

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NOS. UG-020218
)	UG-020575
Complainant,)	
)	
vs.)	SETTLEMENT AGREEMENT
)	
AVISTA CORPORATION d/b/a AVISTA)	
UTILITIES,)	
)	
Respondent.)	
.....		

1 This Agreement is entered into for the purpose of resolving all issues raised in these dockets. This Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”), and is not effective before such approval. The documents constituting the agreement of the Parties are this “Settlement Agreement” and Appendices A, B and C attached hereto, collectively called the “Agreement” herein.

2 Appendix A is a copy of the Violation Report issued to Avista Corporation, d/b/a Avista Utilities. Appendix B contains copies of relevant federal rules that have been adopted by reference by the Commission, and are referred to in this Agreement. Appendix C lists the specific follow-up actions Avista agrees to perform company-wide to address Commission Staff’s concerns on a company-wide basis.

I. PARTIES

3 The parties to this Agreement are the Respondent, Avista Corporation, d/b/a Avista Utilities (“Avista” or “company”), and the Staff of the Commission (“Staff”) (collectively, “the Parties”).

II. BACKGROUND

4 Avista is a public service company subject to Commission regulation under Title 80 RCW. As pertinent to this Settlement Agreement, Avista operates as a “gas company” as that term is defined in RCW 80.04.010. Avista owns and operates a natural gas distribution system in Eastern Washington. Avista serves residential, commercial and industrial customers with natural gas, under tariffs subject to Commission regulation.

Avista is subject to Commission safety rules applicable to natural gas pipelines. *E.g.*, RCW 80.28.210.

5 In Docket No. UG-020218, Staff conducted a Standard Natural Gas Pipeline Inspection of Avista's pipeline facilities in the Spokane and Ritzville Districts of Avista's service area. That inspection took place February 11-15 and February 18-22, 2002.

6 In Docket No. UG-020575, Staff conducted a Standard Natural Gas Pipeline Inspection of Avista's pipeline facilities in the Goldendale and Stevenson Districts of Avista's service area. That inspection took place the week of June 17, 2002.

7 In these inspections, Commission Staff reviewed the procedures, records inventory and natural gas facilities of Avista.

8 As a result of these inspections, Staff issued a Violation Report (Appendix A) listing allegations that Avista violated WAC 480-93-015, WAC 480-93-110, WAC 480-93-183, WAC 480-93-186, WAC 480-93-187, WAC 480-93-188, and WAC 480-93-010, some sections of which adopt and incorporates, *inter alia*, Title 49 of the Code of Federal Regulations ("CFR"), Part 192. Violations of specific requirements of 49 CFR Part 192 were alleged. This action was taken in Docket Nos. UG-020218 and UG-020575. Appendix A itemizes the specific violations alleged.

9 On November 15, 2002, the Commission, based on the Violation Report (Appendix A), issued its Complaint to continue Docket Nos. UG-020218 and UG-020575. The Complaint summarized the violations in the following areas:

- a. Avista did not have readily detectable odorization at required levels at certain of its facilities;
- b. Avista did not have adequate cathodic protection applied to certain of its facilities, and/or that low cathodic protection readings were not corrected within 90 days, and/or that Avista had an insufficient number of test sites necessary to measure the adequacy of the cathodic protection system;
- c. Avista could not provide records demonstrating that an atmospheric corrosion monitoring program was in place in certain areas;
- d. Avista had documents indicating that the maximum allowable operating pressure had been exceeded on certain occasions, but Avista could not demonstrate that it had notified the Commission of such incidents as required;
- e. Avista had various problems with compliance with leak detection, including untimely follow-up inspections for

- several grade 1 leaks, failure to grade a leak upon discovery, incomplete documentation of leaks; and
- f. Avista did not have adequate records indicating that it had notified certain new customers of the option to install an excess flow valve.

10 A prehearing conference was held on January 14, 2003. The only two parties to these dockets are Avista and the Commission.

11 Since issuing its Violation Report (Appendix A), Staff has been discussing with Avista ways to resolve the issues now presented in these dockets, in a manner that assures present and future compliance with applicable Commission laws and rules. Both Parties share the goal that Avista's pipeline facilities be operated in compliance with Commission laws and rules related to the safe operation of those facilities.

III. AGREEMENT

12 The Parties have reached agreement on how to resolve the issues raised in these dockets and wish to present their agreement for the Commission's consideration and approval. The Parties voluntarily enter this Agreement without hearing or adjudication of any issues of fact or law to resolve the matters in dispute between them in what each Party believes is an appropriate manner, and to avoid the expense, time and uncertainty of litigation.

13 This Agreement outlines the elements of agreement, and the sections of the Violation Report (Appendix A) each aspect of the Agreement addresses. The most relevant sections of the CFR described herein are included in Appendix B to this Agreement.

Alleged Violations Cured

14 As of the date this Agreement was executed, the specific violations alleged in Staff's Violation Report (Appendix A) have been cured by Avista. Staff has independently confirmed this fact, based in part on a site visit by Staff to the Avista facilities involved.

15 This addresses all the specific items in the Violation Report (Appendix A).

Assuring Compliance Systemwide

16 As a practical matter, in inspecting companies with facilities that cover a large area, Commission Staff inspects a limited area, and if problems are found, Staff requests the company to conduct inspections to determine whether the problems exist company-wide, and if so, to correct the problems that are found. For example, in this

case, the Commission Staff found problems with cathodic protection and leak detection in regards to the limited areas of Avista's system that were inspected. It is reasonable to require Avista to conduct an analysis of its system with respect to certain of the problems itemized in Staff's Violation Report, and to correct whatever problems are discovered. Avista has agreed to do so.

17 Accordingly, Avista agrees to conduct the activities listed in Appendix C. This addresses all items in the Violation Report (Appendix A), on a going forward basis, company-wide.

Admissions of Violations and Sanctions

18 Avista has reviewed in detail the Commission Staff's Violation Report (Appendix A), and has taken the opportunity to discuss with Staff in detail the allegations in that Violation Report. Avista concurs with the findings of the Violation Report set forth in Appendix A, with the exception of the findings relating to Violation Number 11. Violation Number 11 involved a matter that had been addressed in a prior proceeding, and Avista was handling the matter. Staff has concluded that this violation should not have been characterized as a "repeat violation" in the Violation Report Staff issued. For this reason, if this case went to hearing, Commission Staff would not have pursued Violation Number 11.

19 Avista and Commission Staff have agreed that Avista will pay to the Commission penalties totaling fifty thousand dollars (\$50,000.00). This amount shall be due and payable within fifteen calendar days after the date of the Commission order approving this Agreement. Avista will pay the Commission that amount by that date. If Avista fails to timely comply with any of the specified obligations contained in Appendix C, nothing in the this Agreement prevents the Commission Staff from recommending, and the Commission imposing, additional sanctions be imposed by the Commission for any violations of Commission laws and rules that are discovered during the additional activities Avista has agreed to conduct as described in Appendix C. Nothing in this Agreement limits Avista's arguments or defenses in any such enforcement action, including a showing that lack of timeliness was justified due to circumstances beyond Avista's control.

IV. GENERAL PROVISIONS

Nature of the Agreement.

20 The Parties agree that this Agreement is an appropriate settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is subject to Commission approval and it is not effective unless and until it is approved by the Commission.

21 Nothing in this Agreement is intended to limit or bar any other entity from
pursuing legal claims, or to limit or bar Avista's ability to assert defenses to such claims.

22 Nothing in this Agreement limits or bars the Commission from pursuing penalties
for violations of Commission statutes and rules unrelated to the subject matter of this
Agreement. Nothing in this Agreement limits or bars the Commission from pursuing
penalties for violations of Commission statutes and rules that are related to the subject
matter of this Agreement, but which violations occurred after the date this Agreement
was executed. The Commission Staff understands that as a result of the company-wide
steps Avista has agreed to take (described in Appendix C), additional conditions may be
found that constitute violations of Commission laws and rules. Staff agrees that so long
as these violations are of the same type as those listed in Appendix A, and if Avista meets
the timeframes agreed to in Appendix C, Staff will not recommend additional sanctions
be pursued by the Commission for such violations.

23 The Parties have entered into this Agreement to avoid further expense,
inconvenience, uncertainty, and delay. The Parties recognize that this Agreement
represents a compromise of the Parties' positions. As such, conduct, statements, and
documents disclosed during negotiations of this Agreement shall not be admissible as
evidence in this or any other proceeding, except in any proceeding to enforce the terms of
this Agreement or any Commission Order fully adopting those terms. This Agreement
shall not be construed against either Party because it was a drafter of this Agreement.

Integrated Terms of Settlement

24 The Parties have negotiated this Agreement as an integrated document to be filed
with the Commission only upon execution. Once the Agreement is executed, the Parties
agree to support the Agreement in its entirety. This Agreement supersedes all prior oral
and written agreements on issues addressed herein, if any.

Manner of Execution

25 This Agreement is considered executed when all Parties sign the Agreement. A
designated and authorized representative may sign the Agreement on a Party's behalf.
The Parties may execute this Agreement in counterparts. If the Agreement is executed in
counterparts, all counterparts shall constitute one agreement. An Agreement signed in
counterpart and sent by facsimile is as effective as an original document. A faxed
signature page containing the signature of a Party is acceptable as an original signature
page signed by that Party. Each Party shall indicate the date of its signature on the
Agreement. The date of execution of the Agreement will be the latest date indicated on
the signatures.

Procedure

26 Once this Agreement is executed, the Parties agree to cooperate in promptly filing this Agreement with the Commission for approval. The Parties agree to support approval of this Agreement in proceedings before the Commission, through testimony and/or briefing. However, if there is a Commission order, rule or policy statement issued after the date this Agreement is executed but before it is approved, and that order, rule or policy statement, changes the posture of the Agreement in either Party's view, comments may be made to the Commission as to how the Agreement should be viewed in light of that order, rule or policy statement. The Parties agree to request from the Commission a hearing to present this Agreement, and the suspension of the existing remaining procedural schedule in these dockets. The Parties understand that the Commission will decide the appropriate procedures for presentation and consideration of the Agreement.

27 At the hearing on the Agreement, each Party shall each make available a witness or witnesses to answer questions and to support the Agreement. Any Party may elect to file, on or before 5 calendar days of the hearing on the Agreement, a memorandum with the Commission explaining the Settlement. It is understood that such a memorandum may contain the perspectives of the filing Party which may or not be the perspectives of the other Party.

28 In the event that the Commission rejects all or any portion of this Agreement, each Party reserves the right to withdraw from this Agreement by written notice to the other Party and the Commission. Written notice must be served within 10 business days of the date of the Commission order rejecting all or any portion of this Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Agreement. The Parties will jointly request a prehearing conference for purposes of establishing a procedural schedule to complete the case.

No precedent

29 No Party shall be deemed to have agreed that this Agreement is precedent for resolving any issues in any other proceeding, other than a proceeding for enforcement of this Agreement.

For Commission Staff:

Donald T. Trotter
Assistant Attorney General

Date signed:

For Avista:

David J. Meyer
Senior Vice President and
General Counsel
Avista Corporation

Date signed: