

[Service Date October 18, 2012]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS UE-120436 and
TRANSPORTATION COMMISSION,)	UG-120437 (<i>Consolidated</i>)
)	
Complainant,)	
)	
v.)	ORDER 07
)	
AVISTA CORPORATION d/b/a)	
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	
WASHINGTON UTILITIES AND)	DOCKETS UE-110876 and
TRANSPORTATION COMMISSION,)	UG-110877 (<i>Consolidated</i>)
)	
Complainant,)	
)	
v.)	ORDER 12
)	
AVISTA CORPORATION d/b/a)	
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

PREHEARING CONFERENCE ORDER
AND
REVISED NOTICE OF HEARING
(Evidentiary Hearing Set for November 29-30, 2012)

1 **NATURE OF PROCEEDINGS:** On April 2, 2012, Avista Corporation d/b/a Avista Utilities (Avista) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-28, Electric Service in

Docket UE-120436 and revisions to its currently effective Tariff WN U-29, Gas Service in Docket UG-120437 designed to provide a general rate increase for electric and gas service. Avista requests an electric rate increase of \$41.0 million, or 9.0 percent, and a gas rate increase of \$10.1 million or 7.0 percent. In addition, Avista filed tariff Schedule 93, which reflects a proposed one-year Energy Recovery Mechanism bill decrease, or rebate, to electric customers of \$13.6 million (about 2.9 percent). On May 14, 2012, the Commission entered Order 03/08, Prehearing Conference Order and Order Granting Request for Limited Consolidation of Dockets, consolidating Dockets UE-120436 and UG-120437 with the second phase of Dockets UE-110876 and UG-110877 involving decoupling issues.¹

2 On October 15, 2012, the Commission's regulatory staff (Staff) informally notified the Commission that it had reached a settlement agreement in principle with Avista and some of the other parties on the issues raised in this matter. Staff requested on behalf of the settling parties that the Commission suspend the rebuttal and cross-answering testimony filing deadline, set for October 19, 2012. The Commission approved this request and convened a prehearing conference in this proceeding on October 16, 2012, to discuss a proposed procedural schedule for consideration of the as-yet unfiled settlement agreement.

3 **PARTY REPRESENTATIVES:** David J. Meyer, Vice President and Chief Counsel for Regulatory and Governmental Affairs, Spokane, Washington, represents Avista. Simon J. ffitich, Senior Assistant Attorney General, and Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represent the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel). Donald T. Trotter and Michael A. Fassio, Assistant Attorneys General, Olympia, Washington, represent Staff.²

¹ The dual order number is the result of consolidation.

² 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 the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

4 Melinda J. Davison and Joshua D. Weber, Davison Van Cleve, P.C., Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU). Ronald L. Roseman, Attorney, Seattle, Washington, represents The Energy Project. Chad M. Stokes and Tommy A. Brooks, Cable Huston Benedict Haagensen & Lloyd LLP, Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Todd True, Earthjustice, Seattle, Washington, represents The Northwest Energy Coalition (NWECC).

5 **PROCEDURAL SCHEDULE.** Staff, Avista, ICNU, NWIGU, and the Energy Project represent that they have reached a multi-party settlement in principle.³ The settling parties agree to file the settlement agreement and supporting testimony on October 19, 2012, and propose the following procedural schedule for consideration of the agreement:

Testimony in Opposition to the Settlement	November 9, 2012
Rebuttal Testimony by Settling Parties	November 19, 2012
Evidentiary Hearing	November 27-28, 2012
Oral arguments or post-hearing briefs to be determined at hearing	

The settling parties propose this schedule, in part, because a January 1, 2013, implementation date for settlement rates is an integral part of the agreement.

6 Public Counsel recommended several modifications to the proposed schedule. These recommendations are as follows:

- Discovery should continue until November 27, 2012, with response time for data requests limited to five days until November 19, 2012; after which, response time would be three days for the remainder of discovery.
- Rebuttal testimony on behalf of the settling parties should be due by noon on November 19, 2012.

³ At the October 16th prehearing conference, Public Counsel and NWECC confirmed that they have not joined in the settlement.

- The Commission should commence the evidentiary hearing on November 28 or 29, 2012.
- Cross examination exhibits should be due on November 27, 2012.
- Simultaneous post-hearing briefs should be due on December 11, 2012.
- Recognizing that the uncertainty inherent in setting a procedural schedule for a settlement agreement that has not yet been filed, the Commission should reserve the right to modify the procedural schedule as needed.

7 Staff and Avista do not oppose Public Counsel's proposed schedule modifications, with the exception of the December 11, 2012, deadline for post-hearing briefs. Staff and Avista contend that the Commission should wait until the evidentiary hearing to determine whether post-hearing briefs would even be beneficial to the decision process. ICNU expressed a scheduling preference for convening the evidentiary hearing on November 27 and 28, 2012, due to a scheduling conflict later in the week. The Energy Project, NWIGU, and NVEC all agreed with Public Counsel's modifications.

8 *Commission Decision and Determination.* The settling parties' procedural schedule would establish a very aggressive time frame for consideration of the settlement agreement, especially given that the Commission has not yet seen the agreement's terms and conditions or been made aware of the issues that the other parties will raise in opposition to the settlement. The Commission nevertheless will largely adopt the settling parties' procedural schedule with some modification as suggested by Public Counsel,⁴ subject to revision if necessary to provide parties and the Commission with adequate opportunity to address the issues raised by the agreement. The adopted schedule is as follows:

- Filing of Settlement and Supporting Testimony October 19, 2012
- Testimony in Opposition to Settlement November 9, 2012
- Rebuttal Testimony in Support of Settlement November 19, 2012
- Hard copies of cross-examination exhibits,

⁴ ICNU's scheduling conflict is unfortunate but hardly persuasive given the original procedural schedule adopted in May of this year provided for an evidentiary hearing on the very dates ICNU now claims to have a personal conflict with.

- cross-examination estimates, and witness lists November 26, 2012
- Evidentiary Hearing November 29-30, 2012

9 As proposed by Public Counsel, discovery shall continue until November 27, 2012, with responses to data requests due within 5 business days until November 19, 2012, and responses to data requests thereafter until November 27, 2012, due within 3 business days. In addition, rebuttal testimony will be due by noon on November 19, 2012. The Commission will determine the need for oral arguments or post-hearing briefs at the conclusion of the evidentiary hearing.

10 The settling parties' filing on October 19, 2012, will trigger the Commission's rules regarding consideration of agreements, in particular WAC 480-07-750(2)(a) and (b). Any request for waiver of these provisions must be filed by **October 19, 2012**.

11 The parties are reminded that **8 hard copies** of the cross-examination exhibits they have prepared for use during the evidentiary hearing must be pre-distributed to the Commission's Records Center by **November 26, 2012**. Cross-examination exhibits must be served on all parties by this same date. The exhibits must be accompanied by an exhibit list and must be organized into sets that are tabbed, labeled, and grouped according to the witness the party intends to cross examine with the exhibits. Cross-examination exhibits not conforming to these requirements may be rejected. The parties will provide an electronic copy of all cross-examination exhibits to the administrative law judge by **November 26, 2012**. The parties will file all cross-examination exhibits offered or discussed on the record by **December 10, 2012**.

12 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning **November 29, 2012**, tentatively scheduled for 10:30 a.m., to immediately follow the Commission Open Meeting, and continuing thereafter, as necessary, on **November 30, 2012**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

ORDER

THE COMMISSION ORDERS That:

- 13 (1) The procedural schedule previously adopted in Order 03/08 in Dockets UE-120436, UG-120437, and phase two of UE-110876 and UG-110877, consolidated, is vacated.
- 14 (2) The procedural schedule listed in this Order is adopted.

NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective October 18, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge