



A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

FOR INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES:

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MARY KIMBALL, Public Counsel

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1 OLYMPIA, WASHINGTON; SEPTEMBER 21, 2015

2 10:00 A.M.

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4  
5 JUDGE FRIEDLANDER: We'll go on the  
6 record.

7 Good morning, everyone. This is the time and  
8 the place set for a prehearing conference in Docket  
9 UE-151148, a filing by Avista Corporation, doing  
10 business as Avista Utilities, requesting revisions to  
11 its electric demand side management tariff,  
12 Schedule 91, that would result in an electric rate  
13 decrease of approximately \$3.4 million or 0.7 of a  
14 percent. This Commission issued a complaint order  
15 suspending the docket and the revisions, but allowed  
16 the rate decrease to become effective subject to  
17 revision.

18 Let's start with appearances. We will just do  
19 brief appearances with name and who you represent,  
20 beginning with Mr. Meyer.

21 MR. MEYER: Thank you, Your Honor.  
22 David Meyer representing Avista.

23 JUDGE FRIEDLANDER: Thank you.

24 On behalf of Staff.

25 MR. OSHIE: Patrick Oshie representing

1 Commission Staff.

2 JUDGE FRIEDLANDER: Thank you.

3 Mr. ffitch?

4 MR. FFITCH: Simon ffitch for the Office  
5 of Public Counsel.

6 JUDGE FRIEDLANDER: Thank you.

7 And I believe we have one intervention  
8 request. Mr. Cowell?

9 MR. COWELL: Yes, thank you, Your Honor.  
10 Jesse Cowell on behalf of the Industrial Customers of  
11 Northwest Utilities.

12 JUDGE FRIEDLANDER: Okay. Thank you.

13 Is there anyone else who wishes to put in an  
14 appearance today?

15 Hearing nothing, we will move on to petition  
16 for intervention. Mr. Cowell, we have received the  
17 petition. Are there any objections to the petition at  
18 this time?

19 MR. MEYER: I don't object to the  
20 petition to intervene per se, but I do object to the  
21 broadening of the issues that have been set.

22 I can elaborate at this point, if you would  
23 like.

24 JUDGE FRIEDLANDER: Yes, please.

25 MR. MEYER: Okay.

1           In its July 30th order setting this matter for  
2 hearing, the Commission was quite clear on what this  
3 proceeding was designed to do. Just reading from the  
4 order itself, the Commission noted that Staff had  
5 discovered three issues that warrant further  
6 investigation and discussion. The first of which was  
7 the spending of approximately \$2500 to sponsor a  
8 Northwest Energy Coalition event; the second was an  
9 issue that Staff discovered regarding the allocation  
10 of more than \$300,000, whether it's natural gas or  
11 electric; and the third, and really the most  
12 significant issue, and was so characterized by the  
13 Commission, was the issue surrounding the Opower home  
14 energy audit reports. As you are no doubt aware,  
15 those reports were suspended for a period of time, but  
16 has since resumed, and there was an issue of what to  
17 do about that, what about the costs associated with  
18 those Opower reports.

19           Staff also raised some other issues, as did  
20 Public Counsel, relating to some of the forms that  
21 were being used. I'm happy to report that the Company  
22 and the Staff and Public Counsel, as members of the  
23 advisory group, have made considerable progress  
24 towards resolving all of those issues identified in  
25 the Commission's July 30th order. I am not here to

1 tell you that we have reached settlement in principle  
2 yet, but I'm reasonably hopeful that we will in the  
3 very near future. And after we finish the  
4 intervention discussion, I want to return to what next  
5 step, if any, we take for scheduling this docket based  
6 on that.

7 The point of this, as it has to do with the  
8 intervention, is not that ICNU should not be allowed  
9 to intervene, but rather that they are clearly trying  
10 to broaden the issues well beyond the identified scope  
11 of this case.

12 As you turn to their request to intervene --  
13 this is at Page 2 of their intervention -- they state,  
14 quote, In particular ICNU is concerned that  
15 Schedule 25 customers may be contributing far more to  
16 Schedule 91 than could be justified by DSM benefits  
17 received. In order to investigate and address any  
18 such potential inequities, ICNU requests leave to  
19 intervene to represent its members.

20 So that is the basis for their intervention.  
21 That clearly is not among the issues set for hearing  
22 by the Commission. The reason that that is important,  
23 not just because it layers on an additional issue, is  
24 that it goes to the process of the advisory group.  
25 This advisory group meets several times during the

1 year. It issues reports, it issues biannual reports  
2 as well. It's an active group, and I'll say, just for  
3 the record, that it's open to all who choose to  
4 participate. ICNU used to participate, but to the  
5 best of my knowledge they have not done so in the last  
6 four or five years.

7 And the reason I mention the group per se is  
8 that in that group, the residential customers are  
9 represented actively by Public Counsel, Staff  
10 participates, and they talk about programs and they  
11 also -- and budgets, and Schedule 91 on its face  
12 divvies up the cost of the DSM programs among  
13 schedules.

14 And so that is the process that should be run  
15 through the advisory group. The next best opportunity  
16 to do that would be this next spring, as we convene  
17 the group, and as we then work toward a report, I  
18 believe to be filed in May or June of 2016. That way  
19 those who would be affected by any revenue shift --  
20 given what ICNU is proposing, it could be a  
21 significant revenue shift, approaching a half a  
22 million dollars. That has to go somewhere within  
23 Schedule 91, whether it's -- presumably the bulk of  
24 that would go to residential customers and to others,  
25 and those participants, in the context of an advisory

1 group meeting, or series of meetings, should have an  
2 opportunity to fully vet that. So there is a better  
3 place for the issue raised by ICNU and it is in the  
4 context of advisory group meetings. And perhaps just  
5 as importantly is that it is not among the issues set  
6 for hearing in this docket.

7 And the reason it is important at the outset  
8 to nail that down, to resolve that, to bring closure  
9 to that, is that as we near settlement, if the issues  
10 were to be broadened to include something not set for  
11 hearing, it would be perhaps very difficult, and  
12 certainly it would bring delays in the process of  
13 resolving issues that were set for hearing if we had  
14 to introduce yet another issue clearly not anticipated  
15 by the Commission's order setting this for hearing.

16 So with that, I don't object to intervention  
17 but I do object to them broadening the issues beyond  
18 what was ordered.

19 Thank you.

20 JUDGE FRIEDLANDER: Thank you.

21 Mr. Cowell, do you have a response?

22 MR. COWELL: Yes. Thank you, Your  
23 Honor, I would like to respond and to state that our  
24 position is that, as we said in our petition to  
25 intervene, we would not be unreasonably broadening the

1 issues. We believe this is actually a fairly narrow  
2 issue. It's a significant issue in the sense of the  
3 scope that we are talking about, that we believe that  
4 the difference between Schedule 25 customer benefits  
5 versus amounts being currently paid in are collected  
6 into Schedule 91.

7 But in terms of not unreasonably broadening  
8 the issues per what was ordered in Order 1 in this  
9 docket, I would just point to Paragraph 18 in  
10 Order 01. The last sentence says, "Nothing in this  
11 Order is intended to limit the issues as to the  
12 fairness, justness, reasonableness, and sufficiency of  
13 the proposed decreases."

14 And Paragraph 16 says that "...Avista has not  
15 yet demonstrated that the tariff revisions would  
16 ultimately result in rates that are fair, just,  
17 reasonable, and sufficient..."

18 I would point to, also in the order, as  
19 Mr. Meyer said, that the chief issue -- and I would  
20 agree with him from reading the order, it seems to be  
21 this Opower issue. And Staff raised concerns about  
22 collections of \$295,000. We are talking about a much  
23 more significant scope for Schedule 25 customers.

24 And so to kind of sum all of this up, I don't  
25 believe we would be unreasonably broadening the issues

1 in the sense that it is very narrow, we are just  
2 looking at allocation for Schedule 25 customers. But  
3 the significance is maybe more material than anything  
4 that's yet been raised, and with the Commission not  
5 finding that Avista has demonstrated the fairness and  
6 reasonableness of what's being proposed in  
7 Schedule 91, I believe that it is within the scope of  
8 the order that expressly says that there is no  
9 limitation to issues that can be explored and should  
10 be explored.

11 JUDGE FRIEDLANDER: Thank you.

12 Does Staff or Public Counsel wish to weigh in  
13 on this issue?

14 MR. FFITCH: Thank you, Your Honor.

15 Public Counsel does not object to the  
16 intervention of ICNU. We do share a concern that's  
17 been raised about the appropriate forum for raising  
18 the ICNU issue about allocation. We agree with the  
19 comments of Avista, that in the first instance, that  
20 is most properly addressed through the advisory group  
21 process, and we haven't had an opportunity to do that  
22 yet. We prefer the advisory group process take a look  
23 at this issue, which it traditionally has done a good  
24 job of reviewing this type of issue.

25 That's where we come down. We don't object to

1 the intervention per se, however.

2 JUDGE FRIEDLANDER: Thank you.

3 And, Mr. Oshie?

4 MR. OSHIE: Yes. Thank you, Your Honor.

5 Staff doesn't object to the intervention of  
6 ICNU in this matter as well. You know, it is a bit of  
7 a thorny issue, and there's no question about it that  
8 the issues raised by ICNU are kind of coming in at the  
9 last minute in this proceeding. It is a significant  
10 policy issue that the Commission is -- would benefit  
11 from addressing.

12 I don't really -- you know, Staff doesn't  
13 agree necessarily with Mr. Cowell's representation  
14 that this is more meaningful an issue. I mean there  
15 is about -- it's my understanding, about half a  
16 million dollars are paid by ICNU's represented  
17 industry there in Avista service territory, but this  
18 is really monies that are made available to it to use  
19 to implement and develop conservation over the course  
20 of a particular year. If they don't use that money,  
21 that's really the decision of the Company. It's not  
22 necessarily that what's being imposed upon them is  
23 something that they can't take advantage of. In that  
24 sense, it's no different than any other conservation  
25 measure, that windows are made available to customers,

1 insulation is made available to customers. If they  
2 choose to use it, they use it; if not, they still pay  
3 for it in Schedule 91.

4 And that -- you know, that's really the crux  
5 of the issue for Staff, is why is this coming in now.  
6 You know, if ICNU would agree to delay this until  
7 there is a policy, until the advisory group can meet  
8 and have a more thorough discussion, that would be  
9 great. If not, we will just -- you know, we can bring  
10 these issues to the table here and the Commission can  
11 decide what to do with it.

12 I would point out that the same issue has come  
13 up under Puget's conservation tariff, with PSE, and  
14 there they address it by -- and it's a similar issue  
15 that was addressed. I don't really have the details  
16 at the tip here to be able to explain them, but this  
17 issue was dealt with. I believe what it does is sets  
18 monies aside for a period of time. If the Company  
19 doesn't use it over a longer period, then it falls  
20 back into the general pool of monies available. I  
21 don't think it's -- I believe that's the -- that's  
22 really the heart of it, the change that was made on  
23 behalf of some of PSE's industrial customers.

24 So Staff doesn't agree to -- doesn't agree to  
25 the objection made by Avista in this matter, but we do

1 see the importance of the policy issue and the effect  
2 it's going to have on the schedule. We wish we could  
3 just move forward with the issues that were brought to  
4 the Commission at the open meeting and it's -- but it  
5 may not be that easy.

6 Thank you.

7 JUDGE FRIEDLANDER: Thank you.

8 Mr. Cowell, did you want to respond?

9 MR. COWELL: Yes. Thank you, Your  
10 Honor.

11 I do want to clarify, if I did say, I didn't  
12 mean to indicate that my clients' issues are more  
13 meaningful than other clients and other parties  
14 involved in this. What I meant to say is that when  
15 talking about the dollar amounts, I do believe that  
16 they are more significant, just from a financial  
17 perspective.

18 Also, I did want to respond to the statement  
19 made by Mr. Oshie about this being -- kind of coming  
20 last minute. Again, in reading Order 01, I note that  
21 Staff was -- actually, as the order itself reads, that  
22 Avista failed to inform the advisory group about a  
23 lapse in service until May 1st.

24 This issue came to our attention actually  
25 during the general rate case. I don't want to go into

1 confidential settlement negotiations, but I have  
2 spoken privately with parties, and the indication that  
3 I got was this -- this docket was the appropriate  
4 forum to raise these issues.

5 In terms of -- Mr. Meyer had mentioned that  
6 ICNU years ago had participated in the advisory group  
7 and now Staff, Public Counsel are more active in it.  
8 You know, for -- I am set sitting in a different  
9 situation than everyone else, as intervening party.  
10 We have different resource considerations, in terms of  
11 what we can be involved in, than some of the public  
12 parties and some of the utilities. We are not able to  
13 fully participate in all available procedures.

14 But this was raised to our attention in the  
15 general rate case. I have talked to parties about  
16 taking care of it there. I was told that -- the  
17 indication that I received was that this was the  
18 appropriate forum. I am trying to kind of work  
19 cooperatively with parties. It did recently come to  
20 our attention. We believe it is an important issue, a  
21 very significant financial issue, and that the issues  
22 aren't -- there is no preclusion of issues to be  
23 investigating. This seems to be the appropriate  
24 forum.

25 JUDGE FRIEDLANDER: Okay. Thank you.

1 Mr. Meyer?

2 MR. MEYER: Yes, just a couple of  
3 points.

4 First of all, you know, Staff talked a bit  
5 about the use of the funds that ICNU's clients might  
6 make made available through DSM. That's half the  
7 equation. The other half that I was referring to was  
8 who pays into that budgeted amount of funding. That I  
9 think is really the core of what ICNU is concerned  
10 about here. And again, they express concern in their  
11 petition that they may be contributing far more to  
12 Schedule 91 than could be justified by the DSM  
13 benefits.

14 That's why I brought to your attention roughly  
15 half a million dollars in funding that their clientele  
16 pay into it. It's -- I'm assuming that, were this  
17 broadened, that we wouldn't be talking so much about  
18 what use they should be making with funding, but  
19 rather whether should they be contributing at all, and  
20 if not, where do those funds get respread. So that  
21 clearly broadens this well beyond what was envisioned  
22 in the Commission's order.

23 There are other opportunities to pursue this.  
24 To the best of my knowledge, in the last -- or the  
25 pending general rate case, Avista was not directing

1 ICNU to take this particular issue of theirs up in the  
2 context of this Schedule 91 file.

3 Thank you.

4 JUDGE FRIEDLANDER: Thank you.

5 So, Mr. Cowell, can you comment on whether or  
6 not Mr. Meyer is correct in assuming that who pays the  
7 budgeted amount is really the primary issue for ICNU?

8 MR. COWELL: I would rephrase that a  
9 bit, Your Honor, to say that who pays in relation to  
10 benefits received so that there is an equal  
11 correlation that there is not interclass subsidies  
12 going on.

13 I want to say Mr. Meyer is correct that I have  
14 not specifically spoken to him. When I have said  
15 other parties, I should clarify that I have kind of  
16 spoken offline to Staff and Public Counsel. I don't  
17 want to misrepresent their positions of, you know,  
18 what was the appropriate forum, but it was -- I  
19 initially took this up and received data requests in  
20 the general rate case from Avista to that point of  
21 amounts that have been paid in over the last decade by  
22 Schedule 25 customers and then benefits actually  
23 received. And so that was a significant concern for  
24 us.

25 And then with the attempt to work

1 cooperatively with other parties, I have been in touch  
2 with them, and the feedback -- my understanding of the  
3 feedback was that the appropriate forum was not in the  
4 general rate case but here.

5 JUDGE FRIEDLANDER: So would ICNU  
6 be willing to pursue this in the advisory group, as  
7 opposed to pursuing it in this adjudication?

8 MR. COWELL: Well, Your Honor, I guess  
9 we are very concerned about the amount of dollars that  
10 was being -- again, this just came up this summer in  
11 settlement negotiations with Avista. And so we --  
12 there is a process ongoing. We don't believe that it  
13 is going to -- it would unreasonably broaden the  
14 issues. We already have the material that I have  
15 forwarded to other parties.

16 JUDGE FRIEDLANDER: But I just want a  
17 yes or no. Is ICNU willing to pursue this in the  
18 advisory group?

19 MR. COWELL: Yes. Preferably, we would  
20 like to address it in this docket.

21 JUDGE FRIEDLANDER: And my concern is  
22 exactly what Staff indicated. I think the language  
23 that you quote in the order about allowing  
24 different -- allowing the pursuit of -- okay. So what  
25 the order says is, "Nothing in this Order is intended

1 to limit the issues as to the fairness, justness,  
2 reasonableness, and sufficiency of the proposed  
3 decreases."

4 I think, though, that's, A, kind of  
5 boilerplate language that we usually put in these  
6 orders that say the Commission can essentially address  
7 anything dealing with this decrease.

8 MR. COWELL: Right.

9 JUDGE FRIEDLANDER: My concern kind of  
10 bootstraps off of Staff's concern, which is timing.  
11 ICNU may actually have a better chance of resolving  
12 this issue in the advisory group faster than if we  
13 were to add this onto the issues that we will be  
14 addressing here. I think that it would unduly broaden  
15 the scope of what the Commission has stated was  
16 supposed to be addressed in this adjudication.

17 It would be my preference and my view that  
18 this should not be addressed in this docket. I would  
19 say that the advisory group is certainly -- it sounds  
20 like the better -- the better place to have that  
21 discussion.

22 MR. COWELL: Your Honor, could I ask --  
23 and maybe other parties can contribute. I was  
24 understanding from what Mr. Meyer was saying that the  
25 advisory group would next meet in the spring.

1 MR. MEYER: They will be meeting before  
2 that. The report is due next -- is it June?

3 MS. GERVAIS: June 1st.

4 MR. MEYER: June 1st, but they will be  
5 meeting beginning in April-ish.

6 JUDGE FRIEDLANDER: So the advisory  
7 group doesn't meet again until April?

8 MR. MEYER: I think that's the --

9 MS. GERVAIS: We meet all the time, but  
10 we could bring the issue to the advisory group at any  
11 time.

12 MR. MEYER: There you have it.

13 JUDGE FRIEDLANDER: Can you come up to  
14 the mike, Ms. Gervais?

15 MS. GERVAIS: Yes.

16 JUDGE FRIEDLANDER: Thank you.

17 MS. GERVAIS: Linda Gervais on behalf of  
18 Avista.

19 The advisory group is ongoing, all the time.  
20 If there is an issue that needs to be addressed by the  
21 advisory group, ICNU can bring it to us and we can  
22 certainly take a look at it, schedule meetings, and  
23 have the conversation with the entire group.

24 When we talk about the spring, we have a fall  
25 and a spring meeting. The spring is technically

1 taking a look at what the cost recovery, this docket  
2 mechanism, looks like for the June 1st filing. That's  
3 an opportunity for them to all get together in person.

4 JUDGE FRIEDLANDER: I see.

5 MS. GERVAIS: You can bring it at any  
6 time.

7 MR. COWELL: And I guess maybe going to  
8 the point of --

9 MR. MEYER: Thank you, Linda.

10 MR. COWELL: Is there a difference  
11 between when discussions would be held and when there  
12 could be a rate effect? Maybe that's where I'm not  
13 clear. I am understanding that it would not be until  
14 next June. To your point of it would be quicker to go  
15 through the advisory group channel than through this  
16 current docket, then that --

17 MR. MEYER: Your Honor, it's not just  
18 about speed, it's also about having a deliberative  
19 process. It is true that the June 1st filing would  
20 talk about cost recovery, but certainly active  
21 discussions, as Ms. Gervais said, could begin at any  
22 time and would continue.

23 JUDGE FRIEDLANDER: Mr. Oshie, did you  
24 want to add anything?

25 MR. OSHIE: I just wanted to make a

1 point, Your Honor, as I have been advised by  
2 Mr. Cebulko, that I think under the rules that have  
3 been set up for the advisory group, that any member  
4 can call for a meeting at any time. That would be  
5 the -- there might be a process involved with doing  
6 that, but I'm sure that, you know, we can figure that  
7 out and expedite the holding of an advisory group  
8 meeting to address the issue.

9 But back to Mr. Cowell's issue. It is true, I  
10 mean if rates are going to go into effect, they will  
11 be in effect for the entire year, and they will be  
12 reset at the next -- you know, when the filing is made  
13 at the end of the year, to reset the conservation  
14 filing and the tariff, and under -- and true it up.

15 There is -- you know, that's -- they would  
16 be -- I guess that's the end of -- that's all I wanted  
17 to address the court on that. This would just -- it  
18 would be in effect for the -- for the annual period.

19 JUDGE FRIEDLANDER: Mr. ffitch?

20 MR. FFITCH: Thank you, Your Honor.

21 Not to pile on ICNU here, but I just wanted to  
22 comment on one of the policy implications or  
23 process -- pardon me, process implications that  
24 matters to us here. With the advisory group process,  
25 we have a number of parties that would participate in

1 that who aren't parties in this document. So you have  
2 The Energy Project, the Northwest Energy Coalition,  
3 other folks. The contemplation is that matters like  
4 this, which are important policy discussions, are  
5 vetted in that forum with all of the parties able to  
6 participate. That's what we would miss out on if it  
7 is brought in this docket.

8 JUDGE FRIEDLANDER: Thank you for that  
9 point.

10 Mr. Cowell, did you have anything else to add?

11 MR. COWELL: Your Honor, I would just  
12 like to say to an earlier comment you made about  
13 boilerplate language. I would agree it is -- you  
14 know, you will find this in many orders, but I would  
15 say it's there for a reason because it is so  
16 fundamental to the process here of not limiting issues  
17 and not limiting material issues. And with -- again,  
18 to not dismiss boilerplate language, but to take it at  
19 its word. If this is not yet demonstrated that it  
20 would result in fair, just, reasonable and sufficient  
21 rates -- we have information from the Company that  
22 would -- really brings that into question, of whether  
23 rates would be fair, just, and reasonable if we were  
24 not to investigate further this issue.

25 JUDGE FRIEDLANDER: Well, I think,

1       though, aren't we conflating in your analysis, two  
2       different issues?  The first issue, and I think this  
3       is what the Commission was addressing, is what this --  
4       the three issues that are in the order specifically  
5       and the amount of dollars dealing with those based on  
6       Staff's investigation.  What you are saying is ICNU  
7       itself may be paying too much and getting too little;  
8       is that correct?

9                   MR.COWELL:  And in --

10                  JUDGE FRIEDLANDER:  But you are talking  
11       about -- you are talking broader, in the entire  
12       context of Schedule 91, what -- what your client is  
13       actually paying and then the benefits.  I guess I am  
14       not seeing the nexus here between this larger issue  
15       that ICNU is raising and these three specific issues.

16                  MR. COWELL:  Well, Your Honor, as part  
17       of -- you know, in the order, I believe, you know, it  
18       talks about a general decrease to Schedule 91 rates,  
19       which I think the nonutility parties agree is a good  
20       thing.  But within that rate decrease, there is an  
21       allocation.  And so in terms of implementing whether  
22       it is rate increase or decrease, part of that, rolled  
23       into that is the rate allocation.  That's -- that's  
24       the point that we are coming to that we are seeking  
25       further process upon, to make sure that the rate

1 allocation, which is part of the rates is fair, just,  
2 and reasonable.

3 JUDGE FRIEDLANDER: So -- and maybe  
4 Mr. Cebulko can address this issue, since he was the  
5 author of the memo originally that the order is based  
6 on. Did the memo address anything as far as rate  
7 design and rate spread, who was going to have to --  
8 who was -- who would get the decrease and all of that,  
9 or was it more of an issue where we don't know the  
10 final amount, we can't get into that at this point?

11 MR. CEBULKO: Good morning. Brad  
12 Cebulko, Commission Staff.

13 Yes, it's more about the -- we identified a  
14 handful of issues, which have been stated here, and  
15 then the reason it had to be put off a little further  
16 is that the Opower program was still not up and  
17 running again. We wanted to allow for the Company to  
18 get that program running before we knew the exact  
19 dollar amount. That's really -- that's probably one  
20 of the largest issues that was holding us back.

21 JUDGE FRIEDLANDER: Gotcha. Okay.  
22 Thank you.

23 And is there anyone else who wished to make  
24 any further comment?

25 Mr. Meyer?

1 MR. MEYER: No further comment.

2 Thank you.

3 JUDGE FRIEDLANDER: Okay.

4 MR. FFITCH: We had -- sorry, Your  
5 Honor, I guess we had one other point. I will just  
6 ask Ms. Kimball to address it, if that's okay.

7 JUDGE FRIEDLANDER: That's fine.

8 MS. KIMBALL: Good morning, Mary Kimball  
9 with Public Counsel section of the Attorney General's  
10 Office.

11 I would just point out, this is more relevant  
12 for the last two or three years. Essentially, all  
13 customer statements for Avista's customers have been  
14 contributing more in revenues under the Schedule 91  
15 rider and they have been receiving incentives for the  
16 last two or three years because of a large,  
17 underfunded balance that was spread out over two or  
18 three years. I would just point that out for this  
19 discussion.

20 JUDGE FRIEDLANDER: So I guess that  
21 raises even more questions in my mind as to, are all  
22 the relevant parties here that may want to impact --  
23 have some impact on this decision? For example, is  
24 this something that The Energy Project is going to  
25 want to weigh in on? I mean specifically if there are

1 that -- all customer classes have been paying more  
2 than the implicit benefits that they have been  
3 receiving, then -- Mr. Cowell, maybe you can address  
4 this. If we are going to take into account this  
5 broader issue of benefits versus payments, then it  
6 sounds like we may need to open this up further.

7 MR. COWELL: I can't speak to the other  
8 parties, because the discovery that we requested was  
9 specifically just to Schedule 25, our clients. I can  
10 speak to that material that I received from the  
11 Company, that it was alarming enough that we have  
12 sought to intervene here.

13 I don't know if the discrepancy is the same  
14 for other classes, but it was significant enough for  
15 us that we do believe that -- and because this docket  
16 is open and because I talked to other parties, should  
17 we look at this in a general rate case, that this  
18 seems to be the best and it is a currently available  
19 means to address it.

20 JUDGE FRIEDLANDER: Right, except that  
21 we have also heard from all three parties that  
22 typically this isn't addressed in a rate proceeding,  
23 it is addressed in the advisory group; isn't that  
24 correct?

25 You know, the Commission as an entity does not

1 participate in that advisory group, so my knowledge of  
2 it is very limited. I have to assume that what the  
3 other parties are saying is correct. So if that's the  
4 case and that's the appropriate forum that we need to  
5 address this in, unless anyone has any other words of  
6 wisdom, I don't see in the order where we say we are  
7 going to replace the advisory group and make these  
8 determinations.

9 MR. MEYER: Thank you, Your Honor.

10 JUDGE FRIEDLANDER: I would say that --  
11 Mr. Oshie, were you coming up to the table to respond?

12 MR. OSHIE: No, Your Honor, but I might.

13 JUDGE FRIEDLANDER: Before I make a  
14 pronouncement, I will go ahead and give you the  
15 opportunity to do so.

16 MR. OSHIE: Well, I just want to point  
17 out that generally -- Your Honor, it is true. I mean  
18 the tariff change that was made, or was suspended by  
19 the Commission, it's not typically the place where  
20 these -- where major policy questions are brought to  
21 the Commission for some kind of decision. They would  
22 come -- they would filter through the policy group or  
23 the advisory group and then brought to the Commission.

24 How they get brought, it's not certain to me,  
25 but they would be brought in a different -- in a

1 different sort of mechanism than just the tariff, the  
2 resetting of the tariff and the true-up of the tariff  
3 that happens in -- early in the year.

4 So that's -- I agree with Your Honor there.  
5 It's not clear to me. Maybe others can advise how it  
6 would actually be brought. I do agree that it has  
7 to -- it should go through the advisory group. As  
8 Mr. ffitch pointed out, there are a number of other  
9 parties that can be affected by an outcome,  
10 particularly an outcome of this financial magnitude.

11 Because of that, everyone should be at the  
12 table to understand what the proposals may be and be  
13 able to contribute to an outcome here that may be  
14 satisfactory to all the parties. That may be wishful  
15 thinking here, but still I think that the advisory  
16 group should be given the opportunity to do that.

17 JUDGE FRIEDLANDER: Okay. Thank you  
18 very much. I appreciate that. I would agree with  
19 that completely in that I think that there is a reason  
20 why we have the advisory group and a reason why  
21 participation by all the parties is essential, because  
22 issues like this start to develop. You know,  
23 regardless of the genesis of the original issue and  
24 the fact that it arose in another rate case, this  
25 issue needs to have the full attention and be brought

1 to all of the stakeholders that are going to be either  
2 benefited or disadvantaged by it before it comes to  
3 the Commission in whatever forum it ends up coming to  
4 us in.

5 I see this as a broadening of what the  
6 Commission had originally set out to do. So as far as  
7 I can tell, from Mr. Cebulko's memo, it's not listed,  
8 it's not addressed by Staff. Staff did not say that  
9 it needed more time to address that issue specifically  
10 in the memo, and so the order is based on the memo.  
11 I'm going to go with, I would -- I would think that  
12 ICNU could probably bring this up, as Ms. Gervais  
13 said, at an advisory group meeting. Since the parties  
14 can call those, I would say that, you know, it's --  
15 it's incumbent upon ICNU to now bring this forward to  
16 the advisory group.

17 When it has run its course -- I am in as much  
18 darkness on that process as anybody. When it has run  
19 its course, we are more than willing to hear it. From  
20 my reading of the memo, Staff's memo, as well as the  
21 order that it is based on, I see that as a broadening  
22 of the issues here.

23 I will allow the intervention, but limited  
24 to -- and this goes for all the parties -- limited to  
25 the scope of the Commission's initial order, the order

1 and complaint suspending the docket, and those topics  
2 therein.

3 And so I believe that we were also going to  
4 discuss scheduling after this. So, Mr. Meyer, have  
5 you had a chance to talk with the parties on a  
6 proposed schedule?

7 MR. MEYER: Not with respect to a  
8 proposed schedule. Might I suggest as an alternative,  
9 given what I represented earlier, that the parties are  
10 in active discussions, and I -- I will say I think  
11 they have made considerable headway. It seems to me  
12 that rather than set a schedule at this time, simply  
13 establish a status conference, say three weeks out,  
14 and that should provide, I think, ample opportunity to  
15 advise whether we are settled or whether we need to  
16 set a schedule.

17 JUDGE FRIEDLANDER: How do the other  
18 parties feel on that? We will start with Staff and go  
19 around the table.

20 MR. OSHIE: I believe it's acceptable,  
21 Your Honor.

22 JUDGE FRIEDLANDER: Okay. Thank you.

23 Mr. ffitch?

24 MR. FFITCH: That's acceptable to Public  
25 Counsel, Your Honor. I guess we would have to look at

1 the specific date in that time frame for availability,  
2 but the concept is fine with Public Counsel.

3 JUDGE FRIEDLANDER: Do you mean the date  
4 three weeks from now, or whether or not Public Counsel  
5 is available to discuss it within those three weeks?

6 MR. FFITCH: We are able to discuss it.

7 JUDGE FRIEDLANDER: Okay.

8 MR. FFITCH: I just want to make sure we  
9 are available for the status conference date --

10 JUDGE FRIEDLANDER: Okay.

11 MR. FFITCH: -- whenever that would be.

12 JUDGE FRIEDLANDER: My understanding of  
13 what Mr. Meyer was proposing was that you would be  
14 submitting -- I -- maybe I'm assuming, but submitting  
15 a letter as far as the status of whether we need to  
16 have a conference. Are you proposing that we actually  
17 meet in person?

18 MR. MEYER: No, I guess what I am  
19 proposing is that we set a date, and the only date on  
20 your calendar, for a status conference by phone.

21 JUDGE FRIEDLANDER: Okay.

22 MR. MEYER: I don't know that we need to  
23 meet in person.

24 JUDGE FRIEDLANDER: Okay.

25 MR. MEYER: And then either we file

1 something before that date and it's moot, or we let  
2 you know just where we are at at that point.

3 JUDGE FRIEDLANDER: Okay.

4 Mr. Cowell, how does ICNU feel about having a  
5 status conference I guess on October 12th?

6 MR. COWELL: Well, I don't think that  
7 that's a problem from our point of view, Your Honor.  
8 I would say that I'm not sure, I'll have to confer  
9 with the client, the level of interest they will have  
10 in the existing issues. As I understand, our  
11 intervention is allowed just for those.

12 JUDGE FRIEDLANDER: Right.

13 MR. COWELL: No objections.

14 JUDGE FRIEDLANDER: Okay. Great. Thank  
15 you.

16 So why don't we go ahead and plan on a status  
17 conference, just an informal status conference by  
18 telephone, 10:00 a.m. Does that sound sufficient?  
19 10:00 a.m. on October 12th.

20 If Avista could arrange that, with a call-in  
21 number, that would be great.

22 MR. MEYER: We can do that.

23 JUDGE FRIEDLANDER: Okay. Thank you.

24 Mr. ffitch?

25 MR. FFITCH: I will be traveling on a

1 family matter on that day, but we will be back on the  
2 13th. Is it possible to do it a day or two later?

3 MR. MEYER: That's fine with Avista.

4 JUDGE FRIEDLANDER: Okay.

5 MR. OSHIE: Apparently, that's the fall  
6 forum, Your Honor.

7 JUDGE FRIEDLANDER: Okay.

8 MR. OSHIE: October 13th and 14th.

9 JUDGE FRIEDLANDER: What about the 15th,  
10 then, would that be sufficient? Be available on the  
11 15th, Thursday?

12 MR. MEYER: Yes.

13 JUDGE FRIEDLANDER: Okay. Why don't we  
14 go ahead and set it for 10:30 on Thursday the 15th.  
15 Again, this will just be an informal status conference  
16 via telephone.

17 MR. FFITCH: Thank you. I appreciate  
18 the accommodation.

19 JUDGE FRIEDLANDER: Sure.

20 Okay. And as I mentioned off the record, if  
21 everyone can get me the remaining courtesy e-mail  
22 addresses and names for the prehearing conference  
23 order, that would be great, by the end of today.

24 Okay. And just a couple of preliminary  
25 issues. For filings, we do want an original and six

1 copies.

2 Do we need a protective order in this matter  
3 at all?

4 MR. MEYER: Yes, please.

5 JUDGE FRIEDLANDER: Just the standard?

6 MR. MEYER: Standard.

7 JUDGE FRIEDLANDER: Okay.

8 And of course discovery rules are applicable  
9 in this case due to the tariff revision, the nature of  
10 the tariff revision.

11 Okay. So I think that's it from the Bench.

12 Is there anything else that the parties wish  
13 to address?

14 All right. Hearing nothing, we are adjourned.  
15 Thank you.

16 (Conference adjourned 10:42 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF KING

I, Sherrilyn Smith, a Certified  
Shorthand Reporter in and for the State of Washington,  
do hereby certify that the foregoing transcript is  
true and accurate to the best of my knowledge, skill  
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SHERRILYN SMITH