

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

vs.

PACIFICORP d.b.a. PACIFIC POWER &
LIGHT COMPANY,

Respondent.

DOCKET UE-090205

**RESPONSE TO PUBLIC COUNSEL'S
MOTION FOR AN ORDER
REGARDING THE CUSTOMER
NOTICE**

1 Pursuant to WAC 480-07-375 (4), Pacific Power & Light Company (“PacifiCorp” or “Company”) responds to the Motion for an Order Regarding Customer Notice (“Motion”), filed on June 22, 2009, by the Public Counsel Section of the Washington Attorney General’s Office (“Public Counsel”). As part of its general rate case, the Company must issue a customer notice to inform its customers of the pending rate revisions and their right to participate in the proceeding.¹ Although Public Counsel does not argue that the Company’s proposed notice is deficient under the Commission’s rules, Public Counsel seeks to exclude from PacifiCorp’s customer notice a chart entitled “US Average Residential Monthly Electric Bills for 1,000 kWh” (“chart”).

¹ See WAC 480-100-194 and -197.

2 PacifiCorp's proposed customer notice² satisfies WAC 480-100-194 and -197 by properly informing customers of the pending rate revisions and their right to participate in the proceeding.³ The Washington Utilities and Transportation Commission ("Commission") should deny Public Counsel's Motion and approve the customer notice proposed by PacifiCorp.

I. Background

3 At the public meeting on February 26, 2009, the Commission provided notice of PacifiCorp's general rate filing and suspended PacifiCorp's proposed tariffs.⁴ On March 24, 2009, Administrative Law Judge Patricia Clark issued a Prehearing Conference Order ("Order") for this case.⁵ The Order required Commission Staff ("Staff"), PacifiCorp, and Public Counsel to report their efforts to reach consensus on the content and format of the Company's public notice required for this proceeding.⁶ To that end, the Company prepared a customer notice and circulated it to Staff and Public Counsel for comment.

4 The Company and Public Counsel reached agreement on all aspects of the notice, except one. On May 15, 2009, Public Counsel informed the Company that it objected to the content of the notice because it included the chart titled "US Average Residential Monthly Electric Bills for 1,000 kWh." PacifiCorp was

² After Public Counsel filed its Motion, PacifiCorp discovered that the comparison of current and proposed rates by service had been inadvertently omitted from the notice when the notice was revised for other changes. This information is required by WAC 480-100-194(4)(d). The Company's proposed notice—including the comparison of current and proposed rates by service—is attached as Exhibit A.

³ See *WUTC v. Puget Sound Energy*, Dockets UG-072300 and UG-072301, Order 06 at ¶ 12 (April 1, 2008).

⁴ *WUTC v. PacifiCorp*, Docket UE-090205, Notice of Prehearing Conference at ¶ 1 (March 2, 2009).

⁵ *WUTC v. PacifiCorp*, Docket UE-090205, Order 04 (March 24, 2009).

⁶ *Id.* at ¶ 12.

surprised by this objection because an almost identical chart was included in Avista Corporation's ("Avista") general rate case customer notice approved by Public Counsel on April 17, 2009.⁷ The chart used by Avista differed from PacifiCorp's primarily in that it used rate information from 2008, while PacifiCorp proposed to use more up-to-date information from 2009.⁸

5 In numerous meetings, phone calls, and emails throughout May and June 2009, PacifiCorp attempted to compromise with Public Counsel on this issue. First, PacifiCorp revised the proposed chart to include not only its current rates, but also its proposed rates. Second, the Company agreed to include a statement with the chart explaining that: "The UTC does not consider electric rates charged by other utilities in setting rates."⁹ Third, responding to Public Counsel's proposal to substitute the chart available on the Commission's website comparing rates of Washington electric utilities, the Company proposed a pie chart that allowed a similar comparison in a manner that did not violate the Company's policy against referencing other utilities by name in rate comparisons.¹⁰ Public Counsel rejected all of these proposals and filed its Motion.

⁷ *WUTC v. Avista Corporation*, Dockets UE-090134 and UG-090135, Letter from Public Counsel Re: Public Notice Report (April 17, 2009).

⁸ The Avista notice also includes a reference to rates in Hawaii. Because these rates were much higher than any other rates included in the chart, PacifiCorp removed them from the comparison as an outlier. The Avista customer notice is attached as Exhibit B. A copy of the notice was provided to PacifiCorp by the WUTC.

⁹ This is similar language to that proposed by Public Counsel if the Commission allows a comparison chart. Motion at ¶ 17.

¹⁰ This proposed chart is attached as Exhibit C. The Company remains willing to substitute or add this chart to the notice.

II. Argument

A. The Company's Proposed Customer Notice Satisfies the Commission's Rules.

6 Commission rules require electric utilities to provide customer notice when a company proposes a change to its tariffs.¹¹ The purpose of these rules is to “inform customers concerning the pendency of [the] proceeding, how they may learn more about it, and how they may participate.”¹² Thus, a substantial portion of the rules address the language used to describe public participation in the proceeding.¹³ These rules mandate the minimum information that utilities must include in the notice. Nothing in the language of the rules or the Commission's interpretation of the rules prohibits the inclusion of additional information for customer education.¹⁴ Specifically, no Commission rule or order prohibits the inclusion of rate comparison charts in customer notices.

7 Public Counsel's only basis for challenging the proposed customer notice is to demonstrate that it is deficient under the rules. But Public Counsel does not make the claim that the disputed chart renders PacifiCorp's notice deficient under the rules, nor can it credibly do so having just approved Avista's proposed customer notice that includes the same chart. Because PacifiCorp's customer notice indisputably complies with the Commission's rules, the Commission should deny Public Counsel's motion.

¹¹ WAC 480-100-194 and -197.

¹² See *WUTC v. Puget Sound Energy*, Dockets UG-072300 and UG-072301, Order 06 at ¶ 12.

¹³ See WAC 480-100-197(2).

¹⁴ *WUTC v. Puget Sound Energy*, Docket UG-080064, Order 06 at ¶ 12 (“The notices PSE has provided in accordance with the Commission's rules...are legally sufficient...We require nothing more.”).

B. The Chart Is Not Misleading.

- 8 Public Counsel argues that the use of rate comparisons is inherently misleading because the Commission does not set rates based upon such a comparison.¹⁵ To address this concern, the Company has agreed to include the statement that: “The UTC does not consider electric rates charged by other utilities in setting rates.” This disclaimer resolves Public Counsel’s concerns about potential customer confusion by clearly stating that the Commission does not consider other utility’s rates in determining PacifiCorp’s rates.
- 9 The chart proposed by the Company provides accurate, useful information to its customers. The chart was developed from information provided by the Edison Electric Institute (“EEI”) through its Typical Bills and Average Rates Report Winter 2009. This report is based upon an industry-wide survey reflecting the typical monthly bill to customers as charged by investor-owned utilities. The rate comparison chart in the Avista customer notice approved by Public Counsel is also based upon EEI data.
- 10 The chart provides context for PacifiCorp’s customers to understand how their rates compare to those of other electric customers in western states. While Public Counsel argues that comparison charts are “misleading,” it also points out that the Commission itself publishes just such a comparison.¹⁶ The Commission’s chart compares what residential customers of six Washington utilities pay for 1,000 kWh of usage in 2009. Similarly, the Company’s chart compares what residential customers of different western states pay for 1,000 kWh of usage in 2009.

¹⁵ Motion at ¶ 7 and ¶ 17.

¹⁶ See Motion Exhibit B.

Presumably, the Commission, like PacifiCorp, recognizes that comparison charts are educational to Washington customers and not inherently misleading.

11 The Energy Project also argues that the chart is misleading because it does not indicate whether the underlying utility rates are derived in part based upon operation of a power cost adjustment. Because PacifiCorp's rate chart, like the rate chart on the Commission's website, purports to compare only final charges to residential customers for 1,000 kWh of electricity, by definition it does not contain detail on the myriad of factors that impact these final rate levels—such as a PCAM or rate design. The chart is captioned “US Average Residential Monthly Electric Bills for 1,000 kWh” and concisely presents only this information. The chart is limited in scope and not misleading.

C. The Chart Will Not Discourage Public Participation.

12 Public Counsel argues that inclusion of the chart will somehow discourage public participation in the docket because the chart implies the rate increase is justified.¹⁷ For a general rate case, the Commission has previously found that utilities adequately encourage public participation when the notice conforms to the rules.¹⁸ Here, the notice includes explicit language encouraging public participation¹⁹ and it conforms to the public involvement language required by WAC 480-100-197(2)—an issue that is not disputed by Public Counsel. As noted above, the

¹⁷ Motion at ¶ 11.

¹⁸ See WAC 480-100-194 and -197; and *WUTC v. Puget Sound Energy*, Dockets UG-072300 and UG-072301, Order 06 at ¶ 12.

¹⁹ Exhibit A. The notice states “Your input into this process is important, please comment” and outlines the various ways customers can participate including at the public hearing, by contacting Public Counsel, submitting written comments directly to the Commission, or by contacting PacifiCorp directly.

Commission crafted its customer notice rules specifically to encourage public participation and compliance with the rules satisfies that purpose.

13 Moreover, it is unlikely that inclusion of the chart will discourage public participation. In a case involving the merger of two telecommunications companies (not governed by WAC 480-100-194 and -197), the Commission approved a customer notice that stated that the results of the merger are not expected to affect the provision of service received by customers of either company.²⁰ In other words, the Commission found that a customer notice informing customers that a proposed merger would have no impact on them did not discourage participation. Here, the notice provided by PacifiCorp explicitly encourages public participation and states that PacifiCorp is attempting to increase customer rates. The Company clearly informs customers that the case will affect them and tells them how to participate if they so choose.

D. Public Counsel Proposes Impermissible Restrictions on PacifiCorp's Right to Communicate with its Customers.

14 Public Counsel acknowledges that there are constitutional limitations on the Commission's ability to regulate PacifiCorp's customer notice.²¹ To prevail on its Motion, Public Counsel must establish either that the customer notice is misleading or that the regulation of the notice implements a substantial

²⁰ *In the Matter of the Joint Application of Verizon Communications Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*, Docket UT-050814, Order 06 at Appendix A (Nov. 9, 2005) ("*Verizon/MCI Order*") (the notice stated: "Washington customers...are not expected to experience any change in the provision of service they receive today as a result of the merger").

²¹ Motion at ¶ 12.

government interest, directly advances that interest, and reaches no further than necessary to serve that interest.²²

15 Public Counsel has failed to satisfy either standard. As discussed above, the comparison chart is not misleading, especially with the clarifying caption PacifiCorp has agreed to include. Additionally, the Commission has previously rejected proposals like Public Counsel's for incremental, ad hoc customer notice requirements.²³ Public Counsel cannot prove that its position serves a substantial interest and reaches no further than necessary, particularly given that: (1) PacifiCorp has complied with the customer notice rules; (2) Public Counsel has applied its position inconsistently among utilities; and (3) PacifiCorp's rate comparison chart is "straightforward information about utility services and bills,"²⁴ which PacifiCorp could include separately in a newsletter or other bill stuffer.

E. PacifiCorp Made a Good Faith Effort to Compromise this Issue.

16 Throughout this process, PacifiCorp has offered several concessions to address Public Counsel's concerns in an attempt to reach consensus regarding the content and format of the customer notice as contemplated by the Order.²⁵ Public Counsel rejected these proposals. The only concession proposed by Public

²² See *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 566 (1980).

²³ See *WUTC v. Puget Sound Energy*, Docket UG-080064, Order 06 at ¶ 12 (compliance with WAC 480-100-194 and -197 is all that is required to satisfy the Commission's interests with respect to the customer notice).

²⁴ See *Pacific Gas and Electric Company v. Public Utilities Commission of California*, 475 U.S. 1, 8 (1986) ("There is no doubt...[the utility's] newsletter *Progress* receives the full protection of the First Amendment.").

²⁵ See *WUTC v. PacifiCorp*, Docket UE-090205, Order 04 at ¶ 12 (Mar. 24, 2009).

Counsel was the use of the Commission's Washington-only comparison chart. After the Company indicated it has a policy against specifically naming other utilities in rate comparisons, PacifiCorp created a chart showing how PacifiCorp's rates compared to average rate levels in Washington. However, Public Counsel also rejected the use of that chart.

- 17 PacifiCorp has made a good faith effort to resolve this matter without having to involve the Commission, notwithstanding the inherent inconsistencies of Public Counsel's position on the PacifiCorp and Avista customer notices.

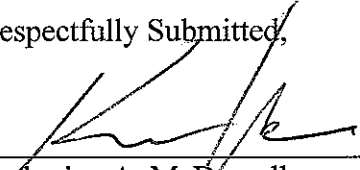
Signature Page Follows

III. Conclusion

18 Based upon the foregoing, the Company respectfully requests that the Commission deny Public Counsel's motion and approve PacifiCorp's proposed customer notice attached as Exhibit A, to which PacifiCorp will add the statement that "The UTC does not consider electric rates charged by other utilities in setting rates."

DATED: June 30, 2009.

Respectfully Submitted,



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Attorneys for PacifiCorp

Docket UE-090205

Response to Public Counsel's Motion for an Order
Regarding the Customer Notice

Exhibit A

PacifiCorp's Proposed Customer Notice

Notice of proposed rate increase

On February 9, 2009, Pacific Power filed a general rate case request with the Washington Utilities and Transportation Commission (UTC) requesting an electric rate increase of \$38.5 million or 15 percent. The increase would recover additional costs associated with investments in the electrical system we use to reliably serve our customers, as well as investments in new renewables to meet the state's new renewable portfolio standards. Power costs are also rising, due in part to the expiration of some purchase power contracts.

The UTC will be reviewing our request. If approved, changes would go into effect January 2010. You have the opportunity to comment on this filing.

Public comment hearing

Pacific Power customers have the opportunity to comment to the UTC in numerous ways, including in person at a public hearing.

October 12, 2009
5:30 p.m. - 7:30 p.m.
Yakima Valley Community College
Parker Room
1015 S. 16th Avenue
Yakima, WA



Let's turn the answers on.

You are invited to comment to the UTC:

- in person at the October 12, 2009, public hearing in Yakima (see front cover for details) or contact the commission
- via UTC Web form: utc.wa.gov/comment
- by e-mail at: comments@utc.wa.gov
- in writing at:

UTC

P.O. Box 47250
Olympia, WA 98504-7250

- by using the detachable mailer attached to this notice
- by phone: **1-888-333-WUTC (9882)**

Please reference Docket Number UE-090205.

Public Counsel

The public is represented by the Public Counsel Section of the Washington Attorney General's Office.

You may contact the Public Counsel in writing at:
Public Counsel

Assistant Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188

e-mail: utility@atg.wa.gov

For more information about Public Counsel, visit:
www.atg.wa.gov/utilities.aspx

For more information or to contact Pacific Power, please call us toll free at **1-800-221-7070** or write to:

Pacific Power
825 NE Multnomah, Suite 2000
Portland, OR 97232

Need help managing electric expenses?

Pacific Power offers special services, bill assistance and time payment plans for customers experiencing financial difficulties. For questions about payment plan eligibility or if you are experiencing difficulty making payments, please call **1-888-221-7070**.

Place stamp here

Washington Utilities and Transportation Commission
Post Office Box 47250
Olympia, WA 98504-7250
Re: Docket No: UE-090205

What would the requested rate increase pay for?

If approved, the increase would recover the rising cost of serving customers. This request includes, but is not limited to the following, approximately:

- \$20.0 million for new generation resources
- \$2.3 million for increased operating expenses for new generation resources
- \$9.8 million for increased power costs
- \$5.0 million for increased return on investment

General rate case information

A general rate case is the regulatory proceeding which gives the UTC an opportunity to examine a utility's operations and costs to determine if the proposed rates are fair, just and reasonable. This process lets the UTC conduct a detailed review of a utility's revenues, profits, expenses, and investments in plant and equipment, in order to establish an approved revenue requirement.

The UTC staff, Pacific Power, Public Counsel Section of the Attorney General's Office, and other parties will participate. New rates would go into effect at the completion of the UTC's investigation, which may take up to 11 months. Based on the outcome of its investigation, the UTC has the authority to approve rates that are higher or lower than Pacific Power's request

Summary of proposed rate increases

Overall increase in dollars	\$38.5 million
Overall increase percent	15.1%
Type of service	Schedule(s)
Residential	16
Commercial Industrial	Average Increase
Small General Service	24
Medium General Service	36
Large General Service	48

Pacific Power also has proposed to increase the customer charge from \$6.00 to \$7.00.

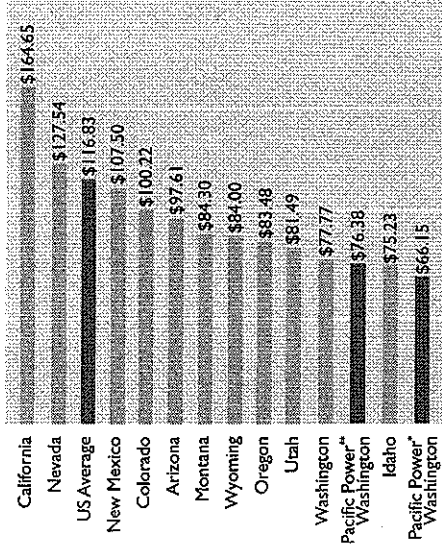
Effects on residential customers

Based on the overall increase discussed, the following chart shows the increases for a residential customer using electric service at 1,000 kwh and 1,300 kwh per month:

	Current	Proposed
Basic charge per month	\$6.00	\$7.00
@ 1,000 kwh:		
Average rate per kwh	6.62¢	7.64¢
Total bill	\$66.15	\$76.38
@ 1,300 kwh:		
Average rate per kwh	6.86¢	7.92¢
Total bill	\$89.17	\$102.93

A typical Pacific Power residential customer uses 1,300 kwh per month.

US Average Residential Monthly Electric Bills for 1,000 kWh (As of January 1, 2009)



*Pacific Power calculated using current WA rates
**Pacific Power calculated using proposed WA rates
Source: Edison Electric Typical Bills and Average Rates Report, Winter 2009.

Your input into this process is important, please comment.

Directions for mailing:

1. Detach comment form from this customer notice

2. Stamp and mail to UTC

Save a stamp

Share your comments with the commission for free by logging on to: utc.wa.gov/comment

Customer name

Phone number

E-mail

Comments

Docket UE-090205

Response to Public Counsel's Motion for an Order
Regarding the Customer Notice

Exhibit B

Avista Customer Notice



**AUGUST 2009
Notice of Request for
Rate Increase**

**Public Hearings to be held
September 30th in the City of
Spokane and City of
Spokane Valley on Avista's
Proposed Electric & Natural
Gas Rate Increases**

On January 23, 2009, Avista asked the Washington Utilities and Transportation Commission (Commission) for approval of a general increase in its electric rates of 16.0 percent, or \$69.8 million annually, and to increase natural gas rates by an average of 2.4 percent, or \$4.9 percent annually. In the same filing, Avista requested a 7.4 percent reduction in the electric rates associated with the Energy Recovery Mechanism. The Energy Recovery Mechanism allows Avista to surcharge or refund to customers a portion of actual power supply costs that are above or below the cost included in customer rates. The general rate increase discussed above combined with the reduction of the Energy Recovery

Mechanism would result in a net increase in rates of 8.6%.

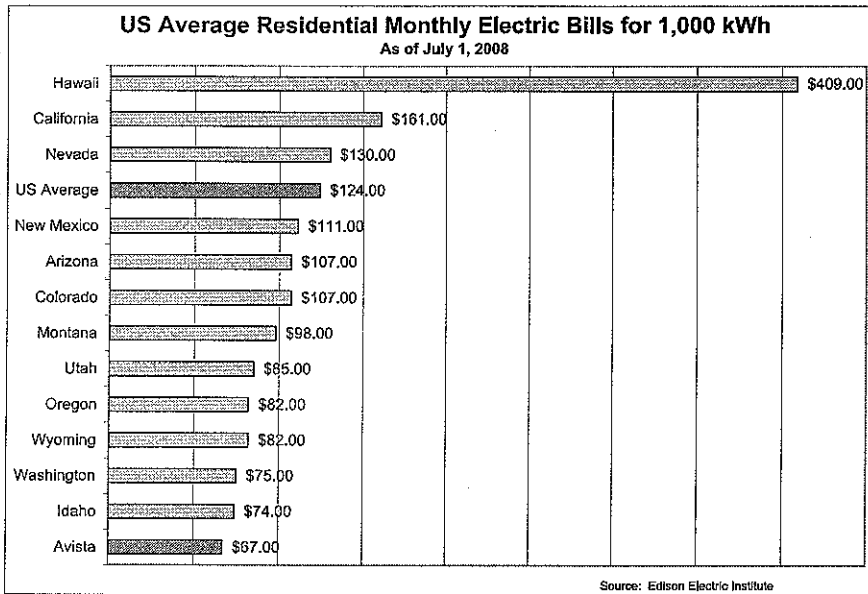
The request to increase electric rates reflects increased costs associated with operating and maintaining Avista's electric system, including costs associated with upgrading and operating Avista's hydroelectric plants and an increase in the cost of fuel to produce electricity from the company's thermal generating plants. A general description of the major components of the requested increase is shown in the pie-chart on the reverse side.

The request to increase natural gas rates reflect an increase in the costs to operate and maintain Avista's natural gas distribution system. Changes in the cost of natural gas used by customers are not reflected in this filing – charges in the cost of natural gas are directly passed through to customers in an annual Purchased Gas Adjustment in the fall of each year.

Proposed Electric Price Increase

The average proposed net electric increase by customer class and rate schedule are as follows:

SCHEDULE NO.	PROPOSED RATE INCREASE	PROPOSED NET BILL INCREASE
Residential	16.7%	9.2%
General Service (small commercial)	11&12	13.4%
Ex. Lg. General Service (large commercial/semi industrial)	21&22	15.9%
Ex. Lg. General Service (large industrial)	25	16.3%
Pumping Service	31&32	16.0%
Street & Area Lights	41-48	16.6%
		8.6%



See along this line

along this line

Place stamp here.

**WUTC
P.O. Box 47250
Olympia, WA 98504-7250**

RE: Docket Nos. UE-090134 & UG-090135

The differences in the proposed increase for each customer class / rate schedule are designed to more closely align the proposed rates with the actual cost to provide service to each customer class.

The proposed monthly increase for a residential customer using an average of 1,000 kilowatt-hours (kWhs) per month is \$6.99, or 9.2%. The proposed increase includes an increase of 25 cents in the monthly Basic Charge. The present bill for 1,000 kWhs is \$75.94 and the bill with the proposed increase would be \$82.93. The present and proposed rates for Residential Service are as follows:

	PRESENT BILL RATE	PROPOSED NET INCREASE	PROPOSED RATES
Basic Charge	\$5.75/month	\$0.25/month	\$6.00/month
1st 600 kWhs/month	6.54¢/kwh	0.688¢/kwh	7.231¢/kwh
Next 600 kWhs/month	7.734¢/kwh	0.652¢/kwh	8.386¢/kwh
Over 1,300 kWhs/month	9.192¢/kwh	0.841¢/kwh	10.033¢/kwh

Proposed Natural Gas Price Increase

The average proposed natural gas increase by customer class and rate schedule are as follows:

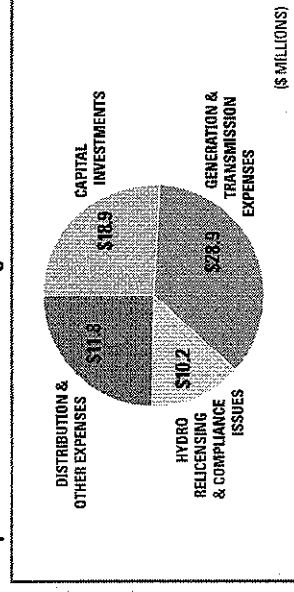
	SCHEDULE NO.	PROP. CHANGE
Residential & Sm. Commercial (less than 200 therms/mo)	101	2.5 %
Commercial & Industrial (over 200 therms/mo)	111	2.0 %
Lg. Commercial & Industrial (over 60,000 therms/yr)	121	2.0 %
Lg. Interruptible Service (over 250,000 therms/yr)	131	0.9 %
Lg. Transportation Service (over 250,000 therms/yr)	146	6.8 %*

*Increase does not include gas cost

The proposed monthly bill increase for a residential customer using an average of 70 therms per month is \$2.11 or 2.5 percent. The proposed increase includes an increase of 25 cents in the monthly Basic Charge. The present bill for 70 therms is \$85.40 and the bill with the proposed increase would be \$87.51. The present and proposed rates for residential and small commercial customers is as follows:

	PRESENT RATE	PROPOSED INCREASE	PROPOSED RATES
Basic Charge	\$5.75/month	\$0.25/month	\$6.00/month
Usage Charge	\$113.781/therm	\$0.02653/therm	\$116.44/therm

Components of Electric Rate Filing



Commission Investigation

The commission is conducting an investigation and will hold hearings to examine the requested increases. The commission has the authority to set final rates that may be different from the requested increase(s) based on the results of the investigation. The commission can take up to eleven months to review the filing and will issue its ruling on or before December 23, 2009.

How can you participate in the rate proposal process?

1. The commission will conduct Public Hearings and take comments from the public on **September 30, 2009.**

Council Chambers,
City of Spokane Valley
Redwood Plaza,
11707 East Sprague Ave.
12:30 p.m. to 2:30 p.m.

Council Chambers,
City of Spokane
808 W. Spokane Falls Blvd
5:30 p.m. to 7:30 p.m.

2. You may contact the commission with questions or to share your comments several ways.

Write to:
 WA UTC
 P.O. Box 47250
 Olympia, WA, 98504-7250

UTC online comment form:
www.utc.wa.gov/comment

By e-mail at:
comments@utc.wa.gov

By phone at:
 360-664-4291

For more information, please see the commission webpage at www.utc.wa.gov. If you write, include your name and mailing address, the name of the company (Avista), and Docket UE-090134/UG-090135.

Avista offers a number of energy assistance programs to help customers who are most impacted by rising energy prices. Please visit www.everylittlebit.com for more information. If you are not already on Comfort Level Billing, consider applying for this free service. Comfort Level Billing averages your annual bill into equal monthly payments.

For more information about the proposed rate increase, conservation tips and energy efficiency programs, energy assistance programs and bill payment plans, visit us at www.avistautilities.com or contact us at (800) 227-9187.

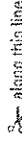
The public is represented by the Public Counsel Section of the Washington State Attorney General's Office. You can contact them via the web at www.atg.wa.gov/utilities.aspx, or by email at utility@aga.wa.gov.

Avista Utilities
 PO Box 3727
 1411 E. Mission
 Spokane, WA 99220

SAVE A STAMP

Share your comments with the commission for free by logging on to:

www.utc.wa.gov/comment



Customer Name: _____

Address: _____

Phone: _____

Email: _____

Comments: _____

(Please do not mail with bill to Avista)

Docket UE-090205

Response to Public Counsel's Motion for an Order
Regarding the Customer Notice

Exhibit C

Comparison Pie Chart

Washington Electric Utility Customers By Average Rates

