

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
AVISTA CORPORATION FOR THE )  
AUTHORITY TO INCREASE ITS RATES AND )  
CHARGES FOR ELECTRIC AND NATURAL )  
GAS SERVICE TO ELECTRIC AND NATURAL )  
GAS CUSTOMERS IN THE STATE OF IDAHO. )**

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**CASE NO. AVU-E-04-1  
AVU-G-04-1  
ORDER NO. 29583**

On August 4, 2004, Potlatch requested the following information from Avista:

Request No. 86:

In Avista's latest quarterly earnings report, Gary Ely states that Avista has entered into a non-binding letter of intent to purchase Mirant's half-interest in Coyote Springs II.

- (a) Please provide a copy of the letter of intent.
- (b) Please provide a statement of the purchase price and any terms and conditions agreed to by Avista and Mirant that are not included in the letter of intent.
- (c) Please provide copies of all studies comparing the cost and benefits of Coyote Springs II to existing or potential alternative resources.

*IDAPA 31.01.01.225*

Avista objected to Potlatch's request for information in the following manner:

Response No. 86

Avista respectfully objects to this request for information. The possible purchase of Mirant's interest in Coyote Springs II is not at issue in these proceedings; Avista has asked for no rate relief or other regulatory treatment with respect to this potential transaction in this docket. Should Avista consummate this purchase, any request for associated rate relief will be the subject of future proceedings, which will afford all parties the opportunity for discovery.

Moreover, it should be recognized that only a confidential non-binding letter of intent has been executed. A definitive Purchase and Sale Agreement has yet to be negotiated and executed. Unless and until such an agreement is reached, any such purchase remains indefinite.

On August 24, 2004, Potlatch filed a Motion to Compel Discovery Responses together with an accompanying Affidavit. As reflected in the Affidavit, Potlatch states and contends as follows:

Avista Corporation has failed to produce discoverable records concerning its intent to purchase Mirant's half-interest in Coyote Springs II on the grounds that "the possible purchase of Mirant's interest in Coyote Springs II is not at issue in these proceedings." Avista Corporation's objection is inconsistent with the rules of discovery and law. Rule 26(b)(1) of the Idaho Civil Rules provides that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...." One of the primary issues in this case is whether Avista should be allowed to ratebase construction costs in excess of Coyote Springs II's fair market value. The price and terms of the potential purchase of Mirant's half of Coyote Springs II are obviously relevant to the determination of the plant's fair market value. More generally, this case calls into question the prudence of Avista's resource acquisition strategies in its dealings with Mirant in the natural gas transaction identified as "Deal A," and all of the discovery requests are designed to produce information relevant to these issues.

Potlatch requests an immediate Order compelling the production of Potlatch Corporation's six set of discovery requests to Avista Corporation by August 30, 2004, in order that Potlatch Corporation and the Commission may be fully advised concerning Avista Corporation's intent to purchase Mirant's half-interest in Coyote Springs II. Potlatch does not request oral argument on this motion, but stands ready to appear in any further proceedings the Commission may deem necessary or advisable.

On August 30, 2004, Avista filed an Answer to Potlatch's Motion to Compel. Avista objects to Potlatch's request on the following grounds:

The possible purchase of Mirant's interest in Coyote Springs II is not at issue in these proceedings; Avista has asked for no rate relief or other regulatory treatment with respect to this potential transaction in this docket. Should Avista consummate this purchase, any request for associated rate relief will be the subject of future proceedings, which will afford all parties the opportunity for discovery.

Moreover, Avista notes, it should be recognized that only a confidential non-binding letter of intent has been executed. A definitive Purchase and Sale Agreement has yet to be executed. Unless and until such an agreement is reached, any such purchase remains indefinite. At issue in this rate case, the Company contends, are the facts and circumstances known to Avista at the time it decided to initially acquire Coyote Springs II—not the terms of a potential purchase several years later of Mirant’s share.

Avista recommends that Potlatch’s Motion to Compel be denied.

### **COMMISSION FINDINGS**

The Commission has reviewed Potlatch’s Production Request No. 86, Avista’s Answer and Potlatch’s related Motion to Compel and the Company’s response. The Commission finds that the parties have complied with the Commission’s rules of discovery, i.e., IDAPA 31.01.01.221-234 and the Idaho Civil Rules of Procedure (ICRP) Rules 26 and 37. The general rules governing the scope of discovery are found in ICRP Rule 26(b)(1). It states that parties may obtain discovery regarding any matter that is not privileged and which is relevant to the subject matter involved in the pending action. The discovery must reasonably be calculated to lead to discovery of admissible evidence at hearing. The Commission notes that the record in Case No. AVU-E-04-1 has already closed. We further find that the information sought regarding what is only a “non-binding letter of intent” would not be relevant in informing our decision in this case. The Commission is persuaded by Avista’s argument regarding Potlatch’s Production Request No. 86 and finds it reasonable to deny Potlatch’s related Motion to Compel.

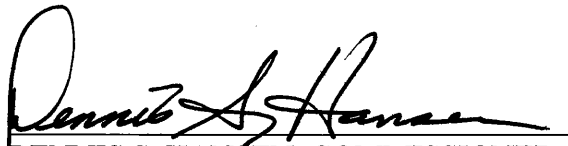
### **ORDER**

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny Potlatch’s Motion to Compel.

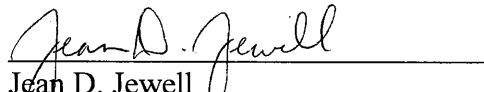
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3<sup>rd</sup>  
day of September 2004.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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