

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

WASHINGTON UTILITIES AND)	DOCKET PG-082253
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
v.)	
)	
AVISTA CORPORATION, d/b/a)	INITIAL ORDER APPROVING AND
AVISTA UTILITIES,)	ADOPTING SETTLEMENT
)	AGREEMENT
Respondent.)	
)	

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1 **Synopsis.** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, the Settlement Agreement entered into between Avista Corporation and the Commission Staff will be approved and adopted. Pursuant to the Settlement, Avista agrees to offer enhanced education to city, county, and state officials responsible for excavations and will provide written materials to contractors. Avista also agrees to several measures designed to alert the company more quickly to any potential gas leak hazards including annual leak surveys of A main installed before 1987. Finally, Avista acknowledges that it violated Commission rules regarding the gas main in the vicinity of the accident and agrees to pay a monetary penalty of \$200,000 to the Commission.*

MEMORANDUM

2 **PROCEEDING.** This is a complaint proceeding the Washington Utilities and Transportation Commission (Commission) initiated against Avista Corporation, d/b/a Avista Utilities (Avista or Company) alleging that Avista committed violations of statute and rules governing the operation of systems for transporting natural gas. The specific matters about which the Commission complains are set forth fully in the Complaint, issued on June 8, 2010. Avista filed an Answer on June 25, 2010.

3 **APPEARANCES.** Donald T. Trotter, Assistant Attorney General, Olympia, Washington, appeared on behalf of Commission’s regulatory staff (Commission Staff or Staff).¹ David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, appeared on behalf of Avista. Tom Cordell, attorney at law, Moses Lake, Washington, represented Roger Reyes and Cassandra McClure.

4 **BACKGROUND.** On December 26, 2008, a natural gas explosion and fire occurred in the vicinity of 206 North Birch Street in Odessa, Washington, injuring two people. One of those persons suffered serious physical injuries, including burns. The explosion and fire seriously damaged a garage and secondary living quarters.

5 The fuel source of the explosion and fire was natural gas that 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 pipeline main, owned and operated by Avista. Gas leaked from the pipe through a fracture caused by rocks impinging on the pipe. The ditch in which Avista installed the pipe contained several large rocks in the vicinity of the fracture.

6 Avista promptly investigated the incident and notified the Commission of its occurrence. The Company also monitored gas readings in the soil and footings of the homes around the accident site, evacuated individuals, and took steps to document and preserve evidence during its investigation.

7 On June 8, 2010, the Commission issued a complaint alleging that Avista had violated several of the Commission’s rules. These violations included: (1) removal of a section of the gas main prior to the Commission designating the release of the facility in violation of WAC 480-93-185(2); (2) use of a material in the ditch containing the gas main that did not provide “firm support under the pipe” and did not “prevent damage to the pipe” as required by WAC 480-93-010; and (3) failure to install the

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

facility in compliance with Commission rules, specifically RCW 80.28.010(2) which requires that the facility “shall be safe, adequate and efficient, and in all respects just and reasonable.”

8 **PROCEDURAL HISTORY.** The prehearing conference convened, as scheduled, at Olympia, Washington, on July 15, 2010. During the prehearing conference, the Commission established a procedural schedule including an evidentiary hearing set for April 12 and 13, 2011. The Commission also granted the petitions to intervene of Roger Reyes and Cassandra McClure, the two persons injured by the incident. On December 1, 2010, the Commission entered Order 02 granting the intervenors’ request to withdraw from the proceedings. They had previously reached a settlement of all issues with the Company pertaining to the incident.²

9 Following Staff’s announcement that the remaining parties had reached a settlement in principle, the Commission issued a Notice Suspending the Procedural Schedule on December 7, 2010. On January 7, 2011, Avista and Staff filed an all-party settlement agreement and supporting narrative.

10 **SETTLEMENT AGREEMENT.** The parties’ Settlement Agreement is attached to and made part of this Order. If there is any inconsistency between the Settlement Agreement and the summary of that agreement in this Order, the express terms of the Settlement Agreement control.

11 The Settlement provides that Avista will offer enhanced education to city, county, and state personnel responsible for excavations in the vicinity of Aldyl A pipe.³ The Company will offer the education annually for the next three years and periodically thereafter as necessary.⁴ Avista will also mail written educational materials to contractors on an annual basis.⁵ The Company will provide Staff a copy of the written materials for comment 30 days prior to Avista using those materials.⁶

²Settlement, ¶ 11.

³ Settlement, ¶ 13(1).

⁴ *Id.*

⁵ *Id.*

- 12 According to the Settlement, when Avista's gas inspectors learn of impending excavations in the vicinity of Aldyl A pipe, Avista will inspect the soil composition as it relates to providing the proper support under the affected pipe.⁷ With reference to any *Exposed Pipeline Inspection Report*, which Avista will complete in connection with excavations in the vicinity of Aldyl A pipe, the Company will also record the existing soil composition and identify appropriate and reasonable remedial measures, if any.⁸
- 13 Another Settlement condition requires Avista to perform annual leak surveys of Aldyl A pipe mains installed before 1987 for the next three years and then as necessary.⁹ The Company will also continue to evaluate leak survey results so as to determine the prevalence of leaks over time and to identify any issues or concerns relevant to Aldyl A mains or service.¹⁰
- 14 Avista will file a copy of all leak survey reports on Aldyl A pipe performed during the preceding year coincident with the filing of its PHMSA Form F7100.1-1, Annual Report for Gas Distribution System with the Commission.¹¹ Finally, Avista acknowledges that it violated Commission rules with regard to the gas main in the vicinity of the incident and agrees to pay a monetary penalty of \$200,000 to the Commission.¹²

⁶ *Id.*

⁷ *Id.* ¶ 13(2).

⁸ *Id.* ¶ 13(3).

⁹ *Id.* ¶ 13(4).

¹⁰ *Id.*

¹¹ *Id.* ¶ 13(5).

¹² *Id.* ¶ 13(6).

- 15 In the Narrative Supporting the Settlement Agreement (Narrative), Staff asserts that the Settlement provisions “are a measured and appropriate response to the incident.”¹³ The Narrative maintains that the steps Avista has committed to take in resolution of the complaint are still subject to Commission statutes and rules.¹⁴ Avista points out that it has numerous programs and procedures in place to maintain the safety of its gas pipeline system.¹⁵ The Company contends in the Narrative that the incident was not the result of intentional or knowing misconduct.
- 16 **DISCUSSION AND DECISION.** WAC 480-07-750(1) states, in pertinent part, that “[t]he commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” In considering settlement agreements, the Commission “may accept the proposed settlement, with or without conditions, or may reject it.”¹⁶
- 17 The parties’ Settlement addresses all of the contested issues in this dispute. In the Settlement, Avista accepts responsibility for violating the Commission’s rules regarding the gas main in question. The Company further agrees to institute several safeguards, including educating public and private individuals on ways to reduce the risk of damage to gas pipelines during excavations and annually surveying Aldyl A mains installed prior to 1987 for leaks to prevent any future accidents from occurring. As such, the parties have provided satisfactory assurance that implementation of these measures will minimize the possibility of a similar incident in the future. The Settlement also imposes the maximum penalty of \$100,000 for one violation each of WAC 480-93-185 and WAC 480-93-010 for a total penalty of \$200,000.
- 18 Based on the comprehensive nature of the Settlement, which addresses both prevention and penalty, and given Avista’s cooperation in Staff’s investigation of the incident, the Commission finds that its approval and adoption of the Settlement

¹³ Narrative, ¶ 13.

¹⁴ *Id.* ¶ 11.

¹⁵ *Id.* ¶ 17.

¹⁶ WAC 480-07-750(2).

Agreement is lawful, in the public interest and supported by an appropriate record. The Commission concludes that we should approve and adopt the Settlement as full resolution of the issues in this docket.

FINDINGS OF FACT

- 19 Having discussed above in detail the evidence received in this proceeding concerning all material matters, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 20 (1) The Commission is an agency of the state of Washington, authorized by Title 80 RCW to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including gas companies, and by RCW 81.88 to regulate persons or entities constructing, owning, or operating gas pipelines for transporting gas.
- 21 (2) Avista Corporation, d/b/a Avista Utilities (Avista) is a corporation that, *inter alia*, owns and operates a system for transporting natural gas within the state of Washington.
- 22 (3) On December 26, 2008, a natural gas explosion and fire occurred in Odessa, Washington, injuring two people and damaging a garage and secondary living quarters.
- 23 (4) The explosion and fire were traced to a natural gas leak from a pipeline owned and operated by Avista. The gas leaked through a fracture caused by rocks impinging on the pipe.
- 24 (5) The Commission issued a complaint against Avista on June 8, 2010, alleging several violations of Commission rules.

- 25 (6) The parties propose to resolve the issues in this proceeding via the Commission's approval and adoption of their Settlement Agreement filed on January 7, 2011, which is attached to and made part of this Order.
- 26 (7) The Commission's approval and adoption of the Settlement Agreement is in the public interest.

CONCLUSIONS OF LAW

27 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 28 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. RCW 80.28.010 and RCW 81.88.040.
- 29 (2) Avista Corporation, d/b/a Avista Utilities is a "gas company" because it owns and operates a natural gas distribution system in Eastern Washington. RCW 80.04.010.
- 30 (3) The Settlement Agreement is lawful, supported by an appropriate record, and is in the public interest.
- 31 (4) The Commission Secretary should be authorized to accept by letter, with copies to all parties in this proceeding, any filing that complies with the requirements of this Order.
- 32 (5) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 33 (1) The Settlement Agreement filed by all parties to this proceeding on January 7, 2011, and attached to and incorporated into this Order by prior reference is approved and adopted.
- 34 (2) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, any filing that complies with the requirements of this Order.
- 35 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective February 3, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final either by operation of law or on administrative review.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and eleven (11) copies of your Petition or Answer by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250