

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent.

In the Matter of the Electric Service
Reliability Reporting Plan of

AVISTA CORPORATION.

DOCKETS UE-220053, UG-220054 and
UE-210854 (*consolidated*)

POST-HEARING BRIEF OF THE ENERGY PROJECT

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I. INTRODUCTION

1 Avista Corporation (Avista or Company), Staff, the Alliance of Western Energy Consumers, the NW Energy Coalition, Sierra Club, Walmart, Small Business Utility Advocates, and The Energy Project (TEP) (collectively, Settling Parties) present a Full Multiparty Settlement that resolves all the issues in this general rate case.¹ The Energy Project (TEP) supports the Settlement because it satisfactorily addresses low-income customer needs, adopts a reasonable set of performance measures, and is in the public interest.

2 The Settlement includes multiple provisions specifically designed to assist low-income customers and vulnerable populations, and otherwise to promote equity. First, the Settlement paves the way for Avista to implement a five-tier bill discount program and programs that

¹ Exh. JT-2 (Full Multiparty Settlement Stipulation) (Settlement).

address arrearages, the combination of which shows promise as a cornerstone strategy to reduce household energy insecurity and retain access to essential utility service in Washington. Second, the Settlement requires Avista to file a work plan to facilitate the development of a renewable energy project for the direct benefit of low-income customers. Third, the Settlement includes changes that will allow Avista's low-income weatherization program to serve more customers. Fourth, Avista agrees to incorporate equity and a distributional equity analysis into its capital planning processes. Finally, Avista agrees to track and report various performance metrics concerning affordability and equity.

3 For the first time since the Legislature passed Senate Bill (SB) 5295, in this case the Washington Utilities and Transportation Commission (Commission) must evaluate a proposal for a multiyear rate plan and incorporate performance-based ratemaking.² The Settling Parties and Public Counsel carefully evaluated the Legislature's new requirements, retained national experts in performance-based regulation to guide their work, and canvassed other jurisdictions' performance-based regulation practices to ensure that the proposals presented to the Commission are consistent with the law and best practices in this emerging field. The Settlement presents, and Public Counsel supports, a proposal for performance measures (also known as performance metrics, TEP uses the two terms synonymously) that fully complies with SB 5295's requirements.³ As TEP explains later in this brief, nothing in SB 5295 requires the Commission to assign targets or benchmarks to the measures, much less implement a performance incentive mechanism at this time. Indeed, implementing a wide range of incentives and penalties with the ability to significantly impact the Company's finances would be inconsistent with what the

² Engrossed Substitute S.B. 5295, 67th Leg., Reg. Sess., § 2(7) (Wash. 2021); RCW 80.28.425.

³ Crane, Exh. ACC-1T at 16:15-18:16.

literature and experts describe as the best practice for a jurisdiction just starting its journey towards performance-based regulation.⁴ While the Settlement in this case is not perfect—after all, it represents a compromise between many parties—starting off with a broad set of performance measures is the best practice for performance-based ratemaking.

4 For the reasons described herein, the Settlement is in the public interest and TEP encourages the Commission to approve it in whole.

II. PERFORMANCE-BASED REGULATION.

5 The Commission historically has had the discretion to establish performance measures and to design mechanisms that penalize and incent certain actions by regulated utilities. For example, Avista produces an annual service quality measure report card that documents the utility's performance concerning certain customer service guarantees and reliability performance measures.⁵ The report card includes approximately fifteen measures and each has an associated target or benchmark.⁶ Shareholders pay a penalty to customers when Avista fails to meet a customer service guarantee.⁷

6 Recently, the Legislature affirmed certain aspects of the Commission's discretionary authority concerning performance measures, and also mandated that the Commission take a limited set of actions when approving a multiyear rate plan. Senate Bill 5295, codified in RCW 80.28.425(7), requires the following concerning performance-based regulation:

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

⁴ Cebulko, Exh. BTC-1T, at 5:2-6:13.

⁵ Crane, Exh. ACC-3.

⁶ Crane, Exh. ACC-3 at 27 (Appendix A: Service Quality Measures Report Card).

⁷ Crane, Exh. ACC-3 at 21.

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 policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

RCW 80.28.425(7) includes three sentences. These three sentences include one sentence with a mandate, *i.e.*, “[t]he commission must,” followed by two sentences that include delegations of discretionary authority to the Commission, *i.e.*, “the commission may” and “[t]hese performance measures may.”

A. Performance-based Regulation Mandates in RCW 80.28.425(7).

7 Notably, RCW 80.28.425(7) includes only one mandate concerning performance-based regulation. That one mandate is found in the first sentence of the section, which requires that 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.”⁸ This requirement includes two components. The first is to “determine a set of performance measures,” and the second is to use those performance measures to “assess a gas or electrical company operating under a multiyear rate plan.”⁹

B. Delegations of Discretionary Authority in RCW 80.28.425(7).

8 In the second and third sentences of RCW 80.28.425(7) the Legislature delegates to the Commission the discretion to decide if and when it should employ other tools in the performance-based regulation toolbox.

⁸ RCW 80.28.425(7).

⁹ RCW 80.28.425(7).

9 In the second sentence, the Legislature provides the Commission discretion to select which performance measures to use. The Legislature allows the Commission to select from the measures proposed by a party in the proceeding or otherwise supported by evidence.¹⁰

10 The third sentence, which discusses “developing performance measures, incentives, and penalty mechanisms” is also entirely discretionary.¹¹ The operative verb in the third sentence allows that “the commission *may* consider [various] factors” when “developing performance measures, incentives, and penalty mechanisms. . .”¹² Put simply, there is nothing in the structure of the third sentence or the rest of RCW 80.28.425(7) that requires or implies that the Commission is required to implement an incentive or penalty mechanism.

11 The Legislature used mandatory language in the first sentence and permissive language in the following two sentences. We must assume that the Legislature deliberately selected where to use mandatory and permissive terms. The Legislature could have said, but did not say, that the Commission “must adopt an incentive or penalty mechanism.” Therefore, the Legislature clearly expressed its intent not to require the Commission to adopt a performance incentive mechanism, but left this decision to the Commission.

C. The Settlement Complies with the Performance-based Regulation Mandate in RCW 80.28.425(7).

12 The settlement complies with the mandate in RCW 80.28.425(7) that the Commission first “determine a set of performance measures,” and second to use those performance measures to “assess a gas or electrical company operating under a multiyear rate plan.” Attachment B to the Settlement identifies a set of performance measures that the Settling Parties recommend the

¹⁰ RCW 80.28.425(7).

¹¹ *See* RCW 80.28.425(7).

¹² RCW 80.28.425(7) (emphasis added).

Commission determine are appropriate to assess Avista's performance because they measure regulatory goals and objectives that are most important to the Commission and the public.¹³

13 The list of performance metrics included in Attachment B are categorized into five groups: affordable service, capital formation, equitable service, satisfying customer needs, and advancing societal outcomes. Not only can the performance metrics be used for assessing the utility's performance over the multiyear rate plan, they can also be used for measuring the utility's performance in meeting the regulatory goals that the Commission provisionally identified in its proceeding on performance-based ratemaking.¹⁴

14 These measures will be posted on Avista's website and will be available for use by the Commission, stakeholders, and the public.¹⁵ TEP would not oppose the Commission requesting that Avista file the performance measures with the Commission in addition to posting them online.

15 The Commission and its Staff can, at any time after the measures are published, access the measures and use them to assess Avista's performance. The Settling Parties do not specify the exact way that the Commission and its Staff should assess Avista's performance using these measures and the Settlement provides them with considerable discretion in this regard. When assessing the Company's performance, the Commission and its Staff can choose to review a subset, a selected number, or all of the measures identified in Attachment B. Avista will report

¹³ Settlement ¶ 23; *id.* at Attachment B.

¹⁴ Dkt. U-210590, Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making, Notice of Opportunity to File Written Comments (August 5, 2022) (Goal 1: Resilient, reliable, and customer-focused distribution grid, Goal 2: Customer affordability, Goal 3: Advancing equity in utility operations, and Goal 4: Environmental improvements).

¹⁵ Settlement ¶ 23.

each metric on a quarterly or annual basis, so the Commission and its Staff can compare the Company's performance over a period of time. Over the course of the multi-year rate plan, or in Avista's next general rate case, the Commission could choose to assess Avista's performance by examining different subsets of the reported measures.

16 The Settlement does specify that the Settling Parties are not proposing any targets at this time, and the Settling Parties agree that the performance incentive mechanisms proposed by Avista in this docket will not be implemented.¹⁶ Apart from these limited-duration restrictions, the Commission and its Staff can assess Avista's performance using any of the measures Avista reports.

17 The Commission should approve the Settlement's performance-based ratemaking terms in full because the Settlement complies with the mandates of RCW 80.28.425(7) and is in the public interest.

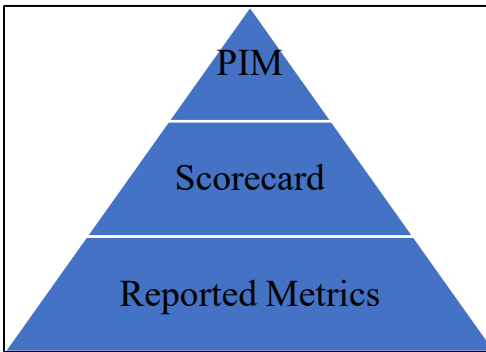
D. Starting with a Broad Set of Performance Measures is the Best Practice for Performance-based Ratemaking.

18 TEP conceptually categorizes metrics into three levels: reported metrics, scorecards, and performance incentive mechanisms. The three levels of metrics are best depicted in a pyramid, as shown in Figure 1 below.¹⁷

¹⁶ Settlement ¶ 23(a)-(b).

¹⁷ TEP earlier described this concept and pyramid in comments in the performance-based ratemaking policy docket. Dkt. U-210590, Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making, Second Comments of The Energy Project on Performance-Based Regulation in Washington, at 14 (June 13, 2022).

Figure 1: Levels of Reported Metrics



At the base, regulators establish a broad set of metrics to track outcomes across all of the state’s regulatory goals. Of those reported metrics, regulators select a subset to place on the scorecard and assign targets or benchmarks. Finally, regulators select a limited number of performance incentive mechanisms to associate with financial incentives or penalties. Performance incentive mechanisms should only be used for the smallest subset of metrics that are the most important to furthering the public interest; this ensures that utility management focuses on the most important outcomes and avoids imposing significant financial impacts (on both customers and the utility) for relatively less important outcomes.

19 Today the Commission and stakeholders have just begun building Washington’s performance-based regulation pyramid. The Settling Parties and Public Counsel support starting that work in this proceeding by building a wide and structurally sound base consisting of a broad set of measures. With the benefit of several years of reported data for the base measures, the Commission in the future can build the middle layer of the pyramid by identifying a select number of metrics to attach a benchmark or target and place in a scorecard. After the middle layer is solidified, the Commission will have a foundation upon which it can design a limited number of performance incentive mechanisms to promote the public interest.

20 TEP witness Mr. Cebulko testifies that it is a best practice for regulatory commissions to take sufficient time to deliberately set the performance targets and incentives in the second and third level of pyramid.¹⁸ Mr. Cebulko reaches this conclusion because:

- Setting performance targets without sufficient historical data or deliberate discussion about the appropriate performance level would be an exercise in uninformed judgement.
- Selecting which metrics to associate with a target, or for use in a performance incentive mechanism, without sufficient consideration of the desired outcomes for performance-based ratemaking risks incenting the wrong actions.
- Designing a performance incentive mechanism without first establishing an appropriate framework for penalties and incentives, and determining the total amount of money on the line for the utility, risks providing disproportionate rewards or imposing disproportionate penalties.

Put simply, the Commission should not hurriedly adopt incentive and penalty mechanisms without sufficient deliberation or an appropriate record of support.

21 TEP believes that the schedule set in the more deliberate performance-based ratemaking policy docket will resolve these issues in a reasonable and efficient timeframe, consistent with industry best practices.¹⁹ TEP acknowledges that the measures the Commission selects in its performance-based ratemaking policy docket may not match perfectly the metrics included in this Settlement. However, it is not a fatal flaw that there may be discrepancies between the measures in this Settlement and the number, content, and calculation of measures the Commission selects in its performance-based ratemaking policy docket. Such discrepancies are inevitable when the Legislature provides the Commission with overlapping mandates, as it has done here by mandating that the Commission select measures in rate cases before the

¹⁸ Cebulko, Exh. BTC-1T at 6:2-13.

¹⁹ Crane, Exh. ACC-1T at 3:15-4:22 *citing* Dkt. U-210590, Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making.

Commission completes its work in the performance-based ratemaking policy docket. After the Commission issues its policy statement establishing favored performance measures, the parties can begin to align the measures they support in future rate cases with measures included in the Commission's policy statement. The Commission could even set an expectation in its policy statement or general rate case orders that a utility incorporate those favored performance measures in future filings.

22 Based upon the record in this case, the Commission should approve the universally supported performance-based ratemaking aspects of the Settlement in full. The Settlement will begin Avista's performance-based ratemaking efforts by reporting a set of measures that will inform the Commission and stakeholders when it comes time to establish a scorecard or design performance incentives for a more narrow set of measures.

III. CONCLUSION

23 For the reasons described herein, the Settlement is consistent with the requirements of RCW 80.28.425(7) and is in the public interest. The Energy Project supports its approval in whole.

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