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August 17, 2011

VIA E-MAIL & ABC LEGAL MESSENGER

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:

Public Counsel files this letter in response to the Notice of Ex Parte Communications (Notice) issued on August 4, 2011. The Notice states that the Commission was provided information outside the pending Avista general rate case about the costs of Smart Grid projects, a portion of which Avista is seeking to recover in this case. The Notice also points out that, at the time the information was first provided, the Commission “understood... that the case did not include any Smart Grid investment or costs.”¹

Public Counsel previously expressed concern regarding the practical difficulty of entirely separating Smart Grid cost and prudence issues, which are part of the current rate case, from a discussion of Avista’s Smart Grid deployment.² The facts described in the Notice demonstrate this point.

In addition, the continuation of off-record discussions of Smart Grid issues creates a precedent which threatens the integrity of the Commission’s rate making process. While Public Counsel appreciates the Commission’s invitation to parties to participate in future discussions, this does not address the fact that continued off-record communications create a significant risk that contested issues, integral to the current rate case, will also be under discussion in a parallel, informal forum. This raises both legal and practical concerns. First, the due process protections applicable to the rate case do not apply to informal discussions and briefings. In addition, it is a substantial burden on parties to expect that they participate in two separate forums wherein the

¹ Public Counsel was of the same understanding based on a pre-filing informational call with Avista representatives held on May 12, 2011.

² Public Counsel’s letter to David Danner in response to the Commission’s Notice Regarding Appearance of Fairness Concerns, dated July 29, 2011.

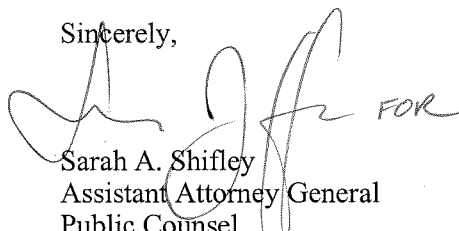
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same issue is being simultaneously addressed. Yet parties have little choice if they wish to have their positions and interests fully represented and considered.

For the reasons stated above, Public Counsel respectfully requests that off-record communications regarding Avista's Smart Grid projects be suspended during the pendency of the Avista's current general rate case.³ This includes the regularly-scheduled Smart Grid meetings and proposed September briefing referred to in the Notice. Following the conclusion of the rate case, Public Counsel would request that future communications regarding Avista's Smart Grid projects be made in a manner that would allow all parties' participation, such as during a stakeholder working group or at an open meeting.

Sincerely,



FOR

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

SAS:cjw

cc: Service List (U.S. Mail & Email)
Judge Marguerite Friedlander (Email only)

³ Public Counsel is troubled by Avista's decision to provide information regarding smart grid costs off-the-record when it was aware that the Company was seeking to recover substantial smart grid costs in its current general rate case.