

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

I. SUMMARY

A. SYNOPSIS

1 The Commission authorizes Avista Corporation (“Avista”) to sell the portion of the Centralia steam plant and related facilities it purchased from Portland General Electric (“PGE”) to TECWA Power, Inc. (“TECWA”). The Commission orders that the gain on the sale be divided equally between Avista’s shareholders and ratepayers.

B. PROCEEDINGS

2 On January 24, 2000, Avista filed with the Commission a request for a ruling on the regulatory treatment of the gain on its proposed sale of the 2.5 percent share of the Centralia Power Plant acquired by Avista from PGE. The Commission convened a prehearing conference at Olympia, Washington on February 10, 2000, before Administrative Law Judge C. Robert Wallis. The parties submitted an agreed stipulation of facts to the Commission on Monday, February 14, 2000. The parties submitted simultaneous opening briefs on February 28, 2000. Avista and Public Counsel submitted reply briefs on March 6, 2000.

C. PARTIES

3 Gary A. Dahlke, Paine, Hamblen, Coffin, Brooke & Miller, Spokane, represents Avista. Robert D. Cedarbaum, Senior Counsel, Olympia, represents the Staff of the Washington Utilities and Transportation Commission (“Commission Staff”). Simon ffitich, Assistant Attorney General, Seattle, appears as Public Counsel. Melinda J. Davison, Duncan Weinberg Genzer and Pembroke, Portland, represents the Industrial Customers of Northwest Utilities (“ICNU”).

II. MEMORANDUM

A. BACKGROUND

- 4 In this proceeding Avista Corporation asks the Commission to determine whether it has jurisdiction to approve the sale, and if yes, to approve the sale and the regulatory treatment of the gain on the proposed sale of the Company's 2.5 percent share of the Centralia power plant and related facilities ("Centralia" or "the Plant"). This 2.5 percent share of the Plant was acquired by Avista from Portland General Electric on December 31, 1999 ("the PGE share"). Avista has contracted to sell the PGE share to TECWA contemporaneously with the sale of the Company's original 15 percent share of the Plant. TECWA is a Washington corporation and a subsidiary of TransAlta Corporation, headquartered in Calgary, Alberta, Canada.
- 5 On February 11, 2000, the parties submitted a stipulation of facts and eleven exhibits identified as Exhibits A-K. The decision in this matter is based on those facts and exhibits. The decision in this matter is also based, in part, on the Commission decision in Dockets No. UE-991255, *et al.*,¹ in which all parties to this proceeding were also parties, and which was entered on March 6, 2000. At the prehearing conference in this matter the Applicant's proposal to consolidate this Docket with *Centralia* was considered and rejected. It was determined in the February 11, 2000, Prehearing Conference Order determined that the parties sought consolidation solely so that the record in *Centralia* would be available for consideration in this Application. Because all parties to this proceeding are parties in *Centralia*, the Order stated that if all of the parties could agree as to the need to rely on the *Centralia* record then, by that agreement, and with the consent of the Commission, the *Centralia* record could be used in this proceeding. The Prehearing Conference Order also stated that any party objecting to this proposal could file an objection within ten days. Prehearing Conference Order, paragraph 5(a).
- 6 The Commission Staff did object to paragraph 5(a) on February 14, 2000. Staff was concerned that if this proceeding were to be appealed, the Commission might not have a sufficient record to provide to a reviewing court. Staff also offered a recommendation that is more efficient than consolidation. Staff recommends that the Commission incorporate by reference into this Docket the entire record in *Centralia*, excluding confidential or super-confidential exhibits and transcript pages. This will require the copying of the record only if there is a judicial challenge in this Docket, but otherwise presents none of the administrative burdens the Commission noted with formal consolidation. The Commission will incorporate by this reference the record in *Centralia*.

¹ Second Supplemental Order, *Avista/PacifiCorp/PSE Applications to Sell Centralia Power Plant*, Docket Nos. UE-991255, UE-991262 and UE-991409 (March 6, 2000). Hereinafter *Centralia*.

- 7 The Commission's March 6, 2000, order in *Centralia* approved the sale by Avista of its 15 percent share of the Centralia facilities. The Commission, in that order, approved sale applications by all three of its jurisdictional electric companies, each of which sought to sell its share of the Plant to TECWA. In determining that sale was consistent with the public interest, the Commission cited as an important benefit the transfer of management responsibility for the Plant from eight owners to one owner.
- 8 In *Centralia*, Avista indicated that it had agreed to purchase the PGE share of the Centralia facilities, and to resell that share to TECWA for a gain of \$4.2 million, because PGE wished to avoid investment in emission control equipment and the risk of not recovering such investment in the event that the sale to TECWA did not close. The reasons for PGE's decision to sell its share of the Plant to Avista were provided in the sales agreement as follows: "PGE wishes to avoid (1) investment in the emission control equipment and (2) the risk of not recovering such investment in the event the sale to TECWA does not close." (Stipulation of Facts, Ex. C, p. 1). The terms of the Centralia Plant Purchase and Sale Agreement required the Plant owners to have contracted by the end of May, 1999, for the installation of required emission control equipment, and to continue the installation of such equipment until the sale closes. Since PGE was unwilling to make this commitment, Avista purchased the PGE share interest in order to enable the sale to TECWA to proceed. Avista agreed to assume PGE's contracts pertaining to the Centralia Power Plant under an Assignment and Assumption Agreement. (Stipulation of Facts, ¶ 8 and Ex. I). Avista will sell the PGE share to TECWA. The purchase from PGE closed on December 31, 1999. Avista is selling the power from the PGE share to PGE until the earlier of the date of the TECWA closing or May 5, 2000, at wholesale rates approved by the Federal Energy Regulatory Commission ("FERC") in Docket No. EC00-976-000. The order was entered February 2, 2000, and accepted the rate schedule effective December 31, 1999.
- 9 On January 24, 2000, Avista filed an application in Docket UE-000080 requesting a ruling by the Commission on the PGE Acquisition.

B. APPLICABLE STATUTES AND RULES

- 10 A public service company may not sell a significant asset without prior authorization from the Commission. The following statutes and rules apply:

RCW 80.01.040 General powers and duties of commission. The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, 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, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

RCW 80.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do * * * .

80.28.010 Duties as to rates, services, and facilities--Limitations on termination of utility service for residential heating.

(1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

RCW 80.28.074 Legislative declaration. The legislature declares it is the policy of the state to:

- (1) Preserve affordable natural gas and electric services to the residents of the state;
- (2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington;
- (3) Ensure that customers pay only reasonable charges for natural gas and electric service;
- (4) Permit flexible pricing of natural gas and electric services.

WAC 480-143-120 Transfers of property. A public service company may not complete a transfer of property necessary or useful to perform its public duties unless the company first applies for, and obtains, commission approval. Transfers include sale, lease, assignment of all or part of a public service company's property, and merger or consolidation of a public service company's property with another public service company * * * .

WAC 480-143-170 Application in the public interest. If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.

WAC 480-143-180 Disposal and determination of necessary or useful property.

A public service company must not dispose of any property necessary or useful to perform its public duties unless it first applies for, and obtains, written authority from the commission. Necessary or useful includes all property except items that:

- (1) Are substituted with or replaced by items of equal or greater value or usefulness;
- (2) Are surplus and unneeded assets for which full value is received;
- (3) Are obsolete; or
- (4) Are excluded from the public service company's rate base by commission order, or otherwise.

The public service company must file an application for commission determination that the property is not necessary or useful, prior to disposing of such property, if the property to be disposed of has a market value that exceeds the greater of .1% of the public service company's rate base (for the applicable utility service) last established by commission order, or \$20,000.

C. POSITIONS OF THE PARTIES***1. Avista***

11 Avista first provides an overview of its recent purchase of the PGE share, including an explanation of how this share of the Centralia plant is being operated pending the sale to TECWA. The purchase contract between Avista and PGE was signed on May 5, 1999, the day before the main TECWA sale contract was signed. The Oregon commission approved the PGE sale to Avista on November 29, 1999. The FERC approved sale of the PGE share to Avista on December 20, 1999. The FERC approved sale of all Centralia facilities to TECWA on January 13, 2000. Avista has paid PGE \$3.5 million to date for its Centralia share. If the sale to TECWA closes, Avista must pay PGE an additional \$1.1 million. All output and operational decisions regarding the PGE share rest with PGE through May 2000. Avista is not using its ownership of the 2.5% share in performance of its public service duties. Avista is not currently paying (and by extension its customers are not paying) for operation of the 2.5% share of the Plant.

12 Avista believes that chapter 80.12 RCW, the statutory provisions requiring a utility to obtain an order from the Commission for the sale of facilities, is not applicable to the sale of the PGE share of the Plant. Avista argues that the Commission has no jurisdiction over the sale, for the following reasons:

- (1) The PGE share is not “necessary or useful.” Avista argues that it is not receiving the output of the PGE share; it recorded the purchase as non-utility property in its System of Accounts because it is not used, operating costs are not paid, and it is not being held for future use.
- (2) The PGE share has not been included in rate base.

- (3) The Scottish Power and GTE cases are not on point, since neither dealt with the issue of what constitutes “used and necessary” property.

13

With respect to the gain of approximately \$4.28 million related to the sale of the PGE share, Avista believes that the record supports a decision by the Commission to assign the gain exclusively to the Company's shareholders. Claiming that the asset at issue has not been "necessary or useful" by Avista in any way in "the performance of its duties" to its customers, Avista argues that all gain should be assigned to shareholders. It provides the following reasons:

- (1) The 2.5% share was purchased by Avista with the full intention to resell it to TECWA and to retain the gain.
- (2) The 2.5% share has never been part of Avista's rate base.
- (3) The 2.5% share is not included in plant in service.
- (4) The 2.5% share is not included in the Company's results of operations calculations.
- (5) Customers have paid no depreciation related to the Company's investment in this portion of the Centralia plant.
- (6) Customers have paid no rate of return to the Company related to its investment in this portion of the Centralia plant.
- (7) PGE continues to make all dispatch decisions and continues to receive all of the energy from the 2.5% share, pending the sale to TECWA. Because Avista does not receive any power from the 2.5% share of the Centralia plant, it has not been used in any way to serve Avista's retail customers.
- (8) PGE is paying for all fuel and operation and maintenance expenses associated with the PGE share. Therefore, the Company's retail customers are paying none of the fixed or variable costs associated with owning and operating the PGE share.
- (9) The 2.5% share is not "used and useful" and is not "necessary" in Avista's performance of its duties to its customers.
- (10) Avista placed its own shareholders' capital at risk in the purchase of the 2.5% share of Centralia. If the sale to TECWA does not occur and the Company were to propose that the PGE share be used to serve Avista's retail customers, Avista would expect the Commission to examine the prudence of this portion of the Plant prior to allowing it into rate base. No prudence review has been conducted by the Commission related to Avista's purchase of the PGE share, and therefore, shareholders are at risk for its full investment in this portion of the Plant.
- (11) As the Company explained in its application in this Docket, the Staff of the Idaho Public Utilities Commission has advised the Company that it is their position that the PGE share has never been used to serve Idaho's ratepayers and has not been in Idaho rate base, and that any gain on the sale would accrue to shareholders.
- (12) Other co-owners of the Plant had the same opportunity to put their own capital at risk in purchasing all or a portion of PGE's 2.5% share of the Project. These parties, however, waived their rights of first refusal to purchase this portion of the Project.

14

Avista does not address the argument raised by Staff and Public Counsel that it bears a

continuing obligation to meet load with least-cost resources, and that the acquisition of the PGE share should be considered as an action relevant to that obligation.

2. *Commission Staff*

- 15 The Commission Staff provides the most detailed set of arguments why the 2.5% PGE share is jurisdictional to the Commission. First, Staff argues that case law demonstrates that the Commission's responsibility to protect the public interest requires it to review Avista's sale of the PGE share under the "necessary or useful" clause of RCW 80.12.020. Staff notes that in *Tanner Electric Corp. v Puget Sound Power & Light*, 128 Wn.2d 656, 682, 911 P.2d 1301 (1996), the state Supreme Court observed that the Commission "is charged with administering pervasive regulatory schemes that effect almost every phase of activity of the businesses under its authority." According to Staff, the Commission itself relied on *Tanner, supra*, in two recent decisions concerning the scope and meaning of RCW 80.12.020. *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, 192 PUR4th 143 (March, 1999) (acquisition by a foreign corporation of the stock of a regulated public service company); *In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation*, Docket UT-981367, Fourth Supp. Order (December, 1999) (merger of unregulated holding company owning subsidiary public service company with another unregulated holding company).
- 16 The Commission Staff analyzes pertinent case law which defines "necessary" and "useful," and concludes that Avista's sale of the PGE share must receive prior Commission approval. The deciding factor for determining whether the PGE share is "necessary or useful" within the meaning of RCW 80.12.020 is not whether the output is temporarily assigned to PGE or whether the power provides service in Washington at the time of sale. The Legislature clearly distinguished between property that the Commission may value as part of rate base, which must be "used," from property that can only be sold with Commission permission, which must be "* * * necessary or useful in the performance of [the utility's] duties to the public* * * ." Those duties include obligations to (1) acquire least cost resources, and (2) manage those resources for the full benefit of consumers. WAC 480-100-251. The Commission could not examine whether Avista satisfied those duties if the company's sale of the PGE share fell outside the provisions of RCW 80.12.020.
- 17 Rather, the Commission Staff argues, the *capability* of a generation facility to provide service is enough to qualify as "useful" under RCW 80.12.020. In *POWER v. Utilities & Transp. Comm'n.*, 101 Wn.2d 425, 430, 679 P.2d 922 (1984), the Court defined the term "useful" as something which is "capable of being put to use: having utility: advantageous: producing or having the power to produce good: serviceable for a beneficial end or

object.”² This contrasted with the Legislature’s inclusion of the term “used,” which the Court defined as property that is “employed in accomplishing something.” *Id.*

18 The Commission Staff argues that Avista’s 2.5 percent share of Centralia is clearly “useful” as that term is defined in *POWER, supra*. Avista admitted that it will be better able to perform its duties to the public with the additional 2.5 percent share if the sale to TECWA does not close. (*Centralia* Ex. T-301 p.4) Thus, Staff argues that the PGE share is a resource not only capable of providing service to ratepayers in Washington; it will soon actually provide available service if the sale to TECWA does *not* close. And it will soon need to be replaced as a resource if the sale to TECWA *does* close. It is, therefore, necessary or useful in the performance of Avista’s duties to the public under RCW 80.12.020.

19 Regarding allocation of the gain, the Commission Staff argues that the sale of the PGE share is only consistent with the public interest if the full gain is allocated to ratepayers. Staff asserts that the same logic that supported its recommendation in *Centralia* that 100% of gain must be allocated to ratepayers applies equally to Avista’s sale of the additional 2.5 percent share of Centralia. That logic argues that the sale increases risks for ratepayers who must bear the higher cost of replacement power if Centralia is sold, but that the same qualitative factors which supported Avista’s sale of its 15 percent interest also support the sale of its 2.5 percent interest. Staff would then conclude that the gain should be allocated to ratepayers because: (1) The gain proceeds are necessary to compensate ratepayers for future risks; (2) This argument applies to the 2.5% because Avista bears the responsibility to acquire and use least-cost resources and this is a least-cost resource; and (3) Avista’s purchase of 2.5% placed no risk on shareholders, but increased risk on ratepayers.

3. Public Counsel

20 Public Counsel argues that the PGE share of the Plant is utility property that is held by a regulated utility subject to the jurisdiction of the Commission and it is useful for Avista to meet its obligations as a public service company. To Public Counsel, the fact that the PGE share is not in rate base is not relevant to the question of jurisdiction. Avista’s witness Mr. Gary Ely admitted in *Centralia* that Avista Corporation, the regulated utility, is holding the PGE share as “utility property.”³ Public Counsel concludes that, as utility property held by the regulated utility, the PGE share is within the general regulatory authority of the Commission, citing RCW 80.01.040(3) and RCW Chapter 80.28.

21 Public Counsel argues that the sale of the PGE share should be found to be not consistent

² Citing *Webster’s Third International Dictionary* 2524 (1976).

³ *Centralia*, Tr. 216-217.

with the public interest for the same reasons it argued the sale of the 15% should not be approved in *Centralia*. It concludes that “if the Commission rules in the main *Centralia* case that the sale is not in the public interest, it should reach the same conclusion with regard to the PGE share.”

- 22 Public Counsel recommends that, if the PGE share is sold, all of the gain should be allocated to ratepayers **and** ratepayers should be insulated from future increased power costs, because the PGE share would have been useful for meeting future load. It provides no argument other than a reference to its *Centralia* brief in support of this recommendation. The position appears to be compensation for future risk. Public Counsel asks the Commission to ensure that in future rate cases, excess power costs which result from the sale of the PGE share are not passed on to customers.

4. ICNU

- 23 ICNU argues that the PGE share of The Plant acquired by Avista is jurisdictional to the Commission because: (1) It is useful for utility performance of public service in Washington; (2) It was acquired by the utility and not an unregulated subsidiary; and (3) The Commission’s responsibility to protect the public interest when utility property is sold or transferred is “pervasive.”
- 24 Citing its own and Staff’s arguments on brief in *Centralia*, ICNU argues that all the gain should go to ratepayers because: (1) The gain is necessary to offset risks of higher power costs; (2) Allocation of the gain would provide an inappropriate incentive for utilities to leverage utility assets for shareholder gain; (3) The sale is not in the public interest if the gain doesn’t go to ratepayers; and (4) Ratepayers have borne the risk of the 15% of *Centralia* owned by Avista and this 15% ownership made the acquisition of the 2.5% possible.

III. ISSUES PRESENTED

- A. Does The Commission Have Jurisdiction Over Avista’s Sale of The PGE Share?
- B. Is Avista’s Sale of The PGE Share to TECWA Consistent With The Public Interest?
- C. How Should Avista’s Gain From The Sale Be Allocated?

IV. COMMISSION DISCUSSION

A. DOES THE COMMISSION HAVE JURISDICTION OVER AVISTA'S SALE OF THE PGE SHARE?

25 The threshold issue in this case is whether the sale of Avista's 2.5 percent interest in Centralia requires Commission approval under the following provisions of RCW 80.12.020:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are *necessary or useful in the performance of its duties to the public*, . . ., without having secured from the Commission an order authorizing it so to do . . .
(Emphasis added.)

26 We largely concur in Staff's analysis of the term "useful." The Commission's jurisdiction under RCW 80.12.020 does not depend on whether Avista's 2.5 percent share of Centralia has been included in rate base or is "used" to serve retail loads. The *capability* of a generation facility to provide service is enough to qualify as "useful" under RCW 80.12.020. In *POWER v. Utilities & Transp. Comm'n.*, 101 Wn.2d 425, 430, 679 P.2d 922 (1984) the state Supreme Court defined the term "useful" as "capable of being put to use: having utility: advantageous: producing or having the power to produce good: serviceable for a beneficial end or object."

27 This contrasted with the Legislature's inclusion of the term "used," which the Court defined as property that is "employed in accomplishing something." *Id.* The Court also has defined the term "necessary" not to mean absolute, indispensable, or immediate. In *Port of Seattle*, 80 Wn.2d 392, 399, 495 P.2d 327 (1972). While that case involved eminent domain statutes, the definition of "necessary" arose in the context of the right of the public to expect service and facilities to provide service. *Id.* That reasoning is equally applicable to electric service under chapter 80.28 RCW. In any event, RCW 80.12.020 does not require necessity, however that term may be defined. The statute requires only that property be necessary or useful.

28 Avista makes much of the fact that the 2.5% share is subject to a contract for sale to TECWA, and that if the sale goes through, the 2.5% share will never have been available to ratepayers. But Avista carries the keys to unlock its contractual obligations. It can back out of the sale if it is not satisfied with the regulatory treatment of either its 15% or 2.5% share. See Exhibit A, Article 11. Indeed, it has made clear in its briefs in this case and in *Centralia* that it is waiting to evaluate regulatory rulings before it decides whether to sell. That kind of discretion means that this is an asset that could well be put to use for the benefit of the ratepayers. A temporary obligation to sell the power to PGE does not alter the underlying usefulness of the asset.

29 Further, our finding that the 2.5% share is “useful” is consistent with the broad scope of our authorizing statutes. The Washington Legislature has delegated broad authority to the Commission to regulate public utilities, including electric companies. *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wash.2d 656, 666, 911 P.2d 1301, 1306 (1996). Washington law requires the Commission to:

Regulate in the public interest, as provided by the public service laws, 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, but not limited to, electrical companies * * * .

RCW 80.01.040(3).

The Commission “is charged with administering pervasive regulatory schemes that affect almost every phase of the activity of the businesses under its authority.” *Tanner*, 128 Wash.2d at 682, 911 P.2d at 1314.

30 Our legal analysis convinces us that the Commission has jurisdiction over Avista’s proposed sale of the PGE share of Centralia.

B. IS AVISTA’S SALE OF THE PGE SHARE TO TECWA CONSISTENT WITH THE PUBLIC INTEREST?

31 The Commission ruled on March 6, 2000, that the sale of the Centralia facilities by Avista, PacifiCorp, and PSE is consistent with the public interest. All parties to this proceeding were also parties to Docket No. UE-991255, *et al.* Both Public Counsel and the Commission Staff ask the Commission to rule on the public interest issue consistently with the rulings they requested in *Centralia*. The Commission agrees with them that the rulings in the two Dockets should be consistent. The Commission will not revisit its ruling regarding the sale of the Centralia facilities to a single owner. That ruling applies in this proceeding as well. It is consistent with the public interest to allow all of the parties holding pieces of the Centralia facilities to sell those pieces to TECWA. Avista’s sale of the PGE share to TECWA is consistent with the public interest and is approved.

C. HOW SHOULD AVISTA’S GAIN FROM THE SALE BE ALLOCATED?

32 We view the 2.5% PGE share in a similar light as Avista’s 15% share. While the 2.5% was purchased more recently, and the ratepayers have not paid any amounts for it, the decision to buy *both shares* was a choice Avista exercised in its responsibility to run its utility in a manner that is efficient and beneficial to the ratepayers. Choosing one purchase opportunity forecloses or affects other opportunities in which the ratepayers

might also have a stake. Treatment of the gain should reflect and align shareholders' and ratepayers' interests so that both benefit, and so that the company is not tempted to take the better deals for itself alone.

33 As we said in *Centralia*, the sale of the PGE share offers a balance of risks and benefits, allocation of gain being one of them. As in *Centralia*, we will allocate the gain above original cost (which is all of the gain, in this instance) equally between ratepayers and shareholders. We believe this allocation also represents the best way to align the interests of the ratepayers and shareholders so that they may mutually benefit from the opportunity the *Centralia* sale presents. We will treat the taxes on the gain in the same manner determined to be appropriate in *Centralia*.

IV. FINDINGS OF FACT and CONCLUSIONS OF LAW

A. FINDINGS OF FACT

- 34 1. Avista Corporation ("Avista") is an investor-owned public utility engaged in the generation, transmission and distribution of electricity to customers in eastern Washington and northern Idaho. Additionally, Avista provides natural gas service to customers in the states of Washington, Idaho, Oregon and California. Avista's electric and natural gas services in the state of Washington are subject to regulation by the Washington Utilities and Transportation Commission ("Commission") pursuant to Title 80 of the Revised Code of Washington.
- 35 2. Avista, along with certain other public and private regional utilities, is a co-owner of the Centralia Electric Steam Generating Plant ("Centralia Power Plant"). The Centralia Power Plant is a coal-fired generating plant with a capacity of 1340 megawatts consisting of two generating units and related equipment. The majority of the coal used to fire the Centralia Power Plant comes from the adjacent Centralia Mine with additional coal delivered by rail from other sources. Avista owns a 17.5% interest in the Centralia Power Plant. The other six co-owners and their respective ownership shares in the Centralia Power Plant are as follows:

PacifiCorp – 47.5%
City of Seattle – 8.0%
City of Tacoma – 8.0%
Public Utility District No. 1 of Snohomish County, Washington – 8.0%
Puget Sound Energy, Inc. – 7.0%
Public Utility District No. 1 of Grays Harbor County, Washington – 4.0%

Portland General Electric Company owned a 2.5% interest in the Centralia Power Plant prior to the sale of its share to Avista effective December 31, 1999. PacifiCorp is the sole owner of the Centralia Mine.

- 36 3. On May 6, 1999, Avista and the other co-owners of the Centralia Power Plant entered into an agreement ("TECWA Agreement") to sell the Centralia Power Plant to TECWA Power, Inc. TECWA is a Washington corporation, which is a subsidiary of TransAlta Corporation, a Canadian corporation with its headquarters in Calgary, Alberta, Canada. The Federal Energy Regulatory Commission (FERC) approved the sale to TECWA in Docket No. EC00-17-000 on January 13, 2000.
- 37 4. On August 10, 1999, Avista applied to the Commission for permission to sell its 15% share of the Centralia Power Plant to TECWA pursuant to the TECWA Agreement. This application was granted, with conditions, in Docket No. UE-991255.
- 38 5. In a separate agreement dated May 5, 1999, and its Amendment No. 1 dated October 13, 1999, Avista agreed to purchase the 2.5% share of the Centralia Power Plant owned by Portland General Electric Company ("PGE").
- 39 6. On June 3, 1999, PGE filed an application (Docket No. UP 165) with the Oregon Public Utilities Commission ("Oregon Commission") seeking approval for the sale of its 2.5% interest in the Centralia Power Plant to Avista. On August 19, 1999, PGE filed an application (Docket No. UP 170) seeking approval for the sale of its 2.5% interest in the Centralia Power Plant to TECWA in the event that the Oregon Commission did not approve the sale to Avista. On November 29, 1999, the Oregon Commission entered Order No. 99-730 rejecting the proposed sale by PGE to TECWA (in Docket No. UP 170) and approving the proposed sale to Avista (in Docket No. UP 165).
- 40 7. PGE applied to the FERC for permission to sell its share of any FERC-jurisdictional facilities associated with the Centralia Power Plant to Avista by an application in FERC Docket No. EC00-12-000. On December 20, 1999, FERC issued an order approving PGE's sale to Avista of facilities which were jurisdictional under the Federal Power Act.
- 41 8. On December 31, 1999, Avista and PGE closed the purchase and sale of PGE's share of the Centralia Power Plant. Deeds were recorded conveying the real property interests to Avista and a Bill of Sale was executed conveying the personal property, which together constituted a 2.5% undivided share of the Centralia Power Plant. Avista agreed to assume PGE's contracts pertaining to the Centralia Power Plant pursuant to an Assignment and Assumption Agreement.
- 42 9. In addition, Avista and PGE agreed to a retention by PGE of the fuel supply and electric power output of the PGE share pending the TECWA closing. This agreement was filed with FERC in Docket No. EC00-976-000, and on February 2, 2000, FERC issued an Order accepting the rate schedule effective December 31, 1999.

- 43 10. On January 24, 2000, Avista filed an application with the Commission in this proceeding, Docket No. UE-000080, seeking 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 from PGE to be sold to TECWA.
- 44 11. To date, Avista has paid \$3.5 million to PGE pursuant to the PGE Agreement and has accounted for the payment as non-utility property in Account No. 121 pending the closing with TECWA. The PGE Agreement also requires Avista to make a second payment to PGE in the amount of \$1.1 million on the closing of the sale of the entire Centralia Power Plant to TECWA. If the sale to TECWA occurs as contemplated by the TECWA Agreement, there will be a net gain realized by Avista of approximately \$4.28 million dollars. The work paper detailing the calculation of the net gain is attached to the Application for a Ruling on Gains Treatment, Commission Docket No. UE-000080. The amount of the gain is an estimate that is subject to true-up and final closing adjustments.
- 45 12. Both ratepayers and shareholders face risks and benefits from the sale, and risks and benefits from no sale. The benefits of the sale should be equitably allocated by the Commission in a manner in which benefits follow burdens, and rewards follow risks. The Commission must exercise its discretion to determine a fair allocation.
- 46 13. Based on the risks borne by each, a fair allocation of the proceeds from the sale is: one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.
- 47 14. Avista's proposal to allocate all gain from the sale to shareholders is not a fair sharing, and is not consistent with the public interest. Adoption of this proposal would harm the public interest.
- 48 15. The entire record in Docket Nos. UE-991255, *et al.*, excluding confidential or super-confidential exhibits and transcript pages, is incorporated into this docket by this reference.

B. CONCLUSIONS OF LAW

- 49 1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of these proceedings.
- 50 2. The Avista application to sell the PGE share of its Centralia facilities and to allocate all of the gain to shareholders is not consistent with the public interest, and should be rejected.

- 51 3. Avista may sell its Centralia facilities if it allocates the proceeds as follows: one-half to shareholders and one-half to ratepayers, taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.

V. ORDER

THE COMMISSION ORDERS:

- 52 1. The Commission authorizes Avista to sell its ownership interest in the PGE share of the Centralia facilities to TECWA, if it allocates the proceeds as follows: one-half to shareholders and one-half to ratepayers; taxes to be paid by shareholders and ratepayers in proportion to taxable gain awarded.
- 53 2. Avista must recalculate the gain on the sale to match the date that the sale closes. That figure must be provided to the Commission.
- 54 3. The Commission retains jurisdiction over the subject matter and over Avista to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this day of March, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

WILLIAM R. GILLIS, Commissioner

Commissioner Hemstad concurring in part and dissenting in part.

- 55 I concur in the opinion of the Majority that the Commission has jurisdiction over Avista's sale of the PGE share of the Centralia plant, and that Avista's sale of the PGE share to TECWA is consistent with the public interest. However, respectfully, I dissent from the opinion of the majority that the gain should be shared between the shareholders and the ratepayers.
- 56 In the examination of Avista's sale of its 15% share of Centralia, I noted that the ratepayers had been responsible to pay through rates the operating and maintenance expenses, depreciation, taxes, and a return on the original investment of Avista in the Centralia facilities.⁴ For that reason, I argued that all of the gain from that portion of the transaction should be allocated to ratepayers. In the unusual, perhaps unique, facts of this case I note that the Avista ratepayers have not borne any of these costs, and conclude that the ratepayers have not, therefore, borne any meaningful risk or burden if the sale to TECWA is completed. Accordingly, consistent with the reasons stated in my concurring and dissenting opinion in the companion case, *Id.*, I would allocate all of the gain from Avista's sale of the PGE share to Avista's shareholders.

DATED at Olympia, Washington, and effective this day of March, 2000.

RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

⁴ Third Supplemental Order; Order Serving Dissent, *Avista/PacifiCorp/PSE Applications to Sell Centralia Power Plant*, Docket Nos. UE-991255, UE-991262 and UE-991409 (March 14, 2000).