

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	)	DOCKETS UE-160228 and UG-160229 ( <i>Consolidated</i> )
	)	
Complainant,	)	
	)	
v.	)	THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' RESPONSE
	)	IN OPPOSITION TO MOTION OF
AVISTA CORPORATION d/b/a AVISTA UTILITIES	)	AVISTA CORPORATION FOR LEAVE TO FILE REPLY COMMENTS
	)	
Respondent.	)	

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**I. INTRODUCTION**

1 Pursuant to WAC § 480-07-375(4), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response in Opposition to the Motion of Avista Corporation (“Avista” or the “Company”) for Leave to File Reply Comments (“Motion”). In short, Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) procedural rules do not provide for replies to answers to petitions for reconsideration, and good cause does not exist to justify a waiver of Commission rules.

**II. RESPONSE**

2 WUTC rules contain extensive provisions governing process on a petition for reconsideration of a final order.<sup>1/</sup> Conspicuously absent from these provisions, however, is any allowance for a reply to an answer to a petition for reconsideration—which seems notable on at least two accounts.

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<sup>1/</sup> WAC § 480-07-850.

3 First, Commission rules do not allow for answers to a petition for reconsideration as a matter of right, never mind contemplating replies to such answers. Rather, answers to petitions for reconsideration are only allowed when “requested by the commission.”<sup>2/</sup> Given such limited opportunity for answers, the omission of any mention of an opportunity for a reply to such an answer seems both purposeful and logical. That is, the Commission apparently intended to end party process at the reconsideration stage with the petition itself, or at most with answers expressly requested by the Commission.<sup>3/</sup>

4 Second, the omission of any provision for replies in the reconsideration process stands in direct contrast to rule sections elsewhere, which explicitly contemplate reply filings in other petition processes. For example, the Commission expressly allows for replies to answers in general petition process, “upon a showing of cause,”<sup>4/</sup> and explicitly provides for replies in process on petitions for administrative review, including a positive “right to reply” in certain instances.<sup>5/</sup> Since “the Commission’s procedural rules are not mere technicalities,”<sup>6/</sup> ICNU attributes significance to the anomalous treatment of replies in the reconsideration process.

5 In any event, ICNU does not believe that good cause exists that would justify a grant of the Motion. Avista claims that good cause exists “in order to correct certain misstatements or misrepresentations or other incorrect characterizations of the evidence.”<sup>7/</sup> As

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<sup>2/</sup> WAC § 480-07-850.

<sup>3/</sup> ICNU also notes that, when positions were reversed in post-final order process in the last Avista general rate case, non-Company parties followed the apparent intent of WUTC rules by not filing replies to Avista’s answer to Staff’s petition for reconsideration. See WUTC v. Avista, Dockets UE-150204 and UG-150205 (*consolidated*), Order 06 at ¶¶ 11-29 (Feb. 19, 2016) (recounting the full procedural history, including “Staff’s Petition for Reconsideration,” following the issuance of a final order).

<sup>4/</sup> WAC § 480-07-370(1)(d)(i).

<sup>5/</sup> WAC § 480-07-825(5).

<sup>6/</sup> City of Kennewick v. Port of Benton, et al., Docket TR-130499, Order 03 at ¶ 7 n.1 (May 29, 2014).

<sup>7/</sup> Motion at ¶ 2.

the senior presiding officer pointed out at hearing, however, the Commission has already “very thoroughly studied the record.”<sup>8/</sup> Thus, at this stage of the process, the Commission hardly seems in danger of being wrongly influenced or misled by answers filed to the Company’s petition for reconsideration. ICNU alone filed an answer with 131 citations,<sup>9/</sup> demonstrating that answer positions have been well supported by the record. Conversely, Avista appears to be improperly attempting to supplement the record via new representations of Company stock performance attached to reply comments. Instead of allowing the filing of such improper information, ICNU agrees with Staff in recommending that “[t]he appropriate remedy is not to reconsider the case or to re-do the case but for Avista to follow the Commission’s guidance and present sufficient testimony in its next general rate case.”<sup>10/</sup>

### III. CONCLUSION

6 Even “Avista understands that at some point the ‘back and forth’ needs to end.”<sup>11/</sup> ICNU believes that point has already passed. Accordingly, ICNU respectfully requests that the Commission deny the Motion.

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<sup>8/</sup> Judge Moss, TR. 436:14-21.

<sup>9/</sup> Answer of ICNU to Avista’s Petition for Reconsideration or, in the Alternative, for Rehearing.

<sup>10/</sup> Commission Staff’s Answer to Avista’s Petition for Reconsideration or Rehearing at ¶ 37. Staff drew this conclusion on the sufficiency of process after specific consideration of post-final order reaction by the financial community. *Id.* at ¶¶ 32-36.

<sup>11/</sup> Motion at ¶4.

Dated this 26th day of January, 2017

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

Jesse E. Cowell

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 (telephone)

(503) 241-8160 (facsimile)

jec@dvclaw.com

Of Attorneys for the

Industrial Customers of Northwest Utilities