

Agenda Date: April 24, 2002
Item Number: 4B

Docket No.: A-020334
Interpretive Statement: Filing requirements prior to issuance of securities

Staff: Fred Ottavelli, Senior Policy Strategist

Recommendation:

Issue the attached Interpretive Statement clarifying when a public service company undertakes to issue securities.

Discussion:

RCW 80.08.040 and 81.08.040, and WAC 480-146-290 require that any public service company that undertakes to issue securities file certain information with the Commission before such issuance. The attached Interpretive Statement clarifies when a public service company must file such information with the Commission.

On March 28, 2002, a notice was sent to Interested Persons inviting them to file written comments on the Draft Interpretive Statement.

Verizon Northwest Inc. submitted comments supporting the proposed Interpretive Statement.

Avista Corporation (Avista) supports the language in the Draft Interpretive Statement based upon its belief that all the security filings it has made over the past two years have met the current requirements of RCW 80.08.040, WAC 480-146-290, and the spirit of the Draft Interpretive Statement.

Puget Sound Energy (PSE) submitted comments to confirm its understanding of the Draft Interpretive Statement and to suggest a procedure for it to follow to comply with the RCW 80.08 filing requirements. PSE understands that filing a shelf registration statement does not constitute “undertaking the issuance of a security” and therefore, does not require an RCW 80.08.040 notice filing at the time PSE files a shelf registration statement. A notice filing under RCW 80.08.040 should be made on a date when reasonable specificity or detail is available about the amount, type, and terms of an actual issuance of securities under a shelf registration. PSE proposes the following procedure for future RCW 80.08.040 notice filings with respect to shelf registrations:

Provide the Commission with each effective shelf registration statement for informational purposes.

Make RCW 80.08.040 notice filing following the action by PSE’s Securities Pricing

Committee approving the parameters of a proposed offering. The filing would include the approved parameters for terms of the offering, including principal amounts, interest indices, and interest rate spreads. PSE would reserve its right to request the Commission to enter a written order, prior to final pricing, that PSE has complied with the requirement of RCW 80.08.040.

As soon as practicable following the actual pricing of an offering, file a copy of the relevant pricing or prospectus supplement for informational purposes.

Staff observes that WAC 480-146-340 requires that a public service company must file a letter outlining the final terms and conditions of the transaction, within thirty days after the issuance.

The Interpretive Statement encourages filings when reasonable specificity or detail is available about the amount, type, and terms of the issuance. Comments submitted by Avista and PSE acknowledge the need to provide adequate information in a timely manner. While the Interpretive Statement offers additional clarification, Staff recognizes actual situations for each financing will differ in view of highly volatile markets and company differences. Therefore, the companies and Staff will need to remain flexible and work together to assure adequate reporting under the requirements of RCW 80.08.040.

Conclusion:

In conclusion, Staff recommends that the Commission direct the Staff to issue the attached Interpretive Statement clarifying when a public service company undertakes to issue securities.

Attachment