

## **76 FERC - 101 FERC, 87 FERC ¶61,223, Avista Corporation, Docket No. ER99-55-000, (May 27, 1999), (May 27, 1999)**

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*Energy & Natural Resources > FERC Opinions, Orders & Decisions (1 FERC - present) > 76 FERC - 101 FERC > Volume 87 (April-June 1999) > Commission Opinions, Orders, and Notices > 87 FERC ¶61,223, Avista Corporation, Docket No. ER99-55-000, (May 27, 1999), (May 27, 1999)*

**Avista Corporation, Docket No. ER99-55-000**

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[¶61,223]

**Avista Corporation, Docket No. ER99-55-000**

**Order Granting Waiver of Notice, Conditionally Accepting for Filing Proposed Rates for Ancillary Services, and Announcing Generic Policy on Flexible Rates for Third-Party Ancillary Services Providers**

**(Issued May 27, 1999)**

**Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.**

In this order, the Commission conditionally accepts for filing, without suspension or hearing, an application to provide ancillary services at market-based rates.<sup>1</sup> We grant waiver of the

[61,881]

Commission's 60-day prior notice requirement to allow the proposed rates to become effective on the dates requested, as discussed below. The Commission also announces a generic policy that allows flexible rates for third-party providers of ancillary services who are unable to develop a reliable market power analysis.<sup>2</sup>

*Background*

On October 6, 1998, Avista Corporation (Avista)<sup>3</sup> filed a proposed additional service schedule to FERC Electric Tariff, First Revised Volume No. 9 (Schedule E). Schedule E provides for the provision of Dynamic Capacity and Energy Service at market-based rates, which Avista explains is a power sales service and which Avista contends falls within the market-based rate authority that it previously was granted for power sales.<sup>4</sup> Avista requests waiver of the Commission's prior notice requirement to the extent necessary to permit an effective date of October 6, 1998, the date of filing. Avista states that good cause exists for such waiver because it is offering new service under Schedule E.

On December 2, 1998, Avista filed two additional proposed service schedules: Schedule I (Spinning Reserve Service) and Schedule J (Supplemental Reserve Service). Those two services (unlike Schedule E service) are the same as the comparably-named services identified in [Order No. 888](#),<sup>5</sup> except they would be provided only to third party customers who are not within Avista's service area (*i.e.*, not as part of transmission service that Avista itself would provide). Accordingly, Avista filed a market analysis for ancillary services in support of Schedules I and J, as well as in further support of its request for acceptance of Schedule E (the ancillary services market analysis would be applicable to Schedule E service in the event the Commission declines to accept Schedule E as a power sales service). Avista requests waiver of the Commission's prior notice requirement to the extent necessary to permit an effective date for Schedules I and J of December 2, 1998, the date of filing.

On January 29, 1999, the Director, Division of Rate Applications, Office of Electric Power Regulation, sent a letter directing Avista to provide additional information concerning its filings.

On March 15, 1999, as corrected on March 24, 1999, Avista filed a Revised Ancillary Services Market Study (Revised Market Study) in response to the January 29 Letter.<sup>6</sup>

#### *Notice of Filing*

Notice of the October 6 filing was published in the *Federal Register*, 63 *Fed. Reg.* 56,017 (1998), with comments, protests, and motions to intervene due on or before October 26, 1998. None was filed. Notice of the December 2 filing was published in the *Federal Register*, 63 *Fed. Reg.* 69,276 (1998), with comments, protests, and motions to intervene due on or before December 22, 1998. None was filed.

Notices of Avista's March 15 and 24 filings were published in the *Federal Register*, 64 *Fed. Reg.* 14,900 and 16,438 (1999), with comments, protests, and motions to intervene due on or before April 13, 1999. On April 1, 1999, Enron Power Marketing, Inc. (Enron) filed a motion to intervene in support of Avista's proposed entry into the ancillary services markets in the Pacific Northwest and California.

#### *Discussion*

Under Rule 214 of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.214](#) (1998), Enron's timely, unopposed motion to intervene serves to make it a party to this proceeding.

In [Order No. 888](#) and subsequent cases, the Commission required transmission providers to offer certain ancillary services at cost-based rates as part of their open access commitment but also contemplated that third parties (parties other than the transmission provider in a

**[61,882]**

particular transaction) would also provide ancillary services.<sup>7</sup> The Commission also left open the door that ancillary services could be provided on other than a cost-of-service basis. In [Order No. 888](#), the Commission stated that it would entertain requests for market-based pricing related to ancillary services on a case-by-case basis if supported by analyses that demonstrate that the seller lacks market power in these discrete services.<sup>8</sup> In *Ocean Vista Power Generation, L.L.C.*, 82 FERC ¶61,114, at pp. 61,406 -07 (1998) (*Ocean Vista*), the Commission explained that as a general matter a study of ancillary service markets should address the nature and characteristics of each ancillary service, as well as the nature and characteristics of generation capable of supplying each service, and that the study should develop market shares for each service. The Commission also noted that it would entertain alternative explanations and approaches.

The Commission further offered more detailed guidance for what a market power study for ancillary services markets should include: (1) defining a relevant product market for each ancillary service, which should include the applicant's product, together with other products that, from the buyer's perspective, are good substitutes; (2) identifying the relevant geographic market, which could include all potential suppliers of the product from whom the buyer could obtain the service, taking into account relevant factors which may include the other suppliers' locations, the physical capability of the delivery system and the cost of such delivery, and important technical characteristics of the suppliers' facilities; (3) establishing market shares for all suppliers of the ancillary services in the relevant geographic markets; and (4) examining other barriers to entry.

The guidance offered by the Commission in [Order No. 888](#) and *Ocean Vista* was designed for two purposes: to ensure that sellers of ancillary services do not exercise market power and to further the goal of promoting competition in ancillary service markets. However, since issuing that guidance it has become clear to us that two problems are hindering the development of ancillary service markets.

First, there are industry data problems that may be precluding many potential sellers of ancillary services from performing reliable market analyses. Second, if we do not find alternative means of regulating ancillary service rates at this early stage in the development of competitive wholesale power markets, we may not be able to encourage sufficient market entry of third-party providers of ancillary services. Because the provision of these services is a key component in the development of competitive power markets, we have therefore developed an alternative method of providing rate flexibility that is designed to encourage entry into ancillary service markets and promote competition in these markets and, at the same time, protect against market power and anticompetitive behavior. We discuss below the data problems that are being encountered by market participants, as exemplified in the particular context of this case, and a modified rate policy which responds to these problems.

### *Data Problems*

Avista is a third-party supplier of ancillary services. However, we are unable to ascertain from Avista's Revised Market Study whether or not it has market power in the relevant ancillary services markets. The reason for this is because Avista has not been able to obtain reliable estimates of other suppliers' abilities to supply ancillary services. Avista's failure to provide an adequate market power analysis is the result of its inability to obtain factual data about the ancillary service capabilities of other suppliers.<sup>9</sup> Avista explains that it attempted by telephone surveys to obtain the critical supply data (e.g., which resources have automatic generation control (AGC) equipment, and unit ramp rates). When Avista's requests for data were refused, it used its "judgment and applied operating generalities that were learned from operators of other, similarly situated projects."<sup>10</sup>

We recognize that the data collection problems encountered by Avista may similarly affect other third parties requesting market-based rates for sales of ancillary services. We also recognize that, in many cases, these data problems may be difficult to overcome, since the data that is needed to quantify ancillary service capacity may not be available from public sources and is often viewed as proprietary by the generation owner (e.g., unit ramp rates). Indeed, because ancillary services markets are just beginning to emerge, in some cases the necessary information (e.g., facts supporting

**[61,883]**

or refuting the availability of ancillary services) may not exist.

Another potential data problem is that (as the Commission recognized in [Order No. 888](#)) the location of the generator may be critical in determining its usefulness for providing ancillary services.<sup>11</sup> Inclusion of off-system generators as potential ancillary service suppliers assumes that there are no technical impediments to customers accessing each of the identified suppliers, and that the necessary off-system transmission services can be obtained. We cannot make that assumption at this time, however, because off-system ancillary service transactions are as yet rare (e.g., generally limited to operating reserve sharing within power pools). Moreover, even if off-system supply could somehow be quantified, the assumption that all supply can reach each market is as yet speculative.

### *Promoting Competition in Ancillary Services Markets*

The Commission believes generally that entry by third-party suppliers in ancillary services markets in which a transmission provider is obligated to provide such services at cost-based rates can potentially result in lower prices than would otherwise emerge. Such outcomes, however, depend on third parties' and transmission providers' relative costs, the structure of the market, and the circumstances under which prices are determined.

In the situation where the transmission provider is obligated under [Order No. 888](#) to meet all demand for ancillary services in the market at a cost-based rate, a third-party supplier will have an incentive to compete business away from the transmission provider if discounting from the transmission provider's cost-based rate is profitable. With enough entry, stimulated by the ability of third-party suppliers to charge flexible rates, prices would eventually be bid down to competitive levels. However, even though the transmission provider has authority to offer discounts on its tariff rates for ancillary services, if a third-party supplier has market power, prices are unlikely to fall as much as they would otherwise.

While the Commission wishes to foster entry into ancillary services markets and thereby capture the benefits of some price reduction, it is necessary to guard against potential anticompetitive behavior (e.g., withholding or otherwise manipulating prices) by third-party suppliers who may have market power. Therefore, we conclude that third party ancillary service sellers that cannot perform a market power study should be allowed to sell ancillary services at flexible rates, but only in conjunction with a requirement that such third parties establish an Internet-based OASIS-like site for providing information about and transacting ancillary services.<sup>12</sup>

We base our policy in this case on the expectation that--as entry into ancillary service markets occurs--prices will decrease from the level established by the transmission provider's cost-based rate. Under these circumstances, customers will pay prices for ancillary services that are no higher than and will very likely be

lower than the transmission provider's cost-based rate.<sup>13</sup> The ancillary services customer will be protected in part by the availability of the same ancillary services at cost-based rates from the transmission provider. The backstop of cost-based ancillary services from the transmission provider will, in effect, limit the price at which customers are willing to buy ancillary services. We believe that this protection, in conjunction with the Internet-based site requirement, as discussed in more detail below, will provide an appropriate and effective safeguard against potential anticompetitive behavior. As a result, this approach will further the Commission's goal of promoting entry into ancillary

**[61,884]**

services markets, the development of competitive power markets and cost savings to customers.

As discussed in the next section, the information contained in the Internet-based site would include service availability, prices, and requests granted and denied. Over time--and with the described safeguards in place--we would expect competitive ancillary services markets to develop. To further monitor development of market entry, we will require third-party suppliers to file with the Commission one year after their Internet-based site is operational (and at least every three years thereafter<sup>14</sup>) a report detailing their activities in the ancillary services market.

We will therefore allow Avista and other third-party suppliers who are unable to perform a reliable market power analysis to charge flexible rates for ancillary services if they establish the Internet-based site needed to guard against potential anticompetitive behavior and comply with the market monitoring reporting requirements discussed above.<sup>15</sup>

We conclude that it is appropriate to apply the same Internet-based site requirement to third-party applicants that are able to perform a market analysis and show that they lack market power, but we will give such applicants the option of demonstrating that Internet-based site requirements different than those discussed below are appropriate for their circumstances.

*Establishment of an Internet-based Site For Applicants That Do Not Perform a Market Power Analysis*

If the applicant cannot perform a study showing that it lacks market power in the provision of ancillary services, it may receive flexible rates provided it safeguards against potential anticompetitive behavior by establishing an Internet-based site for providing information regarding, and conducting, ancillary services transactions. The site would include postings of offers of services available and their offering prices and would provide customers with the ability to request services and make bids for these services. The site would also contain information about accepted and denied requests and the reasons for denial. The site should conform to the applicable OASIS Standards and Communications Protocols (Version 1.3).

*Conclusion*

As we explained above, in this case we have already determined that Avista has been unable to perform a reliable market power analysis to show that Avista lacks market power for ancillary services. Accordingly, we will conditionally grant Avista approval to charge flexible rates for ancillary services only upon the condition that Avista establishes an Internet-based OASIS-like site as described above within 30 days and files with the Commission one year after such a site is operational (and at least every three years thereafter) a report describing its activities in the ancillary services markets.<sup>16</sup>

*Waivers*

We find good cause to grant Avista's requests for waiver of the Commission's 60-day prior notice requirement,<sup>17</sup> and we will allow Avista's market-based rates to become effective on October 6, 1998 (Schedule E) and on December 2, 1998 (Schedule I and Schedule J), as requested.

*The Commission orders:*

(A) Avista's proposed Schedule E is hereby conditionally accepted for filing, without suspension or hearing, to become effective on October 6, 1998, as requested, on the condition that Avista makes a compliance filing modifying its rate schedules to reflect the conditions and limitations discussed above and showing that it has established an Internet-based site, similar to OASIS, as described in the body of this order, within 30 days.

(B) Avista's proposed Schedule I and Schedule J are hereby conditionally accepted for filing, without suspension or hearing, to become effective on December 2, 1998, as requested, on the condition that Avista makes a compliance filing modifying its rate schedules to reflect the conditions and limitations discussed above and showing that it has established an Internet-based

**[61,885]**

site, similar to OASIS, as described in the body of this order.

(C) Avista is hereby directed to make a compliance filing, modifying its rate schedules to reflect the conditions and limitations discussed above and establishing an Internet-based site, similar to OASIS, within 30 days of the date of this order.

**-- Footnotes --**

**[61,880]**

**Footnotes**

1 As noted below, *see infra* note 4, Avista previously was authorized to sell power and energy at market-based rates. Our action here authorizing Avista to sell ancillary services at market-based rates is premised, in part, on this prior authorization to sell power and energy at market-based rates. Similarly, we will authorize other potential third-party providers of ancillary services to provide such services at

**[61,881]**

flexible rates only if they first are otherwise authorized to sell power and energy at market-based rates.

2 The Commission's authorization of flexible rates for ancillary services will extend only to the following four ancillary services: Regulation Service, Energy Imbalance Service, Spinning Reserves, and Supplemental Reserves.

3 Avista was formerly the Washington Water Power Company; Avista filed a notice of succession with the Commission on January 25, 1999 in Docket No. ER99-1435-000. For the sake of clarity, the applicant in this case will be referred to throughout as Avista.

4 *Washington Water Power Company*, [77 FERC ¶61,233](#) (1996).

5 *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, [Order No. 888](#), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036 (1996), *order on reh'g*, [Order No. 888-A](#), *FERC Statutes and Regulations* ¶31,048 (1997), *order on reh'g*, [Order No. 888-B](#), [81 FERC ¶61,248](#) (1997), *order on reh'g*, [Order No. 888-C](#), [82 FERC ¶61,046](#) (1998).

6 For clarity, in the discussion below, this order will only refer to the March 24 filing.

**[61,882]**

7 See, e.g., [Order No. 888](#), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036, at pp. 31,720 -21.

8 [Order No. 888](#), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036, at pp. 31,720 -21; [Order No. 888-A](#), *FERC Statutes and Regulations* ¶31,048 at pp. 30,237 -38.

9 Avista concedes that, at this time, none of the suppliers identified in its Revised Market Study offers ancillary services to off-system third parties under cost-based tariffs.

10 Avista Revised Market Study at 3.

**[61,883]**

11 E.g., [Order No. 888](#), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036, at pp. 31,715 -16.

- 12 The Commission will apply this policy only to applicants who are authorized to sell power and energy at market-based rates. See *supra* note 1. In addition, the Commission will not apply this approach to sales of ancillary services by a third-party supplier in the following situations: (1) the approach will not apply to sales to a regional transmission organization (RTO) such as an independent system operator (ISO) or transco, *i.e.*, where the RTO has no ability to self-supply ancillary services but instead depends on third parties; our experience to date indicates that the data problems associated with market analysis involving sales to an ISO, for example, should not be insurmountable and an appropriate showing of a lack of market power can be made; (2) to address affiliate abuse concerns, the approach will not apply to sales to a traditional, franchised public utility affiliated with the third-party supplier, or to sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier; and (3) the approach will not apply to sales to a public utility who is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers (the Commission is open, however, to considering requests for market-based rates in such circumstances on a case-by-case basis).
- 13 The Commission is cognizant of--but will address separately and at the appropriate time--situations in which it becomes apparent that, due to changes in ancillary services markets, competitive prices would be higher than the transmission provider's cost-based rate, were it not for the transmission provider's obligation to meet all demand for ancillary services at such a rate.

**[61,884]**

- 14 The Commission reserves the right to require that such a report be filed at any time.
- 15 The transmission provider will continue to be obligated to offer ancillary services as required by [Order No. 888](#) and the *pro forma* tariff. See [Order No. 888](#), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036, at pp. 31,703 -22; [Order No. 888-A](#), *FERC Statutes and Regulations* ¶31,048, at pp. 30,226 -38, 30,511-12, 30,538-40. These services will continue to be provided at cost-based rates, as they have been to date, as we continue to presume that the transmission provider may have market power.
- 16 We emphasize that applicants are still required to report ancillary service sales and prices in their quarterly filings, following the same reporting requirements that apply to sales of energy at market-based rates.
- 17 See *Central Hudson Gas & Electric Corporation*, [60 FERC ¶61,106](#), *order on reh'g*, [61 FERC ¶61,089](#) (1992).