

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, D/B/A
AVISTA UTILITIES,

Respondent.

DOCKET PG-082253

COMPLAINT

NOTICE OF PREHEARING
CONFERENCE

**(Set for Thursday, July 15, 2010,
at 1:30 p.m.)**

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington, authorized by Title 80 RCW to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including gas companies, and by RCW 81.88 to regulate persons or entities constructing, owning, or operating gas pipelines for transporting gas.

3 Respondent Avista Corporation, d/b/a Avista Utilities (Avista) is a corporation that, among other things, owns and operates a system for transporting natural gas within the state of Washington.

II. JURISDICTION

4 The Commission has jurisdiction over Avista because Avista is a “pipeline company” subject to gas pipeline safety regulation by the Commission under RCW 81.88, including, but not limited to RCW 81.88.040, and because Avista is a “gas company” subject to Commission regulation under RCW 81.28, including, but not limited to, RCW 80.28.010.

5 The Commission has jurisdiction over the subject matter of this Complaint under the provisions of RCW 80.01, RCW 80.04, RCW 80.28, RCW 81.88, and WAC 480-93. Specific provisions include but are not limited to: RCW 80.01.040, RCW 80.04.070, RCW 80.04.110, RCW 80.04.380, RCW 80.04.385, RCW 80.04.410, RCW 80.28.010, RCW 80.28.040, RCW 80.28.130, RCW 81.88.005, RCW 81.88.010, RCW 81.88.030, RCW 81.88.040, RCW 81.88.065, RCW 81.88.100, and WAC 480-93-185, and former WAC 480-93-010.

III. FACTUAL ALLEGATIONS

6 On December 26, 2008, a natural gas explosion and fire occurred in the vicinity of 206 North Birch Street in Odessa, Washington. Two people were injured in the incident. One person suffered serious physical injuries, including burns. The explosion and fire seriously damaged a garage and secondary living quarters.

7 The fuel source of the explosion and fire was natural gas. The gas leaked from a section of pipe located under a nearby alley that abuts the lot at 206 North Birch Street. The pipe was a pipeline main. The main was owned and operated by Avista.

8 Gas leaked from the main because the main had a through-wall fracture. The through-wall fracture was caused by rock impingement on the main. The ditch in which Avista installed the main contained several large rocks in the vicinity of the fracture.

9 Avista installed the main in 1981. Avista failed to install the backfill material in the ditch in which Avista placed the pipe in such a way as to provide firm support under the pipe, and to prevent damage to the pipe.

10 On or about December 27, 2008, Avista excavated the pipe, discovered the fracture, and removed the damaged section of pipe. The Commission (or the lead investigative authority, if that authority was not the Commission), did not designate the release of the main, or allow Avista to remove the pipe, before Avista removed the pipe, or at any subsequent time.

IV. APPLICABLE STATUTES AND RULES

11 WAC 480-93-185(2), entitled “Gas Leak Investigation” states:

In the event of an explosion, fire, death, or injury, the operator must not remove any suspected gas facility until the commission or the lead investigative authority has designated the release of the gas facility.

12 The version of WAC 480-93-010 in effect at the time Avista installed the main was entitled “Compliance with Federal Standards,” and stated:

Gas distribution and transmission facilities shall be constructed...in compliance with the provisions of 49 CFR Part 192 – Transportation of Natural and Other Gas by Pipeline.

13 A requirement in 49 CFR Part 192 in effect at the time Avista installed the main was 49 C.F.R. §192.319, entitled: “Installation of pipe in a ditch.” Paragraph (b) stated:

Each ditch for a transmission line or main must be backfilled in a manner that – (1) Provides firm support under the pipe; and (2) Prevents damage to the pipe and pipe coating from equipment or from the backfill material.

14 RCW 80.28.010(2) requires that Avista furnish “facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.” RCW 81.88.065(1) requires each gas pipeline company to “design, construct, operate, and maintain its gas pipeline so that it is safe and efficient.”

15 RCW 81.88.040 states (in pertinent part) that a pipeline company that violates any provision of RCW 81.88 or any regulation issued under the authority of RCW 81.80.065 shall be subject to a civil penalty to be directly assessed by the Commission. Under WAC 480-93-223, the maximum civil penalty for violating a provision in RCW 81.88 or any rule in WAC 480-93 is one hundred thousand dollars (\$100,000) for each violation for each day that the violation persists, and the maximum civil penalty for a related series of violations is one million dollars (\$1,000,000).

16 The Commission may also order a gas company to make repairs, improvements or other changes as it may deem appropriate. *RCW 80.28.130.*

V. CLAIMS AND CAUSES OF ACTION

A. FIRST CAUSE OF ACTION (Violation(s) of WAC 480-93-185(2))

17 The Commission re-alleges the allegations contained in paragraphs 1 through 16
above.

18 The Commission further alleges that Avista violated WAC 480-93-185(2), as set forth
in paragraphs 10 and 11 above, because Avista removed the section of gas main that
contained the fracture before the Commission (or the lead investigative authority, if
that authority was not the Commission) designated the release of that gas facility. The
Commission alleges one violation of WAC 480-93-185(2).

B. SECOND CAUSE OF ACTION (Violations of WAC 480-93-010)

19 The Commission re-alleges the allegations contained in paragraphs 1 through 16
above.

20 The Commission further alleges that Avista violated former WAC 480-93-010, as set
forth in paragraphs 8, 9, 12 and 13 above, because the material in the ditch in which
Avista placed the main did not provide a “firm support under the pipe,” nor did it
“prevent damage to the pipe” as the rule required. The Commission alleges one
violation of former WAC 480-93-010. The Commission alleges that each day after
Avista installed the main, to the day Avista removed the section of main containing
the fracture, is a related series of violations for purposes of WAC 480-93-223.

C. THIRD CAUSE OF ACTION (Violation of RCW 80.28.010(2))

21 The Commission re-alleges the allegations contained in paragraphs 1 through 16
above.

22 The Commission further alleges that Avista violated RCW 80.28.010(2), as set forth
in paragraphs 8, 9, 12, 13 and 14 above, because the main pipeline facility described
in this Complaint was not safe, adequate and efficient, nor just and reasonable,
because Avista did not install that facility in compliance with Commission rules
discussed in this Complaint. The Commission alleges one violation of RCW

80.28.010(2). The Commission alleges that each day after Avista installed the main, to the day Avista removed the section of main containing the fracture, is a separate violation of RCW 80.28.010.

VI. REQUEST FOR RELIEF

23 Staff asks the Commission to find that Avista has failed to comply with the statutes and rules of the Commission as set forth in the allegations above.

24 Based on all of the allegations in this Complaint and Notice, Staff requests that the Commission take the following actions:

(1) The Commission should assess monetary penalties and/or other sanctions against Avista if the alleged violations of state law or Commission rules are proven. Specifically:

- If the Commission determines that Avista violated provisions of WAC 480-93-185, that constitutes one violation. The maximum penalty that can be assessed based on one violation is \$100,000.
- If the Commission determines that Avista violated provisions of former WAC 480-93-010, that constitutes one violation, before consideration of related series of violations. The maximum penalty that can be assessed based on one violation is \$100,000. The statutory maximum amount of monetary penalties considering the related series of violations is \$1,000,000.
- If the Commission determines that Avista violated RCW 80.28.010(2), the maximum penalty for a violation of that section is \$1,000, with each day of violation being a separate and distinct offense. *RCW 80.04.380.*

(2) The Commission should order Avista to implement specific measures to ensure that its gas plant is in a safe and adequate condition and in compliance with Commission laws and rules.

(3) The Commission should order such other and/or further relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

25 Based on a review of Staff's investigation report and all supporting documents, and
consistent with RCW 80.01.060, the Commission finds probable cause exists to issue
this Complaint and Notice.

VIII. NOTICE OF PREHEARING CONFERENCE

26 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference
in this matter on July 15, 2010, beginning at 1:30 p.m., in Room 206, 2nd Floor,
Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia,
Washington.**

27 The Commission will hear this matter under the Administrative Procedure Act (APA),
particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the
APA that relate to this proceeding include but are not limited to RCW 34.05.413,
RCW 34.05.431, RCW 34.05.434, RCW 34.05.440, RCW 34.05.449, and RCW
34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in
this proceeding.

28 Party representatives must file a notice of appearance with the Commission no later
than the business day before the hearing. *See WAC 480-07-345(2).*

29 **THE COMMISSION GIVES FURTHER NOTICE that any party who fails to
attend or participate in the hearing set by this notice, or any other stage of this
proceeding, may be held in default in accordance with RCW 34.05.440 and WAC
480-07-450.**

30 If any party or witness needs an interpreter or other assistance, please fill out the form
attached to this notice and return it to the Commission.

31 The names and mailing addresses of all known parties and their known representatives
are as follows:

Complainant: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
PO Box 47250
Olympia, WA 98504-7250

Representative: Donald T. Trotter
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189

Respondent: Avista Corporation
East 1411 Mission
P.O. Box 3727
Spokane, WA 99220-3727

Representative: David J. Meyer, Esq.
VP and Chief Counsel for
Regulatory and Governmental Affairs
Avista Corporation
1411 E. Mission Ave, MSC-13
P.O. Box 3727
Spokane, WA 99220-3727

32 Marguerite Friedlander is appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, and will preside at the hearing.

- 33 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective June 8, 2010.

ANN E. RENDAHL
Director, Administrative Law Division

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington State Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket : _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary
Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____