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Via Electronic and US Mail

Carole Washburn
WUTC
1300 S. Evergreen Park Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: Avista Petition for an Accounting Order Regarding the Appropriate Treatment of the Net Costs Associated with the Repurchase of Debt
Docket No. U-070311

Dear Ms. Washburn:

The Industrial Customers of Northwest Utilities (“ICNU”) submits this letter to the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) in response to Avista Corporation’s (“Avista”) Petition for an Accounting Order (“Petition”). ICNU respectfully requests that the Petition be suspended and considered in Avista’s next general rate case. In the alternative, ICNU requests that the Petition be rejected or set for hearing.

On February 14, 2007, Avista filed the Petition requesting that the Commission issue an accounting order for approval of the treatment of costs related to the repurchase of debt from 2002 to 2006. The debt that Avista repurchased was incurred during the western energy crisis, when Avista’s credit rating fell below investment grade. In order to return its credit rating to investment grade, according to Avista, it was necessary to reduce its debt percentage in relation to total capitalization.^{1/} Apparently, from 2002 to 2006, Avista repurchased small blocks of bonds to reduce its interest expense without refunding, *i.e.*, converting long-term debt into another form of long-term debt.

When repurchasing debt without refunding, utilities are required to follow Federal Energy Regulatory Commission (“FERC”) General Instruction 17 (“FERC 17”), which mandates that repurchasing costs be amortized over the remaining life of the

^{1/} Petition at ¶ 7.

original debt that was retired.^{2/} Deviation from the FERC accounting rules can be “accomplished *only after due notice and order of this Commission.*”^{3/}

Avista, however, did not follow FERC 17 and proceeded to amortize the repurchase costs over the much longer average life of all of Avista’s outstanding debt.^{4/} Moreover, at no point did Avista apply to the WUTC for permission to deviate from FERC 17, as the WUTC’s rules require.

On March 12, 2007, ICNU received a draft Staff report recommending that the Commission grant Avista’s Petition because Avista acknowledged that it violated the Commission’s rules and agreed to follow the rules in the future. Attachment A to the Staff Report appears to show that Avista was able to greatly improve its 2002 and 2003 earnings by ignoring FERC 17 and utilizing its own accounting method.

In making its recommendation, Staff explains that “[t]he impact on ratepayers is debatable given that [Avista’s] last two rate cases were settled” and that “[o]ne could reasonably assume that customers received the benefit . . .” Staff then states, however, that “[c]ustomers will incur higher costs for the next several years using [Avista’s] proposed method.”^{5/} It is unclear whether ratepayers benefited in the previous years under Avista’s accounting method; however, it is clear that Avista violated the Commission’s rules and, if the accounting treatment is approved, customers will incur higher costs in the near future. If anybody should be given the benefit of the doubt, it should be customers and *not* Avista. At a minimum, Avista should be required to prove to the WUTC that its accounting method will not cause any harm to customers.

The last time Staff was faced with a violation of the accounting rules, Staff recommended that corrective action be taken.^{6/} In that case, PSE automatically deferred and amortized all rate case costs, in violation of FERC’s accounting rules and WAC §§ 480-90-203 and 480-100-203. Staff argued that the Commission never authorized PSE to automatically defer rate case expenses, and that all deferred accounts require express, advance approval. As such, Staff formulated a recommendation to the Commission to bring PSE back into compliance with the law.^{7/} The WUTC agreed with Staff, although the Commission noted that PSE had some basis to infer that it had the authority to automatically defer those costs.^{8/}

Unlike that case, the circumstances here appear to involve a willful violation of the WUTC’s rules by Avista. Yet, Staff does not recommend any corrective

^{2/} See WAC §§ 480-90-203; 480-100-203 (requiring electric and gas utilities to follow FERC accounting rules).

^{3/} WAC §§ 480-90-203(3); 480-100-203(3) (emphasis added).

^{4/} Petition at ¶ 9.

^{5/} Staff Recommendation at 2.

^{6/} WUTC v. Puget Sound Energy (“PSE”), WUTC Docket Nos. UG-040640 and UE-040641, Order No. 6 at ¶¶ 164-65 (Feb. 18, 2005).

^{7/} Id.

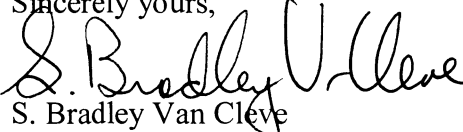
^{8/} Id. at ¶ 171.

action. Granting Avista's application in this case, however, would implicate the same issues of retroactive ratemaking present in the deferred accounting context. The Commission has been consistent in prohibiting utilities from deferring costs incurred before the date the utility files for authorization on retroactive ratemaking grounds.^{9/} The Commission has stated that the evil in retroactive ratemaking is that the customer has no prior notice or opportunity for review of a rate prior to implementation.^{10/} The same logic applies to a proposed change to required accounting treatment.

ICNU has attempted to resolve this matter with Staff and Avista, but the parties were unable to reach an agreement. In Avista's next rate case, ICNU should have the opportunity to argue that debt reacquisition costs should be included in rates based on the FERC 17 accounting method. As a result, the Commission should suspend the Petition and consolidate it with Avista's next rate case. The Commission should not prejudge how Avista's violation of the accounting rules will impact rates in a future rate case, because the Commission does not have sufficient information to make that determination.

If the Commission does not suspend the Petition and defer it until the next rate case, ICNU recommends rejecting the Petition outright or at least setting the Petition for hearing. The Commission also may consider assessing penalties against Avista for a willful violation of the WUTC's rules. Pursuant to RCW § 80.04.380, Avista "shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every [rule violation]" (emphasis added). Moreover, every day Avista is in violation of the rule is a "separate and distinct offense." The WUTC has stated that, under RCW § 80.04.380, the "Commission has no discretion, upon a finding in a proper proceeding that violations occurred, to avoid making a penalty assessment."^{11/} In determining the amount of penalty to assess, the Commission considers whether the violation was willful.^{12/}

ICNU intends to appear at the Commission's public meeting on April 11, 2007, to address any questions the Commission may have on this matter.

Sincerely yours,

S. Bradley Van Cleve

cc: Service List

^{9/} See, e.g., Re PacifiCorp, WUTC Docket No. UE-020417, Sixth Supp. Order at ¶ 36 (July 15, 2003) (deferring costs prior to the filing date "undeniably would violate the general prohibition against retroactive ratemaking and thus is not a legally sustainable result").

^{10/} See Re PSE, WUTC Docket No. UE-010410, Order Denying Petition to Amend Accounting Order at ¶ 7 (Nov. 9, 2001).

^{11/} WUTC v. International Pac., Inc., WUTC Docket No. UT-921340, Second Supp. Order at 4 n.1 (Nov. 12, 1993).

^{12/} See WUTC v. PSE, WUTC Docket No. UE-061239, Order No. 2 at ¶ 31 (Jan. 22, 2007).