

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of Avista Corporation d/b/a Avista Utilities for an Order Approving a Corporate Reorganization To Create a Holding Company, AVA Formation Corp.

DOCKET NO. UE-060273
COMMISSION STAFF'S
RESPONSE TO PUBLIC
COUNSEL'S "RENEWED
REQUEST FOR ADJUDICATION"

Introduction

1 On July 27, 2006, the Public Counsel section of the Attorney General's Office (Public Counsel) filed a document entitled "Public Counsel's Renewed Request for Adjudication" (Request). Staff responds by recommending the Commission set this docket for hearing, and asking the Commission to disregard Public Counsel's assertions regarding settlement issues.

Public Counsel's Request

2 Public Counsel requests the Commission to set this docket for hearing. Public Counsel argues that, by dint of its request, the Commission is mandated by law to hold a hearing. *Request at 2-8.*¹ Public Counsel also argues that the Commission should set the docket for hearing even if that is not required by law. *Request at 8-11.*

3 In addition to these legal arguments, Public Counsel's Request also contains assertions that Staff and Avista have been discussing issues "which may have produced a

¹ Public Counsel's document does not contain paragraph numbers, so the references are to page numbers.

tentative settlement agreement” and “[n]o public notice was issued regarding the settlement talks.” *Request at 2.* Public Counsel later asserts that “the petition has remained behind closed doors as Avista and Staff negotiate a settlement agreement that will ultimately be presented to the Commission as a *fait accompli.*” *Request at 11.*

Staff’s Response

4 **Whether to hold a hearing.** Staff emphatically disagrees with Public Counsel’s legal position that because Public Counsel requested a hearing, the law requires the Commission hold a hearing. However, Staff recommends the Commission set this docket for hearing on its own motion.

5 **Settlement-related issues.** The Commission should disregard Public Counsel’s assertions regarding settlement because they are misleading and inaccurate, and contradict earlier statements Public Counsel made to Staff.

6 As the attached declaration of Dr. Glenn Blackmon² describes, he discussed this docket with Public Counsel. In a telephone call on June 22, 2006, Mr. Blackmon asked Public Counsel if it wished to participate in the discussions with Avista, and whether resolution of the docket at an open meeting would be satisfactory. Dr. Blackmon describes Public Counsel’s response:

I asked Ms. Krebs³ about the level of involvement that Public Counsel desired at that point in the process. Ms. Krebs responded that she would like Staff to provide her with an outline of Staff’s recommended conditions once that was ready. I promised to do so. I also offered to provide access for her and any other Public Counsel staff to the documents Staff had obtained through informal discovery. We discussed the status of Public Counsel’s request for a hearing on the application, and I asked Ms. Krebs whether Public Counsel was open to a resolution of the case at an open meeting, without a formal hearing. Ms. Krebs responded that Public Counsel was open to resolving the case using this procedure.

² Dr. Blackmon is the Commission’s Director of Regulatory Services.

³ Ms. Krebs is the assistant attorney general for Public Counsel in this docket.

Blackmon Declaration at ¶ 7. The Commission will note that none of these facts appear in Public Counsel's Request.

7 Public Counsel is also incorrect to state on page 11 of its Request that "this approach to settlement on a matter of this significance is completely at odds with the spirit of the discussions in the recent Commission's procedural rulemaking, Docket No. A-050802."⁴ As Dr. Blackmon explains in his Declaration, the Commission's rule on settlement conferences was never intended to apply until an adjudication was commenced. This matter is not yet an adjudication. *Blackmon Declaration* at ¶ 9. As Dr. Blackmon concludes: "so the Commission's rule, even if it were in effect today, would not require a formal settlement conference process. The informal process of communicating with stakeholders that I described earlier is consistent with the approach adopted by the Commission in Docket A-050802." *Id.*

8 It is unreasonable and ultimately disingenuous for Public Counsel to make statements to the Commission that Staff's discussions are somehow inappropriate, yet when contacted by Staff, Public Counsel: 1) made an affirmative decision not to participate in those discussions; 2) stated Public Counsel was open to addressing the docket at an open meeting; and 3) elected not to raise any of the claims Public Counsel now raises to the Commission, which are inconsistent with the earlier statements Public Counsel made to Staff.

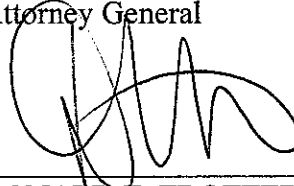
⁴ In its Request, Public Counsel refers to the procedural rules rulemaking docket as Docket A-050208. The correct number is A-050802.

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Based on the facts stated in the attached Declaration of Dr. Blackmon, the Commission should completely disregard the statements of Public Counsel in its Request regarding settlement.

DATED this 31st day of July, 2006.

ROB McKENNA
Attorney General

A handwritten signature in black ink, appearing to read 'D. Trotter', written over a horizontal line.

DONALD T. TROTTER
Senior Counsel
Counsel for Washington Utilities and
Transportation Commission Staff