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AVISTA Corp.

June 5, 2009

Via Overnight Mail

David Danner, Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S. W.
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Olympia, Washington 98504-7250

Re: Docket No. UG-060518, UE-090134 & UG-090135
Avista's Reply to Joint Memorandum of Public Counsel, et. al.

Enclosed for filing with the Commission is the original and 17 copies of Avista Corporation's Reply to Joint Memorandum of Public Counsel, et. al. If you have any questions regarding this filing, please contact Patrick Ehrbar at 509-495-8620 or Patty Olsness at 509-495-4067.

Sincerely,

Kelly Norwood

Kelly Norwood
Vice President, State and Federal Regulation
Avista Corporation

Enclosures

cc: Service List (First Class Mail and Email)
ALJ Adam E. Torem (Email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served Avista Corporation's Reply to Joint Memorandum of Public Counsel, et. al, upon the parties listed below by electronic mail and mailing a copy thereof, postage prepaid.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated at Spokane, Washington this 5th day of June, 2009.

Patty Olsness
State & Federal Regulation

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, vs. AVISTA CORPORATION, D/B/A AVISTA UTILITIES, Respondent.	)	DOCKETS UE-090134 and UG-090135 (consolidated)
In the Matter of the Petition of AVISTA CORPORATION, d/b/a AVISTA UTILITIES, For an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism.	)	DOCKET UG-060518 (consolidated) **AVISTA'S REPLY TO JOINT MEMORANDUM OF PUBLIC COUNSEL, ET. AL.**

I. INTRODUCTION

1 At issue is Avista's request that the Commission grant an interim extension of the Decoupling Mechanism, for the simple purpose of allowing the recording of deferral amounts from June 30, 2009, until such time as the Commission ultimately decides whether to extend the Mechanism on a permanent basis. Were the Commission to decide not to extend the Mechanism, the Company would reverse any deferrals recorded during the interim period and customers would not be affected. (See Avista's Petition for a Natural Gas Decoupling Mechanism, ¶14, at pp. 7-8.) On May 26, 2009, a Joint Memorandum in opposition to this request was filed by Public Counsel, the Northwest Industrial Gas Users, and the Energy Project (hereinafter "Opposing Parties"). For

its part, the Commission Staff filed its response to Avista's Petition, and supported Avista's request, noting as follows:

> With this express limitation on the interim relief requested [i.e., Avista would reverse any deferrals recorded were the Mechanism not continued on a permanent basis], Staff believes this request is reasonable, and is consistent with the Commission's objective to ultimately evaluate the Mechanism and determine whether it should be extended on a permanent basis, perhaps with one or more modifications.

(Staff's Response at ¶2.) For the reasons set forth in this Reply, and in Staff's Response, Avista respectfully urges the Commission to grant Avista's request for an interim extension.[1]

II. THERE ARE NO LEGAL IMPEDIMENTS TO A CONTINUATION OF THE MECHANISM ON AN INTERIM BASIS

2 Opposing Parties begin by arguing that the prior Orders of the Commission "expressly provide" for a termination of the pilot program on June 30, 2009, and preclude any interim extension. (See Joint Memo at ¶¶5-7) Opposing Parties quote from the language of the Commission's Order 05 at ¶54, wherein it is 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. (Emphasis added)

Opposing Parties chose to emphasize the language "shall not be extended" in the above excerpt, and entirely ignore the last proviso "unless the Commission takes affirmative action in that regard." Accordingly, the very language excerpted from the Commission's Order 05 by the Opposing Parties helps makes Avista's point – namely that, notwithstanding the scheduled expiration date of June 30, 2009, the Commission, on request, can otherwise take "affirmative action" to extend the program on an interim basis. And that is what is at issue here.

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[1] The NW Energy Coalition also does not oppose Avista's request to continue the Mechanism on an interim basis, provided that, if the Commission subsequently modifies the Mechanism, such modifications should apply during the interim period as well for purposes of calculating any deferrals. Avista agrees.

3 Avista clearly understands that the Commission is under no legal obligation to continue this program on an interim basis. Conversely, there is no legal prohibition in the prior Orders of this Commission that would foreclose such an interim continuation. (Indeed, the Commission's own order, excerpted above, anticipates just that possibility.) The Opposing Parties continue to argue, however, that Avista somehow agreed, either in prior settlement documents (to which they were not a party) or at time of hearing, to waive any right in the future to request a continuation of the Mechanism on an interim basis. Opposing Parties only refer to Section 6A of the Settlement Agreement which sets forth the term of the Pilot Program. (Joint Memo at ¶7) Opposing Parties, however, can point to nothing in the Settlement Agreement, itself, that serves to bar a subsequent request for an interim extension; rather, it is simply silent with respect to such a prospect.

4 Next, Opposing Parties cite to transcript references involving an exchange between Judge Torem and Company Witness Hirschkorn. (Joint Memo at ¶¶8-9) Again, the references made to the transcript by the Opposing Parties actually recognize the possibility that Avista may, indeed, request a future extension, on either an interim or permanent basis:

> 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.

(Tr., p.167, l. 23 – p.168, l. 111) (cited by Opposing Parties at ¶8) Opposing Parties next refer to another exchange between Judge Torem and Mr. Hirschkorn:

> JUDGE TOREM: I think your pre-filed 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 Company and for its 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.

(Emphasis added) (Tr., p.169, ll. 5-16) (Joint Memo at ¶8) Those "two options" were described in the Opposing Parties' own Footnote No. 9 as a "cessation of deferrals until the review was complete" or an "interim extension." This again demonstrates that Avista made clear that a future request for an interim extension remained a possibility – and this possibility was ultimately reflected in Order No. 05 in which, as discussed above, the Commission recognized that it could take "affirmative action" to extend the program, even on an interim basis, beyond its scheduled expiration date.

III. CONTINUATION OF THE PROGRAM, ON AN INTERIM BASIS, WILL NOT HARM CUSTOMERS

Opposing Parties contend that extension of the program is not a "neutral accounting exercise," but may have some potential financial impact on customers. (Joint Memo at ¶11) In the same breath, however, Opposing Parties concede ". . . that Avista proposes no surcharges during the interim period pending review." (Joint Memo at ¶11) Rather, they simply contend that if the Mechanism is ultimately approved on a permanent basis, future surcharges could result. But that is just as it should be; if the program is ultimately extended because the Commission has made a determination, after hearings, that such a permanent extension is warranted and is in the public interest, it would only be because the Commission has exercised its discretion to determine that the surcharge or rebate features of the Mechanism are appropriate, and consistent with the public interest. Stated differently, any potential future financial impact on customers would only be the result of a reasoned determination by the Commission, in the context of Avista's request for a permanent extension.

6 The Commission Staff, in its Response, appropriately recognizes that Avista's request for an interim extension involves only permission to record additional deferred revenues which can later be reversed if the Mechanism is discontinued. In so doing, Staff recognizes that Avista's request is not for a "guarantee" of future recovery:

> . . . At this point, the request is only for an interim extension to record additional deferred revenues, accounting entries which can later be reversed if the mechanism is discontinued, with no impact on ratepayers. This is a reasonable request.

(Emphasis added) (Staff Response at ¶4)

7 Simply put, there is no undue harm to customers, regardless of what the Commission elects to do with respect to the permanent extension: If the Mechanism is ultimately continued, it will be predicated on a determination by the Commission that public policy and the evidence support such a permanent extension; and it follows that there would be no need for an unnecessary interruption of an existing program that continued to be, by definition, "in the public interest." Any such ultimate determination of "public interest" would take into account the potential impact on customers, alluded to by the Opposing Parties, as well as the impact of lost margins and necessary incentives to promote conservation. On the other hand, were the Commission to ultimately reject the continuation of the Mechanism on a permanent basis, this would return all parties to the *status quo ante*, as if the program had, in fact, terminated on June 30, 2009. Customers would not be surcharged any amounts, in that instance, to recover any deferrals that had been recorded during this interim period.[2]

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[2] It is unreasonable to suggest that customers are somehow "harmed" by any future surcharges under the Mechanism, if the Commission ultimately continues it on a permanent basis. Any such reference to "harm" is a mischaracterization, at best; no future surcharges will occur unless, as argued above, the Commission has made a public policy determination that the program should continue on a permanent basis, after giving due regard to all factors, including the impact on both the customer and the Company.

8 Ultimately, Opposing Parties have failed to demonstrate any actual harm to customers by the Company's simple act of recording deferrals for possible future recovery, if the program is ultimately continued. The Commission Staff, in its comments, had it right:

> The contrary view would effectively impose a six-month period during which no Decoupling Mechanism could be in place, even if the Commission ultimately determined that some form of decoupling is appropriate and in the public interest. Staff does not believe that this was the intent of the Commission's prior Orders.

(Staff's Response at ¶7)

IV. "GOOD CAUSE" DOES, IN FACT, EXIST FOR THE CONTINUATION OF THIS PROGRAM ON AN INTERIM BASIS

9 Opposing Parties argue that "good cause" does not exist to continue the program on an interim basis. (See Joint Memo at ¶¶12-16) During the six-month extension period, however, the same factors that originally supported the implementation of the program will remain at work, e.g., incentives to pursue conservation, lost margin, etc. One should not assume that the original rationale for the Mechanism will no longer apply for six months, until such time as the Commission can act on Avista's request for a permanent Mechanism. (If, ultimately, the Commission chooses to discontinue the Mechanism because the rationale or other evidence no longer supports such a program, customers will not have been harmed in the process, as explained above.)

10 For the reasons previously discussed, good cause does exist for the interim extension. First of all, there will be no harm to customers resulting from the recording of deferral entries during the ensuing six-month period; no surcharges can or will be imposed during such time (and can only be subsequently imposed if the program is permanent continued); secondly, the rationale for the pilot program is undermined with an unnecessary six-month interruption. If it is ultimately determined to be in the public interest to continue the program permanently, it necessarily follows that it would have been in the "public interest" to have continued the program in the interim.

Moreover, there is no legal impediment to continuing the program in the interim, as explained above. Finally, it is well to remember that Avista is not requesting a determination of the ultimate question of whether the program is in the "public interest." That must await a later determination as part of the hearing process.

11 Finally, the Opposing Party's reference to Order 05, as excerpted, below, is misplaced:

> 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.

(Joint Memo at ¶14) (Order 05, ¶30) This reference was with respect to any permanent extension of the Mechanism, because any such evaluation would necessarily depend on a resolution of the ultimate factual issues at time of hearing in this docket, which include whether the program has enhanced the conservation efforts of Avista. The Commission Staff, in its own response, appropriately recognized that this demonstration must await the general rate case.

12 Staff correctly observes that the Commission did not intend that Avista make this "convincing demonstration" prior to June 30, 2009. Given the dual requirement of a post-April 30, 2009, filing date for any extension, and the required review within the context of a general rate case, Staff notes that this task would be "virtually impossible to accomplish". (Staff Response at ¶5)

V. CONCLUSION

13 For the foregoing reasons, Avista respectfully requests that the Commission approve its request to record deferral amounts from June 30, 2009, for possible future recovery, until such time as the Commission ultimately decides whether to extend the Mechanism on a permanent basis.

14 RESPECTFULLY SUBMITTED this 5th day of June, 2009.

AVISTA CORPORATION

By: _____

David J. Meyer
Vice President and Chief Counsel for Regulatory
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