

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS UE-120436 and
TRANSPORTATION COMMISSION,)	UG-120437 (<i>Consolidated</i>)
)	
Complainant,)	
)	ORDER 08
v.)	
)	
AVISTA CORPORATION d/b/a)	
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	
)	
WASHINGTON UTILITIES AND)	DOCKETS UE-110876 and
TRANSPORTATION COMMISSION,)	UG-110877 (<i>Consolidated</i>)
)	
Complainant,)	
)	ORDER 13
v.)	
)	
AVISTA CORPORATION d/b/a)	
AVISTA UTILITIES,)	
)	
Respondent.)	
.....)	

**ORDER GRANTING MOTION TO STRIKE PORTIONS OF PUBLIC
COUNSEL’S RESPONSE TO BENCH REQUEST NO. 9**

1 During the November 29, 2012, evidentiary hearing, Commissioner Philip B. Jones questioned Ms. Karen Feltes, witness on behalf of Avista Corporation d/b/a Avista Utilities (Avista), on Avista’s criticism of the Institutional Shareholder Services (ISS) peer group reports.¹ Following this inquiry, Commissioner Jones requested that the

¹ TR 341:5-346:16.

Public Counsel Section of the Washington Office of Attorney General (Public Counsel) provide any academic or think tank study to counter the criticism of ISS's peer group methodology cited by the Harvard Law School Forum on Corporate Governance and Financial Regulation.²

- 2 On December 6, 2012, Public Counsel filed its Response to Bench Request No. 9 (Response) stating that "Public Counsel was not able to find an academic study which focuses solely on the ISS peer group, as requested by the Bench Request."³ Public Counsel then criticized the article referenced by Ms. Feltes as "a blog" that "was based on a client memorandum written by [a] guest contributor."⁴ The Response also included four attachments, none of which are academic or think tank studies countering the criticism of ISS's peer group methodology.
- 3 The Commission's regulatory staff (Staff) filed an Objection to Public Counsel's Response to Bench Request 9 (Motion to Strike). Staff contends that the only portion of the Response that is responsive to Commissioner Jones' request is Public Counsel's admission that it could not find any academic or think tank study and that the remainder of the response should be stricken.⁵
- 4 Public Counsel filed a reply to Staff's Motion to Strike (Public Counsel Reply) on December 13, 2012, claiming that its Response corrected "an inaccurate assumption" that Ms. Feltes was citing an article from Harvard Law School.⁶ Public Counsel

² Jones, TR 347:13-18. ("I don't want to engage – it's late in the day and 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 ISS.")

³ Response at 1.

⁴ *Id.*

⁵ *Id.* ¶ 3.

⁶ Public Counsel Reply ¶4.

contends that the article referenced was a blog posting, not an academic study, so no count-study would exist.⁷

- 5 Public Counsel fails to acknowledge, however, that it had the opportunity to discredit the article and its source during the evidentiary hearing. Further, Commissioner Jones' request for information was very specific, and Public Counsel directly responded to that request in one sentence: "However, Public Counsel was not able to find an academic study which focuses solely on the ISS peer group, as requested by the Bench Request." As Staff notes, the remainder of the Response is unresponsive to Commissioner Jones' inquiry.
- 6 Staff's Motion to Strike should be granted.

ORDER

- 7 The Commission grants Staff's Motion to Strike. The Commission strikes from the record all of Public Counsel's Response to Bench Request No. 9 after the following sentence: "However, Public Counsel was not able to find an academic study which focuses solely on the ISS peer group, as requested by the Bench Request."

Dated at Olympia, Washington, and effective December 18, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

⁷ *Id.* ¶ 5.