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April 24, 2006

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking to Consider Rules Implementing SHB 2426, 2006 Session,
Relating to Delegation of Certain Commission Decisions
Docket No. A-060357

Dear Ms. Washburn:

Thank you for the opportunity to submit comments in the Delegation Rulemaking in the above-cited docket. Avista's comments are responsive to the questions contained in the Commission's March 17, 2006 Notice of Opportunity to File Written Comments. The questions from this Notice are italicized, below.

Matters amenable to delegation. Given the Commission's intention to use delegation only for noncontroversial matters equivalent to items presently on the open meeting consent agenda,

- *How may such matters be defined?*

A rule should be designed to provide general principles to be used for the purpose of defining matters appropriate for delegation as discussed below. The Company suggests that the Commission include in any new rule certain generally-defined categories of decisions capable of being delegated. These types of decisions would include matters which are generally not in dispute and, as such, are not likely to be contested, and are of a

routine ministerial nature. Examples of such categories are set forth below. Also as discussed below, a preliminary determination by appropriate Staff would be made upon receipt of any filing concerning the appropriateness of handling such a filing by delegated authority.

- *Which categories of decisions could be delegated?*

Routine items of a housekeeping nature would generally be appropriate for delegation. Routine items appropriate for delegation are those that are not expected to be in dispute, and which do not involve questions of fact or policy for which guidance from the full Commission is required. The Commission should authorize the Executive Secretary, Executive Director, Directors and Assistant Directors to make a preliminary determination (subject to the safeguards below) that a filing is expected to be uncontested and that there is no issue of fact or policy that would otherwise require action by the full Commission. Categories of items might include: Utility tax tariffs, interconnection agreements, routine compliance filings in response to existing rules or orders, and tariff filings of a “housekeeping” nature.

- *Should delegated matters be defined by rule or order? If some categories are amenable to one or the other, which ones?*

Matters capable of delegation should generally be defined by a rule, and should include those which are uncontested and which do not involve disputed questions of fact or matters of policy. In addition, the rule should also provide sufficient flexibility for the Commission to delegate, by order, on an *ad hoc* basis those items that may not otherwise fall within the rule’s general description of items capable of being delegated. Finally,

there should also be a provision in the rule which allows the filing party to request, at the time of filing, that a matter be decided by delegated authority.

- *Should a rule define the process for entering an order defining a matter as subject to delegation?*

Yes. Following a procedural determination by the Executive Secretary, Executive Director, Directors or Assistant Directors that a filing is subject to delegation, the rules should provide for the Commission to issue a “notice of intent” to proceed by way of delegated authority and for an opportunity for affected parties to respond within a short, but reasonable, time period. Notice should be provided to the applicant and identified on the Commission’s list of received filings which should be posted on the Commission’s website, in order to provide notice to other interested parties.

Process for providing notice. The Commission must identify a process for providing notice of decisions to ensure that interested persons have an appropriate opportunity to receive a Commission rather than a delegated decision.

- *Should the rule clearly provide that matters contested by the parties will not be delegated? How should “contest” be defined in that context?*

Yes. The rule should clearly provide that matters contested by the parties will not be delegated, in order to be consistent with the legislation authorizing delegation. Section 3 of Substitute House Bill 2426 states: “Any such matter shall be heard or reviewed by commissioners at the request of any commissioner or any affected person.” “Contest” in the context of this matter should generally be defined as a pleading by a party that states there are contested facts or matters of policy that should be put to the Commissioners for decision.

- *How may matters subject to delegation, once classified (see above) be identified for parties' review on the question of delegation? Is the Commission's list of received filings sufficient? What other means of providing notice will be effective and appropriate?*

By rule there should be a process for a notice of intent to proceed by way of delegated authority. The notice should be provided to the applicant and identified on the Commission's list of received filings which should be posted on the Commission's website, in order to provide notice to other interested parties.

- *The law permits the Commission to provide a decision without delegation, or to review decisions that have been delegated. How should the notice process be determined for different categories of decisions? How can notice and opportunity for review be provided while continuing to make timely decisions?*

Once a decision has been made by delegated authority, affected parties should be notified of the decision. The affected parties should be provided a reasonable period of time within which to request that such a decision be reviewed by the Commissioners and suggesting any further process that may be warranted.

Process for "probable cause" determinations. *The law empowers administrative law judges to make determinations of probable cause and issue complaints in the name of the commission.*

- *Should a rule be adopted to identify the process for making such decisions, or is it an internal matter that may be determined without a rule?*

The Company believes that the process is an internal matter that may be determined without a rule, provided that sufficient safeguards are provided for the benefit of affected parties. There should be a notice of intent to issue a "probable cause" complaint and an opportunity for affected parties to respond. After the notice of intent is issued, comments of parties in response to the notice shall be taken into consideration and any probable

cause determination shall, on its face, provide a reasoned basis for proceeding in light of the comments received. No probable cause determination should serve to prejudice or predetermine the final outcome of the proceeding.

- *What record of review and decision should be required for probable cause decisions?*

As stated above, there should be a notice of intent to issue a “probable cause” complaint and an opportunity for affected parties to respond. After the notice of intent is issued, comments of parties in response to the notice shall be taken into consideration and any probable cause determination shall provide a reasoned basis for proceeding in light of the comments received. No probable cause determination should serve to prejudice or predetermine the final outcome of the proceeding.

- *Should the process differ between determinations of probable cause to issue a complaint and determinations for penalty assessments?*

No. The process described above, including the reference to safeguards, should be employed in both instances.

Thank you again for the opportunity to submit comments. Please call me at (509) 495-8706 regarding any questions on this matter.

Sincerely,



Bruce Folsom
Manager, Regulatory Compliance