



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

May 25, 2012

VIA ELECTRONIC FILING & ABC LMI

David Danner
Executive Directory and 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
Docket No. UE-120436 & Docket No. UG-120437(Consolidated)
Docket No. UE-110876 & Docket No. UG-110877(Consolidated)

Dear Mr. Danner:

Enclosed please find the original and twenty (20) copies of Public Counsel's Response to Avista Corporation's Motion for Leave to File Letter of Clarification.

Sincerely,

Lisa W. Gafken
Assistant Attorney General
Public Counsel
(206) 464-6595

LWG:bc
Enclosure

cc: Service List (First Class Mail & E-mail)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a AVISTA
UTILITIES,

Respondent.

DOCKET NO. UE-120436
DOCKET NO. UG-120437
(Consolidated)

DOCKET NO. UE-110876
DOCKET NO. UG-110877
(Consolidated)

PUBLIC COUNSEL'S RESPONSE
TO AVISTA CORPORATION'S
MOTION FOR LEAVE TO FILE
LETTER OF CLARIFICATION

1. Pursuant to WAC 480-07-375(4) and the Commission's Notice of Opportunity to Respond to Motion for Leave to File Letter of Clarification, issued on May 16, 2012, Public Counsel files this Response in opposition to Avista Corporation's Motion for Leave to File Letter of Clarification (hereinafter "Motion"). Public Counsel recommends that the Motion be denied because the letter of clarification is more appropriately characterized as rebuttal testimony and does not address a statement made on the adjudicative proceeding's record.
2. Avista, in its Motion, proposes to clarify statements made at the Commission's April 26, 2012, Open Meeting by Commission Staff in response to a Commissioner's question. In particular, Avista avers that a statement made by Commission Staff, which used a figure taken from the Company's own exhibit, "may have resulted in some misunderstanding"¹ regarding the Company's earned returns for 2011.
3. The clarification that Avista proposes to make is more accurately characterized as a form of rebuttal testimony, not as a simple clarification that the Company has a duty to bring to the Commission's and parties' attention. The Commission has set the schedule by which the parties

¹ Motion at ¶ 3.

will submit their direct and rebuttal testimony. Thus, Avista will have ample opportunity to clarify and advocate for its position. In addition, the parties are engaging in discovery, further developing the evidence that may be presented on this issue during the course of the general rate case (GRC).

4. The issue of the amount of earnings experienced by the Company during the test year touches on the ultimate question before the Commission in this GRC proceeding. The parties will presumably test the Company's "normalized rate of return" theory and present the Commission with their positions. It is the Company's burden to support its "normalized rate of return" theory. All of this will occur through presentation of testimony and exhibits on the record in the adjudication. Avista's letter of clarification is not a proper way to offer further testimony regarding its rate of return calculation.

5. Moreover, the statement that Avista now wishes to "clarify" was made outside of the adjudicative proceeding's record. Under RCW 34.05.413(5), an adjudicative proceeding commences when the agency issues a notice of prehearing conference. The Notice of Prehearing Conference in this case was issued on April 26, 2012, after the Open Meeting exchange.² The agency record provides the exclusive basis for an agency's decision in an adjudicative proceeding.³ Unless a party affirmatively brings a statement made at an Open Meeting into the record of the adjudicative proceeding, the Open Meeting statements would not be in the record and would not provide a basis for the Commission's ultimate decision in Avista's GRC. No purpose is served, therefore, by the requested clarification.

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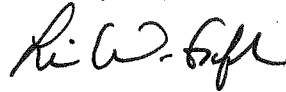
² The Open Meetings Act, Chapter 42.30 RCW, does not apply to matters governed by the APA. RCW 42.30.140(3).

³ RCW 34.05.476.

6. For the foregoing reasons, Public Counsel respectfully recommends that the Commission deny Avista's Motion.

DATED this 24th day of May, 2012.

ROBERT M. McKENNA
Attorney General



LISA W. GAFKEN
Assistant Attorney General
Public Counsel