BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of AVISTA CORPORATION for a Ruling on the Regulatory Treatment of the Gain on the Proposed Sale of the 2.5% Share of the Centralia Power Plant Acquired by Avista Corporation from Portland General Electric to be Sold to TECWA Power, Inc.	)	DOCKET NO. UE-000080 BRIEF OF COMMISSION STAFF

I. INTRODUCTION

Avista Corporation (Avista) owns 15 percent of the Centralia Power Plant (Centralia) located in Lewis County, Washington. Avista contracted to sell that interest to TECWA Power, Inc. (TECWA) and it applied, under RCW 80.12.020, for Commission approval of the sale in consolidated Docket Nos. UE-991255, et. al. That application has been submitted to the Commission for decision and is pending.

Avista owns an additional 2.5 percent of Centralia which it acquired recently from Portland General Electric (PGE). Avista agreed to sell that interest to TECWA as part of the same contract for sale of Avista's 15 percent share of Centralia. (Stipulation of Facts, Exhibit A, Section 15.1.) Avista, however, excluded the 2.5 percent interest from its application in consolidated Docket Nos. UE-991255, et. al., because it believes Commission approval is unnecessary. Avista intends to give the entire gain from the sale of the 2.5 percent share exclusively to shareholders. That gain is estimated at $4.2 million.

This Docket concerns Avista's sale to TECWA of the 2.5 percent interest in Centralia that Avista acquired from PGE. The application raises three essential issues.

1. Does Avista's sale of the 2.5 percent share to TECWA require approval by the Commission under RCW 80.12.020?

2. If Commission approval is required, is the sale of the 2.5 percent share to TECWA consistent with the public interest?

3. If Commission approval is required, how should the gain on the sale of the 2.5 percent interest be treated for regulatory purposes?

The discussion that follows demonstrates that there is no reason to distinguish between Avista's 2.5 percent and 15 percent shares of Centralia. Like the 15 percent share, Avista's 2.5 percent of Centralia is property that is "necessary or useful in the performance of its duties to the public . . ." under RCW 80.12.020. Therefore, Avista's sale of the 2.5 percent interest to TECWA requires prior Commission approval.

Like the 15 percent share, Avista's sale of the 2.5 percent harms ratepayers by increasing their risk of higher replacement power costs in the future. Therefore, the sale is consistent with the public interest only if the gain on that sale is allocated completely to ratepayers in a general rate case. Allocating any of the gain to shareholders allows Avista to escape its obligations as a public service company to the detriment of ratepayers and the exclusive benefit of shareholders.

II. ARGUMENT

A. The Commission has Jurisdiction Over the Sale of the 2.5 Percent Share of Centralia by Avista to TECWA

1. RCW 80.12.020 Contains Expansive Language that Requires the Commission to Review the Transaction In Order to Protect the Public Interest

The threshold issue in this case is whether the sale of Avista's 2.5 percent interest in

Centralia requires Commission approval under the following provisions of RCW 80.12.020:

> No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, . . ., without having secured from the Commission an order authorizing it so to do . . .

(Emphasis added.)

Case law demonstrates that the Commission's responsibility to protect the public interest requires it to review Avista's sale of its 2.5 percent share under the "necessary or useful" clause of RCW 80.12.020. In Tanner Electric Corp. v Puget Sound Power & Light, 128 Wn.2d 656, 682, 911 P.2d 1301 (1996), the state Supreme Court observed that the Commission "is charged with administering pervasive regulatory schemes that effect almost every phase of activity of the businesses under its authority." In fact, the Commission came under sharp criticism for its failure in that case to carry out that obligation with respect to the interpretation and enforcement of service area agreements by regulated electric companies. Tanner, 128 Wn.2d at 665.

Avista's purchase and sale of generation facilities falls equally within the Commission's broad public interest authority to regulate utility practices which the court admonished the Commission to actively enforce. There is no dispute that that obligation applies to Avista's sale of its 15 percent share of Centralia. There is no reason to shy away from that same responsibility in this case merely because Avista's 2.5 percent share was purchased recently and may be owned only for a short time period.

The Commission itself relied upon Tanner, supra, in two recent decisions concerning the scope and meaning of RCW 80.12.020. In the Matter of the Application of PacifiCorp and Scottish Power PLC, Docket No. UE-981672, Second Supp. Order, 192 PUR4th 143

(March, 1999) (acquisition by a foreign corporation of the stock of a regulated public service company); In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation, Docket UT-981367, Fourth Supp. Order (December, 1999) (merger of unregulated holding company owning public service company with another unregulated holding company). The Commission concluded in both cases that the expansive language of RCW 80.12.020 requires the Commission to review transactions in a manner that best advances its statutory mission to protect the public interest. Scottish Power, supra, Second Supp. Order at 9, 192 PUR4th at 149. GTE Corporation, supra, Fourth Supp. Order at 14. The Commission in both cases also rejected attempts by companies to create transactions as "simple expedients" to avoid scrutiny under RCW 80.12.020. Scottish Power, supra, Second Supp. Order at 10, 192 PUR4th at 149; GTE Corporation, supra, Fourth Supp. Order at 15. In effect, the Commission "pierced the corporate veil" to assert jurisdiction under RCW 80.12.020 over transactions where the spirit and intent of the law would be advanced, if not literal letter of the law.

The spirit and intent of RCW 80.12.020 will also be advanced if applied to Avista's sale of the 2.5 percent interest in Centralia to TECWA. Indeed, the necessity for Commission oversight is enhanced if, as Avista claims (Application at 4: 3-4), it purchased the 2.5 percent share from PGE with the specific intent to resell that interest to TECWA for the exclusive benefit of shareholders. The Commission should "pierce that corporate veil," as it did for Scottish Power and GTE Corporation, and assert jurisdiction over Avista's sale to TECWA consistent with the Commission's statutory mission to protect the public interest.[1]

[1] In Section II, 2, a, we discuss Avista's temporary assignment to PGE of Avista's rights to power from the 2.5 percent share of Centralia that Avista purchased from PGE. In GTE Corporation, supra, at 15, the Commission noted that RCW 80.12.020 also includes assignments of any designated right or set of rights a company may wish to

2. Avista's 2.5 Percent Share of Centralia is Property that is "Necessary or Useful in the Performance of Its Duties to the Public"

Avista argues that the "necessary or useful" clause of RCW 80.12.020 does not apply because the 2.5 percent share has never been a part of Avista's rate base. (Application at 3: 12.) Two theories are advanced in support of this position. First, Avista recorded the purchase from PGE as "non-utility" property under Account 121. (Stipulation of Facts at 4, ¶ 11.)

Second, between December 31, 1999, when Avista closed its purchase from PGE, and no later than May 5, 2000, when the entire sale of Centralia to TECWA must close, Avista assigned the output of its 2.5 percent share to PGE which also pays for all fuel and operation and maintenance expenses associated with that share. (Stipulation of Facts, Exhibit J.) Therefore, according to Avista, the 2.5 percent share of Centralia has never been "used" to serve Avista's retail customers. (Application at 3: 2-22.)

Neither argument has merit. It is not dispositive to Commission jurisdiction under RCW 80.12.020 whether or not Avista's 2.5 percent share of Centralia is included in rate base or is "used" to serve retail loads.

a. Case Law Defines "Necessary" and "Useful" to Include Avista's 2.5 Percent Share of Centralia

Avista argues that the output from the 2.5 percent share of Centralia is assigned to PGE rather than used to provide service to Avista's ratepayers. The assignment, however, is temporary (December 31, 1999 to May 5, 2000 at the latest) and should not be erected as an obstacle to Commission jurisdiction.

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carve out from its property. Therefore, it is arguable that Avista required Commission approval for the assignment of power to PGE. If that is the case, it is inconceivable that Avista would not then require Commission approval to sell outright the property that produces that power.

Whether or not the power provides service in Washington at the time of sale is also not the deciding factor in determining whether the property producing that power is "necessary or useful" within the meaning of RCW 80.12.020. The Legislature did not require the property being sold to be used to provide service as it did for purposes of rate base valuation under RCW 80.04.250 (used and useful "for service . . . ."). It instead required the broader standard that the property be necessary or useful "in the performance of [the utility's] duties to the public . . . . " Those duties include the obligations to acquire least cost resources and to manage those resources for the full benefit of consumers. WAC 480-100-251. Whether Avista satisfied those duties would escape Commission scrutiny if the company's sale of the 2.5 percent share fell outside the provisions of RCW 80.12.020.

Moreover, in RCW 80.04.250, the Legislature required property to be "used and useful" for service in order to be included in rate base. The Legislature, therefore, was very aware of the distinction between property that was "used" for service and property that was "useful," but not actually being used. Simply stated, omission of property from rate base does not bar Commission jurisdiction under RCW 80.12.020 when that property is sold.

Most important, the capability of a generation facility to provide service is enough to qualify as "useful" under RCW 80.12.020. In, POWER v. Utilities & Transp. Comm'n., 101 Wn.2d 425, 679 P.2d 922 (1984), the state Supreme Court examined whether construction work in progress (CWIP) was property that is "used and useful for service" to be included in rate base under RCW 80.04.250. The Court defined the term "useful" as something which is "capable of being put to use: having utility: advantageous: producing or having the power to

produce good: serviceable for a beneficial end or object."[2] POWER, supra, at 430. This contrasted with the Legislature's inclusion of the term "used," which the Court defined as property that is "employed in accomplishing something." Id. CWIP was neither employed for service nor capable of being put to use for service. Therefore, CWIP was neither "used" nor "useful," and properly excluded from rate base.[3] Id.

In contrast, Avista's 2.5 percent share of Centralia is clearly "useful" as that term is defined in POWER, supra.[4] Avista admitted that it will be better able to perform its duties to the public with the additional 2.5 percent share if the sale to TECWA does not close. (Ex. T-301 at 4: 8-17.)

Moreover, the power output from the 2.5 percent share is assigned to PGE only between December 31, 1999 and May 5, 2000, at the latest. After that time period, the output will necessarily be used by Avista to provide service to Washington customers if the TECWA sale does not close.[5] In fact, Avista will be unable to fulfill its resource requirements going forward

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[2] The Court also has defined the term "necessary" not to mean absolute, indispensable, or immediate. In re Port of Seattle, 80 Wn.2d 392, 399, 495 P.2d 327 (1972). While this case involved eminent domain statutes, the definition of "necessary" arose in the context of the right of the public to expect service and facilities to provide service. Id. That same context is applicable equally to electric service under chapter 80.28 RCW. In any event, RCW 80.12.020 does not require necessity, however that term may be defined. The statute requires only that property be necessary or useful.

[3] The prohibition against including CWIP in rate base was reversed by the Legislature in 1991. RCW 80.04.250 now allows the Commission to include reasonable costs of CWIP in rate base. Laws of 1991, chapter 122, § 2.

[4] It is interesting to note that Avista's predecessor, The Washington Water Power Company, was a party in the POWER case. It contested the Court's exclusion of CWIP from the "used and useful" statute, RCW 80.04.250, because it believed that the statute was broad enough to include providing for anticipated energy needs. POWER, supra, at 432. Avista's position with respect to the 2.5 percent share of Centralia is, therefore, directly opposed to the position it took before the state Supreme Court in POWER.

[5] Avista has a peak load requirement of 1988 MW, but only 1997.5 MW of peak capability. It, therefore, has no uncommitted capacity. (Stipulation of Facts, Exhibit G, page 4.)

with both the 2.5 percent share acquired from PGE and an additional 8 percent share that Avista may acquire from Snohomish PUD if the TECWA sale does not close. (Tr. 217-218.) Of course, if the sale to TECWA does close, Avista's resource deficiency will be even more severe.

Clearly, the 2.5 percent share is a resource not only capable of providing service to ratepayers in Washington, it will soon provide service if the sale to TECWA does not close, and it will soon need to be replaced as a resource if the sale to TECWA does close. It is, therefore, necessary or useful in the performance of Avista's duties to the public under RCW 80.12.020.[6]

It is also no less necessary or useful than any other resource in Avista's portfolio which generates power that Avista may, from time to time, sell in wholesale markets rather than to retail customers. Surely Avista would not claim that it could sell any of its resources without Commission approval under RCW 80.12.020 solely because the sale occurred during the time the power is sold for resale. That, however, is the logical but clearly erroneous result of Avista's interpretation of RCW 80.12.020.

b. The Public Utility Holding Company Act Requires Avista to Treat the 2.5 Percent Share as a Utility Asset

Avista testified that ownership of the 2.5 percent share of Centralia acquired from PGE is held by Avista Corporation, the regulated utility. (Tr. 216-217.) This is the same entity that owns Avista's other 15 percent share of Centralia, the sale of which the company does not contest is governed by RCW 80.12.020.

[6] The 2.5 percent share is, therefore, akin to "property held for future use," which the state Supreme Court concluded is "useful for providing service." State ex. Rel. Pac. T.& T. Co. v. D.P.S., 19 Wn.2d 200, 230, 142 P.2d 498 (1943).

The company may argue that this arrangement was required solely because the Public Utility Holding Company Act of 1935 (PUHCA) prohibits ownership of the 2.5 percent interest by a subsidiary of Avista.[7] Therefore, it follows, ownership by the utility itself is not evidence that the 2.5 percent share acquired from PGE is utility property governed by RCW 80.12.020.

However, the prohibition under PUHCA concerns "utility assets" which are defined expressly to include "facilities, in place, of any electric utility company . . . for the production . . . of electric energy . . . ." 15 U.S.C. § 79b(18). Clearly, the 2.5 percent share of Centralia is a "utility asset" as defined by PUHCA. The requirement under RCW 80.12.020 for Avista to obtain Commission approval to sell that utility asset cannot be thwarted by either the temporary assignment of power the asset produces or, as discussed below, by contractual descriptions and accounting entries which characterize the 2.5. percent share as "non-utility."

c. The TECWA Sale Contract, Which is Already Before the Commission, Includes the Sale of Avista's 2.5 Percent Share of Centralia

Avista assigned the output of its 2.5 percent share of Centralia to PGE for the short time period December 31, 1999 to no later than May 5, 2000. The assignment contract characterizes the 2.5 percent share as property "acquired from [PGE] for non-utility purposes . . . ." (Stipulation of Facts, Exhibit J, page 1.) The record, however, is absolutely devoid of any other similar "non-utility" characterization of the 2.5 percent interest in Centralia which Avista

[7] The prohibition appears to come from 15 U.S.C. § 79i(a)(1) which allows only subsidiaries of registered holding companies to acquire utility assets if approved by the Federal Energy Regulatory Commission (FERC). Avista is not a registered holding company. Therefore, it cannot seek approval from FERC to allow a subsidiary to acquire the 2.5 percent share of Centralia.

acquired from PGE.[8] The sales contract between Avista and PGE refers simply to the "Centralia Steam Electric Generating Plant" without limitation as to the use for which that plant can be directed. (Stipulation of Facts, Exhibit C, page 1.) In fact, PGE specifically disclaimed any ". . . WRITTEN OR ORAL REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE FITNESS, MERCHANTABILITY, OR SUITABILITY OF THE ASSETS FOR ANY PARTICULAR PURPOSE OR THE OPERATION OF THE ASSETS BY OR FOR AVISTA."[9] (Id. at 15, Section 4.7.) (Caps in original; emphasis added.) Avista's characterization of the 2.5 percent as non-utility, therefore, is nothing more than a convenient disguise which cannot escape Commission jurisdiction under RCW 80.12.020.

Moreover, Avista's 2.5 percent share acquired from PGE was included specifically in the contract under which Avista sold its 15 percent interest in Centralia to TECWA. (Stipulation of Facts, Exhibit A, Section 15.1.) That transaction, again in its entirety, was presented to FERC for approval under Section 203 of the Federal Power Act. On January 13, 2000 FERC authorized the transaction as proposed. (Stipulation of Facts, Exhibit B.) Its order of approval addressed specifically Avista's sale to TECWA of the 2.5 percent share in addition to Avista's original 15 percent share.[10] (Id., page 2, fn. 4.)

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[8] Even the assignment agreement between PGE and Avista continues to make Avista responsible for capital costs associated with the 2.5 percent share, as well as a host of other significant liabilities attributable to utility ownership. (Id., page 2, item 3; Stipulation of Facts, Exhibit I.)

[9] The PGE-Avista sales contract also anticipated the potential for approval by the Commission. (Id. at 12, Section 3.3(b), handwritten addition: "The WUTC & IPUC, if necessary".) Avista should, therefore, not be surprised by the assertion of Commission jurisdiction in this case.

[10] When FERC approved PGE's sale to Avista, it also referenced Avista's intent to sell the 2.5 percent share as part of the entire sale to TECWA. (Stipulation of Facts, Exhibit H, page 2, fn. 4.)

In other words, Avista sought approval from FERC of a transaction which included the sale to TECWA of the 2.5 percent share Avista acquired from PGE. No evidence in this record shows that Avista questioned FERC's jurisdiction over that element of the sale to TECWA. In fact, the evidence shows that Avista admitted that the sale to TECWA involved a jurisdictional transfer of its interest in Centralia, which included the 2.5 percent share acquired from PGE. (Stipulation of Facts, Exhibit B, page 2.) There is simply no reason for Avista now to contest this Commission's jurisdiction over the same transaction under a similar statutory framework.[11]

d. Avista has Attempted to Manipulate the System of Accounts as a Means to Avoid Commission Scrutiny of the Sale of the 2.5 Percent Share

Avista recorded its payment to PGE in Account 121 as non-utility property. (Stipulation of Facts, page 4, ¶ 11.) From that fact, Avista argues that the 2.5 percent share is not a part of its rate base for ratemaking purposes. Therefore, sale of that share does not require Commission approval.

Avista's position is reminiscent of a prior case in which it argued that purchased gas cost savings attributable to new facilities (the PGT lateral) should not be tracked to consumers because those facilities had not been included in rate base for ratemaking purposes. The Commission rejected Avista's argument as reflecting a "fundamental misunderstanding of utility regulation in general . . . ." WUTC v. The Washington Water Power Company, Cause No. U-88-2380, Third Supp. Order at 8 (October, 1989.) Rate base, the Commission stated, is

[11] The Commission has itself noted the similarities between its jurisdiction under RCW 80.12.020 and FERC's jurisdiction under Section 203 of the Federal Power Act. It utilized those similarities in aid of its assertion of authority over the Scottish Power and GTE Corporation transactions. Scottish Power, 192 PUR4th at 152-153; GTE Corporation, supra, at 19-20.

the company's net plant in service which is used and useful to ratepayers at any given point in time. Id. Therefore, just because Avista's 2.5 percent share of Centralia has not been reflected in rates does not require the conclusion that that property is not included in rate base. In any event, as discussed earlier, inclusion in rate base is not required to trigger Commission jurisdiction under RCW 80.12.020.

The Commission has also rejected previous attempts to manipulate the Uniform Systems of Accounts by companies seeking to escape Commission regulation. In Cause No. U-85-53, Puget Sound Power & Light Company argued that certain property was "non-utility" property under the Uniform System of Accounts and, therefore, not subject to regulation at the time of sale because the property was not "used and useful." The Commission rejected this argument in favor of its statutory mandate to regulate in the public interest:

> The Company's contentions are unpersuasive. For example, although the Commission generally prescribes the Uniform System of Accounts for utility accounting purposes, the Commission is not bound to follow the Uniform System of Accounts for ratemaking purposes where the public policies affecting the setting of rates differ from the public policies regarding the recording of financial activity.

Cause No. U-85-53, WUTC v. Puget Sound Power & Light Company, Second Supp. Order at 32 (May, 1986). This same principle applies equally to Avista's accounting of the 2.5 percent share purchased from PGE.

Moreover, the Commission has adopted FERC's Uniform System of Accounts for electric companies subject to Commission regulation. WAC 480-100-031. The Uniform System of Accounts requires that Account 102, Electric Plant Purchased or Sold, must be charged with the cost of electric plant acquired as an operating unit by purchase and that those journal entries must

be cleared from Account 102 within six months from the date of acquisition or sale. 18 C.F.R. Part 101, Account 102. Entry into Account 102 with later clearance, therefore, was the proper method for Avista to account for its purchase of PGE's share of Centralia and the subsequent sale to TECWA or continued ownership by Avista.

In fact, both FERC and PGE accounted for the sale of Centralia as utility property under the Uniform System of Accounts. In its order approving the sale of Centralia to TECWA, FERC required Avista to file journal entries to clear Account 102, Electric Plant Purchased or Sold, within six months of the date of sale. (Stipulation of Facts, Exhibit B, page 4, ¶ 5.) PGE, for its part, recorded journal entries for the sale to Avista in various accounts attributable to electric plant in service. (Stipulation of Facts, Exhibit E.)

Avista's accounting for its purchase and sale of the 2.5 percent should not be treated differently than the treatment FERC prescribed and PGE followed. Avista should not be allowed to avoid these accounting requirements simply because it purchased the PGE share with the intent to resell that share to TECWA.

For all of the reasons set forth above, Avista's 2.5 percent share of Centralia is "necessary or useful in the performance of its duties to the public" under RCW 80.12.020. Commission approval, therefore, is required for Avista to sell that share to TECWA. The question now becomes whether that sale is consistent with the public interest under the "no harm" test the Commission applied previously to the sale of Colstrip by Puget Sound Energy (PSE) in Docket No. UE-991267 and indicated it will apply to the overall sale of Centralia in consolidated Docket Nos. UE-991255, et. al. See, Prehearing Conference Order at 4.

B. The Sale of Avista's 2.5 Percent Share of Centralia is Consistent With the Public Interest Only if the Entire Gain is Allocated to Ratepayers

On January 28, 2000 the parties in consolidated Docket Nos. UE-991255, et. al., submitted closing briefs with respect to the proposed sale of Centralia by Avista, PacifiCorp, and PSE. Staff demonstrated that the sale increases risks for ratepayers because it exchanges a known, least-cost resource for higher-cost replacement power in the future. (Brief of Commission Staff at 5-8.) These harmful quantitative consequences, however, were balanced against positive qualitative factors that support the sale of Centralia. (Id. at 8-10.) This exercise led Staff to conclude that the sale of Centralia was consistent with the public interest, but only on condition that each utility allocate the entire gain to ratepayers in a general rate case. (Id. at 10.) This recommendation was also supported by important regulatory policies that balance fairly the interests of ratepayers and shareholders. (Id. at 10-18.)

The same logic that supported Staff's recommendation for Avista's 15 percent share of Centralia applies equally to Avista's sale of its 2.5 percent share of Centralia. In both cases, the sale increases risks for ratepayers who must bear the higher cost of replacement power if Centralia is sold. However, the same qualitative factors which supported Avista's sale of its 15 percent interest also support the sale of its 2.5 percent interest.

Balancing these negative quantitative factors and positive qualitative factors, therefore, warrants the Commission finding that Avista's sale of its 2.5 percent interest in Centralia is consistent with the public interest but, again, only on condition that ratepayers receive the entire $4.2 million gain from that sale in Avista's pending general rate case. As with Avista's 15

percent share, this recommendation balances fairly the interests of ratepayers and shareholders in light of several important principles of regulatory policy.[12]

1. Allocating the Entire Gain to Ratepayers is Required By Management's Ongoing Responsibility to Acquire and Manage Least-Cost Resources

There is no dispute that the management of Avista has the ongoing responsibility to evaluate and manage the costs and risks of all resource options so that ratepayers are served on a least-cost basis.[13] As stated before, the sale of Centralia was shown conclusively to harm ratepayers by requiring them to pay higher costs of replacement power in the future than if Centralia was not sold. The sale of Centralia, therefore, is inconsistent with Avista's obligation to provide least-cost power to ratepayers whether one examines Avista's 15 percent share it has held since the 1970s or its 2.5 percent share it has held since only December, 1999. Ratepayers must, therefore, receive the entire gain in order to be held harmless for that deficiency. Indeed, it would be a gross injustice if, as Avista proposes, ratepayers were harmed twice: first, by having to pay for higher power costs in the future with the sale of Centralia, and, second, by not

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[12] An important public policy which supported Staff's recommendation for Avista's 15 percent share of Centralia involved the impact of traditional rate base regulation, which required Avista's ratepayers to fund significant front-loaded capital costs of large central-station generation facilities while compensating shareholders prospectively for the risks and uncertainties they undertake in ownership of that utility property. (Brief of Commission Staff at 10-11 and 14-15.)

This particular policy is not applicable directly to Avista's 2.5 percent share since its ratepayers have not funded the associated costs of that investment. Likewise, investors have not been exposed to any of the associated risks of ownership. Nevertheless, Avista may argue as it did in the main Centralia case, that it is fair and equitable to give the entire gain to shareholders because of Avista's history of low rates and high quality service and because shareholders have been on the short end of asymmetrical treatment from the Commission when the company's resource decisions have been partially disallowed. Staff's prior response to these arguments is equally applicable here. (Brief of Commission Staff at 12-13.) The rate of return established for Avista already compensated the company for the risk of disallowance, while ratepayers were required to pay part of the cost of some facilities that never reached commercial operation or were found imprudent. Nothing about these prior decisions, therefore, was "asymmetrical" that should now allow shareholders to be compensated for investment risks they never undertook for the 2.5 percent share.

[13] See, WUTC v. Puget Sound Power & Light, Docket Nos. UE-921262, Nineteenth Supp. Order at 16 (September 1994) (WAC 480-100-251 requires utility's resource mix to be least-cost).

receiving the gain from the sale itself.

Avista may argue, as PacifiCorp did in the main case (Ex. T-226 at 4-5), that providing the gain to shareholders gives management the incentive to maximize the sales price for utility property which benefits both ratepayers and shareholders. This argument, however, has no place in a transaction that required no unusual effort by management. (See, Section II, B, 2.) The argument also does nothing to overcome management's existing responsibility, without an incentive, to lower costs whenever reasonable and prudent. Furthermore, the argument ignores the benefits shareholders receive when the company fulfills its obligation to provide least-cost service, since lower costs allow Avista to remain competitive and eliminate regulatory risk.

2. Avista's Purchase of the PGE Share of Centralia was Made Without Risk to Investors, But With Increased Risks for Ratepayers

The purchase by Avista of PGE's 2.5 percent share of Centralia was not the result of any extraordinary or special effort on the part of management. The purchase, instead, was the result of the unique, but purely convenient, status Avista holds which allowed Avista, and Avista only, to purchase that investment without risk to shareholders whether the investment was retained by Avista or sold to TECWA. That unique status has two essential elements.

First, as an existing owner of the facility, Avista was intimately knowledgeable of the costs and operations of Centralia. It was also present at the owners' meeting when the bids on the overall sale of Centralia were opened. That unique status assisted Avista in purchasing the PGE share at book value and selling that same share to TECWA at 2.5 times book value.[14]

[14] The owners' meeting occurred on May 6, 1999. The contract for sale to Avista of PGE's share was entered a day earlier, on May 5, 1999 (Stipulation of Facts, Exhibit C). The contract for sale of that share, and all remaining interests, to TECWA occurred one day later on May 6, 1999. (Id., Exhibit A.)

(Tr. 216.) No one outside the group of owners had that opportunity of happenstance.

Second, Avista is a regulated utility which provides monopoly services. As such, it benefits from a captive customer base which will compensate shareholders, through a fair rate of return, for both the book value of Avista's entire 17.5 percent interest in Centralia and all of the risks investors will encounter if that interest is not sold to TECWA but is, instead, placed in rate base for ratemaking purposes.

Avista's status as a regulated utility also means that, along with its obligation to secure and manage least-cost resources, it also has the opportunity to recover the cost of those resources if the costs are appropriate and prudently incurred. The evidence demonstrates that Avista has a need to acquire resources (Tr. 216-218) and that the sale of Centralia exposes ratepayers to the risk of increased power costs in the future. Keeping Centralia, therefore, is consistent with the company's least-cost obligation, which would allow Avista to recover the costs of that resource from the same captive customers who compensate shareholders for their entire 17.5 percent investment in that resource.

In essence, the purchase by Avista of PGE's 2.5 percent share of Centralia fell into the company's lap as a result happenstance and regulatory policies over which Avista has no control, but certainly derives great benefit. Therefore, the gain from the sale of that same property to TECWA should go to ratepayers since ratepayers, not shareholders, place Avista in the unique position in which it has fallen.

III. CONCLUSION

For the reasons stated above, sale of Avista's 2.5 percent share of Centralia is governed by RCW 80.12.020. Commission approval for that sale should be conditioned upon the gain

going to ratepayers in its entirety in Avista's pending general rate case. Absent that condition, the sale is not consistent with the public interest.

DATED this 28th day of February, 2000.

CHRISTINE O. GREGOIRE
Attorney General

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ROBERT D. CEDARBAUM
Senior Counsel
Attorneys for WUTC