BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-120436 DOCKET NO. UG-120437 DOCKET NO. UE-110876
Complainant,	)	DOCKET NO. UG-110877
v.	)	INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' RESPONSE
AVISTA CORPORATION, d/b/a/ AVISTA UTILITIES,	)	IN OPPOSITION TO AVISTA CORPORATION'S MOTION FOR LEAVE TO FILE LETTER OF
Respondent.	)	CLARIFICATION

I. INTRODUCTION

1 Pursuant to WAC § 480-07-375(4), the Industrial Customers of Northwest Utilities ("ICNU") hereby responds in opposition to Avista Corporation's ("Avista" or the "Company") Motion for Leave to File Letter of Clarification ("Motion"), and respectfully asks that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") deny Avista's Motion in its entirety. Avista asserts that Kathryn Breda, on behalf of WUTC Staff, erroneously represented the Company's 2011 rate of return ("ROR") at the April 26, 2012 open meeting.[1/] Avista now requests leave to clarify any "misunderstanding" that may have resulted from Ms. Breda's statements.[2/]

2 ICNU respectfully opposes this motion on both procedural and substantive grounds. First, this is not the time to allow additional testimony on Avista's proposed ROR

1/ Re Avista, WUTC Docket Nos. UE-120436/UG-120437, Motion at ¶ 2 (May 15, 2012).
2/ Id. at ¶ 3.

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methodology. Ascertaining the Company's true 2011 ROR is a fact-intensive inquiry at the center of these proceedings; any further discussion is properly addressed in the upcoming testimony and hearing phases of this docket. Second, even if Avista's proposed "clarification" were permissible as a procedural matter, the substance of the proffered clarification letter is factually inaccurate. On this point, ICNU submits the declaration of expert witness Michael P. Gorman, who will further address the Company's flawed approach in his prefiled, written testimony. Accordingly, ICNU respectfully requests denial of Avista's Motion.

II. BACKGROUND

3 On April 26, 2012, following an open meeting, the Commission suspended Avista's tariff revisions and set the case for hearing.[3/] Finding that Avista "ha[d] not yet demonstrated that the tariff revisions would result in rates that are fair, just, reasonable and sufficient," the Commission concluded that RCW 80.04.130 required further investigation.[4/]

4 On May 15, 2012, Avista moved the Commission for leave to file a letter of clarification pursuant to WAC § 480-07-375.[5/] The Company stated its desire to clarify "remarks made during the April 26, 2012, open meeting at which time Avista's rate cases were suspended and set for hearing."[6/] Specifically, the Company sought to clarify remarks made not by an Avista representative, but by a member of the WUTC Staff, Ms. Kathryn Breda.[7/]

3/ Re Avista, WUTC Docket Nos. UE-120436/UG-120437, Order No. 02 at ¶¶ 9, 16–17 (April 26, 2012).
4/ Id. at ¶¶ 11–13.
5/ WUTC Docket Nos. UE-120436/UG-120437, Motion at ¶ 1.
6/ Id.
7/ Id. at ¶ 2.

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5 Avista asserts that Ms. Breda "represented Avista's 2011 restated electric earnings [ROR] to be 8.32%," while the Company's preferred figure is the "normalized" ROR of 6.56% shown in the pre-filed exhibits of Company witness Mark N. Lowry.[8/] Citing its responsibility to bring matters to the attention of the Commission on a timely basis, Avista now requests an opportunity to correct any "misunderstandings" that may have occurred.[9/]

6 The Administrative Law Judge established a May 25, 2012 deadline for parties to respond to Avista's Motion, and ICNU's response in opposition is timely filed.

III. STANDARD OF REVIEW

7 Avista's Motion, filed pursuant to WAC § 480-07-375, is novel, and the standard of review is unclear. In general, procedural motions are often subject to a "good cause" and "no prejudice to the parties" standard.[10/] Here, not only has Avista failed to establish good cause, but granting the Company's Motion will also significantly prejudice ICNU and its members, as well as other parties to this proceeding.

[8/] Id.; see also Exh. No. ____ (MNL-5) at 2.

[9/] WUTC Docket Nos. UE-120436/UG-120437, Motion at ¶ 3.

[10/] See WAC § 480-07-385(2) (providing that the Commission will grant a continuance where the requesting party demonstrates good cause and the continuance will not prejudice any party or the WUTC); see e.g., Judd & Herivel v. AT&T Commc'ns of the Pac. Northwest, Inc. & T-Netix, Inc., WUTC Docket No. UT-042022, Order No. 04 at ¶ 26 (June 2, 2005) (finding good cause for a supplemental declaration where the witness was previously precluded from reviewing certain information).

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IV. ARGUMENT

A. Avista Cannot Satisfy the Good Cause Requirement Because the Company Could Have Offered These Clarifications at the Open Meeting on April 26, 2012.

8 Although Avista representatives were present at the April 26, 2012 open meeting, the Company failed to clarify Ms. Breda's remarks at that time.[11/] Even after witnessing firsthand the so-called "confusion" around the Company's 2011 ROR, Avista inexplicably waited twenty days before filing this Motion.[12/] Avista has proffered no explanation for its delay from which this Commission could infer a "good cause" justification.[13/] Accordingly, this Motion should be denied for the Company's failure to demonstrate good cause.

B. ICNU Will Be Prejudiced if the Commission Allows Avista to Argue For its Preferred ROR Methodology Outside the Context of the General Rate Case ("GRC") Procedures.

9 In order to prevent prejudice to other parties, the GRC—not this Motion—is the proper place for Avista to argue the merits of its alleged 6.56% ROR ("Normalized ROR"). First, ROR calculations are highly complex, fact-intensive determinations. This is illustrated by the Company's own difficulty distinguishing between its traditional 8.32% ROR ("Ratemaking ROR") and its newly developed Normalized ROR at the time of Ms. Breda's remarks.

[11/] See WUTC Open Meeting Minutes at 2–3 (April 26, 2012) (showing that Mr. Kelly Norwood was present on behalf of Avista).

[12/] Avista nowhere indicates the rationale for its belief that a "misunderstanding" has occurred. See WUTC Docket Nos. UE-120436/UG-120437, Motion at ¶ 3 (stating only that "Avista believes that the colloquy between Commissioner Oshie, staff representative Breda, and Company representative Norwood *may have resulted in some misunderstanding* concerning Avista's earned returns in 2011") (emphasis added).

[13/] WAC § 480-07-385(2).

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10 Second, rather than clarifying a "misunderstanding," Avista's motion is more accurately characterized as an attempt to supplement or modify its own prefiled GRC testimony.[14/] As Avista observes,

> …Ms. Breda, on behalf of Staff, represented Avista's 2011 restated electric earnings [ROR] to be 8.32%, presumably relying on Company Exhibit No. ___ (EMA-2), page 7. *Contributing to the possible confusion, the column on page 7 was labeled "Restated Total" and does, in fact, reference an 8.32% ROR.*[15/]

In Avista's own words, any misunderstanding originated, at least in part, from the ambiguities in the Company's own prefiled testimony. If Avista wishes to refine those aspects of its prefiled materials that obscure the logic of its preferred ROR, then the Company must either file a motion for leave to supplement pursuant to WAC § 480-07-460(b) or simply address the matter, if appropriate, in rebuttal testimony. A letter of clarification, however novel, will not suffice.

11 Most importantly, the Commission's ultimate selection between the two ROR methodologies is a pivotal issue in this proceeding. Granting this Motion would allow Avista to advocate for a particular result under the guise of "clarifying" a passing statement made by someone other than a Company representative. Avista is essentially asking the Commission to sanction a one-sided argument on the merits about the Company's preferred ROR methodology—an argument to which ICNU would not be permitted to respond at this time. This Motion should thus be denied to prevent prejudice to ICNU and the other parties to this

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[14/] See WAC § 480-07-460(b)(i)–(ii) (discussing the procedures governing substantive corrections, substantive changes, and minor corrections).

[15/] WUTC Docket Nos. UE-120436/UG-120437, Motion at ¶ 2 (second emphasis added).

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proceeding; any desired "clarifications" must be saved for the appropriate time in the GRC, in which all interested parties will have an equal opportunity to respond.

C. Avista's Proposed ROR Methodology is Substantively Erroneous.

12 Even if this Motion could be properly granted on procedural grounds, its substantive defects require denial. Attached is a declaration of Michael P. Gorman, Managing Principal at Brubaker & Associates, Inc., and a cost of capital expert witness for ICNU in this proceeding. After reviewing this Motion and the prefiled testimony and exhibits of Avista witness Mark N. Lowry, it is Mr. Gorman's opinion that the Ratemaking ROR—the 8.32% figure referenced by Ms. Breda—more accurately reflects traditional ratemaking normalized adjustments.[16/] The Ratemaking ROR includes both implemented rate adjustments and costs recovered under Commission-approved deferral mechanisms.[17/]

13 The methodology used to derive Avista's Normalized ROR, in contrast, is "highly prejudicial and unorthodox."[18/] As a preliminary matter, Mr. Gorman observes that the 6.56% ROR figure excludes at least two significant regulatory adjustments that skew the final calculation: (1) a rate increase that went into effect in 2012 from the 2011 GRC; and (2) deferred 2011 Energy Regulatory Mechanism costs.[19/] The Company's changes to its audited accounting data "distort the actual measurement of revenues, expenses, and rate base items from the 2011 test year."[20/] As such, Mr. Gorman strongly disagrees that the 6.56% ROR figure can

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16/ Decl. of Michael P. Gorman at ¶ 4.
17/ Id.
18/ Id. at ¶ 6.
19/ Id. at ¶ 5.
20/ Id. at ¶ 6.

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serve as an accurate basis for determining whether, or to what extent, a rate increase is justified.[21/]

14 Overall, ICNU opposes Avista's presentation of the Normalized ROR and looks forward to providing the Commission with an exhaustive analysis of its position at the prefiled testimony and hearing phases of this proceeding. At this stage, however, the Company's factually dubious position makes clarification wholly improper.

V. CONCLUSION

15 Avista's Motion is impermissible with respect to both procedure and substance. If Avista had concerns about the implications of Ms. Breda's statement at the open meeting, the Company could have offered its own clarifying remarks. Avista has, thus, failed to show good cause for this Motion. Moreover, ICNU and its members would be prejudiced if Avista were permitted to engage in a one-sided argument on the merits of its methodology for calculating a Normalized ROR. Finally, even in the absence of these procedural defects, Avista should not be permitted to "clarify" a substantive position that derives from a highly unorthodox and prejudicial mode of analysis.

16 WHEREFORE, ICNU respectfully asks that the Commission deny Avista's Motion in its entirety.

[21/] Id. at ¶ 5.

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Dated in Portland, Oregon, this 25th day of May, 2012.

Respectfully submitted,

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