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

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,<br><br>Complainant,<br><br>v.<br><br>AVISTA CORPORATION d/b/a AVISTA UTILITIES,<br><br>Respondent. | DOCKETS UE-220053, UG-220054, and UE-210854 (*consolidated*) |

# POST-HEARING BRIEF ON BEHALF OF COMMISSION STAFF

October 21, 2022

ROBERT W. FERGUSON
Attorney General

Nash Callaghan, WSBA No. 49682
Assistant Attorney General

Office of the Attorney General
Utilities & Transportation Division
P.O. Box 40128
Olympia, WA 98501
(360) 915-4521
Nash.Callaghan@utc.wa.gov

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## I. INTRODUCTION

*1* The Commission should accept the settlement without conditions. Under WAC 480-07-700, the Commission "supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest."[1] The record demonstrates that the amount of the revenue requirement increase in the settlement comports with this standard and that the rates in the settlement are fair, just, reasonable, equitable, and sufficient.[2] The agreement also complies with all aspects of RCW 80.28.425, including requirements related to equity and performance measures. Ratemaking, including consideration of multiyear rate plan (MYRP) proposals, is a balancing of interests, including fairness to ratepayers and sufficiency of rates for the Company. The proposed settlement strikes a proper balance of interests, and the Commission should approve it.

## II. BACKGROUND

*2* On January 21, 2022, Avista filed with the Commission a general rate case and MYRP proposal to increase general rates for electric service (Docket UE-220053) and natural gas service (Docket UG-220054). Avista requested a two-year rate plan, which would begin on December 21, 2022 (Rate Year 1) and December 21, 2023 (Rate Year 2)., Avista requested a Rate Year 1 increase in electric base rates of $52.9 million, or 9.6 percent (9.8 percent on a billed basis, prior to the Residual Tax Customer Credit resulting in a net increase of 7.6 percent), and an increase in natural gas base rates of $10.9 million, or 9.5 percent (5.8 percent on a billed basis, prior to the Tax Customer Credit resulting in a net increase of 2.5 percent). For Rate Year 2 of the rate plan, Avista proposed an increase in

[1] *See also* WAC 480-07-740 ("The commission will review all settlement agreements to determine whether they comply with applicable legal requirements and whether approval of the agreements is consistent with the public interest.").
[2] *See* RCW 80.28.020 ("the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts . . . and shall fix the same by order").

electric base revenues of $17.1 million, or 2.8 percent, and an increase in natural gas base rates of $2.2 million, or 1.7 percent, effective December 21, 2023.

*3* Representatives of all parties appeared telephonically at an initial settlement conference held on May 25 and 26, 2022, with additional telephonic and email discussions through June 10, 2022, which led to the settlement. The Settling Parties (all parties to the case except for Public Counsel) filed the settlement and supporting testimony on June 28, 2022. On July 29, 2022, Public Counsel filed opposition testimony, and rebuttal testimony was filed on August 19, 2022. The Commission held a hearing to consider the proposed settlement on September 21, 2022, and September 30, 2022.

*4* The settlement proposes a multiyear rate plan effective on and after December 21, 2022, for Rate Year 1, Avista's annual electric revenues would increase by $38.0 million above October 1, 2021, approved levels, representing a $14.9 million reduction from the Company's original request of $52.9 million. For Rate Year 2, the Parties agree that effective with service on and after December 21, 2023, Avista's annual electric revenues would increase by $12.5 million above Rate Year 1 levels, representing a $4.6 million reduction from the Company's original Rate Year 2 request of $17.1 million.

*5* The settlement also includes an annual overall natural gas revenue increase of $7.5 million effective December 21, 2022, above October 1, 2021, approved levels; this is a $3.4 million reduction from Avista's original request of $10.9 million. For Rate Year 2, Avista's annual natural gas revenues would increase by $1.5 million above Rate Year 1 levels, representing a $0.7 million reduction from the Company's original Rate Year 2 request of $2.2 million.

The only party that opposed the settlement was Public Counsel. In opposition testimony, Public Counsel outlines its objections to the settlement based on the following

elements: overall revenue requirement, rate escalation study terms, the projected EIM benefits as included in the revenue requirement, Avista's proposed insurance balancing account, rate of return, and return on equity.[3] Public Counsel also provided suggested improvements for Avista's wildfire prevention and resiliency plan.[4] Public Counsel indicated acceptance of many aspects of the settlement, including the following conditions: performance metrics, low income assistance, distributional equity analysis, and capital projects review.[5]

## III. DISCUSSION

*6* In this brief, Commission Staff will focus on two main topics. First, Staff will address issues raised by the Commissioners at the settlement hearing. Second, Staff will broadly address the arguments put forward by Public Counsel in opposition to the settlement.

### A. The Commissioners' Questions Raised During the Settlement Hearing

*7* At the settlement hearing, Chair Danner raised the issue of whether the terms of the settlement satisfy the requirements of RCW 80.28.425(7).[6] Specifically, whether the performance metrics in the settlement qualify as performance measures, and whether they should be filed with the Commission. Commissioner Doumit also raised questions related to Condition 19, which establishes a process to develop methods and standards for distributional equity analysis.[7] Specifically, whether Staff is the party best suited to lead this process, whether the Commission as a whole could (or should) lead the process instead, and

[3] Dahl, Exh. CJD-1T at 8:8-17. Note that the escalation study was not used to determine the revenue requirement in the settlement (*See* Settlement Stipulation at 8, condition 17), and that the settlement does not specify a return on equity (*See* Settlement Stipulation at 4, condition 11).
[4] *Id*. at 8:20.
[5] *Id*. at 7:12-8:7.
[6] *See* Ehrbar, TR. 113:14-114:9.
[7] Full Multiparty Settlement Stipulation at 10 (filed June 28, 2022) (Settlement Stipulation).

finally whether a general proceeding on distributional equity analysis would be preferable. [8] Each set of questions is addressed below.

### 1. The performance metrics agreed to in the settlement stipulation are performance measures, and therefore satisfy the requirements in RCW 80.28.425(7).

*8* At the settlement hearing, Chair Danner raised the issue of whether the terms of the settlement satisfy the requirements of RCW 80.28.425(7).[9] The question indicates two primary concerns: First, whether the settlement's performance metrics (which did not establish any performance incentive mechanism or "PIM" ) satisfy the requirements of the statute. Second, whether the performance metrics results must be filed with the Commission under subsection (7). Staff also takes this opportunity to request guidance from the Commission on a related matter: the interaction between PIMs and RCW 80.28.425(6).

#### a. The metrics proposed in the settlement qualify as performance measures under RCW 80.28.425(7).

*9* At the hearing, Chair Danner raised questions about whether the settlement's proposed metrics[10] qualify as performance measures. Under RCW 80.28.425(7):

> The commission must, in approving a multiyear rate plan, **determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan.** These performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding. **In developing performance measures, incentives, and penalty mechanisms**, the commission may consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction

[8] *See* Ehrbar, TR. 140:3-141:21.
[9] *See Id*. at 113:14-119:4.
[10] Settlement Stipulation at 13, Condition 23; Attachment B.

> policies, rapid integration of renewable energy resources, and fair compensation of utility employees.[11]

*10* Chapter 80.28 RCW does not define "performance measures", but RCW 80.28.425(7) does distinguish between performance measures, incentives, and penalties.[12] As highlighted in the quote above, if the Commission approves a multiyear rate plan, it is required to "determine a set of performance measures." By the plain language of the subsection, that requirement does not extend to performance incentives or penalties, which the statute mentions separately in the third sentence. With respect to performance incentives and penalties, subsection (7) only gives a non-exhaustive list of factors the Commission may consider in their development, but the statute does not state that incentives or penalties are a required feature of an approved multiyear rate plan. Had the legislative intent been to require that the Commission determine a set of incentives and/or penalties when approving a multiyear rate plan, the statute could have simply included those words into the first sentence of subsection (7) along with performance measures, or added a statutory definition of performance measures that included incentives and penalties.[13] The legislature chose not to do either, strongly suggesting that PIMs are not a statutorily required aspect of a MYRP.[14]

*11* Furthermore, the law states that the performance measures "will be used to assess a gas or electrical company operating under a multiyear rate plan." The statute does not dictate

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[11] RCW 80.28.425(7). Emphasis added.
[12] *See also* LAWS OF 2021, ch. 118, § 1(1) ("…including performance measures or goals, targets, performance incentives, and penalty mechanisms.").
[13] Additionally, if the term "performance measures" was intended to always include penalties and/or incentives, then specifying "performance measures, incentives, and penalty mechanisms" at the beginning of the third sentence of the subsection would be superfluous. *See Spokane Cty. v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.").
[14] *See Perez-Crisantos v. State Farm Fire & Cas. Co*., 187 Wn.2d 669, 680, 389 P.3d 476 (2017) ( "[W]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions. And where the legislature includes particular language in one section of a statute but omits it in another, the exclusion is presumed intentional.").

when this "assessment" will occur or what the consequences of the assessment might be. If incentives or penalties were required by the statute, this statement would be unnecessary, as the purpose of the performance measures would then be obvious: to determine whether the criteria of an incentive or a penalty mechanism was satisfied. An assessment could occur through many different processes, including during the Company's next GRC filing.[15] The use of the word "assess" in subsection (7) provides further contextual evidence that targets, incentives, and penalties are not required by statute.

*12* In general, ESSB 5295 should be read as an expansion (or clarification) of the Commission's ratemaking authority, not a restriction of it.[16] Interpreting the phrase "performance measures" to require that the Commission approve goals, targets, or PIMs as part of each and every MYRP is a restrictive reading, one that is likely incorrect given how easily circumvented such a restriction would be. As an example, suppose the Commission was considering a MYRP, and for whatever reason did not believe implementing PIMs would be a wise policy decision in this particular case. Under this reading of the statute, the Commission would have to approve a set of PIMs anyway. However, because no other part of RCW 80.28.425 specifies how impactful performance incentives must be, the Commission could simply set the incentives so low that they would be inconsequential or set the targets/goals for those incentives extremely high or low. This is an absurd result. A much more consistent reading of the statute is that the legislature entrusted the Commission with

[15] For another possible process in which the assessment could take place, *see* Docket UE-220066, Ball, JLB-1T at 35:13-38:26 (Describing how performance measure results could impact provisional pro forma review during a MYRP).
[16] *See* LAWS OF 2021, ch. 118, § 1(1).

the authority to decide whether to approve a MYRP at all,[17] and if so, on what terms. That includes whether to set targets, goals, penalties, or incentives as part of the plan.

*13* Ultimately, because the plain meaning of phrase "performance measures" is ambiguous, the Commission's interpretation will likely be given deference.[18] The Commission may have the discretion to interpret the term "performance measures" as necessarily including goals, targets, and/or PIMs, but it is unclear what benefit adopting such an interpretation would have in comparison with an interpretation that allows it discretion to approve PIMs in a given MYRP. Staff encourages the Commission to read the phrase "performance measures" as requiring no more than what the phrase suggests: measurement.[19] Goals, targets, incentives, and penalties are within the Commission's authority to implement, but measurement and assessment are the only requirements under RCW 80.28.425(7).

**b. The proposed performance metrics satisfy the legal standard.**

*14* Given all the considerations above, Staff believes that the metrics included in the settlement qualify as "performance measures" as that term is used in RCW 80.28.425(7). The metrics cover a wide range of topics and were the subject of substantial negotiations between the Settling Parties, many of whom had recently participated in Avista's CEIP

[17] Note that RCW 80.28.425(1) does not require that the Commission approve or set a MYRP, only that the utility propose a plan in each GRC filing.
[18] *See Phillips v. City of Seattle*, 111 Wn.2d 903, 908, 766 P.2d 1099 (1989) (An agency's definition of an undefined statutory term should be given great weight where that agency has the duty to administer the statutory provisions.); *but see Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 5, 802 P.2d 784 (1991) (where only question is of statutory interpretation, resort to administrative agency is unnecessary because it has no special competence over the controversy).
[19] *See Commission Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Ratemaking (Phase 1 – Performance Metrics)*, Docket U-210590, Staff Comments filed Sept. 9, 2022, at 2 ("Performance measures are either qualitative or quantitative metrics for tracking certain objectives.").

Docket where a set of customer benefit indicators[20] were successfully negotiated and approved. The results from these metrics should provide the Commission with enough information to assess Avista's overall performance, as required by statute.

**c. While the Commission clearly needs to have access to the results of any performance measures approved as part of a MYRP, the statute does not require the performance metrics results to be filed with the Commission.**

*15* The Commission raised a related question during the evidentiary hearing: Whether the results of the performance metrics tracked under Condition 23(c)[21] of the agreement should be filed with the Commission. Staff supports the terms of the settlement agreement as written and does not read any requirement in RCW 80.28.425 that indicates performance measures must be filed with the Commission as part of the assessment process under subsection (7). Condition 23 requires the Company to publish performance metrics results on its website, a requirement Staff supported to ensure transparency. Given that the information would be publicly available, Staff did not find it necessary to require those the results be filed with the Commission. In any proceeding in which the Commission performs an assessment, these reported results could easily be added into the record. However, after consulting with the other Settling Parties, Staff can state that it does not oppose requiring that these results are also filed with the Commission, provided that the filing is in addition to the requirements already outlined in the settlement.

**d. Although no PIMs were proposed in this settlement, the Commission should consider taking this opportunity to provide guidance on the relationship between RCW 80.28.425(6) and PIMs approved under RCW 80.28.425(7).**

[20] Customer benefit indicators or "CBIs" are a CETA-related concept intended to measure the distribution of costs and benefits among a utility's ratepayers. While performance metrics and CBIs are not the same, they are closely related concepts.
[21] Settlement Stipulation at 13.

*16* Although the settlement in this case does not include PIMs, Staff requests that the Commission consider providing guidance on how PIMs are intended to interact with other aspects of RCW 80.28.425. Specifically, subsection RCW 80.28.425(6), which states:

> If the annual commission basis report for a gas or electrical company demonstrates that the reported rate of return on rate base of the company for the 12-month period ending as of the end of the period for which the annual commission basis report is filed is more than .5 percent higher than the rate of return authorized by the commission in the multiyear rate plan for such a company, the company shall defer all revenues that are in excess of .5 percent higher than the rate of return authorized by the commission for refunds to customers or another determination by the commission in a subsequent adjudicative proceeding. If a multistate electrical company with fewer than 250,000 customers in Washington files a multiyear rate plan that provides for no increases in base rates in consecutive years beyond the initial rate year, the commission shall waive the requirements of this subsection provided that such a waiver results in just and reasonable rates.

*17* Staff requests that the Commission clarify how the refund requirement of this subsection interacts with PIMs authorized under subsection (7) in instances where a PIM penalty or award determines whether the 0.5 percent above authorized rate of return (ROR) threshold is crossed.

*18* For example, suppose a utility's commission basis report indicates that prior to considering PIMs its ROR is 0.4 percent higher than its authorized ROR. However, the utility exceeded several of its authorized PIMs incentive targets, entitling it to recover more through rates. When the awards are considered, the utility is now earning 0.6 percent higher than its authorized ROR. In this hypothetical, would the utility be required to return the 0.1 percent of ROR to ratepayers?

*19* Also consider the opposite circumstance, in which a utility's actual ROR prior to accounting for PIMs is 0.6 percent above commission authorized ROR. However, the utility's performance fell below several penalty thresholds. Taking these deductions into account, it now receives an actual ROR of 0.4 percent above the commission authorized

ROR. In this circumstance, would the utility be excused from returning 0.1 percent of ROR from ratepayers?

*20* Staff's answer to both questions is no. To state the obvious, PIMs are intended to change the incentives of IOUs, aligning their private interests more closely with the public interest. In the circumstances outlined above, accounting for the impact that PIM incentives or penalties have on actual ROR would undermine those incentives. Although the Commission need not provide guidance on this issue now, Staff believes that a common understanding of this issue would be helpful for settlement negotiations in future cases.

### 2. Commission questions on the Distributional Equity Analysis Development Condition.

*21* During the settlement hearing, Commissioner Doumit raised questions related to Condition 19.[22] Specifically, whether Staff is the party best suited to lead this development process, whether the Commission could (or should) lead the process instead, and whether a generic proceeding or collaborative regarding distributional equity analysis (DEA) would be preferable. [23] Below each question is addressed in turn.

*22* Staff is the best suited out of all the parties to lead the process outlined in the settlement. Staff is an objective and impartial party tasked with making recommendations to the Commission that are in the public interest. The insight and input from the other parties are all valuable, and as always Staff would consider the input provided by the other parties and the public, but Staff's role in utility regulation uniquely suits it to leading this process. Staff supports the conditions of the settlement as written, since the Commission would still review and approve the proposed DEA under Condition 23, as well as resolve disagreements

[22] Settlement Stipulation at 10.
[23] *See* Ehrbar, TR. 139:22-142:1.

between the parties, should there be any. With that being said, nothing in the language of the Condition 19 prevents the Commission from participating in this process if it so desires.

*23* Opening general proceeding, rulemaking, or collaborative to address distributional equity analysis is also an option always open to the Commission if it so desires. In the context of this proceeding however, Staff did not have the authority to negotiate a condition that would obligate the Commission to initiate such a proceeding. Any terms reached in this docket could only be binding on Avista, not the other Commission-regulated utilities that would take part in a generic proceeding on distributional equity analysis. For those reasons, Staff concluded that its support for any generic proceeding should be decided outside the context of a specific GRC. Finally, approval of this condition and a generic proceeding on the same topic are not mutually exclusive. Staff supports the conditions of the settlement as written. However, after discussion with the other Settling Parties, Staff can state that it is comfortable with addressing distributional equity analysis standards in a generic proceeding if that is the Commission's preference.

### B. Public Counsel's Opposition to the Settlement is Misplaced and Appears in Some Instances to be Based upon a General Skepticism of the MYRP Mechanics

*24* In this section Staff will address two issues. First, Staff will generally outline how the concerns raised by Public Counsel are adequately addressed by the settlement. Second, Staff will address a potential argument Public Counsel might make in its post-hearing brief related to provisional pro forma additions.

#### 1. Public Counsel's Objections to the Settlement's Overall Revenue Requirement are Adequately Addressed by the Mechanics of the MYRP Statute, the Used and Useful Policy Statement, and the Terms of the Settlement

*25* Public Counsel's objections to the settlement's overall revenue requirement are addressed by the protective measures outlined in statute, commission policy, and the terms of the settlement. Over the past few years, the passage of ESSB 5116 and more recently ESSB 5295 has signaled a shift in Washington State's ratemaking policies. Together, the amendments to RCW 80.04.250, the Commission's used and useful policy statement, and RCW 80.28.425 encourage a transition from traditional ratemaking, in which utility spending is disciplined by regulatory lag, toward a system of performance-based ratemaking with cost recovery subject to review and refund. Under this new system, the protective function that regulatory lag once served is now accomplished through subsequent reviews of provisional pro forma additions included in rates, refunds for excessive actual returns above authorized ROR, and performance measures assessed over the course of MYRPs. The transition from traditional ratemaking to the new system presents risks that the Commission and Staff continue to identify, consider, and mitigate. When evaluating the current case and the Public Counsel's objections to the settlement however, it is important to also acknowledge that certain concerns that would be reasonable under traditional ratemaking no longer present the same risks under the mechanics of this new system.

*26* For example, RCW 80.28.425(6) provides for refunds should the utility's actual annually reported ROR be above 0.5 percent of the Commission authorized ROR, protecting ratepayers from utility overearning beyond that point. This mechanism increases the importance of determining the appropriate ROR, a topic which Staff will leave to other Settling Parties to address in brief.[24] And Staff certainly acknowledges that utility earnings between Commission authorized ROR and the 0.5 percent threshold could still be a

[24] Suffice it to say that Staff does not believe that Public Counsel's cost of capital recommendations are consistent with the principle of gradualism.

significant and undue burden on ratepayers. Nevertheless, subsection (6) represents an important new limit that caps the potential harm from utility overearning, especially when considered in conjunction with the Commission's longstanding authority, for example, under RCW 80.04.360.[25] Subsection (6) provides the Commission with the ability to determine a specific dollar amount that represents the utility's maximum potential overearnings in a given year, allowing the Commission to assess the risk of error presented by approving a settlement's proposed revenue requirement. The "tail risk" of extreme overearning due to a miscalculated revenue requirement no longer exists.

*27* Furthermore, as the Commission is aware, any utility overearning as a result of including provisional pro forma additions that do not materialize are subject to refund, apart from any subsection (6) refund determination. Under both the used and useful policy statement and the terms of the settlement,[26] review of provisional pro forma additions includes offsetting factors. In the 2020 NW Natural GRC Order, the Commission made clear that review of provisional pro forma additions must include consideration of both direct and indirect offsetting factors,[27] and that the used and useful policy statement remains relevant guidance in the context of MYRPs under RCW 80.28.425.[28] The offsetting factors aspect of subsequent pro forma review is potentially more significant than parties realize, and any

[25] RCW 80.04.360: "If any public service company earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings shall have been invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company."
[26] Settlement Stipulation at 10-11, Condition 20. *See also* Andrews, Exh. EMA-1T at 45:10 – 48:2. On an administrative note, should the Commission approve the settlement, Staff suggests including the relevant portions of Ms. Andrews's testimony as an attachment for ease of access in the future. Staff has made a note internally that future settlement stipulations that reference portions of pre-filed testimony should include the relevant portions of that testimony as an attachment to the settlement itself.
[27] *Wash. Utils. & Transp. Comm'n v.Nw. Nat. Gas Co*., Docket UG-200994, UG-200995, UG-200996, UG-210085 (Consolidated), Order 05, pp.8-9, ¶¶ 28-29 (Oct. 21, 2021).
[28] *Id*. at 7, n.5.

offsetting factors unaccounted for in the settlement agreement could still be accounted for in the pro forma review.[29] This severely weakens Public Counsel's argument that certain alleged errors within the settlement agreement, even if true, are a sufficient reason to reject or alter the settlement.

### 2. If Public Counsel requests in post-hearing brief that the Commission establish a test for including provisional pro forma in MYRPs, it should decline to do so in this case.

*28* At the settlement hearing, Public Counsel's cross examination questions hinted at a potential argument. Namely, that the Commission should establish a more specific test for evaluating pro forma capital additions that a utility seeks to include provisionally in rates.[30] The questions posed by Public Counsel at hearing imply that they may argue in post-hearing brief that the Commission should specify a test whereby only proposed pro forma plant additions that are already "designed" may be included provisionally in rates, and those not yet designed should not be included, even if subject to refund.[31] Staff may be reading too much into this particular line of questioning from Public Counsel. However, if Public

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[29] *In re Commission Inquiry Into the Valuation of Public Service Company Property that Becomes Used and Useful After Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date, pp. 12-13, ¶ 37; 7, n.25 (Jan. 31, 2020) (Used and Useful Policy Statement); *see also*, *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket UE-200900, Order 08/05, pp. 72-73, ¶ 202 (Sept. 27, 2021) ("Offsetting factors are required in each pro forma adjustment. In future filings, if Avista seeks to recover any major capital addition through a pro forma adjustment, Avista must demonstrate all offsetting factors, direct and indirect, hard and soft, material and immaterial. If the plant is sufficiently material for the Company to seek recovery, all offsetting factors must be considered material and included in the adjustment. The necessity of these offsetting factors, as we have stated here, will not dissipate in the context of a multi-year rate plan. Avista should not expect recovery in rates without a demonstration of all offsetting factors.").

[30] Andrews, TR. 230:18-21 (Question from Public Counsel: "Okay. Would you agree that there is a difference between a project that is still at a conceptual phase versus a project where engineering design has been completed?").

[31] *See* Andrews, TR. 229:3- 232:25.

Counsel does make this argument, the Commission should consider the following counterarguments.

*29* First, in the past the Commission has resisted bright line tests related to accepting pro forma plant additions into rates, provisionally or otherwise.[32] While additional Commission guidance is always welcomed by Staff, there may be good reason to avoid establishing such a test in this first round of multiyear rate plans brought before the Commission. The used and useful policy statement indicates that these will be case-by-case determinations.[33] As mentioned above, the 2020 NW Natural GRC Order confirmed that the used and useful policy statement's guidance applies to provisional pro forma in MYRPs.

*30* Second, the Commission should keep in mind that RCW 80.28.425 encourages MYRPs, specifying details related to the Commission approving rate plans of up to four years.[34] Any Commission standard that governs whether pro forma costs are included provisionally in rates should be crafted with this extended timeline in mind. As a practical matter, the filing for a four-year MYRP proposal would be crafted about a year before the beginning of the rate effective date of rate year one, if not earlier. In other words, to include a pro forma item proposed for inclusion in rate year four rates, the evidence necessary to support its inclusion would need to be produced and presented at least four years prior to the beginning of rate year four. A standard for including provisional pro forma into rates that makes producing the necessary evidence practically impossible would effectively eliminate the possibility of approving three or four year rate plans.

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[32] *See Wash. Utils. and Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991 & UG-190992 (Consolidated), Order 08/05/03, p. 4 (Rejecting Staff's proposed materiality threshold for pro forma adjustments).
[33] Used and Useful Policy Statement at 12, ¶ 35 ("The threshold for including provisional pro forma adjustments will be determined on a case-by-case basis according to the specifications of the rate-effective period investment.").
[34] RCW 80.28.425(3)(a).

## IV. CONCLUSION

*31* The settlement is a result of thoughtful negotiations between parties with a diverse set of interests. The revenue requirement increase is reasonable, and the multiyear rate plan provides adequate protections to address the concerns raised by Public Counsel. The Settlement complies with the requirements of RCW 80.28.425 and delivers crucial first steps toward implementing both equity requirements and performance-based ratemaking. The Commission should approve the settlement agreement as filed.

Respectfully submitted this 21st day of October, 2022.

ROBERT W. FERGUSON
Attorney General

/s/ *Nash Callaghan*, WSBA No. 49682
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98501
(360) 915-4521
nash.callaghan@utc.wa.gov

Attorneys for Commission Staff