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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 Finblea

Edward A. Finklea

EAF/ls
Enclosures

cc: Service List

1	BEFORE THE WASHINGTON UTILITY AND TRANSPORTATION COMMISSION				
2					
3	Docket No. UG-041515				
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5	Washington Hilliam and Tonner (1)	`	D 1 (3)	XIC 044545	
6	Washington Utilities and Transportation Commission,	)	Docket No	UG-041515	
	,	)			
7	Plaintiff,	)			
8		)			
_	V.	)			
9	Avista Corporation d/b/a Avista Utilities.	)			
10	Comment	)			
	Respondent.	)			
11		)			
12					
13	LEGAL MEMORANDUM OF THE NO	RTHWES	ST INDUSTRIA	L GAS USERS	
14	ADDRESSING PRO	CEDURA	AL ISSUES		
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16	Purquent to the Prehearing Conference	o Order M	o Aissped in the	nhava aantianad	
	2 manual to the x remember content of the remaining the more cupitoned				
17	1 6,				
18	Memorandum Addressing Procedural Issues raised by the presentation of a settlement in				
19	this proceeding. It is NWIGU's position that	the Wash	ington Utilities ar	d Transportation	
20	Commission ("WUTC" or "Commission") ca	n act on tl	he proposed settle	ment without	
21	violating the procedural due process rights of	any party	objecting to the s	settlement. So	
22	long as objecting parties have an opportunity	to present	t their views to the	e Commission,	
23	no due process rights are violated by the Commission taking action on the proposed				
24	settlement after the hearing on October 22, 2004.				
25	Procedural due process requires notice	e and an o	pportunity to be h	neard when a	
26	contested settlement is presented during the s	uspension	period. Under R	CW 80.04.130,	
	LEGAL MEMORANDUM OF THE NOR ADDRESSING PROCEDURAL ISSUES	THWEST	ΓINDUSTRIAL	GAS USERS	

- 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.
- 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.
- 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
- 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	upporting 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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18	Respectfully submitted,				
19	Edward a Finklea				
20	Edward A. Finklea				
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