

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of	)	
	)	
AVISTA CORPORATION	)	
	)	DOCKET NO. UE-000080
for a Ruling on the Regulatory Treatment	)	
of the Gain on the Proposed Sale of the	)	BRIEF OF PUBLIC COUNSEL
2.5 % Share of the Centralia Power Plant	)	SUPPORTING JURISDICITON,
Acquired by Avista Corporation from	)	OPPOSING SALE, AND FAVORING
Portland General Electric to be Sold to	)	DISTRIBUTION OF GAIN TO
TECWA Power, Inc.	)	RATEPAYERS IF SALE IS APPROVED
_____	)	

**I.INTRODUCTION**

As set out in the stipulation of facts filed in this matter, Avista Corporation (Avista), a regulated utility, on May 5, 1999, purchased the Portland General Electric (PGE) 2.5 % interest in the Centralia Power Plant (Centralia) (hereinafter “the PGE share”), with an effective date of December 31, 1999. This sale has been completed and Avista has assumed responsibility for PGE’s contractual responsibilities at Centralia. Avista has paid PGE \$3.5 million and will pay PGE an additional \$1.1 million if and when the proposed sale of Centralia to TECWA Power, Inc. (TECWA) is consummated. Avista stipulates that its net gain from the sale of the 2.5 % PGE interest in Centralia will be approximately \$4.28 million.

Three issues are presented to the Commission by this docket. First, whether the Commission has jurisdiction over the sale by Avista of the PGE share or whether the transaction was beyond the scope of regulatory review. Second, whether the Commission should approve the proposed sale of the PGE share by Avista to TECWA. Third, if the sale by Avista to TECWA is approved by the Commission, how the net gain of approximately \$4.28 million

should be treated by Avista.

Public Counsel asserts that the Commission does have jurisdiction over the proposed sale of the PGE share by Avista to TECWA. Public Counsel asserts that the proposed sale by Avista to TECWA of the PGE share, as with the rest of the proposed sale of Centralia to TECWA, is not in the public interest and should not be approved. Public Counsel respectfully argues that, if the Commission finds the Centralia sale to TECWA in the public interest, then any and all gain from the transaction attributable to the PGE share should be allocated to ratepayers; as with the rest of the Centralia sale.

## II. ARGUMENT

### **A. The Commission Has Jurisdiction Over Avista's Proposed Sale of the Former PGE Share of the Centralia Plant**

The PGE share of the Centralia plant is utility property that is held by a regulated utility subject to the jurisdiction of the Commission. Mr. Gary G. Ely stated upon cross-examination that Avista paid \$3.5 million to PGE for the 2.5 % share in the Centralia plant and that additional consideration of \$1.1 million would be provided to PGE if and when the sale to TECWA is consummated. Transcript, 215-216. Mr. Ely admitted that Avista Corp., the regulated utility, is holding the 2.5 % interest in Centralia as “utility property.” Tr. 216-217. He explained that the Public Utility Holding Company Act imposes limitations on Avista's ability to hold utility property in unregulated subsidiaries. *Id.* As utility property held by the regulated utility, the PGE share is within the general regulatory authority of the Commission. *See* RCW 80.01.040(3), RCW Chapter 80.28.

Avista's proposed transfer of the PGE share is likewise subject to the jurisdiction of the Commission. RCW 80.12.020 requires that a transfer of utility property be approved by the

Commission, stating, in pertinent part:

**No public service company shall sell, lease, assign, or otherwise dispose of the whole or any part of its franchises, properties, or facilities whatsoever, which are necessary or useful in the performance of its duties to the public....without having secured from the commission an order authorizing it so to do....**

The Centralia plant is an operating power plant generating electricity for Washington customers, including those of Avista. Avista has a need for the output of the plant in order to meet its current demand for service. Avista currently has inadequate resources to meet its customers needs. Tr. 217-218. The Centralia plant, including Avista's PGE share, are both necessary and useful in providing the supply of electricity needed for Avista to meet its obligations to the public. Avista concedes that if no sale occurs, they "would probably look to see if that [the PGE share] would fill part of the resource needs we have at the utility." Tr. 217. Indeed, there is no argument in the main Centralia proceeding that Avista's share is not necessary or useful utility property or that the Commission lacks jurisdiction over the proposed sale. It makes little sense to argue that the Commission has jurisdiction over the sale of Avista's 15 % share, but not over the 2.5 % PGE share.

Avista may argue that the PGE share is not in rate base and is not subject to Commission jurisdiction for that reason. Under RCW 80.12.020, however, the determining factor is whether the property is "necessary and useful" not its status with respect to rate base at the time of the application.<sup>1</sup> As noted above, there can be no dispute that the Centralia plant is necessary and useful for providing service to Avista customers. But for the particular timing of the PGE share transaction, the PGE share, like the main Avista share, would become part of the company's rate

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<sup>1</sup> For Commission decisions involving allocation of benefits to ratepayers from sale of property argued not to be in rate base, *see, e.g. In the Matter of the Sale of U S West Communications, Inc.'s Interest In Bellcore Research Communications, Inc.*, WUTC Docket No. \_\_\_\_\_, Order Granting Application (August 27,1997); *Puget Sound Power & Light Company*, Cause No. U-85-53, Fourth Supplemental Order, pp. 30-34 (May 16, 1986).

base. Public Counsel argues, indeed, that the sale should be disapproved and that the companies should retain their interests in the Centralia plant because continued ownership and operation is in the best interest of customers.<sup>2</sup> The Commission's administrative rules lend support to Public Counsel's position. WAC 480-143-180 addresses the "disposal and determination of necessary or useful property," stating:

A public service company must not dispose of any property necessary or useful to perform its public duties unless it first applies for, and obtains, written authority from the commission. Necessary or useful includes all property except items that:

- (1) Are substituted with or replaced by items of equal or greater value or usefulness;
- (2) Are surplus and unneeded assets for which full value is received;
- (3) Are obsolete; or
- (4) Are excluded from the public service company's rate base by commission order, or otherwise.

**The public service company must file an application for commission determination that the property is not necessary or useful, prior to disposing of such property, if the property to be disposed of has a market value that exceeds the greater of .1 % of the public service company's rate base (for the applicable utility service) last established by commission order, or \$20,000.**

Under this expansive definition, "all property" is considered necessary and useful for purposes of the transfer statute unless subject to one of the exclusions in the rule. None of the exclusions is applicable in this case. In particular, the Commission has neither issued an order excluding the PGE share from rate base, nor has Avista filed an application and received a determination from the Commission that the property is not necessary or useful.

For the foregoing reasons, the Commission should conclude that it has jurisdiction over the sale of the PGE share.

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<sup>2</sup> Cf., *Camp Meeker Water System, Inc., v. Public Utilities Commission*, 51 Cal. 3<sup>rd</sup> 845, 862, 799 P.2d 758 (1990), where the California Supreme Court, under a statute similar to RCW 80.12.020, found the California PUC justified in ensuring that a utility would not dispose of property which could potentially be necessary and useful to meet the present and future needs of customers.

## **B. Avista's Sale of the PGE Share Is Not in The Public Interest**

In its January 28 brief in the main case, Public Counsel set out the reasons why the sale of the Centralia plan is not in the public interest. That reasoning applies with equal force to the sale of the PGE share and Public Counsel, therefore, recommends that the Commission reach the same conclusion here. In order to avoid unnecessary repetition, the January 28 brief is incorporated herein by reference. In summary, the application should be rejected because:

It exposes customers to greater risks and to higher future rates, provides disproportionate benefits to shareholders at the expense of ratepayers, and reduces the Commission's ability to protect the ratepayers' interests.

The record establishes that the sale of Centralia will result in increased long-term costs to ratepayers because the cost of producing power from Centralia is lower than projected replacement power.

The qualitative risks raised by applicants are speculative and fail to overcome the substantial additional costs of replacement power.

See, e.g., Post Hearing Brief of Public Counsel, pp. 3-4. Accordingly, if the Commission rules in the main Centralia case that the sale is not in the public interest, it should reach the same conclusion with regard to the PGE share.

## **C. If the Sale is Approved, All Proceeds Should Be Allocated to the Benefit of Ratepayers.**

In the event that the Commission concludes that the sale of Centralia is in the public interest, the Commission should treat the gain on sale in the same manner as the gain on Avista's 15 % share. As it did above, Public Counsel incorporates by reference its arguments from the January 28 brief. See, Post-Hearing Brief of Public Counsel, pp. 30-33. In summary, Public Counsel urges the Commission to defer all proceeds above undepreciated book value with a return and pass them through to ratepayers in subsequent rate cases, as recommended by Staff. The Commission should insure that in future rate cases, excess power costs which result from the sale of the plant are not passed on to customers. As the record reflects, Avista is short of resources to serve its native load. Tr. 217. The regulated company has an obligation to serve its native load at least cost. In a resource deficit, the PGE share would have been used to serve native load. Tr. 217-218. Since it has chosen nevertheless to sell its interest in the plant, including the PGE share, customers are entitled to the benefit of the sale of property, which should have been used to meet load.

### **III. CONCLUSION**

The Commission has the jurisdiction to review the proposed sale by Avista of the 2.5 % interest in Centralia formerly held by PGE. The Commission should exercise that jurisdiction to disapprove the sale. As with the rest of the Centralia transaction, the sale of the PGE share is not in the public interest as the sale would result in measurable economic harm to the affected ratepayers. If the Commission finds the sale to be in the public interest then the gain from the sale of the should be allocated to ratepayers.

Respectfully submitted this \_\_\_\_\_ day of February, 2000.

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