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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

7 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

8 APPLICATION OF AVISTA CORPORATION FOR)
9 AN ORDER APPROVING THE SALE OF ITS) DOCKET NO. UE-04____
10 INTEREST IN THE SKOOKUMCHUCK)
11 HYDROELECTRIC PLANT AND FOR EWG)
12 DETERMINATIONS)

13
14 Avista Corporation ("Avista") hereby requests that the Washington Utilities and
15 Transportation Commission ("WUTC") authorize Avista to sell its minority ownership interest in the
16 Skookumchuck Hydroelectric Plant ("Skookumchuck"), and issue determinations required for the
17 purchaser to qualify as an Exempt Wholesale Generator ("EWG") under Section 32 of the Public
18 Utility Holding Company Act of 1935 ("PUHCA").¹ The purchaser is 2677588 Washington LLC²
19 ("Washington LLC"), a limited liability company formed by TransAlta USA Inc. ("TransAlta").

20 **I. INTRODUCTION**

21 **A. The Parties**

22 **1. The Applicant: Avista**

23 Avista is an investor-owned utility engaged in the generation, transmission, and distribution
24 of electricity in certain portions of Eastern Washington and in Northern Idaho. Avista is further
25 engaged in the distribution of natural gas in certain portions of Eastern and Central Washington, in
26 Northern California, in Western and Central Oregon, and in Northern Idaho. Avista is subject to the

1 WAC 480-143-180 requires Commission approval if the property to be disposed has a market value that exceeds the greater of 0.1% of the public service company's rate base (for the applicable utility service) last established by commission order, or \$20,000. The Company is requesting approval, even though this property is less than 0.1% of Avista's Washington electric jurisdictional rate base, to effectuate appropriate accounting treatment.

1 jurisdiction of this Commission (RCW Title 80) with regard to its rates, charges, services and
2 practices. As of December 31, 2003 Avista provided service to approximately 326,000 electric
3 customers and 298,000 natural gas customers throughout its service area. Approximately 216,000
4 electric customers were served in the state of Washington.

5 Communications in reference to this Application should be addressed to:

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14 2. The Owners

15 Skookumchuck is jointly owned by seven public and private owners (collectively, the
16 "Owners"): PacifiCorp; Avista; Public Utility District No. 1 of Snohomish County, Washington;
17 Puget Sound Energy, Inc.; City of Tacoma, Washington; City of Seattle, Washington; and Public
18 Utility District No. 1 of Grays Harbor County, Washington. PacifiCorp is the majority owner with a
19 47.5% ownership share. Avista is a minority owner with a 17.5% ownership share.

20 3. The Purchaser

21 Washington LLC is a Washington limited liability company and a direct, wholly-owned
22 subsidiary of TransAlta. TransAlta is the indirect owner of the Centralia Power Plant, a coal-fired
23 generating plant, and the Centralia Coal Mine. In 2000, the Owners sold the Centralia Power Plant
24 to a direct wholly-owned subsidiary of TransAlta, TECWA Power Inc., and PacifiCorp sold the
25 Centralia Coal Mine to another direct wholly-owned subsidiary of TransAlta, TECWA Fuel Inc.

2 2677588 Washington LLC is an interim corporate name used by TransAlta USA Inc.

1 TransAlta Central Generation LLC, a direct wholly-owned subsidiary of TECWA Power Inc., owns
2 and operates the Centralia Power Plant as an EWG.

3 **B. The Skookumchuck Plant to be Sold**

4 Skookumchuck is a small earth-fill dam and hydroelectric generating plant located in the
5 vicinity of Centralia, Washington on property adjacent to the Centralia Power Plant. The
6 Skookumchuck dam was constructed in 1973 as a water storage facility for the Centralia Power
7 Plant. In 1991, a hydroelectric unit with a capacity of approximately one megawatt was installed at
8 the dam. The Skookumchuck plant being sold includes real property and associated easements and
9 water rights, as well as various equipment. Skookumchuck was granted an exemption from licensing
10 as a hydropower facility by the Federal Energy Regulatory Commission ("FERC") pursuant to 16
11 U.S.C. §2705(d), which allows exemptions for facilities less than five megawatts. Skookumchuck
12 is, however, subject to dam safety regulation by the FERC.

13 **II. PROPOSED TRANSACTION**

14 The Owners propose to sell and transfer to Washington LLC the Skookumchuck dam,
15 powerhouse, water rights, land, easements and other related assets, including certain fixtures,
16 contracts and other rights. The sale and transfer is governed by the Skookumchuck Facilities
17 Purchase and Sale Agreement between the Owners and Washington LLC, dated November 25, 2003
18 (the "Sale Agreement"). A copy of the Sale Agreement is included as Appendix 1. A copy of the
19 Skookumchuck Dam Management Agreement is attached as Appendix 2.

20 The aggregate sale price of the transaction is \$7.57 million, adjusted for changes in
21 PacifiCorp's Net Book Value of the Facilities from September 30, 2003 to the Closing Date. See
22 Section 2.3(a) of the Sale Agreement. Avista's share of the sales price is 17.5%, or approximately
23 \$1.32 million on system basis prior to closing costs.

1 Washington LLC has indicated that their intention is to continue operation of Skookumchuck
2 to provide cooling water supply to the Centralia Power Plant, and that it will produce power from
3 Skookumchuck either as an EWG or as a qualifying facility under the Public Utility Regulatory
4 Policies Act of 1978. None of the electrical output of Skookumchuck has been or will be used to
5 serve Avista's retail customers, except perhaps indirectly through the wholesale power markets.

6 At the time the Centralia coal-fired Generating Plant was sold to TransAlta (TECWA Power,
7 Inc.), a Flood Control Committee formed by Lewis and Grays Harbor Counties, Washington and the
8 cities of Centralia, Chehalis and Aberdeen, Washington (the "Committee") had expressed an interest
9 in acquiring the Skookumchuck Dam and reservoir. The Committee had been working with the U.S.
10 Army Corps of Engineers to develop a comprehensive flood control plan for the basin. In June 1999,
11 a Memorandum of Understanding ("MOU") between the Owners and the Committee was signed
12 reflecting the Committee's intent to purchase the facilities. This MOU expired in December 1999,
13 but the Owners understood that the Committee's intent to acquire the facilities had not changed.
14 This desire by the Committee to purchase the facilities and the Committee's stated intent to operate
15 the facilities in a manner that would not be in conflict with the continued operation of the Centralia
16 Steam Plant caused the Owners to withhold the Skookumchuck Project from the sale of the Centralia
17 Steam Plant.

18 III. JURISDICTION AND AUTHORITY

19 A. Transfer of Utility Property

20 A public service company must receive WUTC approval for any transaction to sell
21 property that is necessary or useful in the company's performance of its duties to the public.
22 Specifically, RCW 80.12.020 provides:

23 No public service company shall sell, lease assign or otherwise dispose of the whole

1 or any part of its franchises, properties or facilities whatsoever, which are necessary
2 or useful in the performance of its duties to the public, and no public service
3 company shall, by any means whatsoever, directly or indirectly, merge or consolidate
4 any of its franchises, properties or facilities with any other public service company,
5 without having secured from the commission an order authorizing it so to do

6 The standard for approval of a sale is whether the proposed transaction is consistent with the public
7 interest:

8 **WAC 480-143-170 Application in the public interest.**

9 If, upon the examination of any application and accompanying exhibits, or upon a
10 hearing concerning the same, the commission finds the proposed transaction is not
11 consistent with the public interest, it shall deny the application.

12 The Commission has further articulated this as a “no harm” standard.

13 The standard in our rule does not require the Applicants to show that customers,
14 or the public generally, will be made better off if the transaction is approved and goes
15 forward. In our view, Applicants’ initial burden is satisfied if they at least
16 demonstrate no harm to the public interest.

17 *PacifiCorp/ScottishPower Merger Proceeding*, Docket No. UE-981627, Third Supplemental
18 Order (April 2, 1999), p. 2; *see also*, *GTE/Bell Atlantic Merger Proceeding*, Docket No. UT-981367,
19 Second Supplemental Order (1999), p. 25.

20 **B. EWG Determinations**

21 To qualify as an EWG, Washington LLC must be engaged exclusively in the business of
22 owning or operating an “eligible facility” and selling electric energy at wholesale. If the costs of a
23 generation facility were included in the rates of a regulated utility on October 24, 1992 (the date of
24 enactment of section 32 of PUHCA), then in order for the facility to be considered an “eligible
25 facility,” every state commission having jurisdiction over such rates must specifically determine that
26 allowing the facility to become an eligible facility (1) will benefit consumers, (2) is in the public
27 interest, and (3) does not violate State law. 15 U.S.C. § 79z-5a(c). Thus, the WUTC and each of
28 PacifiCorp’s other state regulatory commissions, which include Avista’s other state regulatory

1 commission, the Idaho Public Utilities Commission, would be required to make these determinations
2 regarding the sale and transfer of the Skookumchuck facilities.

3 **IV. BENEFITS OF TRANSACTION**

4 **A. Compliance with State Law**

5 The requirements of Washington law regarding the transfer of Skookumchuck to
6 Washington LLC are set forth in Section III.A of this Application, above. If the Commission
7 approves this Application, the transfer to Washington LLC and allowing the facility to become an
8 eligible facility will not violate Washington State law.

9 **B. Benefits to Consumers**

10 Skookumchuck has an electrical capacity of 1 MW but, because the facility is operated for
11 purposes of supplying cooling water to the Centralia Power Plant, it has relatively low energy output.

12 Over the last eight years, the average annual production has been 3,000 megawatt-hours.
13 Skookumchuck's bus bar cost in PacifiCorp's fiscal year 2003 (twelve months ending March 31,
14 2003) was approximately \$250 per MWh. With regard to this cost per MWh, it is important to
15 remember that the dam was originally built to provide water supply for the coal plant, and therefore
16 the energy produced by the hydroelectric generator does not reflect the total value of the project.
17 Skookumchuck is interconnected with the system of Puget Sound Energy, Inc. ("PSE") and
18 historically all of the power from Skookumchuck has been sold to PSE.

19 As one of the Owners of Skookumchuck, Avista must pay its proportionate share of the costs
20 of the facilities. Net plant related to Avista's share of its investment in Skookumchuck is included in
21 the Company's rate base. Customers will not be harmed by the proposed transaction and will in fact
22 benefit from it. The forecast of the market price of power is substantially below the cost of power
23 generated from Skookumchuck. Hence, the Company's revenue requirement will be lower as a

1 result of the sale of Skookumchuck.

2 In addition, the proposed transaction eliminates the risk that the Owners will be required to
3 fund future expenditures for ensuring the structural integrity of the Skookumchuck dam. The
4 benefits from the proposed sale outweigh the risks and costs of continuing to own and operate
5 Skookumchuck.

6 Moreover, the sale will not harm the public interest because competitive markets will be
7 unaffected by the sale. A 1 MW plant, with only 3,000 MWhs of annual production would not have
8 a measurable impact on western electricity supply or any impact on wholesale electricity prices.

9 **C. Public Interest Standard**

10 The transfer of Skookumchuck to Washington LLC is in the public interest because it
11 will benefit Avista's customers by lowering the Company's costs of providing electrical service, for
12 the reasons stated in Section IV.B of this Application, above. In addition, the transfer will give
13 TransAlta greater control of the water flows in the Skookumchuck River for providing cooling water
14 to the Centralia Power Plant, thus supporting the electrical output of the Centralia Power Plant for
15 the benefit of all electricity consumers.

16 **V. OTHER MATTERS**

17 **A. Proposed Ratemaking Treatment**

18 Avista projects that the sale of Skookumchuck will result in a small after-tax gain. The
19 Washington jurisdictional share (66.99%) of the after-tax gain is projected to be approximately
20 \$440,000. Actual figures will not be known until the transaction closes. Avista proposes to allocate
21 the after-tax Skookumchuck gain between jurisdictions and between ratepayers and shareholders in
22 the same manner as Avista's after-tax gain on the sale of the Centralia Power Plant was allocated in
23 Docket Nos. UE-991255 and UE-000080. Applying the methodology for allocating proceeds set

1 | forth in the orders approving the sale of the Centralia Power Plant to the estimated Washington share
2 | of the Skookumchuck after-tax gain of approximately \$440,000 yields an allocation to ratepayers of
3 | approximately \$290,000 and an allocation to shareholders of approximately \$150,000. The
4 | calculation and allocation of the estimated gain is attached as Exhibit ____ (RRP-1) to the testimony
5 | of Ronald R. Peterson.

6 | Avista is proposing that the estimated portion of the Skookumchuck gain allocated to
7 | ratepayers of approximately \$290,000 be applied against the demand side management (“DSM”)
8 | tariff rider balance. This proposal is consistent with the methodology of handling any residual
9 | balance associated with the pass through of the gain on the sale of the Centralia Power Plant
10 | approved in the Fifth Supplemental Order Approving Centralia Gain Bill Credit Compliance Tariff
11 | in Docket Nos. UE-991606 and UG-991607 dated November 21, 2000. An over-refund associated
12 | with the pass through of the gain on the sale of the Centralia Power Plant of approximately \$174,000
13 | has previously been charged to the DSM tariff rider balance. The ratepayer portion of the
14 | Skookumchuck gain would result in a credit of approximately \$290,000 to the DSM tariff rider
15 | balance. Excerpts from Paragraphs 6 and 7 of the Fifth Supplemental related to this accounting
16 | treatment is as follows.

17 | At the end of the credit period, if there is a residual balance (due either to actual volumes
18 | that receive the Schedule 56 credit being different than projected, and/or interest on the
19 | balance being different than projected), Avista’s proposal is to net the residual balance
20 | (positive or negative) against the DSM tariff rider balance. Schedule 25 customers will
21 | receive their proportionate share of the residual Centralia gain through the Schedule 91
22 | DSM tariff rider rates. There would, therefore, be no windfall to Avista, contrary to the
23 | suggestion of ICNU. For these reasons, Staff supports Avista’s bill credit proposal to
24 | credit back the gain on the Centralia sale.

25 |
26 | The Commission finds that the tariff revision filed by the Company on October 24, 2000,
27 | is consistent with the Commission’s Third Order and concludes therefore that the tariff
28 | should be approved as filed.
29 |

1 A portion of the Skookumchuck facilities was treated as thermal property since it provided a
2 cooling water source to the Centralia Power Plant and was retired as part of the Centralia Power
3 Plant when that plant was sold. Hence, the gain recognized on the sale of the Centralia Power Plant
4 was slightly lower than it would have been if none of the Skookumchuck facilities had been retired at
5 that time. The gain on the sale of the Skookumchuck facilities is now slightly higher due to the
6 earlier, partial retirement. Allocating the gain on the sale of Skookumchuck in the same manner that
7 the gain on the sale of the Centralia Power Plant was allocated results in a total gain being allocated
8 to ratepayers that is the same irrespective of when the Skookumchuck retirements occurred or will
9 occur.

10 **B. Timing of Approval**

11 Washington LLC cannot process its EWG application with the FERC until all of the state
12 regulatory commissions have ruled on the EWG status request. Accordingly, Avista respectfully
13 requests that the Commission process this matter and issue its Order as expeditiously as possible.

14 **C. Appendices to Application**

15 The Sale Agreement, which is the instrument governing the transfer that is the subject
16 of this Application, is included as Appendix 1. The Skookumchuck Dam Management Agreement is
17 attached as Appendix 2. Application Appendix No. 3 consists of Avista's most recent Forms 10-K
18 and 10-Q as filed with the Securities and Exchange Commission. Also, plant balances being retired
19 and the calculation and allocation of the estimated gain is included as Exhibit ___ (RRP-1) to the
20 testimony of Ronald R. Peterson.

21 **VI. REQUEST**

22 Avista requests a Commission order:

- 23 (a) Approving the proposed sale of Avista's interests in the Skookumchuck facilities in

1 accordance with the Sale Agreement;

2 (b) Determining that the proposed transfer of Skookumchuck to Washington LLC and
3 allowing the facility to become an "eligible facility" within the meaning of section 32 of PUHCA (1)
4 will benefit consumers, (2) is in the public interest and (3) does not violate Washington State law;

5 (c) Approving the proposed accounting treatment related to the gain on the sale; and

6 (d) Granting such other relief as the Commission deems necessary and proper.

7
8 Dated at Spokane, Washington this 20th day of February 2004.

9
10 AVISTA CORPORATION

11 BY Kelly O. Norwood
12 Kelly O. Norwood
13 Vice President, State and Federal Regulation
14

1
2 VERIFICATION
3

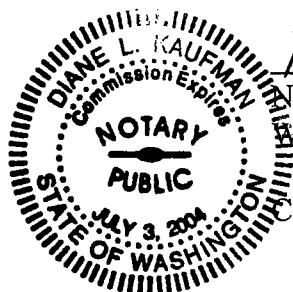
4 STATE OF WASHINGTON)
5)
6 County of Spokane)
7

8
9 Kelly O. Norwood, being first duly sworn on oath, deposes and says: That he is the
10 Vice President, State and Federal Regulation of Avista Corporation and makes this verification for
11 and on behalf of said corporation, being thereto duly authorized;

12 That he has read the foregoing filing, knows the contents thereof, and believes the same to be
13 true.
14

15
16 Kelly O. Norwood
17

18
19 SIGNED AND SWORN to before me this 20th day of February 2004, by Kelly O. Norwood.
20



Diane L. Kaufman

NOTARY PUBLIC in and for the State of
Washington, residing at Spokane.

Commission Expires: 7-3-04