



Rob McKenna

## ATTORNEY GENERAL OF WASHINGTON

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July 29, 2011

### VIA E-MAIL & FIRST CLASS MAIL

David Danner  
Executive Director & Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250

Re: WUTC v Avista Corporation d/b/a Avista Utilities  
Docket Nos. UE-110876 & UG-110877 (*consolidated*)

Dear Mr. Danner:

Pursuant to the Notice Regarding Appearance of Fairness Concerns (Notice) issued on July 25, 2011, Public Counsel is writing to express the following questions and potential concerns. Public Counsel recognizes the Commission's important duty to remain in contact with utilities and abreast on regulatory developments. However, without more information, Public Counsel is not able to determine whether it would object to continuation of these meetings. Public Counsel reserves its right to object to the continuation of these meetings should it become apparent that they constitute *ex parte* communications.

The Notice states that Commissioners and policy staff attend monthly meetings presented by Avista regarding the Company's Smart Grid pilot projects. As the notice points out, Avista has requested recovery of nearly \$9 million in costs associated with smart grid deployment in its current general rate case, Docket Nos. UE-110876 and UG-110877 (*consolidated*). The notice goes on to state that no matters related to Avista's rate request will be discussed at these meetings.

At first blush, it is not clear how it is possible to entirely separate the cost and prudence issues in the current rate case from discussion of smart grid deployment and, accordingly, the prudence of these projects is necessarily at issue in the rate case.<sup>1</sup> Without additional information, it is not possible for Public Counsel to determine whether discussions at these meetings have, or may in the future, implicate the Commission's and APA's rules against *ex parte* communications by including discussion of issues integral to a rate case prudence determination.<sup>2</sup>

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<sup>1</sup> See *In Review of PURPA Standards in The Energy Independence and Security Act of 2007*, Docket No. U-090222 General Order R-559 (Order Adopting Rule Permanently), ¶ 45 (stating, in part, "[a] utility will always bear the burden of showing that its actions and investments are prudent when those actions and investments are reviewed in a rate-making context") (*hereinafter Smart Grid Rulemaking Order*).

<sup>2</sup> WAC 480-07-310 and RCW § 34.05.455.

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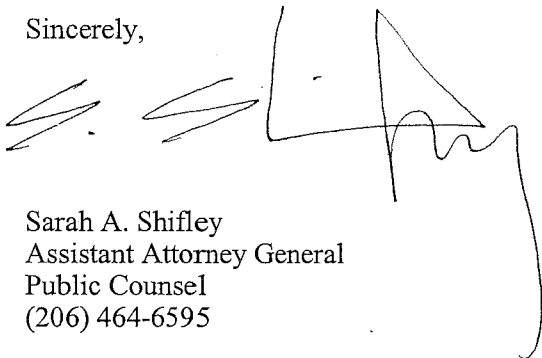
Public Counsel notes that all electric IOUs, including Avista, are required to file annual Smart Grid Technology Reports.<sup>3</sup> Utilities must include discussion of “projects [they are] undertaking and projects they have completed.”<sup>4</sup> WAC 480-100-505(4) further provides that all reports subsequent to the initial report must “include information on the utility’s *progress* on... any smart grid pilot project the utility has undertaken.”<sup>5</sup> In addition, the rule allows for additional information and discussion to be included in these reports, if a utility so desires.<sup>6</sup> Avista filed a substantial report, including discussion of its current projects, on September 9, 2010. Given the substantial information provided in these reports, it is not clear why additional, more frequent presentations during the pending rate case are necessary.

In light of these concerns, Public Counsel has issued a data request in the current general rate case asking Avista to provide the following:

- (1) The dates, durations, and attendees for all previous meetings;
- (2) The anticipated dates, durations, and attendees for all future meetings;
- (3) All materials produced in preparation for previous meetings, such as agendas, power point presentations, hand-outs, etc.;
- (4) All materials produced as a result of previous meetings;
- (5) The costs to Avista of previous meetings; and,
- (6) An explanation of why these meetings are necessary and why the meetings were not made part of the Commission’s regular Open Meetings.

Thank you for the opportunity to comment on this matter. Public Counsel will notify the Commission if it has further concerns after receipt of the discovery.

Sincerely,



Sarah A. Shifley  
Assistant Attorney General  
Public Counsel  
(206) 464-6595

SAS:cjw  
Enclosure

cc: Service List (First Class Mail & Email)  
Judge Marguerite Friedlander (Email only)

<sup>3</sup> WAC 480-100-505(3).

<sup>4</sup> *Smart Grid Rulemaking Order* at ¶¶ 32 and 34.

<sup>5</sup> WAC 480-100-505(4)(d) (emphasis added).

<sup>6</sup> WAC 480-100-505(5) (providing that the Smart Grid Technology Reports may include “any other factors considered by the utility).