

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-050482
	)	
Complainant,	)	DOCKET NO. UG-050483
	)	<i>(consolidated)</i>
	)	
v.	)	RESPONSE IN OPPOSITION OF THE
	)	INDUSTRIAL CUSTOMERS OF
AVISTA CORPORATION d/b/a AVISTA UTILITIES,	)	NORTHWEST UTILITIES
	)	
Respondent.	)	
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**I. INTRODUCTION**

1 Pursuant to WAC § 480-07-375 and Administrative Law Judge (“ALJ”) Caillé’s notice of opportunity to respond, the Industrial Customers of Northwest Utilities (“ICNU”) hereby submits this Response in Opposition (“Response”) to the Joint Motion for Modification of Procedural Schedule (“Motion”) filed by Avista Corporation (“Avista” or the Company), the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) Staff, the Northwest Industrial Gas Users (“NWIGU”) and the Energy Project (“Joint Movants”). ICNU urges the Commission to reject the Motion because it will prevent the parties from developing a complete record for the Commission’s consideration of the settlement agreement among the Joint Movants (“Settlement Agreement”). In particular, the Commission should reject the Joint Movants’ request to limit the issues to be raised in testimony and considered at hearing, as well as the proposal to dramatically shorten the briefing schedule.

## II. BACKGROUND

2                   On March 30, 2005, Avista filed new gas and electric rates in Washington, requesting an increase in electric rates of \$35.8 million, or approximately 12.52%. The Commission suspended Avista's proposed new rates and docketed the proceedings as consolidated Docket Nos. UE-050482 and UG-050483. On May 20, 2005, ALJ Caillé issued a Prehearing Conference Order adopting the following procedural schedule: Staff, Public Counsel and Intervenor testimony due on August 26, 2005; Avista Rebuttal and Cross Answering Testimony due on September 22, 2005; Evidentiary Hearings on October 17-28, 2005; Simultaneous Opening Briefs due on November 23, 2005; and Simultaneous Answering Briefs due on December 9, 2005. The suspension period in this case ends on February 28, 2006.

3                   On August 12, 2005, the Joint Movants filed their Motion and Settlement Agreement proposing a \$24.8 million electric rate increase.<sup>1/</sup> The Settlement Agreement was filed less than two weeks before Staff, Public Counsel and Intervenor testimony is due. The Joint Movants have not submitted testimony in support of the Settlement Agreement, but propose to do so on August 26, 2005. The Settlement Agreement proposes approximately \$13.7 million in specific revenue requirement adjustments to the Company's original proposed rate increase.<sup>2/</sup> ICNU and Public Counsel are not parties to the Settlement Agreement.

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<sup>1/</sup> This figure includes a \$22.1 million increase in base rates and a \$2.7 million increase in the ERM surcharge. Settlement Agreement at 2, 5.

<sup>2/</sup> Settlement Agreement, Attachment A.

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The Joint Movants request that the current procedural schedule be expedited in part to review the proposed Settlement Agreement. The Joint Movants did not propose new briefing dates; however, their proposed schedule would drastically shorten the time available for filing briefs. The Joint Movants also assert that the sole issue to be addresses in testimony and considered by the Commission is whether to approve or reject the Settlement Agreement, and they request a Commission order three months earlier than required by the existing schedule.<sup>3/</sup> The following chart includes the dates in the existing and proposed schedules:

<i>Event</i>	<i>Existing Schedule</i>	<i>Proposed Schedule</i>
Public Counsel, Intervenor and Settlement Parties' Testimony	August 26, 2005	August 26, 2005
All Party Rebuttal and Cross Answering Testimony	September 22, 2005	September 22, 2005
Evidentiary Hearings	October 17-28, 2005	October 17-20, 2005
Simultaneous Opening Briefs	November 23, 2005	No date
Simultaneous Answering Briefs	December 9, 2005	No date
End of Suspension Period	February 28, 2006	December 1, 2005

### III. RESPONSE

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ICNU respectfully requests that the Commission deny the Motion and adopt only minor modifications to the current procedural schedule in order to provide the Commission and the non-settling parties a full and fair opportunity to investigate and review Avista's proposed rate increase. Contrary to the assertions of the Joint Movants, the existence of a Settlement Agreement does not narrow the issues in this proceeding

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<sup>3/</sup> Motion at 1-2.

and should not prevent non-settling parties from being provided an opportunity to fully litigate all issues raised by Avista's original filing and the Settlement Agreement.

6                   The Commission should proceed with the existing schedule. The fact that certain parties have resolved the issues between themselves does not change the nature of the Commission's statutory responsibilities, eliminate Avista's burden of proof to justify an increase in its rates, or reduce the number or complexity of the issues for ICNU and Public Counsel to review and litigate.

**A.     Avista Must Meet Its Burden of Proof to Establish that Its Proposed Rates Are Just and Reasonable Regardless of the Existence of the Settlement Agreement**

7                   The central issue in this proceeding remains whether the rates proposed by Avista (and now agreed to by Staff, NWIGU and the Energy Project) are fair, just, and reasonable.<sup>4/</sup> The Joint Movants would have the Commission ignore its fundamental statutory duty and only review the narrow issue of whether "to approve or reject the Settlement Agreement."<sup>5/</sup> Regardless of the fact that certain parties resolved their contested issues with the Company, the Commission must still review whether the Company's proposed rate increase is justified. In order to determine if the proposed rates are just and reasonable, the Commission must review the Company's original filing, the proposed changes contained in the Settlement Agreement, and the additional changes proposed by all other parties.

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<sup>4/</sup>     RCW § 80.04.130.

<sup>5/</sup>     Motion at 2.

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The fact that Avista has entered into a Settlement Agreement does not alter the Company's burden of proof or eliminate the procedural rights of the non-settling parties. As the proponent of a general rate increase, Avista has the burden of proof to demonstrate that its proposed tariffs are just and reasonable.<sup>6/</sup> This burden includes "the burden of going forward with evidence and the burden of persuasion."<sup>7/</sup> The Company retains this burden throughout the proceeding and must establish "by a preponderance of the evidence" that the rate change is just and reasonable.<sup>8/</sup> The Company is not relieved of this burden merely because it has entered into a settlement with some of the parties in the proceeding.

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The Commission should not unduly expedite this proceeding merely because Staff has reached a settlement of its issues with Avista. Unless conditioned or limited at the time of intervention, the Commission's rules do not distinguish between the procedural or substantive rights of Staff and other intervenors in general rate proceedings.<sup>9/</sup> Staff plays an important role a in general rate case, but it is "an independent party with the same rights, privileges, and responsibilities as any other party."<sup>10/</sup> If Staff truly has the same rights, privileges and responsibilities of other parties, then Staff's settlement of its issues with Avista should not should not result in ICNU and Public Counsel being prevented from fully litigating all the issues that have been raised

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<sup>6/</sup> RCW § 80.04.130(3); WAC § 480-07-540; WUTC v. PacifiCorp, WUTC Docket No. UE-032065, Complaint and Order Suspending Tariff Revisions at ¶ 9 (Jan. 14, 2004).

<sup>7/</sup> WAC § 480-07-540.

<sup>8/</sup> WUTC v. Pacific Power & Light Co., Cause No. U-84-65, Fourth Supp. Order at 13 (Aug. 2, 1985).

<sup>9/</sup> See WAC § 480-07-355(3).

<sup>10/</sup> WUTC v. Avista, WUTC Docket Nos. UE-050482 and UG-050483, Prehearing Conference Order at n.1 (May 20, 2005).

by the proposed rate increase. ICNU and Public Counsel should have the right to conduct discovery, cross-examine witnesses, present evidence, and fully brief and argue the merits of all relevant issues in this proceeding.<sup>11/</sup>

10                   The Settlement Agreement does not appear to be justified on its own merits, because it relies on specific adjustments to Avista's original filing. Thus, any review of the Settlement Agreement must occur in connection with a review of the Company's original filing. ICNU will likely oppose the Settlement Agreement, because the overall rates are not reasonable and do not accurately reflect normalized costs. The existence of a Settlement Agreement should not prevent ICNU and Public Counsel from having a full and fair opportunity to raise and address all relevant issues.

**B.     The Testimony Dates Proposed by the Joint Movants Are Acceptable**

11                   ICNU generally agrees with the Joint Movants proposed due dates for filing testimony; however, the Commission should not limit the issues that the parties may raise in either round of testimony. The Joint Movants do not propose new testimony dates, but they seek to limit the testimony to responding to the Settlement Agreement. Unfortunately, as noted above, it is not possible to evaluate the reasonableness of the Settlement Agreement without considering its relationship to the original filing.

12                   On August 26, 2005, ICNU intends to submit testimony from two witnesses addressing issues regarding the Company's original filing, including but not limited to power costs, proposed changes to the ERM mechanism, cost of capital and return on equity. Since there currently is no testimony supporting the Settlement

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<sup>11/</sup>     See WAC § 480-07-740(2)(c).

Agreement (and such testimony will not be filed until August 26, 2005), ICNU will likely focus on Avista's original filing in its August 26, 2005 testimony. ICNU intends to conduct discovery regarding the Settlement Agreement, the proposed revenue requirement adjustments, and the supporting testimony. ICNU proposes to file rebuttal testimony responding to issues raised by the Settlement Agreement and supporting testimony on September 22, 2005.

**C. It Is Premature to Significantly Reduce the Number of Days Scheduled for the Evidentiary Hearing in this Proceeding**

13 A significant reduction in the number days scheduled for the hearing is not warranted at this time. The current schedule has reserved two weeks for hearings, October 17-28, 2005. The Joint Movants propose four days of hearings, October 17-20, 2005. Since the amount of time necessary for cross-examination is uncertain, it is premature to shorten the number of hearing days.

**D. The Commission Should Retain the Existing Briefing Schedule and Suspension Period**

14 ICNU opposes the Joint Movants efforts to significantly reduce the amount of time all parties have to submit posthearing briefs. Under the existing schedule, the suspension period ends on February 28, 2006, four months after the hearing. The current schedule provides two rounds of briefing, reflects the statutory suspension period, and recognizes that the consideration of issues in this proceeding overlaps with the Thanksgiving and winter holidays. The Joint Movants' proposed schedule moves the end of the suspension period up by nearly three months, and requests that the Commission

issue an order slightly more than one month after the hearing. The Joint Movants have not proposed a briefing schedule, but the time between the hearing and the new proposed end of the suspension period would not provide the parties the opportunity to adequately prepare even one posthearing brief.

15                   The existence of the Settlement Agreement increases, rather than reduces, the issues that must be addressed by ICNU in its briefs. In addition to the issues that would typically be raised in a general rate proceeding, including the adjustments proposed by ICNU and Public Counsel, ICNU will be required to address the new legal and evidentiary issues raised by the Settlement Agreement. Therefore, a shortened briefing schedule is not justified, because ICNU will need to dedicate more, not less time, to address and brief the issues that have been raised in this proceeding.

#### IV. CONCLUSION

16                   The existing procedural schedule in this proceeding will provide the Commission and all parties an opportunity to adequately review and investigate Avista's request to increase its revenue requirement by approximately \$24.9 million. The Commission should not arbitrarily reduce the number of days allotted for hearing or the amount of time that non-settling parties have to prepare their posthearing briefs merely because the Company has resolved its issues with certain parties. Likewise, the issues that can be addressed in testimony and at the hearing should not be unduly limited. ICNU and Public Counsel should be provided a full opportunity to adequately investigate and address all issues raised by the Company in this proceeding.

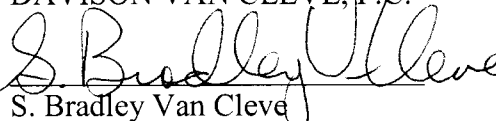


WHEREFORE, ICNU respectfully requests that the Commission deny the motion of Avista, Staff, NWIGU and the Energy Project to modify the procedural schedule in this proceeding.

Dated in Portland, Oregon, this 17th day of August, 2005.

Respectfully submitted,

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