

**Exhibit No. ECO-3  
Dockets UE-160228/UG-160229  
Witness: Elizabeth C. O'Connell**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**AVISTA CORPORATION d/b/a  
AVISTA UTILITIES,**

**Respondent.**

**DOCKETS UE-160228 and  
UG-160229 (*Consolidated*)**

**EXHIBIT TO  
TESTIMONY OF**

**ELIZABETH C. O'CONNELL**

**STAFF OF  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

*Avista's Response to ICNU Data Request No. 115*

**August 17, 2016**

**AVISTA CORP.**  
**RESPONSE TO REQUEST FOR INFORMATION**

JURISDICTION:	WASHINGTON	DATE PREPARED:	05/10/2016
CASE NO:	UE-160228 & UG-160229	WITNESS:	Elizabeth Andrews
REQUESTER:	ICNU	RESPONDER:	David Meyer
TYPE:	Data Request	DEPT:	State & Federal Regulation
REQUEST NO.:	ICNU – 115	TELEPHONE:	(509) 495-4316
		EMAIL:	david.meyer@avistacorp.com

**REQUEST:**

Does the Company agree that in the U.S. Supreme Court case PPL Montana, LLC v. Montana, 132 S. Ct. 1215 (2012), the Court held that “[t]he Montana Supreme Court’s ruling that Montana owns and may charge for use of the riverbeds at issue was based on an infirm legal understanding of this Court’s rules of navigability for title under the equal-footing doctrine”? If yes, please provide an explanation for why ratepayers are continuing to pay settlement costs to the State of Montana identified in account 540100.

**RESPONSE:**

While the Supreme Court did so rule, the Court remanded the case back to Montana for further proceedings to apply the “rule of navigability” to the specific facts of each river segment. As discussed below, that case is now pending before the U.S. District Court for the District of Montana.

The following background information will provide additional context: Several weeks before trial was to start against Avista and PPL Montana (“PPL”), District Court Judge Honzel entered an Order in 2007 finding that the Clark Fork River and various other rivers on which PPL had hydro facilities were navigable and therefore the bed and banks of those rivers were owned by the State of Montana (“State”). As a result, the only issues for trial was the amount of past damages and future rental payments owed by Avista and PPL.

Prior to trial, the State, through its expert, claimed that Avista owed \$200,374,752 in damages for past rent, and rent of \$8,416,510 per year starting in 2006. Faced with the District Court’s ruling on navigability, the significant judgment being sought, and the probability that the Montana Supreme Court would affirm the District Court’s ruling (which it ultimately did), Avista reached a settlement with the State. In exchange for Avista agreeing to pay \$4,000,000 per year in rent (with an annual CPI adjustment), the State agreed to dismiss all of its other claims, including all damages for past rent. In addition, the Settlement Agreement contained a Most Favored Nation provision which provides, among other things, that if PPL achieves a more favorable outcome at trial or through settlement, Avista will receive the benefit of that outcome.

Following Avista’s settlement, the case proceeded to trial against PPL. After hearing the evidence, Judge Honzel entered judgment against PPL for past rent of \$34,743,261 and for annual payments of \$6,207,919 starting in 2007. Based upon Judge Honzel’s ruling, if Avista had remained in the case, it is likely judgment would have been entered against it for approximately \$58 million for past rents and more than \$7 million per year in future rents beginning in 2007, which, including post-judgment interest, would have exposed Avista’s ratepayers to an additional \$98 million in costs,

beyond the agreed-upon level of rent. Since Avista's settlement was much more favorable than the outcome PPL obtained at trial, the Most Favored Nation provision was not triggered.

After the Montana Supreme Court affirmed the District Court's ruling, PPL sought review in the U.S. Supreme Court. Of the 7,713 cases filed in the U.S. Supreme Court during its 2011 Term, the Court only accepted 79 cases. PPL's appeal was one of those few cases. Had the Court not accepted review, the decision of the Montana Supreme Court against PPL would have stood.

The U.S. Supreme Court ultimately ruled that the determination of riverbed title, under the Equal-Footing Doctrine, should be made on a segment-by-segment basis depending on the facts. Consequently, the U.S. Supreme Court reversed the Montana Supreme Court and remanded the case against PPL back to Montana for further proceedings surrounding the navigability of each river segment.

The case is currently pending in the United States District Court for the District of Montana. A trial date concerning the navigability of the various rivers at issue on a segment-by-segment basis, has not yet been scheduled. Given the Most Favored Nation provision in Avista's Settlement Agreement, if PPL (or its successor in interest, NorthWestern) achieves a more favorable outcome at trial or through settlement, the Most Favored Nation provision will be triggered and Avista will receive the benefit of that outcome through a reduction or elimination of the annual rent it is paying.

Also see Avista's responses to ICNU\_DR\_113 and 114.