

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKET NO. UE-050482
DOCKET NO. UG-050483

PUBLIC COUNSEL ANSWER TO
JOINT MOTION FOR
MODIFICATION OF
PROCEDURAL SCHEDULE

Pursuant to the August 15, 2005, Notice of Opportunity to Respond to Motion, Public Counsel hereby submits its Answer to the Joint Motion for Modification of the Procedural Schedule (Joint Motion). While some portions of the modification proposal are reasonable, others are not. In particular, Public Counsel objects to those aspects of the motion that attempt to limit the scope of the issues to be addressed by parties in testimony, or by the Commission at the evidentiary hearing.

1. Dates for Testimony

The dates proposed in the Joint Motion for testimony, unchanged from the existing schedule, are acceptable. However, the scope of the testimony on those dates requires discussion.

Public Counsel intends to file testimony of four expert witnesses covering the full range of issue areas raised by the filing, including: cost of capital, revenue requirement, power supply, the ERM, rate spread, and rate design. We understand ICNU will also be filing the testimony of several witnesses. The testimony Public Counsel will file on August 26 will be directed to a detailed analysis of the case filed by Avista, with its supporting testimony and exhibits, as supplemented by responses to data requests, and will provide alternative recommendations on a range of issues. The settling parties have not yet provided any testimony in support of the

settlement, as required by WAC 480-07-740(2), nor has there been an opportunity for discovery on the settlement terms. It would clearly be premature to require non-settling parties to limit the August 26 testimony to comment on the settlement alone. It is unclear from the Joint Motion whether such a limitation is intended, but if that is the case, Public Counsel objects to such a restriction.

Public Counsel supports the proposal that the settling parties filing supporting testimony on the settlement on August 26. The schedule then appropriately provides an opportunity for non-settling parties to conduct discovery and file rebuttal testimony specifically addressing the settlement on September 22.

2. Public Comment Hearing

Public Counsel requests that the Commission set a hearing to take public comment in Spokane well in advance of the evidentiary hearing, preferably in the month of September. Public Counsel strongly recommends against setting the public comment hearing in late October, particularly during or after the evidentiary hearing. Customers and others attending hearings scheduled at such a late stage in the case have a legitimate concern that their input is meaningless in a process which has nearly concluded. Holding the hearing several weeks in advance of the evidentiary hearing allows both parties and the Commission to factor in the concerns raised by consumers in their deliberations and presentations.

Avista issued a notice to customers around the time of filing, announcing the initiation of the case to customers. Due to the early timing of the notice, Avista was not able to include information about the hearing date, as the Commission rules require. It therefore agreed to provide a second individualized notice to customers of the time and place of the hearing. Given the relatively short time remaining, that will likely need to be accomplished by a special mailing, separate from the billing cycle.

3. The Scope of the Evidentiary Hearing

Public Counsel objects to the Joint Movants' request that the "sole issue" at the evidentiary hearing "would be whether to approve or reject the Settlement Agreement." Joint Motion, p. 5. This recommendation improperly limits Public Counsel's right to present evidence on behalf of ratepayers and violates fundamental fairness and due process. WAC 480-07-730; 480-07-740 (a) (c).. In addition, it hampers the Commission's own exercise of its statutory role under RCW 80.28.020 of determining just, reasonable, and sufficient rates, by limiting the quality and completeness of the record that will be developed at the hearing.

The Commission does not have a "full settlement" before it, as defined in WAC 480-07-730(1), but a "multi-party" settlement under WAC 480-07-730(3). A multiparty settlement is "[a]n agreement of some, but not all, parties on one or more issue may be offered as their position in the proceeding along with the evidence that they believe supports it." Id. The mere fact that some of the parties to this case have reached agreement on some issues does not warrant narrowing the case to exclude other parties from putting on evidence, or the Commission from conducting a full review. This is particularly the case when the primary consumer representatives in the case, representing the great majority of those who will pay any rate increase ordered, have not agreed to the settlement.¹

Not only is it consistent with procedural fairness, the Commission rules, and with the Commission's statutory role, it is far more efficient for the Commission to consider the settling parties' proposal at the same time as the alternative analysis and recommendations presented by Public Counsel and ICNU. Joint Movants, on the other hand, appear to suggest that the Commission would need to hold a second and presumably more extensive evidentiary hearing if it decided not to accept the Settlement. No purpose would be served by this type of bifurcation. It is worth recalling that the current schedule was adopted in contemplation of a fully contested proceeding. It therefore allows for the Commission to have before it in October a fully

¹ Public Counsel represents residential and small business gas and electric customers. ICNU represents large industrial electric customers. Of the settling parties, NWIGU represents a limited group of large industrial gas users. The Energy Project does not take a position on any issue except the low income program agreed to.

developed case consisting of the analysis and recommendations of Public Counsel and ICNU, and the stipulation on issues (Settlement Agreement) supported by some of the parties, with their supporting testimony. The Commission will then have a complete record upon which to determine whether to accept the settlement or the proposal of other parties, and to render an ultimate decision on the just and reasonable level of rates under RCW 80.28.020. Joint Movants' approach places the Commission in the position of deciding the case on an incomplete record.

4. The Evidentiary Hearing Dates

Public Counsel objects to the reduction of the hearing schedule to the four days proposed. This recommendation appears to go hand in hand with the request to narrow the scope of the hearing. Again, it is essentially an effort to control and limit the issues that the Commission can consider, to the detriment of other parties and the quality of the record. It is possible that the Commission could complete the hearing in the first full week if the settlement turns out to reduce the number of Staff and company witnesses and their time on the stand, although this is not a foregone conclusion. If the Commission chooses to reduce the number of days set for hearing, Public Counsel's recommendation would be to set the hearing for the full week of October 17, with a placeholder for "overflow" days on October 24 and 25.

5. Briefing Dates

Public Counsel objects to the removal of briefing dates from the schedule. Post-hearing briefing by the parties has been required in virtually every contested case of significance because the Commission has found it helpful. In this docket, it appears there will be a number of significant contested issues at the hearing on cost of capital, revenue requirement issues, ERM modification, and rate design/spread.

6. The Suspension Date and Effective Date for Rates

The current suspension date is February 28, 2006. When Avista filed its case in March it was aware that a Commission decision on rates would not likely be forthcoming until approximately year end 2005 or early 2006. The Joint Movants now recommend that rates take

effect by December 1. Joint Movants cannot on their own, however, limit the Commission's statutory period for consideration of this docket or direct when the Commission will issue an order. By eliminating the briefing dates and creating an artificial deadline of December 1, the settling parties again seek to improperly truncate the case and constrict the Commission's deliberative process on the incorrect premise that their multiparty settlement resolves all the issues in the case. While Public Counsel has no objection to the Commission setting an effective date earlier than February 28, 2006, once it has completed its deliberations, the Commission should retain the discretion to tie that date to the actual date of its final order, rather than adopting a date certain in the case schedule.

D. Conclusion

For the reasons set forth above, Public Counsel respectfully requests that the Commission not restrict the scope of testimony or hearings in this case, that it provide adequate time for the evidentiary hearing, that it provide for post-hearing briefing by the parties, and that a public comment hearing be scheduled in September in Spokane.

Respectfully submitted.

DATED this 17TH day of August, 2005.

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