

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	
AVISTA CORPORATION)	DOCKET NO. UE-991255
)	
for Authority to Sell its Interest in the)	
Coal-Fired Centralia Power Plant)	
_____)	
In the Matter of the Application of)	
)	
PACIFICORP)	DOCKET NO. UE-991262
)	
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))
_____)	
In the Matter of the Application of)	
)	DOCKET NO. UE-991409
PUGET SOUND ENERGY, INC.)	
)	AVISTA CORPORATION'S
for (1) Approval of the Proposed Sale of)	CONSOLIDATED MOTIONS
PSE's Share of the Centralia Power Plant)	FOR RECONSIDERATION
and Associated Transmission Facilities,)	and
and (2) Authorization to Amortize Gain)	FOR CORRECTION OF ORDER
Over a Five-Year Period)	
_____)	

I. INTRODUCTION

In this consolidated motion, Avista Corporation ("Avista" or "Company") first moves the

Commission for reconsideration of its Second Supplemental Order -- Order Approving Sale With Conditions (“Second Order”), issued March 6, 2000. As an initial matter, in the Second Order the Commission indicated that it made certain allocations of the gain based on the distinctive facts of this case.¹ Avista agrees with the Commission that the treatment of the gain in the Second Order is based on the unique and particular facts of the case and is non-precedential and, if Avista decides to proceed with the sale to TECWA, would do so only if such order is deemed to be non-precedential.

Additionally, Avista believes that the Commission should issue all of the orders regarding the treatment of the gain from the Centralia Power Plant (“Plant”), including the treatment of the 2.5% share, before Avista reaches a final decision on a response to the Commission’s Order.

Avista also moves the Commission for an order correcting errors and clarifying the calculations of the gain on the sale of the Centralia Plant. Avista believes that portions of the order create ambiguity and requests that a precise calculation of the allocation of the gain between ratepayers and shareholders be specified and approved.²

II. LAW and ARGUMENT

Commission rules allow any party to move the Commission for reconsideration within

¹ In its order, the Commission noted that it was allocating the gain based on the particular facts presented in this docket. See Second Order at 1, ¶ 1 (“Case-specific circumstances . . .”); at 29, ¶ 84 (“In this particular transaction . . .”); at 29, ¶ 86 (“When we apply the principles of *Democratic Central* to the facts of this case . . .”); at 30, ¶ 86 (“ . . . equities of this distinctive case”). Thus, Avista assumes that the Commission made its decision based on these unique facts and the allocation of gain in the Second Order is non-precedential.

² Avista recognizes that the final figures will not be known until the sale to TECWA closes and thus will likely be slightly different from the figures in the Second Order and those offered by Avista in this motion.

ten days of issuance of an order. WAC 480-09-810(1). However, the party's right to seek review of the order is not stayed by such a motion, but rather may only be modified by the Commission granting a request for reconsideration of the order. See RCW 80.04.170 & WAC 480-09-810(8). Thus, absent an order granting reconsideration, a party must file a writ of review within thirty days of service of the order.

In addition, the rules allow any party to move the Commission to "correct obvious or ministerial errors" in Commission orders. WAC 480-09-815(2). Such a motion for correction tolls the time limits for any available post-order review as to the matters raised by the motion for correction until such time as the matter is corrected. Id. As a general rule, the Commission has broad discretion in implementing its procedural rules. The procedural rules "are subject to such exceptions as may be just and reasonable in individual cases as determined by the commission." WAC 480-09-010(3). Thus, it is within the discretion of the Commission to grant Avista's motions at this stage of the proceeding.

1. Motion for Reconsideration

Avista requested that the Commission address concurrently the treatment of the gain for both the original 15% share of the Plant (Docket No. UE-991255) and the 2.5% share of Plant purchased from Portland General Electric Company.³ See In the Matter of the Application of Avista Corporation, Docket No. UE-000080, Application for a Ruling on Gains Treatment, p. 4-5 (January 21, 2000). In Avista's view, such concurrent treatment is necessary in order that

³ The Commission noted that it intended to address the treatment of the 2.5% share in Docket No. UE-000080. Second Order at 37, ¶ 116.

Avista have all the relevant information regarding the regulatory treatment of the sale of the Plant to TECWA before being willing to proceed to close such sale.

In the Second Order, the Commission did not address the treatment of the gain for the 2.5% share of the Plant. Without having all of the Commission's orders detailing the treatment of the gain, Avista is not in a position to fully evaluate the Second Order. Meanwhile, the time for Avista to seek judicial review of the Second Order began to run on March 6, 2000. See RCW 80.04.170 (providing that a public service company must seek review of the order "within thirty days after service of the findings or order"). Consequently, Avista is presented with a Hobson's choice: (1) apply for a writ of review of the Second Order even though ultimately Avista may not wish to pursue such an appeal depending on the Commission's treatment of the gain in a future order; or (2) await the Commission's future order on the treatment of the 2.5% share of the Plant and hope the treatment of the gain is agreeable or hope that the order on the 2.5% share is issued in a time frame that would allow Avista ample opportunity to prepare an appeal. Avista believes that a more efficient use of both its and the Commission's resources can be achieved by delaying a decision to seek review until the Commission decides the treatment of the 2.5% share. This result is obtainable only if the Commission grants Avista's motion for reconsideration and issue the Second Order as final at the same time as the order is issued in Docket No. UE-000080 on the treatment of the gain for the PGE 2.5% share. Therefore, Avista requests that Second Order become final for purposes of seeking reconsideration and review only when the Commission issues an order in Docket No. UE-00080 on the treatment of the gain for the PGE 2.5% share.

2. Motion for Correction of Order

Avista's estimated net of tax gain on the sale of the Centralia Plant is \$29.6 million with the Washington allocated share being \$19.83 million. The Second Order in Table 5 at page 31, indicates that the "Allocation of Sale Proceeds" to the ratepayer after tax is \$19.79 million, and

the assignment of the Appreciation to shareholders is \$2.29 million. The sum of these two amounts exceeds the \$19.83 million net of tax gain allocated to Washington. Avista requests that the Commission clarify the calculation of the gain such that the ratepayer and shareholder portions of the gain sum to 100%.

Attachment A provides a detailed calculation of the gain by the Company for both ratepayers and shareholders. The gain associated with accumulated depreciation is assigned to ratepayers with an equal sharing of the Appreciation between ratepayers and shareholders, consistent with the Commission's Order. The result is a net of tax gain shown on line 36 of Attachment A of \$17.56 million assigned to ratepayers and \$2.27 million assigned to shareholders for a total of \$19.83 million.

Table 4 on page 30 of the Commission's Second Order shows the 50/50 split of the Appreciation portion of the sale proceeds. This table shows an equal allocation of \$3.52 million to ratepayers and \$3.52 million to shareholders on a pre-tax basis. The Company's calculated pre-tax figure for shareholders on Line 25 of Attachment A of \$3.52 million ties to the figure in Table 4 of the Second Order.

Table 5 on Page 31 of the Second Order shows the net of tax figures for both ratepayers and shareholders of \$2.29 million relating to the Appreciation portion of the gain. Table 6 also shows the net of tax Appreciation for shareholders of \$2.29 million.

The Company's calculation of the net of tax figures are shown on Line 36 of Attachment A. The net of tax figure for shareholders is \$2,274,164, which is slightly lower than the \$2.29 million included in Tables 5 and 6 of the Second Order. Tables 5 and 6, however, use a 35% tax rate and

the Company's calculations in Attachment A use a tax rate of 37.5% to reflect both federal and state

income taxes. If the Company had used the 35% tax rate in Attachment A, the Company's after-tax figure for shareholders on Line 36 of Attachment A would be \$2.29 million, which would tie to the \$2.29 million assigned to shareholders by the Commission in Tables 5 and 6 of its Order.

In the Company's calculations in Attachment A, the difference between the tax basis and book basis and the reversal of deferred income taxes due to accelerated tax depreciation was assigned to the accumulated depreciation component of the gain. The deferred taxes associated with the reclamation trust was assigned to that component of the gain.

As stated earlier, the result is a net of tax gain shown on Line 36 of \$17.56 million assigned to ratepayers and \$2.27 million assigned to shareholders for a total of \$19.83 million. The \$2.27 million after-tax figure is consistent with the \$2.29 million assigned to shareholders by the Commission in Tables 5 and 6 on Page 31 of the Second Order, after taking into account the different income tax rates used in the two calculations.

III. CONCLUSION

For the foregoing reasons, Avista requests that the Commission grant its motion for reconsideration to allow Avista an overall view of the treatment of all of the gain in evaluating whether to proceed with the sale to TECWA. Specifically, Avista requests that the Second Order become final for purposes of seeking reconsideration and review only when the Commission issues an order in Docket No. UE-00080 on the treatment of the gain for the PGE 2.5% share.

Avista also moves the Commission for an order clarifying the allocation of the gain on the sale to be as calculated by the Company in Attachment A. The Company does not wish to wait to decide the "details" of these calculations in its pending general rate case. Accordingly, the Company

requests that the Commission consider and approve the calculations shown in Attachment A. If the Commission rejects the Company's calculations, the Company requests that the Commission provide a similarly detailed summary of calculations.

Furthermore, if the Commission grants reconsideration for any other Centralia owners' petitions for reconsideration and reconsideration is granted in a manner that would increase the amount of gain allocated to shareholders based on a change in methodology, Avista requests reconsideration so that it receives no less favorable treatment.

DATED this _____ day of March, 2000.

Respectfully submitted,

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By: _____
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