

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Establishment of Rules That Would)
Require Reporting of Transactions) DOCKET NO. A-021178
Between Regulated Companies and Their)
Subsidiaries) COMMENTS OF THE INDUSTRIAL
) CUSTOMERS OF NORTHWEST
) UTILITIES
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The Industrial Customers of Northwest Utilities (“ICNU”) submits the following Comments to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in the above-referenced Docket. ICNU supports the Commission’s effort to clarify its authority to regulate the transactions between Washington utilities and their subsidiaries.

The Notices of Opportunity to File Written Comments issued in this Docket provide minimal information regarding the scope and proposed effect of any rules that the Commission would establish regarding utility-subsidary transactions. The October 9, 2002 Notice indicates that the Commission intends to use this rulemaking to address its inability to regulate certain utility-subsidary transactions under the existing affiliated interest rules. ICNU submits these comments based on the understanding that this rulemaking relates to issues regarding utility-subsidary transactions that are similar to the issues that arise with affiliated interest transactions. Additional opportunity to submit comments in this Docket would be appropriate as the scope of the rulemaking becomes more defined and proposed rules are drafted.

Investigation of utility-subsidary transactions has become an increasingly important function of public utility regulators. The expansion of utilities' unregulated operations and the increasing desire of many utilities to outsource major functions has created an environment in which utilities view their subsidiaries as potential business partners. This trend has resulted in more frequent requests from utilities for regulatory approval of transactions with subsidiaries. Under these circumstances, the Commission should have definitive requirements related to utility-subsidary transactions.

This rulemaking is important to customers because the Commission's ability to effectively identify and prevent abuses in utility-subsidary transactions is a significant component of consumer protection. The opportunity for self-dealing in utility-subsidary transactions creates risk that the utility will structure the deal to maximize profit for shareholders at the expense of customers. For instance, a utility can sell products or services to a subsidiary at below market prices, which can create a subsidy paid for by customers. Similarly, a utility may purchase products or services from a subsidiary at prices that are higher than market prices, which can increase costs for customers. In addition, the activities of a subsidiary can adversely affect a utility's credit rating.

The Commission should adopt a rule in this proceeding to protect against such potential abuses. This rulemaking should, at a minimum, define the following requirements related to utility-subsidary transactions: 1) the type of transactions that must be filed with the Commission; 2) the contents and timing of any filing; and 3) the standards that apply to such filings.

The October 9, 2002 Notice issued in this Docket identifies certain types of utility-subsidary transactions that a regulated utility must file with the Commission. The Commission should not adopt a rule that unnecessarily limits the types of transactions that would be subject to a rule. Any rule adopted by the Commission should apply broadly to a wide range of utility-subsidary transactions to ensure the greatest protection for customers.

In addition, the Commission should adopt a rule that creates certainty as to the filing and approval requirements. Attempting to establish categories of the types of utility-subsidary transactions according to the nature of the transactions could create confusion as to whether a particular transaction fits in a regulated category or not. Such confusion would likely lead to disputes regarding the applicability of the rule in certain circumstances. Ambiguity in the current statutes regarding affiliated interest transactions led to a dispute regarding the filing requirements for a series of transactions at issue in a recent Avista rate case. WUTC v. Avista Corp., Docket No. UE-991606, Third Supp. Order at 26-27 (Sept. 29, 2000). In that docket, Avista argued that the Commission's statutes and rules did not require the company to file a series of transactions that it entered into with a subsidiary. Id. Although the Commission ultimately determined that Avista was required to file such transactions, the confusion surrounding this issue could have been eliminated by an unambiguous Commission rule.

ICNU suggests that the Commission require that regulated utilities file all contracts or arrangements that those utilities enter into with a subsidiary. This broad rule will better protect customers. In addition, such a rule would mirror the Commission's current rule governing the filing of affiliated interest transactions. WAC § 480-146-350. If, however, the Commission limits the applicability of any rule to only certain utility-subsidary transactions,

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then ICNU proposes that the Commission establish a minimum monetary transaction value as the limiting factor. Transactions whose value did not exceed this minimum monetary value would not be subject to the rule. A minimum monetary threshold still allows for broad application of the rule, but will create more certainty than a rule that applies based on the nature of the transaction. In addition, a rule with a minimum monetary threshold will remove transactions that may not warrant Commission scrutiny from the requirements of the rule, but will likely minimize disputes regarding the applicability of the rule.

With respect to the timing and content for filings of utility-subsidary transactions, ICNU suggests that the Commission use the current rules governing affiliate transactions for guidance. WAC §§ 480-146-350, .480-146-360. Utilities should be required to “prefile” any transaction with a subsidiary prior to the effective date of that transaction and should report all such transactions on an annual basis, as they are for affiliated interest transactions.

The Commission should depart from the provisions of the affiliated interest rule, however, with respect to the standards and requirements for approval of utility-subsidary transactions. The current affiliated interest transaction rules do not require affirmative approval of those transactions; instead, the Commission “may” initiate an investigation and disapprove a transaction if it is not consistent with the public interest. WAC § 480-146-350. Any rule governing utility-subsidary transactions should require that the Commission affirmatively approve the costs of any transaction that may be included in customer’s rates. This will provide customers greater protection from potential abuses.

In approving utility-subsidary transactions, the Commission should apply the “reasonable and consistent with the public interest” standard. Id. The Commission has

previously interpreted this standard to require valuation of affiliated interest transactions at the lower of cost or the average market price. WUTC v. Washington Natural Gas Co., Docket Nos. UG-911236, 911270, Third Supp. Order (Sept. 28, 1992). ICNU urges the Commission to include language in the subsidiary transaction rule to formalize this pricing policy. Incorporating this pricing policy in the rule itself will ensure that customers are not “required to support a company’s purchases from [a subsidiary] at a price greater than the company would pay for a comparable supply on the open market.” Id.

Protection of customers from abuses related to subsidiary transactions is an important function of the WUTC. Transactions between regulated utilities and their subsidiaries pose particularly difficult challenges for regulators, because the real motivations behind the transactions are often not apparent. ICNU urges the Commission to adopt a rule that will make the Commission’s oversight of utility-subsidiary transactions specific and meaningful. ICNU appreciates both the Commission’s review of this important issue and the opportunity to comment on this proposed rulemaking.

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Respectfully submitted,

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