

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

Avista Corporation, D/B/A  
Avista Utilities

For an Order Authorizing  
Implementation of a Natural Gas  
Decoupling Mechanism and to Record  
Accounting Entries Associated with  
the Mechanism

DOCKET NO. UG-060518

COMMENTS OF  
PUBLIC COUNSEL RE  
DECOUPLING PILOT  
EVALUATION

**I. INTRODUCTION**

Public Counsel respectfully submits these comments in response to the Commission’s March 5, 2008, Notice of Hearing and Opportunity to Comment (Notice) in this docket. The Notice focuses the comments and hearing at this stage on “whether the substantive value of the evaluation plan and final evaluation report have been irreparably undermined” as a result of Avista’s failure to file an evaluation plan by December 31, 2007, as required by the Commission’s Order 04. In addition, the Notice asks Parties to provide comment regarding what remedy or sanction, if any, is appropriate.<sup>1</sup>

As discussed more fully below, Public Counsel believes that, at this juncture, it is not possible to know with certainty whether irreparable harm has been caused by the delay, either to the evaluation plan itself, or the substantive value of the evaluation. This is because we do not

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<sup>1</sup> Notice of Opportunity for Comment and Hearing, March 5, 2008, at ¶ 3.

yet have a final evaluation plan, and an evaluator has not yet been selected. What we do know at this point is that the delay is creating problems for the parties' ability to develop a plan and select an evaluator. Ultimately, the late start to these efforts could have some negative impact on the quality of the evaluation. However, given that the program is in place and will operate until June 2009, there should be an evaluation. Public Counsel is prepared to work with other parties and do the best we can in the circumstances. Given the delays, it is doubly important to have an impartial evaluation and a carefully developed and technically sound evaluation plan.

With respect to appropriate remedies or sanctions, Public Counsel recommends that: (1) the timeline and procedures at the end of the pilot should be modified to allow sufficient time for review of the Final Evaluation Report as well as a reasonable procedural schedule to consider any petition to extend or modify the mechanism; and (2) Avista's shareholders should be required to bear the costs associated with the evaluation.

## **II. HAS THE DELAY UNDERMINED THE VALUE OF THE EVALUATION PLAN OR THE EVALUATION ITSELF?**

We recognize the Commission's Notice calls for comments on the impact of the delay, not on the substance of the plan itself. However, the issues are somewhat related and these comments will highlight a few issues to offer some context for Public Counsel's view as to whether the delay has undermined the value of the plan or the final evaluation.

There are two main components or topic areas that should be included in an evaluation plan. First and foremost, the plan should provide a roadmap of key *procedural* issues related to the evaluation. Second, the plan may also outline the key *substantive* content areas and

questions that will be the focus of the evaluation. In our view, the parties are further along developing the substantive aspect of the plan, and we are hopeful we can develop a joint document outlining the substantive elements of the evaluation. This is still very much a work in progress, however. Working through the issues requires care and attention to detail. Having delayed for many months, it is not appropriate for Avista to now “rush” the other parties or the Commission to adopt a plan.

**A. Diverging Views of Procedural Elements of the Evaluation Plan May Further Delay Selection of an Evaluator.**

With regard to the procedural aspect of the plan, the “procedural roadmap” should provide answers to process questions such as:

- What is the process for evaluator procurement (sole source, publicly issued RFP)?
- If there is a publicly issued RFP, how will it be broadcast to the widest possible pool of qualified bidders?
- Who will retain the evaluator?
- What is the contracting process?
- What is the timeline of major activities?
- Will there be a stakeholder advisory committee and if so, what is the process for interfacing and communicating with the evaluator?
- What are the expected qualifications of an evaluator?
- How will the evaluator be paid?

Based upon discussions and correspondence during the past thirty days, it appears the parties have divergent views regarding critical *procedural* components of the evaluation plan. For example, it appears there is disagreement regarding who should appropriately retain the

evaluator. Public Counsel recommends that, if possible, the Commission retain the evaluator (with significant input and support from the parties as appropriate), to help ensure that the evaluator is truly independent and objective. Another potential alternative may be to have Commission Staff retain the evaluator. Avista, in contrast, has recently expressed its belief that the Company should retain the evaluator.

Because discussions regarding the development of the evaluation plan began in February, 2008, instead of February, 2007, the Parties have not yet had an opportunity to consider and fully explore various options that may exist related to the procurement of an evaluator. The parties have also not yet had an opportunity to seek guidance from the Commission on this issue. While the deadline for filing a draft evaluation plan was only three months ago, it is feasible that had the parties begun discussions in early 2007 and recognized that they had reached impasse on key issues (e.g. who should retain the evaluator), the parties may well have sought guidance from the Commission on any such procedural issues in advance of December 31, 2007.

**B. Avista's Draft Evaluation Plan Fails to Adequately Address Substantive and Procedural Issues.**

Although the Commission has not called for the filing of a draft evaluation plan on March 17, we understand that Avista intends to provide the Commission with the Company's most recent version of the draft evaluation plan as an attachment to its comments. The Company circulated this draft to the parties on Friday afternoon, March 14, 2008. Public Counsel has not had time to comment on this draft. For this reason, as Attachment A, we provide Public

Counsel's most recent redline comments on the draft evaluation plan,<sup>2</sup> in order to provide the Commission with an idea of the issues that remain unsettled between the parties. Discussions are ongoing and thus the draft may change significantly in the coming weeks. Some of the major issues still under discussion, and not addressed adequately, if at all, in Avista's draft include:

- A clear statement of the Commission's specific interest to "closely scrutinize" the "proportion of margin lost to company sponsored DSM relative to the amount subject to recovery."<sup>3</sup>
- An explanation of the process for retaining and selecting an evaluator.
- Recognition that a suggested timeline of major activities must allow for Commission review and guidance regarding the draft Evaluation Plan, as the Settling Parties clearly contemplated.
- An explanation of how a stakeholder advisory group, composed of representatives from the parties, would interface and communicate with the evaluator.

From a substantive perspective, we believe it is very important to clearly and specifically highlight the first bullet point above, which was the key evaluation point identified by the Commission in its Order 04.

On the procedural front, the settling parties clearly contemplated that the evaluation plan filed with the Commission would be a draft plan, and that it would be important to get the Commission's feedback. As Mr. Hirschhorn of Avista stated at the settlement hearing on

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<sup>2</sup> These are Public Counsel redline comments on an Avista draft that was shared with the parties March 5, 2008. Public Counsel's comments were provided to parties on March 7, 2008, and also include comments from the Energy Project, which appear in brackets and bold text and conclude with the notation "-CE."

<sup>3</sup> Order 04, at ¶ 26.

December 21, 2006, in colloquy with Commissioner Jones:

We thought, [I]et's take our time, develop a good evaluation plan, *present it to the Commission, get the Commission's feedback*. So rather than do that as part of this, let's give ourselves some time and do it right. (emphasis added).<sup>4</sup>

The timeline included in Avista's recent draft evaluation plan eliminates this step. The draft timeline provides that an evaluation plan would be filed with the Commission on April 30, 2008, and on that same day, an RFP would be issued (Avista Draft Evaluation Plan, p. 1). This approach is neither feasible nor appropriate. Even if the parties reach consensus on all issues, we will need Commission input and approval prior to implementing the plan. If consensus is not reached, the Commission's guidance will be instrumental in further development or modification of the evaluation plan. To date, the parties have not yet begun drafting an RFP.

While discussions are ongoing and the evaluation plan is still very much a work in progress, we are hopeful that we can reach agreement on many, even if not all of these issues.

### **III. REMEDIES OR SANCTIONS**

#### **A. Establish a Reasonable Review Process.**

Based on experience with the pilot and discussions about the evaluation process, some problems have become apparent with the original process for the end-of-pilot review. Public Counsel recommends that the Commission adopt several modifications, as discussed below.

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<sup>4</sup> TR. 68:3-7. The Settlement Agreement states that a "draft" evaluation plan will be filed with the Commission. ¶ 6 (J), p. 10.

The Settlement and Order contemplate that Avista may file for extension on or before March 31, 2009. The settlement states that Avista's filing must include an evaluation of the mechanism, and any modifications the company proposes.<sup>5</sup> The Commission's Order 04 requires the filing of an evaluation regardless of whether Avista seeks to continue the mechanism.<sup>6</sup>

A key factor here is the date by which the evaluator will have received all the data it needs to do a final report.<sup>7</sup> Avista has recently informed the parties that from its perspective, the earliest that a Final Evaluation Report could be completed would be March 31, 2009, the same day that its petition for extension or modification would be due under the current settlement. This is due in part to the fact that it is desirable that the evaluation will include annual data for calendar year 2008 (e.g. DSM savings achieved, usage per customer, total sales volumes, total gas margin revenues, etc.). Avista has indicated that this year-end 2008 data should be available in February, 2009. In addition, Avista indicates the evaluator should also have the final results of the 2008 DSM verification analysis by the end of February 2009.<sup>8</sup> The DSM verification will be critically important because a key evaluation point will be a comparison of lost margins due to Company-sponsored DSM for Schedule 101 customers relative to additional margin revenues

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<sup>5</sup> Settlement Agreement, ¶ 6 (J), p. 10.

<sup>6</sup> Order 04, Finding of Fact 7.

<sup>7</sup> Since the pilot runs until July 1, 2009, the evaluation arguably should include that data for completeness. However, the settlement as filed and approved contemplates that the review process begin prior to the pilot's conclusion.

<sup>8</sup> While Avista originally informed Public Counsel that the 2008 verification would be complete by August 1, 2009, the Company has now stated that they believe it can be completed by February 28, 2009. The 2006 DSM verification was not completed until August, 2007.

Avista recovers from Schedule 101 customers. Avista's proposal assumes that all the 2008 data will be available to the evaluator no later than February 28, 2009, and that 30 days is an adequate time for the evaluator to analyze the data. Because there may be some uncertainty about both assumptions, the schedule should allow the evaluator 30 days from the date when the data is available, and should also allow the evaluator to request additional time if needed to review the information once received.

Public Counsel recommends that the Commission should order that Avista may not file for extension or modification of the mechanism sooner than thirty days after the submission of the Final Evaluation to the Commission (i.e. no sooner than April 30, 2009). This is necessary to allow sufficient time for all parties to review and analyze the Final Evaluation Report.

In the event Avista files for extension or modification, the Commission would schedule a prehearing conference to establish a procedural schedule to allow for discovery, responsive testimony, and possibly hearings and/or submission of the case on a written record. The need for a reasonable procedural schedule may mean that the review process would extend beyond July 1, 2009. In that event, decoupling deferrals should cease as of that date, and not resume unless the Commission were to approve an extension of the program.

A schedule incorporating this recommendation would appear as follows:

- February 28, 2009. All 2008 data provided to evaluator.
- March 31, 2009 (or 30 days from receipt of 2008 data).

Final Evaluation Report.

- April 30, 2009 (or no earlier than 30 days after Final Evaluation Report)  
Deadline for petition to extend or modify
- TBD Prehearing conference to set schedule for petition docket.
- June 30, 2009 End of pilot. Deferrals terminate if review process not complete.

**B. Require Shareholders To Bear The Costs of The Evaluation.**

Public Counsel also recommends that as a sanction for Avista’s initial failure to comply with the evaluation planning requirement, Avista should not be permitted to recover the cost of the evaluation from its ratepayers. Avista’s decoupling pilot represents a departure from traditional ratemaking. The Commission’s Order 04 was clear that the Commission placed great importance on the evaluation of the pilot, not only for understanding Avista’s pilot mechanism, but for determining the value of decoupling for other Washington utilities.<sup>9</sup> As Chairman Sidran stated at the February 28, 2008 open meeting, the Commission’s decision on this matter was “a close question, in our minds, on the merits or demerits of decoupling.”<sup>10</sup> Avista relied upon the presence of the evaluation process as one of its arguments for Commission approval of the pilot, yet neglected it once the pilot was approved. It is important to send a signal to Avista, and other companies, that failure to comply with Commission Orders will be taken seriously and will result

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<sup>9</sup> Order 04, at ¶¶ 26, 33, and Finding of Fact 7.

<sup>10</sup> February 28, 2008 Open Meeting minutes, at 1:14.

<http://www.wutc.wa.gov/rms2.nsf/vw2005OpenOM/096E09EF81FEEC618825737200820BBD>

in meaningful sanctions.

#### **IV. CONCLUSION**

For the reasons described herein, at this juncture it is not possible to know with certainty whether irreparable harm has been caused by Avista's failure to timely file a draft evaluation plan with the Commission. The late start to these efforts could have some negative impact on the quality of the evaluation. However, given that the program is in place and decoupling deferrals are scheduled to continue until June 2009, there should be an evaluation. Public Counsel is prepared to work with other parties and do the best we can in the circumstances. Given the delays, it is doubly important to have an impartial evaluation and a carefully developed and technically sound evaluation plan.

With respect to appropriate remedies or sanctions, Public Counsel recommends that the timeline and procedures at the end of the pilot should be modified to allow sufficient time for review of the Final Evaluation Report as well as a reasonable procedural schedule to consider any petition to extend or modify the mechanism. Public Counsel also recommends that as a sanction for Avista's initial failure to comply with the evaluation planning requirement, Avista should not be permitted to recover the cost of the evaluation from its ratepayers.

Dated this 17<sup>th</sup> day of March, 2008.

**ROBERT M. MCKENNA**  
Attorney General

**Simon J. ffitc**  
Assistant Attorney General  
Public Counsel