

1 PRINCIPLES OF ALLOCATING GAIN

2 **Q. WHAT PRINCIPLES DO YOU UNDERSTAND THE COMMISSION EMPLOYS TO**  
3 **DETERMINE HOW TO ALLOCATE A GAIN BETWEEN RATEPAYERS AND**  
4 **INVESTORS IN WASHINGTON?**

5 A. I understand that to determine who should receive the gain on the sale of a utility asset, the  
6 Commission employs principles established in *Democratic Central Committee of the*  
7 *District of Columbia v. Washington Metropolitan Transit Commission*, 458 F. 2d 786 (D.C.  
8 Cir. 1973), reh den, cert den, 415 US 935 (1973).<sup>2</sup> In *Illinois Public Publie*  
9 *Telecommunications Association v. FCC*, The DC Circuit Court of Appeals described the  
10 principles it established in *Democratic Central Committee* as follows:

11 As a general rule, utility service ratepayers "pay for service" and thus "do not acquire  
12 any interest, legal or equitable, in the property ... of the company. Property paid for  
13 out of moneys received for service belongs to the company." However, we have held  
14 that neither ratepayers nor the company (and thus its shareholders) are necessarily  
15 entitled to increases in the value of assets employed in the utility's operations.  
16 Rather, such increases are to be allocated under a two-step test in which the court  
17 first asks which party "bears the risk of loss" on the assets. The party that bore the  
18 risk of loss is the party entitled to the capital gains on the assets. Only if it is  
19 difficult to determine who bore the risk of loss will "the second principle come into  
20 play, namely, 'that those who bear the financial burden of particular utility activity  
21 should also reap the benefits resulting therefrom.'"<sup>3</sup>

22 Therefore, I understand that the allocation of gain between ratepayers and investors is  
23 dictated by the Commission's legal policy decision that reward from the disposition of an  
24 asset should go to the party that bore the risk of loss on the asset and that if the risk of loss  
25 cannot be determined, the benefit derived from the disposition of a utility activity should

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<sup>2</sup> In re the Matter of the Application of Avista Corporation for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, WUTC Docket Nos. UE-991255, UE-991262 and UE-991409. Second Supplemental Order, March 2000.

<sup>3</sup> *Illinois Public Telecommunications Association v. Federal Communications Commission and United States of America*, 326 U.S. App. D.C. 1 at 43: 117 F3d 555; (July 1, 1997)