VIA FIRST CLASS MAIL AND E-MAIL

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, Washington 98504-7250

October 26, 2004

Re: Docket No. UG-041515, Avista Gas General Rate Case

Dear Ms. Washburn,

No one from the NW Energy Coalition is able to attend the public hearing in Spokane on October 28 regarding the aforementioned docket. We appreciate the opportunity to comment in writing on the settlement proposed by Avista, UTC Staff, and the Northwest Industrial Gas Users (NWIGU). Our comments focus primarily on procedural rather than substantive issues associated with the proposed settlement agreement.

The Coalition had considered requesting intervention status in this proceeding. We opted not to participate due to resource constraints. In addition, while we strategically intervene in adjudicated proceedings to protect the public interest, particularly when key policies are at stake, we believed the substance of this case would be well-covered by Public Counsel in representing broad consumer interests as well as the Energy Project in representing low-income customers.

On September 8, the Commission suspended the tariff changes that were proposed by Avista in mid-August. A prehearing conference was scheduled for September 23 in accordance with usual procedure, and interested parties were granted intervention status. It became a matter of record at that same prehearing conference that Staff and the Company *already* had reached a settlement in principle – before other parties had the opportunity to even commence discovery. The settlement was filed on October 15, and the Commission commenced a fast-paced procedural schedule, including a hearing on the settlement on October 22 and a public hearing on October 28, with the possibility of new rates effective November 1. We understand that NWIGU opted to join the settling parties subsequent to the first prehearing conference.

The Coalition strongly supports the ability of parties to reach settlement agreements in adjudicated proceedings. However, we have significant concerns that the public process is being circumvented in this docket. Due process requires that all parties have a meaningful opportunity to be heard. Given the considerably expedited schedule, it is difficult to imagine that non-settling parties will have that meaningful opportunity. Not only is discovery severely restricted due to time constraints, but also non-settling parties do not appear to have a meaningful opportunity to present an opposing case. As mentioned previously, the Coalition felt in this case that Public Counsel and the Energy Project would protect consumers' interest in this proceeding. Their ability to do so is seriously hampered by the current procedural schedule.

While the Commission has authority in its rules to expedite procedural schedules, for example through the use of "brief adjudicative proceedings" (WAC 480-07-610), that decision must be made consistent with the public interest and with other provisions of law. In this case, if due process is inadequate, the public interest clearly is not being upheld. We note that Mr. Elgin's testimony in support of the settlement agreement refers to Puget Sound Energy's ability to file a Power Cost Only Rate Case (PCORC), which can be processed in a 4-month time period, as an example of an expedited proceeding. It is important to recall that the PCORC mechanism was established through a comprehensive settlement agreement negotiated over several months with all parties in the 2002 PSE rate case. The PCORC also focuses on a discrete issue, while a general rate case tends to cover various issues.

The Joint Motion of Avista and Staff, filed on October 15, requests an Order allowing the implementation of the rates in the settlement agreement on November 1, *even if the Commission has not yet issued its final decision on the settlement*, to coincide with the *proposed* effective date of the Company's Purchase Gas Adjustment. While we can appreciate the preference for implementing rate adjustments simultaneously, and notifying customers only once, this recommendation strikes us as having the potential for creating more confusion among customers regarding the process for determining rates. And it seems odd to put in place rates that have not yet been approved.

Over the past several years, we have witnessed what appears to be a growing trend of UTC Staff and utilities beginning settlement negotiations early and without all parties present. We note that PSE has been an exception to this over the past two years, and we applaud that utility's commitment to including all parties in potential settlement discussions. A trend also appears to be forming towards expediting and streamlining processes at the Staff level. While we support improving the efficiency of the UTC's processes, we strongly believe that related discussions should occur in an open public process such as a rulemaking, where all parties have an opportunity to comment and be heard on the advantages and disadvantages of different approaches.

In sum, approval of this settlement agreement on its current fast track would establish a poor precedent for future adjudicated proceedings, as well as a potential lack of faith in the fairness of the UTC's adjudicated process. We respectfully ask the Commission to deny the proposed settlement and Joint Motion, and establish a procedural schedule that allows non-settling parties ample, meaningful opportunity for discovery, testimony, and briefs, and to engage in further settlement discussions if those appear warranted. We also urge the Commission to direct Staff in this and future proceedings to ensure all parties are included in settlement discussions when those commence.

Sincerely,

Senior Policy Associate
NW Energy Coalition