June 11, 2010

VIA: Electronic Mail

David Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S. W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Inquiry on Regulatory Treatment for Renewable Energy Resources – Docket No. UE-100849

Dear Mr. Danner,

Avista supports the examination of whether the Commission should consider adopting new regulations relating to the acquisition of renewable resources by Washington investor owned electric utilities and looks forward to discuss the issues identified by the Commission on page 1 of its May 21, 2010 Notice of Opportunity to File Statements of Issues and Written Comments in this Docket, which are shown below:

Specifically, the Commission will review and discuss:

1. The progress of investor-owned utilities in meeting the renewable portfolio standards (RPS) set by the Energy Independence Act (Initiative 937), RCW 19.285;
2. Whether the existing statutory and regulatory frameworks impede compliance with RPS requirements;
3. Whether the statutory and regulatory frameworks should encourage acquisition of renewable resources in excess of that required by the RPS;
4. Whether the Commission should consider adopting rules or new regulatory practices that would provide incentives for utilities and customers to acquire renewable resources; and,
5. Whether the Commission should propose any legislative changes relative to incentives for acquisition of renewable resources by utilities and customers.

In addition to these topics, "Statement of Issues and Positions" requested to be submitted by June 11, 2010, is intended to ensure that the Commission is aware of all issues that the parties wish to address. Avista's statement of issues is provided below:

a) Description of Problem: A statement citing regulatory or statutory provisions or practices that may make it difficult for a utility to reach its RPS goals or to acquire renewable energy resources.

Avista would like to highlight three concerns in this proceeding: i) current rules may not adequately recognize the Washington Energy Independence Act (I-937) as creating a need for resources in a prudency determination; ii) temporary tax and other financial incentives should be recognized as a valid reason for constructing I-937 resources ahead of the law's schedule; and iii) "dry-hole" development risks are a normal part of renewable energy development, and a mechanism for recovery of these costs should be explicitly addressed.

i) Existing regulatory practice expects an investor-owned utility to demonstrate its "need" to acquire a generation asset to recover the costs of its resource investment. I-937 has superimposed on utility decision-making a requirement that the utility make an investment, either in renewable energy, renewable energy credits, or both, regardless of whether that asset was "needed" to serve the energy and capacity requirements of its retail customers. In addition, Washington utilities are competing with utilities across the West for the most advantageous and cost-effective renewable resources and resource sites. Should an investor-owned utility acquire a renewable energy resource in a timeframe suitable to meet an individual renewable energy target year (the "I-937 Requirement") under RCW 19.285.040(2) but not "need" the capacity or energy from that facility to serve native load at the time the facility entered commercial operation, it potentially exposes itself to regulatory disallowance on its investment.

ii) Significant temporary tax incentives presently are available to reduce renewable project costs by as much as 50%. Under current law, the federal Production Tax Credit and the federal Investment Tax Credit will end in 2012 for wind and 2013 for other non-solar renewable technologies. Solar projects are eligible for the federal Investment Tax Credit through 2016. A Washington State sales and use tax exemption for machinery and equipment is available for renewable energy generation purchases made on or before June 30, 2013. It is unknown whether these economic incentives will be extended beyond their termination dates. Building renewable resources ahead of the I-937 targets to take advantage of the tax credits therefore has the potential to significantly reduce customer rates over the long-term; however, current regulatory rules provide little assurance that a renewable generation investment made in advance of I-937 need will be deemed eligible for full regulatory recovery under such circumstances.

iii) Renewable project development presents a number of challenges differing from non-renewable developments. For example, wind projects require adequate wind, willing landowners, reasonably developable topography, and cost-effective transmission access, among other things. The number of sites meeting these

requirements is few, and the timeframes over which a site's viability may be determined is long. It is not unusual for wind developers to have a considerably larger amount of megawatts under development than ultimately will become completed, cost-effective wind projects. This scenario implies a utility likely will work on a few "dry holes" in the interest of bringing one or more sites to commercial operation. The Commission should clarify that cost recovery should be allowed for prudently incurred costs associated with "dry hole" projects.

b) Description of Possible Solution: Clearly discuss recommended policy, rule or legislative solution(s) to the cited problem.

In response to the problems identified above, the following solutions and direction are suggested:

i) I-937 creates a need beyond traditional capacity and energy. This regulatory accommodation can be effectively provided by re-defining the concept of "need" in a prudency determination to include I-937 law, or, more specifically, what is meant by the phrase "used and useful" under RCW 80.04.250.

ii) The Commission should, at a minimum, adopt new administrative rules enabling investor-owned utilities to take advantage of temporary economic incentives lowering renewable resources procurement costs significantly, even if that means allowing the acquisition in advance of RCW 19.285.040(2) targets. Appropriately encouraging renewable energy resource acquisition described in i) above involves prescribing circumstances under which early construction can occur. The existing provisions of RCW 19.285.050(2) that provide that "an investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter," do not sufficiently define what is meant by "prudently incurred." As such, by rulemaking, this Commission can provide the necessary clarity that will allow the utilities to proceed with investments in renewable resources under the circumstances described above.

iii) Rules and rulemaking practices should acknowledge that reasonable "dry hole" risks are a prudent business expense in the pursuit of renewable resource development. They should define renewable energy project development costs that are eligible for recovery, and clarify whether there are costs that are not eligible. Recovery should consider the time value of money, or return on investments, associated with dry hole risk.

If the Commission does not believe it presently has the authority to make the determinations requested above, Avista is hopeful that the Commission will support

legislation clarifying its regulatory authority and providing guidance on the review and approval process of I-937 resources.

c) Summary of Associated Issues: Identify any impacts on other regulatory practices, impacts on consumer rates, or any other issues associated with either the described problem or possible solution.

The passage of Initiative 937 creates a value associated with environmental attributes that did not exist prior to its existence, yet these attributes are not addressed in current regulation. Under the Public Utilities Regulatory Policies Act of 1978 (PURPA), utilities are obligated to purchase the output from "qualifying facilities." Utilities have historically been granted all production from the PURPA facilities in exchange for scheduled payments. The Commission should provide needed clarity on this issue, both for existing and future contracts, by ruling that the environmental attributes from PURPA contracts are for the benefit of the purchasing utility and its customers. Alternatively, if the Commission does not believe it has the authority to make this determination, it could support legislation to enable such authority.

In conclusion, the Washington State Energy Independence Act (I-937) requires certain utilities in Washington (including Avista) to meet an increasing amount of their retail load with new renewable resources in the future. Other states in the West, such as Oregon and California, also have renewable portfolio standards, or RPS requirements. Therefore, Washington utilities not only have a requirement to meet the state standard, but they are also competing with other utilities in the West for the most advantageous and cost-effective renewable resources and resource sites.

In light of these requirements and the competition for available sites, we are hopeful that the proposed rulemaking by the WUTC will provide more clarity around the opportunity for cost recovery related to the acquisition of renewable resources, especially as it relates to the possible acquisition of resources, or resource sites, prior to the time they are needed or required by law.

Avista looks forward to participating in the upcoming workshop. If you have any questions regarding these issues, please contact Linda Gervais, Manager, Regulatory Policy at 509-495-4975 or myself at 509-495-4267.

Sincerely,

Kelly Norwood

Kelly Norwood
Vice President, State and Federal Regulation