

Attachment G

UNITED STATES OF AMERICA 119 FERC ¶ 62,161
FEDERAL ENERGY REGULATORY COMMISSION

OFFICE OF ENERGY MARKETS AND RELIABILITY

Avista Energy, Inc.

Docket No. CP07-179-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued May 25, 2007)

1. On April 19, 2007, Avista Energy, Inc. (Avista Energy)¹ filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a limited-jurisdiction certificate of public convenience and necessity authorizing the temporary assignment of rights to Coral Energy Resources, L.P. (Coral Resources), an unaffiliated company, to use expansion capacity at the Jackson Prairie Storage Project (Jackson Prairie) located near Chehalis, Washington. Avista Energy requests pre-granted authority to abandon the assignment arrangement effective April 30, 2011. For the reasons discussed below, Avista Energy is issued the limited-jurisdiction certificate and pre-granted abandonment authorization, as requested.

Background

2. Jackson Prairie is an aquifer-type storage facility. Jackson Prairie is owned in equal, undivided, one-third parts by Puget Sound Energy, Inc. (Puget), Northwest Pipeline Corporation (Northwest), and Avista Corporation (Avista Corp). Avista Corp and Puget are state regulated local distribution companies, and Northwest is an interstate pipeline company under Commission jurisdiction. The three owners are parties to an amended Gas Storage Project Agreement (Project Agreement) dated January 15, 1998, that designates Puget as Project operator and describes the storage service rights and obligations of the owners. The Commission accepted the Project Agreement in a September 30, 1998 Order.²

3. Avista Energy states that the Commission found that neither Avista Corp (formally Washington Water Power Company) nor Puget (formally Washington Natural

¹ Avista Energy is an energy marketing subsidiary of Avista Capital, Inc., which is wholly-owned by Avista Corp.

² *Puget Sound Energy, Inc.*, 84 FERC ¶ 61,347 (1998) (September 30, 1998 Order).

Gas Company) are a “natural gas company” under the meaning of the NGA by virtue of their ownership interests in Jackson Prairie.³ Instead, the Commission determined that the *de facto* “corporation” created by the owners’ Project Agreement is the regulated natural gas company under the NGA, and Puget is the agent of the *de facto* corporation. The Commission also required the Project Agreement to be filed with the Commission as the FERC Gas Tariff governing Jackson Prairie operations.

4. Subsequent to the September 30, 1998 Order, Avista Energy and Avista Corp entered into a Conveyance Agreement, as amended in 2002, under which Avista Corp conveyed its ownership interest of the Jackson Prairie capacity in the 1998 and 2002 expansions to Avista Energy, including withdrawal and injection capability. In exchange, Avista Energy agreed to pay Avista Corp’s portion of the capital costs and ongoing expenses associated with the expansion. The Conveyance Agreement incorporates and is subject to the Project Agreement. The initial term of the Conveyance Agreement expires on October 31, 2009.

Instant Filing

5. Avista Corp states that it plans to exit the wholesale marketing business which is carried out through its subsidiary Avista Energy. Avista Energy states that it will sell substantially all of its operating assets to the Coral Entities (including Coral Resources),⁴ which will continue the marketing activities previously conducted by Avista Energy. As part of the Purchase and Sale Agreement, Avista Corp and Avista Energy will extend the term of the Conveyance Agreement by 18 months, so that it expires on April 30, 2011.

6. Avista Energy requests a limited-jurisdiction certificate of public convenience and necessity to authorize the temporary assignment of approximately 2,976,252 Dth of Jackson Prairie expansion capacity and 104,000 Dth of deliverability to Coral Resources until April 30, 2011.⁵ Avista Energy states that both the Conveyance Agreement and

³ See *El Paso Natural Gas Co.*, Opinion No. 620, 47 F.P.C. 1527, 1532 (1972).

⁴ Avista Energy, Avista Energy Canada, Ltd, Coral Energy Holding, L.P., Coral Energy Resources, L.P., Coral Power, L.L.C., and Coral Energy Canada Inc. (Coral Entities) entered into a Purchase and Sale Agreement, under which Avista Energy will sell substantially all of its operating assets, including its trade book and related agreements, to the Coral Entities. On April 18, 2007, Coral Power, L.L.C. and Avista Energy filed a joint application in Docket No. EC07-82-000, pursuant to section 203 of the Federal Power Act, requesting authorization for the disposition of jurisdictional assets that will result from the Purchase and Sale Agreement. The authorization was granted in a delegated letter order issued on May 24, 2007 in Docket No. EC07-82-000.

⁵ Avista Energy states that it will assign its rights to use a volume equivalent to its ownership interest in the expansion capacity at closing to Coral Resources for a limited

Assignment Agreement will expire on April 30, 2011, and the assigned capacity will then revert from Coral Resources to Avista Corp. Therefore, Avista Energy requests that the Commission provide for pre-granted abandonment authority, effective April 30, 2011, upon expiration of the assignment. Avista Energy states that pre-granted abandonment authority will allow the capacity assigned to Coral Resources to transfer back to Avista Corp for use in serving its retail customers.

7. According to the Assignment Agreement, Coral Resources will remit a monthly payment of \$83,333.33 to Avista Energy for the use of the Jackson Prairie expansion capacity. Avista Energy states that this monthly payment and the extension of the Conveyance Agreement were negotiated as a part of the Purchase and Sale Agreement. Avista Energy also states that during the term of the assignment, it will bear the risk of any underrecovery of costs associated with the storage capacity. Moreover, it states that the retail customers of Avista Corp will not be at risk for any underrecovery of those costs because Avista Corp will not seek to recover such costs from its retail customers. Avista Energy filed an unexecuted copy of the Assignment Agreement with Coral Resources as a special rate schedule in Exhibit P to the application and asks that all other regulation and reporting requirements be waived. Avista Energy contends this approach is consistent with Commission action in issuing limited-jurisdiction certificates for portions of the Jackson Prairie capacity.⁶ Avista Energy states that it will file an executed copy of the Assignment Agreement in the future.

8. Avista Energy also requests that the Commission reaffirm its longstanding determination that Avista Corp is not a natural gas company under the NGA and also find that Avista Energy will not be a natural gas company as a result of the requested authorization. Avista Energy argues that retaining Avista Corp's non-jurisdictional status remains in the public interest because its local distribution functions, including use of Jackson Prairie capacity, are subject to state jurisdiction. Further, it claims that extending the same non-jurisdictional status to Avista Energy is also in the public interest and that the use of the Jackson Prairie capacity for the benefit of Avista Corp's retail business will continue unchanged. Avista Energy asserts that any change in the jurisdictional status of these entities could result in a termination of the existing Project Agreement.

term until April 30, 2011 (Assignment Agreement). Avista Energy also indicates that the Assignment Agreement permits Coral Resources to assign the Assignment Agreement to its parent, Coral Energy Holding, L.P., or other of its corporate affiliates in the event of an internal corporate restructuring that results in the transfer of the function for which the expansion capacity was obtained to another company within the same corporate family.

⁶ *Citing Northwest Pipeline Corp.*, 23 FERC ¶ 61,361 (1983) and *Washington Water Power Co.*, 53 FERC ¶ 61,238 (1990).

9. Avista Energy states that its proposal is consistent with prior Commission orders granting similar authorization with respect to Jackson Prairie capacity,⁷ and with limited-jurisdiction certificates issued to other companies.⁸ Avista Energy contends that authorizing Coral Resources to assign the Assignment Agreement to its parent, Coral Energy Holding, L.P., or to other corporate affiliates as a result of a corporate reorganization, is consistent with Commission decisions approving such provisions.⁹

Notice of Filing

10. The filing was noticed on April 26, 2007, and timely, unopposed motions to intervene were filed by Puget and Northwest. No protests or adverse comments were received. Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.214 (2006)).

Discussion

11. The proposed assignment arrangement is a reasonable means to enable Avista Energy to withdraw from wholesale marketing. Avista Corp's existing retail customers will not subsidize the cost of the temporary assignment of the rights to use a portion of Jackson Prairie capacity and their service will not be adversely affected. Additionally, as Avista Energy states, the proposed arrangement, unlike a transfer of Jackson Prairie capacity to Coral Resources or a conveyance of ownership interests, will not trigger the approval and right-of-first-refusal provisions of the Project Agreement. Since the proposed temporary assignment and requested limited-jurisdiction certificate do not involve the construction of any new facilities, it will have no adverse effect on existing pipelines in the market and their captive customers, or landowners or communities.

12. In view of the above discussion, and given that there were no filed objections, the proposal is found to be required by the public convenience and necessity. Accordingly, Avista Energy is issued its requested limited-jurisdiction certificate and abandonment

⁷ Citing *Northwest Pipeline Corp.*, 23 FERC ¶ 61,361 (1983), *Northwest Pipeline Corp.*, 76 FERC ¶ 62,096 (1996), *The Washington Water Power Co.*, 53 FERC ¶ 61,238 (1990), *The Washington Water Power Co.*, 73 FERC ¶ 61,080 (1995), *The Washington Water Power Co.*, 82 FERC ¶ 61,041 (1998).

⁸ Citing *Sonat Marketing Co. and United Cities Gas Co.*, 68 FERC ¶ 61,334 (1994).

⁹ Avista Energy cites *Alliance Pipeline L.P.*, Docket No. RP07-175-000 (unpublished letter order issued Mar.21, 2007); *CenterPoint Energy-Mississippi River Transmission Corp.*, 115 FERC ¶ 61,013 (2006) at P 5; *Gulfstream Natural Gas System, L.L.C.*, 111 FERC ¶ 61,330 (2005).

authorization. Further, provided that Avista Corp. continues to operate in the manner described by Avista Energy, it will not be a natural gas company under the NGA because its local distribution functions, including use of Jackson Prairie capacity, are subject to state jurisdiction. Similarly, provided that Avista Energy operates in the manner described in its application, it will not be a natural gas company under the NGA, subject to the Commission's jurisdiction and its regulatory requirements. Given this determination, the Assignment Agreement between Avista Energy and Coral Resources will be treated as a special rate schedule for Jackson Prairie storage services as requested, and compliance with all other regulation and reporting requirements is waived.

Findings:

- (A) A certificate of public convenience and necessity is granted to Avista Energy authorizing the temporary assignment of rights to use capacity in the Jackson Prairie Storage Project to Coral Resources until April 30, 2011.
- (B) Avista Energy is granted permission and approval to abandon the assignment of storage capacity and service authorized by Paragraph (A), effective April 30, 2011, as more fully described in this order and the application.
- (C) The certificate issued by paragraph (A) above and the rights granted there under are conditioned upon Avista Energy's compliance with all applicable Commission regulations under the Natural Gas Act and in particular the General Terms and Conditions set forth in paragraphs (a) and (e) of section 157.20 regulations. Waiver is hereby granted of any other reporting requirements with respect to the certificated activities of Avista Energy and it is determined that the Uniform System of Accounts does not apply to such activities.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development – West under 18 C.F.R. §375.307. This action constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.

Sincerely,

Steve P. Rodgers, Director
Division of Tariffs and Market
Development – West