BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of AVISTA CORPORATION, D/B/A AVISTA UTILITIES, For an Order Approving Avista's Update of its Base Power Supply and Transmission Costs.	)	DOCKET NO. UE-061411

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES AND

THE PUBLIC COUNSEL SECTION OF THE ATTORNEY GENERAL'S OFFICE

October 26, 2006

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1 The Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Attorney General's Office ("Public Counsel") submit this Memorandum in Support of Motion to Dismiss in Docket UE-061411, requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") dismiss Avista Corporation's ("Avista" or the "Company") filing in this Docket. Avista's request to selectively update power costs related to the energy recovery mechanism ("ERM") in a single issue rate proceeding is improper and should be dismissed for the following reasons:

1. Avista's filing violates the WUTC's rules. Avista's filing qualifies as a "general rate proceeding" under the Commission's rules, but the Company has not complied with the "special requirements" for such a proceeding. Avista bases its filing on authorized results from the last rate case rather than the actual test period results-of-operations that the rules require. The Commission has the authority to summarily reject such a filing;

2. Avista's filing does not comply with the stipulation that the Commission approved to resolve its recent review of the ERM ("ERM Stipulation"). The ERM Stipulation required Avista to file testimony in its next general rate case addressing the impact of the ERM on the cost of capital, but the Company does not address the cost of capital impacts of the ERM in its filing;

3. Avista requests that the Commission engage in prohibited single issue ratemaking. Avista seeks to selectively update its ERM-related production and transmission expenses without reviewing potential changes in other costs. Longstanding ratemaking principles prohibit such single issue proceedings, and no extenuating circumstances justify abandoning those principles in this case;

4. Avista's filing violates the "matching principle," which requires that all cost of service components of a utility's rates be set at a common point in time. Granting Avista's request in this case would result in certain costs that are based on a 2006 rate year while power costs and rate base would be updated for 2007; and

5. Even if the Commission were inclined to consider Avista's filing, the Company has failed to provide the information necessary to evaluate whether the requested rate increase would result in fair, just, and reasonable rates. The informational foundation for Avista's request is the authorized costs from the Company's last general rate case, but Avista did not provide that information in its initial filing.

2 The Commission's ultimate duty in a rate case is to ensure that the proposed rates are just, reasonable, and sufficient, and fulfilling that duty requires "a comprehensive review of the company's rate base and operating expenses, determining a proper rate of return, and allocating rate changes equitably among ratepayers."[1/] The Commission should dismiss Avista's filing, because it simply does not provide the information necessary for the Commission to comprehensively examine the Company's costs in order to fulfill the duty to set just and reasonable rates.

3 Since 2001, ratepayers have borne a significant burden in helping to restore Avista's financial health following the western power crisis and the Company's ill-fated attempt to enter the unregulated wholesale energy markets. The efforts to improve Avista's financial status should not, however, extend to disregarding substantive filing requirements and departing from longstanding ratemaking principles to process a case that is deficient on it face. Avista controls the decision about when filing a rate case will benefit the Company, and some of customers' primary protections are the rules and policies that prohibit selectively updating a utility's costs in the absence of a thorough review of all the utility's operations are intended to protect customers. Avista has identified no extraordinary circumstances that justify granting rate relief in a single issue proceeding. ICNU and Public Counsel request that the Commission dismiss Avista's filing without prejudice to the Company's ability to refile a case that conforms to the relevant requirements.

[1/] MCI Telecommunications Corp. v GTE Northwest, Inc., WUTC Docket No. UT-970653, Second Supp. Order at 6 (Oct. 22, 1997).

BACKGROUND

4 On August 31, 2006, Avista filed revised tariffs requesting that the WUTC approve a $28.9 million increase in gas and electric revenues, which would result in an average 8.8% increase in electric rates. According to Avista, the requested rate increase is "limited to updating those production and transmission related cost items that are related to the ERM," with the exception of a minor update to the cost of debt.[2/] Avista provides no testimony or information to support its proposed administrative and general costs, operating or maintenance costs, the cost of equity, or changes in its capital structure, and the Company does not propose to adjust the amount of those costs that the Commission authorized in Avista's last rate case.[3/] Avista characterizes its filing as similar in nature to the power cost only rate cases ("PCORC") that Puget Sound Energy ("PSE") filed in 2003 and 2005 pursuant to specific Commission authorization for PSE's power cost adjustment mechanism ("PCA").[4/] Avista lacks any similar authority to request to update power costs in a single issue rate proceeding.

5 Avista requested an expedited schedule that would result in new rates with an effective date of February 1, 2007. A prehearing conference was held on September 27, 2006, and Administrative Law Judge Wallis adopted a schedule under which the Commission will first consider arguments that it should dismiss Avista's filing because the filing fails to comply with the filing requirements for general rate cases and suffers from other deficiencies. If the Commission grants the motion to dismiss, it will resolve Avista's current filing without prejudice to the Company's ability to file a new case that conforms to the relevant requirements.

2/ Petition at ¶ 11.
3/ Exh. No.___(KON-1T) at 8.
4/ Petition at ¶ 2.

STANDARDS FOR MOTION TO DISMISS

6 The Commission may grant a motion to dismiss on the basis "that the opposing party's pleading fails to state a claim on which the commission may grant relief."[5/] In considering such a motion, the Commission applies the standards applicable to a motion to dismiss pursuant to Washington Superior Court Civil Rules 12(b)(6) and 12(c) and considers the documents initiating the proceeding, including the utility's prefiled evidence.[6/] Dismissing a case is appropriate under CR 12(b)(6) and 12(c) when "it appears beyond doubt that that the [non-moving party] can prove no set of facts that would justify recovery."[7/] The Commission has stated that the "fundamental question" in considering a motion to dismiss is, given the previous orders related to the utility, the relevant case law, and the Commission's statutory and inherent authority, would the Commission grant the requested relief based on the allegations in the utility's filing?[8/] The Commission has granted a motion to dismiss when the filing failed to satisfy just one of these factors.[9/]

7 According to WAC § 480-07-380(1)(a), "[i]f a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination . . . ." In considering a motion for summary determination, the Commission applies the standards under CR 56, which provides that summary judgment is appropriate if the moving party can show that there is no

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5/ WAC § 480-07-380(1)(a).

6/ Id.; WUTC v. PSE, WUTC Docket Nos. UE-011163, UE-011170, Sixth Supp. Order at ¶¶ 12-13 (Oct. 4, 2001).

7/ Gorman v. Garlock, Inc., 121 Wn. App. 530, 534 (2004).

8/ WUTC Docket Nos. UE-011163, UE-011170, Sixth Supp. Order at ¶¶ 12-13.

9/ Id. at ¶ 41.

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.[10]

8 ICNU and Public Counsel move to dismiss this case because there is no set of facts under which the Commission can grant Avista's requested relief based on the information that the Company provided in its initial filing. In support of this request, ICNU and Public Counsel discuss certain materials outside of Avista's initial filing, such as orders and information from the Company's last rate case (UE-050482) and the ERM review (Docket UE-060181). ICNU and Public Counsel do not believe that discussing this information should result in treating the motion to dismiss as a request for summary determination, because the information primarily consists of prior Commission orders, and ICNU and Public Counsel have not presented supporting affidavits. Regardless of whether the Commission considers the motion under the standard for a motion to dismiss or a motion for summary determination, the Commission should dismiss Avista's case.

ARGUMENT

9 The Commission should dismiss Avista's filing, because the form of the filing violates the WUTC rules governing rate cases, the substance of the filing violates the ERM Stipulation, and the nature of the filing violates longstanding ratemaking principles prohibiting single issue ratemaking. The violations that ICNU and Public Counsel describe in this memorandum are not merely "procedural" disputes regarding the form of Avista's filing. The rules and policies for processing rate case filings establish substantive protections for customers and the Commission by requiring that the utility provide the basic information necessary to thoroughly review the utility's results and establish just and reasonable rates. Avista seeks

[10] WAC § 480-07-380(2)(a).

authorization to selectively update ERM-related costs in a single issue proceeding in which the Commission and parties would effectively be required to ignore other costs and revenues. Avista has not convincingly explained why the Commission should sanction such a proceeding when doing so will only increase rates in a forum that lacks the important substantive and procedural protections of a comprehensive general rate case.

I. Avista's Filing Violates the Commission's Rate Case Filing Requirements

10 Avista's request to increase electric revenues and to modify the Company's rate of return plainly qualifies as a "general rate proceeding filing" under the WUTC's rules, but the Company's filing fails to comply with either the letter or the spirit of the requirements for such cases. As described below, the foundation for Avista's filing is fundamentally flawed in that the Company relies on authorized results from its last rate case, UE-050482, rather than providing actual results for a designated test year, adjusted for known and measurable changes.

A. The Rules Establish "Special Requirements" for General Rate Case Filings

11 WAC § 480-07-505 defines a "general rate proceeding filing" for an electric utility as a filing for an increase in rates that meets any of the following criteria: 1) the amount requested would increase gross annual revenue from regulated activities by three percent or more; 2) tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more; or 3) the company requests a change in its authorized rate of return or a change in its capital structure.[11/] Avista's filing satisfies all of these criteria. Avista requests an average 8.8% increase in regulated revenues, and the Company proposes to modify its authorized rate of return by adjusting its cost of debt.

[11/] WAC § 480-07-505(1)(a) – (c).

12 For rate cases such as Avista's, the Commission has established "special requirements" that dictate the content and format of the information that a utility must file to support its request.[12] The rules generally require the utility to file testimony and exhibits, revised tariffs, and detailed workpapers and accounting adjustments.[13] Specific requirements are spelled out in much greater detail.[14] According to the rules, these requirements are intended to "standardize presentations, clarify issues, and speed and simplify processing."[15]

13 WAC § 480-07-500 and 510 both provide the Commission authority to "summarily reject any filing for a general rate proceeding that does not conform to the requirements." Such rejection does not prejudice the utility's opportunity to subsequently refile a case that conforms to the relevant requirements.[16] In other words, dismissing this case would not prejudice Avista because the Company can refile in conformance with the rules.

B. Avista's Filing is Improperly Based on Authorized Results from UE-050482 Rather Than Actual Results of Operations for a Legitimate Test Year

14 WAC § 480-07-510 establishes the specific informational requirements for a general rate case filing, requiring, among other things, "an exhibit that includes a results-of-operations statement showing *test year actual results* and the restating and pro forma adjustments in columnar format supporting its general rate request."[17] This provision establishes at least two requirements regarding the informational foundation for a rate increase request: 1) the utility will designate a legitimate test year to serve as the foundation for a filing; and 2) the utility will provide the actual results from that test year as the basis upon which to make

[12] WAC § 480-07-500(3); WAC § 480-07-510.
[13] WAC § 480-07-510(1)-(3).
[14] Id.
[15] WAC § 480-07-500(3).
[16] WAC § 480-07-500(4); WAC § 480-07-510.
[17] WAC § 480-07-510(1) (emphasis added).

adjustments for the rate period. Avista has failed to comply with both of these requirements and, by doing so, the Company has presented an insufficient basis for the Commission to examine the request for a rate increase.

1. Avista's Filing is Not Based on a Legitimate Test Year

15 Avista states that the "starting point for the Company's case is our current *authorized* levels for net operating income and rate base approved in Docket Nos. UE-050482 and UG-050483. . . . "[18/] Using authorized results from the last rate case rather than actual results of operations from a specified test year violates WAC § 480-07-510. One of the fundamental assumptions underlying the rate case filing requirements is that the utility will specify a test year upon which its filing is based. Indeed, the Commission's final order in a rate case typically includes a finding regarding the appropriate test year to use for establishing rates.[19/]

16 The purpose of using a test year is to develop a normal level of expense that is expected to match expenses in the rate year, and the Commission relies on the test period data "for investigation of the Company's operations for the purposes of [the] proceeding."[20/] The Commission typically uses a historical test year based on a recent twelve-month period to examine investment and operating results for a rate case, because historical results reflect the relationship between revenues, expenses, and investments.[21/]

[18/] Exh. No.___(EMA-1T) at 3 (emphasis added).

[19/] See, e.g., WUTC v. Avista, WUTC Docket Nos. UE-991606, UE-991607, Third Supp. Order at ¶ 451 (Sept. 29, 2000).

[20/] Id. at ¶¶ 16, 205.

[21/] Id. at ¶¶ 165, 451; WUTC v. Pacific Northwest Bell Tele. Co., WUTC Cause No. U-82-19, Second Supp. Order at 7 (Feb. 10, 1983).

17 In its last rate case, Avista provided a straightforward description of the test period it was using:

> Q. On what test period is Avista basing its need for additional electric revenue?
>
> A. The test period being used by the Company is the twelve-month period ending December 31, 2004, presented on a pro forma basis. Currently authorized rates are based upon the 2000 test year utilized in UE-011595.[22/]

18 Avista's answer to the same question in this case is a complicated discussion of adjustments to 2004 results made to reflect multiple rate years:

> Q. On what period is Avista basing its need for additional electric revenue?
>
> A. The current authorized rates are based upon a 2004 test year, with pro forma adjustments for the 2006 calendar-year rate period . . . . The pro forma adjustments included in this case reflect a rate period of January through December 2007 for power supply and transmission related revenues and expenses, and March 2007 for completed production and transmission capital projects.[23/]

19 Avista cannot identify a specific test year that it is using, because no specific test year data forms the basis for the filing. Avista refers to the 2004 test year upon which "current authorized rates" are based, but the current filing is not based on 2004 results and the Company provides no information from that time period. Avista also refers to adjustments made in UE-050482 to reflect a 2006 rate year, but the filing in this case is not based on 2006 results either. Avista's filing is not based on a legitimate test year—it is a combination of actual, forecast, and adjusted data from multiple time periods.

[22/] WUTC Docket No. UE-050482, Exh. No.___(DMF-1T) at 4.

[23/] Exh. No.___(EMA-1T) at 3-4.

20 The other rate case filing requirements demonstrate the problems that flow from failing to construct a rate case based on a consistent test year. For example, WAC § 480-07-510 requires the utility to identify "restating actual adjustments," which "adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings" or "from an as-recorded basis to a basis that is acceptable for rate making."[24/] Similarly, the pro forma adjustments "give effect for the test period to all known and measurable changes that are not offset by other factors."[25/] Other rules require a portrayal of revenue sources, representation of rate base, and identification of affiliate transactions during the test year.[26/] Avista's filing effectively renders all of these requirements inapplicable, because the Company has not constructed its request for a rate increase based on a legitimate test year. The Company merely restates the authorized results from the last rate case.

2. Avista's Failure to Provide Test Year Results of Operations Violates WAC § 480-07-510

21 The exhibits in Avista's filing demonstrate that the Company has not complied with the requirement to provide the results of operations for the test period. The Commission has explained that providing a proper results-of-operations statement and supporting evidence is essential to determining whether a utility needs additional revenues, because this "determination is made after *all appropriate adjustments are made to the test period results of operations*."[27/]

22 Exhibit No.___(EMA-2) in Avista's filing purports to provide the test period results of operations that WAC § 480-07-510(1) and (3)(e) require, but it includes only the authorized results from UE-050482. Column 'b' of the exhibit is labeled "Authorized

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24/ WAC § 480-07-510(3)(b)(i).
25/ WAC § 480-07-510(3)(b)(ii).
26/ WAC § 480-07-510(3)(c),(e), and (f).
27/ WUTC v. Rainier View Water Co., Inc., WUTC Docket No. UW-010877, Sixth Supp. Order at ¶ 29 (July 12, 2002) (emphasis added).

UE-050482" and includes the expenses, revenues, rate base and other values authorized in that case rather than actual results from the test year.[28/] Exhibit No.___(EMA-2) contrasts with the equivalent exhibit that Avista provided in UE-050482. Exhibit No.___(DMF-2) from UE-050482 includes actual results of operation from the 2004 test period used in that case. Column 'b' of Exhibit No.___(DMF-2) plainly includes the *actual* results from the test year rather than simply providing the authorized results from the last rate case. These actual results provide the informational basis upon which to make adjustments required in the rules to reflect the proposed rate year. Avista's filing in this Docket is deficient because the Company has failed to provide such data.

II. Avista's Filing Violates the Matching Principle

23 Avista's request to update certain components of revenue requirement and rate base, while ignoring any changes to other aspects of costs and revenues, violates the "matching principle." According to the Commission, the matching principle requires that "all cost-of-service components—revenue, investment, expenses, and cost of capital—must be considered and evaluated at a similar point in time."[29/] The Commission held in UE-050482 that "Avista's use of known and measurable information outside the rate year violates the matching principle" when the Company used 2005 numbers for its capital and operating and maintenance costs to perform an adjustment for a 2006 rate year.[30/]

24 The patchwork of information that forms the basis of Avista's filing produces the same result in this case. Avista has not proposed adjustments to a legitimate test year to reflect

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[28/] Exh. No.___(EMA-2) at 1.

[29/] WUTC v. PacifiCorp, WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 194 (Apr. 17, 2006).

[30/] WUTC v. Avista, WUTC Docket Nos. UE-050482 and UG-050483, Order No. 05 at ¶¶ 112-113 (Dec. 21, 2005).

the 2007 rate year. Instead, Avista's power costs, rate base, and cost of debt are based on a 2004 test year that was adjusted to reflect a 2006 rate year in UE-050482 and then is adjusted in this case to reflect a 2007 rate year. All of Avista's other costs and revenues, however, are based on a 2004 test year adjusted for a 2006 rate period in UE-050482. Avista's proposal results in picking and choosing individual costs, revenues, and rate base adjusted for either 2006 or 2007, depending on whether the Company seeks to update the amount in this case. This eliminates the Commission's ability to comprehensively review the Company's financial condition at one point in time, which is the basis for the matching principle. Without adjusting the Company's total results of operations for a 2007 rate period, it is impossible to evaluate whether Avista's pro forma adjustments are in fact known and measurable and not offset by other factors, as the Commission's rules require.[31]

III. Avista's Filing Violates the ERM Stipulation and the Commission's Order Approving that Stipulation

25 In the ERM stipulation, Avista committed to: 1) "file testimony in its next [general rate case] on the cost of capital impact of the ERM;" and 2) "file a prudence case on its hedging strategy for power purchases and purchases of gas used for power generation."[32] Avista's filing excludes testimony on either of these subjects, despite the fact that it clearly satisfies the definition of a general rate case under WAC § 480-07-505. The Commission must dismiss the filing because it violates the ERM Stipulation and the Commission's order approving that Stipulation. The Commission has previously determined that authorizing a rate case filing that is inconsistent with the terms of a Commission-approved stipulation requires amending the

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[31] WAC § 480-07-510(3)(b)(ii).

[32] Re Avista, WUTC Docket No. UE-060181, Order No. 03 at Appendix A, p. 4 (June 16, 2006).

order in which the stipulation was approved.[33/] Avista has not requested that the Commission amend the order approving the ERM Stipulation to allow for the current filing, nor has the Company alleged that extraordinary circumstances justify doing so.

26 Avista's failure to address the cost of capital impact of the ERM is inexcusable given the nature of the Company's filing, the background of the commitment, and the Commission's acceptance of a stipulation containing that requirement. Avista's stated purpose for this case is to update "production and transmission costs that are related to" the ERM, yet the Company fails to abide by a commitment to address the cost-of-capital impact of that mechanism.[34/] In addition, the ERM Stipulation modified the mechanism to include the transmission expenses and revenues that the Company seeks to update in this case. In other words, Avista seeks to implement certain provisions of the ERM Stipulation but ignore others. Avista should not be permitted to casually jettison its commitments to this Commission and the settling parties.

27 The provision in the ERM Stipulation requiring Avista to address the ERM's cost of capital impact derives from the Commission's criteria for evaluating a PCA, which includes whether the mechanism reflects a cost of capital adjustment to compensate for reducing the utility's risk.[35/] According to the Commission, a "PCA introduces rate instability for ratepayers and produces earnings stability for stockholders. Ratepayers should receive a benefit for this tradeoff in the form of a cost-of capital reduction."[36/] Furthermore, "if no such downward adjustment can be demonstrated by the parties in the next general rate case, then the Commission

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33/ Re PacifiCorp, WUTC Docket Nos. UE-020417 and UE-991832, Sixth Supp. Order at ¶¶ 22-23, 54 (July 15, 2003).

34/ Exh. No.___(KON-1T) at 2.

35/ WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 91; WUTC v. Puget Sound Power & Light Co., WUTC Docket No. U-81-41, Seventh Supp. Order at 4-5 (Apr. 12, 1989).

36/ Re Washington Water Power, WUTC Docket No. U-88-2363-P, First Supp. Order at 16 (Sept. 18, 1989).

will have to seriously question the [PCA's] raison d'etre."[37/] The Commission has twice rejected requests by Avista and its predecessor, Washington Water Power, to implement a PCA, because the mechanism did not include a specific adjustment to cost of capital to compensate ratepayers for the greater risk.[38/]

28 Parties argued in Avista's last general rate case that the Company's request to eliminate the ERM deadband would reduce shareholder risk without any corresponding ratepayer benefit.[39/] The Commission agreed and ordered Avista to initiate a comprehensive review of the ERM.[40/] The filing that Avista made to initiate that review resulted in an all-party settlement in the ERM Stipulation, in which Avista agreed to: 1) reduce the ERM deadband from $9 million to $4 million; 2) expand the ERM's scope to include transmission revenues and expenses; and 3) file testimony on the cost of capital impact of the ERM in its next general rate case.[41/]

29 The joint testimony supporting the ERM Stipulation demonstrates the importance that the parties placed on addressing the cost of capital impacts. At the time the parties signed the ERM Stipulation, the Commission had recently stated in a PacifiCorp order that a cost of capital reduction should accompany a PCA, and the stipulating parties testified that Avista's commitment to file testimony on the ERM's cost of capital impact addressed those concerns:

> Q. How does the settlement address the Commission's statement in its recent PacifiCorp order, at p. 35, that 'ratepayers should receive the benefit of a reduction in cost of capital, as a [PCA] introduces rate instability for ratepayers and earnings stability for stockholders'?

37/ WUTC Docket No. U-81-41, Sixth Supp. Order at 16 (Dec. 19, 1988).

38/ WUTC Docket No. U-88-2363-P, First Supp. Order at 22; WUTC Docket Nos. UE-991606, UE-991607, Third Supp. Order at ¶ 185.

39/ See WUTC Docket Nos. UE-050482 and UG-050483, Order No. 05 at ¶¶ 67-68.

40/ Id. at ¶¶ 71-72.

41/ WUTC Docket No. UE-060181, Order No. 03 at ¶¶ 9-10.

A. The Settlement provides for a review of the cost of capital impact of the ERM in the next general rate case and requires the Company to file testimony on the effect of the ERM on the cost of capital.[42]

30 Even if the Commission disagrees that it *cannot* grant Avista's requested relief, it *should* not exercise its discretion to consider Avista's filing because authorizing rate relief request would be fundamentally inequitable. Avista wants to have its cake and eat it too. Avista seeks to retain the benefit from reducing the ERM deadband by $5 million and enhance that benefit by increasing the baseline power costs upon which the ERM is based. Avista wants to ignore, however, the ERM's impact on the cost of capital despite the Company's specific commitment to address that issue. Reducing the ERM deadband and updating the power cost baseline undoubtedly reduces Avista's overall risk, but the only testimony that the Company filed on its rate of return implements a minor adjustment to the authorized cost of debt.[43] The Commission sets a utility's rate of return commensurate with the risks and uncertainties that the utility faces.[44] The less financial risk that a utility faces, the lower the utility's authorized rate of return should be. There is no basis to conclude that Avista's proposed cost of capital or rate of return reflects Avista's overall risk, because the Company has ignored its stipulated commitment to address how the ERM mitigates that risk.

IV. Granting Avista's Requested Relief Would Constitute Prohibited Single Issue Ratemaking

31 Washington law generally prohibits utilities from filing single issue rate proceedings.[45] As described above, the Commission fulfils its duty to ensure that rates are just and reasonable by performing "a comprehensive review of the company's rate base and

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[42] WUTC Docket No. UE-060181, Exh. No.___(JT-1) at 10.
[43] Exh. No.___(EMA-1T) at 4.
[44] WUTC Docket Nos. UE-050684 and UE-050412, Order No. 04 at ¶ 235.
[45] WUTC Docket No. UT-970653, Second Supp. Order at 7; Re PSE, WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at 25 (June 20, 2002).

operating expenses, determining a proper rate of return, and allocating rate changes equitably among ratepayers."[46] Changes to any of a utility's costs "could have a substantial effect on the company's overall results of operations and therefore should not be address[ed] in a single issue rate proceeding."[47] Single issue ratemaking is disfavored because it considers changes to costs and revenues in isolation, thereby ignoring potentially offsetting considerations and risking understatement or overstatement of the overall revenue requirement.[48] The prohibition against single issue ratemaking protects consumers by ensuring that they will not be required to bear an increase in rates without an examination of all aspects of a utility's revenue requirement.[49] The WUTC has consistently refused to engage the practice except in limited circumstances.[50] In fact, the Commission has remarked that "[s]uch limited rate cases likely would result in unfair and unequal allocation of rates among the company's ratepayers, and would not be a productive use of the Commission's resources."[51]

32 By any objective measure, Avista's filing violates the prohibition against single issue ratemaking. Avista seeks authorization to selectively update production and transmission expenses in isolation, and the Company attempts to limit the Commission's consideration to only those subjects by not filing information regarding any other aspect of revenue requirement. This is exactly the type of proceeding that the prohibition against single issue ratemaking is intended to prevent.[52] Based on Avista's filing, it would be impossible for the Commission to determine what effect Avista's alleged increase in power and transmission costs have on the Company's

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46/ Id. at 6.
47/ Id.
48/ City of Chicago v. Ill. Commerce Comm'n, 281 Ill.App.3d 617, 627 (1996); Business & Professional People for the Pub. Interest v. Ill. Commerce Comm'n, 146 Ill.2d 175 (1991).
49/ Citizens' Util. Bd. v. Ill. Commerce Comm'n, 166 Ill.2d 111, 136-137 (1995).
50/ WUTC Docket No. UT-970653, Second Supp. Order at 6; Re US West Communications, Inc., Docket No. UT-920085, Third Supp. Order (April 15, 1993).
51/ WUTC Docket No. UT-970653, Second Supp. Order at 7.
52/ Id.

overall results of operations. Furthermore, the Commission would be unable to consider potentially offsetting changes in the costs and revenues that the Company seeks to prevent the Commission from examining.

V. Avista Has Not Demonstrated that Extraordinary Circumstances Justify Granting Relief that Violates the Commission's Rules and Policies

33 Avista unconvincingly argues that the Commission should process the Company's filing despite its threshold deficiencies because: 1) the Commission authorized PSE to file a PCORC as part of that utility's PCA; and 2) the Commission reviewed the Company's other costs and revenues in the last general rate case.[53/] Although the Commission has indicated that recognizing exceptions to its rules and policies may be warranted in limited circumstances, the facts surrounding Avista's filing do not warrant similar treatment in this case. Furthermore, even if the Commission were inclined to consider authorizing rate relief, Avista has provided insufficient information in its initial filing to lawfully to do so.

A. The Commission Has Not Specifically Authorized Avista to File a PCORC-Type Proceeding

34 Avista characterizes its filing as similar to the PCORCs that PSE filed in 2003 and 2005, but Avista ignores important distinctions about those proceedings. First, PSE has a PCA that is the result of a negotiated settlement that specifically provided PSE the opportunity to file a PCORC to update or to add new resources to PSE's baseline power costs.[54/] To compensate for the potential harm associated with a single issue PCORC, however, PSE's PCA also includes certain customer protections.[55/] For example, PSE was limited to filing a PCORC for particular reasons. In addition, PSE was required to file a general rate case within three months if the

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[53/] Exh. No.___(KON-1T) at 4-6.

[54/] WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at ¶ 25, Exhibit A, p. 5.

[55/] Id. at Exhibit A, p. 6.

Commission approved a cumulative rate increase greater than 5% in all PCORCs before July 1, 2005, and PSE is required to file a general rate case within three months if a PCORC results in *any* rate increase after July 1, 2005.[56]

35 Second, the Commission specifically addressed the legality of the PCORC proceeding, recognizing that such a single issue proceeding conflicts with the Commission's rules and policies.[57] In the order approving PSE's PCA, the Commission explicitly authorized the PCORC pursuant to the former WAC § 480-09-310, which specifically excluded "[p]eriodic rate adjustments for electric utilities as may be authorized by the commission . . ." from the definition of a general rate increase filing for purposes of the WUTC's rules.[58] In approving the settlement, the Commission held that the PCORC fell "within the exception to this rule governing general rate increase filings," allowing PSE to file the PCORC without complying with all the rules for general rate cases.[59] WAC § 480-09-310 has since been renumbered as WAC § 480-07-505, and the provisions are substantively identical.

36 Avista attempts to bootstrap the instant filing onto the Commission's authorization of the ERM, but the Company's efforts are clearly misplaced. Avista's ERM does not provide the authority to file a PCORC. The ERM is the product of two different negotiated agreements, and the stipulating parties have never agreed to a PCORC-type proceeding for Avista.[60] The stated purpose for the ERM when it was initially approved was to track, on a prospective basis, the difference between forecast power costs and actual power costs as a result

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56/ Id.
57/ Id. at ¶ 27.
58/ Id.
59/ Id.
60/ See WUTC Docket No. UE-060181, Order No. 03 (approving stipulated changes to the ERM in June 2006); Re Avista, WUTC Docket No. UE-011595, Fifth Supp. Order at ¶¶ 35-40 (June 18, 2002) (approving the original, stipulated ERM).

of ordinary power cost variation.[61] Granting rate relief in response to Avista's current filing would expand the ERM's scope by adding the authority for the Company update its forecast power costs between rate cases as well.

37 The lack of PSE-like provisions to mitigate the potential harm of single issue proceedings demonstrates that a PCORC-type proceeding was never contemplated under the ERM and illustrates that customers are at risk if the Commission processes Avista's filing in its current form. Indeed, Avista's request for an 8.8% rate increase exceeds the 5% threshold that the parties agreed would trigger a general rate case for PSE. Finally, Avista proposed in the recent ERM review to modify the mechanism by reducing the deadband and including transmission expenses and revenues, but the Company did not propose to include the ability to file a single issue update to power costs.[62] Having failed to propose such a proceeding when the Commission was specifically considering modifications to the ERM, the Company cannot now legitimately claim that its current filing is somehow authorized by the mechanism.

38 Avista also lacks explicit Commission authorization, pursuant to one of the exceptions in WAC § 480-07-505, to file a single issue rate case that would otherwise have to comply with the general rate case filing requirements. The Commission's orders addressing the ERM do not indicate that the Commission has even considered the legality of a PCORC-type proceeding for Avista. The Commission and parties should not devote resources to a proceeding for which there is no legal authority when Avista would not be prejudiced by dismissing the proceeding and having the opportunity to refile in a manner that conforms to the Commission's rules and policies.

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[61] WUTC Docket No. UE-011595, Fifth Supp. Order at ¶¶ 35-38.
[62] WUTC Docket No. UE-060181, Exh. No.___(KON-1T) at 1-2.

B. Avista Has Not Demonstrated that Extraordinary Circumstances Justify Disregarding Important Customer Protections

39 Avista claims that a single issue proceeding is appropriate because "it would not be administratively efficient or necessary to re-litigate many of the same issues that the Commission" decided in the last rate case and the ERM review.[63] The Commission rules and ratemaking principles dictate the requirements for a general rate case filing, not Avista's opinions of administrative efficiency. The Commission has accepted deficient filings in the past "out of necessity" when the utility was experiencing extraordinary circumstances that caused severe financial hardship.[64] Avista has not demonstrated any special circumstances or provided a compelling explanation for processing a filing that is deficient on its face.

40 Avista also claims that the Commission's review in the last rate case of costs that the Company does not seek to update in this proceeding was sufficient for ratemaking purposes.[65] Avista's last rate case was resolved through a stipulation between the Company and Staff, and the Commission has recognized that resolving a proceeding through a stipulation does not result in as thorough of a determination of the utility's results of operations as a fully litigated proceeding.[66] The Commission's role in approving a stipulation is to determine whether a stipulation is supported by the record and consistent with the public interest.[67] There is less assurance, under these circumstances, that the stipulated results of operations reflect the utility's actual costs and revenues. These concerns are particularly relevant in this case, because there was evidence in the last rate case that settlement occurred at an early stage of the case, even

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[63] Petition at ¶ 10.
[64] WUTC v. Olympic Pipe Line Co., WUTC Docket No. TO-011472, Twentieth Supp. Order at ¶¶ 5, 33 (Sept. 27, 2002).
[65] Petition at ¶ 10.
[66] Re Washington Natural Gas Co., WUTC Docket Nos. UG-940034 and UG-940814, Fifth Supp. Order at 9 (Apr. 11, 1995).
[67] WAC § 480-07-750(1).

prior to Staff and intervenors filing responsive testimony. Although the Commission ultimately accepted certain provisions of the stipulation, it also ordered certain adjustments and further proceedings to ensure that Avista's rates were just and reasonable. The stipulated results from the last rate case provide an improper basis upon which to set rates in this proceeding.

C. Even if the Commission Considers Avista's Filing, the Company Has Not Included the Information Necessary to Lawfully Establish New Rates

41 Even if the Commission disagrees that Avista's authorized results from UE-050482 are an improper basis to set rates in this case, it cannot lawfully establish rates based on the record in this proceeding because the Company has not provided any information supporting those results. Avista provided no evidentiary or analytical support for the costs that the Company does not seek to update. Rather, Avista attempts to incorporate by reference into its filing the information upon which it based the authorized results from the last rate case. Even setting aside concerns about how the parties would conduct discovery regarding costs and revenues that reflect a negotiated agreement rather than actual operations, the Commission cannot lawfully establish new rates for Avista without some evidentiary basis for the Company's filed costs and revenues in this proceeding. Avista provided *no* information regarding certain of its costs to establish a comprehensive revenue requirement, and the record is insufficient to make a determination regarding what constitutes just and reasonable rates.

CONCLUSION

42 Avista cannot prove any sets of facts under which the Commission can grant the Company's requested relief, because the initial filing in this case fails to comply with the Commission's rules, ratemaking principles, and recent orders regarding the ERM. ICNU and

Public Counsel request that the Commission grant this motion to dismiss without prejudice to Avista's ability to refile a case that conforms to the relevant requirements.

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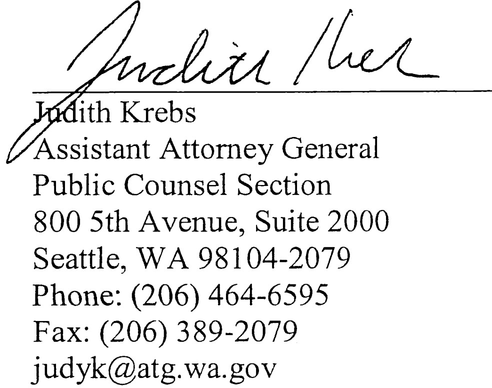
DATED this 26th day of October, 2006.

Respectfully submitted,

ROB MCKENNA
Attorney General



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