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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of AVISTA CORPORATION For a Ruling on the Regulatory Treatment of the Gain on the Proposed Sale of the 2.5% Share of the Centralia Power Plant Acquired by Avista Corporation from Portland General Electric to be Sold to TECWA Power, Inc.	)	DOCKET NO. UE-000080 REPLY BRIEF OF AVISTA CORPORATION

I. INTRODUCTION

Avista Corporation (Avista or Company) hereby submits its Reply Brief in response to the Opening Briefs of Commission Staff, Public Counsel, and the Industrial Customers of Northwest Utilities (ICNU) in this Docket.

II. ARGUMENT

A. No Harm to Customers

On page 2 of its Opening Brief, Staff asserts that, "Like the 15 percent share, Avista's sale of the 2.5 percent harms ratepayers by increasing their risk of higher replacement power costs in the future." This statement is simply not true for at least two reasons. First, Staff's statement fails even the most simple logical test. You cannot replace

what is not being used to serve customers in the first place. The 2.5% share of Centralia was purchased from Portland General Electric (PGE) to enable the sale to TECWA Power, Inc (TECWA) to proceed, because PGE would not fund scrubbers pending regulatory approval of the sale. The Company elected to not retain rights to the power from the 2.5% share of the plant pending the closing of the sale to TECWA, in order to permit separate accounting and avoid commingling the property with other utility assets, since the 2.5% share was not intended to be used to serve customers in the first place. Thus, there is simply no "replacement power" issue to be addressed for this portion of the plant.

Secondly, the Company's 2.5% share of Centralia is very unlike the Company's 15% share. The Company's 15% share of Centralia has been included in rate base and has been used to serve the Company's retail customers for many years. However, the 2.5% share was not intended to be used in any way to serve retail customers. The 2.5% share has never been part of Avista's ratebase, is not included in plant in service, and is not included in the Company's results of operations calculations. None of the power has been used to serve customers, and customers have paid none of the ownership and operating costs associated with that portion of the plant.

On page 15 of its Opening Brief (Footnote 12), with regard to the Company's purchase of the 2.5% share of Centralia, Staff asserts that "investors have not been exposed to any of the associated risks of ownership." This statement is incorrect, however, in that Avista has taken on all of the ownership risks associated with that portion of the plant, without any guarantee that its costs would be recovered by the Company in the event the sale to TECWA does not proceed.

As the Commission Staff stated regarding Avista's purchase of the 2.5% share, "rate payers have not funded the associated costs of that investment." (Brief of Commission Staff at 15) Furthermore, that portion of the plant has not been used in any way to serve customers. Avista's shareholders have placed their own capital at risk to purchase the 2.5% share of Centralia, which enabled the sale of the Centralia Project to proceed, and it is appropriate for all of the gain related to the sale to go to shareholders.

B. Used and Useful Standard

RCW 80.12.020 requires Commission approval for the sale of property that is "necessary or useful in the performance of its duties to the public." Staff argues that "useful" means the capability to provide service and, that since the 2.5% share is capable of providing service, the prior approval statute applies. (Brief of Commission Staff at 6 citing People's Org. for Wash. Energy Resources v. Utilities & Transp. Comm'n, 101 Wn.2d 425, 679 P.2d 922 (1984) [hereinafter "POWER"].) Similar arguments are offered by Public Counsel and ICNU. However, upon careful reading, the POWER case does not support these arguments.

In the POWER case, the Court held that costs of construction work in progress (CWIP) were not properly included in rate base, noting that "[o]bviously, an uncompleted utility plant is neither employed for service nor capable of being put to use for service; therefore, such a plant is not 'used and useful' for service." Id. at 430.

In the case of the 2.5% share of Centralia, this portion of the plant is "neither employed for service nor capable of being put to use for service" pending the sale to TECWA; nor was it intended to be used for service for Avista's customers. As explained

earlier, Avista elected to not retain the power from this share of the plant pending closure of the sale to TECWA. Therefore, this portion of the plant is not capable of being used for service to Avista's customers.

There are two possible outcomes for the 2.5% share of Centralia: either the plant is sold to TECWA or it is not sold to TECWA. Under the first scenario, the TECWA sale goes through as planned. In such case, the 2.5% share has never been, and will never be, used to serve Avista's customers. Since the share has never been used, nor is it capable of being used, to serve Avista's customers, the prior approval statute is not implicated.

Under the second scenario, the TECWA sale does NOT go through as planned. In this case, the 2.5% share is not sold at all, therefore there is no sale to approve and there is no gain to distribute. Again, as the entire issue is rendered moot, the prior approval statute is not implicated.

Staff and the other parties rely heavily on arguments that the 2.5% share is useful in the event the sale to TECWA is not completed. For example, Staff argues that if the sale to TECWA does not occur, "the output will necessarily be used by Avista to provide service to Washington customers." (Brief of Commission Staff at 7.) This argument proves too much. As noted above, if the sale does not go through, then there is no sale to approve and no gain to distribute. When the arguments of how to treat the 2.5% share <u>if the sale is not completed</u> are stripped away, it is clear that this share is not used, useful or capable of use between the time of purchase and the time of sale.

C. Public Interest

If the Commission should determine that a ruling is necessary in order for Avista

to sell the 2.5% share of Centralia, the Company submits the following reply to the Opening Brief of Staff related to the conditions under which the sale is in the public interest.

On page 14 of its Opening Brief, Staff stated as follows:

> Staff demonstrated that the sale increases risks for ratepayers because it exchanges a known, least-cost resource for higher-cost replacement power in the future. (Brief of Commission Staff at 5-8).
>
> The same logic that supported Staff's recommendation for Avista's 15 percent share of Centralia applies equally to Avista's sale of its 2.5 percent share of Centralia. In both cases, the sale increases risks for ratepayers who must bear the higher cost of replacement power if Centralia is sold.

In this Docket, Commission Staff recommends a Commission finding that the sale is in the public interest, but "only on condition that ratepayers receive the entire $4.2 million gain from that sale in Avista's pending general rate case." (Opening Brief of Commission Staff at 14.)

Staff's arguments are without merit for a number of reasons. First, as explained earlier, the 2.5% share has not been used in any way to serve customers, and therefore, the sale of this portion of the plant does not introduce "replacement power" cost issues.

Second, even if we were to follow Staff's logic, Staff did not conduct its own economic analysis related to the sale of Centralia, as evidenced by the following cross-examination of Mr. Ken Elgin by Commissioner Hemstad:

Q. Staff didn't do its own independent economic analysis here, did it?

A. No.

(Docket No. UE-991255, Tr. 535)

Therefore Staff has developed no economic foundation upon which to "demonstrate" that the "entire" gain related to the sale of either the 15% share or the 2.5% share would be necessary to result in the sale being in the public interest. It is also important to note the contradictions of Staff's own arguments related to the future economics of Centralia:

On page 8 of the Brief of the Commission Staff in Docket No. UE-991255 it states:

> It would even be justified to conclude that the sale of Centralia has negative economic consequences for ratepayers because it exchanges a known, fixed cost resource for higher-cost replacement power in the future. (emphasis added)

Then on the following page of the same Brief of the Commission Staff, page 9, regarding the Centralia Plant and the coal mine it states:

> First, future costs of the power plant and the adjacent coal mine are highly uncertain with regard to potential environmental and reclamation liability. Selling Centralia removes these uncertainties for both shareholders and ratepayers. (emphasis added)

In sum, the Commission Staff first asserts that Centralia is a "known, fixed cost resource" and on the very next page states that the "future costs of the power plant" are "highly uncertain." It is difficult to understand how Staff can believe both of the above statements to be true, and yet without conducting their own economic analysis, "demonstrate" that the "entire" gain from the sale of Centralia must go to ratepayers in order for the sale to be in the public interest.

Staff's recommendation related to the disposition of the gain on the sale of the 2.5% share of Centralia lacks studied factual foundation, is without merit and should be rejected. Similar arguments offered by Public Counsel and ICNU should be rejected by the

Commission for the same reasons.

D. Accounting for the Purchase of the 2.5% Share

Staff alleges on page 11 of its Opening Brief that Avista has attempted to manipulate the System of Accounts. At page 13 of its Opening Brief, Staff claims that charging Account 102, Electric Plant Purchased or Sold, with later clearance from that account, was the proper method for Avista to account for the purchase of the 2.5% share of Centralia. Staff also claims at page 13 that since the FERC required Avista to file journal entries to clear Account 102 for the 15% share of Centralia to be sold to TECWA in the event that the sale occurs, that Account 102 should be used to record the purchase of the 2.5% share of Centralia.

A casual reading of Staff's argument might lead the reader to assume that Account 102 is synonomous with Account 101, Electric Plant is Service. This is clearly not the case. Account 102 is a temporary holding account until final entries are determined. Even if Avista had recorded the purchase of the 2.5% share of Centralia in Account 102, it would have been appropriate to immediately clear Account 102 and charge Account 121, Nonutility Property, for the purchase. But there was no reason to temporarily record the purchase in Account 102. At the time the purchase was recorded, Avista knew that the 2.5% share of Centralia would not be used to serve customers. Since Account 121 covers property owned by the utility, but not used in utility service, Avista properly recorded the purchase of the 2.5% share of Centralia in Account 121. Account 101, Electric Plant in Service, is not appropriate for recording the purchase since the plant is not used by Avista in its electric utility operations. Staff's contention that not using Account 102 to

temporarily record the purchase is a reason that somehow makes the 2.5% share "necessary or useful in the performance of its duties to the public" is without merit and should be rejected.

Avista has properly accounted for the purchase of the 2.5% share of Centralia in Account 121, Nonutility Property. Avista has not violated FERC's accounting rules or the order approving the sale to TECWA and has not manipulated the Uniform System of Accounts to escape Commission regulation.

E. Clarifications Related to the Company's Initial Filings

There are two points in Staff's Opening Brief related to the Company's initial filings that require clarification. First, in both Docket No. UE-991255 and in this Docket, Staff has repeatedly mischaracterized the Company's testimony related to the prior regulatory treatment of generation assets by this Commission. On page 15 of Staff's Opening Brief in this Docket (Footnote 12), Staff characterizes the Company's testimony to say that "shareholders have been on the short end of asymmetrical treatment from the Commission when the company's resource decisions have been partially disallowed." The Company was very clear in its testimony and its brief in Docket No. UE-991255 that the purpose of the Company's testimony regarding the prior disallowances of investment by the Commission was not to call into question the fairness of those prior decisions, but to request that the Commission carefully consider the balance of equities between customers and shareholders in its decision regarding the disposition of the gain.

It is disturbing that Staff would repeatedly mischaracterize the Company's testimony before this Commission when the Company has repeatedly made clear the

purpose and intention of its testimony in both direct and rebuttal testimony, and in its brief.

Secondly, on page 1 of its Opening Brief, Staff asserts that "Avista, however, excluded the 2.5 percent interest from its application in consolidated Docket Nos. UE-991255, et. al., because it believes Commission approval is unnecessary." As the Company explained in its Opening Brief, this is not a new issue for the parties in this case. In Avista's application in Docket No. UE-991255, dated August 6, 1999, the Company stated on page 3, with regard to the purchase of the 2.5% portion, that: "as that 2.5% share has never been part of Avista's ratebase and/or its jurisdictional facilities, this application does not seek approval for the sale of that share."

If the Staff believed, as it has now stated it does, that the Company's 2.5% share requires an order from the Commission for the sale, it should have raised this issue earlier in response to the Company's application. Staff's explanation in its brief in Docket No. UE-991255 as to why it did not address this issue was:

> Staff did not discuss the PGE Acquisition in its testimony due to doubt when the testimony was filed that the Oregon Commission would approve that sale, which was made at book value, while the resale to TransAlta was made at two and one-half times book value. (Brief of Commission Staff at page 33)

Staff's incorrect judgement about how the Oregon Commission would rule on PGE's request is not grounds to ignore the Company's filed position related to this portion of the Centralia Plant.

III. CONCLUSION

If the Commission should determine that approval of the sale of the 2.5% share to TECWA by Avista is necessary, the Company requests that the Commission issue an order

approving the sale. In any event, the Company requests that the Commission issue a ruling in this proceeding to assign all of the gain associated with Avista's sale of the 2.5% share of Centralia to shareholders.

Avista seeks expedited treatment and respectfully requests that the Commission issue its ruling as quickly as possible so that the Company can be in possession of all relevant information regarding the regulatory treatment of the proposed sale of the Centralia Project.

DATED this 3rd day of March 2000

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