

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

WASHINGTON UTILITIES AND	)	DOCKETS UE-090134
TRANSPORTATION COMMISSION,	)	and UG-090135
	)	(consolidated)
Complainant,)	
)	
v.	)	ORDER 07
)	
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,)	
	)	ORDER 07
For an Order Authorizing)	
Implementation of a Natural Gas)	
Decoupling Mechanism and to Record	)	SUPPLEMENTAL ORDER
Accounting Entries Associated With the	)	TEMPORARILY EXTENDING
Mechanism.	)	DECOUPLING MECHANISM
.....)	

1 *Synopsis: The Commission grants Avista’s request for approval of an interim extension of its existing pilot decoupling mechanism (Pilot Program) until such time as a final decision is entered in the Company’s natural gas general rate case, subject to conditions, and defers consideration of the merits of the program until the Company’s general rate case hearing.*

2 **PARTY REPRESENTATIVES:** David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, represents Avista Corporation d/b/a Avista Utilities (Avista). Simon ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Greg Trautman, Assistant Attorney General, Olympia,

Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹ Chad M. Stokes and Tommy Brooks, Cable Huston Benedict Haagenen & Lloyd LLP, Portland, Oregon, represent Northwest Industrial Gas Users (NWIGU). David Johnson, Seattle, Washington, represents the Northwest Energy Coalition. Ronald Roseman represents The Energy Project.

3 **NATURE OF PROCEEDINGS:** On April 30, 2009, Avista filed a petition with the Washington Utilities and Transportation Commission (Commission) seeking to continue its existing pilot decoupling mechanism (Pilot Program), and associated accounting entries, on an interim basis beyond the expiration date of June 30, 2009, set forth in Order 04, *Final Order Approving Decoupling Pilot Program*.² The Company proposed to continue recording the mechanism's accounting deferrals until the Commission, as part of the company's pending general rate case, decides whether to make the Pilot Program permanent. The Company proposed to protect customers by reversing any deferrals recorded during the interim extension period should the Commission decide to terminate the Pilot Program.³

4 At a prehearing conference held on May 14, 2009, Administrative Law Judge (ALJ) Adam E. Torem adopted a briefing schedule for the parties to respond to Avista's petition.⁴ On May 26, 2009, in accordance with that schedule, Public Counsel, NWIGU, and the Energy Project filed a joint response opposing any interim extension of the Pilot Program. Commission Staff and the NW Energy Coalition also filed responses that same date, each indicating no objections to the Company's requested accounting treatment. On June 5, 2009, the NW Energy Coalition and Avista each filed separate replies to the joint parties' opposition.

5 **COMMISSION DETERMINATION.** Avista's Pilot Program would expire on June 30, 2009, by the plain terms of our previous orders. However, the Commission grants Avista's request to extend the Pilot Program and retains the necessary flexibility to

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

² See Order 04 in Docket UG-060518.

³ Avista's Petition, ¶¶ 14 and 19.

⁴ See Order 06 in Dockets UE-090134, UG-090135, and UG-060518 (consolidated).

determine the future of the program during the pending general rate case. This decision results in no immediate impact to the company's ratepayers, but allows the Commission to preserve the potential benefits of decoupling, if any, for subsequent implementation in Avista's natural gas rates. The Commission will take up and carefully evaluate the substantive impacts of the Pilot Program in the context of the general rate case now pending. Until our final decision on the program's value and cost-effectiveness, the Company must remain ready to reverse and refund any deferrals recorded during this interim extension period.

MEMORANDUM

I. Background

- 6 On February 1, 2007, the Washington Utilities and Transportation Commission (Commission) entered Order 04 in Docket UG-060518, conditionally approving a settlement agreement in which the signing parties agreed to implement a pilot decoupling program. By its terms, the Pilot Program was to expire on June 30, 2009, though the amortization period would end on October 31, 2010. The Commission required Avista to file a report evaluating the pilot no later than March 31, 2009. The Commission added that “[t]o ensure an 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.
- 7 On March 31, 2009, Avista timely filed its “Evaluation of Avista Natural Gas Decoupling Mechanism Pilot” report with the Commission.
- 8 On April 30, 2009, Avista filed a petition seeking to extend its Pilot Program on an interim basis until the Commission has had the opportunity to review the program in full.⁵ At the same time, the Company filed a Motion to Consolidate the program's review with its pending general rate case.⁶

⁵ The Company's petition also explained a minor modification to be included in the decoupling mechanism if the Commission approved its permanent adoption.

⁶ See Avista's Motion to Consolidate.

II. PARTY POSITIONS ON EXTENSION OF PILOT PROGRAM

9 *Company's Position.* Avista argues that its “decoupling mechanism, as demonstrated in its pilot program, has achieved its intended results in that the Company has substantially increased its natural gas DSM [demand side management] efforts and achieved substantial results, and in a cost effective manner.”⁷ The Company contends that its decoupling mechanism “is a preferable alternative to a \$20 [per month] customer charge”⁸ and “removes the disincentive related to fully promoting energy efficiency,” allowing Avista to offer an array of DSM programs.⁹

10 *Staff and NWECA Positions:* Commission Staff does not oppose Avista’s request, characterizing an interim extension of the accounting treatment as “reasonable.”¹⁰ According to Staff:

If additional revenue deferrals are recorded beyond June 30, 2009, Staff recognizes that this might result in future recovery of all or a portion of such amounts by Avista – but only if the Commission determines that an approved decoupling mechanism serves the public interest. This is appropriate, in Staff’s view. 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.¹¹

11 NW Energy Coalition also does not oppose the Company’s request, registering its view that Avista’s promise to reverse any deferrals recorded during the interim extension period if the Commission does not permanently approve the program is “reasonable and appropriate.” However, NW Energy Coalition expresses its opinion that any later modifications to Avista’s decoupling mechanism should not be retroactive to the interim period.

⁷ Avista’s Petition, ¶ 2.

⁸ *Id.*, at ¶ 6.

⁹ *Id.*, at ¶¶ 5 and 18.

¹⁰ Staff Response, at ¶ 4.

¹¹ *Id.*, at ¶ 7.

12 *Opposing Parties' Position.* Public Counsel, NWIGU, and the Energy Project contend that (a) Avista affirmatively agreed to terminate its Pilot Program on June 30, 2009; (b) any extension of the Pilot Program will significantly impact ratepayers and financially benefit Avista; and (c) the continuity of an unproven program is not sufficient reason to excuse the Company from making a convincing demonstration that its decoupling mechanism pilot program meets the Commission's standards. According to the opposing parties, granting an extension now is premature.

13 Avista replies that prior orders allowed for "affirmative action" by the Commission to extend the pilot program beyond the expiration date of June 30, 2009. It also rebuts the opposing parties' position that customers will be harmed by continued accounting deferrals, noting that "any potential future financial impact on customers would only be the result of a reasoned determination by the Commission" made during the upcoming general rate case hearing.¹² Joining with Commission Staff's viewpoint,¹³ Avista observes that "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."¹⁴

III. COMMISSION DISCUSSION AND DECISION

14 Avista asks that we extend its Pilot Program and conduct our substantive review in the pending general rate case. In essence, Avista's request preserves the possibility that we might ultimately approve the recovery of accruals that would have otherwise ceased on June 30, 2009.

15 We are willing to approve such an extension of the program, recognizing that this is a provisional step because, by the terms of Order 04, the Pilot Program must be evaluated in a general rate case (*Order 04*, ¶32) and any permanent adoption must come only after "a convincing demonstration that the mechanism has enhanced Avista's conservation efforts in a cost-effective manner." *Order 04*, ¶ 33.¹⁵ Avista

¹² Avista's Reply, at ¶ 5. Avista acknowledges that the Pilot Program would be extended for approximately six months. *Id.*, at ¶¶ 9 and 10.

¹³ As expressed in Staff's Response brief (¶ 7) and repeated in Staff's Cross-Reply brief (¶ 1).

¹⁴ Avista's Reply, at ¶ 7. NW Energy Coalition takes the same position in its reply brief (at pg 2).

¹⁵ We have not undertaken a thorough review of the evaluation report submitted on March 31, 2009. However, it appears that, without further elaboration and analysis, it may not be sufficient

recognizes the provisional nature of its request as well, and pledges no harm to ratepayers should the program be rejected or modified.¹⁶

- 16 We agree with Commission Staff that imposing a six-month period during which no decoupling mechanism could be in place would not be proper, particularly if we ultimately determine that some form of decoupling is appropriate and in the public interest.¹⁷ Therefore, we grant Avista's petition, with the understanding that the ultimate placement of any deferred amounts into rates for the period subsequent to June 30, 2009, will depend on our decision on the merits of the program in conjunction with the general rate case.¹⁸
- 17 Avista believes that we will find its decoupling mechanism pilot to have been valuable, cost-effective, and in the public interest. Even so, in its petition, Avista notes that it wishes us to consider a minor modification to the decoupling mechanism for adoption of the program on a permanent basis. Given this request and our decision to extend the Pilot Program and its existing accounting treatment, we further require Avista to ensure its accounting records are sufficiently detailed to accommodate its proposed modification(s) to the decoupling mechanism for our further analysis.

to enable the Commission to evaluate the program pursuant to the standard we set for such review in Order 04. We look forward to a more robust and focused presentation as part of Avista's attempt to provide a "convincing demonstration" that its decoupling mechanism is cost-effective and valuable not only for the Company, but also for its ratepayers.

¹⁶ Avista's Petition, at ¶¶ 14 and 19; *see also* Avista's Reply, at ¶ 1 and ¶¶ 5-8.

¹⁷ In that case, if we allowed the Pilot Program to expire as scheduled, Avista's ratepayers might be prevented from realizing any benefits of decoupling during the last half of this year. Such an outcome is neither pragmatic, prudent, nor in the public interest.

¹⁸ At the conclusion of the general rate case, there are four possible outcomes for Avista's decoupling mechanism, with, perhaps, variants of each. First, we may decide Avista did not make a convincing showing that the decoupling mechanism should be continued, so it would cease, and any deferrals since June 30, 2009, would be reversed. Second, Avista may make such a showing, so we would make the Pilot Program permanent, possibly with some amendments, and the amounts deferred after June 30, 2009, would be placed into rates at that time. Third, the Commission could authorize a new program going forward, but not place the deferrals made after June 30, 2009, into rates, choosing instead some later date (i.e., January 1, 2010), for implementation of the new decoupling mechanism. Finally, if the Commission deems more study remains necessary, it could authorize a continuation of the existing pilot or some amended version of the pilot.

FINDINGS OF FACT

- 18 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated above our findings and conclusions upon issues in dispute among the parties and the reasons supporting the findings and conclusions, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 19 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.
- 20 (2) Avista Corporation is a “public service company” and a “gas company,” as those terms are defined in RCW 80.04.010, and as those terms are used in RCW Title 80. Avista is engaged in Washington State in the business of supplying utility services and natural gas to the public for compensation.
- 21 (3) Avista filed an evaluation of its Pilot Program on March 31, 2009.
- 22 (4) Avista filed a petition on April 30, 2009, requesting an order authorizing an extension of its previously approved Pilot Program which would otherwise expire on June 30, 2009.
- 23 (5) Avista also proposes a modification of the Pilot Program for consideration during its natural gas general rate case.
- 24 (6) Avista has agreed that if the Commission does not permanently adopt a decoupling mechanism, the Company will reverse all accounting entries associated with any interim extension of its Pilot Program.

- 25 (7) Allowing Avista to continue the Pilot Program permits the Commission the
ability to complete a substantive review of the decoupling mechanism and also
retain the option of preserving a public benefit, if any, during the last six
months of 2009.

CONCLUSIONS OF LAW

26 Having discussed above all matters material to this decision, and having stated
detailed findings, conclusions, and the reasons therefore, the Commission now makes
the following summary conclusions of law incorporating by reference pertinent
portions of the preceding detailed conclusions:

- 27 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, this proceeding. *RCW Title 80.*
- 28 (2) Avista has not yet made a convincing demonstration that its decoupling
mechanism enhanced the Company's conservation efforts in a cost-effective
manner, as required by Order 04.
- 29 (3) Avista's decoupling pilot program expires on June 30, 2009, unless the
Commission takes affirmative action to extend the program. *Order 05, ¶ 54.*
- 30 (4) Avista should be permitted to continue its Pilot Program on an interim basis
with the condition that the Company may not recover any deferrals accruing
after June 30, 2009, if the Commission does not permanently adopt a
decoupling mechanism during the Company's pending general rate case.
- 31 (5) The Commission should retain jurisdiction over the subject matter of and the
parties to this proceeding to effectuate the terms of this Order. *RCW Title 80.*

O R D E R

32 THE COMMISSION ORDERS THAT

33 (1) Avista's pilot program decoupling mechanism is extended beyond June 30,
2009, until such time as the final decision is entered in the pending general
rate case.

34 (2) Avista may continue the accounting treatment associated with its decoupling
mechanism pilot for an additional period, beginning on July 1, 2009.

35 (3) Avista shall ensure its accounting records are sufficiently detailed to permit
full analysis of its proposed modification(s) to the decoupling mechanism.

36 (4) Avista may not realize the deferrals accrued under the extension period unless
the Commission ultimately approves a permanent decoupling program for the
Company in its natural gas general rate case, Docket UG-090135.

Dated at Olympia, Washington, and effective June 30, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.