

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL STAFF**

FROM: SCOTT WOODBURY

DATE: AUGUST 25, 2004

**RE: CASE NOS. AVU-E-04-1/AVU-G-04-1 (Avista)
POTLATCH DISCOVERY REQUEST—MOTION TO COMPEL**

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.

IDAPA 31.01.01.225.03.

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.

COMMISSION DECISION

Potlatch has requested information regarding the possible purchase by Avista of Mirant's half-interest in Coyote Springs II. Avista has objected to Potlatch's request for information. Potlatch has filed a Motion to Compel. How does the Commission wish to handle Potlatch's Motion?

Scott Woodbury

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