

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>AVISTA CORPORATION’S PETITION FOR</b>	)	<b>CASE NO. AVU-G-20-02</b>
<b>APPROVAL OF A SETTLEMENT</b>	)	
<b>AGREEMENT BETWEEN CLEARWATER</b>	)	<b>ORDER NO. 34712</b>
<b>PAPER CORPORATION AND AVISTA</b>	)	
<b>CORPORATION</b>	)	

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On April 7, 2020, Avista Corporation (“Company”) petitioned the Commission to approve a settlement agreement (“Agreement”) between the Company and Clearwater Paper Corporation (“Clearwater”) pursuant to Commission Rule of Procedure 53. IDAPA 31.01.01.053. The Agreement proposes to reduce the amount of a penalty that could have been imposed on Clearwater under the Company’s Idaho Natural Gas Tariff, Schedule 146 – Transportation Service for Customer-Owned Gas (“Tariff”). The Company requested that the Petition be processed by Modified Procedure. *Petition* at 6.

On May 13, 2020, the Commission issued its Notice of Petition and Notice of Modified Procedure and set written comment and reply comment deadlines. *See* Order No. 34668. The Commission Staff (“Staff”) filed the only comments and supported the Company’s Petition. The Company did not reply.

Having reviewed the record, the Commission enters this Order approving the Company’s Petition and Agreement.

**THE PETITION**

The Company has a special contract (“Contract”) for natural gas transportation service with Clearwater. *Petition* at 2; *see also* Order 30307. According to the Company, Section 7 of the Contract makes Clearwater responsible for imbalance charges or penalties contained in the Company’s Tariff. *Id.*

On October 9, 2018, the Enbridge-owned West Coast Pipeline experienced a rupture that reduced natural gas flows to the Sumas natural gas trading hub for the entire 2018-2019 winter period. *Id.* at 3. The Company asserted the rupture, coupled with Jackson Prairie system maintenance and outages, resulted in unusually high prices and volatility at Sumas. *Id.* The Company asserted Northwest Pipeline issued entitlement notices in February and March of 2019 requiring that shippers on the pipeline stay within a certain percentage of their nominated natural gas supplies. *Id.* The Company alleged it sent the same entitlement notices to Clearwater and

other transportation customers on its distribution system. *Id.* The Company stated that despite these notifications, “and without passing judgment as to why, Clearwater exceeded its nominated natural gas volumes eight times between February 7, 2019 and March 4, 2019.” *Id.* This led to a resulting penalty of \$926,202 under the Company’s Tariff. *Id.* at 4.

The Company and Clearwater agreed that the \$926,202 penalty was unduly burdensome due to the unique circumstances that existed when it was incurred. *Id.* at 4. As a result, the Company asked the Commission for a limited waiver of certain penalty provisions in the Tariff and permission to enter settlement discussions with Clearwater. *Id.*; *see also* Order No. 34549. In the Agreement the Company and Clearwater agreed to reduce the amount of the penalty to be paid by Clearwater to \$500,000. *Id.* at 5. The Company asserted the agreed-upon \$500,000 penalty is still sizeable and provides deterrence, but not so high as to become unduly burdensome. *Id.* The Company represented that other customers were not harmed by Clearwater’s entitlement violations. *Id.* Last, the Company provided notice of the Agreement to its transportation customers when it filed it with the Commission.

#### **STAFF COMMENTS**

Staff reviewed the Agreement, prior Commission orders, and provisions under the Company's Tariff. Staff noted that the original \$926,202 penalty was 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. *Id.* at 2. Staff noted in Order No. 34549 that the Commission, in allowing for settlement discussions between the parties, was not authorizing the Company to forgive the penalty or reduce it to a nominal amount. *See* Order No. 34549 at 3. Staff believed that the Company’s and Clearwater’s agreed-upon penalty of \$500,000 complies with the Commission’s directives in Order No. 34549 and strikes a reasonable balance between discouraging future entitlement violations and ensuring the penalty is not unduly burdensome under the circumstances. *Staff Comments* at 3. Staff confirmed that no other customers were harmed by Clearwater's entitlement violations, and the Company was not penalized by Northwest Pipeline. *Id.* Staff noted the reduced penalty would pass through the Company's annual purchased gas adjustment mechanism to offset deferred gas costs. *Id.* Based on its review, Staff recommended the Commission approve the Petition and the Agreement. *Id.*

## COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503.

The Commission has reviewed the record, including the Petition, Agreement, and the comments of Staff. In our order granting the Company a limited waiver of certain penalty provisions in its Tariff and permission to enter settlement discussions the Commission found:

This limited waiver *does not* authorize the Company to forgive the penalty or to negotiate a nominal penalty. 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.

Order No. 34549 at 3 (emphasis added). The Commission finds that the \$500,000 penalty, as agreed to by the parties, strikes a balance between deterring future entitlement violations while also recognizing that events occurring when the penalty was incurred likely contributed to the original amount of \$926,202. Further, it appears from the record that no other customers or the Company were harmed by Clearwater's exceedances. Thus, the Commission finds that the parties Agreement complies with the requirements of Order No. 34549. Based on the foregoing, the Commission finds that the Agreement is fair, just, and reasonable and that it and the Petition should be approved.

Last, the Commission finds that our decision to approve the Agreement, including the reduced penalty of \$500,000, is limited to the specific facts of this case. Those facts being the events which the Company asserted led to unusually high prices and volatility at Sumas (Enbridge rupture and Jackson Prairie System maintenance) and that no harm came to other customers. *Id.* But for those circumstances the Commission may have reached a different conclusion about the reduction of the penalty.

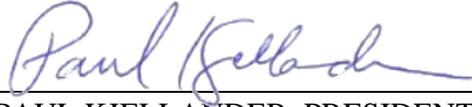
### ORDER

IT IS HEREBY ORDERED that the Petition and Agreement are approved.

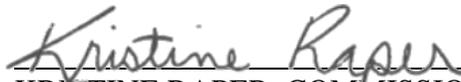
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter

decided in 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 30<sup>th</sup> June 2020.



PAUL KJELLANDER, PRESIDENT

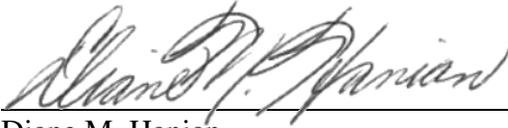


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian  
Commission Secretary

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