

BEFORE THE WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

WUTC v. AVISTA

DOCKETS UE-120436, *et. al.*

TESTIMONY OF LEA DAESCHEL (LD-1CT)

IN OPPOSITION TO THE MULTIPARTY SETTLEMENT STIPULATION

ON BEHALF OF PUBLIC COUNSEL

NOVEMBER 9, 2012

REDACTED VERSION

1 **I. INTRODUCTION**

2 **Q: Please state your name and business address, employer and title.**

3 A: My name is Lea Daeschel and my business address is 800 Fifth Avenue, Suite 2000,
4 Seattle, Washington, 98104. I am employed as a Regulatory Analyst with the Public
5 Counsel Section of the Washington Attorney General's Office.

6 **Q: Ms. Daeschel, please provide information pertaining to your educational**
7 **background and professional experience.**

8 A: I received a B.A. in International Studies from the University of Oregon in 2006. In
9 2008, I received a Masters in Public Administration from the Mark Hatfield School of
10 Government at Portland State University. Since joining Public Counsel in August
11 2008, I have worked on a wide range of energy issues, including review and analysis
12 of utility conservation programs, decoupling mechanisms, service quality, low-
13 income rate assistance programs, renewable energy credits, integrated resource
14 planning, and other analyses of electric and natural gas general rate case and tariff
15 filings before the Commission. In addition, I have presented before this Commission
16 at Open Meetings on various issues, and testified as part of the settlement panel in
17 Avista's 2010 and 2011 general rate cases and Pacific Power & Light's 2011 general
18 rate case.

19 **Q: What is the purpose of your testimony?**

20 A: I will provide an overview of the reasons why Public Counsel does not believe the
21 settlement is in the public interest. In addition, I will specifically address the
22 treatment of renewable energy credit (REC) revenues under the proposed Multiparty

1 Settlement Stipulation (Settlement Stipulation) and the joint testimony of the Parties
2 in support of the Settlement Stipulation.

3 **Q: Did Public Counsel participate in the settlement discussions in this case?**

4 Yes. Public Counsel was a full and active participant with the other parties in the
5 settlement discussions in the docket, including the scheduled settlement conferences
6 on August 27 and October 3, 2012, taking part in consideration and presentation of
7 settlement proposals, until positions became divergent.

8 **Q: Please explain why Public Counsel does not believe the settlement is in the public
9 interest.**

10 Public Counsel opposes the settlement for the following reasons:

- 11 • The proposed settlement is largely a “black box” and fails to address a number
12 of issues of significant importance to the Commission and the customers of
13 Avista.
- 14 • The two-phase rate increases for both gas and electric rates under the
15 proposed settlement are not supported by appropriate evidence, are not
16 reasonable in light of the range of potential outcomes presented in the record,
17 and are not just because rates are not based solely on the record in this case.
- 18 • The proposed settlement would allow new rates to become effective two
19 months in advance of the suspension date in this case, hitting customers with
20 higher bills in the middle of the winter heating season in two consecutive
21 years.

22 **Q: Please explain your concerns with the “black box” nature of the proposed
23 settlement.**

1 A: There are a number of important issues in this case that the Commission will not have
2 the opportunity to address as a result of the settlement. These issues include: attrition,
3 executive compensation, board of director expenses, A&G issues, smart grid
4 investments, treatment of 2012 REC revenues, and the accounting audit ordered by
5 the Commission in the 2010 Avista GRC. In addition, while not “black box” per se,
6 the Stipulation regarding cost of capital effectively deprives the Commission of the
7 opportunity to make its own determination based on the evidence.

8 With respect to attrition, as discussed by Public Counsel witness Jim Dittmer
9 in his direct testimony in this proceeding, the last time the Commission had the
10 opportunity to address a request for an attrition adjustment was in 1986.¹ Mr. Elgin,
11 in his direct testimony for Commission Staff also states that this case represents the
12 first time in over twenty years that Staff has conducted an attrition analysis.² In the
13 last PSE general rate case order, the Commission expressly addressed the attrition
14 issue and invited companies to file attrition requests.³ Avista has done so, squarely
15 presenting the issue for consideration in this new economic environment. Public
16 Counsel as well as other parties, have devoted substantial resources to addressing this
17 issue in discovery and testimony. The issue of attrition is important and should be
18 addressed in this case, yet the settlement prevents that from occurring. As Mr.
19 Dittmer demonstrates, the settlement instead presents a revenue increase that appears
20 clearly to include attrition amounts, but, in its written terms disclaims that attrition is
21 agreed to.

¹ Exhibit No. JRD-10T, p. 12.

² Exhibit No. KLE-1T, p. 4.

³ *WUTC v. PSE*, Dockets UE-111048/UG-111049, Order 08, ¶¶ 489-491.

1 With respect to the other issues enumerated above, Public Counsel is
2 particularly concerned that the settlement does not address the issue of executive
3 compensation, given the Commission’s clearly identified concerns with this issue in
4 the last Avista rate case and its directive to the Company to prepare and file an
5 executive compensation report. Public Counsel witness Sebastian Coppola addresses
6 this issue in his separate testimony addressing the settlement. He also addresses
7 Public Counsel’s concerns with board of director fees and D&O insurance not being
8 addressed in the proposed settlement. Public Counsel witness Jim Dittmer addresses
9 Public Counsel’s concerns with the remaining issues listed above, including the A&G
10 issues, and the accounting audit included in this case. Public Counsel’s objections to
11 the treatment of REC revenues are further discussed in my testimony below.

12 As a general proposition, the Stipulation itself and the supporting testimony
13 are extremely sparse and conclusory.⁴ At the same time, it is evident that the
14 proposed settlement avoids issues that are very important to the Commission and the
15 customers of Avista. A proposed settlement that does not address such important
16 issues does not provide a basis for fair, just or reasonable rates, nor does it represent a
17 desirable outcome from a policy perspective.

18 **Q: Please explain your concerns with the two-phase rate increases for both gas and**
19 **electric rates under the proposed settlement.**

20
21 A: In its Order approving the settlement in the 2011 Avista general rate case, the
22 Commission stated:
23

⁴ It is interesting to contrast this settlement with the last Avista settlement, described by the Commission as a “black box.” Order 06, ¶ 32, Dockets UE-110876 and UG-110877. That settlement contained far more specificity than this filing.

1 In fulfilling its statutory duty, the Commission must establish
2 rates that are “fair, just, reasonable and sufficient.”⁵ The rates
3 must be fair to both customers and the utility, just in that the
4 rates are based solely on the record in this case following the
5 principles of due process of law, reasonable in light of the
6 range of potential outcomes presented in the record, and
7 sufficient to meet the financial needs of the utility to cover its
8 expenses and attract capital on reasonable terms.⁶
9

10 As explained by Mr. Dittmer in his testimony opposing the settlement, in reviewing
11 the proposed rate increases for 2013 and 2014, it is impossible to justify the level of
12 revenue, given the terms of the settlement agreement, considering all of the evidence
13 and testimony filed in the record of this case.

14 Further, the responsive testimony of Commission Staff and ICNU both
15 advocated for rate reductions. In Staff’s case, a rate reduction resulted even with
16 consideration of a substantial positive attrition adjustment. Yet the settlement agrees
17 to over \$27 million in rate increase, purportedly without attrition. On its face, this
18 raises serious question about whether the settlement produces a reasonable result.

19 In addition, the settlement claims to include a rate case “stay out” period
20 which precludes Avista from filing a general rate case in Washington that seeks to
21 implement base rates that would become effective before January, 1, 2015.⁷ (In other
22 words, Avista could file a general rate case in 2014, but the timing would have to be
23 such that base rates would not go into effect before January 1, 2015.) However, in
24 reality this is only a “stay-out” in as far as it relieves Avista of its burden of filing a
25 general rate case and the burden of the parties to review the filing. Under the

⁵ RCW 80.28.010(1); RCW 80.28.020.

⁶ Order 06, ¶ 29, Dockets UE-110876 and UG-110877.

⁷ Joint Testimony, p. 4.

1 proposed settlement, customers would in fact receive a rate increase in 2014, as part
2 of the second phase of the increase authorized to go into effect January 1, 2014.

3 Finally, and importantly, as Mr. Dittmer testifies, the rates proposed in the
4 settlement for 2014 are not based solely on the record in this case. While the
5 proposed settlement includes a rate increase in January 1, 2014, Avista did not
6 develop its revenue request or base its rate filing in this case on the basis of 2014
7 operating costs, forecasted or otherwise. As discussed in more detail in Mr. Dittmer's
8 testimony, there is simply insufficient evidentiary support for a second rate increase
9 in 2014. The validity of the 2014 rates are further called into question by the post-
10 settlement announcement of a major severance program for Avista employees, not
11 made known to any of the rate case parties before the settlement was filed.

12 In summary, the proposed settlement does not provide sufficient evidence to
13 support or explain the terms of the settlement, or for the Commission to conclude that
14 the settlement rates are fair, just, reasonable, and sufficient.

15 **Q: Please explain your concern with the early effective date included in the**
16 **proposed settlement.**

17 As a general policy matter, Public Counsel does not support early effective dates for
18 rates as a term of settlement. Early effective dates serve to accelerate increases in an
19 era when Avista customers have been experiencing rate hikes annually. This increase
20 would take effect just 12 months after the Company's last increase went into effect.

21 The early effective date also results in significant incremental revenues that
22 Avista will be able to collect from customers. In this case, the proposed early
23 effective date would implement new rates a full two months in advance of the

1 suspension date of March 1, 2013, in the case and represents additional revenue to
2 Avista of over \$2 million.⁸

3 Finally, and of particular concern in this case, the early effective date of
4 January 1, 2013, would present customers with the prospect of an energy bill increase
5 in the midst of the winter heating season for two consecutive years.⁹

6 **Q: Are there any other compelling reasons why the Commission should have an**
7 **opportunity to fully review the issues raised in this case in an evidentiary**
8 **hearing?**

9 A: Yes. Avista customers continue to absorb near annual rate increases in a persistently
10 challenging economic environment. As provided in the testimony of Staff witness
11 Mr. Ken Elgin, between 2005 and 2011 Avista's electric rates have increased 48
12 percent and its natural gas rates have increased by 17 percent.¹⁰ Avista's electric
13 rates have increased 88 percent since 2001.¹¹ These continued rate hikes have created
14 a serious hardship for Avista customers. Public Counsel has received a number of
15 customer comments on the rate increase request. The comments below from Avista
16 customer Elizabeth Weber are an example of Avista customer sentiments regarding

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⁸ JRD-12CT, p. 5

⁹ In fact, due to the termination of the proposed ERM credit offset after 2014, customers would see a third consecutive winter increase in January 2015 of approximately 1 percent, even without a new rate case. See JRD-12CT, p. 5.

¹⁰ KLE-1T, p. 11.

¹¹ KLE-1T, pp. 11-12.

1 the proposed rate increase request.¹²

2 *I am writing to voice my objection to Avista raising their rates again.*
3 *They raise them too often, and we as consumers have no choice in*
4 *alternate power. I feel the salaries paid to the top executive officers*
5 *are way too high. It is actually shocking how much Scott Morris and*
6 *the top executives under him make - at the rate payers expense. I am*
7 *on a strict budget - as are most of my friends and neighbors, and the*
8 *idea of them taking home so much money at our expense is shameful.*
9 *Avista can easily save ten's of millions of dollars by just cutting their,*
10 *and their shareholders compensation to a reasonable amount. It is*
11 *shocking - that in our depressed economy they can ask for a rate*
12 *increase - while paying out such huge salaries. Please do not approve*
13 *this rate increase. And please lower the executive salaries and*
14 *bonuses.*

15
16 Another reason the Commission should have an opportunity to fully review the issues
17 raised in this case in an evidentiary hearing is the substantial period over which
18 Avista's general rates would otherwise be set without a full Commission review of
19 issues an evidentiary hearing. Avista's last two rate cases were resolved through
20 settlement, and the proposed settlement in this case would authorize rates to go into
21 effect for another two years without the benefit of the Commission's determination of
22 issues in an evidentiary hearing. The Commission should be afforded the opportunity
23 to fully review the issues presented in Avista's pending rate case at this time.

24 And, finally, the prefiled expert testimony of all the non-company parties to
25 this case, based on extensive discovery and well-developed analysis, uniformly
26 concludes that Avista is in an excess revenue position – that no rate increase is
27 warranted and that a rate decrease could even be justified.¹³ In Staff's case, this is
28 true even when a nearly \$20 million positive attrition adjustment is provided to the

¹² This comment will be filed with the public comment exhibit in this case and made part of the record in this proceeding. Public Counsel will also provide a copy of this letter through discovery, upon request of any party.

¹³ In Public Counsel's case, this is the result of applying the Staff or ICNU cost of capital to Public Counsel's recommendation.

1 Company. These positions and the issues evaluated therein, deserve an opportunity to
2 be fully considered in an evidentiary hearing and such consideration is fully in
3 keeping with the Commission's exercise of its duty to regulate in the public interest.

4 **Q: What is Public Counsel's recommendation with respect to the issue of REC**
5 **revenues?**

6 A: Public Counsel recommends that the Commission reject the Settlement Stipulation.
7 However, should the Commission adopt the Settlement Stipulation, Public Counsel
8 recommends that the Commission modify the provision related to REC revenues¹⁴ for
9 the reasons indentified below. Specifically, the Commission should order Avista to
10 provide a full accounting of calendar year 2012 REC revenues attributable to
11 Washington and return 100 percent of these revenues to customers as bill credits.
12 Beginning January 1, 2013, Public Counsel recommends that Avista defer all REC
13 revenues in a separate tracker outside of the ERM and return 100 percent of these
14 proceeds to customers annually as bill credits. Public Counsel further recommends
15 that the Commission order Avista to work with the parties in this case to develop the
16 details of the separate tracker and bill credit mechanism.

17 **Q: Please summarize how REC revenues are treated in the Settlement Stipulation.**

18 A: The Settlement Stipulation term regarding RECs (RECs Proposal) states that Avista
19 will begin tracking REC revenues, as of January 1, 2013, separately in the ERM and
20 defer 100 percent of the revenues, over that which is included in base rates. The
21 deferrals will not be subject to any deadband or sharing percentage in the ERM and

¹⁴ Settlement Stipulation, ¶ 12.

1 will accrue interest consistent with other ERM balances. Under the proposed
2 settlement the rate adjustment trigger for the ERM is set at \$30 million.¹⁵

3 **Q: Please summarize the flaws associated with the RECs Proposal identified by**
4 **Public Counsel.**

5 A: The RECs Proposal is flawed because:

- 6 • RECs are not guaranteed to be returned to customers in full, on an annual basis.
- 7 • The RECs Proposal does not address 2012 proforma REC revenues at issue in this
8 case.
- 9 • Tracking RECs through the ERM, which is a power cost adjustment mechanism,
10 is inappropriate in light of Commission precedent that REC revenues should be
11 treated akin to utility property sales.

12 **Q: Please explain why the RECs Proposal does not guarantee that RECs will be**
13 **returned to customers, in full, on an annual basis.**

14 A: Tracking REC revenues through the ERM does not guarantee that these revenues will
15 be returned to customers on an annual basis, or ever. In order for customer to receive
16 any REC revenues, the ERM trigger of \$30 million must be reached. Since the initial
17 power cost deferral was recovered by Avista with the inception of the ERM, there
18 have been no subsequent ERM related rate adjustments because the trigger has never
19 been reached.¹⁶ As Staff witness Mr. Elgin correctly states in the Joint Parties'
20 testimony, even with the Settlement Stipulation's downwardly adjusted trigger of \$30
21 million, customers may not enjoy the near term benefits of ERM deferrals.¹⁷ This is
22 because history tells us that it is unlikely that the \$30 million trigger will be reached.

¹⁵ Settlement Stipulation, ¶ 5.

¹⁶ Staff Response to Public Counsel Data Request No. 2.

¹⁷ Joint Testimony, p. 28.

1 **Q: Why is it appropriate for REC revenues to be returned to customers, in full, on**
2 **an annual basis?**

3 A: The Commission has clearly stated that proceeds derived from the sale of RECs must
4 be returned to customers.¹⁸ In addition, most recently, the Commission has stated
5 that all REC sales booked within a calendar year should be included in the credit for
6 that year.¹⁹

7 **Q: Please explain your concern with respect to the RECs Proposal not addressing**
8 **2012 proforma REC revenues.**

9 A: The Settlement Stipulation addresses REC revenues beginning on January 1, 2013,
10 and therefore excludes 2012 proforma REC revenues which are at issue in this
11 proceeding. Therefore, all 2012 proforma REC revenues are subject to the
12 Company's current treatment for REC revenues which does not guarantee that 100
13 percent of these revenues are returned to customers. As described by the Company,
14 its current practice is to include in base rates the amount of proforma REC sales
15 known at the time the proforma is developed for a general rate case filing and to defer
16 any additional REC revenues, in excess of the amount included in base rates, through
17 the ERM.²⁰ This treatment is inconsistent with the requirement to return 100 percent
18 of REC revenues to customers.

19 **Q: What is the total amount of 2012 REC revenues included in base rates in this**
20 **case and deferred in the ERM?**

¹⁸ *WUTC v. PacifiCorp*, Docket UE-100749, Order 06, ¶ 202, (March 25, 2011); and, *Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits*, Docket UE-070725, Order 03, (PSE REC Order), ¶ 13 (May 20, 2010).

¹⁹ *WUTC v. PacifiCorp*, Docket UE-100749, Order 10, ¶ 47 (Aug. 23, 2012).

²⁰ Avista's Response to Public Counsel Data Request No. 236.

1 A: According to information provided by the Company, the total dollar amount of REC
2 revenues included in this case is [Begin Confidential] XXXXXX [End
3 Confidential] on a system basis.²¹ In addition, the Company indicates that is has
4 deferred [Begin Confidential] XXXX[End Confidential] in REC revenues in the
5 ERM from the beginning of calendar year 2012 to-date and estimates it will defer
6 [Begin Confidential] XXXXX[End Confidential] for the remainder of calendar-
7 year 2012.²²

8 **Q: Have 2012 REC revenues already been approved for recovery through the**
9 **ERM?**

10 A: No. Under the status quo, all ERM deferrals for 2012, which include REC revenues,
11 would be reviewed and subject to approval in the annual ERM review filing which
12 will be made on or before April 1, 2013. Public Counsel recommends that the 2012
13 REC revenues that have already been deferred in the ERM be returned in full to
14 customers.

15 **Q: Is the Commission precluded from addressing 2012 REC revenues in this**
16 **proceeding because Avista's practice of deferring REC revenues and expenses in**
17 **the ERM has not been challenged before?**

18 A: No. It could be argued that there are legal issues presented when a utility has
19 approval to defer items and the regulator changes that treatment retrospectively.

²¹ Avista's Confidential Response to Public Counsel Data Request No. 428C. The Company's response to Public Counsel Data Request No. 428C which requested the total dollar amount of REC revenues included in base rates in this case, in addition to total system REC revenues also provided total "Non WA Independence Act (EIA)" revenues, "WA EIA" revenues and "SMUD" revenues. It is not clear to Public Counsel, based on the response provided, what the total Washington allocated REC revenues included in this case are. We anticipate that this number will be clarified if and when the Company were to provide full accounting of 2012 revenues, as recommended by Public Counsel.

²² Avista's Confidential Response to Public Counsel Data Request No. 428C.

1 However, Public Counsel is not aware of Avista ever requesting or receiving explicit
2 approval from the Commission with respect to its treatment of REC revenues.
3 Moreover, the Commission recently provided some guidance on the issue,
4 specifically as it relates to REC revenues. In its Order establishing the disposition of
5 proceeds from the sale of RECs in the PacifiCorp REC proceeding in Docket UE-
6 100749, the Commission stated the following: “PacifiCorp’s decision not to
7 proactively seek a Commission determination of the distribution of REC sales
8 proceeds does not shield the Company from its obligations to its customers or
9 preclude the Commission from determining the proper disposition of those proceeds,
10 even if the sales occurred in the past.”²³ Similarly here, the Commission is not
11 prohibited from addressing the disposition of 2012 REC revenues in this proceeding.

12 **Q: Please explain the third flaw you identify with respect to RECs being tracked**
13 **through the ERM.**

14 A: The Commission has also determined that the sale and disposition of RECs should be
15 treated akin to utility property sales.²⁴ Tracking REC revenues through the ERM,
16 which is a power cost adjustment mechanism, is not consistent with this
17 determination because it treats RECs as a component of power costs. The Company
18 confirms this treatment in a statement it made in response to discovery, stating, with
19 respect to REC revenues: “These revenues and expenses are treated the same as other
20 power costs and revenues in the ERM and are subject to the ERM sharing bands.”²⁵

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²³ *WUTC v. PacifiCorp*, Docket UE-100749, Order 10, ¶ 30.

²⁴ *PSE REC Order*, ¶¶ 13-14 and, *WUTC v. PacifiCorp*, Docket UE-100749, Order 10, ¶ 24.

²⁵ Avista’s Response to Public Counsel Data Request No. 236.

1 **Q: Please summarize your recommendations with respect to REC revenues.**

2 A: Public Counsel recommends that Commission order Avista to provide a full
3 accounting of calendar year 2012 REC revenues attributable to Washington and
4 return 100 percent of these revenues to customers as bill credits. Beginning January
5 1, 2013, Public Counsel recommends that Avista defer all REC revenues in a separate
6 tracker outside of the ERM and return 100 percent of these proceeds to customers
7 annually as bill credits. Public Counsel further recommends that the Commission
8 order Avista to work with the parties in this case to develop the details of the separate
9 tracker and bill credit mechanism.

10 **Q: Does Public Counsel have concerns with other aspects of the settlement?**

11 A: Public Counsel's challenge to the settlement is based on the issues which are
12 addressed in my testimony, and that of Mr. Dittmer and Mr. Coppola. Public Counsel
13 does not object to all components of the settlement, but was not able to join the
14 integrated agreement because of substantial disagreement on the issues raised in our
15 testimony. Public Counsel recognizes that the Settling Parties have negotiated the
16 settlement as an integrated agreement and that rejection would allow those parties to
17 revisit their positions on any aspect of the settlement. However, Public Counsel
18 believes that there is the possibility of all-party settlements on many of the non-
19 challenged issues (e.g. rate spread/rate design), in the event the Commission rejects
20 the settlement as filed, such that the issues could be narrowed for hearing.

21 **Q: Does this conclude your testimony?**

22 A: Yes.