BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	
AVISTA CORPORATION, D/B/A AVISTA UTILITIES,	)	
	)	
	)	DOCKET NO. UE-061411
For an Order Approving Avista's Update of its Base Power Supply and Transmission Costs	)	
	)	
	)	

ANSWER OF AVISTA CORPORATION TO MOTION TO DISMISS

DAVID J. MEYER
Vice President and Chief Counsel for
Regulatory and Governmental Affairs
Avista Corporation
1411 E. Mission Avenue
Spokane, Washington 99220-3727

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DESCRIPTION OF THE LIMITED NATURE OF THE FILING 3

III. THE RECENTLY-CONCLUDED GENERAL RATE CASE OF AVISTA PROVIDED AN OPPORTUNITY TO REVIEW ALL OTHER COST COMPONENTS 9

IV. THE COMMISSION RETAINS CONSIDERABLE DISCRETION UNDER THE LAW, WHEN REGULATING IN THE "PUBLIC INTEREST" 12

V. THERE IS AMPLE PRECEDENT IN THIS STATE FOR UPDATING COSTS OUTSIDE THE CONTEXT OF A GENERAL RATE CASE 15

VI. AVISTA'S P/T UPDATE FILING DOES NOT VIOLATE COMMISSION RULES GOVERNING GENERAL RATE CASES 20

VII. CONCLUSION 22

TABLE OF AUTHORITIES

Page

Cases

F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 62 S.Ct. 736 (1942) 13

Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) 2, 13

Gorman v. Garlock, Inc., 121 Wn. App. 530 (2004) 5

People's Organization for Washington Energy Resources (POWER) v. Utilities & Transp. Comm'n, 104 Wn.2d 798, 711 P.2d 319 (1985) 13

Pub. Counsel v. Washington Utilities & Transp. Comm'n, 128 Wn. App. 818, 116 P.3d 1064 (2005) 14

U.S. West Communications, Inc. v. Washington Utilities & Transp. Comm'n, 134 Wn.2d 74, 949 P.2d 1337 (1997) 13, 14

Statutes

RCW 80.28.010(1) 12

RCW 80.28.020 ..... 2, 12

WAC 480-07-110 22

WAC 480-07-505 ..... 20, 21, 22

WAC 480-07-510 20

WAC 480-09-310 21

Rules

Washington Superior Court Civil Rule 12(b)(6) 5

Washington Superior Court Civil Rule 12(c) 5

Other Authorities

Application of Puget Sound Energy re: Colstrip, Third Supp. Order Approving Sale (Docket No. UE-990267) (September 30, 1999) 13

In re Petition of Avista, Order No. 03, "Order Approving Settlement Agreement" (Docket No. UE-060181) (June 16, 2006) 4

WUTC v. Avista, Order No. 05, "Approving and Adopting Settlement Agreement With Conditions" (Docket No. UE-050482) (December 21, 2005) 10

WUTC v. Puget, Twelfth Supplemental Order (Docket Nos. UE-011570/UG-011571) (June 20, 2002) 19

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of AVISTA CORPORATION, D/B/A AVISTA UTILITIES, For an Order Approving Avista's Update of its Base Power Supply and Transmission Costs	)	DOCKET NO. UE-061411

ANSWER OF AVISTA CORPORATION TO MOTION TO DISMISS

1 COMES NOW Avista Corporation (hereinafter "Avista"), by and through its undersigned counsel, and respectfully answers the Motion to Dismiss filed by The Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Attorney General's Office ("Public Counsel") on October 26, 2006 (hereinafter "Motion").

I. INTRODUCTION

2 In its Motion, ICNU and Public Counsel raise a number of arguments concerning rate case filing requirements, single-issue ratemaking, and whether Avista's filing otherwise violates the "matching" principle and the prior ERM Stipulation entered into earlier this year. Accordingly, ICNU and Public Counsel (hereinafter "Movants") seek to have Avista's filing dismissed, albeit without prejudice to Avista refiling a general rate case.

3 Unfortunately, if Movants' arguments were correct – i.e., that this Commission cannot legally entertain this filing to update production and transmission costs – it would

call into question the Commission's regulatory discretion to approve any number of rate adjustments outside of a general rate case. For example, the Commission could not legally have approved Puget's Power Cost Only Rate Case ("PCORC"), which serves to adjust rates outside the context of a general rate case. Nor, for that matter, could this Commission have legally approved the Company's Energy Recovery Mechanism ("ERM"), as it did in 2001, and as most recently extended by Order of this Commission in June of 2006. Stated differently, this Commission has wide latitude under the law to entertain and approve rate adjustments outside the context of a general rate case. That discretion has been exercised repeatedly in the past 20 years, and is an important regulatory tool in the Commission's "tool kit." This has become increasingly apparent in the past several years, as the need for prompt regulatory action has arisen in the context of a very fluid and dynamic energy market.

4 As will be discussed below, this Commission is not legally prohibited from entertaining this filing; nor, for that matter, is it legally compelled to ultimately approve the specific rate relief requested in Avista's filing.[1] In short, this Commission has sufficient discretion, under the law, to entertain this filing, and it is being asked to review all of the circumstances providing the context for this filing: These include the recent completion of a general rate case for Avista less than a year ago (see Docket Nos. UE-050482/UG-050483), in which all costs were reviewed, as well as the recent review of the ERM mechanism in June of this year. Avista's filing should be seen for what it is – a stand-alone application to update certain discreet, well-defined costs in the immediate

[1] This is subject, of course, to the statutory strictures that rates shall be "just, fair, reasonable and sufficient," under RCW 80.28.020, as well as the Supreme Court's guiding pronouncements in the Hope Natural Gas case, that "the end result" must be reasonable. Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

aftermath of a general rate case. In these circumstances, it is altogether appropriate for the Commission to exercise its regulatory discretion and proceed with a hearing, at the conclusion of which, the Commission can assess, in light of all the evidence, whether it is appropriate to update certain production and transmission costs. It should be remembered that Avista, in this filing, is not asking for ongoing authority to establish a cost recovery mechanism separate and apart from a general rate case; as mentioned above, it is simply attempting to update certain discreet, well-defined cost categories (i.e., production/transmission) that were part of a recently litigated general rate case.

5 In the final analysis, Movants' legal position, if accepted, would lead to an untenable result – namely, that every rate adjustment must be packaged as part of a general rate case. This would have major regulatory implications and deprive this Commission of the rate-setting flexibility that it has freely exercised for many years. The Commission must be free to examine the circumstances of each filing, and the Commission should not summarily dismiss this case.

II. DESCRIPTION OF THE LIMITED NATURE OF THE FILING

6 Before moving to a discussion of the procedural/legal objections lodged by Movants, it is important to have a clear understanding of the limited scope of Avista's filing. Avista has requested approval of an update to the Company's base power supply (production) and transmission costs – hence, the abbreviated reference to the filing as a Production/Transmission Update or P/T Update. In that sense, it is similar in form to Puget's Power Cost Only Rate Case, in that it requests an update to production and transmission costs that are related, in Avista's case, to its ERM.

7 As explained in the pre-filed direct testimony of Avista witness Norwood, the proposed increase of $28.9 million or 8.8% is "driven primarily by additional investments in Avista's hydroelectric and thermal generating plants, and transmission system, together with the continuing high power supply costs to serve growing retail load requirements." (Pre-filed Direct at p.2, ll.5-8). In its filing, Avista identified the components of the revenue requirement increase as follows: The cost of power to serve load growth constituted 45% of the increase; other net increases in power supply expenses, primarily fuel costs, represented 26% of the increase; additional investment in generating plant represented 20%; and the transmission component, composed of transmission revenue and expenses and transmission investment, constituted the remaining 9% of the total. (Id. at p.2, l.20 – p.3, l.2).[2]

8 In short, the specific items that are included in the P/T Update are those fixed and variable cost items that are related to the base revenues and expenses included in the ERM.[3] Therefore, as explained in the Company's filing, both the ERM and this P/T Update include the following items of revenue and expense: Revenues – wholesale sales revenues, transmission revenues, and revenues from the sale of thermal fuel (natural gas); Expenses – purchased power expenses, transmission expenses, and thermal fuel expenses. In addition, the Retail Revenue Credit in the ERM is designed to capture

[2] Because the Company has been successful in buying down higher-cost debt, its average cost of debt has declined from 8.44% in the last rate case to 8.22%. As explained by the Company, although this reduction in interest expense is not power supply or transmission-related, the Company thought it only reasonable to pass along to customers this reduction in interest expense, resulting in a reduction in the revenue request of approximately $1.0 million. (Pre-filed Direct of Avista witness Norwood, supra at p.3, ll.7-10.)

[3] In the recent Settlement Agreement relating to the ERM, approved by the Commission on June 16, 2006, the ERM was modified to include transmission revenue and expense categories, and the Retail Revenue Credit was modified to include the fixed and variable costs associated with transmission. (See Order No. 03, "Order Approving Settlement Agreement" (Docket No. UE-060181) (June 16, 2006)).

changes in that portion of retail revenues, associated with increases or decreases in retail load, that are directly related to fixed and variable production and transmission costs. (Id. at p.6, l.15 – p.7, l.9)[4]

9 Citing to Washington Superior Court Civil Rule (CR) 12(b)(6) and 12(c), Movants argue that dismissing a case is appropriate when "it appears beyond doubt that the [non-moving party] can prove no set of facts that would justify recovery." (Citing, Gorman v. Garlock, Inc., 121 Wn. App. 530, 534 (2004)). Given the circumstances of this filing, and the testimony pre-filed with the Commission, Movants simply cannot sustain the argument, "beyond doubt" that there are "no set of facts that would justify recovery." (Id.) Avista has presented substantial, compelling information with respect to specific revenue and expense changes in its filing, as discussed above. These relate to wholesale sales revenues, transmission revenues and revenues from the sale of thermal fuel; with respect to expenses, substantial information has been provided relating to purchase power expenses, transmission expenses and thermal fuel expenses.

10 The pre-filed testimony of Mr. Norwood provides information with respect to the factors driving the need for the proposed rate increase. Mr. Ron Peterson, Vice President Energy Resources, provides a detailed update on the Company's hydro and thermal plant upgrades; Mr. Clint Kalich, Manager of Resource Planning and Power Supply Analysis, describes the Company's AURORA model (dispatch model), its inputs, assumptions and results that relate to the economic dispatch of Avista's resources to serve load requirements; Mr. William Johnson, Senior Power Supply Analyst, describes adjustments

[4] The Retail Revenue Credit in the ERM captures the increased production and transmission-related retail revenues associated with the higher loads, so that there is a proper matching of revenues and expenses associated with the change in retail loads.

to the level of power supply revenues and expenses; Mr. Scott Kinney, Chief Engineer/System Operations, describes the Company's major transmission upgrades, as well as the Company's pro forma period transmission revenues and expenses; Ms. Elizabeth Andrews, Senior Regulatory Analyst, develops the Company's overall revenue requirement proposal and includes the accounting and financial data in support of the need for rate relief; finally, Mr. Brian Hirschkorn, Manager of Pricing, discusses the spread of the proposed annual revenue increase among the Company's general service schedules.

11 Therefore, it is simply not accurate to suggest, as do Movants, that "there is no set of facts under which the Commission can grant Avista's requested relief based on the information that the Company provided in its initial filing." (Memo. at p.5, ¶8)

12 With the exception of reflecting a downward adjustment in the cost of debt, as discussed above, the Company is not otherwise proposing changes to the capital structure, cost of equity or O&M and A&G expenses. As explained in its filing, while O&M and A&G costs, including labor costs, have increased since the last rate case, the Company has chosen to "limit the scope of the case to enable the opportunity to expeditiously process its request." (Pre-filed Direct of Norwood, p.8, ll.19-21) Nor is Avista otherwise proposing to update distribution-related investment or expenses, or the retail revenues associated with those costs – it is up to the Company to manage those costs until the next general rate case.[5]

[5] Furthermore, with respect to hydroelectric generation and the determination of wholesale electric and natural gas prices in this filing, the Company has employed methodologies that were previously approved by the Commission in recent cases – i.e., the use of the 1929-78 50-year streamflow period for hydroelectric normalization, and a three-month average of forward natural gas prices in the determination of wholesale market prices. These conventions were embodied in the recently-approved general rate case Settlement for Avista (Docket No. UE-050482).

13 Movants, however, fault Avista for failing to identify a specific test year that it is using. (Memo. at p.9, ¶19) As explained by Mr. Norwood, in his Pre-filed Direct, Avista uses the 2004 test period which underlies the rates recently authorized in Docket UE-050482 and makes adjustments to production and transmission related revenue, expense and ratebase components to reflect known and measurable changes for the period beginning January 1, 2007. As discussed below, the Company has included a pro forma retail load adjustment for the 2007 calendar year in order to properly match revenues and expenses during the 2007 pro forma period.

14 Therefore, Avista's filing is based on a 2007 calendar-year pro forma period. Accordingly, adjustments have been made to production and transmission-related revenue, expense and rate base items from the last rate case to reflect known and measurable changes for the period beginning January 1, 2007. In the same manner, the filing also includes pro forma period retail loads for the 2007 calendar year, in order to provide for a proper matching of revenues and expenses during the pro forma period. Stated differently, production and transmission costs for the pro forma period are "matched" with the expected retail load and retail revenues for the same period.

15 Movants also argue that Avista's filing violates the "matching principle." (Memo. at p.11, ¶23) This is a variation of the argument surrounding "single-issue ratemaking," discussed at length below, whereby it is argued that all costs of service components should be evaluated at the same time. Movants complain that Avista's filing "eliminates the Commission's ability to comprehensively review the Company's financial condition at one point in time, which is the basis for the matching principle." (Memo. at p.12, ¶25) This ignores the fact, as discussed below, that this Commission

did, only very recently, "comprehensively review" the Company's financial condition in the just-concluded general rate case."[6] (See Docket No. UE-050482) Moreover, if anything, the Company's update filing does a better job of properly matching revenues and expenses during the pro forma period, as explained in the pre-filed testimony of Avista witness Norwood. (See Pre-filed Direct Testimony at p.9, lines 9-17) That is to say, production and transmission costs for the 2007 pro forma period are matched with expected retail load and retail revenues for the same period. This resolves the "mismatch" of retail revenue, based on historical test-period loads and pro forma period expenses and ratebase that Public Counsel witness Lott complained of in the past rate case. In the Company's most recent general rate case, Public Counsel witness Mr. Merton Lott raised concerns regarding the use of historical test periods and the potential mismatch of retail revenue, based on historical test-period loads, and pro forma expenses and rate base, prompting him to propose a so-called "production property adjustment." (See Pre-filed Direct of Norwood, p.10, ll.1-20.) The use of 2007 calendar-year retail loads in this filing, together with the additional production and transmission-related retail revenue associated with those loads, will respond to those very concerns by better matching revenues and expenses for the period that retail rates would be in place.

16 Finally, Movants erroneously argue that the filing violates the recent ERM stipulation and the Commission's Order approving that Stipulation. (See Memo. at p.12, ¶25) Movants contend that Avista failed to comply with requirements in the ERM's stipulation to file testimony in the next general rate case on the cost of capital impact of

[6] Movants elsewhere argue that the Commission should dismiss Avista's filing because it "simply does not provide the information necessary for the Commission to comprehensively examine the Company's cost in order to fulfill a duty to set just and reasonable rates." (Memo. at p.2, ¶3) This misses the point that this Commission did, very recently, "comprehensively examine" the Company's costs in the recently-concluded rate case; what Avista proposes in this filing are by way of updated adjustments to that case.

the ERM as well as the prudency of its hedging strategy for power purchases and purchases of gas used for power production. (Id.) This argument misses the point that this P/T Update filing is not a general rate case, and therefore does not trigger the requirements of the ERM Stipulation. In its next general rate filing, Avista will address the requirements of the ERM Stipulation. This P/T Update filing is not a referendum on the impact of the ERM Mechanism on the Company's cost of capital; that should await the next general rate case. Similarly, the Company's hedging practices will be addressed in the Company's next general rate filing. The instant P/T Update filing is meant simply to address straightforward, discreet changes to various readily-identifiable production and transmission revenues and expense items.

III. THE RECENTLY-CONCLUDED GENERAL RATE CASE OF AVISTA PROVIDED AN OPPORTUNITY TO REVIEW ALL OTHER COST COMPONENTS

17 Movants contend that Avista improperly relies on the authorized results from the recently-concluded rate case (Docket No. UE-050482). (Memo. at p.7, ¶14) This, of course, ignores the fact that those "authorized results" were from a proceeding decided less than one year ago. As explained below, that general rate case involved the extensive review of all of Avista's costs and was thoroughly tested in the hearing process.[7]

18 Avista's last general rate case (Docket Nos. UE-050482 and UG-050483) was recently concluded with an Order from this Commission on December 21, 2005, with rates effective on January 1, 2006. While Movants suggest that this recent rate case resulted in rates that were simply the result of a contested Settlement that did not afford

[7] Movants elsewhere assert that the Company has not based its request for a rate increase on a "legitimate test year"; rather, that Movants argue that the Company is merely restated authorized results from the last rate case. (Motion at p.10, ¶20) This fails to recognize that the "last rate case" was concluded within the past year, resulting in a very recent examination of the Company's results of operation.

the parties the opportunity for a thorough review of the Company's costs, the record in that proceeding demonstrates otherwise.[8] Undergirding the Settlement and the Commission's approval of the same, was extensive discovery, pre-filed testimony, and cross-examination of witnesses, resulting in the opportunity for a thorough review of the Company's costs.[9] Both Public Counsel and ICNU vigorously opposed the settlement and filed voluminous testimony that proposed a number of adjustments to the Company's case. In its final Order approving the Settlement Agreement, the Commission chronicled the extensive evidentiary hearings relating to the Settlement:

> The Commission conducted a public comment hearing in Spokane, Washington on October 11, 2005, and held evidentiary hearings in Olympia, Washington on October 17-20, 2005. The Commission heard from 26 interested persons who commented orally during the proceeding in Spokane and received 378 written comments, largely in opposition to the proposed rate increase. The Commission's formal record includes testimony by 26 witnesses, including live testimony from 22 witnesses, which produced a hearing transcript of 806 pages. The Commission received into evidence more than 275 exhibits. The parties filed briefs on November 14, 2005. (See Order No. 05, "Approving and Adopting Settlement Agreement With Conditions) (Docket Nos. UE-050482) (December 21, 2005) at p.7, ¶14.

19 The Commission, in its Order, supra, went on to flatly reject suggestions of Public Counsel and ICNU that there was an insufficient opportunity to review and analyze the case before settlement was reached. To begin with, the Commission rejected the assertion that there wasn't sufficient opportunity for staff to review the case; in the

---

[8] Movants argue that Avista's recently-concluded rate case was resolved through a stipulation and therefore did not result in as thorough a determination of a utility's results of operations as a fully litigated proceeding. (Motion at p.20, ¶40) Movants go on to suggest that in the last Avista rate case, settlement occurred at an early stage of the case, even prior to staff and intervenors filings responsive testimony. (Id. at ¶40) This, of course, ignores the history of Avista's last general rate case and the thorough vetting of the issues in the contested settlement hearings.

[9] The Settlement in Docket Nos. UE-050482 and UG-050483 was joined in by Avista, The Northwest Industrial Gas Users, the Energy Project, and Staff, but opposed by Public Counsel and ICNU.

Commission's own words, ". . . the direct evidence on this question supports quite the opposite determination" (Id. at p.17):

> Staff's six analysts, over the course of more than four months, reviewed extensive amounts of information including that produced as part of Avista's filing on March 30, 2005, and the Company's responses to a considerable volume of data requests during the discovery phase. Public Counsel and ICNU participated in the settlement negotiations and must have made their perspectives on Avista's case known prior to the filing of their response cases. In fact, our record shows that a significant number of the adjustments they advocated in their response cases were taken into account and expressly accommodated to one degree or another in the Settlement Agreement.

(Order, supra at p.17, ¶35.) Moreover, the Commission noted that the process afforded Public Counsel and ICNU ample opportunity to present their respective cases:

> Public Counsel and ICNU had ample opportunity to complete their review of the Company's rate filing and the settlement agreement. Between them, Public Counsel and ICNU sponsored testimony by six witnesses. The opposing parties participated in four full days of hearing and were given the time they required to cross-examine all witnesses. All parties, including Public Counsel and ICNU, had the opportunity to present argument on brief in support of their positions. We are satisfied that the Commission's process for review of this multi-party settlement has produced a record from which we can determine whether we should approve the Settlement Agreement, with or without condition, or reject it.

(Emphasis added)(Order, supra at p.18, ¶37.)

20 This Commission's recent review of the ERM Mechanism, completed in June of this year, provided yet another opportunity to review the Company's cost-recovery mechanism. In a Settlement joined in by all parties, including Public Counsel and ICNU, in Docket No. UE-060181, certain modifications were made to the ERM, that "significantly improve the mechanism relative to its original form," as observed by the Commission. (See Order No. 03, "Order Approving Settlement Agreement" (June 16,

2006) at p.8, ¶18). Interestingly enough, as will be discussed below, neither Public Counsel nor ICNU raised the issue of whether the ERM Mechanism, itself, would lead to improper "single-issue" ratemaking or would otherwise violate the "matching" principle. Instead, both parties supported the Settlement. Indeed, Public Counsel and ICNU also joined in a prior settlement establishing Puget's PCORC, again without raising any legal objections over so-called "single-issue" ratemaking.

21 The foregoing discussion provides necessary context for the exercise of this Commission's discretion in entertaining Avista's P/T Update filing. Given the very recent circumstances involving a thorough review of the Company costs in its recently-concluded rate case, as well as an even more recent review of the ERM Mechanism, the Company does not believe that it would be either administratively efficient or necessary to relitigate, in the context of a general rate case, many of the same issues that the Commission has so recently decided.

IV. THE COMMISSION RETAINS CONSIDERABLE DISCRETION UNDER THE LAW, WHEN REGULATING IN THE "PUBLIC INTEREST"

22 The Commission has been given broad authority to regulate "in the public interest." RCW 80.28.010(1) (Duties as to Rates, Services, and Facilities) provides that "all charges made, demanded or received by any gas company, electrical company . . . shall be just, fair, reasonable and sufficient." Moreover, RCW 80.28.020 provides this Commission with authority to fix just, reasonable and compensatory rates:

> Whenever the commission shall find . . . that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and enforced, and shall fix the same by order.

(Emphasis supplied) As the Supreme Court explained in the Hope Natural Gas case, the requirement that rates be "fair, just and reasonable" does not define a method by which rates are to be calculated; instead, the fixing of fair, just and reasonable rates involves a balancing of investor and consumer interests. Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). Simply put, the "end result" must be reasonable. These standards have been incorporated into RCW 80.28.010 and 80.28.020, as set forth above.[10] Accordingly, this Commission is given broad powers in making rate-setting decisions. U.S. West Communications, Inc. v. Washington Utilities & Transp. Comm'n, 134 Wn.2d 74, 949 P.2d 1337 (1997). In this process, the Commission is obligated to balance both investor and consumer interests.[11]

23 As this Commission observed at page 27 of its Order No. 06 (Docket No. UE-032065), which approved a recent settlement involving PacifiCorp:

> Ratemaking is not an exact science. As our Supreme Court has observed: '[t]he economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result.' (U.S. West, supra, 134 Wn.2d at 70.)

---

[10] F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 586, 62 S.Ct. 736, 743 (1942) (Constitution does not "bind ratemaking bodies to the service of any single formula or combination of formulas." As long as the agency's order "in its entirety, produces no arbitrary result, our inquiry is at an end."); F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 602-03, 64 S.Ct. 281, 287-88 (1942). A later case added that "any rate scheduled by the Commission by the broad zone of reasonableness permitted by the [Natural Gas] Act cannot properly be attacked as confiscatory . . . [A]ny such rates, determined in conformity with the Natural Gas Act and intended to 'balanc[e] . . . the investor and the consumer interests,' are constitutionally permissible [citation to Hope omitted]. See also People's Organization for Washington Energy Resources (POWER) v. Utilities & Transp. Comm'n, 104 Wn.2d 798, 808, 711 P.2d 319 (1985).

[11] The public interest is served when the interests of the utility and the interest of the utility's customers are kept in careful balance." In re the Matter of Avista Corp., Docket No. UE-010395, Sixth Supp. Order Rejecting Tariff Filing, ¶7 (September 24, 2001). The public interest standard, of course, encompasses a broad set of interests. See, e.g., Application of Puget Sound Energy re: Colstrip, Third Supp. Order Approving Sale, Docket No. UE-990267 (September 30, 1999).

Indeed, as this Commission reiterated in its recent Order approving Avista's Settlement in Docket No. UE-050482, supra, at page 11, ¶23: "In the final analysis, it is the end results, or overall results, that matter, not the methods by which they are determined."

24 Accordingly, the Commission must take into account all the circumstances surrounding this P/T Update filing, with due regard for administrative efficiency and whether certain matters were recently addressed by the Commission. (Indeed, the Commission has previously determined that it would not allow a company to re-litigate issues which recently were resolved in another proceeding after extensive hearings, unless there is a showing of reasons requiring the duplication of effort or a showing that circumstances have changed. See, WUTC v. U.S. West Communications, Inc. (Docket No. UT-950200), Eleventh Supp. Order (January 1996)). (See also, U.S. West, supra, 134 Wn.2d 74 at 105 (. . . "the Commission did not have to rehear those issues [re depreciation] in the rate case only months after they had been considered in the depreciation case.") Simply put, the courts will "give substantial deference to a regulatory agency's judgment about how best to serve the public interest." Pub. Counsel v. Washington Utilities & Transp. Comm'n, 128 Wn. App. 818, 824, 116 P.3d 1064 (2005). Moreover, the Supreme Court of this State has afforded regulatory agencies substantial discretion in selecting the appropriate ratemaking methodology, as reiterated by the Court in U.S. West, supra:

> In Power, 104 Wn.2d at 812, we reiterated that courts are not at liberty to substitute their judgment for that of the Commission in rate cases and that, within a fairly broad range, regulatory agencies exercise substantial discretion in selecting the appropriate ratemaking methodology.

U.S. West, supra, 134 Wn.2d at 86.

25 Therefore, there is no legal straightjacket which prevents the Commission from exercising its discretion to regulate in the public interest, after taking into account all the relevant circumstances – which, in the instant case, involve a recently-concluded general rate case, coupled with a review of production and transmission costs through the ongoing ERM process. Simply put, the Commission can entertain this filing under its broad powers to regulate in the public interest. At the conclusion of the case, after hearing all the evidence, the Commission can then determine the extent to which rate relief is warranted.

V. THERE IS AMPLE PRECEDENT IN THIS STATE FOR UPDATING COSTS OUTSIDE THE CONTEXT OF A GENERAL RATE CASE

26 Movants argue that granting Avista's relief would constitute "prohibited single-issue ratemaking." (Memo. at p.15, ¶31) They assert that Washington law generally prohibits utilities from filing single-issue rate proceedings. (Id.) This concern over single-issue ratemaking would, perhaps, become more acute if the Company had not just recently-concluded a general rate proceeding in which all costs were examined. As discussed below, there is no legal impediment to the Commission entertaining this P/T Update filing, especially given the circumstances of the recently-concluded general rate case. Movants even acknowledge that the Commission has, in certain circumstances, allowed for single-issue ratemaking. (Id. at p.16, ¶31) Movants argue, however, that single-issue ratemaking would not be a "productive use of the Commission's resources." (Id.) Yet neither would forcing the filing of a general rate case be a productive use of resources, when the Company's costs have been so recently reviewed.

27 As mentioned above, Puget Sound Energy has a Power Cost Only Rate Case ("PCORC") process which provides the opportunity to update its base costs relating to its

power cost tracking mechanism, as well as to include the costs of new resources. This PCORC was the result of a Settlement Stipulation in Docket Nos. UE-011570 and UG-011571. Interestingly enough, this Settlement Stipulation was supported by both Public Counsel and ICNU; they did not otherwise object that such a mechanism would constitute "single-issue ratemaking" or would otherwise violate the "matching" principle.

28 This PCORC mechanism contemplates that, in addition to the yearly adjustment for power cost variances (through the PCA), there would be a periodic proceeding specific to power costs that would true up the so-called "Power Cost Rate." The Company was also allowed to initiate a power cost-only proceeding to add new resources to the Power Cost Rate. The basic similarities of the P/T Update filing of Avista to Puget's PCORC should be apparent. Like the PCORC, Avista's filing serves to update production and transmission costs that, in Avista's case, are related to its ERM. Indeed, it would be ironic (if not patently unfair) if Puget were allowed to retain its PCORC, while Avista's P/T Update filing were summarily rejected – without the opportunity for a hearing – on supposed legal grounds. The same alleged legal infirmities – i.e., single-issue ratemaking/violation of the matching principle – would presumably apply to both Puget's PCORC and Avista's P/T Update.

29 Movants also seek to distinguish the PCORC from Avista's P/T Update filing, by contending that Puget is required to file a general rate case within three months if the PCORC results in a rate increase. (Memo. at p.17, ¶34) Movants argue that this serves to protect the customers of Puget, by forcing an examination of all costs in a subsequent rate case. Given the circumstances of Avista, however, it could just as easily be argued that Avista's customers have received the greater benefit of a recently-concluded general

rate case which examined all costs – one that was completed within the past year. At best, Puget's PCORC would only require the filing of a general rate case within three months, with resolution perhaps as long as eleven months later. (In the meantime, rates would have changed under the PCORC.) Accordingly, Avista's customers have the benefit of a very recent prior determination by the Commission that its rates are fair, just and reasonable versus the prospect of the filing of a general rate case that won't be fully adjudicated for many months.

30 Movants may argue that the PCORC was put into place by means of an all party settlement, and therefore no one challenged whether the mechanism violated Commission policy or the law. The simple fact remains, however, that parties cannot agree among themselves to do what the law would otherwise prevent. If, as a matter of law, Avista's P/T Update is deemed to be an unlawful exercise of single-issue ratemaking, the Commission was likewise without authority to approve Puget's PCORC (or, for that matter, Avista's ERM, as discussed above).[12]

31 A review of the transcript from Puget's settlement hearing in which the PCORC was approved is both instructive and revealing. There was considerable discussion, on the record, about whether the PCORC involved single-issue ratemaking. Mr. Lott, then testifying on behalf of staff as part of the settlement panel, expressed his understanding as follows:

> This, from my intent, when we originally were talking to the company, knowing that they needed new resources, was an attempt

[12] Movants unconvincingly argue that Puget's PCORC was the result of a "negotiated settlement" that provided the opportunity to update or add new resources to its baseline power costs. Movants don't deny, however, that the PCORC results in single-issue ratemaking. And, if single-issue ratemaking is unlawful, per se, or otherwise violates the so-called "matching principle," the Commission could not have approved the settlement. Public Counsel and ICNU, however, did not raise objections in the PCORC proceeding with regard to single-issue ratemaking or the "matching" principle. It is appropriate to provide Avista the same opportunity afforded to Puget in terms of cost recovery for production and transmission resources.

> to – for the limitations that we put into this, in other words, this three-year concept and there's the fact that the company can't just, you know, for 25 years keep coming in for these things, was to go to single-issue ratemaking related to production costs so that the Company could adjust their power cost baseline, production cost baseline, the 44 – whatever it was that we have included in this $44 per megawatt hour. It was intended so that the company could come in for that without having to justify whether their overall costs were – had improved or they had suffered attrition or suffered positive attrition to their rate of return, or negative attrition. And the intent was to be able to allow the company to be able to file those single-issue ratemaking cases.

(Emphasis added) (Tr, p.2155, l.15 – p.2156, l.7) (Dkt. Nos. UE-011570 and UG-011571). Chairwoman Showalter interjected that it was her understanding that the parties wished to confirm with the Commission that the PCORC Mechanism would not involve unlawful single-issue ratemaking:

> My sense is you want to be pretty certain that the company's entitled to bring a single-issue rate case before us and that we would say in this order that we will entertain that idea and we will not hear arguments from the parties that, no, no, no, you can't do this, because that would be single-issue ratemaking, because the parties agreed and the Commission agreed to entertain that.

(Emphasis added) (Id., Tr., p.2157, ll.11-18) For its part, counsel for Puget Sound Energy (Mr. Quehrn) wished to reconfirm, on the record, that the Commission would not at some later date refuse to hear such a filing on the basis of single-issue ratemaking concerns:

> . . . I think this is a desire and I would – you know, we can hear other counsel on this point, too – that it be clear as an aspect of approving the settlement that were such a proceeding initiated, that it would not be something that the Commission would refuse to hear or undertake on the basis of some concern such as single-issue ratemaking or something else. Yes, we do want you, again, to approve this as an appropriate procedure, as a means of accomplishing these objectives…

(Emphasis added) (Id., Tr. p.2159, ll.2-18) Finally, the following exchange between Staff Counsel Cedarbaum and Chairwoman Showalter is revealing:

> MR. CEDARBAUM: Commissioners, just for the record, for Staff, that's also my understanding of Staff's intent, as well, with respect to paragraph 11, that there's a substantive side of that. That would be the power cost type proceeding, being single-issue ratemaking, and that is something that the parties are agreeable to and are asking the Commission to also agree to.
>
> But with respect to the process, that these are expectations of the parties and if the Commission can meet them, great; if for some reason the Commission can't meet them, that's not a problem.
>
> CHAIRWOMAN SHOWALTER: All right. So for the single-issue ratemaking, you wanted it clear from the Commission that that is okay. The other part is somewhat aspirational.
>
> MR. CEDARBAUM: I think that's correct.

(Emphasis added) (Tr., p.2163, l.25 – p.2164, l.16) In its "Twelfth Supplemental Order," in Docket No. UE-011570 and UG-011571, dated June 20, 2002, the Commission ultimately approved Puget's Settlement which adopted the PCORC and, in so doing, explicitly stated:

> We expressly clarify that the Power Cost Only Rate Review provisions in the PCA settlement allow for single-issue rate making.

(Order, supra at p.12, ¶25) In a word, the bridge has been crossed. The Commission has already directly addressed the issue of single-issue ratemaking in the context of Puget's PCORC, and approved the mechanism.

32 Moreover, even more recently, this Commission, in Pacific's general rate case (Docket Nos. UE-050684 and UE-050412), noted that "[n]ew resources must be considered in general rate cases or power cost only rate cases . . .." (Emphasis added) Order at p.35, ¶91, dated April 17, 2006. Accordingly, the Commission has reaffirmed,

as recently as April of 2006, that new resource costs may be considered in either a general rate case or a power cost-only rate case. Movants elsewhere argue that Avista's filing seeks to selectively update costs, production and transmission expenses in isolation. (Memo. at p.16, ¶32) This ignores, however, the context of the recently-concluded general rate case, which should give the Commission comfort that all expenses have been reviewed. Finally, at page 17 of its Memorandum, Movants contend that Avista has not demonstrated that "extraordinary circumstances" justify the filing. This argument is a classic "red herring" in that Avista has never premised its update filing on "extraordinary circumstances" – i.e., financial distress, etc. Rather, Avista is seeking the same opportunity to recover production and transmission costs afforded to Puget in their PCORC. (Puget was not otherwise compelled to demonstrate "extraordinary circumstances.")

VI. AVISTA'S P/T UPDATE FILING DOES NOT VIOLATE COMMISSION RULES GOVERNING GENERAL RATE CASES

33 Movants argue that the Company has failed to follow the Commission's rules concerning general rate proceedings. (See WAC 480-07-505) Movants contend that Avista's filing violates the Commission's rate case filing requirements, arguing that it is, in essence, a "general rate proceeding filing," for which Avista has provided insufficient information. (Memo. at p.6, ¶10) Movants continue by arguing that WAC 480-07-505 establishes special requirements for general rate case filings. (Id. at p.6, ¶11) Because the amount requested would increase gross annual revenue by more than 3%, Movants contend that the requirements surrounding general rate case filings (WAC 480-07-510) are triggered, and Avista's filing is deficient.

34 WAC 480-07-505, in subpart (2), describes those rate filings that are not considered general rate proceedings, notwithstanding the fact that the revenue requested may exceed 3% of gross annual revenues. Among the noted exceptions, in subpart (a) are "periodic rate adjustments for electric and natural gas companies that may be authorized by the Commission (e.g., power cost adjustments and purchase gas cost adjustments)."

35 The predecessor to WAC 480-07-505 was WAC 480-09-310, which was discussed by the parties during the settlement hearings in the Puget PCORC proceeding, supra. Therein, Judge Moss inquired of the parties as follows:

> . . . I'm wondering if it's the intention that this mechanism, if you will, this single-issue ratemaking filing is intended to fall within the exception providing that periodic rate adjustments for electric utilities as may be authorized by the Commission are not considered general rate increases for companies regulated under Title 80.

(Tr., p.2166, ll.10-17.) In response, staff counsel, Mr. Cedarbaum, responded:

> Your honor, I'm not sure that the parties specifically contemplated where in this rule this might fall, but I think it would fall within that section of the rule that you cited me to.
>
> Also, to the extent that there might be some special exception this rule required for these types of filings, then the parties would be asking for that type of exception to be made. . . .

(Tr., p.2167, ll.1-9) Mr. Cedarbaum went on to appropriately note, however, that if that exception in the rule regarding periodic rate adjustments did not apply, that a "waiver" of the rules would serve as an alternative, by way of "backing that up." (Tr., p.2169, ll.14-17)

36 Given the similarities between Avista's P/T Update filing and Puget's PCORC, and given what both are designed to accomplish, it would be unreasonable to argue that

the PCORC fell within the "periodic rate adjustment" exception for power cost adjustments, while Avista's filing somehow did not.

37 Even if, however, the Commission were to determine that Avista's P/T Update filing did not fit squarely within the exception under WAC 480-07-505(2)(a), supra, the Commission is allowed to grant an exemption from or modify the application of its rules in individual cases, ". . . if consistent with the public interest, the purposes of regulation, and applicable statutes." See WAC 480-07-110. Indeed, it may do so, on its own, and may modify the application of the procedural rules without otherwise requiring the filing of a petition requesting the exemption. (Id.) In this case, an overly rigid and restrictive reading of the exceptions to the rules governing general rate proceedings would work a hardship on Avista by denying it the opportunity to have its case heard, and would unfairly distinguish its filing from Puget's PCORC (for which an exception was applied). In the final analysis, this Commission has discretion to either apply the exception to Avista's filing or grant a waiver to that effect. The public interest is not served by summarily dismissing Avista's filling.

VII. CONCLUSION

38 This Brief explains that there is no legal impediment to the Commission entertaining Avista's P/T Update filing.[13] Therefore, the only real question before the Commission is whether it will exercise its discretion under the circumstances to hear this case, given Avista's recently-concluded general rate case and the review of its ERM Mechanism. Avista respectfully submits that it should – as it has with respect to Puget

[13] And the Commission may grant any waivers of its rules "in the public interest," concerning general rate case filing requirements under WAC 480-07-505, if deemed necessary.

and its PCORC. The extent to which rate relief will be forthcoming, of course, must await actual hearings in this docket.

DATED at Spokane, Washington, this 15th day of November, 2006.

AVISTA CORPORATION

By: _____

David J. Meyer
Vice President and Chief Counsel for
Regulating and Governmental Affairs

I:\Spodocs\11150\00001\plead\00457740.DOC:jah