



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle WA 98104-3188

June 21, 2011

SENT VIA E-MAIL & ABC/LMI

The Honorable Marguerite E. Friedlander
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: *WUTC v. Avista Corporation, d/b/a Avista Utilities*
Docket No. UE-110876/UG-110877

Dear Judge Friedlander:

Public Counsel submits this letter in response to the instruction provided at the Prehearing Conference held in the above-captioned docket, as well as the email sent to all parties on Monday, June 20, 2011. As discussed below, Public Counsel has two major concerns at this time.

I. Avista should not be allowed to present supplemental testimony regarding its proposed lost-margin recovery mechanism.

The email sent to all parties states in part that “Avista may wish to file supplemental testimony concerning how its [lost-margin recovery mechanism] proposal fits within the guidance provided by the policy statement.”¹ The Commission issued its Policy Statement in Docket No. UE-100522 on November 4, 2010, over six months before Avista filed this rate case. Avista participated in Docket No. UE-100522 and thus was reasonably aware of the outcome of that proceeding. The Policy Statement clearly lays out what must be included in any proposal for “selected regulatory mechanisms designed either to remove barriers to utilities acquiring all cost-effective conservation or to encourage utilities to acquire all cost-effective conservation” and that any such proposal must comply with its directives.² Thus, Avista had every opportunity to comply with the Policy Statement and explain in its direct case how its proposal fits within the Policy Statement’s guidance. Finally, unlike other cases where supplemental testimony has been

¹ Public Counsel notes that in any case Avista would be required to file a motion for leave to supplement its testimony along with its proposed revisions/supplementations. See WAC 480-07-460(b)(ii). Public Counsel would anticipate filing a response to any such motion.

² The Policy Statement articulates specific policy guidance on three types of regulatory mechanisms which are limited decoupling, full decoupling, and specific incentives. The Commission clearly states in what forum these mechanisms should be proposed by a utility, whether they should be applied to gas or electric or both and the elements each mechanism must include, at a minimum. See e.g., *Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets*, Docket No. UE-100522, ¶¶ 12, 18-19 (Nov. 4, 2010).

ATTORNEY GENERAL OF WASHINGTON

To: Judge Friedlander
Re: Docket Nos. UE-110876 & UG-110877
June 21, 2011
Page 2

allowed, any supplemental testimony in this instance would do nothing more than add to the Company's arguments in support of its proposal and would not correct for a newly discovered factual error or otherwise enhance the factual record in this case.³

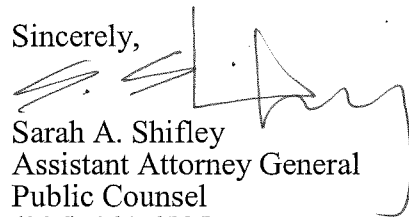
II. Avista has the full burden of supporting any lost-margin recovery mechanism; this burden should not be shifted to other parties.

Public Counsel's second concern relates to the Commissioners' expectation that, if appropriate, Staff and, to the extent they are interested, other parties should propose an alternative to the Company's proposed mechanism. While Public Counsel recognizes that alternate recommendations might be offered by parties in some instances, this does not alter the fact that, in all cases, the company requesting a rate increase through a general rate case bears the full burden of proof.⁴ Accordingly, Avista must fully and adequately support any proposed adjustment/increase, including any proposals for lost-margin recovery here.⁵ If Avista's proposed mechanism fails to meet the standards explicitly laid out in the Policy Statement, it is not the duty of the Commission, Staff, nor any other party, to develop an alternative mechanism on behalf of the Company. In other words, if it is determined in this case that any lost-margin recovery mechanism proposed by the Company does not comply with the Policy Statement's directives, the proper course of action is to reject the mechanism and resulting adjustment/increase rather than require other parties to offer an alternative adjustment/increase.

In addition, as mentioned in the email to all parties, developing a mechanism of this nature is not a simple task. Public Counsel, like Staff and other intervenors, is working under time and resource limitations. Placing an expectation that non-Company parties develop and propose alternative mechanisms places a substantial, additional burden on parties.

In sum, Public Counsel respectfully requests that the Commission not allow Avista to file supplemental testimony regarding its lost-margin recovery mechanisms at this time. In addition, we request that the Commission clarify that Avista alone bears the burden of proposing and fully supporting a lost-margin recovery mechanism and that it is not the responsibility of this Commission, nor any other party, to design such a mechanism for the Company.

Sincerely,



Sarah A. Shifley
Assistant Attorney General
Public Counsel
(206) 464-6595

SAS:cjw
cc: Service List (E-mail & U S Mail)

³ See e.g., *WUTC v. Puget Sound Energy, Inc.*, Order Granting Leave to File Supplemental and Revised Testimony and Exhibits (Order 06), Docket No. UE-090704 and UG-090705 (*consolidated*) (Aug. 12, 2009).

⁴ RCW 80.04.130.

⁵ Order 01 in this docket reiterates that Avista bears "the burden of proof to show that the proposed increases are fair, just, reasonable and sufficient." See Complaint and Order Suspending Tariff Revisions (Order 01), ¶ 10 (June, 1, 2011).