

[Service Date August 29, 2011]

August 29, 2011

Sarah A. Shifley
Assistant Attorney General
Public Counsel Section
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

RE: Letter from Sarah A. Shifley, Assistant Attorney General, dated August 17, 2011, in Dockets UE-110876 and UG-110877

Dear Ms. Shifley:

On August 17, 2011, the Washington Utilities and Transportation Commission (Commission) received your letter in response to the Commission's August 4, 2011, Notice of Ex Parte Communications. In that letter, Public Counsel states that the Commission's continued participation in smart grid policy briefings with Avista Corporation (Avista) "creates a precedent which threatens the integrity of the Commission's rate making process ... [and creates] a significant risk that contested issues, integral to the current rate case, will also be under discussion in a parallel, informal forum."¹ Public Counsel further asserts that the Commission's invitation to attend the smart grid policy briefings, extended to the parties in Dockets UE-110876 and UG-110877, presents several problems including "due process protections applicable to the rate case [not applying] to informal discussions and briefings" and the burden of attendance placed on the parties.² As an alternative, you suggest that the Commission cancel all smart grid briefings until Avista's rate case is concluded and, thereafter, that the Commission schedule the briefings during an open meeting or a stakeholder working group.³

¹ Letter from Sarah A. Shifley, Assistant Attorney General, Public Counsel Section of the Washington State Attorney General's Office, to David Danner, Executive Director and Secretary, Washington Utilities and Transportation Commission (August 17, 2011) (on file with the Commission).

² *Id.*

³ *Id.*

As you know, the Commission's responsibility to the public includes both quasi-judicial and quasi-legislative functions. The Commission is frequently called upon by members of the State Legislature as well as the Governor to provide policy guidance and technical support on rapidly evolving national and regional issues. Smart grid technology, safety, and security are just a few of the subjects of which the Commissioners must remain apprised to do their jobs. Were they to abstain from examining these or other policy topics until the conclusion of the various rate cases, it would be almost impossible to hold any briefings or have informal meetings with many stakeholders on many issues, and the Commission would fail to fulfill its quasi-legislative duties.

The Commission judiciously separates its policy and adjudicative functions and diligently complies with the Administrative Procedure Act (the APA), the Open Public Meetings Act,⁴ and the Appearance of Fairness Doctrine. In the unusual situation where an *ex parte* communication has occurred, we cure it according to the procedures outlined in the Administrative Procedure Act. In fact, in an abundance of caution, this is the process that was followed in the Notice of Ex Parte Communications. Contrary to your assertion, all parties to Avista's rate case did have the opportunity to respond to the communications and file rebuttal statements. It is unclear what additional "due process protections" you deem necessary which have not been provided for in the Administrative Procedure Act.

Further, opening up the smart grid briefings to the parties does not obligate them to attend. If, as you state, this places "a substantial burden on the parties" to attend, it is certainly your prerogative to decline to do so.

While the Commission does not view its prior invitation to the parties improper, the Commission has decided to hold the next smart grid briefing during an open meeting with the specific date to be determined later. It is the Commission's hope that this puts Public Counsel's concerns to rest.

Sincerely,

DAVID W. DANNER
Executive Director and Secretary

cc: All Parties

⁴ RCW 42.30.010, *et seq.*