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

REPLY OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES AND THE PUBLIC COUNSEL SECTION OF THE ATTORNEY GENERAL'S OFFICE IN SUPPORT OF MOTION TO DISMISS

November 27, 2006

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INTRODUCTION

1 On October 27, 2006, the Industrial Customers of Northwest Utilities ("ICNU") and the Public Counsel Section of the Attorney General's Office ("Public Counsel") (collectively, the "Moving Parties") jointly filed a Motion to Dismiss ("Motion") the rate filing made by Avista Corporation ("Avista" or the "Company") in this proceeding on August 31, 2006. The Motion was supported by a Memorandum in Support of Motion to Dismiss ("Memorandum"). Avista and the Commission Staff ("Staff") (collectively, the "Answering Parties") filed Answers to the Motion to Dismiss and Memorandum on November 15, 2006.

2 The Answering Parties argue that the Motion should be denied because there is no legal bar to the relief requested. Similarly, the Answering Parties argue that the Motion should be denied, since the Commission has the authority to waive its rules regarding general rate cases and ignore its policies against single-issue ratemaking. The fundamental flaw with the Answering Parties' argument is that they suggest no compelling reason why the Commission should waive its rules or ignore its policies in this case.

3 The Answering Parties also misconstrue the Motion. The Moving Parties are requesting that the Commission exercise its discretion to dismiss the filing. As demonstrated in the Memorandum, Avista's filing constitutes a general rate case under the Commission's rules, and the filing does not satisfy the Commission's filing requirements for a general rate case. Further, the filing violates regulatory policies regarding single-issue ratemaking and the matching of costs. Finally, the filing is inconsistent with the ERM settlement. While the Commission generally has the authority

to waive its rules and policies, the Answering Parties have failed to articulate a compelling reason why it should. In the absence of a compelling reason, the Commission should apply its rules and policies. As a result, the Motion should be granted.

ARGUMENT

I. Avista Asks the Commission to Disregard Its Rules and Policies

4 Avista and Staff both assert that Avista's filing is not a general rate case.[1/] The Answering Parties ignore the fact that the term "general rate case" is defined by the Commission's rules as a filing requesting a rate increase of more than 3%.[2/] Avista requests an 8.8% average rate increase in this case, almost three times the threshold for a general rate case. For some customer classes, the rate increase would be even higher.

5 Avista attempts to avoid the general rate case requirement by styling its request as a PCORC, but it ignores the fact that its filing addresses more than power costs. When explaining the purpose of its filing, Avista spends six paragraphs arguing about how the filing is simply a "P/T Update."[3/] Then, in passing, Avista briefly mentions that it is also including an adjustment to the Company's cost of debt.[4/] Avista cannot include adjustments that have nothing to do with the Company's power costs and still characterize the filing as a PCORC.

6 The most obvious problem with Avista's attempt to characterize its filing as a PCORC, however, is the fact that the Commission has never authorized a PCORC for Avista. Both Avista and Staff argue that, because the Commission has authorized

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1/ Avista Answer at ¶ 16; Staff Answer at ¶ 21.
2/ WAC § 480-07-505.
3/ Avista Answer at ¶¶ 6-11.
4/ Id. at ¶ 12.

PSE to file a PCORC, Avista should be able to file one as well.[5/] ICNU and Public Counsel pointed out important distinctions between the PSE PCORC and Avista's filing in the Memorandum: 1) PSE's PCORC is an integral part of its power cost adjustment mechanism ("PCA") that resulted from a negotiated Stipulation in a general rate case; 2) PSE's PCORC includes customer protections to compensate for potential harm arising from single-issue ratemaking; and 3) the Commission, when adopting the PCORC, specifically authorized PSE's PCORC as an exception to the rule governing general rate proceedings.[6/] Thus, PSE can only file PCORC proceedings because it obtained Commission approval to do so. In granting PSE this extraordinary authority, the Commission entertained evidence and testimony as to why an exception should be made allowing such a limited proceeding.[7/] In addition, the Commission had the opportunity to assess the impact of the PCORC on PSE's cost of capital. No such similar inquiry has been conducted, much less requested, for Avista.

A. Avista Has Not Requested Commission Approval of a PCORC-Type Proceeding

7 The crux of Avista's argument is that it would be "unfair" to allow PSE to have its PCORC and at the same time not allow Avista to make its proposed filing.[8/] PSE, however, did not make a PCORC filing without prior authorization. Instead, in the context of a general rate case, PSE along with the other stipulating parties obtained Commission approval of PSE's PCA and related PCORC, and it then filed PCORCs in

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5/ Staff Answer at ¶ 15; Avista Answer at ¶ 27.
6/ Memorandum at ¶¶ 34-35.
7/ WUTC v. PSE, WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at ¶ 25 (June 20, 2002).
8/ Avista Answer at ¶ 28.

later proceedings.[9/] Avista, in contrast, seeks to put the cart before the horse by making a single-issue power cost filing that has never been approved in the context of a rate case and is not part of the ERM. Avista's argument that it would be "unfair" for the Commission to reject this filing when PSE has a PCORC is therefore misplaced. What would be unfair would be to allow Avista to establish its own mechanism for rate increases while other utilities must follow Commission rules and policies.

8 It also is inappropriate to assume, as Avista does, that because a PCORC is authorized for PSE, Avista should automatically be allowed to use a similar mechanism.[10/] The Commission recently explained that the "application and appropriateness" of the criteria that the Commission uses to evaluate power cost adjustment mechanisms "must take into account the specific circumstances facing the utility." For this reason, "all power cost adjustment mechanisms for Washington utilities need not be the same."[11/] Furthermore, the only instance in which the Commission has authorized a utility to use a power cost only rate case proceeding is when: 1) the utility's power cost adjustment mechanism specifically provided for it; and 2) the Commission specifically found that the power cost only rate case fell within the exception to the Commission's rate case filing rules.[12/] Neither of these factors is present with respect to Avista's filing.

9 Staff asserts that Avista's filing should be accepted because, even though the Commission has not authorized a PCORC-like filing for Avista, it also has not

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[9/] WUTC v. PSE, WUTC Docket No. UE-031725, Order No. 14 (May 13, 2004); WUTC v. PSE, WUTC Docket No. UE-050870, Order No. 04 (Oct. 20, 2005).
[10/] Avista Answer at ¶ 28.
[11/] Re PacifiCorp, WUTC Docket No. UE-050684, Order No. 04 at ¶ 91 (Apr. 17, 2006).
[12/] WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at ¶¶ 25-27.

prohibited Avista from making such a filing.[13/] Staff's argument ignores the fact that WAC § 480-07-505 only allows *Commission-authorized* exceptions to the rules governing rate increase filings. Avista's filing is not a Commission-authorized exception, and the mere fact that the Commission has never actually prohibited Avista from making this type of filing does not mean that the Commission has, expressly or implicitly, approved of it.

10 The consideration in a general rate case proceeding of whether to authorize a PCORC as part of PSE's PCA was essential in affording the parties to that proceeding the opportunity to fashion certain conditions to ensure customer protection.[14/] For example, PSE may only file a PCORC for limited reasons, and after July 1, 2005, it must file a general rate case within three months if a PCORC results in a rate increase.[15/] If Avista is allowed to proceed with its "P/T Update," there would be no similar provisions designed to address the potential harm from such a limited proceeding.

B. The Fact That the Commission Has Allowed Single-Issue Ratemaking in Certain Contexts Does Not Mean That It Should Allow It Here

11 Avista argues that if the Commission rejects its filing on the basis that the filing constitutes single-issue ratemaking, it would mean that the Commission was without authority to authorize PSE's PCORC.[16/] This argument is without merit. A significant difference between PSE's PCORC and Avista's proposed filing is that the PCORC was approved, after careful consideration and with appropriate customer protections, as an exception to the rule against single-issue ratemaking. Avista's PCORC-like filing, in contrast, has neither been considered nor approved.

[13/] Staff Answer at ¶ 15.
[14/] Memorandum at ¶¶ 34, 37.
[15/] WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at Exh. A, p. 6.
[16/] Avista Answer at ¶ 30.

12 Avista also argues that concerns about single-issue ratemaking are not "acute" because the Company concluded a general rate proceeding in December 2005.[17/] Yet at the same time as the Company asks the Commission to take "comfort" in the fact that its costs were recently examined, its filing is based on a representation that its production and transmission costs allegedly increased significantly since its last rate case. The rate case was decided nearly a year ago, and it was based on results of operations from 2004, indicating that the test year is stale.[18/] Indeed, only recently, on November 1, 2006, Avista Utilities reported a net income of $43.5 million through the third quarter of 2006, as compared to $35.6 million for the same period in 2005.[19/] While the cause of this significant change in earnings is unknown at this time, Avista's contradictory statements about its operations and this increase in profit show why the matching principle and the rule against single-issue ratemaking require all costs and revenues to be examined simultaneously.

13 As demonstrated by the excerpts in Avista's brief from the settlement hearing for PSE's PCORC, the Commission has not treated single-issue ratemaking lightly in the past, and it has no reason to do so now.[20/] The mere fact that the Commission approved PSE's PCORC as an exception to the general rule against single-issue ratemaking does not mean that all Washington utilities now have authority to file single-issue rate cases. If the Commission allows Avista's filing, it will be opening the door to allow utilities to make filings to update isolated costs without any prior

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[17/] Id. at ¶ 26.
[18/] Id. at ¶ 13.
[19/] Press Release, "Avista Corp. Reports Earnings for the Third Quarter and Year-to-Date 2006," http://www.avistacorp.com/news/default/asp?prid=1126 (Nov. 1, 2006); Avista Form 10-Q at 36 (Nov. 3, 2006).
[20/] Avista Answer at ¶ 31.

Commission authorization of their ability to do so, effectively providing for a new form of relief and overruling the Commission's definition of what qualifies as a "general rate proceeding filing" under WAC § 480-07-505. In summary, while the Commission has the ability to permit single-issue ratemaking, it has done so sparingly, and the Answering Parties have not provided a compelling reason for it to do so in this case.

II. Avista's Filing Violates the Terms of the ERM Stipulation

14 The Answering Parties argue that the ERM settlement provisions are inapplicable because Avista's filing is not a general rate proceeding.[21/] As discussed above, however, Avista's filing clearly falls within the definition of a general rate case, since it seeks a rate increase in excess of 3%. When Avista agreed in the ERM Stipulation that it would file cost-of-capital testimony in the next general rate case, it was reasonable for the stipulating parties to assume that this would occur in the next case seeking a rate increase in excess of 3%. The flaw in the Answering Parties' position is that it provides no standards for determining what would constitute a general rate case if one ignores the Commission rules. One could imagine that the next case would be styled as a "distribution update" or an "A&G Update." If the Commission accepts the filing in this case, even though it exceeds 3%, what would be the basis for rejecting those filings? If the Commission were to adopt the Answering Parties' ill-defined logic, Avista could use piecemeal filings to avoid its commitments in the ERM Stipulation indefinitely. This attempted end-run around the ERM Stipulation should be rejected.

15 Essentially, what Avista is requesting in this case is a modification to its ERM to include a PCORC. As noted previously, PSE's PCORC is an integral part of

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[21/] Staff Answer at ¶ 21; Avista Answer at ¶ 16.

PSE's PCA that was adopted pursuant to a stipulation in a general rate case. Thus, the Commission had the opportunity to consider the impact of the PCORC mechanism on PSE's cost of capital in the rate case. At the time of the ERM settlement, the parties were not in agreement on the impact of the ERM on Avista's cost of capital; thus, the issue was deferred to Avista's next rate case. In essence, a PCORC is a design element of a power cost mechanism that reduces utility risk. Approval of a PCORC mechanism in the ERM should be reflected in Avista's cost of capital. Therefore, it would violate the intent of the ERM Stipulation to modify the ERM by allowing a PCORC without first evaluating the impact on cost of capital. Likewise, it would violate the intent of the ERM Stipulation to increase the power cost baseline without examining the prudence of Avista's hedging strategies.

III. Avista's Filing Violates the Matching Principle

16 Staff argues that Avista's filing does not violate the matching principle because of the limited nature of the filing.[22/] Avista, however, premises its argument on the Company's recent general rate case, arguing that that the use of authorized results from that case does a better job of matching revenues and expenses than the use of a historical test year.[23/]

A. Staff Fails to Recognize the Nature of the Proceeding

17 Staff provides no argument as to how the matching principle is not violated if Avista's filing were considered a general rate proceeding. Instead, Staff asserts only that the "matching principle is satisfied for purposes of power supply

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22/ Staff Answer at ¶ 18.
23/ Avista Answer at ¶ 15.

analysis . . . ."[24/] A general rate proceeding involves far more than power supply. Moreover, even if Staff were correct, Avista's filing also includes changes to the Company's cost of debt, which does not fit into Staff's simplistic answer. Ultimately, as explained in the Memorandum, it is impossible to evaluate Avista's filing without comparing revenues and expenses from different time periods.[25/]

B. The Commission Has Never Approved Avista's Proposed Methodology

18 Avista asserts that the Company's proposal to use expected results as a test year does a better job of matching revenues and expenses than the use of a historic test year.[26/] In support of its method, Avista cites to the testimony of Public Council witness Merton Lott from the Company's last rate case, in which Avista asserts that Mr. Lott complained of problems arising from the use of historic test years through his "production property adjustment."[27/] Avista's take on Mr. Lott's testimony is inaccurate. Mr. Lott never advocated eliminating the use of actual test year data.

19 To put this issue in context, it is necessary to identify the scope of Mr. Lott's testimony.[28/] That testimony addressed Avista's proposal to pro form costs associated with the Company's power supply resources without making similar adjustments to rate base.[29/] As a potential solution to the problem, Mr. Lott suggested following the Commission's treatment of a similar problem with PSE. Mr. Lott stated that, in PSE's case:

[24/] Staff Answer at ¶ 18.
[25/] Memorandum at ¶ 24.
[26/] Avista Answer at ¶ 15.
[27/] Id.
[28/] WUTC v. Avista Corp., WUTC Docket Nos. UE-050482 and UG-050483, Exh. No. 281 at 18 (Lott Direct).
[29/] Id.

> "[A]n adjustment to production rate base has always been made to match net pro forma production rate base to the load the pro forma production rate base is intended to serve. In this way, the pro forma rate base, which still tends to be higher than actual rate year net production plant, is matched to the load to be incurred during the rate year. The proformed projected rateyear production rate base costs are then brought back (i.e., matched) *to the test year load*. This is accomplished through employment of a pro forma production rate base adjustment calculated by determining pro forma rate year production rate base on a per kWh basis utilizing the expected rate year load. This production rate base per kWh is then matched *with the test year actual load* to develop the same matched relationship between load and pro forma production rate base as determined for the rate year."[30/]

20 Therefore, Mr. Lott was not advocating for eliminating the use of actual test year data, rather, he was asking the Commission to require Avista to account for "all known and measurable changes that are not offset by other factors."[31/] In this case, however, Avista does not use any test year actual results to make its proposed adjustments. Rather, Avista starts with the Company's authorized results that reflect a 2004 test year and a 2006 rate year, and combines those numbers with power costs adjusted for a 2007 rate year. There is a fundamental mismatch between power costs and other expenses and revenues in Avista's proposal, making it impossible to evaluate the validity of the Company's proposed adjustments.

IV. The Commission Does Not Need to Find a Legal Bar in Order to Dismiss Avista's Filing

21 Avista and Staff argue that the Commission should not dismiss Avista's filing because it is not legally barred from granting relief to Avista.[32/] This argument mischaracterizes the standard for a motion to dismiss and sidesteps the flaws in Avista's filing.

[30/] Id. at 18-19 (emphasis added).
[31/] Id. at 19; WAC § 480-07-510(3)(b)(ii).
[32/] Staff Answer at ¶¶ 4-7; Avista Answer at ¶ 32.

22 The Moving Parties' argument in support of dismissal has two bases: 1) even if the Commission could grant Avista relief predicated on the information contained in its filing, the Commission *should* not do so; and 2) the Commission should exercise its discretion and dismiss the filing pursuant to WAC § 480-07-500(4) for non-compliance with the Commission's rules. The Answering Parties do not address the circumstances under which it is appropriate for the Commission to grant Avista relief based on its filing. Neither party argues why the Commission *should* grant the requested relief despite its inconsistencies with Commission rules and policies. Finally, the Answering Parties never answer why the Commission should not exercise its discretion to summarily dismiss the filing.

A. Under Avista's and Staff's Reasoning, the Commission Could Never Grant a Motion to Dismiss

23 Staff asserts that the Moving Parties' arguments must "constitute a *legal* bar to Commission consideration of Avista's petition on the merits."[33/] Similarly, Avista argues that "the Commission is not *legally prohibited* from entertaining this filing."[34/] They reason that the Commission has considerable discretion to grant relief when it sees fit.[35/] The fallacy of this reasoning is that the Commission could never grant a motion to dismiss, because there would always be at least a possibility that the Commission could use its discretion to grant relief. Staff and Avista's rigid interpretation of the motion to dismiss standard ignores the Commission's interpretation of that standard.

33/ Staff Answer at ¶ 10 (emphasis added).
34/ Avista Answer at ¶ 4 (emphasis added).
35/ Id. at ¶ 22; Staff Answer at ¶ 8.

B. The Commission Has Granted a Motion to Dismiss Without Finding a Legal Bar

24 Whether or not the Commission *may* grant relief in this instance, if the Commission *should not* grant relief because there is no *actual* basis for relief in Avista's filing, then dismissal is appropriate.[36/] The Commission stated the appropriate standard in PSE's 2001 filing for interim rate relief:

> The issue then becomes whether the assertions of the pleadings initiating the proceeding provide sufficient bases for the Commission to exercise its discretion and consider the requested relief . . . that, taking the prefiled evidence in the light most favorable to [the non-moving party], it has not demonstrated facts that entitle it to the requested relief. If, taking the allegations of the initiating documents, as defined in the prefiled evidence supporting the filing, in the light most favorable to the Company, *the Commission would not grant the relief*, there is no point in wasting the parties' and the Commission's time, energies, and financial resources pursuing that relief.[37/]

25 No "legal bar" prevented the Commission from granting relief to PSE when it filed for "interim" or expedited relief in Docket Nos. UE-011163 and UE-011170. Yet, the Commission granted a motion to dismiss PSE's filing because the Commission would not grant PSE relief based on the evidence provided.[38/]

C. The Commission Has the Discretion to Summarily Dismiss Any Filing That Does Not Comply with the General Rate Case Requirements, and It Should Do So in This Case

26 The deficiencies in Avista's filing are not *per se* legal bars to the Commission's consideration of the filing, but rather are compelling reasons as to why the Commission should not consider the filing. Staff admits that Avista's filing fails to satisfy general rate case requirements, but fails to identify why the Commission should

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[36/] WUTC v. PSE, WUTC Docket Nos. UE-011163 and UE-011170, Sixth Supp. Order at ¶ 16 (Oct. 4, 2001).

[37/] Id. at ¶ 12 (emphasis added) (internal footnote omitted).

[38/] Id. at ¶ 41.

grant Avista relief based on such a patently deficient filing.[39/] The Commission should summarily dismiss Avista's filing due to the Company's disregard of the Commission's rules for general rate requests. It cannot be disputed that under the language of WAC § 480-07-500(4), the Commission has a substantial amount of discretion to dismiss a filing for procedural violations such as these.[40/] Further, the rule against single-issue ratemaking and the matching principle are not per se bars to the filing, but they provide fundamental regulatory policy reasons why the Commissions should exercise its discretion to dismiss the filing.

27 Both Avista and Staff assert that the Commission's general rate case filing requirements may be waived without any explanation of why the Commission should do so.[41/] Moreover, just as the Commission has the discretion to waive the procedural requirements, the Commission also has the discretion to require *any* filing to comply with the requirements of a general rate proceeding.[42/] In any event, even if the Commission decided to waive the filing requirements in this case, the evidence provided by Avista remains insufficient. Waiver of the filing requirements does not somehow give the Commission the appropriate evidence to support a general rate request, and none of the deficiencies could be cured by discovery. After all is said and done, the Commission should not grant general rate relief to Avista because the Company's filing does not justify such a request.

[39/] Staff Answer at ¶¶ 11-12.

[40/] WAC § 480-07-500(4) provides that "[t]he commission may summarily reject any filing for a general rate proceeding that does not conform to the requirements of [a general rate proceeding]. If the commission summarily rejects a filing for a general rate, it will provide a written statement of its reasons and will provide an opportunity for the case to be refiled in conformance with these rules."

[41/] Staff Answer at ¶¶ 11-12; Avista Answer at ¶¶ 22-25.

[42/] WAC § 480-07-505(4).

28 Staff does not dispute that Avista's filing fails to satisfy general rate case requirements.[43/] Staff simply asserts that Avista's "failure to provide all of the information required for a general rate case does not, in and of itself, require the Commission to grant the motion to dismiss."[44/] While it may be true that the Commission is not required to dismiss an inadequate petition, Avista still must provide evidence giving the Commission a basis for granting general rate relief. Avista's filing does not do so. The Commission spent considerable time and effort in fashioning the procedural rules to ensure that interested persons and parties will be afforded a certain level of due process.[45/] Avista should not be allowed to subvert that purpose.

29 Avista argues that given the Commission's broad discretion to regulate in the public interest and the requirement that the "end result" of a ratesetting decision be reasonable, the Commission should accept Avista's filing despite its infirmities.[46/] The Commission should not allow Avista to manipulate the Commission's discretion in a way that would effectively grant the discretion to the Company rather than the Commission. As the Commission explained in a past proceeding, "the public interest standard is an umbrella under which all Commission activity must take place, not a vehicle that [a utility] can ride to whatever result its owners wish to achieve . . . ."[47/] Avista should not be permitted to invoke the Commission's discretion to bypass Commission statutes and rules, as well as the Company's negotiated commitments.

[43/] Staff Answer at ¶¶ 11-12.

[44/] Id. at ¶ 12.

[45/] See, e.g.,WUTC v. Advanced Telecom Group, Inc., Docket No. UT-033011, Order No. 19 at ¶¶ 30-32 (Dec. 22, 2004) (stating that the Commission's procedural rules were meant to comply with the Administrative Procedures Act and afford all parties procedural due process).

[46/] Avista Answer at ¶¶ 22-25.

[47/] WUTC v. Olympic Pipe Line Co., WUTC Docket No. TO-011472, Twentieth Supp. Order at ¶¶ 56-57 (Sept. 27, 2002) (adopting Tesoro's position).

CONCLUSION

30 Under the Commission's rules, Avista's request for a rate increase meets the definition of a general rate case, and Avista's filing does not satisfy the filing requirements of a general rate proceeding. Although Avista attempts to characterize its request as a PCORC-type filing, the Company has not incorporated appropriate customer protections or obtained authorization from the Commission to make such a filing. In addition, the Commission has not considered the impact of a PCORC mechanism on Avista's cost of capital. Accordingly, the filing is prohibited single-issue ratemaking, which violates both the matching principle and the ERM Stipulation. Failure to dismiss Avista's filing will set a dangerous precedent in Washington by authorizing every utility to file for rate relief in piecemeal fashion, violating ratemaking principles and wasting the time and money of all interested parties. For those reasons, Avista's filing should be dismissed without prejudice to Avista's ability to refile a case that conforms to the relevant requirements.

DATED this 27th day of November, 2006.

Respectfully submitted,

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