.04.150.

²¹ In Dockets UE-150204 and UG-150205, the Commission found that Avista failed to meet the standard for an attrition adjustment with respect to its electric operations, but granted the adjustment to the Company despite this failing. Order 05 ¶¶ 125-141. In that case, the Commission noted Avista's intent to bring another rate case and that it would have, "the opportunity in future cases to fully demonstrate that such expected capital expenditures, particularly for its distribution system, provide benefit to ratepayers and are beyond its control." Order 05 ¶ 140. The Commission further noted that it, "shared Staff's frustration" with respect to, "continuing to authorize recovery of these significant capital investments, absent a complete demonstration by the Company of quantifiable benefits to ratepayers." Order 05 ¶ 141. The Commission directed Avista to, "Provide more analysis showing how it plans and prioritizes investments in its distribution system, and how those decisions impact system reliability and economy" before it seeks further rate increases. Order 05 ¶ 140. In the current case, this is what the Commission found Avista failed to do.

supported by substantial evidence, and not arbitrary and capricious.²² In this case, the Commission's final order meets the standards set under the Administrative Procedure Act, chapter 34.05 RCW. Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth or correctness of the order.²³ Evidence is "viewed in light of the whole record before the court."²⁴ A decision is arbitrary and capricious only if it is willful, unreasoning, and in disregard of the facts and circumstances.²⁵ A decision supported by substantial evidence is not arbitrary and capricious even when the agency record contains conflicting evidence.²⁶

15. Each of the Commission's determinations in Order 06 are supported by substantial evidence in the record. As a result, the Commission's Order is not arbitrary and capricious, and the Commission should deny Avista's request for reconsideration.

B. Avista's Petition to Reopen the Record for Rehearing should be Denied.

16. RCW 80.04.200 provides that, "[the] commission, may, in its discretion, permit the filing of a petition for rehearing at any time." While it is certainly within the Commission's discretion to rehear the issues originally argued in the rate case, the Commission should decline to grant Avista's request. Avista has not shown good cause to rehear its rate case as the Commission has not erred in Order 06. Discretionary decisions are only set aside on a clear showing of abuse.²⁷

17. Avista requests the Commission reopen the record for further arguments. The time to bring such arguments was in Avista's case in chief, or at the very latest, during Avista's rebuttal

²² *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 670, 929 P.2d 510 (1997); RCW 34.05.570(3).

²³ *Brighton v. Dept. of Transp.*, 109 Wn. App. 855, 861-862, 38 P.3d 344 (2001); *Callecod*, 84 Wn. App. at 673.

²⁴ RCW 34.04.570(3)(e).

²⁵ *Callecod*, Wn. App. at 676.

²⁶ *Id.*

²⁷ *US W. Commc'ns. v. Wash. Util. & Transp. Comm'n*, 134 Wash. 2d 74, 105, 949 P.2d 1337, 1353 (1997), as corrected (Mar. 3, 1998) citing *ARCO*, 125 Wash.2d at 812, 888 P.2d 728.

case in response to arguments and evidence from responding parties. It is simply too late for Avista to meet its burden of proof.

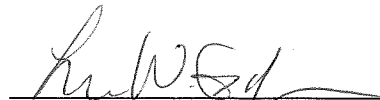
18. WAC 480-07-830 states that “the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause.” Avista has not shown the evidence they wish to present, if the Commission reopens the record, nor has Avista demonstrated how the evidence was unavailable and not discoverable at the time of the hearing. Accordingly, the record should remain closed because Avista has not met its burden under WAC 480-07-830.

IV. CONCLUSION

19. The Commission should deny Avista’s Petition for Reconsideration. The Commission should also deny Avista’s alternative Petition for Rehearing. The Commission did not err in Order 06, which is based on substantial evidence and is not arbitrary or capricious. Moreover, Avista has not learned any new information that warrants reopening the proceeding to rehear the rate case. Passionate disapproval of a final order does not qualify as proper grounds for reconsideration WAC 480-07-850(2), to reopen the record WAC 480-07-830, or to rehear the case WAC 480-07-870.

DATED this 13th day of January, 2017.

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