**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Application of AVISTA CORPORATION for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant | Docket No UE-991255. |
| In the Matter of the Application of PACIFICORP for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination | Docket No. UE-991262 |
| In the Matter of the Application of PUGET SOUND ENERGY, INC. for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five Year Period, | Docket No. UE-991409<br><br>**PETITION FOR CLARIFICATION** |

On March 6, 2000 the Commission issued the Second Supplemental Order Approving Sale with Conditions in the Centralia case. Public Counsel asks for reconsideration or clarification on two issues.

**1) Tax treatment**

At paragraphs 86 – 88 of the order, the Commission sets forth the before and after tax



ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

effect of its order. The conversion was computed at the federal 35% tax rate. In its Exhibit 312 (Page 1), Avista assumed a 37.5% tax rate. During cross-examination, Mr. McKenzie testified that this difference was due to the income taxes imposed by other states (Tr. 297). Mr. McKenzie acknowledged that Washington has no state income tax.

While the use of the 35% federal tax rate clearly implies this, we request that the Commission clarify that Washington ratepayers will not be responsible for taxes imposed by other states.

**2) Excess Deferred Taxes**

Excess deferred taxes arise as an issue because the tax accrued, but not paid, in the early years of the Centralia plant's operation were collected based on a higher federal tax rate than now exists. The companies are holding deferred taxes previously paid by ratepayers that will never be paid to the federal government under current tax laws.

At paragraphs 92 – 94 of the order, the Commission directed each of the companies to seek rulings from the IRS that the excess deferred taxes can be applied toward the taxes due on the ratepayer's share of the recapture of excess depreciation expense paid on Centralia. The Commission did not, however, impose any sort of sanction on the companies should they fail to obtain these rulings.

Public Counsel is concerned that this may create an incentive for failure. If the companies do not get an IRS ruling allowing them to apply the excess deferred taxes to the taxes due on the appreciation, it appears that the shareholders would get to keep the excess deferred taxes. On the other hand, should the companies succeed in getting the requested IRS ruling, then ratepayers get the benefit of the excess deferred taxes. Under these circumstances, it would



ATTORNEY GENERAL OF WASHINGTON
Public Counsel
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Seattle, WA 98164-1012
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appear that the incentive would be to submit a request that the IRS would reject.

We ask that the Commission clarify exactly what sanction or sharing mechanism will be used to reward the companies if their efforts to obtain the desired IRS ruling are successful, or to penalize them if their requests are unsuccessful. In this manner, the incentive for the companies is to obtain the IRS ruling which allows the excess deferred taxes to be applied against the tax due on the appreciation. We suggest that conditioning all or a portion of the gain assigned to the companies on a successful IRS request would achieve this.

DATED this _____ day of March, 2000.

Respectfully submitted,

CHRISTINE O. GREGOIRE
Attorney General

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Simon J. ffitch
Assistant Attorney General
Public Counsel Section



ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744