

**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

ANSWER OF AVISTA  
CORPORATION

**ANSWER**

Respondent Avista Corporation (“Avista”) hereby submits its Answer to the Washington Utilities and Transportation Commission’ (“Commission”) Complaint in the above-captioned docket dated June 8, 2010. Avista’s address for purposes of this proceeding is:

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Avista’s representatives for purposes of this proceeding is:

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1. Avista denies each and every material allegation of the Commission’s Complaint not expressly admitted herein.

2. Paragraph 1 contains no legal or factual allegations that require an answer and, therefore, Avista Corporation (“Avista”) neither admits nor denies this paragraph.

**I. PARTIES**

3. In response to paragraph 2, Avista admits that 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 the State of Washington 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.

4. In response to paragraph 3, Avista admits that it is a corporation that, among other things, owns and operates a system for transporting natural gas within the State of Washington.

**II. JURISDICTION**

5. Paragraph 4 contains legal conclusions to which no answer is required.

6. Paragraph 5 contains legal conclusions to which no answer is required.

### III. FACTUAL ALLEGATIONS

7. In response to paragraph 6, Avista admits that on December 26, 2008, a natural gas explosion and fire occurred in the vicinity of 206 North Birch Street in Odessa, Washington. Avista admits that two people were injured in the incident. In response to the third sentence in paragraph 6, Avista further admits that one person suffered physical injuries, including burns, but the extent of those injuries is yet to be determined. Avista admits that the explosion and fire seriously damaged a garage and secondary living quarters.

8. In response to paragraph 7, Avista admits that a fuel source of the explosion and fire was natural gas. Avista further admits that gas leaked from a section of pipe located under a nearby alley that abuts the lot at 206 North Birch Street and that such section of pipe was part of a pipeline main. Avista admits that the pipeline main was owned and operated by Avista.

9. In response to paragraph 8, based on information and belief, Avista admits that gas leaked from the main because the main had a through-wall fracture and that the through-wall fracture was caused by rock impingement on the main. Avista further admits that the ditch in which Avista installed the main contained several rocks in the vicinity of the fracture.

10. In response to paragraph 9, based on information and belief Avista admits that it installed the main in 1981. The remaining allegations in paragraph 9 contain conclusions to which no answer is required and, therefore, Avista neither admits nor denies those allegations.

11. In response to paragraph 10, Avista admits that, on or about December 27, 2008, Avista excavated the pipe, discovered the fracture, and removed the damaged section of pipe. Avista denies that the Commission (or 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. The incident occurred at or around

9:20 p.m. on December 26, 2008. After receiving notification of the incident, Avista promptly investigated the incident. Among other things, Avista promptly notified the Commission of the incident, notified the National Response Center of the incident, monitored gas readings in the soil and footings of homes around the incident site, evacuated individuals, and excavated the damaged section of pipe, and took steps to document and preserve evidence. A Commission pipeline safety engineer arrived at the site of the incident at or around 10:30 a.m. on Sunday December 28, 2008, approximately 32 hours after Avista notified the Commission of the incident and 37 hours after the incident occurred. Avista's actions were consistent with its obligations under the Commission's regulations, including WAC 480-93-185.

#### **IV. APPLICABLE STATUTES AND RULES**

12. Paragraph 11 restates administrative rules and, therefore, no answer is required. The administrative rules speak for themselves.

13. Paragraph 12 restates administrative rules and, therefore, no answer is required. The administrative rules speak for themselves.

14. Paragraph 13 restates administrative rules and, therefore, no answer is required. The administrative rules speak for themselves.

15. Paragraph 14 contains legal conclusions and restates a statutory provision and, therefore, no response is required. The statute speaks for itself.

16. Paragraph 15 contains legal conclusions and restates statutory provisions and, therefore, no response is required. Statutory provisions speak for themselves.

17. Paragraph 16 contains legal conclusions and, therefore, no response is required. Statutory provisions speak for themselves.

## V. CLAIMS AND CAUSES OF ACTION

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

18. In response to paragraph 17, Avista incorporates by reference its answers to paragraphs 1 through 16 as set forth above.

19. Paragraph 18 contains legal conclusions for which no response is required. To the extent a response is required, Avista incorporates by reference its response to paragraphs 10 and 11 as set forth above and denies that it violated WAC 480-93-185(2).

### B. Second Cause of Action (Violations of WAC-480-93-010)

20. In response to paragraph 19, Avista incorporates by reference its answers to paragraphs 1 through 16 as set forth above.

21. Paragraph 20 contains legal conclusions for which no response is required. To the extent a response is required, Avista incorporates by reference its answers to paragraphs 8, 9, 12, and 13 as set forth above and denies that it violated WAC 480-93-010.

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

22. In response to paragraph 21, Avista incorporates by reference its answers to paragraphs 1 through 16 as set forth above.

23. Paragraph 22 contains legal conclusions for which no response is required. To the extent a response is required, Avista incorporates by reference its answers to paragraphs 8, 9, 12, 13, and 14 as set forth above and denies that it violated RCW 80.28.010.

## **VI. REQUEST FOR RELIEF**

## **VII. PROBABLE CAUSE**

## **VIII. NOTICE OF PREHEARING CONFERENCE**

24. Paragraphs 23-33 of the Complaint state legal opinions or conclusions or describe procedural matters for the conduct of the hearing into this matter that do not require an answer and, therefore, Avista neither admits nor denies paragraphs 23-33. To the extent any response is required, Avista generally denies that the Commission should impose any penalty or other relief against Avista for the violations alleged in the Complaint.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

25. Imposition of the total potential penalties requested in the Complaint would not be appropriate in this case. “The assessment of penalties for violations of law is meant to be corrective, not retributive. The purpose is to secure compliance by incenting reasonable and appropriate conduct by the offending party.” MCI Metro Access Transmission Serv., Inc. v. U S WEST Comm., Inc., WUTC No. UT-971063, ¶ 154 (Feb. 10, 1999).

26. Avista is responsible for the construction and maintenance of an extensive natural gas pipeline system. Avista has numerous programs and procedures in place to seek to ensure that its system is safe. Avista promptly notified the Commission of the incident alleged in the Complaint. Avista also fully cooperated with the Commission Staff’s investigation and conducted its own investigation of the incident. The incident alleged in the Complaint does not represent knowing or intentional conduct by Avista that was gross or malicious. Imposition of penalties in the magnitude recommended by Commission Staff would serve a retributive and not corrective function.

27. Some of the alleged violations are barred by the statute of limitations.

28. The penalties proposed by the Commission Staff are excessive under applicable law because the alleged violations are not properly classified as “separate violations.”


29. The penalties proposed by the Commission Staff are excessive under applicable law because for the alleged violations are not properly classified as a “related series of violations.”

**CLAIM FOR RELIEF**

30. Having answered the specific allegations in the Commission’s Complaint, Avista requests that Avista and Commission Staff meet at the earliest opportunity to discuss the allegations in the Commission’s Complaint in an effort to reach a mutually satisfactory resolution of the issues.

DATED: June 25, 2010

AVISTA CORPORATION

By:   
Michael G. Andrea, WSBA # 38684

**CERTIFICATE OF SERVICE**


**I HEREBY CERTIFY** that I have served Avista Corporation's Answer in Docket PG-082253, by electronic mail and mailing a copy thereof, postage prepaid to the following:

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Dated at Spokane, Washington this 25th day of June 2010.

  
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Patty Olsness  
Rates Coordinator