

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKETS UE-120436 and
TRANSPORTATION COMMISSION,	)	UG-120437 (<i>Consolidated</i>)
)	
Complainant,	)	ORDER 04
)	
v.	)	ORDER DENYING AVISTA’S
	)	MOTION FOR LEAVE TO FILE
AVISTA CORPORATION d/b/a	)	LETTER OF CLARIFICATION
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	
WASHINGTON UTILITIES AND	)	DOCKETS UE-110876 and
TRANSPORTATION COMMISSION,	)	UG-110877 (<i>Consolidated</i>)
)	
Complainant,	)	ORDER 09
)	
v.	)	ORDER DENYING AVISTA’S
	)	MOTION FOR LEAVE TO FILE
AVISTA CORPORATION d/b/a	)	LETTER OF CLARIFICATION
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

1 NATURE OF PROCEEDINGS: On April 2, 2012, Avista Corporation d/b/a Avista Utilities (Avista or the Company) filed revisions to its currently effective Tariff WN U-28, Electric Service in Docket UE-120436 and revisions to its currently effective Tariff WN U-29, Gas Service in Docket UG-120437. Avista requests an electric rate increase of \$41.0 million, or 9.0 percent, and a gas rate increase of \$10.1 million or 7.0 percent. In addition, Avista filed tariff Schedule 93, which reflects a proposed one-year Energy Recovery Mechanism bill decrease, or rebate, to electric customers of \$13.6 million (about 2.9 percent). On April 26, 2012, the Washington Utilities and Transportation Commission (Commission) suspended operation of the tariffs and

consolidated the dockets for hearing. The Commission entered a standard protective order on April 27, 2012.

2 The Commission convened a prehearing conference in this proceeding at Olympia, Washington on May 9, 2012, before Administrative Law Judge Marguerite E. Friedlander, whom the Commission appoints as presiding officer in this proceeding.

3 On May 14, 2012, the Commission entered Order 03/08¹ consolidating Dockets UE-120436 and UG-120437 with the second phase of Dockets UE-110876 and UG-110877, which raises the issue of full decoupling for the Company.

4 **MOTION FOR LEAVE TO FILE LETTER OF CLARIFICATION.** On May 16, 2012, Avista filed a Motion for Leave to File Letter of Clarification (Motion). The Company contends that, during the Commission's April 26, 2012, open meeting, a member of Commission Staff stated Avista's 2011 restated electric earnings rate of return as 8.32 percent.² Avista argues that this figure does not represent its 2011 restated results of operations on a normalized basis.³ Instead, Avista asserts that its 2011 normalized rate of return is 6.56 percent.⁴ The Company states that parties have a duty to correct any misunderstandings on a timely basis.⁵ Avista requests that the Commission grant its Motion and allow the Company to file a letter addressing this "misunderstanding."⁶

¹ The dual order number is the result of consolidation.

² Motion, ¶ 2. Avista suggests that Staff may have relied on the Company's exhibit, Exh. No. EMA-2, page 7, in representing the percentage.

³ *Id.*

⁴ *Id.*, (citing Lowry, Exh. No. MNL-5, at 2). The Company also notes that the testimony of its witness, Mr. Kelly O. Norwood, included an illustration demonstrating Avista's 2011 combined Commission Basis return on equity for its Washington electric and natural gas operations at 7.4 percent. *Id.*, ¶ 2 (citing Norwood, Exh. No. KON-1T, at 9, Illustration 4).

⁵ *Id.*, ¶ 3.

⁶ *Id.*

- 5 Staff, Public Counsel, and ICNU filed responses in opposition to Avista’s Motion. Staff characterizes the Company’s request as “a simple recitation of information contained in Avista’s direct case, which has been on file with the Commission since early April.”⁷ Both Staff and ICNU note that Avista representative, Mr. Kelly Norwood, was present at the open meeting and could have corrected any “confusion” at that time.⁸ Staff, Public Counsel, and ICNU all argue that Avista has the opportunity to address any alleged misunderstandings in its rebuttal case.⁹
- 6 In addition, Public Counsel and ICNU argue that the Company’s “normalized rate of return” is one of the fact-intensive issues to be decided in the case, and it would be improper for the Commission to accept Avista’s testimony in the form of a “letter of clarification.”¹⁰ Public Counsel also notes that Avista’s rate filing was not an adjudicative proceeding at the time of the open meeting.¹¹ Citing RCW 34.05.413(5), Public Counsel argues that the notice of prehearing conference, which was issued on April 27, 2012, began the adjudicative proceeding, and with it, the record in this matter.¹² Statements made at the open meeting, unless presented by a party after the issuance of the notice of prehearing conference, are not a part of the record upon which the Commission bases its decision.¹³

⁷ Staff’s Response, at 2; Public Counsel’s Response, ¶ 3; and ICNU’s Response, ¶ 2.

⁸ Staff’s Response, at 2 and ICNU’s Response, ¶ 8.

⁹ *Id.*

¹⁰ Public Counsel’s Response, ¶ 4 and ICNU’s Response, ¶ 2. ICNU attached the Declaration of Michael P. Gorman to its Response. In his Declaration, Mr. Gorman contests the factual accuracy of Avista’s “normalized rate of return.” As we are denying the Company’s Motion on procedural grounds, we need not address the merits of Avista’s proffered rate of return. Indeed, as ICNU argues, such a decision must wait until we have a full record, with all parties afforded the opportunity to respond to Avista’s proposal. ICNU’s Response, ¶ 11.

¹¹ Public Counsel’s Response, ¶ 5.

¹² *Id.*

¹³ *Id.*

- 7 *Commission Decision and Determination.* Public Counsel is correct; the adjudicative process did not commence until the Commission issued the Notice of Prehearing Conference after the April 26, 2012, open meeting. The Administrative Procedure Act provides that an agency shall maintain an official record of each adjudicative proceeding under this chapter.¹⁴ The statement Avista references is not a part of the record in this proceeding. Further, the issue raised in the Company's Motion is more appropriately addressed in testimony, not a letter of clarification. Avista's request to file a letter of clarification should be denied.

ORDER

- 8 **THE COMMISSION ORDERS That** the Motion for Leave to File Letter of Clarification filed by Avista Corporation, d/b/a Avista Utilities is denied.

Dated at Olympia, Washington, and effective June 1, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

¹⁴ RCW 34.05.476(1). (Emphasis added).