BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION, d/b/a AVISTA UTILITIES, Respondent.	DOCKET NOS. UE-240006 and UG-240007 *(Consolidated)*

POST-HEARING BRIEF OF

NW ENERGY COALITION

October 28, 2024

TABLE OF CONTENTS

Page

I. INTRODUCTION

1. Pursuant to Administrative Law Judge Brown's February 27, 2024 Prehearing Conference Order, the NW Energy Coalition ("NWEC") respectfully submits this Post-Hearing Brief to the Washington Utilities and Transportation Commission ("UTC" or "Commission") in the above-captioned proceeding.

2. On January 18, 2024, Avista Corporation d/b/a Avista Utilities ("Avista" or "the Company") filed with the Commission revisions in docket UE-240006 to its electric service tariff, Tariff WN U-28, and in docket UG-240007 to its natural gas service tariff, Tariff WN U-29. The purpose of these consolidated filings is to increase rates and charges for electric and natural gas service provided to customers in the state of Washington. In its initial filing, Avista proposed electric and natural gas rate increases based on a proposed rate of return of 7.51 percent (with 48.5 percent equity and a 10.40 percent return on equity). Avista also proposed a Two-Year Rate Plan, which would begin with new base rates effective in December 2024 (Rate Year 1) and December 2025 (Rate Year 2).[1]

3. On January 31, 2024, the Commission entered Order 01, consolidating dockets UE-240006 and UG-240007, suspending the tariffs, and setting the matters for adjudication.[2] Since that time, the many parties to this proceeding—Avista, Commission Staff ("Staff"), Public Counsel Unit of the Attorney General's Office ("Public Counsel"), the Alliance of Western Energy Consumers ("AWEC"), Walmart, Inc. ("Walmart"), Sierra Club, NWEC, and The Energy Project ("TEP")—have issued voluminous amounts of discovery, held

---

1 *WUTC v. Avista Corporation d/b/a Avista Utilities*, Order 02, Dockets UE-240006 & UG-240007 at 1 (Feb. 27, 2024).

2 *Id*. at 2.

several settlement conferences, filed several rounds of testimony, and held an evidentiary hearing on the many contested issues. As a result, there is a robust evidentiary record for the Commission's consideration, including several key issues related to equitably decarbonizing Avista's system that are germane to NWEC's advocacy in this proceeding.

4. This is an important time for the Commission to center equity in the journey to decarbonizing of one of its largest dual fuel utilities. Under the legislature's clear mandate, utility system transformation under Washington's Clean Energy Transformation Act ("CETA") must result in "safe and reliable electricity to all customers at stable and affordable rates."[3] Further, the consideration of equity in the Commission's public interest analysis was codified in RCW 80.28.425(1), which "provides that the Commission, in determining the public interest, may consider such factors *inter alia* as environmental health and equity."[4] Additionally, CETA finds that the public interest includes, but is not limited to, the "equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities."[5] Importantly, the Commission has held that "[a]lthough CETA applies to electric utilities only, its objective and language are instructive to the Commission's regulatory work generally as we clarify our definition of 'public interest' to include equity considerations."[6]

---

3 RCW 19.405.010(4).

4 *WUTC v. Cascade Natural Gas Corporation,* Order 09, Docket UG-210755 at 16 ¶ 52 (Aug. 23, 2022).

5 *Id*. citing RCW 19.405.010(6).

6 *WUTC v. Cascade Natural Gas Corporation,* Order 09, Docket UG-210755 at 17 ¶ 52 (Aug. 23, 2022).

5. Relevant to NWEC's recommendations herein, the Commission has adopted the statute that guides the legislative-established Washington Office of Equity, which defines several principles of equity:

- Equity requires developing, strengthening, and supporting policies and procedures that distribute and prioritize resources to those who have been historically and currently marginalized, including tribes;
- Equity requires the elimination of systemic barriers that have been deeply entrenched in systems of inequality and oppression; and
- Equity achieves procedural and outcome fairness, promoting dignity, honor, and respect for all people.[7]

The work of the Office of Equity is intended to complement, though not supplant, the work of statutory commissions.[8] However, through administrative order, the Commission indicated a desire to infuse principles of equity into its existing regulatory framework.[9] By formally adopting these principles and voicing a commitment "to ensuring that systemic harm is reduced rather than perpetuated by [the Commission's] processes, practices, and procedures," the Commission has begun that journey.[10]

6. To that end, here, the Commission must examine how equity flows through Avista's regulated utility service. In general rate cases, all aspects of a utility's operations and services are considered holistically, which provides stakeholders and the Commission with a

---

7 *Id*. at 17 ¶ 54, citing RCW 43.06D.020(3)(a).
8 RCW 43.06D.020(3)(b).
9 *WUTC v. Cascade Natural Gas Corporation,* Order 09, Docket UG-210755 at 17-18 ¶ 55 (Aug. 23, 2022).
10 *Id*.

unique opportunity to examine how the utility is integrating energy equity.[11] This foundational principle is both codified in Washington statute and in bedrock Supreme Court decisions that define the scope of utility commission authority to establish just and reasonable rates.[12] In balancing the interests of the utility shareholder and customer, the Commission must ensure that rates are affordable to the extent they do not qualify as an unreasonable exaction.[13] Since affordability is subjective, the Commission must examine the impact of Avista's proposals on its most vulnerable customers when determining whether they result in just and reasonable rates.

7. NWEC's recommendations, articulated herein, are grounded in legally defensible arguments informed by the statutes and decisions underpinning the Commission's broad authority. These recommendations serve to minimize the cost impact to Avista's customers in the transition to a clean energy economy, equitably distribute the costs and benefits of transitioning away from fossil fuels, allow customers sufficient control over their home energy bills to incent conservation and wise use of resources, and ensure that equity is integrated into Avista's programs and policies. The balance of evidence on the administrative record in this proceeding indicates that the Commission should adopt NWEC's proposals.

8. For the following reasons, NWEC respectfully requests that the Commission:

A. Decline to authorize an incentive rate of return ("ROR") for CETA-compliant power purchase agreements ("PPAs");

---

11 CT-1T 3.

12 *See, e.g., Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591 (1944); RCW 80.28.010(3); RCW 80.28.020; RCW 80.28.074(1).

13 *Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591 (1944).

B. Adopt NWEC's proposal to spread Colstrip Schedule 99 using the generation allocator;

C. Adopt NWEC's proposal to retain Avista's current customer charge;

D. Adopt NWEC's various proposals to aid in the equitable decarbonization of Avista's system;

E. Adopt NWEC's various equity-related proposals in this proceeding, including support for the sound recommendations advanced by The Energy Project ("TEP"); and

F. Adopt NWEC's proposals related to the Company's decoupling mechanism, rural gas service connection, and line extension allowances for customers that are now uncontroverted in this proceeding.

II. STANDARD OF REVIEW

9. The Commission is charged with "regulating in the public interest, as provided in the public service laws, the rates, the services, facilities, and practices" of utilities.[14] The Legislature has entrusted the Commission with broad discretion to determine rates for regulated companies.[15] This broad discretion reflects the quasi-judicial nature of ratemaking.[16] Under RCW 80.28.010(3), all rules and regulations issued by any electric company "affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable." Under RCW 80.28.020, if the Commission finds the rules within a company's tariffs to be "unjust, unreasonable, unjustly discriminatory or unduly preferential,

---

14 RCW 80.01.040(2).

15 *WUTC v. Cascade Natural Gas Corporation,* Order 09, Docket UG-210755 at 15 ¶ 45 (Aug. 23, 2022) citing RCW 80.28.020.

16 *WUTC v. Cascade Natural Gas Corporation*, Order 05, Docket UG-200568, at ¶ 44 (May 18, 2021).

or in any wise in violation of the provisions of the law," then the Commission "shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order."

10. The Commission has described its ratemaking responsibilities as follows:

> The Commission's duty under statute in the context of a general rate case proceeding is to determine an appropriate balance between the needs of the public to have safe and reliable electric and natural gas services at reasonable rates and the financial ability of the utility to provide such services on an ongoing basis. Thus, the end results of our orders in proceedings . . . must be to establish rates that are, in the words of our governing statutes, 'fair, just, reasonable and sufficient' [citing RCW 80.28.010(1) and RCW 80.28.020] – fair to customers and to the Company's owners; just in the sense of being based solely on the record developed in the proceeding following principles of due process of law; reasonable in light of the range of possible outcomes supported by the evidence and; sufficient to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.[17]

11. In a general rate case proceeding, the burden of proving that a proposed rate increase is just and reasonable rests with the Company.[18] The burden of proving that the presently effective rates are unreasonable rests upon any party challenging those rates.[19]

III. DISCUSSION

A. Return on Power Purchase Agreements

12. The plain language of RCW 80.28.410(2)(b) demonstrates the Commission is not legally bound to authorize an incentive ROR on PPAs executed for CETA compliance, and it should not exercise its discretionary authority to do so. In this proceeding, the Company

---

17 *WUTC v. Puget Sound Energy, Inc.*, Order 11, Dockets UE-090704; UG-090705 (*consolidated*) at ¶ 18 (April 2, 2010), citing *Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

18 RCW 80.04.130(1).

19 *WUTC v. Pacific Power and Light Company*, Cause No. U-76-18 (December 29, 1976) (internal citations omitted).

proposes to be authorized an incentive ROR on three PPAs: Chelan, Clearwater III, and Columbia Basin Hydro.[20] Citing a variety of unavailing policy and quasi-legal arguments, both the Company and Staff argue that the Commission should authorize incentive ROR on CETA PPAs, although the return supported by both parties differs.[21]

13. Ultimately, neither party offers any compelling rationale to justify the Commission adopting their proposals, especially since various performance-based ratemaking constructs are being examined holistically in an ongoing proceeding.[22] Since Avista and Staff have failed to meet their burden to demonstrate that an incentive is necessary, and for the various policy reasons discussed herein, NWEC respectfully requests that the Commission decline to exercise its authority to allow a return. Should the Commission feel compelled to provide an incentive, it should set the ROR at the Company's cost of debt.[23]

1. *The plain language of RCW 80.28.410 does not require an incentive ROR*

14. A threshold legal issue is whether RCW 80.28.410 places an affirmative obligation on the Commission to authorize an incentive ROR for CETA-compliant PPAs. It does not. When the Commission construes "a statute, … [its] goal is to determine and effectuate legislative intent."[24] In doing so, the Commission will "start with the plain and unambiguous language of a statute."[25] "[I]f the statute's meaning is plain on its face, then the

---

20 SJK-1T at 49:14.

21 *See, e.g.,* KHM-1T at 18 and SJK-1T at 49: 13-15. Avista seeks interest earnings for certain PPAs at its proposed authorized ROR of 7.61%, while Staff argues that the interest rate should be set at Avista's cost of long-term debt of 4.93% as calculated by Staff witness Parcell. The Commission should adopt neither proposal.

22 *In the Matter of the Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Ratemaking,* Docket U-210590.

23 WG-1T at 7: 15-18.

24 *Swinomish Indian Tribal Cmty. v. Dep't of Ecology,* 178 Wash.2d 571, 581, 311 P.3d 6 (2013); *Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002).

25 *Campbell & Gwinn*, 146 Wash.2d at 9-10, 43 P.3d 4.

[Commission] must give effect to that plain meaning as an expression of legislative intent."[26] "[T]he plain meaning is … derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said *in the statute* and related statutes which disclose legislative intent about the provision in question."[27] "[I]f, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history."[28] However, if the interpretation of the statute is clear upon initial review, the Commission is obligated to uphold that straightforward interpretation as reflective of the legislature's intent.[29]

15. RCW 80.28.410(1) provides, in pertinent part:

> [a]n electrical company *may* account for and defer for later *consideration* by the commission costs incurred in connection with major projects in the electrical company's clean energy plan pursuant to RCW 19.280.030.[30]

RCW 80.28.410(2) delineates the costs that an electrical company *may* account and defer *for later consideration*, which include, for "a power purchase agreement, a rate of return of no less than the authorized cost of debt and no greater than the rate of return of the electrical company."[31] Here, the Legislature's repeated usage of the phrases "may" and "for later

---

26 *Id*.
27 *Id*. at 11.
28 *Id*. at 12.
29 *See generally id.*
30 Emphasis added.
31 RCW 80.28.410(2)(b).

consideration" was unambiguous and intentionally clear, as the Legislature is presumed to know the rules of statutory construction.[32]

16. The Legislature's use of "may" along with "for later consideration" indicates a clear intent to allow the Commission to retain its broad ratemaking discretion to approve or reject a proposal to receive a ROR on PPAs. Under the Commission's review of deferred accounting applications, it retains broad discretionary authority and will generally only grant deferrals upon demonstration of extraordinary circumstances.[33] Here, although the statute in question provides that the Company "may" defer costs for CETA PPAs that include an incentive between its cost of debt and authorized ROR, the Commission is only obligated to "consider" such deferral applications. Webster's Dictionary defines "consider" as "to think about carefully" or "to think of especially with regard to taking some action."[34] Therefore, the plain statutory language makes clear that the Commission is not bound to adopt proposals that electric utilities may file to include an incentive ROR. Since the statutory language is clear, the Commission is obligated to uphold this straightforward interpretation.[35]

17. This Legislative directive is consistent with the Commission's broad and flexible authority to ensure the rates charged are "just, fair, reasonable, and sufficient."[36] The Commission ensures just and reasonable rates through a broad, flexible, and comprehensive ratemaking regime. In *Hope*, the court found that "under the statutory standard of 'just and

---

32 Washington Legislature, *Examples of Statutory Construction from Case Law* at 2 *available at* https://app.leg.wa.gov/committeeschedules/Home/Document/41619.

33 *In re Puget Sound Energy Petition For an Accounting Order Authorizing Deferred Accounting Treatment for Increased Costs Associated with Regulatory Fee Approved in Senate Bill 1589 (2024)*, Order 02, Dockets UE-220407 and UG-220408 at 2 ¶ 6 (Sep. 26, 2024).

34 Merriam-Webster Dictionary, Consider *available at* merriam-webster.com/dictionary/consider.

35 *Supra*, note 29.

36 RCW 80.28.010; *see* RCW 80.28.020.

reasonable,' it is the result reached, not the method employed, that is controlling."[37] This allows the Commission tremendous flexibility to employ a variety of ratemaking tools, as long as it reaches a just and reasonable result.[38] Therefore, the Commission has tremendous authority—and discretion—to set just and reasonable rates and is bound by no specific method, nor is any single element dispositive. Under the plain language of RCW 80.28.410, the Commission is under no affirmative obligation to authorize an incentive ROR as both Avista and Staff seek. NWEC submits that the Commission can and should end its statutory construction inquiry at this threshold stage.

2. *Additional policy reasons weigh in favor of NWEC's recommendation*

18. Even after the Commission's statutory construction analysis has concluded, additional policy rationale support adopting NWEC's recommendation. First, the Commission must ensure equity and affordability are centered as its regulated utilities procure resources to comply with CETA's mandates.[39] Consistent with the legislative directive to implement CETA in a manner that results in affordable rates,[40] the Commission should decline to authorize an incentive ROR for CETA-compliant PPAs, because allowing an incentive on these contracts would increase customer costs. Neither Staff nor Avista have met their burden to prove that prevailing circumstances warrant a change to the Commission's longstanding treatment of PPA cost recovery.

---

37 *Hope* at 602.

38 *Id.*

39 *See, e.g.,* RCW 80.28.074(1) ("The legislature declares it is the policy of the state to [p]reserve affordable energy services to residents of the state."); RCW 19.405.010(4) ("maintaining safe and reliable electricity to all customers at stable and affordable rates.").

40 RCW 19.405.010(4).

19. Conversely, NWEC has provided evidence documenting the cost impact of the Company's proposal on the PPAs at issue. Avista's incentive proposal would result in the Company earning $659,000 in 2024, $1.499 million in 2025, and $2.335 million in 2026.[41] Since these amounts reflect Avista's earnings, they would be entirely avoided if NWEC's recommendations are adopted. Approving an incentive ROR in this proceeding would significantly impact the affordability of CETA-compliant PPAs going forward, as these figures would increase along with any future PPAs whose magnitude and costs impacts are currently unknown. Further, Avista's proposal would result in customers being charged for two financing costs—one through an incentive ROR and another through the utility's arrangement with a third-party plant owner.[42] Avista has not demonstrated that this proposal would benefit customers or further the Commission's mandate to implement CETA in an equitable and affordable manner.

20. Second, Avista has not demonstrated that a ROR on CETA-compliant PPAs is necessary to incent the Company to procure third-party generating assets to meet CETA's mandates. In the coming years, Avista will acquire significant new resources due to state and federal policies, load growth, electrification, and decarbonization efforts. As part of the effort to meet the growing demand for clean energy, third-party renewable energy developers are deploying capital to advance a multitude of projects. Since a broad portfolio of resources are needed to meet clean energy mandates in a manner that minimizes cost and risk, Avista's future procurement strategy will undoubtedly examine the viability of third-party PPAs.[43]

---

41 WG-1T 4:10-12 citing KJS-2 Tab E-3.23,5.12 PF PPA.
42 WG-1T 5: 15-20.
43 *Id*. at 6-7.

Avista must comply with CETA's binding requirements and choose the lowest-cost resource that fits the resource need, with or without a return added for PPAs.[44] Otherwise, it risks a prudence disallowance, which should sufficiently incent the Company. The Commission has held that resource acquisition should occur based on a cost-effective mix of resources rather than solely depending on incentives.[45]

21. In incentive-based regulation, such as the cost-of-service regulation that the Commission engages in, incentives are generally used to encourage utilities to engage in decision-making that furthers an important public policy or is otherwise biased against. Here, neither Avista nor Staff have demonstrated a bias against CETA-compliant PPAs that justifies an incentive ROR. While this Commission has not undertaken a similar investigation, the presence of a bias against PPAs was thoroughly examined by the Public Utility Commission of Oregon ("OPUC") over several years.[46] There, the OPUC was unable to determine whether creating an incentive on PPAs would mitigate any perceived bias "without improperly rewarding the utilities and unfairly harming customers."[47]

22. Absent an affirmative showing of bias—which is not supported by the record—the Commission should decline to adopt Avista or Staff's proposals. Such a decision is especially justified since the Commission is currently investigating whether various

---

44 *Id*. at 7.

45 *In the Matter of the Petition of Puget Sound Energy, Inc. For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs*, Order 08, Docket UE-121373 at 6, fn. 3 (June 25, 2013) ("It should be enough that the contract is part of the least cost mix of resources identified in the 2010/2011 IRP/RFP as the leading candidate to meet near-term capacity requirements, without the need for any incentive at all.").

46 WG-1T 4-5.

47 *In re An investigation regarding performance-based ratemaking mechanisms to address potential build-v.-buy bias*, OPUC Docket No. UM 1276, Order No. 11-001 at 5 (Jan. 3, 2011).

incentives are necessary in an ongoing performance-based ratemaking investigation.[48] The Commission should refrain from placing piecemeal incentives on individual utility actions while a holistic examination is currently underway.

23. Third, although the Commission has allowed an incentive ROR for PPAs in the past, it did so in a limited circumstance to advance a prevailing public policy, and the Commission was explicit in its non-precedential nature. In Docket UE-121373, the Commission allowed a return on equity for coal transition PPAs. There, the Commission held:

> [t]he Commission is keenly aware that the Legislature strictly limited the applicability of an equity adder concept to coal transition contracts and did not authorize such a feature in connection with any other power purchase agreement or, indeed, any other form of contract for the sale and purchase of electricity. The action we take here, therefore, cannot be considered precedential in any sense or an indication of a change in the Commission's traditional views regarding the regulatory treatment of purchased power.[49]

Similarly, here, the Commission should maintain its traditional views on PPAs and decline to authorize an incentive ROR as Avista seeks.

24. Finally, Avista's arguments articulated in Rebuttal Testimony do not justify adoption of its proposal. For example, Avista argues the return it seeks is "[i]n essence . . . a performance-based incentive which serves to compensate utilities for seeking clean energy PPAs over potentially more expensive self-build options."[50] Avista goes on to argue that a "full rate of return as proposed by the Company would further help to drive clean energy acquisition for Washington."[51] Neither argument holds water.

---

48 *Supra*, note 22.

49 *In the Matter of the Petition of Puget Sound Energy, Inc. For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs*, Order 03, Docket UE-121373 at 7, fn. 6 (Jan. 9, 2013).

50 EMA-6T 50:7-8.

51 *Id.* at 52:5-7.

25. As discussed, the Commission in concurrently investigating the viability of holistic performance-based incentives, so it makes little sense to approve a piecemeal incentive structure in this proceeding. If the Commission adopted Avista's proposal, it would render CETA PPAs as expensive as self-build options, from a ROR perspective. Further, the Company has not demonstrated a showing of bias for self-build options that justifies its proposal. Finally, the Commission grants cost recovery if resources are demonstrated to be the optimal blend of cost and risk to serve ratepayers. Given the Commission's role as an economic regulator and the risk of a prudence disallowance if the Company fails to procure resources that are a reasonable blend of cost and risk, the Company needs no additional incentive. If a PPA is the best means to serve customers and meet the state's clean energy mandates, it must be pursued.

26. Avista has not demonstrated that providing it with an incentive ROR would mitigate its perceived self-build bias, nor that any bias exists. All Avista has shown is that it will make CETA PPAs more expensive and is not cost-based. In order to protect customers and equitably meet CETA's aggressive mandates, the Commission should reject Avista and Staff's proposals to receive an incentive ROR on CETA-compliant PPAs. The Commission may also wish to address this issue in the concurrent investigation into performance-based ratemaking. Should the Commission wish to provide an incentive ROR at this time, it should do so at no higher than the Company's cost of debt.

27. For the foregoing reasons, NWEC respectfully requests that the Commission deny Avista and Staff's proposal to allow an incentive ROR on CETA-compliant PPAs.

///

///

B. Colstrip Schedule 99 Rate Spread

28. NWEC urges the Commission to continue tracking Colstrip revenue and expenses in Avista's Schedule 99, but to alter its rate spread from an equal percent of revenue basis to the generation allocator S01 as detailed in Exhibit WG-3.[52] Since the Colstrip plant is a generating unit on Avista's system, NWEC's proposal furthers the fundamental ratemaking principle of cost causation and will help ensure an equitable transition away from coal.[53] WAC 480-85-060 details the cost of service methodology that governs the rate spread allocations of various assets. It is undisputed that Colstrip is a generation cost per Table 1's "Electric Cost of Service Approved Functionalization Methodologies" in WAC 480-85-060. NWEC's proposal ensures that Colstrip costs are allocated consistent with Commission-approved methodologies.

29. NWEC agrees with the Company that Colstrip rate spread should continue to be addressed in its Schedule 99 and should not be factored into the final rate spread determination, as AWEC seeks.[54] However, NWEC disagrees with the Company about the potential impact on the Full Multiparty Settlement Stipulation ("Stipulation") that created the Schedule 99 if NWEC's proposal is adopted.[55] Additionally, the Commission should reject AWEC's proposal to alter Colstrip's rate spread, as articulated in its Cross-Answering Testimony, as unnecessarily complex and out of step with traditional ratemaking principles.

---

52 WG-1T 8-10; WG-8T 11-12.
53 *See* WG-1T 10.
54 JDM-8T 8: 2-10.
55 *Id*. at 16-17.

30. According to the Company, addressing NWEC's proposal in this proceeding "could potentially re-open the entire approved stipulation."[56] The Company argues it would be improper to alter the stipulation because NWEC was a signatory and NWEC witness McCloy sponsored supplemental joint testimony in support of the Colstrip Tracker and Schedule 99.[57] NWEC does not dispute that its request is somewhat unusual in light of the circumstances that gave rise to the tracker's creation. However, it is never too late to rectify past mistakes and achieve a just and reasonable outcome for present and future Avista ratepayers. NWEC's request falls within the Commission's broad authority to further the public interest and alter past decisions based on new information and arguments.

31. The Commission retains broad authority to change orders under RCW 80.04.210 and WAC 480-07-875 based on new arguments or information that has come to light, and the decisions of past Commissions are not binding on future Commissions.[58] By adopting NWEC's proposal, the Commission would simply be making a reasoned change to the Colstrip Schedule 99 tracker on a going-forward basis and would not be re-opening the prior Stipulation, as Avista asserts. This is because the prior Stipulation is now a Commission order.

32. WAC 480-07-750 provides "that if the Commission approves a proposed settlement without condition, a settlement is adopted *as the Commission's resolution of the proceeding.*"[59] Therefore, the Commission's adoption of the Stipulation was a resolution of

---

56 *Id.* at 17.
57 *Id*.
58 *See, e.g.,* RCW 80.04.210 ("Commission may change orders. The commission may at any time . . . alter or amend any order or rule made, issued or promulgated by it.") *and* WAC 480-07-875.
59 *WUTC v. Cascade Natural Gas Corporation,* Order 09, Docket UG-210755 at 16 ¶ 50 (Aug. 23, 2022).

that proceeding, and the terms of the Stipulation officially were adopted and became an order from the Commission.[60] Should the Commission adopt NWEC's proposal, it would be altering a past order, rather than re-opening the Stipulation.[61] Such a decision would fall squarely within the Commission's authority to alter past orders to further the public interest and result in just and reasonable rates.

33. Further, NWEC's request is permissible under the terms of the Full Multiparty Settlement Stipulation, which provides that "[a]ll future Colstrip investments . . . will be recovered separately through this separate tracking mechanism, *subject to review*, including but not limited to an examination of prudence."[62] The Settling Parties to the Stipulation explicitly agreed to "support to the terms of the Settlement *throughout this proceeding*," which concluded in December 2022.[63] The Settling Parties also explicitly agreed that the Stipulation resulted in "No Precedent" and that "no Party shall be deemed to have agreed that such a Settlement is appropriate for resolving any issues *in any other proceeding*."[64]

34. Since the Colstrip Schedule 99 Tracker was always intended to be subject to ongoing review, and because we are now in a different proceeding than that which established the tracker, NWEC is free to suggest changes. However, we do acknowledge that NWEC

---

60 *WUTC v. Avista Corporation d/b/a Avista Utilities, In the Matter of the Electric Service Reliability Reporting Plan of Avista Corporation d/b/a Avista Utilities,* Dockets UE-220053, UG-220054, UE-210854 (*consolidated*), Final Order 10/04 at 74 ¶ 210 (Dec. 12, 2022) ("The Settlement, subject to conditions, should be incorporated by reference into the body of this Order, as if set forth in full.").

61 JDM-8T 17 ("To go back now and argue that this single issue should be re-litigated could potentially re-open the entire approved Stipulation in the Company's view.").

62 *WUTC v. Avista Corporation d/b/a Avista Utilities, In the Matter of the Electric Service Reliability Reporting Plan of Avista Corporation d/b/a Avista Utilities,* Dockets UE-220053, UG-220054, UE-210854 (*consolidated*), Final Order 10/04 at Appx. A p. 7 ¶ 14(b) (Dec. 12, 2022) (emphasis added).

63 *Id*. at 18 ¶ 29 (emphasis added).

64 *Id*. at 20 ¶ 34 (emphasis added).

witness McCloy testified that the allocation agreed to in the Stipulation would be used for the life of the rate schedule, as Avista points out.[65]

35. The proceeding that culminated in the Stipulation was very complex, with many interrelated issues settled simultaneously. NWEC regrets having to come back and offer a different alternative for the Commission in this proceeding, but upon further review, we find that the rate spread we agreed to in the prior proceeding was out of alignment with sound and equitable ratemaking principles. It was therefore inappropriate to suggest in joint testimony that the rate spread should be applied for the life of the rate schedule, even though this language does not appear in the Stipulation.[66] To quote an old Chinese proverb, "[t]he best time to plant a tree is 20 years ago. The second-best time is now."

36. NWEC's proposal would fix this mistake and align with equitable ratemaking principles that would ensure the costs of Colstrip's operation are spread in a commensurate manner with its benefits. NWEC generally stands behind stipulations it has executed, but we also must ensure that equitable ratemaking principles are upheld and are suggesting this change based on new information that has come to light. NWEC is simply requesting that the Commission make reasoned changes to an individual tariff in a manner that comports with its well-established authority to do so.

37. Further, NWEC's proposal aligns with Commission rules related to cost-of-service studies and cost allocation for electric and natural gas utilities. In the proceeding that promulgated those rules, the Commission adopted consistent methodologies for the

---

65 JDM 8T 17:8-12.

66 *WUTC v. Avista Corporation d/b/a Avista Utilities, In the Matter of the Electric Service Reliability Reporting Plan of Avista Corporation d/b/a Avista Utilities*, Dockets UE-220053, UG-220054, UE-210854 (*consolidated*), Final Order 10/04 at Appx. A (Dec. 12, 2022).

functionalization and rate spread of generation assets subject to its regulatory purview—such as Colstrip.[67] There, AWEC argued that "the Commission should modify the electric generation classification method to exclude the allocation of all net power costs to energy."[68] AWEC's argument was not adopted by the Commission at the time, and the Commission should similarly reject AWEC's proposal in this proceeding. AWEC's proposal to spread "the combined revenue from base rates and Schedule 99 according to the approved allocation, then subtracting the generation-based allocation of Schedule 99 from the combined revenue"[69] is unnecessarily complex and deviates substantially from Commission-approved methodologies.

38. NWEC's proposal is simple, implementable, in line with clear Commission precedent, and should be adopted. NWEC urges the Commission to continue tracking Colstrip revenue and expenses in Avista's Schedule 99, but to alter its rate spread from an equal percent of revenue basis to the generation allocator S01 as detailed in Exhibit WG-3.[70]

C. Customer Charge

39. NWEC continues to oppose Avista and Staff's proposals to increase the customer charge for its electric and natural gas customers. Although it has deviated from its initial position, Avista still seeks increases. In Rebuttal Testimony, Avista noted it was willing to modify its request to align with the levels proposed by Staff, which would result in a $1.00

---

67 *In the Matter of Amending WAC 480-07-510 and Adopting Chapter 480-85 WAC, Relating to Cost of Service Studies for Electric and Natural Gas Investor-Owned Utilities,* Dockets UE-170002 and UG-170003, General Order R-599 5 ¶ 20, 12 ¶ 43, and 13 ¶ 45 (Jul. 7, 2020).

68 *Id*. at 16 ¶ 56.

69 LDK-6T 3-4.

70 WG-1T 8-10; WG-8T 11-12.

increase to the basic charge levels.[71] If adopted, Avista's proposal would result in basic charges increasing from $9.00 to $10.00 for electric and $9.50 to $10.50 for natural gas.[72] In support of its alternative proposal, Avista notes that these customer charge levels would fail to cover the costs associated with meters, services, meter reading, and billing.[73] However, Avista concedes that it is unaware of any rule or law that strictly limits what should make up a customer charge.[74]

40. Just as there is no rule or law that limits what should make up a customer charge, there is no rule or law that designates the exact inputs needed to be considered a reasonable customer charge. While a customer charge may consider the fixed costs of providing service to an individual customer, the Commission has broad discretion to determine customer charge levels. The Commission's decision should be based on the overall impact to customer bills and should strive to further important public policies such as providing an incentive for energy conservation.[75] Avista has argued that a higher customer charge is necessary to recover its fixed costs, but it has failed to meet its burden to prove this point. Conversely, NWEC has demonstrated that Avista's ongoing decoupling mechanism enables the Company to recover its fixed costs in a manner that renders an increase to the fixed charge unnecessary.[76]

---

71 JDM-8T 13.
72 *Id*.
73 *Id*.
74 *Id*. at 14.
75 *See, e.g.*, LM-1T 9-10.
76 LM-1T 5.

41. NWEC maintains that higher customer charges do not more accurately reflect the cost to provide service to the marginal customer.[77] Further, Avista's proposal would decrease customer understandability and disproportionately affect Avista's most marginalized customers with the highest energy burden in an inequitable manner.[78] It is also worth reiterating that other Washington investor-owned utilities have lower customer charges than Avista.[79] Neither Avista nor Staff have demonstrated that any increase to the Company's residential customer charge is necessary.

42. For the forgoing reasons, as well as those articulated in NWEC witness McCloy's testimony, NWEC respectfully recommends that the Commission decline to increase Avista's residential and commercial customer charges.

D. Equitable Decarbonization

43. In Cross-Answering Testimony, NWEC articulated support for several Sierra Club positions that would aid in the ongoing equitable decarbonization of the Company's system. These included a Targeted Electrification Pilot, the adoption of a framework for considering non-pipes alternatives ("NPAs"), and a proposal related to gas equipment incentives.[80] NWEC's positions from Cross-Answering Testimony regarding these proposals remain unchanged, and we adopt the arguments in support by reference. NWEC continues to offer slight alterations to Sierra Club's positions.

44. Sierra Club witness Dennison recommends that Avista conduct a Targeted Electrification Pilot program modeled after Puget Sound Energy's electrification pilot

---

77 *Id*. at 8.
78 *Id*. at 10.
79 *Id*.
80 WG-8T 1-10.

program from its 2022 general rate case.[81] Sierra Club's recommended pilot contains four elements: (1) it should include targets for the number of customers engaged through incentives and educational materials; (2) it should include provisions to engage low-income customers and Named Communities, enroll eligible participants in bill assistance programs, ensure that these customers benefit from the pilot, and provide appropriate low-income customer protections; (3) it should include provisions for publicly reporting the pilot's results and lessons learned to the Commission; and (4) it should include provisions to incorporate the pilot into Avista's broader decarbonization and Climate Commitment Act ("CCA") compliance strategies.[82]

45. Implementing a Targeted Electrification Pilot program will enable the Company to gather valuable insights regarding how electrification can help it meet the ambitious mandates set in the CCA.[83] The pilot would also advance equity in the Company's ongoing efforts to decarbonize its system, consistent with clear Commission guidance.[84] NWEC recommends that the Commission adopt Sierra Club's proposal with a slight alteration to require the program to target 40% of its customers from low-income or Named Communities.[85] NWEC also recommends that the Commission require Avista to offer a minimum of 25 no-cost, high-efficiency electric-only heat pump installations to low-income and Named Community customers during the pilot period.[86] In the alternative, if the

---

81 *Id*. at 1-2.
82 *Id.* at 2.
83 *Id*.
84 *WUTC v. Cascade Natural Gas Corporation*, Order 09, Docket UG-210755 at 16-20 (Aug. 23, 2022).
85 WG-8T 4.
86 *Id*. This figure is based on Puget Sound Energy's goal of 50 no-cost installations from its previous pilot program.

Commission does not adopt NWEC's primary recommendation, NWEC recommends that Avista consult with its Energy Assistance Advisory Group ("EAAG") and Conservation Resources Advisory Group on a timeline that would align with other targeted electrification programming.[87]

46. NWEC continues to support Sierra Club witness Dennison's recommendation that the Commission require Avista to implement the OPUC's NPA framework in Washington with some modifications. The adoption of a consistent framework for evaluating NPAs will help ensure that their benefits are consistently and reliably realized as Avista transitions its system.

47. Sierra Club offered several modifications to the OPUC NPA framework that NWEC supports: (1) references to the Oregon Climate Protection Program should be replaced with references to the CCA and other relevant Washington policies; (2) the project cost threshold should be set at $500,000; and (3) Avista should perform NPA analyses for at least five gas infrastructure projects in the next Integrated Resource Plan ("IRP"), even if all of the projects do not exceed the project cost threshold individually.[88] In its proposal, Sierra Club asks that avoided CCA compliance costs of an NPA be modeled assuming all CCA allowances will be purchased at the ceiling price.[89] As an alternative, NWEC suggests that Avista use the best estimates of CCA compliance costs when modeling, which can be determined in the IRP.[90] In NWEC's view, this would be a more accurate way to estimate CCA compliance costs.

---

87 *Id*. at 5.
88 WG-8T 6.
89 *Id*. at 7.
90 *Id*. at 7-8.

48. NWEC similarly supports Sierra Club's recommendation to eliminate conservation incentives for installing new gas equipment in newly constructed residential buildings.[91] Sierra Club explained that constructing new buildings with natural gas and installing new natural gas equipment will make it harder to meet Washington's decarbonization mandates. To effectuate this proposal, Sierra Club has three recommendations: (1) eliminate Avista's incentives for installing gas equipment in newly constructed residential buildings; (2) shift 20% of funds budgeted for residential gas equipment in its current Biennial Conservation Plan to incentives for residential building envelope and electrification readiness measures; and (3) include information about available utility, local, state, and federal incentives for efficient electric equipment in any materials informing customers about incentives for gas equipment and in responses to residential gas customers that request incentives for gas equipment.[92]

49. NWEC supports Sierra Club's proposals to eliminate conservation incentives for new gas equipment in newly constructed residential buildings and to require Avista to provide information regarding incentives for electrification when informing customers about incentives for gas equipment.[93] These proposals will generally aid in the equitable decarbonization of the Company's system and are in alignment with requirements placed on Puget Sound Energy as part of its HB 1589 implementation.[94] However, NWEC does not

---

91 *Id*. at 8.
92 *Id*.
93 *Id*. at 8-9.
94 RCW 80.86.060(1) ("Beginning January 1, 2025, no large combination utility may offer any form of rebate, incentive, or other inducement to residential gas customers to purchase any natural gas appliance or equipment."). Although the law doesn't apply to Avista, the Commission should adopt a similar framework for Avista.

support Sierra Club's proposal to shift conservation funds to residential building envelope and electrification readiness measures at this time.[95] NWEC feels that more information on this topic is needed before a decision is made to shift conservation funds.

50. Subject to the slight modifications addressed herein, NWEC supports Sierra Club's proposals that will aid in the equitable decarbonization of Avista's system.

E. Embedding Energy Equity

51. Consistent with clear Commission guidance provided on August 23, 2022 in Cascade Natural Gas's 2021 General Rate Case Final Order 09, Avista has made strides towards embedding energy equity into its core utility service.[96] This can principally be seen in Avista's: (1) progress on its 2022 general rate case settlement commitments; (2) progress on its 2021 Clean Energy Implementation Plan ("CEIP") commitments; (3) facilitation of its EAAG; and (4) participation in the Commission's docket regarding equity (A-230217).[97]

52. However, progress can still be made on several fronts. In NWEC witness Thompson's testimony, NWEC recommended that Avista should: (1) re-incorporate a non-pipes/non-wires alternative ("NPA/NWA") metric (Metric 26) into its performance-based ratemaking ("PBR") metrics; (2) collect demographic data for customer distributed energy resources ("DER") programs, (3) maintain its disconnection report; and (4) improve its future energy burden analyses.[98] This Brief will respond to arguments raised in Avista's Rebuttal Testimony on these points. In addition, this Brief will express support for several recommendations furthered by TEP, as discussed in NWEC Cross-Answering Testimony.

---

95 WG-8T 9.
96 CT-1T 7.
97 *Id*.
98 CT-1T 2-3.

53. In this proceeding, Avista initially proposed to eliminate two of its four NPA/NWA metrics within its PBR reporting.[99] Avista proposed to eliminate "Metric 26: Percentage of non-pipe alternative utility spending that occurs in highly impacted communities and on vulnerable populations" and "Metric 75: Annual capital expenditures avoided through non-pipe alternative programs."[100] In Rebuttal Testimony, Avista indicated a preference to reduce the metrics down to those listed in the Commission's Policy Statement Addressing Initial Reported Performance Metrics issued on August 2, 2024 in Docket U-210590.[101]

54. NWEC appreciates Avista's proposal to streamline the process of considering varying energy metrics and does not dispute that parties should look to the Commission's PBR investigation for guidance. However, we note that Avista Exhibit SJB-6 details the Company's responses to other parties' PBR metrics recommendations in the event that the Commission does not adopt the initial PBR policy statement. With the re-inclusion and revision of several metrics, including metric 26, Avista now proposes 51 metrics for alternative consideration. This is a greater number than the total metrics considered in the Commission's policy statement. While the PBR investigation is ongoing and has yet to identify environmental metrics, in this proceeding, NWEC can support the 51 metrics addressed in SJB-2 and further revised in SJB-6.

55. Regarding collecting customer demographic information for all current and future DER programs, Avista indicated this would be expensive, challenging, and would place a burden on applicable agencies.[102] As such, Avista proposed moving this discussion to the

---

99 *Id*. at 15.
100 *Id*. citing SJB-2.
101 SJB-5T 2.
102 SJB-5T 28-30.

applicable advisory groups that discuss the collection of this type of information. At this time, NWEC finds the Company's proposal to be reasonable and looks forward to engaging on these important issues in the applicable advisory groups.

56. Regarding maintaining the annual customer Disconnection Reduction Report, Avista indicated a willingness to maintain the report at present because it contains information not currently included in the CEIP, COVID docket (U-200281), or other PBR metrics.[103] NWEC appreciates Avista's willingness to maintain this report.

57. Regarding making changes to its energy burden analyses ("EBA"), Avista responded to several of the arguments raised by NWEC in this proceeding. First, Avista argued that updating customer income and usage data with each new Low-Income Needs Assessment (LINA)/EBA was unnecessary because this information is already tracked in current PBR metrics, which Avista can include in its annual LIRAP Report.[104] NWEC urges the Commission to require Avista to include updates to customer income and usage data as a basis for reporting saturation rate and other metrics in annual LIRAP reports. Second, Avista agreed that it could assess energy burden for customers enrolled in the LIRAP MED and could include this information in the annual LIRAP report.[105] NWEC appreciates this. Third, in response to NWEC's proposal to include customers with fewer than twelve months of usage data into the EBA, Avista indicated that its PBR reporting does not exclude these customers.[106] Instead, the income is normalized according to the number of days the

---

103 *Id*. at 24.
104 *Id*. at 25-26.
105 *Id*. at 26.
106 *Id*.

household has received service from Avista.[107] Avista's approach is reasonable. Finally, in response to NWEC's recommendation to simulate energy burden over time as a function of factors that increase bills, Avista indicated this was not feasible based on the sheer magnitude of dynamics impacting utility bills over time.[108] However, Avista indicated a willingness to discuss this idea with its EAAG to determine what may be possible and how valuable it would be.[109] NWEC finds this to be a reasonable approach and looks forward to engaging in the EAAG.

58. As detailed in NWEC witness Thompson's Cross-Answering Testimony, NWEC continues to support the sound recommendations made by TEP witness Stokes around Avista's disconnection policy, PBR metric reporting, low-income customer identification, language access, and the Company's quarterly decoupling report.[110] NWEC incorporates the supporting arguments made in Cross-Answering Testimony here by reference.

F. NWEC's Uncontroverted Recommendations

59. In testimony, NWEC indicated support for Avista's proposal to continue its revenue decoupling mechanisms for the term of the multi-year rate plan, for the Commission to require Avista to discontinue offering line extension allowances for Schedules 131, 132, and 146 on January 1, 2025, and for the Commission to require Avista to no longer offer service under the Company's Rural Gas Service Connection (Schedule 154).[111] Throughout the proceeding, these proposals have become uncontroverted.[112] NWEC therefore recommends

---

107 *Id*.
108 *Id*.
109 *Id*.
110 *See generally* CT-4T.
111 LM-1T 14; WG-1T 10.
112 *See, e.g.*, JDM-8T 1; JDM-8T 17-18.

the Commission adopt these proposals as a reasonable compromise of positions that furthers the public interest.

IV. CONCLUSION

60. NWEC respectfully requests that the Commission adopt its recommendations as articulated herein.

Dated this 28th day of October 2024.

Respectfully submitted,

/s/ Michael P. Goetz
Michael P. Goetz
Oregon State Bar No. 141465*
Senior Policy and Regulatory Counsel
NW Energy Coalition
811 1st Ave., Suite 305
Seattle, WA 98104
Telephone: 206-621-0094 x 106
mike@nwenergy.org

*Mr. Goetz is not a member of the Washington State Bar.