

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UG-041515
TRANSPORTATION COMMISSION,)	
	)	ORDER NO. 04
Complainant,)	
	)	PREHEARING CONFERENCE
v.	)	ORDER; NOTICE OF SETTLEMENT
	)	PRESENTATION
AVISTA CORPORATION, d/b/a	)	(Set for October 22, 2004, 1:30 p.m.)
AVISTA UTILITIES,	)	NOTICE OF FILING DEADLINES
	)	(Settlement due October 15, 2004,
Respondent.	)	1:30 p.m.)
	)	(Prefiled testimony and legal
.....	)	memoranda due October 20, 2004)

1 **PROCEEDING:** Docket No. UG-041515 involves a filing of Avista Corporation, d/b/a Avista Utilities, of tariffs seeking an increase in its rates and charges for providing utility service in the State of Washington.

2 **CONFERENCE:** The Commission convened a prehearing conference in this docket at Olympia, Washington on October 11, 2004, before Administrative Law Judge C. Robert Wallis.

3 **APPEARANCES.** David Meyer, attorney, Spokane, represents respondent Avista Utilities. Ed Finklea, attorney, Portland, Oregon, appeared for the Northwest Industrial Gas Users (“NWIGU”). Chuck Eberdt, director, appeared for the Energy Project/The Opportunity Council. Robert Cromwell appeared on behalf of the Public Counsel section of the Attorney General Division. Gregory J. Trautman appeared for Commission Staff.

4 **REPORT ON SETTLEMENT DISCUSSIONS.** The parties reported on the status of settlement discussions. Such discussions were in progress at the time of

the initial prehearing conference. Parties announced agreement in principle among three of the five parties—the Company, Commission Staff, and Intervenor Northwest Industrial Gas Users (NWIGU). Mr. Meyer, on behalf of the settling parties, proposed to file the settlement agreement on Friday, October 22, 2004, and testimony supporting the proposal on October 20, 2004.

5 **OPPOSITION TO THE PROPOSED PROCESS.** Public Counsel and The Energy Project both opposed the proposed process. Public Counsel stated that his office opposed the proposal on three grounds: first, that it had not yet hired the necessary consulting assistance to evaluate the company’s case and could not respond substantively to the proposal; second, that the proposed process offered insufficient time for evaluation and response; and third, that the Commission’s acceptance of a proposal offered in this manner would appear unfair. Mr. Eberdt supported Mr. Cromwell’s arguments.

6 **DECISION ON PROCESS.** We grant the settling parties’ request that the Commission *consider* their proposal. If the Commission were to deny the proposal out of hand, it would eliminate the parties’ opportunity for rates effective November 1, 2004, and it could eliminate the possibility of settlement entirely. We emphasize that *consideration* of the proposal does not signal any result on the merits, and that it merely preserves an option in the litigation.

7 **FILING DEADLINE FOR PROPOSED SETTLEMENT.** The settling parties must file their settlement agreement no later than ***1:30 p. m.*** on Friday, October 15, 2004. This filing must be received in hard copy by the Commission and by other parties no later than the time and date stated, unless waived, with courtesy copies via electronic mail to be received by the Commission and all parties no later than the time and date stated.

8 **FILING DEADLINE FOR ANY MOTION FOR IMMEDIATE IMPLEMENTATION.** Mr. Meyer indicated that the Company might seek some form of early implementation of its proposed rate request, or a portion of it, if the Commission does not adopt the proposed settlement for effect on November 1, 2004. Any such motion must be filed no later than the deadline for filing the proposed settlement, and on the same procedural terms. Answers are due on the same procedural terms as specified for the legal memoranda, below.

9 **SUPPORTING TESTIMONY AND MATERIALS.** The settling parties agreed to present prefiled testimony of three witnesses, one sponsored by each party, about the proposed settlement. This material is due to be filed at the Commission and received by parties opposing the settlement no later than **1:30 p.m.** on Wednesday, October 20, 2004.

10 **LEGAL MEMORANDA.** The parties agreed to submit legal memoranda limited to the question of the Commission's authority to accept a proposed settlement under the circumstances presented in this docket. Because of the limited time and parties' other obligations, we understand that these will be "best-efforts" memoranda. We encourage the parties to do the best they can with the time and resources available to them. The legal memoranda are due no later than **1:30 p.m.** on Wednesday, October 20, 2004. This filing will be considered timely if electronic mail *and* telefacsimile copies are received by the Commission and the parties by the stated time and date, and the required hard copies are received the following day no later than noon.

11 **PROPOSED ALTERNATIVE SCHEDULE.** Mr. Cromwell, on behalf of Public Counsel, presented the following proposed litigation schedule for the docket.

Answering testimony	January 24, 2005
Rebuttal testimony	February 25, 2005
Hearing	April 4-?, 2005
Public hearing	Week of April 11, 2005

Initial Briefs	May 16, 2005
Answering briefs	May 23, 2005

12 The proposed schedule would result in an order approximately 10 months following the August 20, 2004, filing of the rate increase request. If the matter were fully contested, the proposed schedule might be appropriate. However, we are concerned that if the settling parties maintain their settlement proposal, the proposal appears lengthy, even for a proposal that would resolve a general rate case.

13 *If the Commission defers full consideration of the settlement proposal pending opportunity for Public Counsel and Energy Project to present substantive evidence, and if the settling parties maintain support for the settlement proposal, and if the Commission determines that opportunity for review should be afforded that is to any extent analogous with Public Counsel's proposal, we believe that the suggested time frames must be reviewed. We recognize the potential need for review of evidence, but believe that the time for review must be proportional to the purposes for and challenges inherent in that review. Staff and at least one major customer group have audited the Company's presentation to their satisfaction in a short period. We expect that the Company will be forthcoming with information, that delays for discovery and for administrative challenges will be minimal, and that a much faster schedule should be manageable. As a contingency, we encourage Public Counsel and The Energy Group to arrange expediently for the support necessary to accomplish a review, to be prepared should the Commission determine that a review is appropriate.*

14 **SETTLEMENT REVIEW HEARING: All parties please take notice** that the Commission sets the proposed settlement agreement for hearing in the Commission's hearing room at Olympia, Washington on October 22, 2004, beginning at the hour of 1:30 p.m. The purpose for the session is to receive testimony about the proposed settlement and to allow questions from the parties

and the bench about the proposal. After the evidentiary presentation, the Commission will inquire into the procedural issues that the proposals raise and, as appropriate, receive argument.

15 **HEARING FOR PUBLIC COMMENT:** The Commission has reserved a time and place for receiving public comment in Spokane on October 28, 2004, on the proposed settlement. The session will begin at 6:00 p.m. and will end no later than 8:00 p.m. The Commission proposes to provide notice of hearing for that session after receipt of the Settlement Proposal.

16 **ORDER ON THE PROPOSED SETTLEMENT AGREEMENT:** The Commission intends to enter an order on the settlement proposal, or regarding review of the settlement proposal, promptly after hearing from the parties and from the public.

17 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective this 12th day of October, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge