BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION, D/B/A AVISTA UTILITIES, Respondent.	DOCKETS UE-240006 & UG-240007

POST HEARING BRIEF

ON BEHALF OF THE

ALLIANCE OF WESTERN ENERGY CONSUMERS

October 28, 2024

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I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Order 02 in the above-referenced dockets, the Alliance of Western Energy Consumers ("AWEC") files this Post-Hearing Brief.

2 As discussed below, Avista Corp.'s ("Avista" or "Company") requested rate increase is significantly overstated, particularly in the first year of its requested two-year rate plan. Most egregiously, the Company's request is supported by an elevated return on equity and an unsupported adjustment to its power costs based on limited historical results. But, as AWEC's testimony and argument below demonstrates, further reductions to the Company's request are needed to establish just and reasonable rates. In particular, AWEC recommends that the Commission reconsider the process for accepting forecasted capital into rates by eliminating the after-the-fact capital review process and performing capital reviews on a project-by-project, rather than portfolio, basis. Such adjustments will comport with the Commission's "Used and Useful" Policy Statement, simplify and streamline process for Staff and stakeholders, and better ensure just and reasonable rates for customers.

3 Moreover, there is no basis at this time to increase Avista's rates based on Staff's recommendation to include Climate Commitment Act ("CCA") allowance costs in modeling dispatch. Staff's recommendation will shift CCA compliance risk to customers and would be implemented before receiving necessary guidance from the Washington Department of Ecology ("Ecology").

4 Finally, given the adjustments AWEC and other parties recommend to Avista's rate request, the Company should be authorized no more than a slight first-year rate increase (and likely should experience a rate decrease). This circumstance allows the Commission to adopt

Avista's recommended rate spread in its Rebuttal Testimony, which would make meaningful progress toward rate parity for all classes without resulting in significant rate impacts for any single customer class.

II. ARGUMENT

A. Capital Forecast

1. The Commission should set rates based on capital projects placed in service as of the rate effective date of each year of the rate plan.

5 Avista's rate request in this case is based on an historical test period of July 1, 2022 through June 30, 2023 with pro forma adjustments and a projection of provisional capital additions through the term of the proposed rate plan.[1] Like its last rate plan, Avista proposes an after-the-fact capital review process that would, among other things, compare its actual net plant investment with the level of investment assumed in the Commission's approved rates.[2] This review would be done on a "portfolio" basis, meaning that the reasonableness of Avista's investments would not necessarily be judged by whether it placed in service the projects it forecasts in this case but whether the overall level of its capital investment was in line with the amount it forecasts in this case.[3]

6 AWEC opposes Avista's approach to its capital forecast because it effectively results in the establishment of rates based on an un-auditable budget. Specifically, Avista has forecast its planned capital additions through 2026, for which AWEC and other parties have very little basis to determine is reasonable or not. Further, at the time of Avista's proposed capital review process, so long as Avista spends at or below its capital forecast, it will be difficult to evaluate whether Avista's investments were prudent regardless of whether that spend went toward the

1 Mullins, BGM-1T at 5:3-8.
2 Benjamin, TCB-1T at 30:18-32:32.
3 Mullins, BGM-1T at 12:1-13:2.

projects it used to form the basis for its budget forecast since Avista will have spent within the limits of its budget that established its rates in the first place. This creates a circular problem in which the prudence of Avista's capital investments are determined in large part by Avista's own budget which is itself essentially a black box. This is not a just and reasonable means of establishing the Company's revenue requirement.

7 Instead, AWEC recommends that the Commission approve rates for the first-rate year based on capital demonstrated to be in service by the rate-effective date. This would be done by Avista filing an attestation for each project placed in service greater than $1 million.[4] To the extent the cost of any project is less than forecasted, Avista would reduce its revenue requirement accordingly.[5] The process for projects placed in service during rate year 2 would operate similarly in that Avista would file a project-specific attestation for all projects above $1 million prior to the rate effective date of the second rate year.[6] This approach eliminates the need for a resource-intensive after-the-fact capital review process and also addresses the problems discussed above with respect to a portfolio-based review approach.

8 Avista opposes AWEC's recommendation, arguing that it is "unreasonable, overly restrictive and would prevent the necessary recovery of investments by Avista."[7] The Company notes that its operations are dynamic, which may justify changing its capital projects throughout the course of a rate plan.[8] AWEC has no argument with this, but that does not mean that "[a] 'portfolio' approach is necessary in a multi-year rate plan."[9] The projects at issue are all capital projects, so if prudent utility practice dictates that Avista change course and invest in a project

4 *Id.* at 11:13-24.
5 *Id.* at 11:20-22.
6 *Id.* at 13:10-18.
7 Andrews, EMA-6T at 25:5-6.
8 *Id.* at 25:6-26:2.
9 *Id.* at 25:6-7.

that is different from what it forecast in its rate plan, this just means Avista will take some regulatory lag on the project until it can be included in rates in the Company's next rate plan. That is no different from the standard ratemaking process. It is also preferable to the alternative created by Avista's last multi-year rate plan in which the Company can effectively establish its own prudent level of capital investment.

9 Avista also discusses the Commission's Used and Useful Policy Statement at some length in apparent service to its position.[10] But nothing in this Policy Statement requires a portfolio capital review based on budgeted assumptions. In fact, as Avista's own excerpts show, this Policy Statement was not intended to modify "the Commission's longstanding ratemaking practice [] to set rates using a modified historical test year with post-test-year rate-base adjustments using the known and measurable standard, the matching principle, and the used and useful standard …."[11] As part of this, the Commission emphasized that the "actual amount of the [revenue] change must also be 'measurable.' This has historically meant that the amount cannot be an estimate, projection, *product of a budget forecast*, or some similar exercise of informed judgment concerning future revenue, expense, or rate base."[12] For rate-effective period investments, the Commission confirmed that it would consider these "consistent with its longstanding ratemaking practices and standards,"[13] and that the multi-year rate plan statute "does not guarantee recovery of specific, programmatic, or projected plant."[14] It further identified as one of its goals to "[s]upport streamlined processes by requiring additional process only when necessary."[15] On this issue, the Commission stated that it "will reject requests that

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10 Andrews, EMA-6T at 20-22.
11 *Id.* at 20:22-25 (quoting Docket No. U-190531, Policy Statement ¶ 21 (Jan. 31, 2020)).
12 Used and Useful Policy Statement ¶ 23 (emphasis added).
13 *Id.* ¶ 29.
14 *Id.* ¶ 28.
15 *Id.*

either cannot be audited or are unreasonably burdensome to review."[16] That is the case with Avista's after-the-fact capital review process. In response to questioning from Chair Danner about whether Staff has the time and resources to review the projects, Staff Witness Erdahl stated that "we would like the multi-year rate plan rejected partly for that reason as there is a resource constraint issue. Some time was definitely spent on it, but we would like more time and resources."[17] If the Commission approves a two-year rate plan, AWEC's recommendations address this burdensome process by eliminating the need for a resource-intensive after-the-fact capital review process.

10 Finally, Avista dismisses AWEC's concerns regarding Avista's incentive to spend up to its capital forecast by pointing to its internal capital investment process. "The Company's long-standing practice has been to constrain the level of capital investment each year," Ms. Andrews states.[18] As comforting as that is, the Commission should not be swayed simply by Avista's assurances. This has the effect of making the regulated the regulator and bases the reasonableness of the Company's investments on its own internal recommendations.

2. <u>AWEC's Response to Bench Request 2</u>

11 On October 15, 2024, the Commission issued Bench Request 2 in this proceeding, requesting that parties provide a response clarifying the discrepancy between documents filed in Avista's 2023 Washington Annual Provision Capital Report or, if such discrepancy cannot be resolved, the parties' understanding of the documents filed in Avista's 2023 report and "to brief any legal issues regarding the 2023 provisional plant review process, how the Commission should address any remaining 2023 discrepancy, as well as how the Commission should address

16 *Id.* ¶ 29.
17 Erdahl, Hearing Tr. Vol. IV at 397:22-398:4.
18 Andrews, EMA-6T at 23:6-7.

future provisional plant review processes."[19] Based on a follow-up e-mail from Judge Thompson, AWEC understood the Commission to prefer its response come in the parties' post-hearing briefs in this case. As such, AWEC responds as follows:

12 With regard to discrepancies in the 2023 filing, in general, AWEC has no reason to dispute the discussion of the variances that Avista provided in its response to Bench Request 2 and this issue was not the focus of its testimony on capital review in this case. Rather, AWEC continues to be concerned with the significant variances presented in the report and the challenges associated with reviewing a portfolio of capital additions after the fact. The portfolio approach used in those capital review filings was the result of a compromise settlement provision adopted in the 2022 rate case. As noted in Response Testimony and in briefing above, AWEC does not believe that a portfolio approach is reasonable going forward and has made recommended changes to the provisional plant review process accordingly.[20] AWEC has no specific recommendations related to any remaining 2023 discrepancy.

B. Avista's return on equity should be set at 9.25%

13 Avista requests a full 100 basis point increase to its ROE from its current 9.4% to 10.4%. Avista's request is supported by several analyses performed by Avista's witness Adrien McKenzie. Specifically, Mr. McKenzie performed a constant growth DCF analysis, a CAPM analysis, an ECAPM analysis, a risk premium analysis, and an Expected Earnings analysis. Mr. McKenzie also proposes an 8-basis point increase to Avista's ROE based on "flotation costs."[21]

14 Initially, the Commission should reject Mr. McKenzie's flotation cost adjustment, as it did in Avista's 2020 general rate case.[22] While Mr. McKenize attempted to respond to the

[19] Bench Request No. 2 (Oct. 15, 2024).
[20] Mullins, BGM-1T at 12:1-13-2
[21] Mckenzie, AMM-1T at 54:4-11.
[22] Docket Nos. UE-200900, UG-200901, UE-100894 (*Consolidated*), Order 08-05 ¶ 96 ("2020 GRC Order").

Commission's criticism of this adjustment in that case by showing Avista's actual flotation costs, Avista fails to show both that it did not recover these flotation costs through its authorized rates and that Avista will incur flotation costs in the test year.[23]

15 The Commission should also give little weight to Mr. McKenzie's CAPM and ECAPM analyses, which skew his results higher. Specifically, Mr. McKenzie's CAPM analysis shows ROEs between 11.3% and 11.7%,[24] while his ECAPM analysis provides ROEs between 11.4% and 11.8%.[25] In addition to this Commission's recent skepticism of the CAPM and ECAPM methods,[26] Mr. McKenzie's analyses should be rejected because they contain unrepresentative and illogical betas, and also illogically high estimates of the market return. Specifically, Mr. McKenzie uses Value Line betas that he adjusts based on an assumption that betas trend toward 1. As Dr. Kaufman shows, the Value Line betas are abnormally high, due to their incorporation of anomalous returns during the COVID-19 pandemic.[27] Further, Mr. McKenzie incorporates the Bloom adjustment to his betas, an adjustment that is 50 years out of date, is focused on portfolios rather than individual equities, and was not performed on the utility industry.[28]

16 Mr. McKenzie also assumes a market return for both his CAPM and ECAPM models of 11.7%.[29] Mr. McKenzie arrives at this percentage by performing a DCF analysis on the dividend-paying firms in the S&P 500.[30] This analysis, of course, is not generally available to investors, and it does not even reflect the market return Avista itself uses for its own internal purposes. Avista uses Willis Towers Watson ("WTW") to determine expected market returns that

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23 Kaufman, LDK-1CT at 55:21-56:3.
24 Mckenzie, AMM-3 at 20:3-4.
25 *Id.* at 22:17-22.
26 2020 GRC Order ¶¶ 99-100.
27 Kaufman, LDK-1CT at 33:1-34:2.
28 *Id.* at 34:9-35:5.
29 Mckenzie, AMM-9 & AMM-10.
30 Mckenzie, AMM-3 at 17:6-8.

inform the necessary funding level for its retirement plan. Avista Witness Christie confirmed that WTW is a respected financial firm and that it is important to Avista that WTW's forecasts of market return are accurate and unbiased. WTW's one-year forecast of the average return for large cap stocks, the asset category akin to the S&P 500 stocks Mr. McKenzie analyzed, is just 8.53%, far below the 11.7% Mr. McKenzie's bespoke DCF analysis produces. Moreover, the other firms Avista uses as a check on WTW – Verus, SageView, and JP Morgan – all forecast relatively similar large cap equity returns and all of them are well below Mr. McKenzie's market forecast. This is particularly notable because, while Mr. McKenzie criticizes Dr. Kaufman's CAPM analysis for having market risk premiums that he considers to be far too low (5.0% and 6.9%),[31] substituting Mr. McKenzie's inflated 11.7% market return with WTW's 8.53% large cap market return produces a risk premium of just 4.1% (and a CAPM result of 8.7%).[32] Thus, Dr. Kaufman's analyses are more in line with accepted investor expectations than Mr. McKenzie's are.

17 The Commission should also disregard Mr. McKenzie's Risk Premium and Expected Earnings analyses, as both models have been rejected by the Federal Energy Regulatory Commission ("FERC"). Specifically, FERC has found that the Expected Earnings model is not consistent with "market-based approaches to determine base ROE" on which the Supreme Court's *Hope Natural Gas* decision was premised.[33] This is because the Expected Earnings model measures the expected return on a utility's book value, and "book value does not reflect the value of any investment that is available to an investor in the market …."[34] With respect to

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31 Mckenzie, AMM-15T at 127:17-20.
32 Derived from AMM-9.
33 *Ass'n of Bus. Advocating Tariff Equity v. MISO, Inc.*, Opinion No. 569, 169 F.E.R.C. P 61,129, 61,767 (Nov. 21, 2019).
34 *Id.*

the Risk Premium model, FERC has found that it is "largely redundant with the CAPM" and also that it "is likely to provide a less accurate current cost of equity estimate than the DCF or CAPM because it relies on previous ROE determinations, whose resulting ROE may not necessarily be directly determined by a market-based method …."[35] While FERC subsequently reversed its decision to exclude the Risk Premium model on rehearing,[36] that decision was then vacated by the D.C. Circuit and FERC has not issued a subsequent ruling.[37]

18 This leaves the DCF analysis, which is the Commission's preferred model.[38] Mr. McKenzie's DCF model estimates a cost of equity for Avista between 9.2% and 11.9%, an exceedingly broad range.[39] Moreover, Mr. McKenzie's results are biased upward for at least two reasons. First, he uses short-term growth rates as the long-term growth rate for his DCF analysis, essentially assuming that short-term growth rates will continue indefinitely.[40] The Commission has rejected this assumption, for good reason.[41] As Dr. Kaufman shows, Mr. McKenzie's short-term growth rates exceed analyst expectations for the rate of long-term GDP growth, and it is illogical to assume that a company's long-term growth can exceed the growth of the economy in which it sells its goods and services.[42] Second, Mr. McKenzie purports to exclude outliers from his analysis; however, his exclusions eliminate far more low results than high results. In fact, Mr. McKenzie's screening eliminates 14 "low-end" results but only eliminates one "high-end" result.[43] This is because Mr. McKenzie's screening eliminates returns as high as 7.5% on the

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35 *Id.* at 61,796.
36 *Ass'n of Bus. Advocating Tariff Equity v. MISO, Inc.*, Opinion No. 569-A, 171 F.E.R.C. P. 61,154, 62,197 (May 21, 2020).
37 *MISO Transmission Owners v. FERC*, 45 F.4th 248, 264 (D.C. Cir. 2022).
38 2020 GRC Order ¶ 103.
39 Mckenzie, AMM-3 at 16 (Table 2).
40 Kaufman, LDK-1CT at 29:21-30:2.
41 2020 GRC Order ¶ 104.
42 Kaufman, LDK-1CT at 29:21-30:2.
43 Mckenzie, AMM-7 at 3.

"low-end" while retaining returns as high as 15.7% on the "high-end".[44] Mr. McKenzie offers no rational explanation for his decision on where to draw the lines for his low and high end screening, relying only on his "professional experience" for a conclusion that returns of 7.6% and 7.8% "are assuredly far below investors' required rate of return."[45] This despite the fact that, as noted above, these returns are not far below WTW's forecast of average returns for large cap stocks used by Avista itself to help establish the funding level of its retirement plan.

19 In contrast to Mr. McKenzie's results, Dr. Kaufman's DCF analyses yield results between 8.5% and 9.3%.[46] This is more in line with the results from Public Counsel's and Staff's DCF models, which show returns between 8.0% and 8.2%, and 7.9% and 10.6%, respectively.[47]

20 Taken together, when the Risk Premium and Expected Earnings models are discarded and primary weight is placed on the witness's DCF analysis, the evidence shows that Dr. Kaufman's recommendation of a 9.25% ROE for Avista is reasonable and will support the Company's access to capital.

C. Net Power Supply Expense ("NPSE") Issues

1. The Commission should reject Avista's proposed portfolio forecast error adjustment.

21 Avista's filed case included a NPSE adjustment of $65.8 million to address anticipated forecast error,[48] referred to as a portfolio forecast error adjustment, which AWEC, Staff, and Public Counsel oppose.[49] On rebuttal, Avista revised its proposed portfolio forecast error adjustment to $29.7 million; however, it did not fundamentally change the structure of this

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44 *Id.*
45 Mckenzie, AMM-3 at 15:12-14.
46 Kaufman, LDK-1CT at 22 (Table 12).
47 Garrett, DJG-1T at 24:16-18; Parcell, DCP-1T at 37:14-15.
48 Kalich, CGK-3 at 2:62.
49 Mullins, BGM-1T at 44:10-13; Wilson, JDW-1TC at 14:15-16; Earle, RLE-1CT at 7:11-16.

adjustment.[50] As explained herein, Avista's portfolio forecast error adjustment should be rejected because it is inconsistent with the agreed-upon power cost methodology and is not known and measurable.[51]

22 To determine the portfolio forecast error adjustment, Avista developed a Forecast Value "valuing various components of the Company's portfolio for each year based on five years' worth of historical forward market prices. It then developed an '<u>Actual Value</u>' which valued those same portfolio components for those same years using <u>actua</u>l index prices and positions. The difference between the forecast and actual values for any given year yielded what it termed its 'forecast error'. It then averaged the annual forecast error for the five years from 2018 –2022, to yield a forecast error of $65.8 million[]."[52]

23 On rebuttal, Avista testified that it "modif[ied] the forecast error calculation using a simpler method …."[53] Fundamentally, though, the calculation continues to rely on historical deviations to establish an adjustment to forecast power costs; now it looks at "the annual average of actual [Energy Recovery Mechanism ("ERM") variances for the past three years from 2021-2023" rather than the "actual value" of its portfolio.[54]

24 In support of the portfolio forecast error adjustment Avista cites 1) a change in market fundamentals; 2) a large forward premium in the implied market heat rate; 3) increased risk to the Company that the value of its thermal fleet will not materialize; 4) diminished market liquidity; 5) increased cost and volatility of collateral; and 6) the Company's inability to properly

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50 Kalich, CGK-7T at 38:9-10.

51 Commission precedent requires that "[p]ro forma adjustments to the historical test year must reflect 'known and measurable' expenses" and that "utilities must account for offsetting costs when proposing pro forma adjustments." Docket No. TP-190976, Order No. 09 at 15:56; Docket No. UG-200568, Order No. 05, at 92:305. Accordingly, "[i]t is the Company's burden to demonstrate…that the effect of the event will be in place during the rate year." Docket Nos. TP-220513, Order No. 08 at fn.357 (internal citations omitted).

52 Kinney, SJK-17T at 8:5-11 (internal citations omitted) (emphasis in original).

53 *Id.* at 11:1-3.

54 *Id.* at 11:8-12.

set NPE and resulting surcharges in the last three years.[55] According to Avista, the Company is "witnessing the magnification over time of forecast error in our portfolio."[56] Avista claims that "the Company is highlighting new risk that is beyond [its] control."[57] However, as Avista concedes, forecast error concerns are not new.[58]

25 In Avista's 2017 general rate case, following several years of controversy over Avista's power cost modeling, the Commission concluded that "Avista's power cost forecasts [had] been consistently unbalanced in the Company's favor,"[59] and ordered Avista to engage parties "in a discussion about how power cost modeling may be simplified and improved."[60] Through a series of workshops that took place over two years, a collaborative team, which included AWEC representatives, was able to reach agreement on a power supply modeling methodology in an effort to resolve the forecasting issues raised by parties.[61] Avista witness Kalich stated that the methodology agreed to by parties was "greatly simplified from previous cases and focuses on removing sources of potential bias."[62]

26 Now, without consulting any party to the proceeding,[63] Avista proposes to materially change the agreed-upon methodology to include the portfolio forecast error. There are two ironies with Avista's request.

27 First, despite Avista's allegations of materially changed circumstances that are supposedly preventing it from accurately forecasting power costs, the Company is experiencing exactly what it predicted a few years ago. In reporting on the progress of the workshops shortly before the

55 Kinney, SJK-17T at 5:12-6:13.
56 Kinney, SJK-1T at 66:12-13.
57 Avista Response to Staff DR No. 192(g) (emphasis original).
58 *See* Kinney, SJK-1T at 66:13-15.
59 Docket Nos. UE-170485 and UG-170486 Order 07 at 54:156.
60 *Id.* at 55:161.
61 *See* Docket Nos. UE-200900, UG-200901, and UE-200894, CGK-10.
62 *See* Docket Nos. UE-200900, UG-200901, and UE-200894, CGK-1T at 4:25-26
63 Kinney, SJK-1T at 66:12-13.

agreed-upon methodology was finalized, Avista testified that the over-collection of power costs the Company had experienced in recent years "will trend towards the surcharge direction when market prices rise."[64] Mr. Kalich, for the Company, further testified that "[w]holesale natural gas prices and electricity prices are volatile – they always have been and always will be. For 2019, while the recent forecast shows deferrals in the rebate direction … volatility can quickly wipe away any benefit and drive the ERM into the surcharge direction. This is normal in my view, and the ERM appropriately tracks this volatility."[65] Yet, now that Mr. Kalich's prediction has materialized, based on "normal" conditions, Avista proposes to increase the ERM baseline in a manner fundamentally at odds with the outcome of the power cost workshops and Commission precedent.

28 Second, with respect to other NPSE adjustments proposed in this case, Avista has insisted on strict adherence to the methodology agreed to in the power cost workshops. In opposing AWEC's adjustment to recognize the value of Avista's rights to the California-Oregon Border ("COB") market, Avista testified that "COB transmission … is not included in the agreed power supply modeling methodology."[66] While Mr. Kinney walked this statement back at the hearing, this should be viewed as nothing more than a cynical attempt to trade a minor ($206,000) downward adjustment in Avista's COB transmission for a far more significant upward adjustment in the form of the portfolio forecast error.[67] Avista cannot insist on maintaining the integrity of the power cost modeling methodology while proposing to fundamentally alter it by including the portfolio forecast error.

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64 Docket Nos. UE-190334 and UG-190335, CGK-1T at 10:13-14.
65 *Id.* at 10:22-11:3.
66 Kinney, SJK-17T at 30:12-14.
67 Kinney, Hearing Tr. Vol. III at 219:18-221:22.

29 Ultimately, Avista simply has not carried its burden to demonstrate that the portfolio forecast error is just and reasonable. Avista's historical review period encompasses only the time in which it has been under-recovering power costs and does not consider earlier years in which it significantly over-recovered power costs.[68] Avista also does not demonstrate that the factors allegedly creating the NPSE forecast error, even if responsible for this error, have a one-way impact on the forecast such that they systematically bias Avista's NPSE forecast downward. As Witness Mullins testifies, Avista's historical review of its modeling results may have value in determining whether a bias exists, but "us[ing] the results of such an analysis as a plug to correct modeling results that were demonstrated to be invalid" is not good modeling practice.[69] Rather, "it is most appropriate to identify the factors that are driving the bias and make modeling changes to accommodate those factors."[70] Avista has not done this and instead proposes a short-cut workaround at a time when such an approach works in its favor. The Commission should not approve such a one-sided adjustment.

2. <u>The Commission should reject Staff's proposal to include Climate Commitment Act ("CCA") allowance costs in forecast net power cost dispatch.</u>

30 Staff proposes to increase Avista's 2025 NPSE in this case by $21,591,885, which is the result of including a CCA allowance price in dispatch for both retail and wholesale sales included in Avista's Aurora run.[71] Staff justifies this increase based what appears to be a concern about cost risk to customers if Avista does not have sufficient no-cost allowances to cover its retail load[72] and its perspective that the CCA is "likely to be a material driver of

[68] Mullins, BGM-1T at 43:1-7.
[69] *Id.* at 43:16-17.
[70] *Id.* at 43:18-19.
[71] Wilson, JDW-24CT at 7: Table 1, row "Include CCA allowance price in dispatch and market purchases."
[72] Wilson, JDW-1TCr at 15:9-16:3.

decarbonization" in the electricity sector thus necessitating Avista's participation in the allowance market.[73]

31 Including a CCA allowance price in dispatch for both retail and wholesale transactions means that Avista's customers will *actually* pay, on a forecast basis, increased NPSE while reducing *on paper* the emissions associated with Avista's forecast NPSE. Adding a CCA allowance cost to forecast NPSE does not change Avista's actual operations or emissions, nor does it contribute in any way to the Company's ability to comply with the CCA based on currently known rules and formal guidance from the Washington Department of Ecology ("Ecology"). Staff's recommendation conflates NPSE impacts and operational impacts and its rationale is marred by its misunderstandings of the CCA and its inappropriate reliance on an informal interview with a staff person from Ecology. By Staff's own admissions, its proposal lacks substantial evidentiary support and as a matter of sound policy, should be rejected by the Commission at this time.

a. There is no statute, rule or formal requirement that Avista include CCA costs in dispatch for both retail and wholesale sales when forecasting NPSE.

32 There is no dispute on the record in this case that neither Avista, nor any other electric investor-owned utility in Washington has an obligation to include CCA costs for either retail or wholesale sales in dispatch when setting rates to recover its forecast NPSE, nor are there rules that prescribe operational decision-making by the utility. Staff has not, and in fact cannot, point to any rule or formal guidance by either Ecology of the Commission that mandates allowance costs be included in dispatch decisions either for setting NPSE or in operations.

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73 *Id.* at 21:19-22:6.

33 As a matter of policy, AWEC supports consideration of allowance costs for wholesale sales when determining forecast NPSE in order to match forecast power costs with how the Company should make operational decisions for wholesale sales. That is, Avista should consider the cost of allowances when determining whether wholesale sales are economic for customers – it would be imprudent for Avista to saddle customers with a net cost associated with wholesale sales transactions due to allowance costs. Reflecting this reality in Avista's NPSE forecast can be accomplished by including a shadow cost for wholesale sales anticipated to incur a CCA compliance obligation.[74]

34 Staff's proposal that Avista also include allowance costs in its forecast dispatch of resources used to serve retail customers is not similarly rational or supported. Staff's proposal seems to ignore the difference between forecasting NPSE and a reduction in emissions on paper and Avista's actual utility operations and emissions for which a compliance obligation is actually incurred, making it unclear what Staff is actually trying to achieve.

b. Key implementation questions before Ecology remain.

35 There is also no dispute that Ecology has not finalized the true-up mechanism that may result in adjustments (either increasing or decreasing) to the amount of no-cost allowances allocated to each electric utility based on a comparison of forecast emissions with actual emissions over the same period. AWEC and Staff are in agreement that this is a critical implementation issue that should inform the Commission's decision, once known, regarding how CCA costs should be reflected for ratemaking purposes. However, Staff's informal interview with an unnamed Ecology staff person does not provide a sufficient evidentiary basis for the Commission to draw conclusions about a true-up design for purposes of setting rates in this case.

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74 *See* Kinney, SJK-17T at 33:1-9.

A reviewing court reviews findings made by the Commission for substantial evidence supporting such findings. "Substantial evidence is evidence sufficient to persuade a fair-minded person of their truth."[75] While this is a "highly deferential" standard in favor of the Commission,[76] it seems very unlikely that a reviewing court would consider the Commission's reliance on an informal interview from an Ecology staff person, as opposed to formal Agency guidance adopted by rule or policy statement consistent with the requirements of the Washington Administrative Procedures Act, as an appropriate basis of reliance when approving fair, just, reasonable and sufficient rates in this case.

36 Similarly, there is simply not substantial evidence to support Staff's assertion that Ecology "intends for the no-cost allowances allocated to Washington utilities to be exposed to the markets"[77] or that Ecology intends "that the utilities have an opportunity for financial gains or losses that would either be passed through to their customers or reflected on their balance sheets."[78] In fact, related to the first CCA compliance period, these interpretations ignore the plain language of the CCA, which allows utilities to deposit the entirety of no-cost allowances for compliance, should they so choose, for the first compliance period.[79] The first compliance period in this case includes Avista's RY1 and RY2 and there simply is no guidance or statutory requirement that Avista consign any amount of no-cost allowances to market. Future requirements that some or all no-cost allowances allocated to electric utilities must be consigned pursuant to RCW 70A.65.120(3)(b) are highly speculative at best as again, there has been no

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75 *Office of Attorney Gen., Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n*, 4 Wn. App. 2d 657, 681 (Aug. 7, 2018) (internal citations omitted).

76 *Id.*

77 Wilson, JDW-1TCr at 16:14-15.

78 *Id.* at 16:16-17.

79 RCW 70A.65.120(3)(a).

rulemaking imposing such a requirement, and could not apply to the term of the MYRP contemplated in this case.

c. Staff's proposal inappropriately shifts the cost of uncertainty in Ecology's implementation of CCA requirements away from shareholders and onto customers.

37 Staff's proposal to include CCA allowance costs in dispatch comes with a significant, known and measurable cost for Avista's customers beginning on day-one of the rate-effective date in this case. There is no dispute that Avista's customers will pay substantially greater NPSE resulting from changing the stack of resources in Avista's power cost forecast. This risk appears warranted, from Staff's perspective, because Avista's emissions will be reduced and thus Avista will need fewer allowances to cover its obligations, and it will be less exposed to a true-up mechanism that does not allow for a one-for-one true-up of forecast emissions to actual emissions. Alternatively, Staff opines that if Ecology's true-up design allows Avista to keep additional no-cost allowances than needed to serve its retail load, the Company can monetize the value of these in the allowance market. Neither of these circumstances warrant Staff's proposed treatment in this case.

38 Staff's proposal for NPSE fails to consider that Avista's compliance obligation will be incurred based on *actual* emissions. Assuming Avista receives sufficient no-cost allowances to cover its retail electric demand, customers will not see a direct benefit associated with reduced emissions. The issue is again that key CCA implementation design questions remain unanswered from Ecology. Staff worries that Avista could incur a significant compliance obligation in a "bad case" scenario, but this is highly speculative.[80] If Avista were to incur a $30 million or perhaps even greater CCA compliance obligation in a "bad case," it would still have to demonstrate that

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80 Wilson, JDW-1TCr at 27:11-28:3.

its decisions leading to that outcome were prudent before customers would face such costs in rates.[81] Conversely, Staff's proposal prices that risk into power costs today, regardless of how Ecology ultimately designs the true-up. This results in a higher risk approach to customers that again, is wholly unsupported by the record in this case.

39 Moreover, if NPSE is artificially increased above what is needed to prudently manage the Company's power costs to comply with the CCA, then there is a windfall to shareholders. This would occur if Avista's NPSE is increased to account for allowance costs in dispatch, but Ecology's true-up mechanism is designed such that no-cost allowances are allocated to cover all emissions associated with retail sales.

d. Staff's position is inconsistent with its position in other dockets.

40 One month and three days *after* Staff witness Wilson filed response testimony in this proceeding recommending that Avista's customers pay higher NPSE resulting from the inclusion of CCA allowance costs in both retail and wholesale dispatch with no caveats, witness Wilson filed response testimony in Puget Sound Energy's ("PSE") general rate case proceeding on the same issue.[82] Only in PSE's general rate case, witness Wilson concluded, after substantial discussion, that there is *not* a "clear-cut case for prudent dispatch by PSE"[83] and that "clarification is needed from Ecology on [the true-up]." When asked about this inconsistency, witness Wilson clarified that "[the PSE] material…would have been included in my Avista cross-answering testimony…" but his cross-answering testimony was modified given the Commission's issuance and later recission of its Policy Statement in Docket U-230161[84] and that "certainly, the general line of reasoning that is in the PSE testimony, I do agree would apply

81 Mullins, BGM-8T at 11:6-13.
82 Wilson, JDW-36X (Wilson response testimony filed on August 6, 2024).
83 JDW-36X.
84 Hearing Tr. Vol. IV at 418:18-419:23.

to the Avista case as well."[85] AWEC agrees that utility customers should be treated consistently. Unfortunately, there is no clear-cut or decisive reasoning in Staff's position in the PSE case on this issue to apply to Avista – rather, Staff's position is effectively a decision-tree that is fraught with assumptions regarding Ecology positions that are either unverifiable or simply unknown at this time.[86]

41 Staff's position in this case is also inconsistent with its position on PacifiCorp's treatment of CCA costs in net power costs. PacifiCorp's last general rate case was filed in 2023 and was largely resolved in the first quarter of 2024.[87] Witness Wilson confirmed his understanding that PacifiCorp only includes CCA dispatch costs for Chehalis, because that is its only emitting plant located in Washington, and that Avista similarly includes a CCA shadow price for its Boulder Park facility dispatch in NPSE.[88] Witness Wilson also concedes that his recommendation in this case "goes beyond just including CCA costs for…dispatch on plants that are located within the state of Washington."[89] When asked why Staff did not make a similar proposal in PacifiCorp's case, witness Wilson simply offered that "we didn't engage this issue in that case."[90]

e. The Commission should determine the appropriate dispatch practice and prudence review process for all investor-owned electric utilities in its generic CCA Implementation Proceeding (Docket U-230161).

42 The Commission opened Docket U-230161 in March 2023 in part because "…the Commission, IOUs and all those interested persons engaged in proceedings involving the IOUs must better understand the impact of the CCA on the IOUs and the customers they serve."[91] On August 15, 2024, the Commission issued its Policy Statement Addressing the Issues and Impacts

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85 *Id.* at 419:21-23.
86 JDW-36X at 38:1-42:14.
87 *See* Docket UE-230172.
88 Hearing Tr Vol. IV. at 414:9-415:10.
89 *Id.* at 415:11-15.
90 *Id.* at 416:15.
91 Docket U-230161, Notice of Workshop at 2 (Mar. 15, 2023).

of the Climate Commitment Act,[92] which was then rescinded four days later.[93] Importantly, in issuing its Notice Rescinding the Policy Statement, the Commission recognized that additional input is needed from interested parties. Docket U-230161 is the appropriate forum to discuss what a consistent and appropriate approach to CCA implementation should be for electric IOUs, including whether and which costs should be included in net power cost forecasts and when and how a prudence review should take place. At this time, as Staff recognizes, there simply is not enough guidance from Ecology on key CCA implementation issues – such as the true-up – that is critical for the Commission to consider prior to ordering specific ratemaking treatment. As Staff also acknowledges, guessing wrong on how a true-up will function or other implementation issues can result in substantial cost risk to customers.

3. The Commission should reject Staff's proposal to include forecast Climate Commitment Act allowance costs associated with wholesale sales transactions in NPSE.

43 Staff recommends Avista increase its 2025 NPSE by $43,128,017 as an estimated cost for potential future CCA compliance obligations associated with Avista's wholesale sales, but concedes that costs determined to be associated with "wheel through" or "wheeling" transactions, currently estimated to make up approximately 16 percent of Avista's non-EIM wholesale transactions, should be deducted from this amount.[94]

44 Staff's proposal should be rejected because including estimated allowance costs for all non-EIM wholesale sales transactions may still over-estimate Avista's compliance obligation for

[92] JDW-37X.
[93] JDW-38X.
[94] Wilson, JDW-28CT at 7: Table 1, row "CCA allowance cost for market sales." At the evidentiary hearing in this case, Staff conceded that "wheel-through" transactions constituting an estimated 16 percent of Avista's non-EIM wholesale transactions should be removed but has not quantified this adjustment. Hearing Tr. Vol. IV at 435:1-13.

these transactions, up to 100 percent of anticipated compliance costs,[95] and thus unnecessarily increase customer rates for a compliance obligation that does not materialize.

45 First, as Staff acknowledges, if Avista is allocated more no-cost allowances from Ecology than it needs to cover obligations associated with its retail load, Ecology's rules permit Avista to "use[] no-cost allowances to cover emissions associated with wholesale load."[96] In this case, Staff acknowledged that "it appears that the Department of Ecology's 2023 allocations (based on Avista's 2022 October forecast) allocate more no-cost allowances than Avista forecasts will be required as of November 2023."[97] And in fact, Ecology's recent guidance indicates that it has no plans to true-up Avista's 2023 allocation of no-cost allowances.[98] While the true-up mechanism for future years is still unknown, at this time, Staff's concern about significant costs associated with purchasing no-cost allowances is clearly mitigated.

46 Second, true-up uncertainty aside, Staff's proposal may still overestimate allowance costs that would be incurred for wholesale sales because it does not adjust for Ecology's "lesser-of-methodology" to Avista's compliance obligation, which "allows wholesale <u>system</u> sales made by the Company to be associated with excess renewable energy at the Mid-Columbia trading hub, minimizing allowances obligations for these transactions." [99] Staff's proposal also fails to acknowledge and account for the fact that the CCA also contemplates the provision of additional no-cost allowances to cover administrative costs of the program which could also be used to cover its compliance obligation.[100]

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95 Kinney, SJK-17T at 33:2-4.
96 Wilson, JDW-1TCr at 18:5-7.
97 Wilson, JDW-1TCr at 18:22-19:1.
98 Washington Department of Ecology, Publication No. 23-02-031 (Oct. 204, 2024), *available at:* https://apps.ecology.wa.gov/publications/documents/2302031.pdf.
99 Kinney, SJK-17T at 33:12-14 (emphasis in original), referring to SJK-18.
100 WAC 173-446-230(2)(h).

47 Finally, ratemaking treatment for compliance costs associated with wholesale sales transactions should also be discussed in Docket U-230161, consistent with the reasoning discussed in the preceding section.

4. The Commission should refrain from determining how it will review the prudence of CCA related costs at this time.

48 Staff proposes that the Commission engage in an annual review process to consider the prudence of Avista's CCA related costs as part of the Company's ERM. AWEC agrees that only prudently incurred CCA costs should be borne by customers, as with any cost.[101] However, at this time, many programmatic elements remain unclear from Ecology, and it is unclear how an annual prudence review would consider that the CCA has four-year compliance periods and whether that would create different compliance incentives that would ultimately put upward pressure on rates.[102] As such, AWEC recommends the Commission consider this issue as part of docket U-230161, or at which point Avista is seeking cost recovery for CCA-related compliance costs.

5. EIM Neutrality Charges

49 AWEC's testimony demonstrates that a downward adjustment of $2.018 million to Avista's NPSE is warranted to reflect the value of "neutrality charges" (sometimes referred to as "offsets") resulting from EIM settlement transactions and GHG payments, both of which are not captured in Aurora.[103] While Avista revised its forecasted EIM benefits in its rebuttal testimony, the Company was clear that its updated forecast was not the result of adopting the EIM

101 Mullins, BGM-8T at 4-7.
102 Mullins, BGM-8T at 11:8-12:2.
103 Mullins, BGM-1T at 46:15-54:15.

adjustments proposed by either AWEC or Staff.[104] As such, adjustments for neutrality charge settlements and GHG revenues are still warranted.

50 Neutrality charge settlements are specifically described in CAISO's Business Practice Manual for Settlements and Billing of the CAISO.[105] Neutrality charges correspond to the three components of locational marginal price – congestion, losses and energy.[106] "Because of the effects of congestion and losses, there are unique prices throughout the system and the charges assessed for purchasing imbalance energy will tend to be at higher prices than for supplying it, resulting in net revenues to the overall market footprint."[107] However, these higher revenues are not retained by CAISO – instead, it allocates these revenues using one of the three neutrality charges.[108] Importantly for purposes of Avista's NPSE, these neutrality charge settlements are not reflected in Avista's sub-hourly dispatch modeling in this case, even though they constitute a separate benefit that should inure to customers.[109] Avista does not substantively rebut AWEC's proposed adjustment, and thus it should be adopted in its entirety, resulting in a $923,366 reduction to Avista's NPSE.

51 Avista also fails to consider greenhouse gas revenues ("GHG") derived from the EIM in its forecast of EIM benefits. These GHG revenues materialize when EIM participants can provide carbon free energy that can be used by California utilities to comply with that state's cap and trade program.[110] GHG settlements result from an adder in the dispatch prices that applies to eligible resources, but this is not reflected in Avista's EIM benefit modeling in this case.[111] As

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104 Kinney, SJK-17T at 25:2-4.
105 Mullins, BGM-7.
106 Mullins, BGM-1T at 11.
107 *Id.* at 52:23-53:2.
108 *Id.* at 53:3-6.
109 *Id.* at 53:7-14.
110 Mullins, BGM-1T at 53:15-20.
111 *Id.* at 53:20-23.

such, a separate adjustment is needed in order to ensure that these benefits are appropriately reflected in Avista's NPSE. Avista argues that it "no longer can sell into California to extract gains from greenhouse gas (GHG) revenues in EIM" because of CCA compliance requirements,[112] but does not elaborate more on this alleged limitation. Notably, other utilities such as Puget Sound Energy, PacifiCorp and Portland General Electric include discrete adjustments for greenhouse gas revenues in their EIM forecasting methods.[113] And despite its arguments that the Company ceased including market GHG adders in its bids in 2022, by Avista's own admission, exceptions are clearly possible and lend support for the Commission to adopt at least Avista's recalculation of AWEC's adjustment.[114] This would result in a $0.9 million reduction to NPSE.

6. The Commission should adopt AWEC's California-Oregon-Border ("COB") Margin adjustment to net power costs given Avista's updated position at hearing.

52 In Response Testimony, AWEC recommended Avista continue with its past modeling practice of modeling sales transactions at the COB market hub in NPSE given the premium associated with COB sales relative to the Mid-C market.[115] Despite its criticism of AWEC's position in its rebuttal testimony,[116] Avista witness Kinney accepted AWEC's adjustment during the evidentiary hearing.[117] AWEC's point in questioning Mr. Kinney was to highlight the Company's inconsistency in criticizing Mr. Mullins' adjustment for not being included in previous cases and not being included in the agreed power supply methodology, while not applying that same standard to its proposed forecast adjustment error. As previously discussed,

112 Kalich, CGK-7T at 43:15-16.
113 Mullins, BGM-1T at 54:2-5.
114 Kalich, CGK-7T at 47:14-15; fn. 53.
115 Mullins, BGM-1T at 44:14-46:12.
116 Kinney, SJK-17T at 7-18.
117 Hearing Tr Vol. III at 221:7-23.

this adjustment was also not included in previous cases and is outside of the agreed power supply methodology.[118] If the Commission agrees with Avista's position in pre-filed testimony that AWEC's adjustment is not allowed by the agreed upon power cost methodology, then the Commission should also reject the portfolio forecast error adjustment under the same rationale.

D. The Commission should reject Avista's and Staff's proposed changes to the Energy Recovery Mechanism ("ERM").

53 Avista initially proposed to move to a single 95/5 sharing level "applied to the entire difference between actual and authorized power supply costs presently included in the ERM and subject to deadbands."[119] On rebuttal, Avista revised its position and partially adopted Staff's ERM proposal of a 90/10 sharing,[120] with modifications to the deadbands such that "[i]n surcharge years, the Company would absorb <u>$2.5 million</u> before the 90/10 sharing begins and in rebate years the Company retains <u>$2.0 million</u> before the 90/10 sharing begins."[121] Any changes to Avista's ERM should be rejected outright as a matter of policy for the same reasons that the Commission articulated when it considered, and rejected, PacifiCorp's proposal to change its PCAM structure in its 2023 general rate case proceeding. Even if the Commission were inclined to consider changes for Avista's ERM, neither Avista nor Staff has presented the necessary evidence of extraordinary circumstances to warrant deviation from the Commission's recently affirmed, longstanding approach to power cost adjustment mechanisms.[122]

54 First, the ERM is functioning as intended. Power costs have always been volatile, which is the fundamental basis for the ERM.[123] And even if power costs can be demonstrated to be more volatile today than they have been in the past, maintaining the deadbands and sharing

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118 Hearing Tr. Vol. III at 220:7-16.
119 Kinney, SJK-1T at 50:3-6.
120 Wilson, JDW-1TCr at 37:2-8.
121 Kinney, SJK-17T at 2:20-3:2 (emphasis original).
122 *See* Docket Nos. UE-170485 and UG-170486, Order No. 07 at 54:160 (Apr. 26, 2018).
123 Mullins, BGM-1T at 61:1-2.

bands that have been in place since 2006 has ensured that Avista is at no greater risk from increased volatility relative to when the ERM was initially implemented.[124] Avista fails to understand that rather than creating power cost risk for Avista, the ERM insulates the Company from this risk by allowing a true-up of amounts subject to the ERM structure. Deadbands and sharing bands are necessary in order to appropriately balance risks between ratepayers and shareholders.

55 In support of its proposal to adjust the sharing ratio, Staff relies on the Commission's order in PacifiCorp's 2023 general rate case to justify lowering Avista's deadband. Staff understands that order to reason that as PacifiCorp's NPC has increased over the years, the deadband percentage has decreased, prompting the Commission to question whether adjustments to PacifiCorp's deadbands are appropriate. But the implication there is that the parties should consider whether PacifiCorp's deadbands should be *increased* to account for the growth in PacifiCorp's net power costs. Staff and Avista should apply that same logic in this case, and when accounting for the fact that Avista's forecast power costs are at a similar level to PacifiCorp's when the PacifiCorp PCAM was first established, the PacifiCorp's 2023 general rate case order actually supports leaving Avista's ERM structure as is.[125] Avista argues that its revised ERM proposal "simplifies the ERM, addresses Company concerns about bearing disproportional risk associated with conditions outside of its control, and better aligns Avista's cost sharing as a percent of NPE with its peer utilities."[126] However, as AWEC has shown in testimony, the ERM is functioning as the Commission intended[127] and modification to the

[124] Mullins, BGM-1T at 61:2-7.
[125] Mullins, BGM-8T at 4:1-5:11.
[126] Kinney, SJK-17T at 3:3-6.
[127] Mullins, BGM-1T at 60:14-61:6; BGM-8T at 2:29-30.

sharing ratios is unnecessary to achieve an equitable sharing of risk between customers and shareholders.[128]

56 Second, the Commission has already considered and rejected substantially the same arguments from Avista as it considered in PacifiCorp's 2023 general rate case proceeding.[129] Like PacifiCorp, Avista raises the fact that variability of NPSE is outside of the Company's control,[130] but as the Commission has already concluded, volatility actually supports the need for robust customer protections in the deadbands and sharing bands, rather than reducing it.[131] Also similar to PacifiCorp, Avista argues that its customers have been harmed by the ERM structure relative to how they will benefit from its current proposal. The Commission appropriately concluded in PacifiCorp's 2023 rate case that deadbands have served to insulate both customers and PacifiCorp from unreasonable risk, noting that "[d]eadbands and sharing bands are cost sharing tools that prevent the utility customer from absorbing the risk from fuel adjustment mechanisms, like the PCAM, that benefit utilities."[132] As also noted by the Commission, these tools are critical to ensuring that utilities maintain an economic stake in major resource decisions,[133] and thus deadbands and sharing must be robust.

57 Finally, concerns raised by Avista, such as market price and liquidity concerns and new policies such as the CCA, have no relevance to the ERM structure.[134] And in response to Avista's argument that the CCA justifies modification to the ERM, AWEC highlighted that these concerns are speculative at best.[135] Avista acknowledged that "there is significant uncertainty

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128 *See* Mullins, BGM-8T at 4:2-5:11.
129 Mullins, BGM-1T at 61:8-62:4; BGM-8T at 3:1-2.
130 Kinney, SJK-1T at50:13-15.
131 *In re PacifiCorp*, Docket Nos. UE-230172 & UE-210852 (consolidated), Order Nos. 08 & 06 at ¶¶ 330-404 (Mar. 19, 2024).
132 *Id.* at ¶ 389.
133 *Id.* at ¶ 390.
134 Mullins, BGM-1T at 60:14-61:7.
135 *Id.* at 62:7-14.

around the absolute level of CCA compliance costs given today's market conditions and uncertainties"[136] and further that "[u]nder the CCA, the Company is permitted to mitigate CCA costs through the granting of no-cost allowances; however, it still is not clear exactly how many allowances will be granted or if they will equate to the entirety of Company emissions."[137] Avista is therefore correct that "it is not possible to address CCA fully in this proceeding, because so many unknowns still exist with CCA."[138] Given that parties agree that uncertainties associated with the CCA persist, it is unreasonable to deviate from Commission policy and precedent to the determinant of ratepayers based on speculation.

58 In sum, Avista's and Staff's proposal, if adopted, would serve to weaken the critical consumer protections in the ERM without appropriate justification and contrary to very recent Commission precedent that supports maintaining the status quo. For these reasons, AWEC continues to recommend the Commission reject any modification to Avista's ERM.

E. Customer Tax Credit

1. Flow-through tax benefits from IDD#5 and meters expenditures are appropriate to include in base rates.

59 In Docket Nos. UE-200895/UG-200896, the Commission approved Avista's deferral request and its request to transition to flow-through accounting, rather than normalization accounting, for the tax expense associated with certain capitalized overhead expenditures—called Industry Director Directive No. 5 ("IDD #5") expenditures—and meters expenditures.[139] This change was prompted by a change in tax accounting method that Avista filed in October 2020 to deduct rather than capitalize and depreciate these expenditures.[140] As a result of the

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136 Kinney, SJK-17T at 22:7-8.
137 *Id.* at fn. 32.
138 *Id.* at 22:10-11.
139 *In re Avista*, Dockets Nos. UE-200895/UG-200896, Application at 14 ¶ 40.
140 Mullins, BGM-1T at 34:17-35:6

change, the benefits from these deductions no longer were subject to IRS normalization requirements, and pursuant to Avista's accounting application in those dockets, the Commission approved the use of the flow through method for IDD #5 and meters expenditures, in which the tax benefits of the deductions are passed through to ratepayers in the period that the deduction occurred.[141] This change resulted in an initial one-time deduction of previously capitalized expenditures.[142] Accordingly, deferred accounting was used to pass back the up-front lump-sum refund due to customers.[143] However, the remaining balances due to customers, at least based on Avista's calculation, will decline effectively to zero by December 31, 2024.[144]

60 In its filing, Avista excluded the ongoing flow through tax benefit of the IDD #5 and meters tax accounting change from its revenue requirement. In its Rebuttal Testimony, Avista estimated the annual revenue requirement benefits of these flow through items to be $2,749,000 for electric services and $1,090,000 for gas services, inclusive of the removal of the associated accumulated deferred income taxes ("ADIT").[145] AWEC is in agreement with these numbers, because they include the offsetting ADIT impacts, which witness Mullins stated were appropriate to consider in revenue requirement.[146] Avista, however, requests that the Commission continue perpetually deferring the annual impacts of the flow-through accounting, on a year-to-year basis, and exclude these benefits from base rate revenue requirement.[147]

61 Rather than perpetually deferring the impact of the IDD#5 and meters tax accounting change, AWEC recommends that the associated flow-through benefits be considered in base rate revenue requirement. This treatment is consistent with the accounting application that the

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141 *Id.* at 35:7-36:2.
142 *Id.* at 36:4-14.
143 *Id.* at 36:4-14.
144 See Andrews, EMA-8, row "202412."
145 Andrews, EMA-6T at 59:1-6, Table No 4.
146 Mullins, BGM-1T at 37:9-13.
147 Andrews, EMA-6T at 57:2-10.

Commission approved in Docket Nos. UE-200895/UG-200896. Because the upfront, lump-sum amounts have been returned to customers, it is no longer necessary to continue deferring and truing-up the impacts on an annual basis.

62 In response to AWEC's recommendation, Avista stated that its "intent, as described in its original petition, was to defer the tax credit benefits owed customers then and on-going over time, rather than just treat future balances as a flow-through going forward year-over-year, ensuring customers receive <u>dollar for dollar the tax benefits owed them</u>."[148] Yet this stated intention directly contradicts the proposal that was made in the accounting application, which stated that "[t]he Company has asked to defer the deferred tax balance in a regulatory liability until the benefit can be passed back to customers in a general rate case proceeding."[149] Thus, the deferral was not perpetual in nature, but only lasted until the benefits were considered in base rates. Avista also stated that it "plans to include this change in accounting for these tax credits in each state's next filed general rate case."[150] Finally, in its request for relief, Avista unequivocally stated "the impact on federal income tax expense and ADFIT, which is a component of rate base, would be included in a future general rate case." Thus, Avista's application clearly contemplated incorporating the ongoing flow-through tax benefits into base rates, and nowhere did it clearly state that the flow-through accounting tax benefits would be perpetually deferred and trued-up annually. Accordingly, Avista's assertion that the use of perpetual deferred accounting was described in its accounting application is factually inaccurate.

63 Avista also cites the variability of the tax deductions as a reason to continue deferring and truing up the impacts of the flow through tax accounting.[151] This, however, is unpersuasive and

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148 *Id*. at 57:16-19 (emphasis in original).
149 Dockets Nos. UE-200895/UG-200896, Application at 10 ¶ 26.
150 *Id.* at 11 ¶ 28.
151 Andrews, EMA-6T at 59:7-21.

not a valid reason to continue deferring these benefits, as there are many elements of revenue requirement that are uncertain and change year to year. Part of the risk of using a forward-looking revenue requirement, versus using a historical period, is that there is uncertainty between the forecast assumptions and actual operating results. Avista's non-labor operating expenses, for example, have varied significantly year-to-year, although that does not justify deferring those expenses on an annual basis.

64 Perpetually deferring and truing up the flow through tax benefits of IDD #5 and meters expenditures is not only unnecessary but has the potential to be very harmful to ratepayers. Because Avista has been tracking both the tax expense and rate base impacts of the flow-through accounting change, the net effect of the deferral could be a major cost to ratepayers, not a benefit. In fact, this was the case in calendar year 2024. In 2024, Avista deferred $1,216,019.94 in funds due from ratepayers for electric services and $661,881 of funds were due from ratepayers for gas services.[152] In Andrews, Exh EMA-8, it can be noted that, in 2024, the deferred rate base impacts (column "Allowed Return on Rate Base") exceeded the ongoing flow-through tax savings (column "Deferral/True-up."). Thus, using Avista's deferral method, there was no benefit deferred in 2024. Rather, Avista deferred a net cost of $1,877,901 due from ratepayers across its two service lines. Considering this, it is no wonder that Avista wants to continue with the annual deferral and true-up process in perpetuity, as doing so will likely result in it collecting more funds from ratepayers in connection with the tax accounting change. AWEC requests that the Commission reject this faulty approach and simply include the ongoing flow through benefits in base rates consistent with the accounting application and as proposed by Witness Mullins.

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[152] Andrews, EMA-8, by comparing columns "Deferral/True-up." And "Allowed Return on Rate Base" for calendar year 2024.

2. <u>Avista was not authorized to true up the rate base impacts of the IDD #5 and meters tax accounting change between rate cases.</u>

65 Fundamental to the inequity in Avista's approach to the customer tax credit is its proposal to include in the balance an "Allowed Return on Rate Base."[153] In total Avista has included in the deferral $6,533,925 and $3,187,845 in costs due from ratepayers associated with the purported "Allowed Return on Rate Base" for electric and gas services, respectively. AWEC opposes including a return on rate base in the customer tax credit deferral. Such a return was never approved by the Commission for deferral.[154] AWEC requests that the Commission recalculate the deferred balance without the purported "Allowed Return on Rate Base" and return the residual funds to ratepayers over a two-year period.[155] Zeroing out that column in the updated balances provided in Andrews, Exh. EMA-8 results in a $5,733,917 residual balance due to electric service customers and a $5,436,066 balance due to gas service customers.[156]

66 Part of the complication with this issue is the fact that Avista has been continuing to defer the customer tax credit benefits between rate cases, rather than including the benefits in base rates in the manner described in its accounting application. The accounting application for the deferral did not contemplate or discuss the perpetual deferral of the flow-through tax savings, let alone the deferral of the ongoing rate base impacts on ADIT in between rate cases. This omission, however, provides no justification for including the purported "Allowed Rate of Return" amount in the deferral balance calculation. To the contrary, if it was Avista's desire to continually defer the rate base impacts associated with flow through accounting, it had the obligation to unequivocally request that those costs be deferred, either through its original

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153 *See* Andrews, EMA-8
154 Mullins, BGM-1T at 38:12-18.
155 *Id.* at 38:4-12.
156 Mullins, BGM-1T at 38:4-11.

accounting application or in a subsequent proceeding. The Commission cannot approve what is not requested. When Avista decided to not consider the ongoing customer tax credit benefits in base rates, and instead continue to defer the benefits, it had the obligation then to request deferral of the rate base impacts between rate cases, which it did not do. Nor would doing so be appropriate. There are many items of ADIT that change between rate cases, and singling out the impacts associated with the customer tax credit, while ignoring others, constitutes undesirable single-issue ratemaking.[157]

67 AWEC respectfully requests the Commission reject Avista's calculation; exclude the purported "Allowed Return on Rate Base" from the deferral calculation; and return the remaining funds to ratepayers over the two-year rate plan.

F. Colstrip Units 3 and 4

1. Net Power Supply Expense RY2 Update

68 Avista must remove Colstrip Units 3 and 4 from rates, with the exception of decommissioning and remediation costs, before January 1, 2026 in order to meet CETA requirements.[158] This begs the question of the appropriate method to remove Colstrip-related costs from NPSE in Avista's RY2. In order to accomplish this removal, Avista proposes to remove Colstrip costs based on those units' 2025 net value, which Avista calculates as market value less fuel.[159] With this change, Avista proposes that no other updates to power costs for RY2 would be necessary.[160]

69 As AWEC's testimony demonstrates, however, it is not appropriate to determine the impacts of removing Colstrip Units 3 and 4 from rates based solely on Avista's proposed mark-

157 *WUTC v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket Nos. UE-061546 & UE-060817, Order 08 ¶¶ 152, 157 (June 21, 2007).
158 RCW 19.405.030(1).
159 Kinney, SJK-17T at 3:15-16.
160 *Id.* at 3:16-17.

to-market valuation.[161] This approach also fails to consider potentially offsetting benefits in power costs that could result from the dispatch of other resources.[162] In order to ensure that rates in RY 2 are fair, just, reasonable and sufficient, a more comprehensive recalculation of NPSE is necessary. This should be accomplished in either a Power Cost Only Rate Case ("PCORC"), or in a more limited update but one that goes beyond Avista's mark-to-market Colstrip update.[163] More specifically, a more limited update should be limited to updates on prices, contracts and resources without any changes to modeling methodologies.[164] This will allow for a more robust, yet streamlined update process that can limit potential areas of controversy. This also allows for a filing that could be reviewed on a shorter timeline. AWEC continues to propose that a limited update, if ordered by the Commission, be submitted in August 2025 based on forward market prices effective November 1, 2025.[165]

2. <u>Colstrip Wheeling Costs</u>

70 Wheeling costs associated with Colstrip Units 3 and 4 should be removed from rates in RY2. Avista pays wheeling costs to the Bonneville Power Administration ("BPA") in order to "move" power from the Colstrip facility to the Garrison substation (where Avista's transmission system interconnects with the BPA transmission system) because Avista does not own the transmission facilities that are needed to move power from Colstrip to its system.[166] However, once Colstrip is no longer providing electric service to Washington customers, costs associated with the transmission contracts that allow Avista to wheel power over BPA's system will no longer be used by Washington customers – there will no longer be power from the Colstrip

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161 Mullins, BGM-1T at 55:13-19.
162 *Id.* at 55:19-22.
163 Mullins, BGM-1T at 55:22-56:2.
164 *Id.* at 56:10-19.
165 *Id.* at 56:3-9.
166 *Id.* at 57:1-11.

facility that needs to be moved into Avista's system on behalf of Washington customers and Avista has not indicated specific plans at this time for the use of its Colstrip transmission rights.[167] As such, these costs should be removed from Washington rates, which would result in a reduction to Avista's revenue requirement of $4.165M beginning in RY2.[168]

71 Importantly, Avista does not contest that these transmission contracts will not be used by Washington customers in RY2 to move power from Avista-owned or contracted generating resources to Washington customers. In fact, although Avista points to the value of Montana wind facilities, the Company does not have specific plans at this time for the use of its Colstrip transmission rights.[169] Avista also notes that continuing to hold this capacity will "provide[] benefits to customers through participation in the EIM and the future Day Ahead (DA) markets," Avista is not currently participating in a DA market and is not anticipated to do so during RY2. Regarding EIM benefits, Avista's assertions that the unused BPA transmission rights provide incremental EIM are unsupported with any quantitative of qualitative evidence, and therefore, should be given little weight. Avista's statements in this regard are only discussed in passing and there was no quantification of the amount of EIM benefits relative to the cost of the transmissions. While AWEC understands the value of transmission rights in the region, this does not change the fact that these transmission rights are not providing the same value to Washington customers as they do when they are connected to a resource serving Washington customers. Accordingly, AWEC recommends that the Commission exclude the BPA transmission rights used to support Colstrip from RY2 of the rate plan.

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167 Kinney, SJK-17T at 25:10-26:1.

168 Mullins, BGM-1T at 57:12-19; BGM-1T at Table 1.

170 *In the Matter of Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement at 4 (Jan. 31, 2020), quoting *People's Org. for Wash. Energy Res*., 101 Wn.2d 425, 430 (Apr. 5, 1984) (emphasis added).

3. <u>Colstrip Transmission Assets should be removed from rates and transferred to plant held for future use.</u>

72 As a co-owner of certain transmission assets interconnected with Colstrip, there is no dispute that Avista will have a continued obligation pay for its share of needed system upgrades and maintenance associated with these assets. However, the Commission's long-held used and useful standard requires that such property be "'*employed for service in Washington* and capable of being put to use for service' at some point during the rate effective period."[170] In this case, Avista has provided no evidence that these assets will be actually employed for service in Washington in RY2. While AWEC is not advocating that Avista sell these assets and agrees it is plausible that these assets could again be used and useful for Washington customers depending on the Company's future resource acquisitions, the Commission is charged with setting fair, just, reasonable and sufficient rates for the duration of the MYRP and must ascertain the value of used and useful property during the MYRP.[171] For this reason, AWEC maintains its recommendation that its co-owned transmission assets be transferred to plant held for future use and excluded from revenue requirement. This results in a $1,915,196 reduction to RY2 revenue requirement.

G. The Commission should accept Avista's rate spread as proposed in its rebuttal testimony.

73 In its initial filing, Avista included a cost of service study that showed residential electric customers at 86% of parity while all other rate schedules except transportation schedules were above parity.[172] Large customers on Schedule 25 were 120% above parity, equivalent to what Staff has historically characterized as an "excessive" deviation from parity that "warrant[s]

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170 *In the Matter of Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement at 4 (Jan. 31, 2020), quoting *People's Org. for Wash. Energy Res*., 101 Wn.2d 425, 430 (Apr. 5, 1984) (emphasis added).

171 RCW 80.04.250(3)(b).

172 Miller, JDM-1T at 8 (Table 5).

corrective action."[173] Avista recommended, if it were not awarded its full rate increase, that residential customers nevertheless be allocated the same level of increase, that certain other schedules receive an equal percentage increase, and that any remaining revenue requirement be allocated equally to Schedules 11/12, 21/22, and 25 "as those schedules are providing significantly more than their relative cost of service …."[174]

74 AWEC was the only party to recommend changes to Avista's cost of service study and rate spread, which showed that Schedule 25 is even farther from parity than Avista's cost of service study identified.[175] In response to AWEC's recommendations, Avista found that AWEC's changes to the cost of service study were, like Avista's study, "directionally accurate for setting rates."[176] It also largely agreed with AWEC's rate spread for both rate years, with limited modifications.[177] AWEC is supportive of the rate spread Avista proposes in its Rebuttal Testimony.

75 Despite not raising any concerns with Avista's cost of service study or Avista's rate spread that allocated more of the revenue requirement to residential customers if the Company received less than its full request, Public Counsel objected to AWEC's rate spread in cross-answering testimony.[178] Public Counsel instead recommends an equal spread of the revenue requirement.[179] Public Counsel's objections are not based on any particular dispute with AWEC's or Avista's conclusions, or on any evidence supporting the reasonableness of an equal rate spread. Instead, its objections are based entirely on speculation, which does not constitute

173 Docket Nos. UE-200900 *et al.*, Jordan, ELJ-1T at 10:1-5.
174 Miller, JDM-1T at 8:17-9:5.
175 Kaufman, LDK-1CT at 3:10-16:2.
176 Miller, JDM-8T at 2-6.
177 *Id.* at 5:9-23.
178 Dismukes, DED-10T at 2:1-7:19.
179 *Id.* at 3:15-17.

the substantial evidence necessary to support a Commission finding.[180] Specifically, Public Counsel notes that Avista's cost of service study was performed before the rates from the second year of its rate plan approved in UE-220053/UG-220054 went into effect, and surmises that approving AWEC's and Avista's rate spread without knowing the impact of this second-year rate increase "may result in overshooting full cost of service."[181] Public Counsel's witness, however, admits that he did not perform a cost of service study to incorporate the second-year rate increase.[182] Avista also did not perform such a study, and it admits that it has no knowledge of whether the residential parity ratio would improve had it done so.[183] Thus, the evidence does not support a conclusion that the second year rate increase would improve the residential parity ratio any more than it supports a conclusion that this increase would exacerbate this parity ratio.[184] Indeed, as Public Counsel admits, Avista's cost of service study *does* include the first-year rate increase from the Company's 2022 rate plan and that increase made very little difference in the residential parity ratio.[185]

76 Public Counsel attempts to sidestep this problem by noting that an equal spread of the rate increase would improve each class's parity on a return ratio basis.[186] But as Avista's witness confirmed, return ratio simply measures the level of a class's contribution to the overall return and says nothing about the parity of classes relative to each other.[187] An equal spread of the rate

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180 RCW §§ 34.05.461(4), 34.05.570(3)(e); *WUTC v. Avista Corp.*, Docket Nos. UE-150204/UG-150205, Order 05 ¶ 172 (rejecting Staff's finding that Avista engaged in inappropriate actions in the selection of contractors, as "Staff has provided no evidence other than speculation"); *WUTC v. Puget Sound Energy, Inc.*, Docket Nos. UE-130137 *et al.*, Order 07 ¶ 107 n. 162 (June 25, 2013) (declining to implement a reduction to Puget Sound Energy's ROE because the reduction "is not supported by empirical evidence or, indeed, any evidence that meets the substantial competent evidence standard").

181 Dismukes, DED-10T at 5:14-17.

182 *Id.*, DED-11X (PC Response to AWEC DRs 1).

183 *Id.,* DED-15X (PC Response to AWEC-DR-125); Garbarino, Tr. at 174:14-22.

184 Garbarino, at 174:23-175:10.

185 *Id.* at 4:4-14.

186 Miller, JDM-21X at 1.

187 Miller, Hearing Tr. Vol. III at 325:2-326:2.

increase, as Avista's witness confirmed, makes no movement at all toward parity on a revenue-to-cost ratio basis, which is the measure the Commission uses in its cost-of-service rules.[188]

77 In fact, approving Public Counsel's equal spread recommendation is just as likely to exacerbate the parity impacts among rate classes as it is to improve them. This is because, due to the settlement in the 2022 rate plan, residential customers will receive a disproportionately high offsetting rate decrease in the second year of this rate plan when Avista's Colstrip rider, Schedule 99, rolls off.[189] AWEC does not object to the allocation of Schedule 99 because, as Avista points out, that allocation was agreed to by all parties to the 2022 rate plan settlement.[190] The treatment of Schedule 99 will provide a material benefit to residential customers – a $17 million reduction offsetting any approved rate year 2 increase.[191] Thus, if the Commission authorizes an equal spread of the rate increase in this case, it will result in residential customers seeing a lower-than-average rate increase in year 2 of the rate plan,[192] a result that could move residential customers further from parity.

78 In addition to basing its recommendation on speculation, Public Counsel also provides testimony that is either irrelevant or incorrect. Public Counsel, for instance, testifies at some length on the energy industry's transition away from generation based on fossil fuels.[193] Public Counsel does not, however, explain what this has to do with the current rate class parity levels, and at the hearing, its witness confirmed that this testimony was simply meant to impart that

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188 *Id.* at 325:19-326:2; WAC 480-85-030(6).

189 Miller, JDM-9 at 1 (Sch 99 Colstrip Rate Adjustment column); *WUTC v. Avista*, Docket Nos. UE-220053 *et al.*, Order 10/04, Appen. A ¶ 14(c).

190 *Id.,* JDM-8T at 16:13-17:13.

191 *Id.,* JDM-9 at 1.

192 Miller, Tr. at 327:24-328:18.

193 Dismukes, DED-10T at 5:18-7:4. Public Counsel's cross examination of Mr. Miller also explored the possibility that the cost of battery storage would decline in the future, but as Mr. Miller also testified, battery storage's effective load carrying capability would also decline as Avista acquires more of this resource. JDM-21X; Miller, Tr. at 331:10-25. This means that, while storage becomes cheaper, Avista will need to acquire more of it. Miller, Tr. at 332:1-6.

utility costs were likely to increase for *all* customer classes in the future. In fact, given that large customers bear a greater percentage of generation costs relative to residential customers, Public Counsel's testimony may be evidence that the excessive costs large customers are paying relative to their cost of service will only increase in the future.

79 This fact is also why Public Counsel's conclusion that residential customers have seen "a larger allocation of costs associated with the Colstrip facility over the years" is incorrect.[194] Public Counsel bases this conclusion on the spread of Schedule 99 costs, but as already shown above, that spread was not based on how Colstrip costs have been historically allocated but was instead based on the 2022 rate plan settlement. In fact, as Avista's cost of service study shows, Schedule 25 customers are allocated a higher percentage of steam generation costs (including Colstrip) than residential customers.[195]

80 It is important that the Commission take action to improve parity levels in this case. Delaying action may only exacerbate the disparity between rate classes, making it more difficult in the future for the Commission to bring rate classes to their cost of service. On this issue, it is important to note that AWEC's rate spread moves classes closer to their cost of service but does not bring them fully to parity.[196] This means that AWEC's recommendation is consistent with the principle of gradualism and illustrates that movement toward parity in this case is essential to ensuring that future cases do not result in increased subsidies between classes.

81 Finally, AWEC recommends that the Commission reject NW Energy Coalition's ("NWEC") proposal to modify the spread of Schedule 99 costs.[197] While NWEC's proposal may be sensible in isolation, as discussed above, the spread of these costs was determined in the 2022

194 Dismukes, DED-10T at 7:15-18.
195 Gabarino, MJG-2; Garbarino, Hearing Tr. Vol. III at 176:18-177:24.
196 Kaufman, LDK-1CT at 15 (Table 10).
197 Gehrke, WG-1T at 9:19-23.

rate case settlement to which NWEC was a party.[198] This result was the product of careful negotiation between the parties and should not be disturbed because NWEC has now decided that a different allocation is now warranted, as it would chill parties' willingness to enter into future settlement agreements.

H. The Commission should adopt AWEC's uncontested adjustments to Schedule 25 rate design

82 In its opening testimony, AWEC recommended three changes to Schedule 25. First, AWEC recommended that Schedule 25's demand charges for energy blocks 1 and 2 be increased by 50% in rate year 1 and 25% in rate year 2, and that each energy block be increased by an equal amount.[199] Second, AWEC recommended that Schedule 25's primary voltage discount be increased from \$1.93/kW to \$4.39/kW.[200] Third, AWEC recommended a language change to Schedule 25 to make the primary voltage discount applicable to customers served through substations not owned by Avista.[201]

83 Avista supports AWEC's recommendation to increase the primary voltage discount to \$4.39/kW and does not oppose AWEC's recommendation to apply the primary voltage discount to customers served through substations Avista does not own.[202] With respect to AWEC's recommendation to increase the demand charges for the first two blocks of Schedule 25, Avista recommends that these charges be increased by 25% in each year of the rate plan instead of by 50% in the first year.[203] AWEC does not oppose Avista's modification to its recommendation. Because no other party has opposed these recommendations and they impact no other customer class, the Commission should adopt them.

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198 *Id.* at 8:18-21; *WUTC v. Avista*, Docket Nos. UE-220053 *et al.*, Order 10/04, Appen. A ¶14(c).
199 Kaufman, LDK-1CT at 16:12-20, 17:5-18:5.
200 *Id.* at 16:21, 18:6-14.
201 *Id.* at 17:3-4, 19:12-20:23.
202 Miller, JDM-8T at 15:14-16:10.
203 *Id.* at 15:3-13

I. Miscellaneous Revenue Requirement Items

84 After reviewing Avista's Rebuttal Testimony, AWEC is willing to accept Avista's adjustment to Rent from Electric Property and its response with respect to pension expense. AWEC addresses its remaining concerns with Avista's revenue requirement below.

1. <u>Avista's increases to Miscellaneous Operations & Maintenance are overstated.</u>

85 In its filed case, Avista proposed to escalate certain operations and maintenance ("O&M") costs, through Adjustments 3.14 and 5.06, by 6.30% for electric operations and 4.57% for gas operations.[204] These escalations increase Miscellaneous O&M by approximately $8.9 million and $3.6 million for electric operations and $1.6 million and $650,000 for natural gas operations in the first and second years of the rate plan, respectively.[205] Through the discovery process, and then later in Rebuttal Testimony, Avista then modified these escalations first to reflect actual expense through the end of 2023, which also had the effect of lowering the escalation percentages to 4.57% for electric and 4.28% for gas.[206] Avista then accepted Public Counsel's adjustment to reduce the escalation factors further to 2.5% for both electric and gas through the rate plan.[207] The net effect of these changes is to *increase* Avista's electric Miscellaneous O&M by $143,000 in the first year of the rate plan and decrease it by approximately $2 million in the second year of the rate plan.[208] For natural gas, Miscellaneous O&M decreases by approximately $1.5 million in Rate Year 1 and $323,000 in Rate Year 2.[209]

86 While AWEC appreciates Avista's updates in its Rebuttal Testimony, its modifications do not go far enough, particularly on the electric side for Rate Year 1. As demonstrated by AWEC

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204 Andrews, EMA-6T at 39:1-9.
205 *Id.,* EMA-7
206 *Id.*, EMA-6T at 39:10-15.
207 *Id.* at 43:8-17.
208 *Id.,* EMA-6T at 1-19.
209 *Id.* at 44:13-16.

Witness Mullins, Avista's Miscellaneous O&M expense in 2023 essentially stayed flat relative to its 2021 expense level used in Avista's 2022 multi-year rate plan.[210] Thus, while Avista increases its Rate Year 1 electric Miscellaneous O&M expense because the year-end 2023 costs increased relative to the test period expenses its used that ended in June 2023, Avista fails to mention that its year-end 2023 expense increased by only 0.45% from its 2021 test year expenses used in the 2022 multi-year rate plan.[211] In fact, because Avista forecast a 7.05% escalation to electric Miscellaneous O&M in the 2022 rate plan, the level of these expenses assumed in current rates exceeds Avista's actual 2023 Miscellaneous O&M expense by over $9 million.[212]

87 Avista did not rebut any of this in testimony. Rather, Avista's only response to Mr. Mullins' observations was to state that it had understated its expected level of *total* O&M expense in the 2022 rate plan.[213] Whether or not that is true is irrelevant to the specific subset of Miscellaneous O&M expenses at issue here. Avista does not dispute that it over-forecast these expenses in the 2022 rate plan and does not dispute that its 2023 actual expense was effectively unchanged from the test period expense used in the 2022 rate plan. Thus, Avista has not borne its burden to justify an escalation to its current level of Miscellaneous O&M expense for Rate Year 1 and the Commission should not authorize any increase. This results in a reduction to Rate Year 1 electric revenue requirement of $9.012 million and Rate Year 1 natural gas revenue requirement of $1.555 million based on Avista's rebuttal filing.[214]

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210 Mullins, BGM-1T at 18-6-18.
211 Andrews, EMA-6T at 39:10-15.
212 Mullins, BGM-1T at 18:6-14.
213 Andrews, EMA-6T at 42:17-19.
214 *Id.,* EMA-6T at 44 (Table 1).

88 With respect to Rate Year 2, AWEC recommended an inflation adjustment of 2.3%.[215] Given the similarity of this percentage to the 2.5% that Public Counsel recommended and Avista has agreed to, AWEC is willing to agree to this level as well.

2. <u>The Commission should maintain its existing practice of splitting directors' fees between shareholders and ratepayers, but require Avista to bear the full cost of director stock awards.</u>

89 Avista has proposed to include approximately $2.5 million in directors' fees in rates.[216] This is comprised of $1.2 million in directors' fees and $1.3 million in stock awards.[217] Contrary to Commission precedent, Avista has requested to recover 90% of its directors' fees from customers.[218] The Commission has a long-standing practice of splitting equally the cost of directors' fees between customers and shareholders.[219] This is because, as Mr. Mullins testifies, "when the interests of shareholders and ratepayers are aligned it can be said that directors are working for the benefit of ratepayers; otherwise, where there is a conflict, the board of directors acts in the interest of shareholders."[220] Avista nevertheless argues that a change in practice to allocating 90% of directors' fees to customers is warranted in this case because its directors spend less time managing unregulated affiliates and the energy industry is more complex than it used to be.[221]

90 In first applying the 50/50 sharing principle in Avista's 2009 general rate case, the Commission found that the board of directors "provides services that benefit shareholders to the same extent those activities benefit ratepayers."[222] This remains true despite the level of director

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215 Mullins, BGM-1T at 19:17-20.
216 *Id.* at 30:18-19.
217 *Id.* at 31:1-2.
218 Schultz, KJS-5T at 16-19.
219 *WUTC v. Avista Corp.*, Docket Nos. UE-150204/UG-150205, Order 05 ¶ 220 (Jan. 6, 2016).
220 Mullins, BGM-1T at 31:17-20.
221 Schultz, KJS-5T at 56:16-58:3.
222 *WUTC v. Avista Corp.*, Docket Nos. UE-090134, UG-090135 & UG060518, Order 10 ¶ 142 (Dec. 22, 2009).

involvement in unregulated affiliates, as the Commission's decision in the 2009 rate case did not rely at all on the amount of time directors apply to the business of unregulated affiliates.[223] Thus, Avista's argument that it has fewer unregulated affiliates is irrelevant to the level of directors' fees that should be borne by customers. Meanwhile, it may be true that the energy industry is more complex than it used to be, but while this might justify the increases to directors' fees Avista has incurred, it provides no justification for a different allocation of these fees between shareholders and customers. It is just as important to shareholders that directors have the experience necessary to competently run Avista's business as it is to customers.

91 By contrast, the Commission should disallow entirely from recovery the portion of directors' fees the Company provides in the form of stock awards. While Avista's Board of Directors is necessary for the Company to prudently operate its utility functions, as Avista's own documentation demonstrates stock awards are provided *solely* to incentivize directors to act in the interest of shareholders.[224] In fact, Avista's Stock Ownership Guidelines require directors to own a minimum amount of stock in order to strengthen their alignment with shareholder interests.[225] These guidelines do not once mention customers or their interest.[226]

92 Furthermore, as Mr. Mullins testifies, "[s]tock compensation does not result in any cash outlays by Avista, but rather, results in dilution of Avista's shareholder equity," which is "not the type of cost that is includable in a revenue requirement calculation."[227] Thus, even if stock awards could be construed as benefitting customers to some degree, they should be excluded

223 *Id.* ¶¶ 138-142.

224 Christie, KJC-13X at 2 (Avista Response to AWEC-DR-123 and AWEC-DR-123 Attachment A) ("The purpose of these guidelines is to (1) strengthen alignment of the financial interest of members of the Board of Directors … with those of shareholders … [and] (3) enhance Director perspective and focus on shareholder value growth …") (emphasis added).

225 *Id.* at 3-4.

226 *Id.*; Christie, Hearing Tr. Vol. III at 140:12-21.

227 Mullins, BGM-1T at 32:5-8.

from Avista's revenue requirement because they do not represent a cost to the utility that can be compensated through rates. AWEC's adjustments to directors' fees result in an $819,000 reduction to electric expense and a $259,000 reduction to natural gas expense.[228]

3. AWEC accepts Avista's adjustment related to benefits expense.

93 In Response Testimony, AWEC recommended updating the pension expense calculation included in revenue requirement to be based on more recent actuarial reports. In rebuttal testimony, Avista updated both the pension expense and medical insurance expenses based on its updated actuarial reports. AWEC accepts Avista's calculation of the adjustment, including the change to medical insurance costs Avista proposed.

4. AWEC accepts Avista's adjustment to rent from electric property.

94 AWEC's initial recommendation for rent from electric property was a decrease to revenue requirement of $2.1 million for RY 1 and $272,590 for RY 2 based on recent historical increases to rent and after accounting for revenue load growth in line with expected growth in distribution plant.[229] AWEC has reviewed the Company's rebuttal testimony on this issue and concurs with Avista's recommended adjustment to rent from electric property of $600,000 in RY1 and $200,000 in RY2.[230]

5. Wells and Mizuho Margin Accounts

95 AWEC maintains its recommendation that the Commission adopt an adjustment to Avista's cash working capital to reflect the removal of interest-bearing accounts it holds with Wells Fargo Securities, LLC ("Wells") and Mizuho Securities USA, LLC ("Mizuho").[231] Avista argues that AWEC's adjustment should be rejected first because Avista is "using the

228 Schultz, KJS-5T at 55:11-15.
229 Mullins, BGM-1T at 26, Table 6.
230 Andrews, *See* EMA-6T at 7:4-15.
231 Mullins, BGM-1T at 26:1-29:22.

methodology approved by the Commission in Avista's litigated proceeding, Dockets UE-190334, UG-190335 and UE-190222, *consolidated…*"[232] by removing "[only] the []interest-bearing portion of these accounts."[233] However, Avista's inference that the Company's current methodology was explicitly adopted by the Commission in the referenced litigated proceedings is misleading. While it appears accurate that Avista adopted a methodology recommended by Staff during the pendency of that case, neither the final order nor the stipulation specifically address this issue.[234] The consolidated cases cited by Avista simply do not stand for the proposition that AWEC's recommendation is counter to Commission-ordered precedent.

96 And as indicated in AWEC's testimony, there is good cause to depart from Avista's proposed methodology in this case. First, there are factors that influence the interest Avista earns or receives beyond just the account balances.[235] Rather, "[t]he margin interest paid or received corresponds to the overall margin position, not necessarily the funds deposited,"[236] meaning that it is not accurate that a portion of these balances do not earn interest.[237] Second, experience in these accounts in the historical period are not representative of how these accounts are expected to perform in the rate plan period.[238] Avista argues that the market is "drastically different" than it has been historically, "causing these balances to remain much higher than previously experienced."[239] However, as demonstrated by Mr. Mullins' Reply Testimony, Figure 3, the balances included in revenue requirement were calculated over the period July 2022 through June 2023 and were influenced by extraordinary gas prices that occurred in the winter of 2022-

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232 Andrews, EMA-6T at 45:5-6 (emphasis in original).
233 *Id.* at 6:8-24.
234 *See In re Avista*, Docket UE-190334, UG-190335 and UE-190222 (consolidated), Final Order 09 (Mar. 25, 2020) and Partial Multi-Party Settlement Stipulation.
235 Mullins, BGM-1T at 27:11-16.
236 *Id.* at 27:21-22.
237 *Id.* at 27:22-28:2.
238 *Id.* at 28:3-29:3.
239 Andrews, EMA-6T at 47:11-12.

2023, market conditions which have since subsided.[240] If the balances over the 12-months ending April 2024 were used, the balance declined by 43%,[241] and AWEC's expert assessed that the balances will further decline to "close to zero" in the rate plan period considering the trajectory of the balances and current market conditions.[242]

97 The Commission should also not be swayed by Avista's assertion that AWEC's adjustment is "'cherry-pick[ing]' a few specific accounts…to reduce or revise [investor-supplied working capital]."[243] To the contrary, AWEC is not cherry-picking, but attempting to conform the working capital calculation with RCW 80.28.425(3)(b), which requires the Commission to "ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is or will be used and useful under RCW 80.04.250 for service in this state by or during each rate year of the multiyear rate plan."[244] By necessity, this valuation must also consider property valued through the investor supplied working capital calculation, including the balances in the Wells and Mizuho accounts. Unlike AWEC's recommendation, Avista made no attempt to forecast the balances of the Wells and Mizuho accounts in the rate plan periods as required by RCW 80.24.425(3)(b). It asks the Commission simply to accept the balances over the 12-months ending June 2023, with no adjustment for the rate plan period, even though those balances were clearly influenced by extreme market prices that in the winter of 2022 and 2023. AWEC on the other hand, requests that the Commission take a forward-looking view and evaluate the expected balance in the rate plan period as required by statute. Avista, through the prices used in its net power supply forecast, demonstrated that the extreme market

240 Mullins, BGM-1T at 28:3-29:3.
241 *Id.*
242 Mullins, BGM-1T at 28:12-13.
243 Andrews, EMA-6T at 48:17-18.
244 RCW 80.28.425(3)(b)

conditions from the winter of 2022-2023 are not representative of conditions expected in the rate plan period.[245] It is undisputed that commodity market prices for gas and electricity have declined relative to $50.00/MMBtu gas that was experienced in the winter of 2022-2023,[246] and accordingly, the expectation for the margin account balances associated with those commodity prices is that they will decline to be more consistent with the experience over the period 2020 through 2021, which AWEC forecast to be effectively zero.[247] Because it is known that the historical Wells and Mizuho accounts balances are not expected in the rate plan period, Avista's recommendation violates RCW 80.24.425(3)(b). Therefore, the only viable forecast of the rate plan period balances included in the record that complies with RCW 80.24.425(3)(b).is the recommendation of AWEC's expert, which AWEC recommend the Commission accept.

98 Finally, any regulatory lag experienced by Avista with regard to investor-supplied working capital is wholly irrelevant to the issue at hand.[248] Regulatory lag is within the control of the Company. Avista settled its 2023-2024 MYRP, which sought to set rates reflective of the circumstances during the MYRP. This prior period result, if accurate, has no bearing on the appropriate level of Working Capital that should be reflected in rates for the 2025-2026 MYRP.

6. Property Tax

99 AWEC continues to recommend that the Avista adjust its revenue requirement for RY1 and RY2 to address the property tax update referenced in Avista's response to Public Counsel Data Request 296, which is consistent with its commitment to perform an update to property tax expenses during this proceeding.[249]

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[245] *See* Kalich, CGK-1T at 8:3-13.
[246] Mullins, BGM-1T at 28:6-8.
[247] *Id.* at 28:12-13.
[248] *See* Andrews, EMA-6T at 49:1-13.
[249] Mullins, BGM-1T at 33:1-13.

7. Non-recurring Legal Expense

100 AWEC maintains its recommendation that the Commission adjust Avista's revenue requirement to remove non-recurring legal expenses incurred in the test period.[250] Specifically, wildfire litigation costs and costs associated with patents and patent applications should be removed, resulting in a $420,867 reduction to electric revenue requirement and a $26,884 reduction to gas service revenue requirement.

101 The Company argues that wildfire litigation costs are "recurring and continuing in nature"[251] and then goes on to provide a detailed list of specific, discrete cases that will most certainly conclude.[252] However, AWEC continues to support removing those expenditures from revenue requirement. While recent wildfires have resulted in litigation, AWEC does not believe that these wildfire litigation expenses should be considered normal and continues to recommend their exclusion from rates.

102 With respect to the patents, there is nexus between the intellectual property protection of the patents in question with utility services, even where the patent is tangentially related to utility services. Because the patents themselves do not provide a benefit to ratepayers, the expenses fail to meet the used and useful standard. For example, if Avista receives a patent for an outage management technique, for example, rate payers do not benefit through the receipt of royalties or otherwise from the patent. Further, if a competing utility were to use the outage management technique, which would otherwise be prohibited in light of the patent, Avista's ratepayers would not be harmed in any way. The reason patents are obtained is to enable an entity to monetize the patent rights and prevent competitors from using the patent. Avista has not provided any

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250 *Id.* at 33:14-34:15.
251 Schultz, KJS-5T at 37:27-30.
252 *See Id.* at 37:30-38:1-2.

evidence demonstrating that ratepayers benefit from the monetization of said patents and certainly preventing other utilities from using the patents in no way benefits ratepayers. If anything, it is harmful to ratepayers of the other utilities in the state.

J. The Commission should reject Avista's proposal to continue its Insurance Expense Balancing Account.

103 Avista proposes to continue during this MYRP with its Insurance Expense Balancing Account, which was established as part of the settlement in its last general rate case proceeding. As the stipulation in that proceeding indicates, the insurance balancing account is non-precedential and its continuation subject to challenge in a future proceeding.[253] Avista argues in this proceeding that maintaining the Insurance Expense Balancing Account is appropriate and necessary in part because it continues to face "extraordinary" and "volatile" insurance increases that are beyond the Company's control.[254]

104 Avista's proposal to continue the Insurance Expense Balancing Account should be rejected as a matter of policy. By definition, balancing accounts constitute single-issue ratemaking and allows Avista dollar-for-dollar recovery of insurance expense.[255] Single-issue ratemaking is generally disfavored as it allows for specific ratemaking treatment for a single or small subset of costs, regardless of whether other costs have gone up or down during the same period, and "risks over-earning by the company and over-paying by the customers."[256] Additionally, truing up costs generally removes the utility's incentive to seek out, negotiate and attain goods and services at the lowest costs,[257] thereby further shifting risk away from shareholders and onto customers. Avista's requested level of insurance expense is uncontested in

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253 Mullins, BGM-1T at 64:13-14.
254 Andrews, EMA-6T at 37:7-10.
255 Mullins, BGM-1T at 64:20-22.
256 *In re Avista Corporation*, Docket UG-060518, Order 04 at 11 (Feb. 1, 2007).
257 *See* Mullins, BGM-1T at 64:22-65:1.

this case,[258] and by virtue of the design of the multi-year rate plan, Avista was able to forecast its anticipated insurance expense for each year of the proposed MYRP. Should insurance expense deviate from expected, the Company has the opportunity to update its forecast in a subsequent MYRP filing. Sound policy does not support continuation of a balance account for costs that Avista has appropriately forecast in its proposed revenue requirement for each year of the MYRP.

K. The Commission should reject certain recommendations from the Sierra Club

1. <u>The Commission should reject Sierra Club's proposal on electric line extension allowances to new multi-fuel buildings.</u>

105 In an effort to further curtail gas usage on Avista's system, Sierra Club recommends the Commission order Avista to change its *electric* line extension allowance to preclude allowances for mixed-fuel new constructions projects.[259] In other words, only electric-only new construction would be eligible for a an electric line extension allowance.[260] Sierra Club's proposal should be rejected as it is inconsistent with sound policy, is unlawful, and may suffer from practical implementation limitations.

106 As AWEC pointed out in testimony, Sierra Club's recommendation ignores the basis for line extension allowances which are designed to ensure equitable access to utility customers.[261] Implementing Sierra Club's recommendation would result in inequitable results among similarly situated customers, as some customers would be provided with financial incentives while others would not and resulting in disparate rate treatment.[262] Of particular concern are those customers sites where fully electrifying is not an option, as they would be excluded from obtaining cost-

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[258] Andrews, EMA-6T at 35:5-14.
[259] Kaufman, LDK-6T at 6:1-10.
[260] *Id.*
[261] Kaufman, LDK-6T at 6:11-8:18.
[262] *Id.* at 7:14-8:2.

effective service.[263] Implementing Sierra Club's proposal would also result in asymmetric impacts across customers classes,[264] and despite Sierra Club's claims otherwise, has important distinctions from the California Public Utilities Commission's exclusion of electric line extension allowances.[265]

107 Moreover, Sierra Club's proposal is unlawful. RCW 80.28.100 prohibits utilities from:

> [D]irectly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

But Sierra Club's proposal does just that – it treats customers seeking electric service in a disparate manner even though the electric service provided is substantially similar. RCW 80.28.090 prohibits utilities from "…mak[ing] or grant[ing] any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Again, Sierra Club's proposal would provide an explicit financial preference to electric-only new construction customers. Such treatment is unreasonable, as it is not supported by either a binding legal requirement or sound policy. In fact, Sierra Club's proposal is contrary to the design of the CCA "because it is an *ad hoc* and highly indirect effort to reduce gas use regardless of the social cost of carbon or consumer preference"[266] whereas the

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263 *Id.* at 6:18-19.
264 *Id.* at 8:3-11.
265 *Id.* at 8:12-18.
266 Kaufman, LDK-6T at 7:8-10.

Washington Legislature has clearly indicated its intent to address reducing carbon emissions through its market-based cap-and invest program under the CCA.

108 As a practical matter, Avista has pointed out that the Company may not have the knowledge necessary ensure that a customer does not have propane or natural gas served by another LDC at its site.[267] This reality could lead to further disparate treatment and inequitable outcomes if Sierra Club's proposal is adopted by the Commission.

109 For these reasons, the Commission should make no changes to Avista's current line extension allowance policy. If the Commission is inclined to adopt Sierra Club's proposal, the Commission should exempt Schedule 25 from proposed changes.

2. <u>The Commission should reject Sierra Club's proposal on non-pipe alternatives.</u>

110 Due to Sierra Club's dissatisfaction with Avista's "lack of progress" regarding non-pipes alternatives ("NPAs"), it recommends the Commission take a more proactive approach and order the Company to utilize the NPA framework ordered by the Oregon Public utility Commission ("OPUC") subject to a number of "improvements."[268] In its cross-answering testimony, NWEC was largely supportive of Sierra Club's proposal.[269] As AWEC indicated in testimony, it does not oppose Avista undertaking a more robust NPA analysis in its next Integrated Resource Program ("IRP"), but finds Sierra Club's prescriptive approach to be unnecessary and unsupported. AWEC recommends that Avista be permitted to maintain the discretion to make appropriately tailored changes to the OPUC framework in order to ensure that its Washington customers' needs are appropriately met.

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267 Miller, JDM-8T at 19:18-20:1.
268 Kaufman, LDK-6T at 9:8-21.
269 Gehrke, WG-8T at 6:10-8:2.

3. If the Commission agrees with Sierra Club that Avista's current gas system decarbonization plan is deficient, it should order the Company to undertake a comprehensive decarbonization study to better understand customer costs and benefits.

111 Sierra Club criticizes Avista's Gas System Decarbonization Plan as set forth in the Company's 2023 gas IRP and argues that the Commission should order Avista to file an updated Gas System Decarbonization Plan in this proceeding no later than March 2027 that would include specific elements as recommended by Sierra Club.[270] As indicated in AWEC's testimony, Sierra Club's criticisms of Avista's current Gas Decarbonization Plan are unsubstantiated,[271] and the Company's basis for recommending an updated plan appears based on a misunderstanding of CCA requirements.[272] If the Commission is interested in identifying cost-effective decarbonization measures, the appropriate course of action is instead to have Avista undertake a decarbonization study, similar to Puget Sound Energy. Information derived from the decarbonization study could then be used in the development of an updated Gas Decarbonization Study, if appropriate based on the findings.[273]

III. CONCLUSION

For the foregoing reasons, AWEC requests that the Commission adopt the recommendations detailed above.

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[270] Kaufman, LDK-6T at 11:15-12:4.
[271] *Id.* at 10:18-11:14.
[272] *Id.* at 12:6-17.
[273] *Id.* at 12:18-13:16.

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Respectfully submitted,

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