

00011

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In Re the Matter of)
AVISTA CORPORATION d/b/a) DOCKET NO. UE-010395
4 AVISTA UTILITIES) Volume No. II
Request Regarding the Recovery) Pages 11 - 37
5 of Power Costs through the)
Deferral Mechanism.)
6 -----

7
8 A settlement hearing in the above matter
9 was held on May 15, 2001, at 9:40 a.m., at 1300 South
10 Evergreen Park Drive Southwest, Olympia, Washington,
11 before Administrative Law Judge DENNIS MOSS,
12 Chairwoman MARILYN SHOWALTER, Commissioner RICHARD
13 HEMSTAD.

14 The parties were present as follows:

15
16 AVISTA CORPORATION, by DAVID J. MEYER,
17 General Counsel and Senior Vice President, East 1411
Mission, Post Office Box 3727, Spokane, Washington
99220.

18 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES,
19 by MELINDA J. DAVISON, Attorney at Law, Davison Van
Cleve, 1300 Southwest Fifth Avenue, Suite 2915,
Portland, Oregon 97201.

20
21 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by DONALD T. TROTTER, Assistant Attorney
22 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504

23 THE PUBLIC, by SIMON J. FFITCH, Assistant
24 Attorney General, 900 Fourth Avenue, Suite 2000,
Seattle, Washington 98164.
Kathryn T. Wilson, CCR
25 Court Reporter

00012

1

2

INDEX OF EXHIBITS

3

4

EXHIBIT:

MARKED:

OFFERED:

ADMITTED:

5

1

15

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

00013

1

P R O C E E D I N G S

2

3

JUDGE MOSS: Let's be on the record. Good morning, everyone. My name is Dennis Moss, and I'm an administrative law judge for the Washington Utilities and Transportation Commission sitting this morning with the commissioners on the Bench in the matter styled: In re the Matter of Avista Corporation, doing business as Avista Utilities, Request Regarding the Recovery of Power Costs Through the Deferral Mechanism, Docket No. UE-010395.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

The parties have filed a settlement in the proceeding so this is a settlement hearing. I've previously discussed with counsel the format that we follow today. Our basis agenda is we will take appearances, and that will be the short form of appearances today since all counsel have previously entered full appearances, so just identify yourself and the party you represent.

I'll ask for a status report and the presentation of the Settlement Agreement as an exhibit of record, and I'll just note now that I have a copy of that and have already marked it, and the commissioners also have copies. We'll then call and swear our witness panel. I'll note in that regard that I

00014

1 discussed with Ms. Davison yesterday that her intended
2 witness, Mr. Schoenbeck, was unavailable. Based on our
3 discussion, it appeared that it would not be necessary
4 for the Industrial Customers of Northwest Utilities to
5 present a witness, and Ms. Davison is prepared to state
6 her client's position for the record. We'll take any
7 other exhibits that the parties wish to present once
8 the panel is seated and sworn.

9 Do counsel have any intention to examine the
10 witnesses? Do you all have any questions for the
11 witnesses, because my primary goal is to have questions
12 from the Bench, if any. All right, then we'll proceed
13 with examination from the Bench and conclude with any
14 other business we have to conduct today and have an
15 opportunity for closing remarks from counsel and from
16 the Bench, and that will conclude our morning.

17 With that, let's take our appearances and
18 we'll begin with Mr. Meyer.

19 MR. MEYER: Appearing for Avista, David J.
20 Meyer.

21 MS. DAVISON: Melinda Davison on behalf of
22 the Industrial Customers of Northwest Utilities.

23 MR. FFITCH: Simon ffitch for the office of
24 Public Counsel, Washington Attorney General.

25 MR. TROTTER: Donald T. Trotter, assistant

00015

1 attorney general for Commission staff.

2 JUDGE MOSS: Now, Mr. Meyer, did you have any
3 statement you wish to make about the Settlement
4 Agreement, or shall I just make it a matter of record?

5 MR. MEYER: If you just make it a matter of
6 record.

7 JUDGE MOSS: I have marked for identification
8 the Settlement Stipulation that the parties filed with
9 the Commission some days ago as Exhibit No. 1, and it
10 will be a Bench exhibit and there being no objection,
11 it will be admitted as marked.

12 (Admitted Exhibit No. 1.)

13 JUDGE MOSS: Let's call and swear our witness
14 panel now, so if the witnesses who have been designated
15 for the parties would come ahead to take seats, I'll
16 have you identify yourselves for the record and just
17 take care of that for counsel.

18 (Witnesses sworn.)

19 JUDGE MOSS: The same preliminary question
20 will go to each of you. We will just start down on
21 this end and ask that you state your name for the
22 record, spell your name to the extent there is any
23 question about the spelling, and I'll ask also that you
24 identify the party you represent and state your
25 business address for the record.

00016

1 MR. STEUERWALT: Matt Steuerwalt appearing
2 for Public Counsel. Last name S-t-e-u-e-r-w-a-l-t;
3 business address, 900 Fourth Avenue, Suite 2000,
4 Seattle, Washington, 98164.

5 MR. SCHOOLEY: For Commission staff, Thomas
6 Schooley, S-c-h-o-o-l-e-y; business address, 1300 South
7 Evergreen Park Drive Southwest, Olympia, Washington,
8 98504.

9 MR. NORWOOD: I'm Kelly Norwood,
10 N-o-r-w-o-o-d, with Avista Corporation; business
11 address, 1411 East Mission Avenue, Spokane, Washington,
12 99220.

13 JUDGE MOSS: Thank you very much. Do any of
14 the witnesses have narrative testimony they intended to
15 present, or should we go directly to the questions?

16 MR. MEYER: I believe Mr. Norwood has a few
17 opening remarks primarily to describe the basic outline
18 of the Settlement.

19 MR. NORWOOD: Very briefly, background
20 standpoint, in the middle of the last year, market
21 prices ran up considerably middle of last year that
22 caused a significant increase in costs to our company.
23 The Company filed for a deferral accounting mechanism,
24 which the Commission approved for us, which allows us
25 to defer costs beginning in July of last year through

00017

1 June of this year. The Company filed for a
2 modification to that mechanism, which the Commission
3 approved in January of this year, and then as part of
4 those filings, the Company agreed to submit a filing to
5 address recovery of those costs, which the Company did
6 in March of this year, and the parties to this case
7 then reached a settlement agreement, the parties being
8 Avista, the WUTC staff, the Public Counsel section of
9 the attorney general's office, and the Industrial
10 Customers of Northwest Utilities reached that
11 settlement, which is before you today as Exhibit 1, and
12 the parties have requested approval by the Commission
13 on or before May 25th.

14 Just very briefly as an overview, in the
15 Settlement, it basically explains that the Company has
16 positioned itself to be in a surplus condition, and our
17 estimates show that because of that surplus condition,
18 we expect to be able to offset the deferred costs that
19 we have been deferring by February of 2003, and, in
20 fact, in the Settlement Agreement, we've asked the
21 Commission to extend the deferral mechanism through
22 February of 2003 to allow the Company to offset those
23 costs. The Company has not requested a change in
24 rates, and the Settlement Agreement specifies that.
25 The Agreement states that the deferrals through 2003

00018

1 will reflect the total costs that the mitigation
2 measures that the Company has taken to offset these
3 deferred costs.

4 In the last general rate case, the Company
5 was required to file a power supply-related case to
6 address modeling and other power supply issues that was
7 to be filed by December of this year. In the
8 Settlement Agreement, we had proposed that that filing
9 be postponed to be on or before April 1 of 2002. Then
10 finally with regard to unanticipated or uncontrollable
11 events, the Stipulation says that the Company may
12 petition the Commission to alter, amend, or terminate
13 the Settlement Agreement if the deferral balance
14 increases or is expected to increase substantially due
15 to unanticipated or uncontrollable events, such as low
16 hydro conditions, extended thermal averages, and load
17 increases, and in the Settlement Agreement, the parties
18 have asked the Commission to issue an order approving
19 the Settlement Agreement by May 25th and extend the
20 deferral mechanism through February 28th, 2003, or
21 until the deferral balance becomes zero, whichever
22 occurs first.

23 JUDGE MOSS: Thank you, Mr. Norwood. That
24 would bring us to inquiry from the Bench.

25 CHAIRWOMAN SHOWALTER: I just want to make

00019

1 sure I understand it. If all goes well, then am I
2 correct that at least by February 28th, 2003, there
3 would be zero dollars in that account?

4 MR. NORWOOD: That is correct.

5 CHAIRWOMAN SHOWALTER: Also by that same
6 date, we could have finished or would have finished a
7 rate case that would then be prospective post-February
8 28th, 2003?

9 MR. NORWOOD: That's correct. By filing on
10 or before April of 2002, it allows time to address the
11 other power supply issues so that that case can be
12 concluded by February of 2003.

13 CHAIRWOMAN SHOWALTER: So if all goes well,
14 it would be as if we never had the deferral account.
15 It would be as if it was never there and the Company
16 came in for a rate case next April and a new rate would
17 take effect March 1st of 2003.

18 MR. NORWOOD: That's correct.

19 CHAIRWOMAN SHOWALTER: Now I would like to
20 think what if all does not go well. If all does not go
21 well, and for whatever reason, the deferral account
22 does not head down towards zero and starts heading up,
23 then am I right that in essence this extended deadline
24 just could be removed by the Company? The Company
25 could come in and propose to do something with that

00020

1 deferral account, and there would be -- we would either
2 approve it or hold hearings on that; is that correct?

3 MR. NORWOOD: That's correct. If we find
4 that the costs are increasing higher than what we
5 anticipated, then we have the opportunity to make a
6 filing, come back before you, and propose any number of
7 solutions, and it may be extending the mechanism to
8 allow further offsets. It could involve a price change
9 also, but that would be left for that filing and would
10 not be decided here.

11 CHAIRWOMAN SHOWALTER: In that case, if there
12 were no filing, would we then be looking back to last
13 July or whenever it was that we initially started up
14 this deferral account?

15 MR. NORWOOD: In the Stipulation, it says
16 that -- I'll just read the one sentence: "Nothing in
17 the Settlement is intended to preclude any party from
18 taking any position on any of the issues presented in
19 whatever filing we take."

20 So I read that to say that issues can be
21 raised by any party in that proceeding related to
22 whatever balance is remaining.

23 CHAIRWOMAN SHOWALTER: Then if this
24 proceeding that I'm talking about -- that is, if things
25 don't go according to plan -- were started up at the

00021

1 same time that the rate case had been filed, would we
2 essentially be looking prospectively post-March 1,
3 2003, and at the same time deciding what to do with the
4 deferral account?

5 MR. NORWOOD: It's my understanding that the
6 rate case we would file in early 2002 would be a
7 separate general rate case-type proceeding, which would
8 address costs, which we normally do on a normalized
9 basis, and that this other filing would be a separate
10 filing, separate and apart from the power supply
11 filing.

12 CHAIRWOMAN SHOWALTER: That's all the
13 questions I have. If either of the other panelists
14 would like to add to those answers, you are welcome.

15 MR. SCHOOLEY: The filing that you are
16 speaking of should only occur if there are uncontrolled
17 or unplanned events, such as a major thermal unit going
18 out or continued drought conditions that truly
19 exacerbate the situation. So if normal weather comes
20 back, then even if there is a balance at the end, there
21 should not be a filing to deal with it.

22 CHAIRWOMAN SHOWALTER: How would the price of
23 power in the market affect this? Are you assuming that
24 because of your resource load and balance, no matter
25 what the price out there is, things should work out

00022

1 by -- you hope that things will work out by February
2 28th, 2003?

3 MR. NORWOOD: There are a lot of variables
4 out there that will affect the ultimate balance there,
5 and Thomas mentioned a couple of them were
6 hydrogeneration, whether it's higher or lower than what
7 our expectations are; outages at thermal plants.
8 Thermal plants can run better than what are expected
9 also, which will help eliminate the balance sooner.

10 Market prices are clearly a variable. We
11 still have some positions where we have to buy power at
12 a higher rate than when we expect, and that will
13 increase the balance. On the other hand, as we go
14 through periods where we are in a surplus condition,
15 higher prices can cause the balance to go down sooner,
16 so it works both ways, and those are the factors that
17 will affect us as we go forward.

18 If we find that the balance is a lot higher
19 than what we expect due to some of these
20 uncontrollable, unanticipated events, then we will be
21 back before you to address that, and other parties will
22 have the opportunity then to address and take their
23 position on that, but at this point in time, we still
24 believe that we will be able to offset the balance by
25 February 2003.

00023

1 CHAIRWOMAN SHOWALTER: You said high market
2 prices could cut both ways. So could low market
3 prices, I would think. If you have a surplus in the
4 market that suddenly isn't as high as you thought it
5 might be, you might not be compensated for that
6 deferred account as fast as you thought.

7 MR. NORWOOD: That's absolutely correct.

8 CHAIRWOMAN SHOWALTER: Thanks.

9 MR. SCHOOLEY: If I may add, there are some
10 positive factors in the Company's model showing it
11 should reach zero by 2003, such as their Coyote Springs
12 plant is expected to come in middle of next year, and
13 in the model, they put that off a couple of months. If
14 that comes in on time, that will help the situation.

15 The small generators they've been bringing on
16 line in the near term are not into the model, so any
17 generation will help the situation.

18 COMMISSIONER HEMSTAD: Pursuing the point, I
19 assume then that those projections are dependent upon
20 some assumption about what the price of power will be
21 as you work through the model, or are you anticipating
22 that your purchases and sales will net out to zero?
23 Are you expecting that on balance you will be selling
24 in the market, and if so, the price becomes crucial,
25 doesn't it?

00024

1 MR. NORWOOD: The price is crucial, as a
2 matter of fact. As we look out all the way through
3 February '03, we do a very detailed analysis about what
4 our loads are; what resources are available to us,
5 including hydro resources; our existing thermal
6 resources, like Colstrip, Kettle Falls and so on, and
7 Tom mentioned the small power.

8 There is actually some small generation that
9 we assume will be there in order to help mitigate that,
10 and we've also made assumptions on market prices during
11 that whole period, and as the chairwoman mentioned, if
12 prices are lower than that, then the deferral balance
13 is going to be higher. If the prices are higher than
14 that, then it will come out quicker, but as Tom
15 mentioned also, like with Coyote Springs too, the
16 target date should be June 1 to get that on line, but
17 we've left some room there, because sometimes when
18 those plants come on line, they don't always work
19 during the first month, so we want to be careful about
20 counting on something which is a brand-new resource,
21 and there is some other small generation that we've
22 been able to access which we think will come on line
23 which will help mitigate -- for example, if prices come
24 off, then there will be more generation there to help
25 offset.

00025

1 So there really is a balancing that's going
2 to take place here. We've seen hydro conditions worsen
3 since we made this filing, which would cause the
4 balance to be higher, but when you look at some other
5 things, like more small generation coming on line than
6 what we had hoped for, that will help to mitigate that.
7 On the demand side also, we've seen a pretty good
8 response from our customers in their load coming off,
9 which we didn't expect earlier. We've already seen a
10 pretty good result from that, so that will also help
11 bring the deferral balance down.

12 So we are going to see both pluses and
13 minuses as we go into the future. It's possible that
14 prices will come down some. I think that's good for
15 the region and good for the consumers, and if that
16 happens, I think we can still make the deferral balance
17 offset to some degree. If it comes off too far, we may
18 not be able to, and that's when we may have to come
19 back to you. We see a good opportunity to get through
20 this without increasing prices, and that's our goal.

21 COMMISSIONER HEMSTAD: I hope your crystal
22 ball on price will be accurate in this extraordinarily
23 volatile period we are in. This is really more of a
24 technical accounting question. Would someone on the
25 panel elaborate for me -- I'm on Page 3 at Paragraph 2.

00026

1 The second sentence says, "Accordingly, the
2 amortization accepted in Docket No. UE-000972 is no
3 longer necessary as a result of this stipulation."
4 What does that mean?

5 MR. NORWOOD: In the filing that the Company
6 made there, we had proposed originally a 10-year
7 amortization of the balance in the original filing that
8 we made for the deferred accounting mechanism, but
9 given we have this deferral offset approach right now
10 in the Settlement, we just wanted to make it clear that
11 a 10-year amortization proposal is no longer relevant
12 here.

13 COMMISSIONER HEMSTAD: And one ancillary
14 question. Avista, along with the other northwest
15 utilities, are involved in the settlement discussion
16 with BPA with regard to what is being referred to as
17 the residential exchange, and here we see both the
18 financial and the power in that proposed settlement. I
19 assume this settlement in no way implicates any aspect
20 of either that power or financial flow would come from
21 the BPA settlement?

22 MR. NORWOOD: That's correct. As we get to
23 that time period in October of this year, we would
24 expect to handle those outside of this agreement.

25 COMMISSIONER HEMSTAD: That's all I have.

00027

1 CHAIRWOMAN SHOWALTER: Just a follow-up on
2 that. Would the BPA exchange settlement result in just
3 a credit on the bill, like a pass-through credit?

4 MR. NORWOOD: We would expect to come before
5 this commission in the months before October to address
6 the right way to pass those benefits on to customers.

7 CHAIRWOMAN SHOWALTER: But one way or the
8 other, they would be passed through independent of this
9 arrangement.

10 MR. NORWOOD: That's correct.

11 JUDGE MOSS: I have a couple of questions,
12 and I think my first one is to counsel rather than to
13 the witnesses. In connection with the point
14 Commissioner Hemstad raised on Paragraph 2 at Page 3 of
15 the amortization that's been accepted, apparently
16 that's been ordered or approved in this other docket,
17 so my question is, let us assume for the moment that
18 the Commission chose to approve and adopt the
19 Settlement Agreement in this proceeding. Would we need
20 to specifically address that other order and take care
21 of this amortization provision in some express way?

22 MR. MEYER: I'll just speak for myself. I
23 don't believe it's necessary. If the Commission
24 approves this settlement by its act, it will have
25 essentially rendered moot the amortization issue, and

00028

1 it will be an express determination by this Commission,
2 so I don't see the need to go back and rewrite that.

3 JUDGE MOSS: Do other counsel agree? I
4 wouldn't want a situation where the Company was facing
5 conflicting requirements is what my concern is.

6 MS. DAVISON: Your Honor, this is Melinda
7 Davison. Among the counsel we did debate this point,
8 and I don't think you have to go back and redo that
9 original order, but I do think in this order there
10 should be an explicit statement with regard to
11 eliminating the 10-year amortization just so that there
12 is no confusion for future parties researching the
13 issue.

14 JUDGE MOSS: In case we are all hit by a
15 truck or something. Do other counsel want to speak to
16 the issue?

17 MR. TROTTER: I would agree with Ms. Davison.
18 This comes in through this note on the Commission's
19 order of approving the deferral mechanism dated August
20 9th of last year. Finding of Fact No. 3 says a
21 deferral treatment proposed by Avista is reasonable and
22 should be approved, and that's where this comes in
23 because they had recommended this amortization
24 requirement. So I think for safety sake, the
25 Commission should in its order relieve the Company of

00029

1 that particular aspect of their proposal. And I would
2 think you could just quote the language on Page 3 of
3 Paragraph 2 of the Stipulation to that effect.

4 JUDGE MOSS: I note in this vein, turning to
5 Page 5 at Paragraph 7, specifically, it does appear to
6 contemplate that there would be an express act in any
7 Commission order that would change the requirement in
8 Finding of Fact No. 8, the Third Supplemental Order,
9 and the docket is designated there, so again, I'm just
10 thinking forward to what might need to be in the order,
11 and it does appear the parties are contemplating at
12 least some specific language addressing these forms.
13 I'm seeing nods of affirmance from counsel, and that's
14 sufficient for my purposes, unless someone wishes to
15 speak to the point.

16 CHAIRWOMAN SHOWALTER: Does that mean that in
17 addition to issuing an order under this Docket No.
18 010395, we need to add another docket number on there?

19 JUDGE MOSS: I don't think we need to do
20 that. I think we need to be clear in the order that
21 the Commission is acting in a fashion that modifies a
22 requirement previously imposed.

23 My questions for the panel really go back to
24 points that Chairwoman Showalter and Commissioner
25 Hemstad pursued with you, but I want to be perfectly

00030

1 clear in my own mind about the meaning of, essentially,
2 the first sentence of Paragraph 4 on Page 4, and I
3 believe I'm reading it the way the parties intended,
4 but I want to confirm that's the case.

5 It says on the second line there, "Should the
6 deferral balance increase or be reasonably anticipated
7 to increase substantially..." No commas. I'm just
8 wondering, is the word "substantially" the adverb
9 intended to modify both of those increases, or is any
10 increase at all in the balance, actual increase, the
11 triggering matter here?

12 MR. SCHOOLEY: It's intended to be
13 substantial increase, not just an increase.

14 JUDGE MOSS: So "substantially" would modify
15 "increase" both times it's used there.

16 MR. NORWOOD: I would agree with that.

17 JUDGE MOSS: I wanted to return briefly to
18 the question of what constitutes an unanticipated or
19 uncontrollable event as is referred to in that same
20 sentence, and we had some discussion about that. One
21 question was related to market power. Let's assume for
22 a moment that the market volatility goes in a direction
23 opposite from what it's been doing for the past some
24 months and we have a significant decrease in market
25 rates for a period of time, perhaps weeks or months.

00031

1 Is that among the unanticipated events that would
2 trigger this?

3 MR. NORWOOD: Market price was one of the
4 factors that was identified, but in our discussions as
5 we talked through this, we found that it would probably
6 be difficult to try to anticipate everything that could
7 happen to the future, and that's why we put in here,
8 such as things like hydro, market price, major thermal
9 outages, and so on, but it would be up to the Company,
10 if we find there is a substantial increase in deferral
11 balance, for us to come in and explain what that event
12 was and what the impact was.

13 JUDGE MOSS: I don't see market price there.
14 I think that might have been amended out of an earlier
15 draft if you thought that was in there.

16 MR. STEUERWALT: I think if you look at Page
17 2, the last sentence of the paragraph that starts on
18 Page 1 starts with, "The ability to fully offset the
19 deferred costs..." And it has a list of elements that
20 might be in the category of things that you are trying
21 to explore, I believe, and you do see wholesale market
22 prices in there.

23 JUDGE MOSS: So that would include a
24 situation where perhaps the FERC, when it's fully
25 flushed out, might decide to take a different course

00032

1 than that it has taken so far and actually establish
2 some sort of cap on wholesale prices. That would be an
3 unanticipated event within the contemplation of your
4 agreement, assuming they set that at some level that is
5 less than \$500 a megawatt hour, let's say.

6 MR. NORWOOD: It could be, yes.

7 JUDGE MOSS: I'm trying to be perfectly clear
8 about the dimensions.

9 CHAIRWOMAN SHOWALTER: I note it says,
10 "unanticipated or uncontrollable," so something might
11 be anticipated but not controllable, such as FERC.

12 MR. TROTTER: The event would have to cause a
13 substantial change in the deferral as well.

14 JUDGE MOSS: Yes, thank you. I just have one
15 other question in this area, and I believe that will
16 complete my questions, and that is in connection with
17 the Coyote Springs project itself and if that does not
18 come on line as anticipated, and Mr. Norwood, I think
19 you mentioned that sometimes these things don't come on
20 exactly as anticipated, would that also be in this
21 category of unanticipated or uncontrollable events?

22 MR. NORWOOD: I think it could be, and then
23 it would be up to the Company to come in to explain
24 that situation.

25 JUDGE MOSS: Sure. I just wanted to cover

00033

1 those specific points. Those are all the questions I
2 have. Did that prompt anything further, perhaps?

3 CHAIRWOMAN SHOWALTER: A little on this
4 Paragraph 4 here. The more you read these sentences,
5 the more you could look at them in different ways. It
6 seemed to me that the last sentence in Paragraph 4 is
7 the telling one, which says, "Only upon such petition
8 may the deferral balance be greater than zero for
9 regulatory purposes by February 28th, 2003."

10 I read that to mean that if the Company
11 doesn't file something, then for regulatory purposes,
12 there is zero in that account, but that it actually is
13 within the control and discretion of the Company to
14 decide to file a petition. On the other hand, if you
15 look at the first sentence in Paragraph 4, it says,
16 "The Company shall petition the Commission to alter,
17 amend, should the deferral balance substantially
18 increase."

19 I assume you would be wanting to do that, but
20 I wonder if the first sentence isn't meant to say, "If
21 there is a substantial increase and the Company wishes
22 to recover anything, then it must file a petition,"
23 which is a little different than saying, You have to
24 come in. You have to come in order to get the
25 regulatory treatment.

00034

1 MR. NORWOOD: That's my understanding. If we
2 see there is a substantial increase coming, then it
3 would be upon us then to file with the Commission for
4 some other form of relief, possibly.

5 CHAIRWOMAN SHOWALTER: So reading the whole
6 paragraph, in particular the first and the last
7 sentence, I just take the first sentence to mean, If
8 the company wants to recover and if there is a
9 substantial increase, then the Company must come in.

10 MR. NORWOOD: Yes.

11 CHAIRWOMAN SHOWALTER: Thanks.

12 MR. TROTTER: I think Mr. Schooley may have
13 had a comment on the prior answer regarding Coyote
14 Springs.

15 MR. SCHOOLEY: If that plant does come in a
16 month or two late, we view that as within the Company's
17 management and that that is their responsibility, so
18 that alone may not trigger a filing and any changes to
19 the plan.

20 JUDGE MOSS: My question was contemplating
21 something more dramatic than a couple of months. Thank
22 you.

23 MR. NORWOOD: As I mentioned, it would be up
24 to the Company to come in and to explain the
25 circumstances surrounding that is where we are at on

00035

1 that.

2 JUDGE MOSS: Some vendor failure or something
3 could be a problem.

4 MR. NORWOOD: Exactly.

5 JUDGE MOSS: I think that concludes the
6 questions from the Bench. Let me ask counsel if they
7 feel the need to elicit any further testimony from
8 these witnesses in connection with the Settlement
9 Agreement before I release them.

10 MR. MEYER: We do not.

11 JUDGE MOSS: Ms. Davison does not.
12 Mr. ffitch does not.

13 MR. FFITCH: I don't believe Public Counsel
14 has any further questions.

15 JUDGE MOSS: Mr. Trotter, anything further?

16 MR. TROTTER: No.

17 JUDGE MOSS: I'll release the witnesses from
18 the witness chair, and we appreciate your testimony
19 today. Ms. Davison, I need to give you an opportunity
20 to state the position of your client on the record
21 because your witness was unavailable today.

22 MS. DAVISON: Thank you, Your Honor. I
23 apologize for the unavailability of Mr. Schoenbeck. He
24 did participate in this proceeding and did carefully
25 review the Stipulation, and as a result, ICNU is

00036

1 supporting and did sign on to the Stipulation.

2 JUDGE MOSS: I just note for the record that
3 all parties to this proceeding did sign the Settlement
4 Stipulation.

5 Are there any other exhibits to be made of
6 record? Apparently there are none. Is there any other
7 business that the parties wish to bring before the
8 Bench? Apparently there is none. Are there any
9 closing remarks from the Bench?

10 CHAIRWOMAN SHOWALTER: I'll just say that I
11 think it's a laudable goal to try to get through this
12 very volatile and uncertain period without a rate
13 increase, and it seems to be a doable goal, and I just
14 applaud the parties for trying to work through this and
15 coming up with what seems to be a doable plan, but I
16 note that it is stated in terms of a goal, not a flat
17 commitment, which I think is appropriate under the
18 circumstances. I hope it all works out.

19 COMMISSIONER HEMSTAD: I concur on those
20 remarks.

21 JUDGE MOSS: I believe that concludes our
22 business this morning. The Commission will take the
23 Settlement under advisement along with the record in
24 the proceeding, and I'm sure we will act promptly in
25 that connection. I thank you all very much for being

00037

1 here this morning, and we will be off the record.

2

3 (Settlement hearing concluded at 10:15 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

