

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET NO. UE-010010
	)	
PUGET SOUND ENERGY, INC.	)	
	)	COMMENTS OF AVISTA
For a Declaratory Order and Accounting	)	CORPORATION
Order Regarding the Classification of	)	
Certain Facilities and Accounting	)	
<u>Treatment Consistent Therewith</u>	)	

**I. INTRODUCTION**

On January 2, 2001, Puget Sound Energy, Inc. (“PSE”) filed a petition for a declaratory order and accounting order. In the petition, PSE requested that the Commission enter a declaratory order adopting PSE’s proposed classification of its transmission and distribution facilities consistent with requirements of FERC Orders 888 and 888-A. PSE also sought an accounting order authorizing PSE to reflect such classifications in its utility accounts.

On January 10, 2001, Avista Corporation (“Avista”) filed a Petition to Intervene in the above-referenced proceeding. On February 16, 2001, the Commission issued, *inter alia*, a Notice of Opportunity to File Written Comments in which the Commission set a deadline of February 28, 2001 for interested parties to file written comments. Pursuant to the Commission’s notice, Avista submits the following comments on PSE’s petition for a declaratory order and accounting order.

## II. COMMENTS OF AVISTA CORPORATION

Avista, as a utility subject to both the jurisdiction of the Commission and the Federal Energy Regulatory Commission (“FERC”), will be directly affected by the Commission’s decision on PSE’s petition. The outcome of this proceeding will set procedures that may be applied to Avista in the classification of transmission and distribution facilities for various regulatory purposes.

First, Avista urges the Commission not to develop an inflexible methodology that would then be applied to all jurisdictional utilities making similar requests. The requested classification by the Commission is necessarily heavily fact-dependent given that the facilities must be evaluated in light of the seven-factor test outlined by FERC in Order 888 as well as other relevant factors. Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats. & Regs. ¶ 31,036 at 31,771 (1996) (“Order 888”) and ¶ 31,048 (1997) (“Order 888-A”). In promulgating its test, FERC noted that “[t]he seven-factor test is intended to provide sufficient flexibility to take into account unique local characteristics and historical usage of facilities used to serve retail customers.” Order 888-A at 30,342 (emphasis added). Thus, while the methodology the Commission adopts in this case may be generally applicable to Avista, there may be local differences between the various jurisdictional utilities that result in a different classification of the utilities’ facilities. In fact, FERC specifically rejected a bright line universal rule in favor of a fact-specific, case-by-case determination. Order 888-A at 30,342; see also Order 888 at 31,783 (“Determining where to draw the jurisdictional line for facilities used in unbundled retail wheeling transactions will involve case-specific determinations that evaluate the seven local distribution indicators that we are adopting”). Accordingly, Avista urges that the Commission’s determination in this case should not foreclose the case-by-case determination envisioned by FERC and not set any

precedents applicable to Avista by approving PSE's petition other than examining the methodology under which such a petition may be considered.

Secondly, in its petition, PSE asks only that the Commission decide which facilities are distribution facilities falling under the jurisdiction of the Commission and which facilities are transmission facilities falling under the jurisdiction of the FERC. As noted above, this determination is a "question of fact" to be decided based on the individual characteristics of the applicant utility. See Order 888-A at 30,342 (noting that "whether facilities are used in local distribution is a question of fact"). Thus, it is important to note what is not at issue and what the Commission is not deciding in this case.

In this proceeding, the Commission is only being asked to decide the classification of transmission and distribution facilities to potentially facilitate the formation of a regional transmission organization ("RTO") or Transco. There are other issues the Commission is not deciding in this case, including:

1. Participation of any utility under the jurisdiction of the Commission in an RTO or Transco;
2. Whether or not facilities determined in this proceeding to be transmission facilities are approved to be transferred to the control of an RTO or Transco and/or removed from state jurisdiction;
3. The cost-benefit analysis of a utility joining an RTO or Transco;
4. Unbundling of the retail rate structure and retail competition; and
5. Priority of use of the transmission system to serve native load.

Avista does not believe that the Commission envisions deciding any of the above enumerated issues. However, should other parties submit comments directed at any of these issues, Avista reiterates that they are not properly at issue in this proceeding.

### **III. CONCLUSION**

Pursuant to Order 888, Avista believes it is appropriate for the Commission to determine the classification of PSE's transmission and distribution facilities and issue an order regarding such classification. Avista offers these comments to point out what is not at issue in this petition and to also point out that the factual determination in this proceeding should not serve as precedent for a similar request by Avista at some time in the future.

RESPECTFULLY SUBMITTED this 27th day of February, 2001.

**AVISTA CORPORATION**

By: \_\_\_\_\_  
DAVID J. MEYER  
Senior Vice-President and General Counsel  
Avista Corporation

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