

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET NO. UE-050482
TRANSPORTATION COMMISSION,	)	and
	)	DOCKET NO. UG-050483
Complainant,	)	<i>(Consolidated)</i>
)	
v.	)	ORDER NO. 04
)	
AVISTA CORPORATION d/b/a	)	GRANTING MOTION TO MODIFY
AVISTA UTILITIES,	)	PROCEDURAL SCHEDULE TO
	)	CONSIDER PROPOSED
Respondent.	)	SETTLEMENT, SUBJECT TO
.....	)	CONDITION

1 **PROCEEDINGS:** On March 30, 2005, Avista Corporation d/b/a Avista Utilities (Avista or the Company) filed certain tariff revisions to its currently effective Tariff WNU-28 and Tariff WN U-29 designed to effect a general rate increase in its electric service (UE-050482) and gas service (UG-050483) in Washington. The proposed revisions provide for general rate increases of 11.4 percent for the electric tariffs and 1.7 percent for the gas tariffs. The Commission, by Order No. 01, suspended the operation of the general tariff revisions and consolidated the dockets for hearing.

2 The Commission conducted a prehearing conference on May 18, 2005, and established a procedural schedule. The schedule included dates for settlement discussions among the parties, dates for prefiling testimony, and hearing dates.

3 **PARTY REPRESENTATIVES:** David J. Meyer, Avista VP and Chief Counsel, Spokane, Washington, represents the Company. Edward A. Finklea and Chad

M. Stokes, Cable Huston Benedict Haagensen & Lloyd LLP, Portland, Oregon, represent Northwest Industrial Gas Users (NWIGU). S. Bradley Van Cleve and Matthew W. Perkins, Davison Van Cleve P. C., Portland, Oregon, represent Industrial Customers of Northwest Utilities (ICNU). Ronald L. Roseman, attorney, Seattle, Washington, represents the Energy Project. Simon J. ffitich, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Gregory J. Trautman and Christopher Swanson, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff ("Commission Staff or Staff").

4 **MULTI-PARTY SETTLEMENT FILING; MOTION TO MODIFY PROCEDURAL SCHEDULE.** On August 12, 2005, Staff filed a multi-party settlement agreement executed by Staff, Avista, NWIGU, and the Energy Project ("Settlement Parties"). Public Counsel and ICNU do not agree to the proposed settlement. The Settlement Parties argue that their agreement is in the public interest, and should be approved and adopted by the Commission to resolve all issues in this proceeding.

5 The Settlement Parties also filed a Joint Motion for Modification of Procedural Schedule. They propose to use existing dates in the procedural schedule for Response Testimony and Rebuttal Testimony to provide opportunities for all parties to file testimony concerning the Settlement Agreement. The Settlement Agreement provides that Avista will offer its prefiled direct testimony into evidence in support of the settlement.

6 The Joint Motion does not propose to limit the opportunity of those opposing the settlement to file their Response Testimony, or Avista's opportunity to file Rebuttal Testimony, as previously scheduled. The Settlement Parties also propose that a hearing on the proposed settlement be held during the time currently scheduled for the evidentiary hearing. The Joint Motion makes no

specific request with respect to post-hearing process (*e.g.*, briefs), but does request that the Commission enter an order approving the settlement, including the revised tariff sheets in "Attachment D" to the Settlement Agreement, on or before December 1, 2005.

- 7 Public Counsel and ICNU, in their responses to the Settlement Parties' Joint Motion, argue that the settlement should be rejected and that alternative proposals as to which they wish to offer evidence (*i.e.*, Response Testimony), as currently scheduled, should be the basis for resolving the issues. Public Counsel and ICNU do not object to using the currently scheduled dates for filing testimony concerning the Settlement Agreement, or to initiating hearings on October 17, 2005. They do object to any shortening of the existing schedule for briefing to allow for a Commission order by December 1, 2005.
- 8 **PROCESS AND PROCEDURAL SCHEDULE:** The Commission's procedural rules address in considerable detail the process by which settlements, including multi-party settlements, will be considered. WAC 480-07-740. The Joint Motion is consistent with our rules, including WAC 480-07-740(2)(c), which states the rights of opponents of a proposed settlement. The Commission will consider the proposed settlement in the fashion described in WAC 480-07-740, subject to the condition discussed below in paragraphs 14 and 15.
- 9 The Commission revises the current procedural schedule and establishes the procedural schedule that is attached to this Order as Appendix A, which is incorporated into the body of this Order by this reference. The revised schedule allows parties to prefile testimony concerning the proposed settlement, and Response, Rebuttal and Cross-Answering testimony as previously scheduled, if they wish. All prefiled testimony will be subject to cross-examination.

10 Two dates remain to be determined. The Commission will hold a public comment hearing in Spokane on one of the following dates:

- October 11, 2005 – 4:00 p.m. – 6:00 p.m.
- October 14, 2005 – 12:00 noon – 2:00 p.m.
- October 17, 2005 – 4:00 p.m. – 6:00 p.m.

11 The parties should inform the Commission by letter of their first, second, and third preferences. Any party that wishes to state preferences must inform the Commission by transmitting electronically to Records Center and ALJ's Caillé and Moss a courtesy copy of the required letter by 12:00 noon on August 26, 2005.

12 The date for briefs will be determined once the settlement hearing is concluded.

13 The evidence presented during the settlement hearing will be considered at this stage of the proceeding only as the basis for the Commission's determination to accept the proposed settlement, with or without condition, or to reject it, as provided in WAC 480-07-750(2). If the Commission rejects the proposed settlement or conditions acceptance on terms unacceptable to one or more of the Settlement Parties, this docket will return "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." WAC 480-07-750(2).

14 If we return to the status quo ante following the settlement consideration process, the Commission will schedule a prehearing conference and will establish a procedural schedule that will provide opportunities for the Settlement Parties to file testimony urging such adjudicated resolution of the issues as they deem appropriate (*e.g.*, Staff will be given an opportunity to file what would have been its Response Testimony had a settlement not been negotiated; Avista

will have an opportunity to file rebuttal to such testimony; all parties will be allowed to file cross-answering cases regarding litigation positions on the issues that are different from resolutions proposed in the Settlement Agreement). Additional hearing dates can be established to allow for cross-examination on any new testimony. The Commission may establish a new briefing schedule, consistent with the needs of the case. Given that such additional process may be required, we find it prudent to condition our agreement to consider the proposed settlement as discussed below.

15 **WAIVER OF SUSPENSION DATE.** The suspension date in this docket is February 28, 2006. The Commission, consistent with WAC 480-07-740(1)(e), will endeavor to enter its order accepting the Settlement Agreement, with or without condition, or rejecting it, by December 1, 2005, as requested. With three full months between these two dates, it is most likely that the Commission would be able to conduct the additional process described in the preceding paragraph by the suspension date if the settlement is rejected or “deemed rejected,” as provided in WAC 480-07-750(2). However, considering the intervening holidays and the Commission’s full hearing calendar, we find it prudent to condition the exercise of our discretion under WAC 480-07-750(1) to review the Settlement Agreement.

16 Consistent with the provisions of WAC 480-07-750(2)(a), we will review the Settlement Agreement as discussed in this Order only if Avista agrees that it will waive the suspension date for a period not to exceed the time required for Commission review of the settlement, if such a waiver is required to permit the Commission to complete the additional process described above. The Commission would endeavor to avoid such an unlikely scenario and to complete any further process within the existing time frame, but we find that Avista’s agreement on this point is important as a cautionary measure. The Company

should immediately inform us by letter whether it accepts or rejects this condition to this Order.¹

DATED at Olympia, Washington, and effective this 24th day of August, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PHILIP B. JONES, Commissioner

¹ Avista should provide a courtesy copy of its letter via e-mail to the Commission's Records Center, to presiding ALJs Caillé and Moss, and to all parties.

APPENDIX A – REVISED PROCEDURAL SCHEDULE

EVENT	DATE
Avista's Prefiled Direct Testimony	April 4, 2005
Settlement Conferences	June 28 -30 and August 3, 2005
Public Counsel and ICNU Response Testimony; All parties' initial testimony regarding proposed settlement	August 26, 2005
Public Comment Hearing	T/B/D (October 11, 14, or 17, 2005)
All parties' response testimony regarding proposed settlement; (Rebuttal Testimony to Public Counsel and ICNU Response Testimony filed on August 26, 2005, is optional; Cross-Answering Testimony is optional)	September 22, 2005
Cross-examination Exhibit Exchange	October 12, 2005
Settlement Hearing	Begins October 17, 2005
Simultaneous Briefs	T/B/D*
Requested Effective Date for Settlement Rates, if approved	December 1, 2005

***Briefs must be submitted via e-mail by 12:00 noon on the date that will be determined at hearing. This is necessary to meet the Commission's internal distribution schedule. Briefs must be simultaneously provided in electronic format to all party representatives. Parties must initiate mail or courier delivery of originals and required copies by COB on the scheduled date.**