

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In re the Matter of)
) DOCKET NO. UE-011514
AVISTA CORPORATION, d/b/a)
AVISTA UTILITIES) FOURTH SUPPLEMENTAL ORDER:
) APPROVING AND ADOPTING
For an Order Finding Avista’s Deferred) SETTLEMENT STIPULATION
Power Costs Were Prudently Incurred) CONCERNING THE PRUDENCE
and Are Recoverable) AND RECOVERABILITY OF
) CERTAIN DEFERRED POWER
.....) COSTS

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
) DOCKET NO. UE-011595
Complainant,)
)
v.) FOURTH SUPPLEMENTAL ORDER:
) REJECTING TARIFF FILING;
AVISTA CORPORATION, d/b/a) APPROVING AND ADOPTING
AVISTA UTILITIES,) SETTLEMENT STIPULATION
) CONCERNING INTERIM RATES;
Respondent.) AUTHORIZING AND REQUIRING
.....) COMPLIANCE FILING

SYNOPSIS: The Commission approves and adopts the Parties’ Settlement Stipulation as a reasonable resolution of Avista Utilities’ petition concerning the prudence of certain deferred power costs and Avista Utilities’ request for interim rate relief. The Commission finds prudent and allows for recovery in rates \$196,023,342 in deferred power costs, adjusts the accounting treatment of a previously approved power cost surcharge, and provides for a 6.2 percent rate increase over base rates (i.e., a 5 percent increase over current rates) for Avista Utilities. The Settlement Stipulation also resolves certain issues pending in Avista Utilities’ general rate increase request.

- 1 **PROCEEDINGS:** The Commission has conducted joint proceedings through the date of this Order to consider Avista Corporation's¹ requests for a determination in Docket No. UE-011514 regarding the prudence and recoverability of certain power costs incurred by the Company through September 30, 2001, and Avista's request in Docket No. UE-011595 for interim rate relief. Docket No. UE-011595 is a general rate proceeding of which the interim rate relief request is but one part. Commission process in the general rate proceeding continues, with evidentiary hearings scheduled during July 2002.
- 2 The Commission conducted evidentiary hearings on the Parties' proposed settlement of the prudence and interim rate issues in Olympia on February 25, 2002. The Commission heard public testimony in Spokane on the issues related to prudence and interim rate relief, and the proposed Settlement Stipulation, on February 27, 2002. The Commission closed the record in Docket No. UE-011514, and in the interim phase of Docket No. UE-011595, on March 1, 2002.
- 3 **PARTIES:** David Meyer, General Counsel, represents Avista Utilities. S. Bradley Van Cleve, Davison Van Cleve, P.C., Portland, Oregon, represents the Industrial Customers of Northwest Utilities (ICNU). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General (Public Counsel). Donald Trotter, Senior Assistant Attorney General, and Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represent the Commission's regulatory staff (Staff).
- 4 **COMMISSION:** The Commission approves and adopts the Parties' Settlement Stipulation as a full and final resolution of the prudence and interim rate issues in Docket Nos. UE-011514 and Docket No. UE-011595 (interim rate phase). The Commission also approves and adopts the Parties' Settlement Stipulation with respect to certain issues pending in the general rate phase of Docket No. UE-011595. The Commission incorporates the Parties' Settlement Stipulation by reference and makes it a part of this Order. *Appendix A, infra*. The Commission authorizes and requires Avista to make any compliance filings required to effectuate the terms of the Settlement Stipulation and this Order.

¹ Avista Corporation, d/b/a Avista Utilities, is referred to in this Order as "Avista," "Avista Utilities," or the "Company."

MEMORANDUM

I. Introduction.

5 This Order, approving and adopting a Settlement Stipulation negotiated among and agreed to by all of the Parties to these proceedings, represents another positive step in the direction of restoring the financial integrity of one of Washington State's major electric utilities, and simultaneously helps to ensure that Avista's customers continue to receive reliable service at reasonable rates. The Commission is encouraged that the Company's new management appears to take seriously its public service obligation, which includes the obligation to improve Avista's financial condition and restore the Company's financial vitality. The Settlement Stipulation shows that Avista has acted responsibly by, among other things, working diligently and in good faith with all Parties to these proceedings to achieve results that are in the public interest. These Parties include the Office of Public Counsel, which represents the interests of residential and small commercial customers; the ICNU, which represents some of Avista's major industrial customers; and the Commission Staff, which represents the public interest generally.

II. Background and Procedural History.

6 Docket No. UE-011514 concerns a November 13, 2001, filing by Avista. The Company requested by its filing that the Commission expedite its process to consider whether Avista's deferred power costs of \$198.5 million, as of September 30, 2001, were prudently incurred and recoverable.

7 Docket No. UE-011595 is a general rate case filed by Avista on December 3, 2001. The Company seeks permanent increases in its electric rates. Avista's filing also requests a 12.4 percent interim rate increase, subject to refund, for its electric rates. Among other things, the prudence and recoverability of Avista's deferred power costs incurred after September 30, 2001, are at issue in the general rate proceeding.

8 The Commission convened a joint prehearing conference in Olympia, Washington, on December 21, 2001, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss. This was a second prehearing conference in Docket No. UE-011514 and a first prehearing conference in Docket No. UE-011595.

9 The Commission determined at its prehearing conference that Avista's prudence proceeding (Docket No. UE-011514) should be heard jointly with the interim rate request in Docket No. UE-011595 and established a procedural schedule. On February 20, 2002, the Parties filed a Settlement Stipulation. The Parties propose that the Commission approve and adopt the Settlement Stipulation as a full resolution of the issues presented.

10 On February 21, 2002, the Commission issued due and proper notice of a hearing to be conducted on February 25, 2002, to receive evidence and hear argument concerning the proposed settlement. The hearing was conducted as scheduled in Olympia, Washington. On February 27, 2002, the Commission conducted previously scheduled and noticed hearing proceedings in Spokane, Washington, to receive testimony and comment from nonparty members of the public who are interested in the outcome of these proceedings. The record was closed on March 1, 2002, following receipt of certain exhibits, including written comments from interested members of the public.

III. Governing Statutes and Rules.

11 The following statutory provisions and rules are most central to our discussion and decision:

RCW 80.01.040 General Powers and Duties of Commission.

The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies

RCW 80.04.130 Suspension of tariff change

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. . . .

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

RCW 80.28.010 Duties as to rates, services, and facilities

(1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable. . . .

RCW 80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

WAC 480-09-310 Filing requirements—Definitions:

(2) The following proceedings shall not be considered general rate increases for companies regulated under Title 80 RCW even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations: . . .; emergency or other short-notice increases caused by disaster or weather-related conditions unexpectedly increasing a public service expense; rate increases designed to recover governmentally-imposed increases in costs of doing business such as changes in tax laws or ordinances; or other increases designed to recover increased expenses arising on short-notice and beyond the public service company's control.

Additional parts of Chapters 80.01, 80.04, and 80.28 RCW and Chapters 480-09, 480-80, and 480-100 WAC apply generally. The Commission's authority to authorize immediate rate relief is a power necessarily incident to its exercise of express statutory authority to regulate the rates of jurisdictional utilities. *State ex rel. Puget Sound Navigation Company v. Department of Transportation*, 33 Wn.2d 448, 206 P.2d 456 (1949).

IV. Analysis and Decision.

A. Brief Description of the Settlement Agreement²

- 12 **Deferred Power Costs.** Avista accrued \$217,803,712 in deferred power costs to Account 186, Miscellaneous Deferred Debits, from July 2000 through December 2001, pursuant to the Commission's orders in Docket Nos. UE-000972 and UE-010395. The Settlement Stipulation provides that 90 percent, or \$196,023,342, of these power costs should be deemed prudently incurred and recoverable in rates. *Stipulation at 3.* The remaining 10 percent, or \$21,780,370, of these power costs would be booked to expenses according to proper accounting practices.
- 13 In its Sixth Supplemental Order in Docket No. UE-010395, the Commission allowed the Company to begin recovering some of these costs by approving Tariff Schedule 93, effective October 1, 2001. Tariff Schedule 93 imposes a temporary 25 percent surcharge on rates, subject to refund. The Settlement Stipulation resolves the prudence question and other issues that were the basis for our decision to make the surcharge revenues subject to refund. Accordingly, the Settlement Stipulation provides that the subject-to-refund condition imposed by our Sixth Supplemental Order should be removed. *Id.*
- 14 The Settlement Stipulation provides that upon the effective date of this Order, and until the conclusion of the pending general rate case in Docket No. UE-011595, one-fifth (*i.e.*, 20% of the 25% surcharge) of existing surcharge revenues collected will no longer be applied against the deferral balance, but instead will be applied to offset the Company's general operating costs. *Id. at 4.* The remaining four-fifths (*i.e.*, 80% of the 25% surcharge) will continue to be applied against the recoverable power cost deferral balance.³

² The Settlement Stipulation includes numerous detailed provisions. Our brief description of the Settlement Stipulation in the body of this Order does not attempt to capture all of the detailed provisions. We incorporate the Settlement Stipulation by reference, and include it as an Appendix to this Order. To the extent of any arguable discrepancy between our brief summary here and the detailed terms of the Settlement Stipulation, we intend that the Settlement Stipulation prevails, except as we may otherwise expressly provide in this Order.

³ We note that the balance in the deferral account as of the date we implement Avista's compliance filing consistent with this Order should be the \$196,023,342 deemed prudent and recoverable in this Order, less the amount attributable to the accelerated amortization of a deferred credit arising from the

- 15 The Settlement Stipulation provides that some form of surcharge will remain in effect until Avista's prudently incurred deferred power costs are fully recovered. *Id. at 3.* The Settlement Stipulation anticipates that the Commission will determine the timing (*i.e.*, amortization period), carrying costs, and manner of recovery (*i.e.*, rate design) of the deferral balance that exists as of the end of the general rate case in its final order in that phase of these proceedings. However, absent some other method of recovery that may be ordered in the general rate phase of Docket No. UE-011595, the Settlement Stipulation allows Avista to continue to recover a portion of its prudently incurred deferred power costs through the current 25 percent surcharge in the Company's Tariff Schedule 93.
- 16 **Rate Relief.** The Settlement Stipulation provides that Avista will file tariff sheets following the effective date of this Order to effect an increase to base rates of 6.2 percent, or \$14,672,000, on an annual basis. *Id. at 4.* This 6.2 percent increase in base rates represents a 5 percent increase over existing rates (*i.e.*, base rates plus the current 25 percent surcharge), according to the Settlement Stipulation. *Id.; Tr. 105 (Norwood).* The increase will be "permanent" in the sense that the revenues collected will not be subject to refund, but the Commission may prospectively revise this increase (up or down) after further hearings on other matters pending in the general rate case. The additional revenue is to be collected through rates on an equal percentage basis applied to Avista's existing electric Tariff Schedules 1-48.
- 17 Avista's overall revenue requirement will be determined in the pending general rate case. The \$14,672,000 increase in current rates does not represent a prejudgment of the Company's overall revenue requirement in that proceeding.
- 18 **Customer Impact Mitigation Measures.** The Settlement Stipulation includes several measures designed to help mitigate the impact of increased rates on customers. These measures are not expected to have any significant revenue impact on Avista, but the Company commits, in any event, that any costs it incurs to implement the measures will not be allowed to impact rates.

monetization of the Portland General Electric (PGE) Sale Agreement (effective as of October 1, 2001, per our Sixth Supplemental Order in Docket No. UE-010395), and less the surcharge revenues collected between October 1, 2001, and the date this Order is effectuated by Commission approval of the Company's compliance filing. *See Exhibit No. 5.*

19 Avista's Tariff states at Original Sheet 70-A that:

The rules regulating electric service, prescribed by the Washington Utilities and Transportation Commission, hereinafter called the Commission, are hereby adopted and by this reference are made a part of this tariff.

This necessarily includes WAC 480-100-143 "Winter low-income payment program," which implements the requirements of RCW 80.28.010. The statute and rule provide, among other things, for agreements between Avista and qualifying low-income customers to payment plans that will assist the low-income customers to continue to receive electric service and to pay current bills and arrearages on a basis that considers the customers' individual financial circumstances. The statute and rule prescribe that electric service for residential space heating cannot be terminated between November 15 and March 15, if the customer meets certain conditions, including agreement to a payment plan. The statute and rule also provide that such payment plans:

shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15.

RCW 80.28.010(4)(e), WAC 480-100-143(1)(e)(ii). The Settlement Stipulation provides that

The Company will extend the Winter Low-Income Payment Program such that customers may participate in the program beyond the scheduled termination date of March 15, 2002, through the effective date of the Commission order in the Company's pending general rate case.

*Stipulation at 6, ¶6.a.*⁴

⁴ At the settlement hearing there was brief discussion of whether the Parties contemplated waiver of any rule. No petition for waiver is before us. This Order approves the Settlement to the extent no

20 In addition, Avista agrees to promote actively its levelized billing program, called “Comfort Level Billing,” and to revise its Tariff (Original Sheets 70-K and 70-k.1) to expand eligibility for the program and to extend the “grace period” under the program by one month. Avista’s customers also will be offered an option to pay any required deposit in four equal monthly installments. The Company agrees to make efforts to increase participation in the CARES program and to promote contributions to Project Share, which provides emergency energy assistance for families in Washington. Avista also commits to provide \$50,000 in Project Share funding.

21 **Issues Pending in the General Rate Proceeding.** As previously discussed, the Settlement Stipulation resolves the issues of prudence and recoverability with respect to deferred power costs for the period October 1, 2001, through December 31, 2001, which were part of the Company’s general rate proceeding and not part of the Petition in Docket No. UE-011514. The Settlement Stipulation also addresses several other general rate case issues.

22 In connection with its general rate case filing, Avista requested in Docket No. UE-011597, and the Commission granted in its order entered in that docket on December 28, 2001, authority for the Company to continue deferral accounting for certain power costs incurred after December 31, 2001. The Settlement Stipulation provides that those deferrals will exclude capital costs, interest, depreciation, and non-fuel Operation and Maintenance (“O&M”) costs of the Company-owned Boulder Park and Kettle Falls CT small generation projects, and Coyote Springs II. *Id. at 4-5.* Appropriate rate treatment of the costs excluded from the deferral account consistent with the Parties’ agreement, is left to be determined in the general rate proceeding, and only on a prospective basis. The Settlement Stipulation does not resolve, and is not precedent for, the treatment of costs deferred after December 31, 2001.

23 The Settlement Stipulation provides that Avista’s capital structure for purposes of the general rate proceeding will be the same as determined by the Commission in Docket Nos. UE-991606 and UG-991607, which was concluded by the Commission’s Third Supplemental Order entered in those dockets on September 29, 2000. *Id. at 5.* That capital structure includes 49 percent Debt, 9 percent Preferred Equity, and 42 percent

Common Equity. The Settlement Stipulation also provides that the costs of debt and preferred equity will be updated in the present case for known and measurable changes. *Id.* The same updated costs will be used in the pending general rate case to calculate pro forma interest expense. The cost of common equity will be the same as determined in the Commission's Third Supplemental Order in Docket Nos. UE-991606 and UG-991607, except that the Parties reserve the right to argue for an adjustment based on the disposition of issues surrounding the Company's request for a power cost adjustment, or similar mechanism.

24 Finally, the Settlement Stipulation provides with respect to the pending general rate case that the Parties will continue to negotiate in good faith to resolve the remaining issues. *Id. at 5-6.* The Settlement Stipulation expressly refers in this connection to issues concerning a power cost adjustment, or similar mechanism. *Id.*

B. Commission Discussion and Disposition

25 We observed in our Sixth Supplemental Order in Docket No. UE-010395 that:

In general, it is undisputed that many retail power companies, municipal electric companies, cooperatives, and Public Utility Districts in Washington State face unprecedented financial needs as a result of both extreme drought and wholesale power market volatility.

Evidence presented in that proceeding showed that the combination of the worst hydroelectric conditions since Avista's records have been kept, together with unprecedented high electric wholesale market prices, had contributed to the deterioration of Avista's financial condition to such a degree that there was a need for immediate rate relief for the Company.

26 We found that, in the economic and other circumstances Avista faced as of the date of our Sixth Supplemental Order, the Company's financial health was continuing to decline very swiftly. We found that the denial of temporary relief would cause clear jeopardy to the utility and detriment to its ratepayers and its stockholders. For these and other reasons detailed in our prior order, we concluded that as an important first step in the public interest, Avista required a plan that included both immediate new revenue and aggressive actions by the Company to work out of its financial

difficulties. Among other things, we recognized the need for and required Avista to file a general rate proceeding so that the possibilities for further positive actions by the Commission and the Company could be considered in the light of a comprehensive review of Avista's financial circumstances.

27 Avista's general rate proceeding is now pending before us. The Commission Staff and other Parties to the proceeding have worked diligently during the three months since that case was filed to analyze whether the Commission should take additional immediate steps to promote Avista's financial recovery. The Parties have presented to us a body of evidence that shows there is a need for such steps to be taken and have proposed through their Settlement Stipulation what those steps should be based on their respective analyses of the facts.

28 Commission Staff's analysis is summarized in the Memorandum of Commission Staff In Explanation of Settlement Stipulation filed on February 22, 2002.⁵ Staff's Memorandum states that:

The substantial uncertainty that the deferral balances pose for Avista is a matter of concern to lenders, rating agencies, the Commission and ultimately, the ratepayers. On October 10, 2001, Standard & Poor's lowered Avista's corporate credit rating to "BB+" from "BBB-". Other rating agencies took similar actions. Avista's credit rating is now below "investment grade." The Company's substantial deferred power costs, the lack of certainty as to their recovery, and the potential for refunds were cited as justification for the downgrades. Consequently, Avista was required to pay higher interest rates on some existing debt, to post security to maintain previously unsecured debt, and to pay higher fees to keep credit lines open. Many lenders, such as pension funds or insurance companies, have restrictions on how much money they will lend to corporations which are rated below investment grade. Avista's options for sources of money are now more constrained than before the downgrades.

⁵ Staff's Memorandum includes statements of fact subscribed to, and adopted by, Staff's witnesses Messer's Tom Schooley and Alan Buckley as a part of their testimony in this proceeding. *Tr.* 129-30.

Avista's main source of funds to finance power purchases and the Coyote Springs II Project is its revolving credit line and other short term lines of credit. Avista needs to refinance \$310 million in short term credit lines by the end of May this year. In order for the Company to complete this substantial refinancing on reasonable terms, or perhaps at all, it requires additional revenue to improve debt coverage ratios, and it needs to reduce the level of debt on its balance sheet. Avista must also show lenders that the deferred power costs will be reflected in rates.

Memorandum at 2-3.

- 29 Mr. Jon Eliassen, Avista's Senior Vice President and Chief Financial Officer, testified concerning Avista's recent efforts to improve its financial condition. He stated that the Company has reduced its capital budget for normal growth and maintenance by roughly \$60 million for 2002. *Tr. 81.* Avista is considering the need to reduce 2003 capital expenditures, as well. Mr. Eliassen testified that the Company continues to maintain a hiring freeze put in place in mid-year 2001. In addition, Avista has eliminated some positions, has reduced the number of contract employees in a number of areas, and has refrained from filling vacant positions. Mr. Eliassen also testified that the Company received \$50 million in dividends from Avista Energy during the third quarter of 2001. *Tr. 80.*
- 30 Mr. Eliassen also testified concerning the Company's immediate challenges. In forecasting an improved financial condition as set forth in his spreadsheet (Exhibit No. 2) captioned "Impact of Settlement on Financial Indicators 1999-2003—With Rate Increases," Mr. Eliassen assumes the Company will receive an additional \$90 million in dividends from Avista Energy in 2002. *Tr. 79-80.* His forecast also assumes the issuance of \$50 million, or more, of new equity at a price more attractive than its current level of less than \$15 per share, which is less than book value. *Tr. 80.*
- 31 The Company also is focused on the need to retire up to \$150 million of outstanding high cost debt during 2002. *Tr. 80-81.* So far, the Company has retired half that amount, but Avista's interest costs on an annual basis remain high. Mr. Eliassen also testified to the Company's need to re-fund \$175 million of maturing debt that currently has a coupon of 9.125 percent. *Tr. 81.*

- 32 Mr. Eliassen testified that Avista's goal in pursuing the settlement agreement, and in the general rate case proceeding, is to strike a balance of the Company's immediate and longer-term financial needs with the needs of Avista's customers. Mr. Eliassen stated that the Company needs access to commercial bank credit lines, needs to continue to use its accounts receivable financing, and needs to position itself to access equity markets so that Avista can restructure its balance sheet by reducing debt. He believes that the Settlement Stipulation is a "critical next step" in allowing the Company to achieve these goals and provides the Company an opportunity to return to financial health. *Tr.* 82.
- 33 Specifically, Mr. Eliassen testified that the settlement provides certainty concerning the recoverability of deferred electric expense (*i.e.*, power costs). Mr. Eliassen stated that "[c]ertainty is critical for us in renegotiating bank lines of credit and to assure credit rating agencies that we really have turned the corner." *Tr.* 83. Mr. Eliassen testified that elimination of the "subject to refund" condition on the surcharge revenue, as provided by the Settlement Stipulation, reduces uncertainty, which is a feature disfavored by banks and creditors. Uncertainty is further reduced, according to Mr. Eliassen, because the Settlement Stipulation provides for collection of the surcharge beyond the end of 2002, if necessary, to permit Avista to recover fully the deferred power costs deemed to have been prudently incurred through the end of 2001. In addition, Mr. Eliassen testified that the Settlement Stipulation's reallocation of a portion (*i.e.*, 20 percent) of the current surcharge will help bolster the Company's earnings and, hence, its financial returns. *Tr.* 83.
- 34 Mr. Eliassen testified with respect to the Settlement Stipulation's provision for a 6.2 percent increase in base rates that the additional cash will help the Company to meet its cash interest coverage requirements. The rate increase also provides cash to fund Avista's capital expenditure requirements and to reduce the Company's debt. *Tr.* 83.
- 35 According to its Memorandum, Staff thoroughly examined the issues related to the questions of prudence and recoverability of Avista's deferred power costs. Staff states that it "evaluated a series of decisions involving well over a thousand individual power transactions, together adding up to many millions of dollars." *Memorandum at 5.* Staff sampled Avista Utility's transactions and compared them to similar, contemporaneous transactions at Avista Energy. *Id.* Staff concluded that Avista Utility's numerous, relatively small market transactions were adequately supported as prudent. *Id.*

- 36 Staff states that it also reviewed the Company's overall resource position at the beginning of the deferral period and the Company's resource decisions and transactions during the deferral period. *Id.* These included numerous short-term resource operation decisions including altered maintenance schedules, temporary resource acquisitions, forward sales and purchase transactions, and other efforts by Avista to mitigate the cost effects of poor hydro conditions and high wholesale electric market prices. *Id. at 5-6.* Again, Staff concluded that Avista's actions were appropriate to its circumstances.
- 37 Staff's Memorandum confirms many of the benefits testified to by Mr. Eliassen. Staff states that "[t]he 6.2% increase serves to improve Avista's cash flow and earnings, and consequently it improves Avista's coverage ratios and other financial ratios." *Memorandum at 7.* Staff states that by making the increase not subject to refund, "unnecessary uncertainty" is removed, thus facilitating Avista's ability to renew its \$310 million in short-term credit lines used to finance power purchases and the Coyote Springs II project. These short-term credit lines are scheduled to expire in May 2002. *Id. at 3, 7.* In addition, Staff states that while allowing Avista to use 20 percent of the current power cost surcharge revenues to offset general operating costs of the Company does not improve cash flow, it does improve Avista's earnings and its debt ratio, which is at or near the 60 percent maximum debt level contained in certain Avista bond covenants. *Id. at 7.*
- 38 During our public comment hearing in Spokane, we heard from business people and government representatives who discussed their own budget difficulties and the effects on them of increased energy rates. *Tr. v.3, passim.* Recognizing that the forces of nature coupled with extreme volatility in the unregulated wholesale energy market have adversely affected Avista's financial health in a similar fashion, the Commission in its economic regulatory function strives to minimize the downstream effects on Avista's customers while taking steps necessary to keep the Company financially viable.
- 39 In this connection, we observe that the Settlement Stipulation provides direct and indirect benefits to Avista's customers. Generally, and importantly, it is a step to restoring the Company to financial health which is critical to ensure that Avista's customers continue to receive reliable service at reasonable rates over the long term. The 6.2 percent increase in base rates, which is a 5 percent increase over current rates,

coupled with the application of a portion of the surcharge revenues to general operating revenues, represents a smaller rate impact on customers than Avista's original proposal for a 12.4 percent increase in base rates (*i.e.*, a 10 percent increase over current rates), but provides significant, immediate financial relief to the Company. Avista will expense, and not recover in rates, \$21,780,370 in deferred power costs. *Stipulation at 3; Tr. 83 (Eliassen)*. Adjustment of the 2002 power cost deferrals to remove the capital costs and non-fuel operating costs of the new power projects Coyote Springs II, Boulder Park, and Kettle Falls CT reduces the amount of deferred power costs at issue in the general rate proceeding. This provides a future benefit to ratepayers.

40 The Commission heard, too, from a number of Avista's residential customers who oppose any rate increase for Avista. *Exhibit No. 3; Tr. v.3, passim*. We are sensitive to the difficulty some of Avista's customers will face in paying even modest increases in rates. The Customer Impact Mitigation Measures to which Avista agrees will provide assistance to those customers most in need.

41 We find based on the foregoing consideration of the record in this proceeding that the Settlement Stipulation represents a full and fair resolution of the issues surrounding the prudence and recoverability of Avista's power cost deferral balances through December 31, 2001. We also find that the Settlement Stipulation reasonably resolves the issues raised by Avista's request for interim rates and results in rates that are fair, just, reasonable, and sufficient. Finally, we find that the Settlement Stipulation provides a reasonable resolution of several issues pending in Avista's general rate proceeding. Considering all that we have discussed above, and the full record of our proceeding, we find and conclude that our approval and adoption of the Settlement Stipulation is in the public interest.

FINDINGS OF FACT

42 Having discussed above all matters material to our decision, and having stated 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.

- 43 (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 electric companies.
- 44 (2) Avista Corporation, d/b/a Avista Utilities, is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010, and as those terms otherwise may 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.
- 45 (3) Avista filed on December 3, 2001, certain tariff revisions (Original Sheet No. 94) that were suspended by Commission Order entered in Docket No. UE-011595 on December 12, 2001. The rates proposed by Avista’s as-filed tariff revisions that are the subject of the Commission’s inquiry in this proceeding, if implemented, would not be fair, just, and reasonable.
- 46 (4) Ninety percent (90%), or \$196,023,342, of the power costs in Avista Utilities’ deferred account as of December 31, 2001, were prudently incurred.
- 47 (5) The existing rates for electric service provided in Washington State by Avista Utilities, are insufficient to yield reasonable compensation for the service rendered. Avista Utilities requires immediate relief with respect to the rates it charges for electric service provided in Washington State.
- 48 (6) The rates that result from adoption of the Settlement Stipulation filed by the Parties to these proceedings are fair, just, and reasonable and sufficient rates; the terms and conditions of service that result from adoption of the Settlement Stipulation are fair, just, and reasonable.
- 49 (7) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation filed by the Parties to these proceedings are neither unduly preferential nor discriminatory.
- 50 (8) Capital costs, interest, depreciation, and non-fuel O&M costs of the Company-owned generation projects known as Boulder Park, Kettle Falls CT,

and Coyote II, should be excluded from Avista's power cost deferrals subsequent to December 31, 2001.

- 51 (9) Avista's capital structure as determined by the Commission's Third Supplemental Order in Docket Nos. UE-991606 and UG-991607 (*i.e.*, 49 percent Debt, 9 percent Preferred Equity, and 42 percent Common Equity) remains reasonable for purposes of the pending general rate proceeding in Docket No. UE-011595.

CONCLUSIONS OF LAW

52 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.

- 53 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and Parties to, this proceedings. *Title 80 RCW.*
- 54 (2) The rates proposed by tariff revisions (Original Sheet 94) filed by Avista Corporation on December 3, 2001, and suspended by prior Commission order, are not just, fair, or reasonable and should be rejected. *RCW 80.28.010.*
- 55 (3) Ninety percent (90%), or \$196,023,342, of Avista Utilities' deferred power costs as of December 31, 2001, were prudently incurred and should be recoverable in rates. *WAC 480-09-470.*
- 56 (4) The existing rates for electric service provided in Washington State by Avista Corporation, d/b/a Avista Utilities, are insufficient to yield reasonable compensation for the service rendered. *RCW 80.28.010; RCW 80.28.020.*
- 57 (5) Avista Utilities requires immediate relief with respect to the rates it charges for electric service provided in Washington State. *RCW 80.01.040; RCW 80.28.060.*

- 58 (6) The Commission must determine the fair, just, reasonable, and sufficient rates to be observed and in force under Avista Utilities' Tariff WN U-28, which governs its rates, terms, and conditions for providing electric service in Washington State. *RCW 80.28.020.*
- 59 (7) The Settlement Stipulation filed by the Parties on February 22, 2002, 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 presented. *WAC 480-09-465; WAC 480-090-466.*
- 60 (8) The rates that result from this Order are fair, just, reasonable, and sufficient; the terms and conditions of service that result from this Order are fair, just, and reasonable. *RCW 80.28.010; RCW 80.28.020.*
- 61 (9) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020.*
- 62 (10) The Commission's prior orders in this proceeding, and in any related proceedings discussed in the body of this Order, should be amended to the extent necessary, or rescinded to the extent required, to effectuate the provisions of this Order. *RCW 80.04.210; WAC 480-09-815.*
- 63 (11) Capital costs, interest, depreciation, and non-fuel O&M costs of the Company-owned generation projects known as Boulder Park, Kettle Falls CT, and Coyote II, should be excluded from Avista's power cost deferrals subsequent to December 31, 2001. *WAC 480-09-470.*
- 64 (12) Avista's capital structure, for purposes of the pending general rate proceeding in Docket No. UE-011595, should be the same as determined by the Commission's Third Supplemental Order in Docket Nos. UE-991606 and UG-991607 (*i.e.*, 49 percent Debt, 9 percent Preferred Equity, and 42 percent Common Equity). *WAC 480-09-470.*
- 65 (13) The Commission Secretary should be authorized to accept by letter, with copies to all Parties to this proceeding, a filing that complies with the requirements of this Order. *WAC 480-09-340.*

- 66 (14) 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

- 67 (1) THE COMMISSION ORDERS That the proposed tariff revisions filed by Avista Corporation on December 3, 2001, as Original Sheet No. 94 and suspended by prior Commission order, are rejected.
- 68 (2) THE COMMISSION ORDERS FURTHER That the Settlement Stipulation filed by the Parties on February 22, 2002, 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, is approved and adopted.
- 69 (3) THE COMMISSION ORDERS FURTHER That its Sixth Supplemental Order in Docket No. UE-010395, entered on September 24, 2001, is modified to remove the condition that Avista's collection of a 25 percent surcharge to recover deferred power costs is subject to refund with respect to that portion of such costs that are found to have been prudently incurred and recoverable, as discussed in the body of this Order.
- 70 (4) THE COMMISSION ORDERS FURTHER That upon the effective date of this Order, and until the conclusion of the pending general rate case in Docket No. UE-011595, one-fifth (*i.e.*, 20% of the 25% surcharge) of existing surcharge revenues collected under Avista's Tariff Schedule No. 93 will no longer be applied against the deferral balance, but instead will be applied to offset the Company's general operating costs. The remaining four-fifths (*i.e.*, 80% of the 25% surcharge) will continue to be applied against the recoverable power-cost deferral balance.
- 71 (5) THE COMMISSION ORDERS FURTHER That Avista is authorized and required to file tariff sheets following the effective date of this Order to effect an increase to base rates of 6.2 percent, or \$14,672,000, on an annual basis. The increase to base rates is required to be collected through rates on

an equal percentage basis applied to Avista's Tariff Schedules 1-48. The revenues collected are not subject to refund.

- 72 (6) THE COMMISSION ORDERS FURTHER That Avista is authorized and required to file following the effective date of this Order such tariff sheets as are required to effectuate the Customer Impact Mitigation Measures set forth in the Settlement Stipulation that is attached to this Order as Appendix A and incorporated into this Order as if set forth in full.
- 73 (7) THE COMMISSION ORDERS FURTHER That Avista will exclude from its deferrals subsequent to December 31, 2001, capital costs, interest, depreciation, and non-fuel O&M costs of the Company-owned generation projects known as Boulder Park, Kettle Falls CT, and Coyote II. The Commission's Order Granting Accounting Petition, entered in Docket No. UE-011597 on December 28, 2001, is modified accordingly.
- 74 (8) THE COMMISSION ORDERS FURTHER That Avista's capital structure, for purposes of the pending general rate proceeding in Docket No. UE-011595, will be the same as determined by the Commission's Third Supplemental Order in Docket Nos. UE-991606 and UG-991607 (*i.e.*, 49 percent Debt, 9 percent Preferred Equity, and 42 percent Common Equity).
- 75 (9) THE COMMISSION ORDERS FURTHER That the Commission Secretary is authorized to accept by letter, with copies to all Parties to this proceeding, a filing that complies with the requirements of this Order.
- 76 (10) THE COMMISSION ORDERS FURTHER That its prior orders in any proceedings discussed in the body of this Order, are further modified to the extent necessary, or rescinded to the extent required, to effectuate the provisions of this Order.
- 77 (11) THE COMMISSION ORDERS FURTHER 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 4th day of March 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

SETTLEMENT STIPULATION