

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
BEFORE THE
BONNEVILLE POWER ADMINISTRATION

Bonneville Power Administration	(BPA File No: WP-10
FYs 2010-2011 Proposed Power and	(
Transmission Rate Adjustments	(

**RESPONSE OF PUBLIC POWER COUNCIL
TO MOTION OF AVISTA CORPORATION TO STRIKE PORTIONS OF DIRECT
TESTIMONY OF THE PUBLIC POWER COUNCIL, ET AL.**

BACKGROUND

On March 31, 2009, Avista Corporation (Avista) filed a motion to strike portions of the direct testimony of the Public Power Council, et al. (PPC), filed as WP-10-E-JP8-1, that deals with the proposed settlement of Avista's deemer account between BPA and Avista. In its motion, Avista seeks to strike from page 13, line 22 through page 14, line 5 of PPC's testimony because Avista argues that it is 1) "beyond the scope of the proceeding . . . as set forth in BPA's Federal Register Notice," 2) is "not relevant to an issue that is within the scope of this proceeding," and 3) is an attempt to "collaterally attack issues in other, separate proceedings—i.e. the WP-07 Supplemental Wholesale Power Rate Case and the separate proceeding regarding the Avista deemer settlement." Avista Motion, WP-10-M-AC-01, p.2.

RESPONSE

PPC addresses each of Avista's arguments below. For the Hearing Officer's reference, the portion of PPC's testimony which Avista seeks to have stricken states:

Q. Do you have any comments to make regarding BPA's proposed treatment of the potential Avista deemer settlement?

A. Yes. We would like to note that PPC has opposed the proposed settlement regarding the Avista deemer account in separate proceedings and would like to assert our position that a settlement of the deemer amount for an amount significantly below its current level is inequitable to BPA's preference customers. As is, we do not see any significant reciprocal value in the proposed settlement for the preference customers, and the fact that BPA now projects fully amortizing Avista's Lookback amount in FY 2020 rather than FY 2022 as a result of reducing the liability does not change this position.

I. The Portion of PPC's Testimony that Avista Seeks to Strike is Not Beyond the Scope of the Proceeding as Set Forth in BPA's Federal Register Notice.

Although Avista asserts that PPC's testimony is beyond the scope of this proceeding as set out in the Federal Register Notice, Avista does not specifically describe the limitation to which it is referring. *See* Avista Motion, p. 2 (pointing to general portion of Federal Register Notice that sets out the scope of the proceeding). Contrary to Avista's statement, PPC does not believe the Federal Register Notice excludes testimony regarding the Avista Deemer settlement.

The Federal Register Notice does state that the Administrator directs the Hearing Officer to exclude argument and testimony that "challenges the appropriateness or reasonableness of the Administrator's decisions on power spending levels." 74 Fed. Reg. 6609, 6614. However, it goes on to state that "[e]xcluded from this direction are revenue requirements related to . . . residential exchange expense." *Id.* Because Avista's deemer balance affects, or could affect, the amount of "residential exchange expense" BPA provides for in this proceeding (*i.e.* assumptions regarding Avista's deemer amount can affect the amount of its lookback that is offset against payments it receives in FY '10-'11), testimony concerning the appropriate deemer balance falls within the exclusion to

the Administrator's direction to exclude testimony regarding power spending levels, and should not be excluded based on the Federal Register Notice.

II. The Testimony is Relevant to Issues in This Proceeding.

PPC's testimony is relevant to issues in this proceeding. At WP-10-E-BPA-10, pp. 25-25, BPA's Direct Testimony states,

BPA has proposed a settlement with Avista regarding its deemer account balance, which is undergoing a review and comment process. Depending on the outcome of that process, Avista's deemer balance may be altered from the assumption used in the WP-07 Supplemental proceeding.

Further, BPA testimony in WP-10-E-BPA-19 explains the changes that BPA will make to its Lookback Study if Avista's deemer account is settled. *See* WP-10-E-BPA-19, pp. 15-16.

Because BPA is proposing to alter its Lookback Study based on the status of the Avista deemer settlement, which will alter the amount of lookback collected from the Investor-Owned Utilities during the rate period, the status of the Avista settlement will have an impact on the ultimate rate level BPA sets for its preference customers in this case. PPC's testimony on the topic of whether the Avista settlement is prudent is therefore relevant to the issues in this case, and to BPA's Direct Testimony cited above.

The fact that BPA may make its ultimate determination based on comments received in a forum other than this rate case does not mean that the testimony on the topic is irrelevant to this case. Moreover, PPC points out that the thrust of its comments on the Avista settlement were made in separate comments to BPA, and that its testimony in this proceeding, for the most part, simply refers to those other comments. Again, this does not make PPC's position on the Avista settlement irrelevant to this proceeding.

III. The Testimony Does Not Inappropriately Attempt to Attack Issues In Other Proceedings.

Avista states that PPC's testimony should be stricken because it "is attempting to collaterally attack issues in other, separate proceedings—i.e., the WP-07 Supplemental Wholesale Power Rate Case and the separate proceeding regarding the Avista deemer settlement." Avista cites the WP-07 Supplemental ROD at 221-22 to support its position.

Page 221 of the WP-07 Supplemental ROD states,

BPA is not resolving the deemer issues as part of this proceeding. Instead, BPA is making assumptions for purposes of calculating the Lookback Amounts.

Additionally, at p. 221-22, the ROD states,

Consistent with BPA's position that the decisions in this proceeding do not constitute final determinations of disputed deemer issues, if deemer issues are settled or otherwise determined subsequent to this proceeding, BPA will reflect the resolution of issues in the respective IOUs' Lookback Amounts.

These statements make clear that BPA did not resolve deemer issues in the WP-07 Supplemental Case, and that BPA simply made its best assumption about what the deemer balances were for purposes of setting rates. However, these statements in no way prevent PPC from offering testimony about the proposed Avista deemer in this proceeding.

First, the WP-07 Supplemental Rate Case set rates for FY 2009. Thus, the decisions in that rate case do not apply to the rates being set in this proceeding, which deals with rates for FY 2010-11. Second, the statements actually support the inclusion of PPC's testimony because they make clear that BPA is endeavoring to set its rates based on the best reasonable assumption of deemer amounts. PPC's testimony argues against BPA's assuming a settlement of Avista's deemer account, and points out that in other contexts, PPC has argued that the settlement should

not be entered. All of this testimony is relevant to this proceeding, in which BPA must make a reasonable determination about what Avista's deemer amount is.

Avista also urges that PPC's testimony should be stricken because "[t]he Avista deemer settlement was separately noticed and is the subject of a separate proceeding." Avista Motion, p. 2. However, the separate notice that Avista refers to does not state that the issue of whether BPA will settle with Avista cannot be commented on in the WP-10 rate proceeding.¹ Instead, it states that BPA was seeking public comment on the proposed settlement through a separate public comment process. The fact that BPA seeks broader public comment on an issue through a separate public process does not mean that parties are restrained from making comments on the same issue in the rate case where the issue is relevant. As explained above, the Avista settlement is relevant to the rates BPA is setting in this proceeding, and issues regarding it are not excluded from this proceeding by the Federal Register Notice.

CONCLUSION

For all of the above reasons, the Hearing Officer should deny Avista's motion to strike portions of PPC's testimony.

Respectfully submitted this 7th day of April, 2009.

/s/ Mark R. Thompson
Public Power Council
825 NE Multnomah St., Ste. 1225
Portland, OR 97232
(503) 595-9779
mthompson@ppcpdx.org
Attorney for Public Power Council

¹ The notice regarding BPA's seeking of comment on the Avista settlement is posted at http://www.bpa.gov/power/pl/regionaldialogue/implementation/Correspondence/Materials/2009-01-28_AVDeemerGendronLetter.pdf.