

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES,

Respondent.

DOCKET NO. UG-021584

REPLY BRIEF OF PUBLIC COUNSEL

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

January 9, 2004

I. INTRODUCTION

1. The Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") respectfully requests that the Washington Utilities and Transportation Commission ("Commission") reject Avista Corporation's proposed gas purchasing benchmark mechanism ("mechanism") and order that the gas purchasing function be returned to Avista Utilities.

II. REPLY

2. The issue now before the Commission is not whether Avista Utility customers will have a reliable source of natural gas, but at what cost. The evidence developed during this proceeding indicates that Avista Energy can achieve no better result than Avista Utilities can achieve through purchases at market rates. Therefore, there is no rational justification for continuation of the mechanism in any form.
3. While Public Counsel would agree that the proposed mechanism incorporates many rational elements of a natural gas purchasing strategy, there is insufficient evidence that the actions proposed to be taken by Avista Energy are worth the price that would be exacted. Post-Hearing Brief of Avista Corporation, ¶ 17 ("Avista Brief"). Using a "tiered" purchasing strategy, use of storage to derive benefits from summer/winter price differentials and to minimize the cost of covering daily load variability, using capacity releases and off-system sales to minimize net costs, and optimizing basin differentials are all reasonable courses of action which this Commission should expect Avista Utility to engage in to maximize the value of its ratebase assets and obtain the least cost natural gas for its customers. It is our contention that Avista Corporation has presented insufficient evidence to demonstrate that Avista Energy's performance of these functions will in fact produce the least cost gas for Avista Utility customers due to the many inappropriate transfers to Avista Energy of one dollar out of every five as well as the \$900,000 management fee. It is our view that these fees will exceed the actual cost of Avista Utility performing these functions.

4. Avista Corporation asserts that Avista Energy's "greater presence in the market" will create benefits that customers will enjoy. At hearing Mr. Norwood analogized Avista Energy's "presence" to that of Wal-Mart. *Id.* With all due respect to Mr. Norwood, Wal-Mart's presence in the market for the goods and services it provides its customers quantifiably and objectively translates into lower prices which its customers then enjoy. Avista Corporation has failed to make a similar showing in this proceeding. The record is clear from Avista's own witnesses that Avista Energy does no better than the market and that Avista Utility could achieve similar, if not identical results. *Id.*
5. Avista Corporation seeks to rebut Ms. Elder's analysis, focusing almost exclusively upon her illustrative analysis of the benefits of off-system sales and capacity releases. *Id.* Avista Corporation takes issue with a number of the assumptions underlying Ms. Elder's calculations while ignoring the greater issue - that Avista Energy adds no management expertise or value to the company's maximization of the value of its transportation assets. Prior to the original adoption of the mechanism, Avista Utility managed its transportation assets and appeared to do so quite well. Exhibit 22. There is no quantifiable evidence in the record to support the assumption that Avista Energy can achieve a greater benefit from the management of Avista Utilities' transportation assets than could Avista Utilities itself. Public Counsel's opposition to the proposed mechanism rests upon the premise that Avista Energy is not entitled to 20% of something which it does not *on its own* create.
6. The company has failed to demonstrate that Avista Energy could achieve X value greater than Y value which Avista Utilities would be able to create in the absence of the proposed mechanism. Without this showing by the company Public Counsel respectfully asserts that this Commission cannot find the proposed mechanism to be proper or in the public interest. We believe this point is reinforced by the quote from Mr. D'Arienzo's testimony cited in Avista's Brief at ¶ 120. The market sets the value of the transportation capacity held by Avista Utilities. Avista Energy has failed to demonstrate by credible, quantifiable evidence that it can achieve a

result which Avista Utilities could not. As in so many aspects of the proposed mechanism now before the Commission, there is no rational basis for rewarding Avista Energy for actions Avista Utility could undertake with equal result, or for creating rewards based upon simple movements of the market where “management expertise” fails to result in a better outcome.

III. CONCLUSION

7. Public Counsel respectfully requests that Avista Corporation’s proposed mechanism be rejected and the gas purchasing function be reverted to Avista Utility.

RESPECTFULLY SUBMITTED this 9th day of January, 2004.

CHRISTINE O. GREGOIRE
Attorney General

ROBERT W. CROMWELL, JR.
Assistant Attorney General
Public Counsel Section