

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

WASHINGTON UTILITIES AND	)	DOCKETS UE-090134
TRANSPORTATION COMMISSION,	)	and UG-090135
Complainant,	)	(consolidated)
)	
v.)	
)	
AVISTA CORPORATION d/b/a)	
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

In the Matter of the Petition of	)	DOCKET UG-060518
	)	(consolidated)
)	
AVISTA CORPORATION, D/B/A)	
AVISTA UTILITIES,)	
)	
)	
For an Order Authorizing	)	JOINT MEMORANDUM OF PUBLIC
Implementation of a Natural Gas	)	COUNSEL, NORTHWEST
Decoupling Mechanism and to Record	)	INDUSTRIAL GAS USERS AND THE
Accounting Entries Associated With the	)	ENERGY PROJECT IN OPPOSITION
Mechanism.	)	TO INTERIM EXTENSION OF
.....	)	DECOUPLING PILOT

I. INTRODUCTION

I. Pursuant to the Notice of Filing Schedule set forth in Administrative Law Judge Torem’s Second Prehearing Conference Order, Public Counsel, Northwest Industrial Gas Users (NWIGU) and The Energy Project (Joint Parties) respectfully file this memorandum in opposition to Avista’s petition requesting interim extension of its decoupling pilot.

2. The decoupling mechanism that is the subject of this proceeding was initially approved by the Commission on a “pilot” basis in Order 04 in February, 2007. The pilot provided for an independent evaluation and the option for Avista to request continuation of the mechanism on a permanent basis after the evaluation was reviewed.¹

3. On May 1, 2009, Avista filed its Petition of Avista Corporation (Petition) requesting continuation of its decoupling mechanism beyond its termination date. The pilot concludes by its terms on June 30, 2009. The Petition included a request that the program be extended on an interim basis pending the Commission’s review of Avista’s request to make decoupling permanent. That review is being consolidated with the pending Avista general rate case.

4. The pilot decoupling mechanism allowed Avista to record deferrals for two and a half years, from January 1, 2007 through June 30, 2009. Amortization and recovery from ratepayers was stretched out over three years, from November 1, 2007 through October 30, 2010. Although amortization continues until October, 2010, the decoupling pilot as designed effectively ends with the termination of deferrals on June 30. If the interim extension is approved, Avista states that it would continue to make deferred accounting entries as it does now under the decoupling pilot. Avista states that no amounts would actually be recovered from customers during the interim extension. If the Commission decides to reject the request to make decoupling permanent, the accounting entries would be reversed. If the Commission approves the request to make decoupling permanent, the company would then be allowed to recover the interim deferrals through its decoupling surcharge

¹Final Order Approving Decoupling Docket, Order 04, February 1, 2007.
PUBLIC COUNSEL et al. OPPOSITION TO INTERIM EXTENSION-DOCKETS
UE-090134 / UG-090135, and DOCKET
UG-060518

II. MEMORANDUM IN OPPOSITION

A. The Commission Orders in This Docket Expressly Provide For Termination Of the Pilot on June 30, 2009, A Date Twice Agreed To By Avista.

5. As noted above, on February 1, 2007, the Commission entered Order 04 approving a non-unanimous settlement establishing the Avista decoupling pilot.² Order 04, stated, *inter alia*:

The main features of this proposed decoupling mechanism include the following:

- **Term:** It would begin January 1, 2007. *Recording of deferred revenue will end on June 30, 2009.* However, the amortization period would begin on November 1, 2007, and end on October 31, 2010.³

6. Order 04 and the underlying settlement required Avista to file a draft evaluation plan by December 31, 2007. Avista failed to initiate the evaluation collaborative or timely file the plan as required and was sanctioned by the Commission for this violation in Order 05 in this docket.⁴ In the course of addressing the evaluation process, Order 05 specifically addressed the schedule for the remainder of the pilot, including end-of-pilot review and the issue of possible extension.

The Commission stated:

Avista may not request to extend the term of or modify its decoupling mechanism until April 30, 2009. The pilot decoupling project *shall not be extended* beyond its expiration date of June 30, 2009, unless the Commission takes affirmative action in that regard.⁵

7. Significantly, the June 30 pilot termination date adopted in both Order 04 and Order 05 is based upon Avista's own affirmative agreement to that date in two separate instances. First, the

² Order 04, Final Order Approving Decoupling Pilot Program. Public Counsel and The Energy Project opposed the decoupling settlement. NWIGU agreed to the settlement. In this pleading, NWIGU's position is that the settlement terms it agreed to which provide for a defined end to the pilot at the end of June 2009 should not be modified as Avista requests (see further discussion below).

³ Order 04, ¶ 15 (emphasis added).

⁴ Order 05, First Supplemental Order; Extending Deadline for Filing Draft Evaluation Plan; Imposing Sanction for Failure To Comply With Commission Order 04 (April 11, 2008).

⁵ Order 05, ¶ 54 (emphasis added).

Settlement Agreement itself, signed by Avista and attached to and adopted by Order 04, states the following with respect to the end of the pilot:

6. The Signing Parties have agreed that the company's Decoupling Mechanism (hereinafter mechanism) shall consist of the following:

A. Term of the Pilot Program: . . . *The proposed term of the Mechanism is 2 years and 6 months for the recording of deferred revenue (January 2007—June 2009).* However, the proposed amortization period would be three years, beginning on November 1, 2007 ending on October 31, 2010.⁶

8. Second, during the March 2008 proceedings on its failure to file the draft evaluation plan, Avista reaffirmed its agreement to the termination date. At the March 24, 2008, hearing, Avista counsel David Meyer asked witness Brian Hirschorn to confirm Chairman Sidran's observation that "there is consensus around the timeline that Public Counsel has suggested [,] that the Company has accepted this Attachment A [Public Counsel's timeline] in terms of an outline."⁷

Mr. Hirschorn confirmed the key dates, stating, *inter alia*:

Then June 30 is the end of the pilot period, the time at which we would cease the deferrals under the pilot program. That's in the order. That's in the settlement agreement. The alternative plan is acceptable to the Company . . . [.]

JUDGE TOREM: The June 30, 2009 date for the end of the pilot program will not be extended unless the Commission acts on the Company's request to do?

MR. HIRSCHKORN: Right.⁸

Judge Torem inquired further into the termination issue shortly after:

JUDGE TOREM: I think your prefiled testimony acknowledged that if the Commission does not have sufficient time from April 30th until June 30th to get its arms around and make a decision about the final evaluation report, the Company is understanding that the pilot program, whether it works for the

⁶ Order 04, Appendix A, Settlement Agreement ¶ 6A. Commission Staff and the Northwest Energy Coalition

⁷ TR. 165:18-21 (Chairman Sidran)

⁸ TR. 167:23-168:111

Company and for ratepayers and for conservation as well, may expire before it can be resumed, is that correct?

MR. HIRSCHKORN: Yes, it is set to expire. We provided two potential options for the Commission to consider if that's the case, if the Commission does not have enough time to review all the information.⁹

As these transcript references establish, Avista reaffirmed its agreement to the termination date, and understood that the pilot would expire if the review was not complete.

9. Based on these representations, the Commission found that the “[t]he Company . . . agreed to a schedule proposed by Public Counsel . . .”¹⁰ That schedule provided as follows:

- March 31, 2009 (or 30 days from receipt of 2008 data).
Final Evaluation Report.
- April 30, 2009 (or no earlier than 30 days after Final Evaluation Report)
Deadline for petition to extend or modify
- TBD Prehearing conference to set schedule for petition docket.
- June 30, 2009 End of pilot. *Deferrals terminate if review process not complete.*¹¹

10. Reaffirming this agreement later in Order 05, the Commission stated, “[w]e will also adopt the schedule agreed to at the March 24, 2008 hearing, including extending the date for filing for extension of decoupling, and *require the Company to strictly adhere to that schedule.*”¹² This sets a high standard for departure from the terms of these orders and the underlying agreements which Avista has not met in its petition.

⁹ TR. 169:5-16. The two options referred to in Mr. Hirschcorn's testimony were cessation of deferrals until the review was complete or interim extension. Exh. ___ (BJH-1T), p. 11:11-20. (Direct Testimony of Brian Hirschcorn, March 20, 2008). As discussed, the Commission adopted the schedule that provided for cessation.

¹⁰ Order 05, ¶20

¹¹ Public Counsel Motion for Leave To Present Oral Direct Testimony, March 24, 2008, Attachment A (Public Counsel Recommended Timeline – Avista Decoupling Pilot Evaluation).

¹² Order 05, ¶31 (emphasis added).

B. Extension of the Pilot Is Not Merely A Neutral Accounting Exercise; It Has Potential Financial Impact On Customers

11. Avista's petition and supporting testimony suggest that the interim extension is nothing more than an accounting exercise that will have no real impact on consumers. This is simply not true. As explained below, any extension of the pilot will have a significant financial impact on ratepayers. The Joint Parties understand that Avista proposes no surcharges during the interim period pending review. However, if Avista's request for an interim extension is granted and decoupling is ultimately approved for permanent implementation, the interim amounts deferred will eventually be collected from customers in subsequent surcharges. The additional deferrals that would occur during the interim extension would cover approximately six months.¹³ If the interim period follows experience in the pilot to date, those recoveries could range in amount from \$300,000 to \$1 million.¹⁴ Thus, Avista stands to gain financially from the interim extension, while ratepayers would incur real and substantial cost.

C. Avista Has Not Shown Good Cause For the Commission To Modify Its Orders Or To Allow Avista To Be Relieved Of Its Settlement Commitment.

12. Given the clarity of the Commission orders regarding extension and the Company's own agreements, the Company bears a substantial burden to show why it should not now be required to "strictly adhere" to those Orders and agreements. The Company does not carry this burden. In Avista's Petition, no basis or justification for interim continuation of the decoupling mechanism is offered except for a general citation to the testimony of Brian Hirschkom.

¹³ This assumes a period from July 1, 2009 to the conclusion of the general rate case in December, 2009.

¹⁴ The actual deferral history is summarized in Mr. Hirshkorn's testimony, Exh. No. ___ (BJH-1T), p. 8, after line 16 and Exh. No. ___ (BJH-3). The one year deferral amount for July, 2007-June, 2008 was over \$678,014 (approximately \$300,000 for a six month period). The most recent deferrals for first quarter 2009 are over \$500,000 (\$1 million extrapolated to a six month period). Exh. No. ___ (BJH-3), p. 3.

13. Mr. Hirschhorn addresses the interim extension in one answer in his testimony. Beyond restating the request, the sole argument he offers in support of the interim extension is that “[t]he Company believes good cause exists for the Commission to ultimately approve continuation of the Mechanism, and, if that is the case, continuity of the Mechanism is important as the Company continues its extensive programmatic DSM measures and customer education related to energy efficiency.”¹⁵

14. The “continuity” rationale falls well short of the mark. This is a pilot. The nature of a pilot is that it runs for a finite period and is then evaluated. Again, Avista has known since at least a year ago there would not be continuity if the review was not complete by June 30. It agreed to that possibility, understanding that its own delay in filing the draft evaluation shortened the time between the filing of the evaluation and the end of the pilot, increasing the likelihood of discontinuation. Furthermore, Avista’s continuity argument puts the cart before the horse since it is based implicitly on an assumption that there will be ultimate approval. While Avista may hope for that result, the outcome must await the results of this proceeding. In Order 05, the Commission reiterated its key considerations for extending the pilot:

We will carefully evaluate the mechanism, and will *only consider an extension* upon a convincing demonstration that the mechanism has enhanced Avista’s conservation efforts in a cost-effective manner.¹⁶

15. Avista’s request for an interim extension is premature. There has been no “convincing demonstration” to date. That is the purpose of the upcoming consolidated proceedings.¹⁷

¹⁵ Exh. No. ____ (BJH-1), p. 3:15-19 (May 1, 2009).

¹⁶ Order 05, ¶30, quoting Order 04, ¶ 33.

¹⁷ As the Commission stated in its initial order, “to ensure adequate review of the program and its accomplishments, we require that the program be reviewed at its conclusion in a general rate case.” Order 04, ¶32.

16. Further, there is no evidence that absent an interim extension Avista would discontinue any of its energy efficiency programs or customer education during the six month review. Indeed, since Avista is collecting the costs of those programs from its customers in the DSM tariff rider, any such action would be improper and irresponsible.

III. CONCLUSION

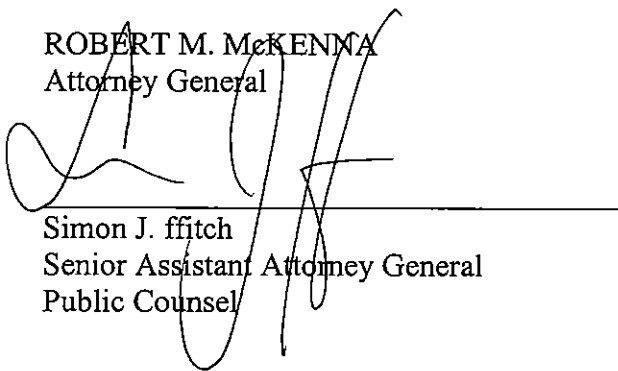
17. Public Counsel, NWIGU and The Energy Project, therefore, respectfully request that Avista's petition for an interim extension of its decoupling pilot be denied.

18. If the Commission decides in favor of the Company's request for an interim extension, the Joint Parties respectfully request that the order state that an interim extension does not in any way prejudice the merits of final review, that no surcharges may be permitted during the interim period, and that any deferrals must be reversed if the petition to allow decoupling is ultimately denied.

DATED this 26th day of May, 2009.

Respectfully submitted,

ROBERT M. McKENNA
Attorney General



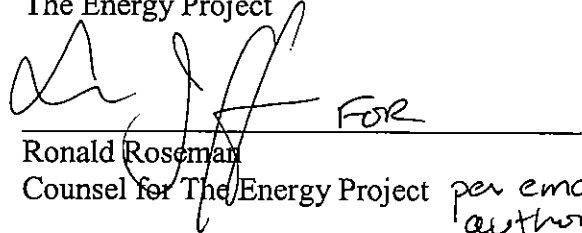
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**Docket No. UE-090134 & UG-090135
Avista GRC 2009**

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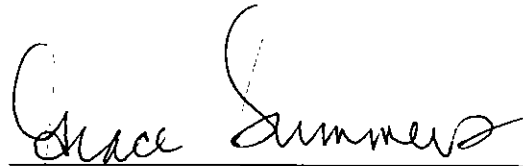
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CERTIFICATE OF SERVICE
Docket No. UE-090134 & UG-090135 / UG-060518

I hereby certify that a true and correct copy of the Joint Memorandum of Public Counsel, Northwest Industrial Gas Users and The Energy Project in Opposition to Interim Extension of Decoupling Pilot, were sent to each of the parties of record shown on the attached Service List in sealed envelopes,

via: First Class Mail and Electronic Mail

DATED: May 26, 2009.

A handwritten signature in cursive script that reads "Grace Summers". The signature is written in black ink and is positioned above a horizontal line.

GRACE SUMMERS