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October 19, 2004

**VIA HAND DELIVERY**

Carole J. Washburn  
Secretary  
Washington Utilities and Transportation Commission  
PO Box 47250  
1300 S. Evergreen Park Drive, SW  
Olympia, WA 98504-7250

**Re: WUTC v. Avista Corporation d/b/a Avista Utilities  
Docket No. UG-041515**

Dear Ms. Washburn:

Enclosed please find an original and 19 copies of the Legal Memorandum of the Northwest Industrial Gas Users Addressing Procedural Issues in the above-captioned proceeding. Electronic copies were sent to the records center on October 19, 2004.

Thank you for your assistance.

Very truly yours,



Edward A. Finklea

EAF/lis  
Enclosures  
cc: Service List



1 the Commission has three options when a gas utility properly files for a tariff revision.  
2 The Commission can take no affirmative action, thereby allowing the tariff to take effect  
3 by operation of law. RCW 80.04.130 ) (1). On its own, or in response to a complaint  
4 brought by a third party, and after proper notice, the Commission can suspend the tariff  
5 and conduct a hearing to investigate the reasonableness and justness of the rates at issue.  
6 The Commission's third alternative is to reject the filing.

7 In this case, the Commission chose to suspend the filing. Some but not all parties  
8 have reached a settlement agreement of all issues approximately two months after Avista  
9 filed the case. The settling parties are now prepared to present the settlement to the  
10 Commission as consistent with the public interest and at the hearing will urge the  
11 Commission to accept the settlement.

12 The procedural rights of non-settling parties will be protected so long as they are  
13 provided with notice and a reasonable opportunity to be heard on the reasons they urge  
14 the Commission to reject the settlement. There is no legal requirement either under this  
15 Commission's procedural rules or under court interpretations of procedural due process  
16 requirements in administrative proceedings that precludes presentation of a settlement  
17 prior to the end of the suspension period. As a matter of sound public policy, the  
18 Commission should, and does, encourage settlements of contested cases provided,  
19 however, that due process and an opportunity to be heard is afforded all parties, including  
20 those not signatory to the particular settlement agreement.


21 The procedural due process rights of all parties have been protected in this case.  
22 The process is being conducted in a manner that ensures that all parties have timely  
23 information and the right to fully participate in the process. Avista served its filing upon  
24 numerous parties, including Public Counsel. A prehearing conference was set to  
25 establish who would seek party status in the case and to set a schedule. Settlement  
26 discussions were noticed, all parties attended, and all in attendance were given the

**LEGAL MEMORANDUM OF THE NORTHWEST INDUSTRIAL GAS USERS  
ADDRESSING PROCEDURAL ISSUES**

1 opportunity to participate in the settlement discussions. All parties have been provided  
2 the opportunity to engage in formal and informal discovery. Finally, all parties opposing  
3 the settlement have been provided with the opportunity to advance their positions against  
4 the settlement consistent with WAC 480-07-740. At the hearing set for October 22, 2004  
5 those opposing the settlement will have the opportunity to cross-examine witnesses  
6 supporting the proposal, the right to present evidence opposing the proposal; the right to  
7 present argument in opposition to the proposal; and the right to present evidence or, in the  
8 commission's discretion, an offer of proof, in support of the opposing party's preferred  
9 result. Thus, at the point when the Commission takes the settlement under advisement at  
10 the end of the hearing scheduled for October 22, 2004, the procedural due process rights  
11 of parties opposing the settlement will have been fully protected.

12 Under these circumstances, the Commission can act on the settlement without  
13 further process and still protect the procedural due process rights of parties opposing the  
14 settlement. The Commission should therefore dismiss any claims by non-settling parties  
15 that due process rights would be violated if the Commission acted after the hearing on  
16 October 22, 2004, by approving the settlement.

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Respectfully submitted,  
  
Edward A. Finklea