BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMISSION.	)	DOCKET NO. UE-050482
	)	and
	)	DOCKET NO. UG-050483
Complainant,	)	
	)	
v.	)	REPLY OF AVISTA
	)	CORPORATION TO
	)	ANSWER/ RESPONSE
AVISTA CORPORATION, D/B/A AVISTA UTILITIES,	)	OF PUBLIC COUNSEL
	)	AND THE INDUSTRIAL
	)	CUSTOMERS OF
	)	NORTHWEST UTILITIES
Respondent.	)	
……	)	

In response to the Joint Motion for Modification of the Procedural Schedule ("Joint Motion") filed by the Signing Parties ("Joint Movants") to the Settlement,[1] both Public Counsel and the Industrial Customers of Northwest Utilities ("ICNU") have filed their respective answers, taking issue with certain aspects of the proposed process for addressing the Settlement Agreement. This reply will address each issue in turn.

I. Dates for Testimony

Neither Public Counsel nor ICNU take issue with prefiling dates for testimony of August 26 and September 22. Indeed, Public Counsel:

> "…supports the proposal that the settling parties [file] 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." (Answer of Public Counsel at p. 2)

[1] The Signing Parties are the Avista Corporation, the Staff of the Washington Utilities and Transportation Commission, the Northwest Industrial Gas Users, and the Energy Project.

Public Counsel does note, however, that it would be "premature to require non-settling parties to limit the August 26 testimony to comment on the settlement alone." (Id.) As will be discussed below, that was clearly not the intent, and opposing parties would be free to file testimony setting forth their "preferred position" as if no settlement position had been reached.[2]

II. Public Comment Hearing

Public Counsel requests a hearing to take public comment, preferably in the month of September; it strongly recommends against a hearing in late October, arguing that customers "at such a late stage in the case have a legitimate concern that their input is meaningless in a process which has nearly concluded." (Id. at p. 2)

Without agreeing with Public Counsel's premise that such input in late October would be "meaningless," Avista, nevertheless, does not object to an earlier date for public input, if that is the preference of the Commission. The date for the public hearing, however, should not occur prior to Octiber 5, 2005, because it will take not less than forty-five (45) days for the Company to complete customer notification of the hearing date through the Company's normal billing cycle, by means of a billing insert.

III. The Scope of the Evidentiary Hearing

Both Public Counsel and ICNU apparently misapprehend the scope of the evidentiary hearing. While the sole issue remains whether or not the Commission should approve or reject the Settlement Agreement, this does not limit Public Counsel's or ICNU's right to present evidence of its choosing and advocate rejecting the Settlement Agreement. Contrary to Public Counsel's suggestion, the proposed schedule does not have the effect of "narrowing the case to exclude other parties from putting on evidence…." (Id. at p. 3). Nor does this have the effect of preventing Public Counsel and ICNU from "fully litigating all the issues that have been raised" or otherwise preclude a "full and fair opportunity to raise and address all relevant issues." (ICNU at para(s) 9-10)

Public Counsel states that it intends to file testimony of four expert witnesses "covering the full range of issues raised by the filing…." (Public Counsel at p. 1)

[2] See WAC 480-07-740(2)(c)

Likewise, ICNU offers that it will submit testimony of two witnesses, covering an array of issues, including power costs, proposed changes to the energy recovery mechanism (ERM), cost of capital and return on equity. (ICNU at para. 12) ICNU also proposes to conduct discovery regarding the Settlement Agreement, the proposed revenue requirement and the supporting testimony, and to file rebuttal testimony concerning the Settlement Agreement on September 22, 2005. (Id.) Avista asserts that nothing would prevent Public Counsel and ICNU from doing what they intend. They remain free to argue for their "preferred result," as context for whether the Commission should approve this Settlement.

WAC 480-07-740(2)(c) clearly sets forth the rights of opponents to a proposed settlement:

> Parties opposed to the commission's adoption of a proposed settlement retain the following rights: The right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal; and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result.

All of these identified "rights" have been preserved in what Joint Movants have proposed.

What needs to be clear, however, is what is at issue before the Commission when it takes up this Settlement Agreement. It is being asked to approve the Settlement Agreement as a fair and reasonable resolution that appropriately balances competing interests, based on what is ultimately in the "public interest."[3] The Commission, however, is not, through this process, being asked to arrive at, e.g., an alternative revenue requirement. While Public Counsel and ICNU may argue for a different "preferred result" with respect to any issues, the sole issue still remains whether the Settlement Agreement should be approved, notwithstanding advocacy for a different "preferred result."

Should the Commission ultimately reject the Settlement Agreement, the Signing Parties should themselves be free to sponsor their own litigation positions, and the

[3] Accordingly, the Commission is being asked to approve or reject the Settlement Agreement. While the Commission is also free to "condition" or otherwise modify the Settlement Agreement, the Signing Parties, as is customary, have reserved the right to withdraw from the Settlement Agreement, if such conditions or modifications prove unacceptable. (See Settlement Agreement at paragraph 19)

schedule would be modified accordingly. For example, the Company would argue for a higher revenue requirement, absent the Settlement Agreement.

The provisions of WAC 480-07-750 clearly address what the Commission may do with respect to a contested settlement:

> WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement. (1) The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.
>
> (2) If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.
>
> (a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement.
>
> (b) If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and (a) of this subsection applies.

In short, the Commission may accept, with or without conditions, the proposed Settlement Agreement. If it rejects the Settlement Agreement, the litigation returns to its prior status and the hearing schedule is adjusted accordingly.

IV. The Evidentiary Hearing Dates

Public Counsel and ICNU object to the proposal to set aside only four days for hearings on the Settlement Agreement. (Public Counsel at p. 14; ICNU at para. 13). Avista, while believing that this matter can be heard in four days, certainly does not object to providing whatever time is necessary during the weeks of October 17-28, 2005 to hear this matter.

V. Briefing Schedule

While the issues before the Commission should be sufficiently clarified through testimony in support of, or in opposition to, the Settlement Agreement, Avista does not

object to a round of simultaneous briefs if that would prove helpful to the Commission. In no event, however, should the briefing schedule impinge on the proposed effective date of the Settlement Agreement of December 1, 2005, for the reasons discussed below.

VI. Effective Date of December 1, 2005

Joint Movants requested implementation of the Settlement Agreement on or before December 1, 2005. As set forth in the Joint Motion, the proposed effective date is an "integral part" of the Settlement Agreement that was bargained for and was the result of trade-offs made on a variety of issues. Moreover, the proposed "effective date" of on or before December 1, 2005, is approximately three and one-half (3 ½) months from the filing date of the Settlement Agreement, and allows more than enough time for sufficient due process for affected parties. [4]

VII. Conclusion

The Commission is not being asked to cross "uncharted territory" in approving this Settlement Agreement in the manner proposed by Joint Movants. WAC 480-07-740 clearly sets forth the rights of affected parties. WAC 480-07–750 describes the actions available to the Commission. Those opposed to the Settlement Agreement are entitled to set forth their "preferred positions" on the issues, and, in doing so, contend that the Settlement Agreement is not in the "public interest." Sufficient time is also provided for the prefiling of testimony (indeed, no party objects in that regard). At the end of the day, however, when all the evidence and argument is in, the Commission is being asked to determine whether this Settlement Agreement appropriately balances competing concerns, and is in the "public interest," or whether further litigation is warranted.

[4] The eleven month statutory period represents the maximum period during which rates may be suspended, from which one should not infer that any investigation of proposed rates must utilitize the entire suspension period.

Respectfully submitted this 22nd day of August, 2005.

By:_____
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VP, Chief Counsel for Regulatory
and Governmental Affairs