

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a AVISTA  
UTILITIES

Respondent.

DOCKET PG-082253

SETTLEMENT AGREEMENT

1           This Agreement is entered into for the purpose of resolving all issues raised in this docket. This Agreement is subject to approval by the Washington Utilities and Transportation Commission (“Commission”), and is not effective before such approval. The documents constituting the agreement of the Parties are this “Settlement Agreement” and Appendix A attached hereto, collectively called the “Agreement” herein. Appendix A is a copy of the May 13, 2010, Commission Staff Investigations Report on the natural gas explosion and fire occurring in Odessa, Washington on December 26, 2008.

**I. PARTIES**

2           The parties to this Agreement are the Respondent, Avista Corporation, d/b/a Avista Utilities (“Avista” or “Company”), and the Staff of the Commission (“Staff”) (collectively, “the Parties”).

## II. BACKGROUND

3 Avista is a public service company subject to Commission regulation under Title  
80 RCW. As pertinent to this Settlement Agreement, Avista operates as a “gas company”  
as that term is defined in RCW 80.04.010. Avista owns and operates a natural gas  
distribution system in Eastern Washington. Avista serves residential, commercial and  
industrial customers with natural gas, under tariffs subject to Commission regulation.  
Avista is subject to Commission safety rules applicable to natural gas pipelines. *E.g.*,  
RCW 81.88.065.

4 On December 26, 2008, a natural gas explosion and fire occurred in the vicinity of  
206 North Birch Street in Odessa, Washington. Two people were injured in the incident  
and the explosion and fire damaged a garage and secondary living quarters.

5 The fuel source of the explosion and fire was natural gas. The gas leaked from a  
section of pipe located under a nearby alley that abuts the lot at 206 North Birch Street.  
The pipe was a two-inch (2”) pipeline main. The main was owned and operated by  
Avista.

6 Gas leaked from the main because the main had a through-wall fracture. The  
through-wall fracture was caused by rock impingement on the main. The ditch in which  
Avista installed the main contained several rocks in the vicinity of the fracture.

7 After receiving notification of the incident, Avista promptly investigated the  
incident. Among other things, Avista promptly notified the Commission of the incident,  
notified the National Response Center of the incident, monitored gas readings in the soil  
and footings of homes around the incident site, evacuated individuals, and excavated the  
damaged section of pipe, and took steps to document and preserve evidence.

8 Avista is responsible for the construction and maintenance of an extensive natural gas pipeline system. Avista has numerous programs and procedures in place to seek to ensure that its system is safe. Avista promptly notified the Commission of the incident alleged in the Complaint. Avista also fully cooperated with the Commission Staff's investigation and conducted its own investigation of the incident. The incident does not represent knowing or intentional conduct by Avista that was gross or malicious.

9 On May 13, 2010, Staff issued an Investigation Report (Appendix A) listing probable violations of WAC 480-93-185 (gas leak investigations) and WAC 480-93-10 (compliance with Federal Standards [49 CFR Part 192] regarding need for proper support and appropriate backfill to prevent damage to pipe).

10 On June 8, 2010, the Commission, based on the Investigation Report (Appendix A), issued its Complaint in Docket PG-082253. The Complaint summarized the alleged violations in the following areas:

- a. It alleged that Avista violated WAC 480-93-185(2), because it removed the section of gas main that contained the fracture before the Commission (or the lead investigative authority, if that authority was not the Commission) designated the release of that gas facility.
- b. It alleged that Avista violated former WAC 480-93-010, because the material in the ditch in which Avista placed the main did not provide a "firm support under the pipe," nor did it "prevent damage to the pipe" as the rule required.
- c. It alleged that Avista violated RCW 80-28-010(2), because the main pipeline facility was not safe, adequate and efficient, nor just and reasonable, because Avista did not install that facility in compliance with Commission rules discussed in the Complaint.

11 A prehearing conference was held on July 16, 2010. The only intervention was through counsel for the individuals injured in the incident; Mr. Reyes and Ms. McClure. They subsequently withdrew their intervention on November 29, 2010, and the

Commission authorized that withdrawal by Order dated December 2, 2010. (The injured individuals had previously reached a settlement of all issues between them and Avista pertaining to this incident.)

12            Since issuing its Investigation Report (Appendix A), Staff has been discussing with Avista ways to resolve the issues now presented in this docket, in a manner that assures present and future compliance with applicable Commission laws and rules. Both Parties share the goal that Avista's pipeline facilities be operated in compliance with Commission laws and rules related to the safe operation of those facilities.

### III. AGREEMENT

13            The Parties have reached agreement on how to resolve the issues raised in this docket and wish to present their agreement for the Commission's consideration and approval. The Parties voluntarily enter this Agreement without hearing or adjudication of any issues of fact or law to resolve the matters in dispute between them in what each Party believes is an appropriate manner, and to avoid the expense, time and uncertainty litigation. The following items reflect the agreement of the Parties resolving all issues in this proceeding:

1. Avista will offer enhanced education annually for each of the next 3 years and then periodically as needed, after consultation with Staff, for city, county, and state personnel responsible for excavations (or their inspectors) in the vicinity of Aldyl A pipe, stressing the importance of providing firm support under and around the pipe through the use of proper backfill and soil compaction, in order to reduce the risk of damage to the pipe. This education shall, at a minimum, include the distribution of written materials, as well as invitations to attend periodic training sessions conducted by Avista for those performing work in areas in and around Aldyl A pipe; this training will also be provide for Company personnel supervising or performing such work. Avista will notify Commission Staff at least three business days in advance of each training session so Staff personnel may observe the training if they wish. Avista will maintain a list of the dates and locations of training for later

Commission review. Additionally, Avista will annually mail the written materials to contractors on the list maintained by Avista per 49 C.F.R. §192.614(c)(1). Avista will provide a copy of the written materials to Commission Staff for comment at least 30 days before Avista uses the materials in training or provides them to contractors, whichever occurs first.

2. When Avista's gas inspectors (and Avista employees with the gas inspector duties relevant to excavations involving Avista gas facilities) become aware through the normal course of business (e.g., through preconstruction planning meetings) of excavations that are to be performed in the vicinity of Aldyl A pipe located in business districts in which annual leak surveys are performed, Avista will perform an inspection of the soil composition as it relates to providing proper support under the affected pipe, and maintain a record of the same. (See also item 3, below). Avista will use its best efforts to inform employees described in this paragraph of the requirements of this paragraph and the following paragraph, and the need to follow such requirements. "Business district" takes its definition from WAC 480-93-005(3).
3. With reference to any "Exposed Pipeline Inspection Report" to be completed by Avista in connection with excavations in the vicinity of Aldyl A pipe, in addition to recording information regarding the condition of the pipe, Avista will record the existing state of soil composition found at the time and identify appropriate and reasonable remedial measures, if any. Such remedial measures may include, but not be limited to, further excavation and inspection of immediately adjacent pipe and more frequent leak surveys of the affected areas, replacement, etc.
4. Avista will continue to evaluate leak survey results by type of installed pipe, in order to determine the prevalence of leaks over time, and identify issues or trends of concern relating to Aldyl A mains or services. Avista will perform annual leak surveys of Aldyl A mains installed prior to 1987; these surveys shall be performed in each of the three years following approval of this Settlement, and periodically thereafter as warranted, after consultation with Staff. Avista and Staff will meet and confer not later than three years from the date this Settlement is approved for the purpose of discussing results of ongoing leak survey results and any issues pertaining to Aldyl A mains or services.
5. Coincident with the filing of its PHMSA Form F7100.1-1, Annual Report For Gas Distribution System with the Commission, Avista will also file with the Commission in this docket a copy of all leak survey reports on Aldyl A pipe (both for mains and for services) performed during the preceding year.

6. Avista will pay a monetary penalty to the Commission of two hundred thousand dollars (\$200,000); in so doing, the Company acknowledges there were violations of Commission rules by Avista regarding the gas main in the vicinity of the accident. This amount shall be due and payable within fifteen calendar days after the date of the Commission's order approving this Agreement.

The Parties understand Avista will include the information it obtains from the activities described in items 2-4 above in evaluating the risks presented on Avista's gas pipeline system, including the risks, if any, presented by a specific type of pipe. For purposes of items 1-3 above, Avista will use the applicable standards for determining or evaluating proper support of pipe, compaction, trenching, etc., such as the standards contained in Avista's *2010 Gas Standards Manual*, Section 3.15 – "Trenching & Backfilling."

#### **IV. GENERAL PROVISIONS**

##### **Nature of the Agreement**

14 The Parties agree that this Agreement is an appropriate settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is subject to Commission approval and it is not effective unless and until it is approved by the Commission.

15 Nothing in this Agreement is intended to limit or bar any other entity from pursuing legal claims, or to limit or bar Avista's ability to assert defenses to such claims.

16 Nothing in this Agreement limits or bars the Commission from pursuing penalties for violations of Commission statutes and rules unrelated to the subject matter of this Agreement. Nothing in this Agreement limits or bars the Commission from pursuing penalties for violations of Commission statutes and rules that are related to the subject

matter of this Agreement, but which violations occurred after the date this Agreement was executed.

17           The Commission Staff understands that as a result of the steps Avista has agreed to take (described above), additional conditions may be found that constitute violations of Commission laws and rules. Staff agrees that so long as these violations are of the same type as those listed in Appendix A, and if Avista meets its obligations set forth above, Staff will not recommend additional sanctions be pursued by the Commission for such violations.

18           The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against either Party because it was a drafter of this Agreement.

#### **Integrated Terms of Settlement**

19           The Parties have negotiated this Agreement as an integrated document to be filed with the Commission only upon execution. Once the Agreement is executed, the Parties agree to support the Agreement in its entirety. This Agreement supersedes all prior oral and written agreements on issues addressed herein, if any.

#### **Publicity**

20           Each Party agrees to provide all other Parties the right to review in advance of publication any and all announcements or news releases that any other Party intends to

make about the Stipulation (with the right of review to include a reasonable opportunity to request changes to the text of such announcements). Each Party also agrees to include in any news release or announcement a statement to the effect that the Commission Staff's recommendation to approve the Stipulation is not binding on the Commission itself.

### **Manner of Execution**

21 This Agreement is considered executed when all Parties sign the Agreement. A designated and authorized representative may sign the Agreement on a Party's behalf. The Parties may execute this agreement in counterparts. If the Agreement is executed in counterparts, all counterparts shall constitute one agreement. An Agreement signed in counterpart and sent by facsimile is as effective as an original document. A faxed signature page containing the signature of a Party is acceptable as an original signature page signed by that Party. Each Party shall indicate the date of its signature on the Agreement. The date of execution of the Agreement will be the latest date indicated on the signatures.

### **Procedure**

22 Once this Agreement is executed, the Parties agree to cooperate in promptly filing this Agreement with the Commission for approval. The Parties agree to support approval of this Agreement in proceedings before the Commission, through a narrative statement and, if required by the Commission, with testimony and briefing. However, if there is an applicable provision of law (e.g., statute, ordinance, order, or rule), effective after the date this Agreement is executed but before it is approved, and that provision of law changes the posture of the Agreement in either Party's view, comments may be made to



the Commission as to how the Agreement should be viewed in light of that order, rule or policy statement. The Parties understand that, for as long as this Agreement is effective, if an applicable provision of law imposes upon Avista a requirement more stringent than a requirement in this Agreement, the more stringent requirement applies.


23 The Parties understand that the Commission will decide the appropriate procedures for presentation and consideration of the Agreement.

24 In the event that the Commission rejects all or any portion of this Agreement, each Party reserves the right to withdraw from this agreement by written notice to the other Party and the Commission. Written notice must be served within 10 business days of the date of the Commission order rejecting all or any portion of this Agreement. In such event, neither Party will be bound or prejudiced by the terms of this Agreement. The Parties will jointly request a prehearing conference for purposes of establishing a procedural schedule to complete the case.

**No precedent**

25 No Party shall be deemed to have agreed that this Agreement is precedent for resolving any issues in any other proceeding, other than a proceeding for enforcement of this Agreement.

**For Commission Staff:**

  
Donald T. Trotter  
Assistant Attorney General

1/7/2011

\_\_\_\_\_  
Date signed:

**For Avista:**

David J. Meyer  
Vice President, Chief Counsel for  
Regulatory & Governmental Affairs

\_\_\_\_\_  
Date signed:

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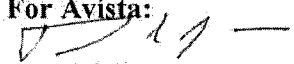
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**For Commission Staff:**

Donald T. Trotter  
Assistant Attorney General

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Date signed:

**For Avista:**

  
David J. Meyer  
Vice President, Chief Counsel for  
Regulatory & Governmental Affairs

1/7/11  
Date signed: