

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET NO. UE-080416
)	
Complainant,)	THE INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES AND
v.)	PUBLIC COUNSEL PETITION FOR
)	REVIEW OF THE PROPOSED
)	SCHEDULE
AVISTA CORPORATION d/b/a AVISTA UTILITIES,)	EXPEDITED CONSIDERATION
)	REQUESTED
Respondent.)	
_____)	

I. INTRODUCTION

1 Pursuant to WAC § 480-07-810, the Industrial Customers of Northwest Utilities (“ICNU”) and Public Counsel seek review of Administrative Law Judge (“ALJ”) Clark’s Order No. 6 establishing a new procedural schedule. ICNU and Public Counsel request that the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) revise the schedule to require Avista, Staff and any other settling party to file rebuttal and/or cross answering testimony on or before October 20, 2008. ICNU and Public Counsel do not request any other changes to the new schedule.

2 The new schedule provides ICNU and Public Counsel with insufficient time to conduct discovery and prepare for hearing. ICNU and Public Counsel should not have their ability to litigate this proceeding significantly harmed in order to effectuate an early effective date for new rates under a settlement not yet approved. If the procedural schedule must be shortened to obtain an order that could allow for early rates, then the loss of case

preparation time should come from the time for Avista, the Northwest Industrial Gas Users, the Energy Project and Commission Staff (“Settling Parties”)—not ICNU and Public Counsel. Due to the short time period, ICNU and Public Counsel request that the Commission review this petition on an expedited basis. In order to facilitate quick resolution of the issues in the case, ICNU and Public Counsel are electronically filing their testimony replying to the multi-party settlement today, which is five days early.

II. BACKGROUND

3 The original schedule in this proceeding was set by ALJ Clark on April 3, 2008.^{1/} Under the original schedule Staff, Public Counsel and intervenor responsive testimony was due on September 12, 2008. Avista’s rebuttal testimony, and Staff, Public Counsel and ICNU cross answering testimony was due on October 15, 2008. This provided Avista and the parties 33 days to review responsive testimony before filing their rebuttal or cross answering testimony. The evidentiary hearing was schedule to start 47 days later on December 1, 2008.

4 The schedule was revised by ALJ Clark on August 8, 2008, after Avista filed supplemental testimony.^{2/} The due date for Staff, Public Counsel and intervenor responsive testimony was moved from September 12, 2008, to September 19, 2008. The due date for Avista’s rebuttal testimony and Staff, Public Counsel and ICNU cross answering testimony was moved from October 15, 2008, to October 20, 2008. This schedule provided Avista with 31 days to review ICNU and Public Counsel responsive testimony. In addition, the schedule

^{1/} WUTC v. Avista Corp., Docket Nos. UE-080416 and UG-080417, Order No. 02 (April 3, 2008).

^{2/} WUTC v. Avista Corp., Docket Nos. UE-080416 and UG-080417, Order No. 04 (Aug. 8, 2008).

provided ICNU and Public Counsel with 42 days to review Avista's rebuttal and any Staff cross answering testimony before the evidentiary hearing.

5 On September 16, 2008, the Settling Parties filed a multi-party settlement. ICNU joined in part of the settlement, while Public Counsel did not join any party of the settlement. On September 16, 2008, the Settling Parties also filed a motion modifying the schedule to accommodate a January 1, 2009 start date for new rates. ICNU and Public Counsel oppose the early January 1, 2009 effective date for new rates.

6 On September 19, 2008, ICNU and Public Counsel filed responsive testimony. ICNU and Public Counsel's witnesses are Michael Majoros and Charles King, who testified regarding revenue requirement and depreciation issues.

7 On October 8, 2008, ALJ Clark further revised the schedule and shortened the discovery timelines.^{3/} Under this schedule, ICNU and Public Counsel's testimony responding to the multi-party settlement is due October 15, 2008. After ICNU and Public Counsel's reply testimony is filed, the due date for discovery will be shortened to 5 business days. The Settling Parties' reply testimony is now due on October 27, 2008, and the hearing is scheduled for November 6-7, 2008. This schedule provides Avista and Staff an additional 7 days to review and prepare testimony responding to the testimony of Messrs. Majoros and King regarding revenue requirement and depreciation issues (which was received on September 19, 2008). In addition, ICNU and Public Counsel will now have 10 days (instead of 42 days) to conduct discovery and review Avista and Staff's rebuttal testimony prior to the hearing.

^{3/} WUTC v. Avista Corp., Docket Nos. UE-080416 and UG-080417, Order No. 06 (Oct. 8, 2008).

8 Although not due until October 15, 2008, ICNU and Public Counsel have filed their reply testimony responding to the multi-party settlement today, October 10, 2008. This testimony is 5 days early, and less than 10 pages. The testimony primarily relies upon the evidence contained in ICNU and Public Counsel’s September 19, 2008 responsive testimony.

III. ARGUMENT

9 The Commission should require the Settling Parties to file their rebuttal testimony by the originally scheduled date of October 20, 2008. There is no reason why the Settling Parties should have additional week to respond to ICNU and Public Counsel’s testimony regarding revenue requirement and depreciation issues, especially since the hearing date has been advanced by one month. In addition, the new schedule does not provide ICNU and Public Counsel an adequate amount of time to prepare for hearing or to review and conduct discovery on the Settling Parties’ rebuttal testimony.

10 Allowing the Settling Parties to file rebuttal testimony on October 27, 2008, does not provide ICNU and Public Counsel any time to obtain any discovery responses regarding rebuttal testimony issues prior to the November 3, 2008 prehearing conference. Cross examination exhibits generally must be identified at the prehearing conference, and Public Counsel and ICNU will have only four business days after receipt of the rebuttal testimony to review the testimony, issue any discovery, and determine which documents are appropriate for cross examination before the prehearing conference. Even if data requests were issued on the same day as the rebuttal testimony is received, responses would not be due until the day of the prehearing conference. These are not realistic timelines.

A. Rebuttal Testimony on Revenue Requirement Issues Should Be Due on October 20, 2008

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The Commission should require that any testimony rebutting ICNU and Public Counsel's revenue requirement and depreciation testimony must be filed by October 20, 2008, the same date as set by ALJ Clark on August 8, 2008. An October 20, 2008 due date will still provide Avista and Staff over one month to conduct discovery and prepare rebuttal testimony, because they have had this testimony since September 19, 2008. There is no reason why Avista and Staff need an additional week to review ICNU and Public Counsel's revenue requirement and depreciation testimony.

12

ALJ Clark's decision to set the due date for rebuttal testimony on revenue requirement and depreciation issues on October 27, 2008 significantly harms ICNU and Public Counsel's ability to prepare their cases. The Commission should note that, for the most part, the issues raised in ICNU and Public Counsel's testimony were not addressed in Avista's original filing. Thus, ICNU and Public Counsel do not know what specific issues the Staff and Avista may raise regarding this testimony. Under the prior schedule, ICNU and Public Counsel had 42 days to review and conduct discovery on any rebuttal testimony submitted. Under the new schedule, ICNU and Public Counsel will have 9 days to review rebuttal testimony, conduct discovery and prepare for the hearing. It is inappropriate to dramatically shorten this time period, especially when the new schedule unnecessarily provides Avista and Staff additional time to respond to revenue requirement and depreciation issues.

B. Rebuttal Testimony Regarding the Multi-Party Settlement Should Be Due on October 20, 2008

13 The Commission also should require that any rebuttal testimony regarding the multi-party settlement be due on October 20, 2008. This would allow the Settling Parties sufficient time to review ICNU and Public Counsel’s reply testimony regarding the multi-party settlement, as well as provide ICNU and Public Counsel with needed additional time to review the Settling Parties’ rebuttal testimony.

14 ALJ Clark’s new schedule provides the Settling Parties with 12 days to review ICNU and Public Counsel’s reply testimony regarding the multi-party settlement. Reply testimony is due October 15, 2008, and rebuttal testimony is due October 27, 2008. ICNU and Public Counsel, however, have only 10 days to review the rebuttal testimony before the hearing. In order to expedite the proceeding, ICNU and Public Counsel are electronically filing their reply testimony early on October 10, 2008. The Settling Parties now have 17 days to review this reply testimony before filing their rebuttal testimony.

15 Setting the due date for rebuttal testimony on October 20, 2008, is fair because it provides the Settling Parties with sufficient time to review ICNU and Public Counsel’s reply testimony on the multi-party settlement. An October 20, 2008, due date only provides the Settling Parties with two fewer days than under the current schedule. Since the schedule modification in this case is motivated by the Settling Parties desire to implement an early January 1, 2009 effective date, it is fair that they bear the burden of any shortened schedule. Moving the due date to October 20, 2008, will also provide ICNU and Public Counsel with additional, needed time to review the Settling Parties’ testimony and prepare for hearing.

IV. CONCLUSION

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ICNU and Public Counsel request that the Commission set the due date for the Settling Parties' rebuttal testimony for October 20, 2008. Avista and Staff do not need the additional week to review ICNU and Public Counsel's testimony on revenue requirement and depreciation issues. In addition, since ICNU and Public Counsel are filing their reply testimony on the multi-party settlement early, an October 20, 2008, due date will provide the Settling Parties with approximately the same time to submit their rebuttal testimony as under the new schedule. Finally, an October 20, 2008, due date for rebuttal testimony is necessary to allow ICNU and Public Counsel sufficient time to conduct discovery and prepare for the November 6-7, 2008 evidentiary hearings.

17

WHEREFORE, ICNU and Public Counsel respectfully petition the Commission reset the schedule in this proceeding.

Dated in Portland, Oregon, this 10th day of October, 2008.

Respectfully submitted,

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