

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**AVISTA GRC 2009 and AVISTA DECOUPLING
Docket Nos. UE-090134/UG-090135, UG-060518**

Public Counsel Response to Bench Request No. 12

Bench Request No. 12: Does RCW 80.80 and WAC 480-100-405 and -415 apply to the Lancaster Power Purchase Agreement (PPA)? Why or why not?

At hearing on Friday, October 9, 2009, Mr. Kelly O. Norwood indicated that the Company was requesting a determination in this proceeding regarding whether the Lancaster PPA complies with the requirements of RCW 80.80 and WAC 480-100.

RESPONSE:

Public Counsel concurs in the response of the Northwest Energy Coalition to this bench request. Public Counsel believes that the above statutes and rules apply to the Lancaster PPA in this rate case under the following interpretation. RCW 80.80.040(1) states, "Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of: (a) One thousand one hundred pounds of greenhouse gases per megawatt-hour, or (b) the average available greenhouse gases emissions output as determined under RCW 80.80.050." While the initial power purchase agreement was executed prior to July 1, 2008, the initial agreement was entered into by an unregulated subsidiary, not by the utility, as were subsequent agreements to date. The utility does not acquire the rights to the power, if at all, until January 1, 2010. The approval of that assignment is an issue in this case. Only if the prior affiliate transactions are considered to be transactions of the "electric utility" within the meaning of the statute, would the statute not apply.