

[Service Date March 26, 2003]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION) DOCKET NO. UG-020218

)
)
Complainant,)

v.)

)
AVISTA CORPORATION d/b/a AVISTA)
UTILITIES,)

)
Respondent.)

.....)
WASHINGTON UTILITIES AND) DOCKET NO. UG-020575
TRANSPORTATION COMMISSION)

)
Complainant,)

SECOND SUPPLEMENTAL ORDER;
ORDER APPROVING SETTLEMENT
AGREEMENT

v.)

)
AVISTA CORPORATION d/b/a AVISTA)
UTILITIES,)

)
Respondent.)

1 **Synopsis: The Commission approves and adopts the Settlement Agreement as a reasonable resolution of the Commission's complaints against Avista for violations of pipeline safety rules.**

2 **Proceedings:** Docket Nos. UG-020218 and UG-020575 involve Commission complaints against Avista Corporation d/b/a Avista Utilities ("Avista") of violations of state pipeline safety regulations resulting from Commission Staff's inspections of Avista's natural gas facilities. Commission Staff inspected Avista's Spokane/Ritzville district pipeline facilities in February 2002 and Avista's Goldendale/Stevenson district pipeline facilities in June 2002.

3 The Commission convened a prehearing conference in this docket at Olympia, Washington on January 14, 2003, before Administrative Law Judge Theodora M. Mace. The parties agreed on a schedule of proceedings which allowed for the presentation of a settlement if the parties resolved their differences, and, alternatively, established dates for evidentiary hearings if they did not.

4 **Appearances.** Donald T. Trotter, attorney, represents Commission Staff. David J. Meyer, attorney, represents Avista.

5 **Settlement Agreement.** On February 21, 2003, the parties submitted a Settlement Agreement (“Settlement”) consisting of eight pages, accompanied by Appendices A, B, and C. Appendix A, entitled Violations Report, is a comprehensive list of asserted violations found by Commission Staff during its 2002 inspections of Avista’s facilities with the exception of Staff’s finding of Violation Number 11, this list forms the basis of the violations alleged in the Commission complaints. Appendix B consists of a list of the state and federal rules applicable to Avista and relevant to the Settlement. Appendix C is an outline of the asserted violations found in the inspection and the state-wide activities Avista will perform to correct the problems involved.

6 The Settlement states that the specific violations alleged in Staff’s Violation Report (Appendix A to the Settlement) have been cured by Avista. Staff independently confirmed this, in part by means of a site visit by Staff to the facilities involved. The Settlement also acknowledges that when Staff conducts an inspection, it is limited as to geographic area, even though violations found in the limited inspection areas may exist state-wide. Because of this, Avista has agreed to conduct an analysis of its system state-wide with regard to violations itemized in the Violation Report, and to correct whatever problems are discovered.

7 The list of corrective activities Avista has agreed to perform are contained in Appendix C to the Settlement as modified by a letter dated March 14, 2003, from the parties. In the March 14 letter, the parties informed the Commission they had come to a further agreement that a clarifying change to the language in Violation 9(c) of Appendix C was required. That section, as clarified, states as follows (new language in italics):

C. By December 31, 2003, Avista will create and implement a program to conduct cathodic protection test readings each time steel pipe is exposed by company or company contractor personnel. *Avista will not conduct such cathodic protection test readings where the pipe coating is intact, unless otherwise required by Commission rule. Avista will document whether the pipe coating is intact each time steel pipe is exposed.*

- 8 The parties stated that the original language under Violation 9(c) could have required Avista to always remove pipe coating around a section of pipe that was subject to excavation, in order to conduct a cathodic protection test. In many cases, the pipe coating will indeed be removed in order to conduct repairs or replacements. In those cases, a cathodic protection reading is required to be made. However, in other cases, if circumstances do not require the pipe coating to be removed, it is preferable to leave the coating intact.
- 9 The Settlement further states that Avista concurs with Staff's finding of violations as contained in the Violations Report, with one exception. Violation Number 11, related to Title 49 CFR Part 192.467(d) This Staff finding was not alleged in the Commission complaints, and so is not at issue here.
- 10 The Settlement provides that Avista will pay to the Commission penalties totaling \$50,000, due and payable within fifteen calendar days of the date of a Commission order approving the Settlement.
- 11 The Settlement also provides that if Avista fails to timely comply with any of the specified obligations contained in Appendix C, the Commission may recommend further additional sanctions for any violations of Commission laws and rules discovered during the performance of the activities outlined in Appendix C. However, any additional violations of the same type as those listed in Appendix A will not form the basis for a Staff recommendation for further sanctions if Avista meets the time frames agreed to in Appendix C.
- 12 **Discussion and Decision.** Avista's concurrence with the facts alleged in the Staff report provides the basis for us to find, and we do find, that Avista violated various rules as set forth in the Commission complaints. Avista takes ownership of its violations and agrees to pay a reasonable monetary penalty. More importantly, Avista agrees to correct, in a timely fashion, similar violations that may be occurring elsewhere in its system state-wide. If Avista fails to make

these corrections, Commission Staff has the option of returning to the Commission with recommendations for further sanctions.

- 13 The Settlement is reasonable and our adoption of it will serve the public interest in greatly improved pipeline safety for Avista's pipeline system. Imposition of a monetary penalty will serve as a signal to pipeline carriers in the State of Washington of the need for them to take adequate steps to insure the safety of their intrastate systems.
- 14 The Commission adopts the Settlement as proposed by the parties.

FINDINGS OF FACT

- 15 Having discussed above all matters material to our decision, and having stated our general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- 16 (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.
- 17 (2) Avista is a "public service company" and a "gas company" as those terms are defined in RCW 80.04.010, and as those terms may otherwise be used in Title 80 RCW. Avista is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 18 (6) On November 15, 2002, the Commission initiated complaints against Avista alleging violations.
- 19 (7) Commission Staff and Avista filed a proposed Settlement Agreement on February 21, 2003.
- 20 (8) Avista committed the violations as set forth in the complaints.

- 20 (9) The terms of the Settlement Agreement are fair, just and reasonable and adoption of the Settlement Agreement would serve the public interest.

CONCLUSIONS OF LAW

21 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 22 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to this proceeding. *Title 80 RCW.*
- 23 (2) Avista is subject to the Commission's safety rules applicable to natural gas pipelines. *RCW 80.28.210.*
- 24 (3) Avista violated Commission pipeline safety rules contained in WAC 480-93-015, WAC 480-93-110, WAC 480-93-183, WAC 480-93-186, WAC 480-93-187, WAC 480-93-188, and WAC 480-93-101, which adopt and incorporate Title 49 CFR Part 192 of the federal pipeline safety rules.
- 25 (4) The Settlement Agreement filed by the Parties on February 21, 2003, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, should be approved and adopted by the Commission as a reasonable resolution of the issues raised by the Commission Staff's inspections of Avista's pipeline facilities. *WAC 480-09-465; WAC 480-090-466.*
- 26 (5) The Commission should retain jurisdiction over the subject matters and the Parties to this proceeding to effectuate the terms of this order. *Title 80 RCW.*

ORDER

- 27 (1) THE COMMISSION ORDERS That the proposed Settlement Agreement filed by the Parties on February 21, 2003 is approved and adopted.

- 28 (2) THE COMMISSION FURTHER ORDERS That it retains jurisdiction over the subject matter and the Parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this _____ day of March, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner