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December 13, 2012

SENT VIA E-MAIL AND ABC LEGAL MESSENGER

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: WUTC v. Avista
Dockets UE-120436, *et. al*

Dear Mr. Danner:

Enclosed please find the original and twenty (20) copies of Public Counsel's Response to Commission Staff's Objection to Bench Request Response and Certificate of Service for filing in the above-entitled dockets.

Sincerely,

LISA W. GAFKEN
Assistant Attorney General
Public Counsel Division
(206) 464-6595

LWG:cjw
Enclosure

cc: Parties (E-mail and First Class Mail)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKETS UE-120436 and UG-120437 (<i>Consolidated</i>)
)	
Complainant,)	
)	PUBLIC COUNSEL’S RESPONSE TO COMMISSION STAFF’S OBJECTION TO BENCH REQUEST RESPONSE
v.)	
AVISTA CORPORATION d/b/a AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKETS UE-110876 and UG-110877 (<i>Consolidated</i>)
)	
Complainant,)	
)	
v.)	
AVISTA CORPORATION d/b/a AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

1. Public Counsel responds to Commission Staff’s Objection to Public Counsel’s Response to Bench Request No. 9 (Objection). Public Counsel’s response is wholly appropriate and responsive to the Bench Request; therefore, Public Counsel requests that the Commission deny Staff’s Objection.

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2. The following exchange occurred at the November 29, 2012, hearing, during which Commissioner Jones requested certain information that became Bench Request / Bench Exhibit No. 9:

COMMISSIONER JONES: I don't want to engage -- it's late in the day and the testimony is evident, but if there is any counter study to the Harvard Law School study that Ms. Feltes referenced, in addition to your testimony, I would appreciate seeing any academic or other study buttressing or, you know, counter to that criticism of the ISS.

MS. GAFKEN: Okay. So the way that I understand that, you're requesting additional information then countering their criticism to the ISS group? Okay. We can provide both that and the errata.

MR. TROTTER: Excuse me, Commissioner Jones, if I have a clarification. You were asking for an academic study?

COMMISSIONER JONES: Yes, an academic study. I would limit it to academic or think tank. And I just haven't had time to review your testimony last night, but I'm sure this is a very contentious area, and I just want to make sure we have a balanced record.

THE COURT: And why don't we go ahead -- I'm hesitant to mark something in the absence of knowing it even exists, but if you do file something, let's go ahead and designate that as Exhibit 9.

MS. GAFKEN: Okay.¹

3. Public Counsel understands the request to be an academic or think tank study that counters the "Harvard Law School study" referenced by Ms. Feltes criticizing the ISS peer group. Consistent with this understanding, Public Counsel drafted the Bench Request as follows: Commissioner Jones requested an academic or think tank study countering the criticism of the ISS peer group cited in Mr. Norwood's testimony, Exhibit KON-7T at 30:7-12, and referred to by Ms. Feltes during her testimony at the November 29, 2012, hearing.²

¹ TR. 347:13 – 348:9 (emphasis added).

² Public Counsel Response to Bench Request / Bench Exhibit No. 9, December 6, 2012.

4. During her oral testimony, Ms. Karen Feltes stated that Avista had “an article from the Harvard Law School talking about the criticism.”³ She was referring to an article quoted in Mr. Kelly Norwood’s Rebuttal Testimony.⁴ Ms. Feltes’s testimony was inaccurate and misleading in calling the article “an article *from* the Harvard Law School.” This inaccuracy resulted in an inaccurate assumption that formed the basis for Commissioner Jones’s Bench Request: that there was an academic study to which a counter-study might exist.

5. Because the article referred to by Avista is not truly an article from Harvard but rather a blog posting, there is no “academic study” to which a counter-study might exist. Public Counsel’s response clarifies this point in a manner that does not constitute surrebuttal. Moreover, simply stating that Public Counsel was not able to find an academic or think tank study, as Staff suggests, is not an accurate, complete response to the request because the faulty imbedded assumption is left unanswered.

6. In addition, Public Counsel noted in its response that other articles exist that examine and critique benchmarking practices for executive pay.⁵ The criticism of the ISS peer group relates to benchmarking, which has been discussed in articles of the nature requested. However, because those articles did not evaluate ISS specifically, Public Counsel erred on the side of not providing copies in response to the Bench Request. Pointing out the existence of those articles, however, is not inappropriate because the articles address the subject matter of the criticism.

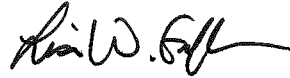
³ Feltes, TR. 346:4-5.

⁴ Exh. No. KON-7T at 30:7-12. Notably, the article was not misrepresented in Mr. Norwood’s prefiled testimony. *See Id.* at n.17.

⁵ Public Counsel Response to Bench Request / Bench Exhibit No. 9 at first paragraph, first sentence, December 6, 2012.

7. The Commission should deny the Staff's Objection and allow Public Counsel's response to Bench Request / Bench Exhibit No. 9 as filed on December 6, 2012.
8. DATED this 13th day of December, 2012.

ROBERT M. McKENNA
Attorney General



LISA W. GAFKEN, WSBA #31549
Assistant Attorney General
Public Counsel Division

CERTIFICATE OF SERVICE

Dockets UE-120436, et. al

I hereby certify that a true and correct copy of Public Counsel's Response to Commission Staff's Objection to Bench Request Response was sent to each of the parties of record shown below in sealed envelopes, via: U.S. Mail and E-Mail.

SERVICE LIST

**** = Receive Highly Confidential; * = Receive Confidential; NC = Receive Non-Confidential**

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DATED: December 13, 2012.


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