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173 The Commission served an order on March 6, 2000, in which the Commission resolved all issues in this proceeding. Commissioner Hemstad in that order stated his dissent to the Commission's resolution of one of the issues, and his concurrence in the remainder of the order.

174 With this Order the Commission serves the full text of Commissioner Hemstad's dissent, an additional table of contents page, and other materials which, taken together with the earlier order, provide a full exposition of Commissioner Hemstad's views and the reasons for his opinion.

175 We have carefully read Commissioner Hemstad's dissent. We respect the views of our colleague, but respectfully disagree for the reasons stated in the Commission order. We make no changes to the order, which remains the Commission's final order in this Docket.

DATED at Olympia, Washington, and effective this day of March, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

WILLIAM R. GILLIS, Commissioner

Commissioner Hemstad concurring in part and dissenting in part.

VI. DISSENT

176 I concur in the opinion of the Majority that the sale by Avista, PacifiCorp, and PSE of their respective shares of the Centralia generating plant and associated mine is consistent with the public interest. In reaching that opinion I place weight differently than does the Majority on some of the relevant factors.

177 I concur in the opinion of the Majority that, out of the proceeds from the sale, the utilities should receive an amount equal to the undepreciated, net investment remaining on the books for the plant and mine.

178 I concur in the opinion of the Majority that, out of the proceeds from the sale, the ratepayers should receive an amount equal to the accumulated depreciation they have paid to the utilities for investment of capital in the plant and mine.

179 I dissent from the opinion of the Majority that one-half of the amount by which sale proceeds exceed original cost for the plant should be allocated to the shareholders.

180 I concur in all other respects with the Majority opinion.

A. THE SALE OF THE CENTRALIA PLANT AND MINE IS CONSISTENT WITH THE PUBLIC INTEREST

181 The Majority finds the sale to be consistent with the public interest based on its analysis of the risks and benefits attendant to the sale and the allocation of sale proceeds between the ratepayers and shareholders. I believe that the analysis of risks and benefits is sufficient to reach the finding that the sale does not harm the public interest. Among the many risks and benefits evaluated, I find the breadth of the decision by all eight plant owners to sell their share of the facilities and the likely improvement in efficient and timely plant management and investment decisions by a single owner rather than a multitude of owners to be compelling. In this regard, I grant deference to utility management decisions, particularly when they represent, as I believe they do here, the balancing of the variety of circumstances and values important for each of the utilities.

182 I do not find the risk that the plant may cease operation to be especially compelling. Nor do I find the projected risks of higher power costs for ratepayers to be compelling. These projections may or may not prove to be true, but the inherent uncertainty and imprecision in long-term power-cost forecasts leads me to place less weight on them than I do the judgment of the management of eight utilities ─ including four publicly-owned utilities ─ to act in their customers' and owners' best interests. In reaching this opinion, I do not dismiss the relevance or value of power-cost forecasting as an important tool for

evaluating utility decisions regarding investments or expenses. In this set of circumstances, however, I am not persuaded that these projections are sufficiently compelling to overcome the weight I place on the decision made by eight utilities.

B. LEGAL PRINCIPLES FOR ALLOCATION OF THE GAIN

183 As the Majority notes, the principles guiding the disposition of the proceeds from sale of a utility asset that is in service, in rate base, and used and necessary for the provision of utility service were clearly set out in the landmark case *Democratic Central Committee v. Washington Metropolitan Transit Commission.* [1] This 1973 decision concludes that, when an asset is sold for a gain, the proper allocation of that gain between ratepayers and shareholders should be guided by the complementary equitable principles that "reward follows risk" and "benefit follows economic burden." The Court described these two principles with the following:

> One is the principle that the right to capital gains on utility assets is tied to the risk of capital losses. The other is the principle that he who bears the financial burden of particular utility activity should also reap the benefit resulting therefrom. The justice inherent in these principles is self-evident, and each already occupies a niche in the law of ratemaking; and their application, sometimes overlapping, to the problem at hand weighs the scale heavily in favor of consumers. For practice in the utility field has long imposed upon consumers substantial risks of loss and financial burden associated with the assets employed in the utility's business. . .
>
> [A]n investor can hardly muster any equitable support for a claim to appreciation in asset value where he has been shielded against the risk of loss on his investment, or has already been rewarded for taking that risk.

Id. at 806.

184 Applying these principles, the *Democratic Central* court ordered that gain from the sale of non-depreciable property by a regulated transit company be allocated entirely to the farepayers, reversing the decision of the District of Columbia Commission which had allocated the gain to the shareholders. In its opinion, the Court undertook an exhaustive analysis of the case law and regulatory theory and concluded:

> Our historical analysis of the interests of investors in value-appreciations of operating utility assets demonstrates beyond a doubt that the burden of safeguarding the utility's investment in all of its assets — depreciable and non-depreciable — is legally assigned in its entirety to consumers.

Id. at 821.

185 The equitable principles enunciated in *Democratic Central* have been widely accepted by regulatory commissions and by courts, so much so that the case citation is often not referenced. In applying these principles, some commissions and reviewing courts have

[1] *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Transit Commission*, 485 F. 2d 786 (D.C. Cir. 1973), cert. denied, 415 US 935 (1973).

allocated a portion of the gain on sale of rate-base assets to shareholders. The better reasoned of these decisions, however, have limited gain-sharing to unusual or extraordinary circumstances, or based the sharing on the notion that a small share of the gain can serve the role of encouraging the utility to maximize the sale proceeds, akin to a brokerage commission.[2]

186 Two recent decisions involving core utility functions illustrate the continuing vitality of the *Democratic Central* principles. In *Cambridge Electric Light Company*, D.T.E. 98-78/83-A, Massachusetts Department of Telecommunications and Energy, 1998 WL 10319844, December 23, 1998, several utilities sought approval for the sale of substantially all of their non-nuclear generating assets. At issue, in the context of electric industry restructuring in Massachusetts, was the disposition of the gain on sale. The public utility commission followed the *Democratic Central* principles and stated:

> With regard to gains achieved by utilities from the sale of assets, Department precedent is to adhere to the principles that reward ought to follow risk. Commonwealth Electric Company, D.P.U. 88-135/151, at 90-94 (1989). In Boston Company, D.P.U. 1100, at 62-65 (1982), ruling in kindred circumstances, the Department stated the rationale for the ratemaking treatment of gains from the sale of utility property as follows:
>
> The Company and its shareholders have received a return on the use of these parcels while they have been included in rate base, and are not entitled to any additional return as a result of the sale. To hold otherwise would be to find that a regulated utility company may speculate in . . . utility property and, despite earning a reasonable rate of return from its customers on that property, may also accumulate a windfall through its sale. We find this to be an uncharacteristic risk/reward situation for a regulated utility to be in with respect to plant in service.

Id. at 1998 WL 10319844, 11.

187 A second recent opinion is *Williston Basin Interstate Pipeline Company v. Federal Energy Regulatory Commission,*115 F.3d 1042, 325 U.S. App. D.C. 139 (1997). The federal appeals court denied a petition by a pipeline company seeking to reverse a Federal Energy Regulatory Commission decision assigning appreciated value of storage gas to sales customers. The court reasoned, "Moreover, a rule assigning the firm the benefit of good outcomes and customers the burden of bad ones, a kind of ‘heads I win, tails you lose’ rule, would seem to give the utility’s management an unhealthy incentive

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[2] See, for example, the following cases cited by the majority: *In the Matter of the Application of Southern California Gas Company for Authority pursuant to Public Utilities Code Section 851 to sell and lease back its Headquarters Property in Los Angeles,* California Decision No. 90-11-031, Application No. 87-07-041, 118 P.U.R. 4th 81; and *Central Maine Power Company*, Docket No. 99-155, Maine Public Utilities Commission, Public Utilities Reports Fourth, Slip Opinion, August 2, 1999.

to gamble." The Court concluded, "Thus, if customers are to bear the risk that a dramatic industry transformation will force the realization of losses on specific asset classes, it is hard to see a reason why they should not reap the benefits from forced realization of gains." *Id* at 1044.

188 This commission has a sparse but consistent history of cases involving disposition of gains from sale of utility assets. The following cases are pertinent.

189 In *Washington Utilities and Transportation Commission, vs. Puget Sound Power & Light Company*, Second Supplemental Order, Cause No. U-85-53, May 16, 1986, Public Counsel sponsored an adjustment to allocate to ratepayers all of the gain from sale by the utility of surplus (non-depreciable) property to an unregulated subsidiary and to third parties. The Commission agreed with Public Counsel's adjustment and referenced, in support of its position, *Democratic Central*. The Commission focused on whether all the costs (taxes, insurance, maintenance, return on investment, etc.), the risks of ownership of the asset, once acquired, and the risks of loss had been borne by the ratepayers.

190 In *Washington Utilities and Transportation Commission vs. Puget Sound Power & Light,* Docket Nos. U-89-2688-T and U-89-2955-T, March 30, 1990, the Commission accepted a rate-base adjustment recommended by Commission Staff concerning utility property that had earlier been removed from Puget's rate base. The effect of the adjustment was to share between ratepayers and shareholders the benefit of the gain by reflecting the amount of time the property had been held in rate base, compared to the amount of time that the property was held either by Puget as a non-rate-base holding, or by the time it was held by a non-utility subsidiary of Puget. This decision was an accounting implementation of the decision made in U-85-53, and illustrates the application of the equitable *Democratic Central* principles.

191 In *Washington Utilities and Transportation Commission vs. Washington Water Power,* Docket No. 87-1533-AT, November 30, 1987, the Commission authorized the sale by Washington Water Power of a combustion turbine generator, but ordered all of the after-tax gain to be returned to ratepayers. The utility was, therefore, required to record the gain in its deferral accounts until final disposition could be determined in the company's next general rate case. The Commission did not reference the principles of *Democratic Central*, but it did note that the turbine had been supported by ratepayers since 1973, and that the gain over book value was less than the accumulated depreciation paid by ratepayers.

192 I have taken the time to cite this case history to emphasize my opinion that, as regards the disposition of gains that accrue from the sale of a used and necessary asset, the principles enunciated in *Democratic Central* continue to be applicable and persuasive. They do not prejudge whether gains should be shared, or whether they should go exclusively to one party or the other. They do establish an analytic framework within which to find an

equitable distribution of gains between shareholders and customers.

C. APPLICATION OF PRINCIPLES TO THIS CASE

193 It is especially important to look to the application of the principles in this case. While some of the cases cited above involve buildings or other kinds of utility property, the Centralia facilities are an example of assets that make up the core of an electric utility's public service responsibility — a dependable source of electricity to meet the utility's public service obligation under state law. These facilities have been supported by ratepayers of the three Applicants since 1972. The ratepayers have paid the operating and maintenance costs and depreciation, and have borne the risk of environmental costs and early plant closure. The shareholders have received a return of approximately two-thirds of their original capital through depreciation payments and have received a fair rate of return on the undepreciated balance of their original investment.

194 The Majority finds that the utilities are entitled to receive amounts equal to the net book value – the undepreciated balances of their original investments. Then, considering that the facilities have appreciated rather than depreciated in value, it finds that the ratepayers should be credited with an amount of gain equal to their accumulated payments for depreciation, net of applicable taxes. I agree with both of these findings in the Majority opinion.

195 The Majority then addresses the "appreciation," or the amount by which the sales proceeds exceed the original cost of the Centralia plant in service. This is approximately $16.5 million of the $78.1 million gain applicable to the Washington jurisdiction of the three Applicants. The Majority concludes the appropriate accounting treatment is to share this appreciation between the ratepayers and shareholders in a 50/50 split. It is on this point that I disagree with my colleagues.

196 The Majority supports its opinion by citing the principles of "reward follows risk" and "benefit follows burden" and finding that the ratepayers and the shareholders both face significant risks and bear important burdens. The Majority states:

> In addition to the financial risks and burdens borne by ratepayers, shareholders bear legislative and market risks and additionally bear the regulatory burden of prudently managing their resources, which multiple ownership can make difficult. (Paragraph 84)

197 It goes on to state:

> In determining the fair allocation of the appreciation, we must consider in particular the uncertain future of the electricity industry and new opportunities for both shareholders and ratepayers in a competitive wholesale generation market. In light of that uncertainty and those opportunities, regulators must be cautious not to apply

> precedent in a way that could inhibit utilities from pursuing opportunities beneficial to both ratepayers and shareholders. We must be flexible enough to allow managers of regulated utilities to exercise sound judgements regarding the restructuring of their portfolios of assets so as to maximize the value of their entire systems, minimize rates, and best serve both ratepayers and shareholders. Thus, the Commission, when determining the public interest, must look both at the particular asset and also at the broader context in which the asset is being sold. This case is further complicated by multiple ownership. One owner with insufficient incentive to agree to an otherwise sound sale can adversely affect the interests of the other seven utilities and their ratepayers. (Paragraph 85)

198 The Majority is careful to point out the unique characteristics and circumstances of this case and admonishes that sharing of the gain in this circumstance does not constitute a change in policy or a general precedent regarding distribution of the gain realized from the sale of in-service utility assets.

199 While I agree with the Majority's invoking the "risk" and "burden" principles, I disagree with the analysis it presents and the conclusions it draws concerning the relative risks and burdens borne by ratepayers and shareholders. I believe that the Majority has read into the facts of this case that which is not there. Its opinion that shareholders deserve a portion of the gain appears to rest on a conclusion that changes in regulation of the wholesale power market have combined with other factors to change fundamentally the balance of risks and burdens borne between the utility's retail customers and its shareholders.

200 Nothing fundamental has changed in this relationship. The record in this case does not support any such conclusion. The three Applicants were, when the Centralia plant entered rate base in 1972, and are today, vertically integrated public service companies that supply bundled electricity service to retail ratepayers. Investors provided the capital necessary for the utilities to provide this service. In return for service, the ratepayers have been obligated to pay fair rates which have compensated the utilities' investors for dedication of their capital to public service. The ratepayers have returned the capital through depreciation payments and have compensated the utilities' for use of their capital through fair rates of return. This was the relationship between ratepayers and the utility in 1972 when the plant was put in service. This is the relationship today.

201 I will take up, in turn, each of the risks and burdens cited by the Majority as evidence that present circumstances have conspired to change the relationship between ratepayers and shareholders.

202 First, the Majority acknowledges that the ratepayers bear financial risk and burden. However, it is important to understand that the magnitude of these risks and burdens have not been diminished in any way since 1972. The ratepayers have been responsible to pay through rates the operating and maintenance expenses, depreciation, taxes, and a return on the original investment of the utilities in the Centralia facilities. The ratepayers have borne the risk that, while found by the Commission to be a prudent investment, the

cost of Centralia power may have at times over the last 27 years been higher than otherwise available power alternatives. And, the ratepayers would continue to be responsible through rates for any additional needed investments, if they were found to be prudent, to keep the plant in compliance with environmental regulations. Perhaps the strongest evidence that customers have borne and continue to bear all of these risks can be found in PSE's arguments in favor of the sale. PSE catalogues a long list of the risks customers would face if the plant were not sold, and cites the relief from these risks as a major reason to find that the sale is consistent with the public interest. (PSE Brief pp. 7-9)

203 Next, the Majority argues that shareholders bear "legislative" and "market" risks. But, utilities in Washington have always faced the risk of loss of customers. Since the 1930's, customers have had the ability to municipalize through formation of a public utility district. In the absence of exclusive service territories, utilities have always faced the risk of loss of customers on the fringes of their service areas. And industrial customers have for decades had the option of self-generation. The utilities face no greater risk of loss of customers today than they did in 1972. The Applicants do not offer an argument or evidence that this risk has increased.

204 Federal regulatory policy has more recently made the transmission system "open access," and has sought to make the power generation market a competitive one. This means the utility has more alternatives for power supply than was previously the case. Choosing between these alternatives presents both risks and opportunities. But this change in the relationship among utilities and other parties who generate and buy and sell power does not fundamentally alter the relationship between utilities and ratepayers. The utility remains obligated to provide service and the ratepayer is obligated to pay a fair, reasonable, and compensatory rate for that service. The practical relationship is still one of monopoly service despite the fact that Washington has never actually established monopoly franchises.

205 The market risk faced by utilities is not fundamentally different from resource risks faced before the advent of competitive generation. So long as utility management can demonstrate that its power acquisitions are prudent, it will be allowed to pass the costs on to ratepayers. It is the ratepayer who has traditionally borne the market risk, not the utility. After all, power purchases do not generally earn a return for the utility precisely because the utility bears no risk to capital. I see no fundamental change in market risks borne by these utilities. At least there is no clear evidence of a change in this record.

206 The potential for legislative change is always present and has been through the years. The battle between public and private power in the legislative sessions of the 1950s provides a clear example that legislative risk is nothing new. To the degree that proposed restructuring legislation has generally included, at the behest of the utilities, provisions to ensure that shareholders receive total return of any stranded costs serves, in my view, to

lessen the risk faced by utilities, not increase it.[3]

207 The Majority next argues that the utilities bear the regulatory burden to prudently manage resources. But utilities have always borne this burden. Nothing has changed fundamentally to alter their traditional responsibility. The fair rate of return that companies are provided the opportunity (not the guarantee) to earn includes the recognition that they will sometimes make mistakes. Some investments will be disallowed because they are found by the Commission to have been imprudent. And some management decisions will cause them to earn less than the return they are allowed. The arguments presented by Avista and PacifiCorp that shareholders bear significant risks are directed at whether their allowed rates of return are fully compensatory of these risks. The burden and risks are not new, and neither are the arguments. The record in this case includes evidence that the allowed rate of return has often been determined with reference to utilities that did bear disallowances for imprudent nuclear investments. The risk of imprudence disallowance is a risk for which the utility is already compensated. (Staff Brief, p. 12)

208 Finally, the Majority contends that utilities should not be inhibited from pursuing opportunities to maximize value for shareholders and ratepayers. PacifiCorp makes an especially artful argument that utilities should be granted a share of gains so they have a "stake in the outcome" of sales that benefit both shareholders and ratepayers. The cases cited above from California and Maine both involve sharing a portion of the gain with shareholders as an "incentive" to ensure that the gain is maximized. This is not a rationale, however, that depends on a fundamental change in the risk/burden relationship between utilities and customers. And it is not a rationale upon which the majority relies.

209 In this case, the rationale seems to have been invoked after the fact. The Majority implies that this sale might not have occurred, and might not close, if the utilities could not anticipate some benefit from a portion of the gain – presumably more benefit than they would receive through relief from the awkward management structure and the mine reclamation liability. However, the record seems to show that the Applicants did not pursue the sale under the expectation that they would receive the gain.

210 In its application for approval of the sale transaction on August 10, 1999, Avista was prepared to set the matter of gain allocation over to its rate case, a case that at that time had yet to be filed. That case, filed October 22, 1999, and now pending before us in Docket UE-991606 could not reasonably have been expected to be resolved before the May 7, 2000, closing date of the TECWA sale.

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[3] See, for example, S. 2098 recently introduced by Senator Frank Murkowski. Section 107 states, "It is the sense of Congress that public utilities are entitled to fully recover all prudently incurred wholesale and retail costs that become stranded as a result of changes in public policy with respect to competition and industry structure."

211 In its application for approval of the transaction on September 10, 1999, PSE requested authorization to amortize the net gain over a five-year period. Absent the fact that PSE is currently regulated under the Rate Plan, PSE acts as if the effect of the requested amortization would have been to credit ratepayers with 100 percent of the net gain. This can be seen by the fact that in this proceeding (as it did in *Colstrip)* PSE's accounting presentations have allocated any portion of the gain amortized in a period that is not covered by the Rate Plan to its ratepayers.

212 In its application for approval of the transaction on August 11, 1999, PacifiCorp requested that the Commission determine the amount and proper ratemaking treatment for the net gain. Its expectation that it would receive any of the gain in excess of book value is not at all clear from this record, however (Ex. SC 514).

D. CONCLUSION AND CONCERNS

213 Considering the record, I can find no reason to conclude that the balance of risks and burdens between ratepayers and shareholders has changed in any significant way since Centralia was originally included in rates in 1972. Finding no such reason, I must disagree with my colleagues that any allocation of gain to the shareholders is necessary or appropriate to compensate them for such a change in the ratepayer/shareholder relationship.

214 The shareholders have received return of their original capital as well as a fair return on their capital. The ratepayers have borne the costs and risks associated with operating the plant, its environmental liabilities, the possibility of early plant closure, and the potential that power costs from Centralia might have been higher than other alternatives. If circumstances had turned out differently and the utilities had proposed to sell Centralia for less than its book value, the utilities surely would not be proposing to share the loss. Since ratepayers have borne the risks, it is only fair that they receive all of the gain.

215 The amount of money at issue, while significant, is not large when compared with the total sale proceeds. My purpose in dissenting is not to quibble over details. It is, instead, to emphasize that I believe the principles stated in *Democratic Central* continue to be persuasive; and to further emphasize that in applying these principles, the relationship between ratepayers and shareholders has not changed in Washington to any degree that justifies departing from the presumption that ratepayers deserve the gain from capital appreciation if they bear the risk of capital losses. To find otherwise is to undermine the fundamental precepts of original cost ratemaking, and introduce for the utilities a perverse incentive for speculation which may increase the risks or costs borne by ratepayers who continue to rely on the service of vertically integrated monopolies.

216 I fear that the decision of the Majority serves more to introduce, than to identify, change in the balance of risks and burdens between ratepayers and shareholders. This may have the unfortunate consequence of destabilizing, or at least obscuring, the precepts that are

today generally accepted to form the foundation of proper ratemaking. I hear in the rationale presented by the Majority some troubling echos of "fair-value" ratemaking principles applied, as they were in the early decades of the Twentieth Century, to an individual utility asset.[4]

217 The era of fair-value rate making began to fade in 1923 when Justice Brandeis, in a celebrated opinion (with Justice Holmes concurring) wrote, "The thing devoted by the investor to the public use is not specific property, tangible or intangible, but capital embarked in the enterprise. Upon the capital so invested the Federal Constitution guarantees to the utility the opportunity to earn a fair return."[5] The Supreme Court subsequently abandoned the reproduction cost method and the "fair-value" theory. The Supreme Court described the rationale for the shift away from fair value in *Hope Natural Gas Company*, where the Court said, "[T]he heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the ongoing enterprise depends on earnings under whatever rates may be anticipated." *Federal Power Comm'n v. Hope Natural Gas Company*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944). Or, as succinctly stated in *Democratic Central*, "[T]he investor's legally protected interest resides in the capital he invests in the utility rather than in the items of property which that capital purchases for provision of utility service." (*Democratic Central* at 801)

218 It is my hope that the opinion of the Majority in this case does not serve to open the door to a parade of individual asset sales and arguments about a utility's right to a share of the fair valuation. ICNU makes a compelling argument when it points out the perversity to which this path might lead:

> If utilities have the right to charge ratepayers for expensive new generating plants, at cost, in the early years, when the power may not be economically competitive, and then sell off the asset to another entity once inflation makes the power cost-effective, and keep the profit for the stockholders, ratepayers are in an untenable bind.

(ICNU Brief p. 10, citing Theodore Eisenberg, *Bankruptcy in the Administrative State*, 50 Law and Contemporary Problems. 3, 39 (1987))

219 ICNU argues further that:

> The logical result is that a utility will sell its low-cost resources and share in the gain

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[4] The application of the fair value theory usually benefitted the shareholder and disadvantaged the ratepayer because it allowed the shareholder to lay claim to the increase in value of assets in public service. See *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 53 L. Ed. 382, 29 S.Ct. 192 (1909).

[5] Missouri ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n, 262 U.S. at 289, 43 S.Ct. 544, 67 L.Ed. 981.(1923)

and keep its high-cost resources, which will remain in rates or be recovered as stranded costs. (ICNU Brief p.15)

220 I trust that my colleagues share with me the view that anticipation of gain from asset sales should not be interpreted by utilities as encouragement to engage in the speculative acquisition and sale of utility property that is useful and valuable for public service, and for which customers bear or will bear risk. And, that they share my view that a "piece-meal" approach to the valuation of the utilities' generation portfolios is to be avoided.

221 Moreover, it is my hope that the Majority opinion will not be interpreted to stand for the proposition that utilities bear additional risks that have not in the past been, or that will not in the future be, compensated in the rates of return they are allowed on the totality of their rate base. Finally, it is my hope that the Majority opinion will not lead us, necessarily, to become more aggressive in review of management decisions in order to ensure that anticipation of gain from asset sales does not serve as a perverse incentive detrimental to customers.

222 Because the Majority describes its understanding of current risks that lead to their decision to share gain in terms of the decision model of the eight current co-owners, and the risks of future mine reclamation, I am confident that this is not its meaning.

DATED at Olympia, Washington, and effective this day of March, 2000.

RICHARD HEMSTAD, Commissioner