

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AVISTA) CASE NO. AVU-G-19-08
CORPORATION’S PETITION FOR)
LIMITED WAIVER OF PENALTY TERMS) ORDER NO. 34549
SET FORTH IN ITS NATURAL GAS TARIFF)
)

On November 14, 2019, Avista Corporation (“Avista” or “Company”) petitioned the Commission to grant a limited waiver of certain penalty provisions in Schedule 146 of Avista’s tariff, and authorize settlement discussions between Clearwater Paper (“Clearwater”) and Avista to resolve a disputed penalty that arose from Schedule 146.

On December 4, 2019, the Commission issued a Notice of Petition and Notice of Modified Procedure, setting a January 7, 2020 comment deadline and a January 14, 2020 reply comment deadline. Commission Staff filed the only comments and recommended the Commission grant the limited waiver. Avista did not reply.

Having reviewed the record, we approve Avista’s petition as described below.

THE PETITION

The Company petitioned the Commission to grant a limited waiver to Schedule 146’s penalty provisions. The Company explained it has a contract with Clearwater to transport natural gas to Clearwater, and the terms in Schedule 146 are incorporated into the contract.

Schedule 146—Transportation Service for Customer-Owned Gas—provided the terms under which Avista provided natural gas transportation services to commercial and industrial customers with requirements exceeding 250,000 therms of gas per year. Under the Schedule, Avista may issue an entitlement order prescribing a maximum amount of gas to be used by a customer per day. Gas used over the prescribed entitlement is subject to an entitlement penalty.

Natural gas prices during the winter of 2018-2019 were volatile because of the Prince George Enbridge (“Enbridge”) pipeline rupture on October 9, 2018. The Company stated that, in February and March 2019, Northwest Pipeline—the main interstate pipeline that transports natural gas from Sumas south along the I-5 corridor and east to the Rocky Mountains—issued entitlement notices requiring shippers on its pipeline to stay within a certain percentage of their nominated natural gas supplies. In response to these notices, Avista issued entitlement notices to those

customers on its distribution system that purchase their own natural gas and procure their own natural gas transportation, of which Clearwater is one.

The Company stated Clearwater exceeded its nominated natural gas volumes eight times between February 7, 2019 and March 4, 2019. Avista issued entitlement penalties for the eight exceedances, under Schedule 146. The entitlement penalty in Schedule 146 is calculated by the *greater* of \$1.00 per therm *or* 150% of the highest midpoint price at one of a select number of natural gas trading hubs. Avista stated that, while the average natural gas price at various non-Sumas trading hubs during the exceedances was \$0.65 per therm, the average price at Sumas during the same period was \$3.59 per therm, with a high price of \$15.93 per therm. Avista stated the resulting entitlement penalty against Clearwater is \$926,202.

Avista noted Clearwater and Avista agree the entitlement penalty is unduly burdensome. Avista was not forced to buy more natural gas to make up for excessive natural gas use by Clearwater. Avista noted ‘there was no financial harm to any of Avista’s core customers, nor was Avista penalized by Northwest Pipeline.’ Petition at 4.

Avista stated Clearwater wishes to negotiate whether and by what amount the entitlement penalty should be reduced. Avista noted it cannot reduce a schedule-derived penalty without the Commission’s authorization. The Company asked the Commission to grant a limited waiver of Schedule 146 to allow Avista and Clearwater to negotiate a settlement regarding the disputed penalty. If Clearwater and Avista agree to a modified entitlement penalty, they will jointly file a settlement agreement with the Commission for approval or rejection.

STAFF COMMENTS

Staff recommended the Commission allow a limited waiver of the penalty terms in Schedule 146 to allow parties to negotiate a possible penalty reduction. Staff also recommended Avista be required to file any settlement agreement for Commission approval.

Staff confirmed that Clearwater violated the entitlement terms defined in Schedule 146, that Avista correctly calculated the entitlement penalty, and that Avista responded appropriately to pipeline restraints caused by the Enbridge pipeline rupture when it issued the entitlement order. Staff agreed with Avista that the unusual circumstances surrounding the Enbridge pipeline rupture led to an unduly burdensome fine. Staff verified Clearwater was the only Idaho transportation customer that violated entitlement orders and incurred entitlement penalties. Because Avista’s Idaho transportation customers complied with the entitlement orders, Staff recommended that if

the limited waiver is granted by the Commission, Avista should give additional notice of any settlement to Idaho transportation customers that complied with the entitlement orders so they may file timely comments in any case requesting approval of the settlement. Additionally, Staff verified Avista was not penalized by Northwest Pipeline, and that the Company had a favorable cumulative imbalance on Northwest Pipeline that accommodated Clearwater's overruns.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction and authority over Avista, a gas utility, and the issues raised in Case No. AVU-G-19-08, under Title 61 of the Idaho Code, including but not limited to, *Idaho Code* §§ 61-116, 61-117, 61-129, 61-307, 61-502 and 61-503 and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

We approve a limited waiver of Schedule 146's penalty provisions, understanding that the Company will negotiate with Clearwater to establish a less burdensome penalty. This limited waiver does *not* authorize the Company to forgive the penalty or to negotiate a nominal penalty. Clearwater agreed to follow Schedule 146 and failed to do so. Under different circumstances, Clearwater's exceedances could have subjected Avista to entitlement penalties from Northwest Pipeline. Entitlement orders are designed for circumstances like the Enbridge pipeline rupture, and such orders need meaningful teeth. We approve the limited waiver here for one reason—no one appears to have been harmed by Clearwater's exceedances. Avista was not penalized by Northwest Pipeline, and no other transportation customers appear to have been harmed. Considering these facts, we find it fair, just, and reasonable to waive the penalty provisions in Schedule 146 to allow the Company to negotiate a less burdensome penalty.

If a settlement is reached, Avista and Clearwater must file the settlement with the Commission for approval as a new case. Avista's other Idaho transportation customers should be given additional notice that the settlement has been filed with the Commission.

ORDER

IT IS HEREBY ORDERED that Avista's petition for a limited waiver of the penalty terms in Schedule 146 to allow parties to negotiate a possible penalty reduction—is approved.

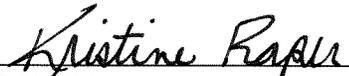
IT IS FURTHER ORDERED that if a settlement agreement is reached, the parties shall submit the settlement agreement to the Commission for approval. Additional notice of the settlement shall be given to Avista's Idaho transportation customers by the date the settlement agreement is filed with the Commission.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  day of February 2020.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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