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August 22, 2005

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

Re: *In the Matter of the Request of Avista Corp. d/b/a Avista Utilities for a General Rate Increase*
Docket No. UE-050482/UG-050483

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket are the original and 16 copies of Reply of Commission Staff to Answer/Response of Public Counsel and the Industrial Customers of Northwest Utilities, and Certificate of Service.

Sincerely,



CHRISTOPHER SWANSON
Assistant Attorney General

CS:tmw
Enclosures
cc: Parties



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES

Respondent.

DOCKET NOS. UE-050482

UG-050483

REPLY OF COMMISSION STAFF
TO ANSWER/RESPONSE OF
PUBLIC COUNSEL AND THE
INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES

I. Introduction

1 Pursuant to the notice of opportunity to reply to the responses filed by ICNU and Public Counsel (Opposing Parties) to the Joint Motion for Modification of Procedural Schedule, Commission Staff files this reply. Staff emphasizes that settlement consideration procedures are dictated by the Commission's procedural rules, WAC 480-07, and these procedures provide procedural fairness to all parties. In contrast, Staff believes that the proposal of the Opposing Parties would create a process that is largely unfair. Staff requests adoption of the settlement consideration

process proposed by parties to the Joint Motion (Settling Parties) and urges rejection of the process proposed by the Opposing Parties.

II. The Commission's Settlement Consideration Process Is Consistent With Commission Rules And Policies Underlying Settlement And Is Fair To All Parties.

2 Under WAC 480-07-750, the Commission may decide whether or not to consider a settlement. The Opposing Parties do not advocate that the Commission decline to consider the settlement. Instead, they advocate adoption of a settlement consideration process that is procedurally unfair, is contrary to WAC 480-07-750, and discourages settlement. Since the proposal of the Settling Parties is consistent with the Commission's rules and procedural fairness, and the proposal of the Opposing Parties is not, the proposal of the Settling Parties should be adopted and the proposal of the Opposing Parties should be rejected.

3 Under the Commission's rules and Settling Parties' proposal, if the Commission considers a settlement, it has three options: (1) to accept the settlement; (2) to accept the settlement subject to conditions; or (3) to reject the settlement. WAC 480-07-750. If the Commission decides to reject the settlement, "the litigation returns to its status at the time of the settlement." *Id.* Similarly, if the Commission accepts

the settlement subject to conditions, and the settling parties do not accept the conditions, “the settlement is deemed rejected.” *Id.* This process is fair to all parties.¹

4 The Commission’s settlement procedures properly account for the procedural rights of all parties, while at the same time encouraging settlement by allowing a settlement to be considered on its merits, without the risk to any party that another party’s litigation position will be adopted as a result of a settlement hearing. This is especially important to settling parties since they are—at least at this time—refraining from exercising their right to argue their litigation position in the interest of compromise.

5 Not only are the Commission’s rules fair to all parties because they limit the outcome of the settlement hearing to either acceptance or rejection of the settlement, but they specifically protect opponents of a settlement, since the opposing parties retain the right to fully litigate their opposition to the settlement and “present evidence . . . in support of the party’s preferred result.” WAC 480-07-730(3), WAC 480-07-740(2)(c). Thus, if an opposing party believes that a settlement fails to meet all pertinent legal and policy standards, the opposing party may attack the sufficiency of the evidence supporting the settlement, advocate that the settlement be rejected, and bring evidence supporting its position to the Commission. *Id.* The Opposing Parties,

¹ Any modification of the Commission rules in this instance, pursuant to WAC 480-07-110, undermines the settling parties’ right to rely on the settlement consideration process in the Commission’s rules.

therefore, retain full rights to advocate for their position in the forthcoming settlement hearing. Furthermore, if the settlement is rejected, "the litigation returns to its status at the time of the settlement." WAC 480-07-750. In that event, all parties are given the opportunity to advocate for their preferred outcome, and no parties' rights are violated in the process.

6 The Opposing Parties, on the other hand, propose a process that is, in addition to being inconsistent with Commission rule, unfair to the Settling Parties. Under their proposal, the Commission may simultaneously reject a settlement and adopt the Opposing Parties' litigation position. Since the Opposing Parties' litigation positions may be adopted, the Settling Parties' litigation risk in the settlement hearing increases significantly when compared to the traditional settlement consideration process. At the same time, however, the Settling Parties have foregone their right, as part of the Settlement Agreement, to advocate for their preferred results. Conversely, the Opposing Parties' litigation risk goes down significantly, since they may achieve their preferred results as a result of the settlement hearing, but the settling parties' litigation cases are taken off the table. Thus, the proposed process is unfair to the Settling Parties.

7 Additionally, the Opposing Parties seek to change a process that has been relied on by the settling parties in reaching the settlement. A party should be able to

rely on the procedures set out in Commission rules in deciding whether or not to settle. Adoption of an alternative process at this stage in the proceeding would be unfair to the settling parties and could constitute a violation of the procedural rights of the settling parties.

8 Finally, the proposal of the Opposing Parties is inconsistent with the policy of the Commission encouraging settlement, since it forces the Commission to compare a settlement outcome to a litigation outcome. The testimony of parties may vary greatly depending on the possible outcomes of the settlement hearing. Permitting a litigation outcome to result from a settlement hearing may change the nature of the parties' interests, and encourage divisiveness and litigation. The result will likely be fewer settlements in the future, and a significantly less fair process. Therefore, the proposal of the Opposing Parties should be rejected.

9 In summary, the modification of the settlement process as proposed by the Opposing Parties creates an unfair and unbalanced settlement process and fundamentally changes the rules upon which the settlement was adopted. In contrast, the Commission rules strike the proper balance between advocates and opponents of a settlement by allowing both sides to advocate for their preferred result on the question of adoption of the settlement. Therefore, the Settling Parties' proposal should be adopted and the Opposing Parties' proposal should be rejected.

III. Public Comment Hearing

10 Commission Staff does not oppose Public Counsel's proposal for a public
comment hearing, as long as it gives the Company sufficient time to notify
customers.

IV. The Evidentiary Hearing Dates

11 Commission Staff believes the hearing dates requested in the Joint Motion are
sufficient to address the issues presented in the settlement hearing. Staff does not
object to setting the hearing for the full week of October 17-21, as long as it does not
interfere with the December 1, 2005, effective date of the settlement agreement. Staff,
however, does not believe that any additional hearing time is necessary.

V. Briefing and Testimony Dates

12 Commission Staff believes that one round of briefing is sufficient to address
the issues in this proceeding. Staff believes the issues surrounding approval or
rejection of the Settlement Agreement will be adequately addressed by testimony
and cross-examination in the settlement hearing, and that one round of briefing will
provide sufficient opportunity for all parties to advocate for their preferred result.
Staff is concerned that inserting an additional round of briefing may interfere with
the proposed effective date of December 1, 2005, contained in the Settlement

Agreement. Staff strongly opposes any briefing schedule that interferes with this date, as it is an integral, bargained-for part of the Settlement Agreement.

13 It appears that all parties are in agreement on the dates established for the submission of testimony. Staff reiterates its support of the testimony dates set forth in the Joint Motion.

VI. The Effective Date For Rates Should Be The Date The Commission Approves The Settlement, Which the Settling Parties Request Be Done By December 1, 2005.

14 The Settling Parties have requested implementation of the Settlement Agreement on or before December 1, 2005. Contrary to the arguments of the Opposing Parties, this proposed effective date does not improperly interfere with or limit the maximum statutory period allowed for consideration of this docket pursuant to RCW 80.04.130. The ten-month statutory period that is allowed for suspending a requested rate increase is precisely that—a maximum allowable period. It does not create any “right” on the part of Public Counsel, or ICNU, or any other intervenor to demand that the Commission, in every case, refrain from implementing any rate changes until the end of the statutory maximum (which in this case is February 28, 2006). The Settling Parties’ request that the Settlement be implemented by December 1, 2005, allows more than enough time for sufficient due process for affected parties.

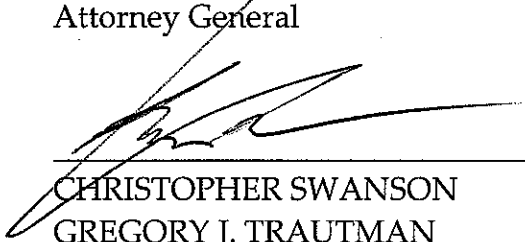
VII. Conclusion

15 Staff believes that the settlement consideration process proposed by the
Settling Parties is consistent with Commission rules and is fair to all parties. Staff
believes that adopting the Opposing Parties' proposal to expand the scope of the
settlement hearing is not. As noted herein, Staff does not oppose certain
modifications to the schedule proposed in the Joint Motion, as long as the
modifications do not result in interference with the terms of the Settlement
Agreement.

16 Therefore, Staff requests that the Commission adopt a settlement
consideration process consistent with the Joint Motion and this reply.

DATED this 22nd day of August, 2005.

ROB MCKENNA
Attorney General

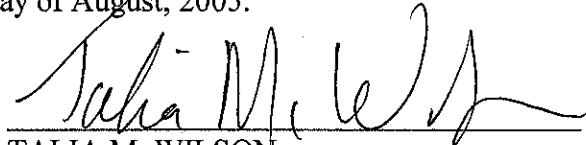


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Counsel for Washington Utilities and
Transportation Commission Staff

Docket No. UE-050482/UG-050483
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 22nd day of August, 2005.



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