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March 19, 2004

**VIA ELECTRONIC FILING &
FIRST CLASS MAIL**

Carole Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Washington Utilities and Transportation, Complaint
v. Avista Corporation d/b/a Avista Utilities, Respondent
Docket No: UG-021584

Dear Ms. Washburn:

Enclosed please find the original and fourteen copies of the Public Counsel's Opposition to Avista's Proposed Transition Plan for filing in the above-entitled case. For confirmation of receipt, I have enclosed a copy to be date-stamped and sent back to us in the enclosed self-addressed, stamped envelope.

Sincerely,

ROBERT W. CROMWELL
Assistant Attorney General
Public Counsel Section
(206) 464-6595

RWC:cjw
Enclosures

cc: Service List (Electronic Mail & First Class Mail)



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

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES.

DOCKET NO. UG-021584

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STATE OF WASH
UTIL AND TRANSP
COMMISSION

**PUBLIC COUNSEL
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE
OPPOSITION TO
AVISTA'S PROPOSED TRANSITION PLAN**

MARCH 19, 2004

I. INTRODUCTION

1. The Public Counsel Section of the Washington State Attorney General's Office ("Public Counsel") respectfully requests the Washington Utilities and Transportation Commission ("Commission") reject Avista Corporation's ("Avista" or "Company") proposed transition mechanism ("Avista Transition Plan"). The Company's proposal provides for the continuation of the Benchmark mechanism, minus sharing and other aspects, but fundamentally contains no commitment to comply with the Commission's order in a timely fashion. Public Counsel requests the Commission order a shorter term, cost-based transition plan be implemented by the company consistent with the Commission's *Sixth Supplemental Order Rejecting Benchmark Mechanism Tariff* ("Final Order").

II. BACKGROUND

2. The Commission's Final Order was issued on February 13, 2004. No party has sought reconsideration, clarification, or to appeal the order under the Washington Administrative Procedure Act, chp. 34.05 RCW. The order is final. The Commission's Final Order held that Avista's benchmark mechanism was not reasonable and ordered the purchasing function be reverted to Avista Utilities. *Final Order*, ¶¶ 100, 106-107 and 110. The Commission also found that it was appropriate to have a transitional period to allow the company to make an orderly transition from the "out-sourcing" of the purchasing function from Avista Energy to Avista Utilities. *Id.*, ¶¶ 101, 108 and 111.
3. During the evidentiary stage of this proceeding before the Commission the Company asserted that if it were ordered to revert the purchasing function to Avista Utilities it could do so within two months. Transcript p. 9, ll. 12-23 and p. 21, ll. 2-21 ("Tr.").
4. Part of the Company's original request was a \$900,000 annual management fee be paid by Avista Utilities to Avista Energy as part of its compensation. According to Avista Energy

employee Michael D'Arienzo this management fee includes compensation to Avista Energy for the risk it carries on behalf of Avista Utilities as well as compensation to balance the "sharing" proposed by the company. Tr. pp. 381-382.

5. Avista Corporation also provides service in the states of Idaho and Oregon, and currently has a benchmark mechanism in effect in those states. It is clear from the Idaho Commission's order approving the benchmark mechanism for Idaho that it had substantial concerns regarding the effectiveness of the mechanism and intends to review it in the near future. *In the Matter of Avista Utilities' Application for Approval of Modifications to its Natural Gas Benchmark Mechanism*, Case No. AVU-G-01-3, Order No. 28941, Idaho Public Utilities Commission (February 1, 2002), p.7 ("Idaho Order").
6. The Company's Transition Plan has four basic elements:
 - a) The existing tariff (163) will terminate on April 30, 2004;
 - b) Avista Energy will continue to manage the gas procurement for Avista Utilities until May 31, 2005;
 - c) The proposal assumes the Idaho and Oregon mechanisms will not be renewed and the scheduled expiration of similar mechanisms in those states on May 31, 2005 will result in a permanent return of the gas procurement function to Avista Utility on April 1, 2005; and
 - d) All "sharing" of costs or benefits will cease except that Avista Energy would be paid \$900,000 per year (\$75,000/month) for managing the gas procurement for Avista Utilities.

III. ARGUMENT

A. Public Counsel is Concerned That Avista Proposes a Continuation, Not a Transition.

7. Public Counsel is concerned that the Company's proposed Transition Plan is, in effect, a continuation of the existing mechanism in the guise of a transition plan. The Company's proposal does not revert the procurement function to the utility in a timely fashion and appears to stretch the language of the Commission's Final Order to delay implementing the Commission's intent to end the mechanism. Public Counsel also is concerned that there is not substantial evidence in the record now before the Commission upon which it can reasonably conclude that the proposed \$900,000 annual management fee is reasonable, let alone meets the "lower of cost or market" standard the Commission applies to such affiliate transactions. As Mr. Parvinen stated, the rationale for applying the "lower of cost or market" standard to affiliated relationships is to have some assurance that that the utility is "... not subsidizing that non-regulated entity." Tr. 517, ll. 15-25. The Chairwoman correctly identified that it appears from the record now before the Commission that the Commission cannot assure that the Utility is receiving the lower of cost or market from the proposal now before it. Tr. 521, ll. 11-23.

1. Avista's transition plan does not comport with the Final Order.

8. Public Counsel does not object to ending the existing tariff (163) on the end of a month to accommodate accounting issues that would result from a mid-month termination. However, Public Counsel is concerned that Avista's Transition Plan, as proposed, inappropriately delays the actual transition to the utility of the gas procurement function. As noted above, at hearing the company asserted that this task could be performed in two months. Sixty days is a far cry from what is now being proposed by the company.
9. Avista asserts that it is in the public interest for the Commission's order to be finally complied with over a year after the date of its issuance in order to meet the administrative

convenience of synchronizing the timing of the termination of the procurement of gas for Washington with the scheduled termination of the Idaho and Oregon mechanisms. While this is a reasonable concern, and higher costs may result from asynchronous gas procurement across jurisdictions, it is not at all certain based upon the record now before the Commission that this is in fact the case.

10. Further, it is clear from the Idaho Commission's order approving the benchmark for Avista's Idaho ratepayers that the Idaho Commission intends to closely monitor the company's performance and to explicitly review not only the mechanism's performance, but also the result of this Commission's investigations. *Idaho Order*, p.7. Idaho and/or Oregon may decide based upon the result in Washington to review or terminate the mechanism in their jurisdictions sooner than May 31, 2005. It would be unfortunate if this Commission ordered a transition plan that then became an impediment to more timely termination of the mechanism across all jurisdictions.

2. Avista's \$900,000 fee is not supported by the evidence.

11. Avista proposes a \$75,000 per month management fee to compensate Avista Energy for costs incurred in continuing to manage the gas procurement function for Avista Utilities. While there certainly are costs that Avista Energy will incur during any transition period, this Commission must satisfy itself that such costs are reasonable, prudent, and meet the "lower of cost of market" standard for affiliate transactions. Public Counsel does not believe substantial evidence exists in the record for the Commission to reach such a conclusion.

12. During the litigated phase of this proceeding the \$900,000 annual fee was part of the package of compensation which Avista was seeking to have the utility pay Avista Energy under the mechanism. As such, it was never broken down to reflect all actual, auditable costs. While Avista Energy would no doubt incur costs during a transitional period (such as credit costs,

labor, etc.), such costs have never been documented in sufficient detail for this Commission to determine that \$75,000 is the appropriate monthly amount.

13. Avista may respond to this criticism by pointing to the testimony of Public Counsel's witness who testified regarding the \$900,000 management fee. Exhibit 251, Direct Testimony of Catherine M. Elder. Ms. Elder testified that the \$900,000 management fee (if compared to a per MMBtu based fee) was on the high end of the range of such fees she has seen. Ex. 251, p. 16. Ms. Elder in fact recommended that the fee be eliminated if the mechanism were continued. *Id.* p. 17. While the \$900,000 fee, when viewed on a per MMBtu basis may be within the range of reasonableness of such fees in the industry, that is not the question now before the Commission. The issue is whether this proposal represents the lower of cost or market compensation during the transition period.

14. It is also important to note that Avista Energy will bear none of the risks it previously discussed during the adjudicatory phase of this proceeding during the transition period. Ms. Elder did not address the reasonableness of management fees in the context where the gas procurement manager was insulated from all risks and was performing a "fee for service" only. Here the Company is proposing the same management fee, which its own witnesses asserted included compensation for risk, in a circumstance where Avista Energy will be exposed to no risk at all.

15. Respectfully, Public Counsel does not believe the Commission can determine that the proposed fee is reasonable, let alone the lower of cost or market, on the record now before it. There is no substantial evidence as to the number of employees involved in the gas procurement, their total compensation, the amount of their time allocable to the gas procurement function, etc. In short, there is insufficient evidence to determine that \$75,000 per month is the right amount.

3. Avista's "practical" concerns can be addressed in a more timely fashion.

16. Public Counsel recognizes the concern expressed by Avista that complying with an inappropriately short time-frame could impair its ability to hire experienced employees and properly train them. For this reason Public Counsel recommends that the Commission adopt a 120 day transition period, starting from the date of the Final Order. Public Counsel believes 30 to 60 days is an adequate period for energy industry placement professionals to find experienced gas managers for Avista Utilities' management to consider for the new positions required to comply with the Final Order and 60 days is a reasonable training period. Avista's Transition Plan proposal does not indicate that they have even begun to attempt to comply with the Final Order by initiating an employee search or retaining placement professionals. That Avista appears to have wasted the last 30 days, and seeks more delay, should not be cause for continuing this mechanism inappropriately. It is clear that the company seeks to continue the mechanism for as long as this Commission will allow it to do so.

17. As conceded by the Company, no "benefit sharing" should occur during the transition period. All costs to be billed to Avista Utilities by Avista Energy could be on an actual cost, as incurred basis. Portfolio decisions, including use of storage, transportation, basin optimization, etc. could continue to be made by the Strategic Oversight Group with Mr. Gruber making the ultimate decisions regarding Avista Utilities' requirements. Tr. 245, ll. 8-15, Tr. 352, ll. 14-17, Tr. 273, l. 23 to Tr. 274, l. 12 and Tr. 331, ll. 2-7. There is no reason why the SOG process could not continue during the transition period and thereafter as so required for Avista Utilities to best serve its customers. Avista Energy could continue to make all necessary notifications of change in contract relationships, development and documentation of internal administrative procedures, etc. as part of this process.

18. Avista Energy could be ordered to identify those employees directly and substantially involved in providing services to Avista Utilities. Avista Energy could be ordered to document the employment costs for the identified employees (including non-bonus or incentive benefits

(medical, dental, pension, etc.) and excluding incentive compensation elements) and then provide a detailed billing to Avista Utilities, the Commission, and the parties to this proceeding for the actual time such employees spent serving Avista Utility's needs, training the new Avista Utility employees, etc. In the event such employees time cannot be segregated due to their work for Avista Energy on a "portfolio basis," such employee costs could be billed to Avista Utilities based upon Avista Utility's percentage of Avista Energy's total portfolio during the transition period. Non employee-related actual costs such as costs of credit and collateral could be allocable to the gas procurement on a percentage of portfolio basis.

19. After the Transition Period is complete all costs allocable to Avista Utilities associated with transition could be documented to the Commission and the parties to the proceeding within 120 days. Objections to any stated costs could be filed by parties within 30 days; with discovery available in the interim. The Commission could then rule on any objections within 150 days.

IV. CONCLUSION

___0. Public Counsel recommends rejection of Avista Corporation's proposed transition plan. The gas purchasing function should be reverted to Avista Utility with all deliberate speed. The company itself asserted it could do so within 60 days. Now that it is faced with the prospect of having to live up to its commitments Avista Corporation suddenly finds itself unable to live up to its commitment to this Commission.

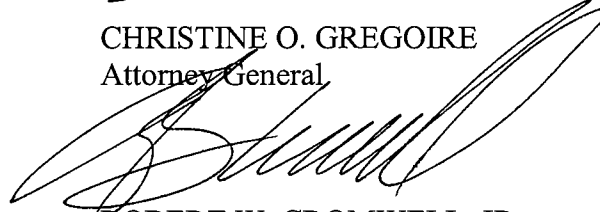
21. Despite having lost its case in chief, Avista Corporation seeks to inappropriately continue the benchmark mechanism through an inappropriately slow "transition" which would effectively continue the mechanism's existence for over a year past the date of the Commission's order directing that it be terminated. The Commission should reject the Company's proposed transition plan and direct the company to file a transition plan that comports with its asserted ability to accomplish this in 60 days, and directing that the transition plan shall provide for cost-

based reimbursement for all costs incurred by Avista Energy during the transition plan without inappropriate compensation that is not cost-based.

March 19, 2004

RESPECTFULLY SUBMITTED this 22nd day of December, 2003.

CHRISTINE O. GREGOIRE
Attorney General




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

CERTIFICATE OF SERVICE
Docket No. UG-021584

I hereby certify that a true and correct copy of the Opposition to Avista's Proposed Transition Plan filed by Public Counsel was sent to each of the parties of record shown on the attached Service List in sealed envelopes. All copies were sent via:

- ☒ First class mail, postage prepaid
☐ Facsimile transmission
☒ E-mail to Electronic Service list
☐ UPS Two-Day Air, freight prepaid
☐ Federal Express, freight prepaid

DATED: March 19, 2004.



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