

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION  
COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a  
AVISTA UTILITIES,

Respondent.

DOCKETS UE-160228 and UG-160229

AVISTA CORPORATION'S PETITION  
FOR RECONSIDERATION OR, IN THE  
ALTERNATIVE, FOR REHEARING

**I. INTRODUCTION**

1 COMES NOW, Avista Corporation (hereinafter "Avista" or the "Company") and respectfully requests reconsideration of Order 06, dated December 15, 2016, pursuant to RCW 34.05.470 and WAC 480-07-850, or, in the alternative, for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.<sup>1</sup>

2 In this Petition Avista identifies portions of Order 06 that are erroneous or incomplete, citing to the record in this proceeding and applicable law, along with supporting argument. For the reasons set forth, the Commission should reconsider its decision in Order 06, and determine that Avista's requested rate relief is "fair, just, reasonable and sufficient." (RCW 80.28.020). The Commission's Order 06 does not otherwise produce an "end result" that is

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<sup>1</sup> RCW 80.04.200 provides that the Commission "may, in its discretion, permit the filing of a petition for rehearing at any time."

reasonable under the standards of Hope and Bluefield,<sup>2</sup> or satisfy the requirements of RCW 80.28.020.

3 In the alternative, Avista submits that good and sufficient cause exists for rehearing to correct for errors and address matters not fully considered and determined in the prior hearing, including those issues identified in its Petition for Reconsideration. Avista requests that the Commission grant its request for a rehearing of this matter, to reopen the record, if necessary, to allow for additional evidence and argument on the following particulars:

1. The opportunity to further explore the interrelationship of modified test year studies with attrition studies or other regulatory tools available to the Commission (see items identified in paragraph 82 of Order 06);
2. The opportunity for further discussion and clarification of what is “within the control” of the Company, as concerns investment and expense: what constitutes investment that is “necessary and immediate” (Order 06, paragraph 69) and what is the relationship to safety and reliability, and the risk/reward trade-off;
3. The opportunity to explore the financial ramifications of the Commission’s Order, in terms of the reasonable opportunity to earn the authorized return on capital, and the impact on investor support<sup>3</sup>;

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<sup>2</sup> *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*)

<sup>3</sup> Preliminary reaction of the investment community has not been favorable: the decline in Avista’s stock price has resulted in a drop of over \$170 million of market capitalization, as of this date. As compared to the Philadelphia Utility Index (UTY), the resulting loss in market cap is approximately \$220 million. Reaction of the investment community has been one of great concern: e.g.,

“We see the order as among the most negative rate order utility decisions in recent memory.” (UBS, “Washington UTC Delivers Rate Case Blow”, December 19, 2016.)

“It obviously could signal a significant change in regulatory environment for Avista. After numerous consecutive base rate cases in which Avista has had some evidence of a trend in its rate cases suggesting a favorable regulatory environment, this latest denial throws the tenor of the WUTC into serious doubt.” (The Williams Capital Group, “Ugly Washington Rate Order Raises Serious Concerns”, December 19, 2016.)

“The timing of the change in the Washington regulatory environment comes at a poor time given Avista’s significant financing/re-financing requirements over the next few years. One certainly could see the credit rating agencies responding poorly to this order, potentially raising the cost of capital, and reducing the availability of capital to Avista’s utilities, in our opinion.” (The Williams Capital Group, “Ugly Washington Rate Order Raises Serious Concerns”, December 19, 2016.)

4. The opportunity for the Company to address the opportunities and risks associated with reducing capital expenditures below the current level of capital expenditures; and
5. The opportunity to present alternative proposals for rate relief in 2017, consistent with the Commission's guidance in Order 06.<sup>4</sup>

4 In Order 06 the Commission expressed concerns regarding the frequency of general rate cases.<sup>5</sup> In this filing, the Company proposed an 18-month rate plan intended to change the "cycle" of base rate adjustments from the middle of winter to the middle of the summer months, so that customers would be aware of rate adjustments prior to entering the winter heating season, and would not experience a base rate increase in the middle of winter. With this change in cycle over an 18-month period, Avista's plans for future rate cases are to propose multi-year rate plans to move away from annual, or frequent, rate cases.

5 In this case the Company demonstrated it is mindful of, not only the timing and frequency of rate cases, but also the impact to customers' retail rates over time. Even though the Company has filed multiple general rate cases in recent years,<sup>6</sup> as shown in the illustration below, the rate impact to electric customers from 2009-2016 has been 1.9% per year, which we believe is reasonable in light of the investment that has been necessary to maintain our system, and given the rate of inflation over this same time frame.<sup>7</sup> Even with these increases, Avista's electric rates are among the very lowest of any investor-owned utility in the Country. (see Exhibit No. SLM-1t, page 25.)

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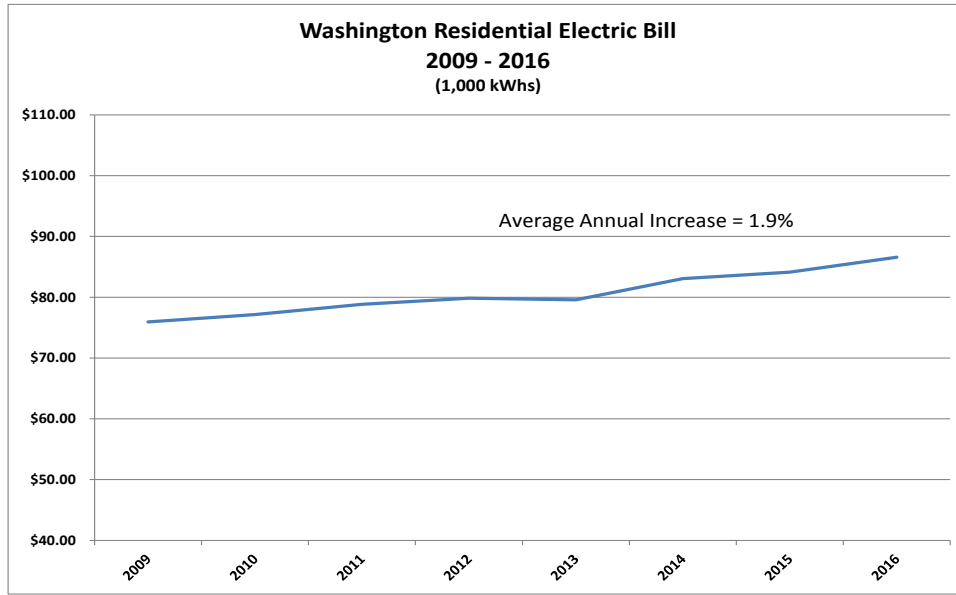
<sup>4</sup> This rehearing process would also provide the parties with an opportunity to engage in further discussions to explore alternative rate plans and approaches identified by the Commission in paragraphs 76-77 of its Order, concerning multi-year rate plans, etc. or otherwise engage in Alternative Dispute Resolution.

<sup>5</sup> Order 06 ¶ 24

<sup>6</sup> Order 06 ¶ 13

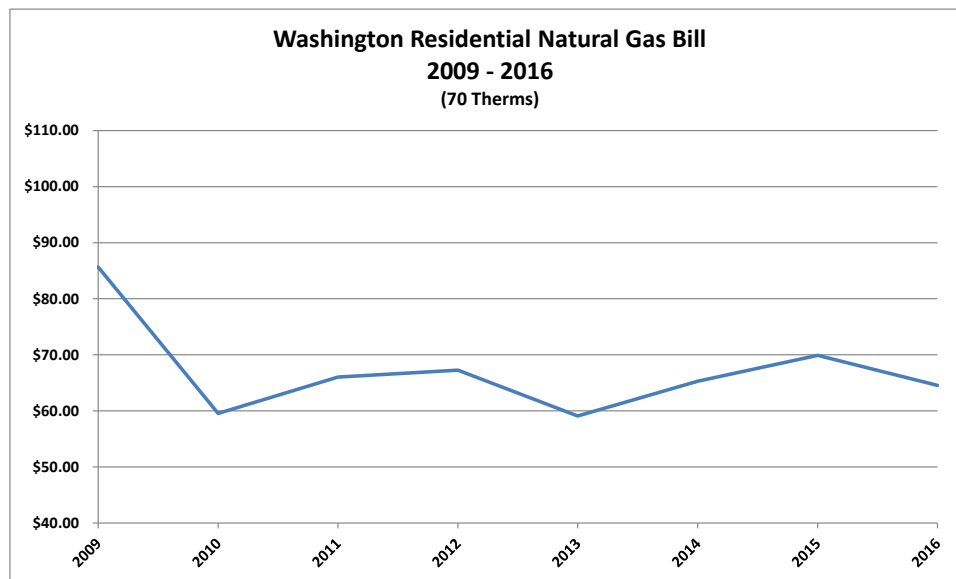
<sup>7</sup> Exhibit No. SLM-1T, page 21.

**Illustration No. 6**



6 For natural gas customers, monthly bills have dropped from approximately \$85 per month in 2009, to approximately \$65 per month in 2016. The following illustration shows that bills have decreased significantly for this time period, even as Avista has continued to make the necessary investments to maintain its delivery system.<sup>8</sup>

**Illustration No. 7<sup>9</sup>**



<sup>8</sup> Id. at p.21: 12-17.

<sup>9</sup> Id. at p.22; Avista recognizes that this also reflects the impact of PGA adjustments.

7 We are also mindful of our customers’ response to these rate cases, and to what customers are telling us related to their satisfaction with our service. During the pendency of this case the Commission received only 73 comments<sup>10</sup> from the total of Avista’s 244,804 Washington electric customers, and 154,324 natural gas customers. During the public comment hearings held in Spokane Valley and Spokane in September, only one customer provided comments in the Spokane Valley<sup>11</sup>, and two customers in Spokane<sup>12</sup>. As we indicated in our direct testimony, “Our customer service surveys indicate that customer satisfaction remains high.”<sup>13</sup>

## **II. GROUNDS FOR RECONSIDERATION**<sup>14</sup>

8 **Issue No. 1: Existing Rates are Insufficient to Provide the Company with a Reasonable Opportunity to earn its Authorized Return.**

Portion of Order Deemed Erroneous or Incomplete:

“Avista failed to carry its burden to prove that its existing rates for electric service and natural gas service provided in Washington State are insufficient to yield reasonable compensation for the service rendered or are otherwise in any manner not fair, just, reasonable, and sufficient. The Commission accordingly has neither the authority, nor an obligation, to determine fair, just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be hereafter observed and in force or to fix the same by order. RCW 80.28.020.”<sup>15</sup>

“Avista’s existing rates continue to be fair, just, reasonable, and sufficient and should remain in effect prospectively from the date of this Order.”<sup>16</sup>

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<sup>10</sup> Order 06 ¶ 11

<sup>11</sup> TR. pp. 35 – 40; Lucy Lepinski, the Chief Operating Officer of Spokane Neighborhood Action Partners (SNAP), attended the Spokane Valley public comment hearing and spoke on behalf of Julie Honekamp, SNAP’s CEO. Among her comments she stated, “SNAP has a strong and resilient Avista partnership. ...While our missions may be different, they are certainly compl[e]mentary, and both Avista and SNAP share a desire for a robust and healthy community.” Tr. p. 37:3-17.

<sup>12</sup> Tr. pp. 43-61.

<sup>13</sup> Exhibit No. SLM-1T, p. 27:10.

<sup>14</sup> Reconsideration is allowed by RCW. 34.05.470. The test stated in the Commission rule for reconsideration includes whether the challenged order is either erroneous or incomplete. WAC 480-07-850(2) (See WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, October 2001.)

<sup>15</sup> Order 06, Conclusions of Law (4), ¶111

<sup>16</sup> Order 06, Conclusions of Law (5), ¶112

Argument and citation to the record:

9           The conditions that prompted the Commission to approve an attrition adjustment in its most recent order in the Company's last general rate case (Dockets UE-150204 and UG-150205) persist today. In its Order 05 at paragraph 109 issued on January 6, 2016, the Commission found:

The evidence in this case demonstrates that Avista is making increased capital investments in non-revenue generating plant (primarily on the distribution system) in an environment of low load growth. However, we do not believe that these circumstances are extraordinary. In fact, we believe that these circumstances represent the "new normal".<sup>17</sup>

Less than one year later, the Commission rejected an attrition adjustment in these dockets, with even more evidence proffered attesting to the mismatch of revenues, expense and rate base. The growth in energy sales continues to be insufficient to cover the necessary investments in plant and operating expenses. The following illustration shows the actual growth in net utility plant investment and operating expenses through 2015, and the expected growth for 2016 through 2019:<sup>18</sup>

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<sup>17</sup> Dockets UE-150204 and UG-150205, Order 05, ¶109.

<sup>18</sup> Exh. No. SLM-1T, p.15:1-20.

**Illustration No. 5 [Growth in Net Utility Investment and Operating Expenses]**

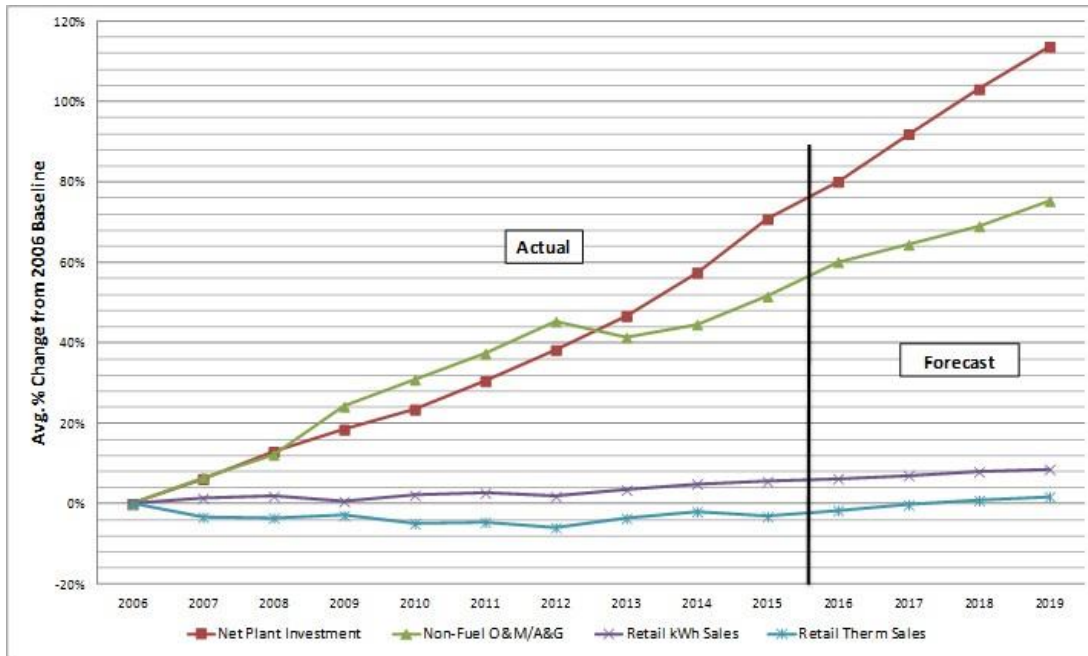


Illustration No. 5 above shows that net plant investment is growing at a much faster pace than sales. It also demonstrates that non-fuel Operation and Maintenance (O&M) expenses and Administrative and General (A&G) expenses are also growing at a faster pace than sales.<sup>19</sup> Because annual costs are growing faster than sales, it is necessary to increase retail rates so that total revenues are sufficient to cover costs, while providing a fair rate of return on investment for investors.<sup>20/21</sup> As noted by Mr. Morris, “these are the circumstances facing not just Avista, but many investor-owned and consumer-owned utilities across the Country, and it

<sup>19</sup> Company witness Dr. Forsyth testified that electric load growth is approximately 0.6% to 0.7% on an annual basis. (TR p. 16:7-9.) This is well below the measure of inflation presented in this case, and well below the demonstrated increase in operating costs to run our system for the benefit of customers.

<sup>20</sup> *Id.* at p.15:21 – p.16:3.

<sup>21</sup> In Avista’s last general rate case, net power supply costs subsequently, decreased significantly from the level embedded in retail rates, which ultimately offset the need for a revenue increase related to the growth in net plant investment and O&M expenses. In this case, net power supply costs have increased from the level currently embedded in retail rates (by more than \$14 million, see Exhibit No. WGJ-1T, page 3, lines 7-9 [Washington Allocation]). Therefore, the \$38.6 million revenue increase request in this case is driven by not only the costs associated with rate base and O&M growing at a faster pace than sales revenue, but also a significant increase in net power supply costs.

is the primary reason Avista has requested electric and natural gas revenue increases through this filing.”<sup>22</sup>

10           So what has changed in the last year? The Commission’s Order 06 is silent with respect to how, if at all, the ongoing relationship between revenues, expense, and rate base that typifies “attrition” has changed. Presumably, the Commission still believes that Avista’s circumstances represent the “new normal.”<sup>23</sup>

11           In the regulatory arena, consistency in Commission orders, policies, and other determinations is important to allow all parties to manage their affairs. With respect to “attrition,” the Commission has done a good job of articulating its policies as they have developed through time. (See pages 7-33 of Order 06) What makes Order 06 so perplexing is that it rejects essentially the same attrition methodology that it approved less than a year ago, based on similar evidence. And again, this occurs against a backdrop of the “new normal” which has not changed. The very reason that the Commission embraced the attrition adjustment as the appropriate regulatory “tool,” in lieu of a modified test year or year-end rate base, was because these other “tools” were insufficient then – and they remain so today.

12           As recognized by Staff Witness Hancock, both Staff and Avista largely adopt the approach used by Staff in Avista’s last general rate case (Dockets UE-150204 and UG-150205). As explained by Mr. Hancock:

. . . Both studies apply regression analysis to evaluate prevailing rates of growth in expenses and rate base. Future revenues are based on future billing determinants estimated in the Company’s load forecast. The revenue shortfall in the Attrition Study is

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<sup>22</sup> Ibid.

<sup>23</sup> Moreover, even though the Commission identified in its Order 06, at paragraph 82, other “tools” at its disposal (e.g., use of pro forma adjustments, year-end rate base, CWIP, etc.), these “tools” were previously deemed insufficient in its previous Order 05 for dealing with attrition. See Order 05, at paragraphs 62-63.



the difference between expected revenues at current rates, and the revenues required to make the Company whole at the estimated levels of rate base and expenses.<sup>24</sup>

Finally, the estimated revenues, expenses and rate base balances found in Avista's and Staff's Attrition Studies are then compared to the results of the traditional modified test year approach and the difference between the two produces the attrition adjustment.<sup>25</sup> With a few adjustments, this was the attrition model approved by the Commission in Order 05.

13 The Commission in Order 05 approved an attrition allowance after determining that various items of rate base and expense were "beyond the control" of the Company.<sup>26</sup> And yet, in its Order 06, it summarily rejected all attrition rate base and expense based on its belief that the Company has not demonstrated that any of these expenditures were beyond its control. It did so even though the Company presented even more evidence in this case than in the prior case concerning the issue of whether such costs were beyond its control.<sup>27</sup> In short, the Commission applied the same standards to the same type of evidence in both cases – and yet reached different results, approving an attrition adjustment in its Order 05 and rejecting it in Order 06. It leaves the Company in a quandary, wondering why it was able to satisfy the requirements for an attrition adjustment in one case, and present even more compelling

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<sup>24</sup> Exh. No. CSH-1T, p.26:17-23.

<sup>25</sup> This attrition adjustment can be found in Staff's revenue requirement presentation as Adjustment 4.08 in its electric model and Adjustment 4.08 in its natural gas model. See Huang, Exh. Nos. JH-2 and JH-3. Avista's proposed attrition adjustment is shown on page 3 of Exh. No. JSS-2, as excerpted later in this Petition.

<sup>26</sup> The Commission excluded distribution investment, however, stating: "...based upon our concerns about whether Avista has provided evidence supporting its expected electric distribution plant expenses and capital investment, we zero out any escalation rate for distribution plant capital investments in arriving at an attrition adjustment for Avista's electric service." See Order 05, ¶120, Docket Nos. UE-150204 and UG-150205.

<sup>27</sup> In this case, the Company presented even more detailed evidence pertaining to each item of generation, transmission, distribution, and other investments and expense. See Exhibit Nos. SJK-1T, BAC-1T, HLR-1T, KKS-1T. Also, detailed "business cases" were provided in Exhibit No. KKS-5 identifying the need for the investment, its timing, and whether it was necessary to maintain safe and reliable service. In fact, it augmented its testimony in this case by providing additional explanation and descriptions of projects, explaining how they were necessary to provide safe and reliable service and were necessary at this time.

evidence a year later and have the adjustment summarily rejected. Such a result is perplexing to the Company and the investment community at large.

14 To be even more specific, many of the same categories of plant investment that were identified and captured in last year's attrition adjustment and approved by the Commission represent ongoing investment and form the basis for the attrition adjustment in this case. One only has to examine Company witness Ms. Schuh's Exhibit No. KKS-4 showing approximately 40-50 items of capital plant additions (e.g., generation, transmission, distribution) by category for 2016 and 2017, and compare it with her exhibit in the Company's last case, to see that the vast majority of expenditures represent a continuation of investment for the same purposes. The "purposes" were deemed beyond the Company's control in the last order approving attrition, and yet not so in this case. The same standards presumably applied in both instances.

15 In conclusion, the conditions that reflect what the Commission characterized as the "new normal" in its recent Order 05, supra, persist today. Those conditions are characterized by levels of expense and rate base that exceed the revenues derived from very low customer growth and sales growth. This phenomenon of "attrition" is recognized by both the Company and Commission Staff and both have provided detailed attrition studies in support of their respective recommendations. Both studies are largely consistent with the attrition studies presented by Avista and Staff in Avista's last general rate case and as approved by the Commission.

Relief Requested: The Commission should reconsider its determination that existing rates are "fair, just, reasonable and sufficient" based on an erroneous or incomplete review of the

evidence. It did not fully examine the evidence of attrition and whether existing rates will be “sufficient” to provide Avista with a reasonable opportunity to earn its allowed rate of return.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

16 **Issue No. 2: Use of the Modified Historical Test Year**

Portion of Order Deemed Erroneous or Incomplete:

“Avista proposed revenue requirements for electric and natural gas operations based on attrition studies that did not follow the methodology identified in Order 05 in Dockets UE-150204 and UG-150205 which begins with development of a modified historical test year with *pro forma* plant additions. Avista begins with an attrition analysis, which it then modifies by the addition of what it calls “after-attrition adjustments.”<sup>28</sup>

“Avista did not follow this “appropriate methodology” [*the appropriate methodology begins with development of a modified historical test year with pro forma plant additions*] and instead begins with the Company’s attrition study.”<sup>29</sup>

“Avista’s case begins and ends with its attrition study, albeit with results adjusted upward for certain capital investments that may occur during the rate period, which the Company describes as ‘after-attrition adjustments’.”<sup>30</sup>

“Avista bears the burden to prove the existence of attrition, but failed to follow the Commission’s prior direction that the starting point for such an analysis is a *pro forma* study following the modified historical test year approach upon which the Commission continues to rely.”<sup>31</sup>

Argument and citation to the record:

17 The traditional modified historical test year studies are, in fact, presented and explained by Avista in Ms. Smith’s direct testimony and exhibits (Exhibit Nos. JSS-1T, JSS-2 and JSS-

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<sup>28</sup> Order 06, Findings of Fact (4), ¶105

<sup>29</sup> Order 06, ¶62

<sup>30</sup> Ibid.

<sup>31</sup> Order 06, fn. 119

3). These studies are also referred to by other Avista witnesses, such as Ms. Andrews (Exhibit No. EMA-1T).<sup>32</sup>

18 As illustrated on pages 6-10 of Ms. Smith's Exhibit No. JSS-2, attached to this petition as Attachment A, the development of the modified test year study was the starting point in Avista's determination of the requested revenue increase in this case. This study begins with the actual results of operations for the historical test period in the first column of page 6.<sup>33</sup> The results of the study are shown on page 10 of this Exhibit in the last column, with a revenue requirement total of \$11,843,000.<sup>34</sup> This study is consistent with, and identical to, the traditional modified historical test year study that Order 06 refers to in these Dockets. Commission Staff witness Joanna Huang referred to Avista's modified historical test year study on page 9 of her testimony, beginning on line 18 (Exhibit No. JH-1T):

The Company calculates its own modified historical test period results of operations with limited pro forma adjustments (shown on the final column of page 10 of Exhibit Nos. \_\_\_ (JSS-2) and (JSS-3)).

19 Page 3 of Ms. Smith's Exhibit No. JSS-2 includes a table that shows a comparison of the results of the modified historical test year study and the attrition study, with the difference being the attrition allowance. That table is reproduced below:<sup>35</sup>

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<sup>32</sup> WAC 480-07-510 provides that:

"General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section [this includes Subsection 1, which requires that 'The utility must provide an exhibit that includes a results-of-operations statement showing test year actual results and the restating and pro forma adjustments in columnar format supporting its general rate request. The utility must also show each restating and pro forma adjustment and its effect on the results of operations. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.]. The Commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section."

<sup>33</sup> The modified historical test period study for natural gas is presented on pages 6-10 of Exhibit No. JSS-3.

<sup>34</sup> On rebuttal, the Company filed Exhibit Nos. JSS-5 (electric) and JSS-6 (natural gas). These revised studies show updated Pro Forma Studies of \$16.866 million (electric) and \$69 thousand (natural gas).

<sup>35</sup> The natural gas comparison can be found on p. 3 of Exhibit No. JSS-3.

**Excerpt from Exhibit No. JSS-2, p. 3:**

	<b><u>Historical Pro Forma Study &amp; Attrition Adjustments</u></b>				
12	Pro Forma Study Rate Base		\$	1,411,117	
13	Pro Forma Study Net income		\$	100,468	
14	Pro Forma Study Revenue Requirement		<b>\$</b>	<b>11,843</b>	Pro Forma
15	Proposed Revenue Requirement 2017			\$38,568	2017 Attrition
16	<b>2017 Attrition Allowance</b>			<b>\$26,725</b>	2017 Attrition Allowance
17	<b>2018 Incremental Attrition Allowance (6 months)</b>			<b>\$10,301</b>	Jun-Jul 2018 Attrition Allowance

20 On page 19, footnote 60, of Order 05 in Avista’s prior rate case (Dockets UE-150204 and UG-150205) the Commission stated as follows:

When developing an attrition adjustment, parties first provide a revenue requirement analysis based on a modified historical test year. Parties then perform an attrition study to determine the utility’s revenue requirement in the rate year. The attrition adjustment is the difference between the revenue requirement provided by the modified historical test year and the revenue requirement provided by the attrition study.

21 What is described immediately above in the Commission’s Order 05 is precisely what Avista presented in this case, and which is summarized in Table No. 1 above. The modified historical test year results are compared with the attrition study results to arrive at the attrition allowance or attrition adjustment. The modified historical test year studies presented by Avista are not altered in any way by the attrition studies or the cross-check studies. The modified historical test year studies stand on their own and are developed to be consistent with that required by the Commission, and include only restating and normalizing adjustments, and a limited number of pro forma adjustments, in accordance with the prior practice of this Commission.<sup>36</sup>

**Relief Requested:** The Commission’s Order 06 was erroneous or incomplete and should be reconsidered to recognize that the Company (and Staff) presented both a Pro Forma Study,

<sup>36</sup> For its part, Staff also developed a pro forma study and an attrition study in the development of its attrition adjustment. (See Exhibit Nos. JH-1T and CSH-1T)

and an attrition study as part of identifying the need for an attrition adjustment, thereby satisfying the requirement that a Pro Forma Study be presented as part of any attrition study.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

22 **Issue No. 3: The Recent Earnings of Avista**

Portion of Order Deemed Erroneous or Incomplete:

“The absence of a showing of chronic under earnings in this case and, indeed, undisputed evidence that the Company continues to earn at, near, or even in excess of, its authorized return, thus militates against the use of an attrition adjustment in this case.”<sup>37</sup>

Argument and citation to the record:

23 The conclusion in Order 06 is incorrect that the absence of a showing of chronic under-earnings, and that the Company continues to earn at, near, or even in excess of, its authorized return, thus militates against the use of an attrition adjustment in this case.

24 Prior to 2013, and prior to the Commission factoring in attrition experienced by Avista,<sup>38</sup> the Washington earned returns for Avista’s utility operations were well below that authorized by the Commission in those years. It represented “chronic under-earning” under any reasonable definition. Illustration No. 4 below, provided in Ms. Andrews’ direct testimony at

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<sup>37</sup> Order 06, ¶66

<sup>38</sup> In Avista’s prior Order 05, at paragraph 110, the Commission noted: “In more recent cases, the Commission has entertained the use of a variety of regulatory methods to address regulatory lag, ... These include, in addition to attrition adjustments, such methods as expedited rate cases, decoupling, and EOP pro forma adjustments. While the Commission has not established a different standard or criteria for attrition adjustments in more recent cases, the Commission has indicated, without more detail, that ‘an attrition adjustment should not be limited to circumstances where the utility can demonstrate extreme financial distress.’ We continue to hold that view, and determine that it is not necessary to require a finding of extraordinary circumstances to justify granting an attrition adjustment. An attrition adjustment is yet another tool in our regulatory ‘toolbox’ for utility ratemaking.”

Exhibit No. EMA-1T, page 20, shows Avista’s earned Commission Basis Returns for its Washington jurisdiction for the period 2008-2014.

**Illustration No. 4:**

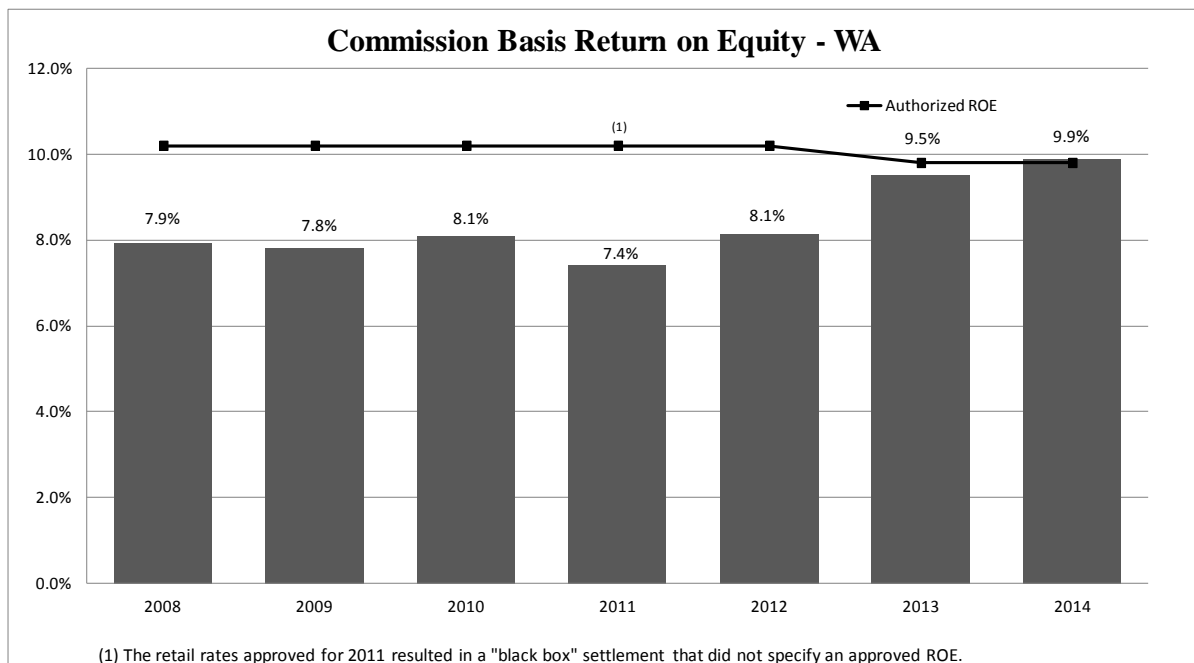


Illustration No. 4 above shows that prior to 2013 (2008-2012), the Company consistently under-earned by approximately 200 basis points on Return on Equity (ROE).<sup>39</sup> Starting in 2013, once the consideration of “attrition” was included in Avista’s authorized rate relief<sup>40</sup>, the Company began to earn at or close to its allowed returns. Table No. 3 below, from Exhibit No. KON-1T, page 11, shows the earned ROE’s for Avista’s electric and natural gas operations for the period 2013-2015.

<sup>39</sup> Prior to 2013, the Modified Historical Test Year (Pro Forma) Study was used to set rates during 2008-2012.

<sup>40</sup> In Order 06 the Commission noted its understanding that the proposed settlements impacting the 2013-2014 rate periods relied upon attrition adjustments: “Despite the settlement’s disavowal of express reliance on the Company’s or Staff’s attrition adjustments, the Commission made clear in Order 09/14 its understanding that Staff and Avista relied heavily on the existence of attrition to justify both the 2013 and 2014 rate increases proposed in the settlement. (See paragraph 34 of Order 06.) For 2015, at paragraph 41: “Order 05 [of Dockets UE-140188/UG-140189] discusses that Avista claimed in its as-filed case to be experiencing attrition and included in its prefiled evidence an attrition study, which the Company used to derive its revenue deficiency. Staff adopted a similar trending method to identify projected expense levels, which Staff proposed the Commission use to set rates.”

**Table No. 3 – 2013 through 2015 Earned Return on Equity**

	CBR Electric ROE	CBR Natural Gas ROE	CBR Total WA Jurisdiction (Weighted)	Authorized ROE
2013	9.9%	7.2%	9.5%	9.8%
2014	10.6%	6.4%	9.9%	9.8%
2015	9.4%	7.0%	9.0%	(41)
Average	10.0%	6.9%	9.5%	

25 This table shows that, on a total Washington jurisdictional basis, the Company either under-earned or slightly over-earned, with an average of 9.5% over the three-year period. Considering natural gas operations alone, the Company continued to under-earn by over 200 basis points during this period. For electric operations, the Company slightly over-earned two of the three years (by 10 basis points in 2013 and 80 basis points in 2014)<sup>42</sup>.

26 Finally, for the first six months of 2016, the results, when translated into equivalent ROEs, yield an estimated electric ROE for 2016 of 9.54%, as compared with the authorized ROE of 9.5%; and for natural gas it demonstrates a 10.2% ROE as compared to the same authorized ROE of 9.5%.<sup>43</sup> All of this suggests that the most recent revenue adjustments ordered by this Commission in Order 05 in Docket Nos. UE-150204 and UG-150205 in January of this year

<sup>41</sup> No stated ROE was agreed upon in the Settlement Stipulation approved by the Commission in Docket Nos. UE-140188 and UG-140189.

<sup>42</sup> As explained at lines 20-25 of Exhibit No. KON-1T, page 11, pension and post-retirement medical expenses for 2013, 2014, and 2015 were \$18.7 million, \$14.1 million, and \$18.7 million, respectively. The unexpected decrease in 2014 was related to favorable returns on the fund balances in 2014, and changes in interest rates and discount rates. Removing this aberration in expense for 2014, which was beyond the control of the Company, reduces the normalized ROE for Washington electric operations from 10.6% to 10.2%, which is much closer to the authorized level, and reduces the over earning to 40 basis points.

<sup>43</sup> Exh. No. KON-1T, p.13:11-18; as explained by Mr. Norwood, gas ROE percentages are very sensitive to relatively small changes in revenue, given a proportionately smaller level of natural gas rate base (10 basis points in ROE equals \$145,000) (Norwood, TR. 114:17-22).



were “very close to what they needed to be in order for Avista to have the opportunity to earn its allowed return for 2016.”<sup>44</sup>

27 For the period 2013 forward, these earnings by the Company do not militate against the use of an attrition adjustment in this case; instead, they point to the fact that the use of an “attrition allowance” in determining the Company’s rate relief approved for 2013-2015, and into 2016, allowed the Company an opportunity to earn at or close to its authorized returns. Said another way, it is precisely the “attrition allowance” that made it possible for the Company to actually earn at or close to its allowed returns, rather than continue to “chronically under-earn” as it had prior to 2013. In fact, without the consideration of an “attrition allowance” the Company would have continued to under-earn as it had in years prior to 2013.

28 The ability of the Company to actually earn close to its allowed returns starting in 2013 should not now deprive the Company of the use of an attrition adjustment, which allowed Avista to move away from chronic under-earning in the first place. To do so would unravel the very progress that has been made to this point, allowing Avista the opportunity to actually earn what has been previously authorized by this Commission as being reasonable. If anything, the recent earned returns are an affirmation that the attrition adjustment is doing what it was intended to do – namely providing the Company with an opportunity to earn its authorized return. The test is not whether the Company must again experience “chronic under-earning” for a period of years before it again becomes eligible for an attrition adjustment.

29 If this Commission is to let stand its current decision of no additional rate relief during the prospective rate periods, this equates to an earnings opportunity (ROE) of approximately 6.6%

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<sup>44</sup> Exh. No. KON-1T, p.13:19-22.

for electric and 8.0% for natural gas operations in 2017 (total Washington jurisdiction of 6.8%).<sup>45</sup> This is approximately 270 basis points below Avista's current authorized ROE of 9.5%.<sup>46</sup>

Relief Requested: The Commission's order was erroneous or incomplete and should be reconsidered to recognize that the Company will return to "chronic under-earning" during the rate-effective period without an attrition adjustment.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

30 **Issue No. 4: The Proformed Test Period Studies Do Not Show That Existing Revenues are Sufficient.**

Portion of Order Deemed Erroneous or Incomplete:

"If the *pro forma* study demonstrates a mismatch in the rate year between revenues, rate base and expenses that is not within the utility's control, then there is evidence of attrition...In point of fact, as discussed in this Order, Staff's traditional *pro forma* study shows a revenue sufficiency in the rate year for both electric and natural gas operations, while the existence of attrition depends on the existence of a revenue deficiency."<sup>47</sup>

Argument and citation to the record:

The results of a traditional modified historical test year study are not a reflection of the revenues that would be sufficient for the rate-effective period. It simply arrives at a revenue adjustment (up or down) based on limited pro forma adjustments to the normalized results for

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<sup>45</sup> A copy of the calculations, drawn from evidence of record, has been included as Attachment B.

<sup>46</sup> It should be noted that customers are protected from potential over-earnings by the Company through the earnings test; however there is no such protection for the Company if it under-earns.

<sup>47</sup> Order 06, fn. 119

the historical test year. The modified test year study restates and normalizes historical test year revenues, expenses and rate base, and it includes only a limited number of pro forma adjustments beyond the end of the historical test year.

31 The pro forma studies do not incorporate the impacts of the “new normal” experienced by Avista and other utilities, where rate base and expenses after the test year are growing faster than revenues. Under current and ongoing conditions, revenue increases above that determined by the modified test year study are necessary to address the gap in the growth in costs and revenues between the historical test year and the rate effective year, which in recent rate cases has been accomplished with attrition allowances.

32 The employment of the modified test year study does not in and of itself determine whether the resulting revenue requirement from the study would provide sufficient revenues for the rate-effective period. In Order 05, in Dockets UE-150204 and UG-150205, the Commission recognized the effect and relationship of the modified test year study and the attrition study:

When developing an attrition adjustment, parties first provide a revenue requirement analysis based on a modified historical test year. Parties then perform an attrition study to determine the utility’s revenue requirement in the rate year. The attrition adjustment is the difference between the revenue requirement provided by the modified historical test year and the revenue requirement provided by the attrition study. (emphasis added) (Para 47, Fn. 60.)

The modified test year study provides a revenue requirement result based on only limited adjustments. The attrition study provides a revenue requirement result based on the revenue necessary to be sufficient “in the rate year.”

33 The finding in Order 06 that, “. . . Staff’s traditional *pro forma* study shows a revenue sufficiency in the rate year for both electric and natural gas operations, . . .” (emphasis added)

therefore, is in error.<sup>48</sup> In fact, on page 3 of Staff Witness Hancock’s testimony (Exhibit No. CSH-1T), he testifies that the revenue requirement determined solely by the modified historical test year study is insufficient and an attrition allowance is necessary to add to the results of the modified test year study:

Staff recommends the Commission include an attrition adjustment to the modified historical test year analysis based on the attrition studies I present. Staff witness Ms. Joanna Huang presents Staff’s calculation of the revenue requirements for Avista’s electric and natural gas services, which incorporates my attrition adjustment. Staff’s analysis indicates that, absent an attrition adjustment, Avista will likely experience attrition and that the forces driving attrition are more likely than not outside of the Company’s control.

The discussion set forth above in connection with Issue Nos. 1 and 3, describes the extent to which there is a demonstrated revenue deficiency, absent an attrition adjustment.

Relief Requested: The Commission’s Order was erroneous or incomplete and should be reconsidered to recognize that the pro forma test period studies of the Company and Staff, standing alone, will produce insufficient revenues during the rate-effective period.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm’n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

34 **Issue No. 5: Costs Beyond Company Control**

Portion of Order Deemed Erroneous or Incomplete:

“Avista failed to demonstrate that its increasing capital costs and expenses are caused by factors beyond the Company’s ability to control, a showing necessary to support an attrition adjustment.”<sup>49</sup>

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<sup>48</sup> Order 06, fn. 119.

<sup>49</sup> Order 06, Findings of Fact (5), ¶106

“The record does not support a determination that Avista will experience increased demands for capital expenditures or operating expenses that are beyond the Company’s ability to control.”<sup>50</sup>

“Thus, again, while the Commission no longer found it necessary to justify granting attrition adjustments on the existence of extraordinary circumstances, as had been the case in earlier decades, it established that utilities seeking an attrition adjustment would be required “to demonstrate persuasively that the attrition occurring is outside of their control.”<sup>51</sup> (footnote omitted)

“Third, Avista presented no persuasive testimony or evidence to support that the circumstances driving the Company’s steadily increasing rate of capital investment and steadily increasing expenses are matters beyond the ability of the Company to control.”<sup>52</sup>

Argument and citation to the record:

35 Order 06, in paragraph 69, defines the concept of “beyond the Company’s control” as the investment or expense as being “so necessary and immediate as to be beyond its control.” Avista submitted hundreds of pages of testimony and exhibits (and supplied thousands of pages of discovery) in this case identifying and explaining the specific capital expenditures in progress and planned for the rate year, doing so item-by-item, including a demonstration that the expenditures are both “necessary and immediate.”<sup>53</sup> In this testimony, Avista provided tables listing each capital expenditure project, and the dollar amounts associated with each. Following these tables, the Company provided explanations for each of the projects, including what is being accomplished through the expenditures, and why they need to be done at this time.

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<sup>50</sup> Order 06, Page 1, Synopsis.

<sup>51</sup> Order 06, Page 41, Paragraph 69.

<sup>52</sup> Order 06, Page 41, Paragraph 70.

<sup>53</sup> See the prefiled testimony and exhibits of Company witnesses Mr. Thies (MTT-1T), Ms. Rosentrater (HLR-1T, HLR-6, HLR-7, HLR-8), Mr. Kinney (SJK-1T), Mr. Cox (BAC-1T), and Ms. Schuh (KKS-1T, KKS-2, KKS-4, KKS-5, KKS-6 and KKS-7).

36 With regard to generation capital investment, Mr. Kinney provided testimony (Exhibit No. SJK-1T) explaining that the Company completes specific assessments on groups of assets when determining its generation capital replacement needs. Mr. Kinney discussed at page 11 the “main drivers” of the Company’s generation projects:

The main drivers for the generation-related capital investment includes updating and replacing over 100-year old equipment in many of the Company’s hydro facilities in order to reduce equipment failure forced outages. There is also some regular responsive maintenance for reliability just to keep the generating plants operational. In addition, there are projects to address plant safety and electrical capacity issues. Finally, there are capital requirements resulting from our settlement agreements for the implementation of Protection, Mitigation and Enhancement (PM&E) programs related to the FERC License for the Spokane River and Clark Fork River.<sup>54</sup>

37 Regarding transmission capital investment, Mr. Cox provided testimony (Exhibit No. BAC-1T) explaining that the Company continuously needs to invest in its transmission system to maintain reliable customer service and meet mandatory reliability standards. Starting at page 18 he provides an example:

Compliance requirements are driven by the North American Electric Reliability Corporation (NERC) standards, which are national standards that utilities must meet to ensure interconnected system reliability. Beginning June 2007, compliance with these standards was made mandatory and failure to meet the requirements could result in monetary penalties of up to \$1 million per day per infraction. ... These requirements drive the need for Avista to continually invest in its transmission system. Avista is required to perform system planning studies in both the near term (1-5 years) and long term (5-10 years).<sup>55</sup>

38 And with regard to distribution capital investment, Ms. Rosentrater provided testimony (Exhibit No. HLR-1T) explaining that Avista’s investment in electric distribution capital assets is primarily driven by a combination of the following factors: (1) new customer connections and changing customer usage, (2) maintaining system reliability and safety, (3)

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<sup>54</sup> Exhibit No. SJK-1T, p. 11, ln. 10-17.

<sup>55</sup> Exhibit No. BAC-1T, p. 17, ln. 11-p. 18, ln. 5.

realizing operational and electrical efficiencies, including compliance with the requirements of Washington Initiative No. 937,<sup>56</sup> and (4) minimizing life cycle costs of assets (e.g., Asset Management programs).

39 In its testimony, Avista explained that in recent years Avista has chosen to not fund all of the capital investment projects requested by the various departments in the Company, driven, in part, by the Company's desire to mitigate the retail rate impacts to customers. The decision to delay funding of certain projects is made only in cases where the Company believes the amount of risk associated with the delay is reasonable and prudent.<sup>57</sup>

40 It is important to recognize that no party or witness in these Dockets identified a single capital project that should not be completed in the time frame proposed by Avista (other than Public Counsel's general opposition to Avista's Advanced Metering Infrastructure Project). In other words, there is no evidence in the record that any of Avista's capital expenditure projects are not needed, and not needed immediately. Conversely, there is significant evidence that the capital expenditures are needed, and needed immediately.<sup>58</sup>

41 The Commission's definition of expenditures that are necessary and immediate and "beyond the Company's control" leaves open several questions: In theory, everything is within the control of the Company – it can simply not spend on anything (salaries/building

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<sup>56</sup> Initiative No. 937, the Washington Energy Independence Act, requires that "each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible." Chapter five of the 2015 Electric Integrated Resource Plan includes discussion of the inclusion of Washington feeder upgrades in meeting Avista's conservation targets under the requirements of initiative 937.

<sup>57</sup> Exhibit No. MTT-1T, page 9.

<sup>58</sup> With regard to increases in operations and maintenance expenses, the Company provided explanations of various cost increases being faced by Avista, such as increases in pension and medical costs experienced by the Company which are determined by an outside actuarial firm, as well as increased union wages established through contract negotiations. (See Exhibit No. JSS-1T, pgs. 33-35, and pg. 32, l. 11-15.) Another example of increased costs impacting the Company is atmospheric corrosion expense. As discussed by Ms. Andrews, the Atmospheric Corrosion (AC) Inspection Program is a federally-mandated program (Code of Federal Regulations (CFR) 49 CFR 192.481) that requires the Company to inspect all above-ground steel pipe at a frequency not to exceed three years. (See Exhibit No. EAM-6T, pg. 51.)

maintenance/power and natural gas purchases). That, of course, is not what the Commission is saying. If one accepts the premise, however, that a utility is obligated by law<sup>59</sup> to provide “safe and reliable” service, and if it, in good faith spends money to do so because of its belief that to not do so at this time would compromise that statutory mandate, such expenditures are, in a very real sense, “beyond its control.”

Relief Requested: The Commission’s Order was erroneous or incomplete and should be reconsidered to recognize that the costs at issue are so necessary and immediate as to be beyond its control, and that it has satisfied its burden of proof.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm’n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

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**Issue No. 6: Self-fulfilling Prophecy**

Portion of Order Deemed Erroneous or Incomplete:

“Thus, what is indicated by Avista’s results in recent years appears now to be the realization of the Commission’s earlier expressed concern that:

[A]uthorizing a practice that simply projects future levels of expense and capital expenditures . . . may, as multiple commenters point out, “become a ‘self-fulfilling prophecy’ where there is an incentive for rates of capital expenditure to be driven by an effort to match earlier projections.”<sup>60</sup> (footnote omitted)”

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<sup>59</sup> RCW 80.28.010 (2) requires that, “Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.”

<sup>60</sup> Order 06, ¶68



Argument and citation to the record:

43 There is no evidence in this record that the Commission's approval of attrition adjustments in past cases has resulted in, or has created, a "self-fulfilling prophecy" regarding utility investments or operating costs.

44 As explained by multiple Company witnesses, continuing investment in utility plant for Avista is driven by the need to build and replace infrastructure and install new technology, among other things, and not driven by a particular Commission order or approach to ratemaking.<sup>61</sup> The significant evidence presented by Avista in this case demonstrates the need for, and timing of, these investments. One should not presume, without evidentiary support, that Avista will needlessly incur expenses or spend capital simply to create a "self-fulfilling prophecy" that will drive the need for rate relief.

45 In Avista's pre-filed testimony, exhibits and workpapers submitted for this case, the Company provided significant documentation and explanation of the capital projects recently completed and planned for the near-term.<sup>62</sup> Avista also provided additional information in response to discovery requests from the parties. Following an extensive review of Avista's case, it is noteworthy that no party in this case identified a single capital project that should not be done in the time frame in which the capital projects are being carried out by the Company.<sup>63</sup>

46 With regard to utility operating costs, Avista's operating expenses are designed to operate the utility in a manner that results in safe, reliable service to customers with a high level of

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<sup>61</sup> Exhibit No. KON-1T, pp. 16-18.

<sup>62</sup> See the prefiled testimony and exhibits of Company witnesses Mr. Thies (MTT-1T), Ms. Rosentrater (HLR-1T, HLR-6, HLR-7, HLR-8), Mr. Kinney (SJK-1T), Mr. Cox (BAC-1T), and Ms. Schuh (KKS-1T, KKS-2, KKS-4, KKS-5, KKS-6 and KKS-7).

<sup>63</sup> We recognize, however, that Public Counsel has taken issue with the AMI project.

customer satisfaction, as well as to ensure Avista's compliance with numerous local, state and federal requirements. Staff Witness Hancock noted in his testimony that "utilities are expected to provide a wider range of services and greater reliability than their counterparts of decades past."<sup>64</sup>

47 Mr. Hancock also recognized the reality of a continuing increase in both utility operating expenses and capital investment, as he noted:<sup>65</sup>

Q. What does Staff think is causing Avista's attrition?

A. Expenses and capital investments are growing faster than revenues. The growth rates in expenses and capital investments are largely the result of factors that appear to be outside of the control of the utility. Revenue growth is flat. To the extent that revenues are a function of load growth, load growth nonetheless remains low. (emphasis added)

Through its testimony and exhibits in the record, the Company has demonstrated that capital investments and operating cost increases proposed by the Company are beyond the Company's control, and are not influenced by the level of cost recovery the Company has received in its past cases that were based on attrition.

48 What is the state of the record on this issue? The Commission Staff, having spent months reviewing and auditing the Company's books and records, did not oppose the need for, or timing of, any capital project. No party identified projects (other than AMI) that should be deferred, delayed, or cancelled. No party asserted that the Company could delay or cancel a project and still satisfy its obligation to provide safe and reliable service.

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<sup>64</sup> Exhibit No. CSH-1T, p. 19:1.

<sup>65</sup> Id, at p. 21:6.

Relief Requested: The Commission’s Order was erroneous or incomplete and should be reconsidered to recognize that there is no evidence of record that the recovery of costs incurred by the Company will result in a self-fulfilling prophecy.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm’n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

49 **Issue No. 7: Increasing Pace of Capital Expenditures**

Portion of Order Deemed Erroneous or Incomplete:

“[Avista] has not presented adequate evidentiary support to demonstrate that its current rates are insufficient or that the pace of its capital investments is outside of the Company’s control.”<sup>66</sup>

Argument and citation to the record:

50 The Commission erroneously concludes that the Company is increasing the “pace” of capital expenditures. From the 2015 historical test year to the 2017 rate year and beyond, Avista is not increasing the rate or pace of capital investment. The level of capital expenditures in 2015 was \$415.3 million, while the planned level of capital spend in 2016 is \$375 million, and \$405 million in the 2017 rate year, and it remains at the same level for

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<sup>66</sup> Id. at ¶73

future years.<sup>67</sup>

51 The capital projects included in the Company's case were explained in the testimony and exhibits of four separate witnesses, Mr. Kinney (Exh. SJK-1T) , Mr. Cox (Exh. BAC-1T), Ms. Rosentrater (Exh. HLR-1T) and Ms. Schuh (Exh. KKS-1T). Their testimony explains why these projects are "necessary" and "immediate." These projects have been prioritized by the Company's Capital Planning Group as necessary to be funded.<sup>68</sup> Indeed, no party identified a single capital project that should not be completed in the timeframe proposed by the Company.<sup>69</sup>

52 As it relates to the Company's pipe replacement programs, for example, the Commission in paragraph 72 of Order 06 states:

the attrition adjustment granted on the gas side in Avista's 2015 case, in addition to revenue authorized in earlier cases, however, should provide the revenue needed to finance the Company's pipe replacement program going forward...the annual costs of this pipe replacement are now included for recovery in rates and, hence, within the Company's control going forward.<sup>70</sup>

This conclusion is erroneous and illustrates the broader point. The Company's pipe replacement program is a capital investment. As such the amount of investment (rate base) included in the Company's prior 2015 general rate case provides the return of (depreciation expense) and return on (rate of return) the level of rate base additions through the 2016 rate

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<sup>67</sup> Even if the "pace" of capital investments remains the same, that does not mean that there is no needed revenue requirement; depreciation expense does not cover the increased capital investment. As we systematically replace our utility assets over time we are replacing structures and equipment that were installed many years ago (in many cases 50 to 70 years ago), when the cost of installation was very low as compared to the cost to replace them today. And these older facilities have been depreciated to a point where the costs to customers embedded in retail rates is very low. The new facilities replacing the old ones, in many cases, provide a continuation of the same service, such as an old wood pole and transformer being replaced with a new pole and transformer. Therefore, as utility structures and equipment are replaced, retail rates must go up to reflect today's higher costs of the new facilities. Exhibit No. SLM-1T, p. 13:12-22.

<sup>68</sup> Exhibit No. MTT-1T, p. 8:38 -9:4.

<sup>69</sup> We recognize, however, that Public Counsel has taken issue with the AMI project.

<sup>70</sup> Id. at ¶72

year. The increase provided in the 2015 rate case does not provide for the return of, or return on investment, of the capital additions for future incremental rate base additions, including the level of rate base additions included in this case.

Requested Relief: The Commission’s order was erroneous or incomplete and should be reconsidered to recognize that the “pace” of ongoing capital investment is not materially increasing since 2015 and into 2017 and beyond.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm’n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

53 **Issue No. 8: No Commission Findings Related to Modified Historical Test Year**

**Adjustments and Results.**

Portion of Order Deemed Erroneous or Incomplete:

“That is, even if we could accept Avista’s stated results for electric service, Commission orders in the Company’s rate cases over the past 10 years suggest it is unlikely that we would simply adopt Avista’s pro forma results in a litigated case. This is particularly indicated by Staff’s and ICNU’s results that show small to modest revenue sufficiencies for both electric and natural gas service. The parties’ respective results, all taken at face value and considered together, show that finding a revenue sufficiency for electric operations would be at least equally likely as finding a revenue deficiency. The results of all parties’ analyses in the case of gas operations are definitive; a revenue sufficiency is indicated in each party’s *pro forma* analysis.”<sup>71</sup> (footnote omitted)

Argument and citation to the record:

54 As discussed elsewhere, Avista did present a traditional modified test year pro forma study.<sup>72</sup> It shows an electric revenue requirement of \$11.83 million.<sup>73</sup> It was subsequently

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<sup>71</sup> Id. at ¶65

<sup>72</sup> See Exhibit No. JSS-2, p. 10.

<sup>73</sup> Ibid.

revised to \$16.866 million in the Company's rebuttal testimony to reflect updated information on several adjustments.<sup>74</sup> None of these numbers incorporated adjustments from Avista's "Cross-Check Study," which fully proformed adjustments for the 2017 rate year (that separate study showed an electric revenue deficiency of \$43.5 million)<sup>75</sup>.

55 In the course of preparing its modified test year study, Company witness Smith also identified various Staff and Intervenor adjustments with which Avista disagreed. See Exh. No. JSS-4T, pp. 9-29. The Staff and Intervenor proposed adjustments to the modified test year that were rejected by Avista are summarized in Table No. 5 of Ms. Smith's testimony. (Exh. No. JSS-4T, p.10). The explanations of why these Staff and Intervenor proposed adjustments were rejected by Avista are set forth at pages 10-29 of Ms. Smith's rebuttal testimony, and will not be repeated here. There were approximately 10 different pro forma adjustments at issue.<sup>76</sup>

56 Nowhere in its Order 06 does the Commission enter findings with respect to any of these contested issues. Instead, it simply concludes that "finding a revenue sufficiency for electric operations would be at least equally likely as finding a revenue deficiency."<sup>77/78</sup> At the end of the day, with the Commission having rejected the Company and Staff's attrition studies, as well as the Company's pro forma studies, the Company is left without any needed rate relief.

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<sup>74</sup> Exhibit No. JSS-4T, see p. 6 and Exhibit No. JSS-5, p. 10

<sup>75</sup> Exhibit No. JSS-2, page 12.

<sup>76</sup> In developing its Modified Test Year Study, Staff only included transfers-to-plant on major pro forma projects through July of 2016. Moreover, in preparing its study, Staff used a limiting threshold for "major" projects of "one-half of one percent" of net utility plant, resulting in a threshold of \$7.9 million for electric and \$1.5 million for the definition of a "major" plant investment. (Exh. No. KKS-8T, p:3:7-4:1, at p.3:7-14) This limiting "threshold" serves to exclude approximately one-half of the overall plant that will actually be serving customers in the rate-effective period, i.e., it excludes smaller discreet levels of day-to-day routine levels of investment not otherwise meeting the threshold. And yet, those investments will be in service during the rate-effective period.

<sup>77</sup> Order 06, ¶65.

<sup>78</sup> In support, the Commission simply observes that it has "approved about 43 percent of the Company's as-filed requests for increased revenue for electric service." (Id. at p. 37, fn. 123)

As a result, nearly \$112 million<sup>79</sup> of invested capital (rate base) that has gone, or will go, into service in Washington in 2016 and 2017 will not be reflected in rates – even though no party raised specific concerns as to the need or timing of a single capital project (except for AMI by Public Counsel). Ratepayers will enjoy the benefits of these investments, but without cost recovery for the Company, and a fair rate of return for investors.<sup>80/81</sup>

Requested Relief: The Commission’s Order was erroneous or incomplete and should be reconsidered to recognize needed test year adjustments as part of its overall determination of the Company’s revenue deficiency in order to address attrition.

Relevant Law: RCW 80.28.010, and 80.28.020. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm’n*, 262 U.S. 679, 692, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)) (*Bluefield*); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*) - Establish end results that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient.

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<sup>79</sup> Total of rate base included per Exhibit No. JSS-2, p. 11, columns 4.00, 4.01 and 4.03; and Exhibit No. JSS-3, p. 11, columns 4.01-4.03.

<sup>80</sup> Among the “casualties” of this approach is recovery of all of the Company’s investment in Nine Mile HED, Little Falls HED, and Post Falls HED, which were completed by July of 2016 and serving customers today. Also excluded were capital costs associated with restoring service following the historic “wind storm” in November of 2015. Moreover, existing rates reflect a level of revenue associated with the PGE contract that will go away on December 31, 2016; as a result, existing rates assume \$8 million of net benefit that will no longer be there.

<sup>81</sup> Even Avista’s attrition revenue requirement proposal already reflects a lower level of plant in service (rate base) of \$42 million than that planned to be in service, serving customers during the 2017 rate period. Staff’s attrition revenue requirement proposal reflects \$90 million less of plant in service (rate base) for the 2017 rate period. (Exhibit No. EMA-6T, page 35.)

### **III. GROUNDS FOR REHEARING**<sup>82</sup>

57 In the event the Commission does not grant reconsideration for the reasons requested by  
Avista, the Company nevertheless believes that good cause exists for the Commission to  
reopen the record and entertain additional evidence on the issues identified below.

58 A purpose of rehearing is to bring matters to the attention of the Commission that were  
not previously presented and otherwise proffer additional argument regarding matters not  
considered or determined in a prior hearing. [RCW 80.04.200 provides that the Commission  
“may, in its discretion, permit the filing of a petition for rehearing at any time.”]

59 The Company recognizes that a request for rehearing could be considered by some as an  
extraordinary remedy – but from the Company’s perspective, it is faced with an extraordinary  
outcome, one that was clearly not anticipated by it or the financial community. And that is  
why the Company is seeking to invoke rehearing procedures, in order to examine, on a timely  
basis, certain issues that may not have been sufficiently addressed in Order 06 and to explore  
alternative resolutions in the context of these existing dockets.

60 The parties and the Commission have devoted considerable effort over the past ten (10)  
months in undertaking discovery and developing a record that is current and extensive.  
Indeed, at the end of the day, there is more agreement than not over the basic facts of how  
much the Company is spending and for what purpose. There is very little dispute over the  
need for the investment, in that no party identified a single capital project that should not be

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<sup>82</sup> Rehearing is provided for in RCW 80.04.200. The tests include whether the order produced a result injuriously affecting the petitioner that was not considered or anticipated at the former hearing, whether conditions have changed, or whether there is any good and sufficient cause for rehearing that for any reason was not considered and determined in the prior hearing. (See WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-011163 and UE-011170, October 2001.)



completed in the timeframe proposed by the Company (again with the exception of AMI by Public Counsel).

61           Accordingly, the basic evidentiary foundation has already been laid – but can be augmented with additional testimony on rehearing to address the issues raised in Order 06 of “pace,” timing, and control over capital investments that were apparently not sufficiently addressed to the satisfaction of the Commission. Rather than starting anew with another general rate filing on the heels of these dockets, Avista believes that the record in this case can be augmented to allow for further clarity and guidance through the rehearing process in these dockets on the issues set forth below, as well as on the issues raised for reconsideration.<sup>83</sup> That further guidance will benefit the parties in this and other future proceedings.

62           To be clear, the primary purpose of rehearing would be to explore alternative resolutions for rate relief in these dockets, consistent with the underlying objectives of the Commission’s Order 06. In that regard, the Company envisions the filing of additional testimony on rehearing, setting forth alternative rate proposals based on the record already compiled and as augmented through the rehearing process. Other parties would be afforded the opportunity for the filing of responsive testimony, and the matter would be heard by the Commission. The Company believes this process could be concluded within 3-4 months.

63           In addition to matters discussed in the Company’s Petition for Reconsideration, the parties would be given the opportunity to more specifically address the following issues on rehearing:

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<sup>83</sup> If the Commission is persuaded to grant additional rate relief at this time through the rehearing process, it will also serve to moderate the level of rate relief in the Company’s next filing, as it seeks to “catch up” on cost recovery – *i.e.*, avoid the “compounding effect.”

1. The opportunity to further explore the interrelationship of modified test year studies with attrition studies or other regulatory tools available to the Commission (see items identified in paragraph 82 of Order 06);
2. The opportunity for further discussion and clarification of what is “within the control” of the Company, as concerns investment and expense: what constitutes investment that is “necessary and immediate” (Order 06, paragraph 69) and what is the relationship to safety and reliability, and the risk/reward trade-off;
3. The opportunity to explore the financial ramifications of the Commission’s Order, in terms of the reasonable opportunity to earn the authorized return on capital, and the impact on investor support;
4. The opportunity for the Company to address the opportunities and risks associated with reducing capital expenditures below the current level of capital expenditures; and
5. The opportunity to present alternative proposals for rate relief in 2017, consistent with the Commission’s guidance in Order 06.<sup>84</sup>

64 In closing, the Company believes that the regulatory process before the Commission would benefit by a rehearing process in these dockets and at this time. The clarity afforded by such a process would provide further guidance to all stakeholders and provide a measure of reassurance to the investment community.

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<sup>84</sup> This rehearing process would also provide the parties with an opportunity to engage in further discussions to explore alternative rate plans and approaches identified by the Commission in paragraphs 76-77 of its Order, concerning multi-year rate plans, etc., or otherwise engage in Alternative Dispute Resolution (perhaps with the assistance of a mediator).

#### IV. CONCLUSION

65 WHEREFORE, Avista respectfully requests that the Commission reconsider its findings in Order 06 and grant Avista the necessary rate relief that it requested in these dockets, for the reasons set forth above. In the alternative, the Company nevertheless believes that good cause exists for the Commission to reopen the record and grant rehearing to entertain additional evidence on the issues identified above.

DATED this 23<sup>rd</sup> day of December 2016

By:   
David J. Meyer  
Vice President and Chief Counsel for Regulatory  
and Governmental Affairs

VERIFICATION

STATE OF WASHINGTON )  
 )  
 County of Spokane )

David J. Meyer, being first duly sworn on oath, deposes and says: That he is a Vice President of Avista Corporation and makes this verification for and on behalf of said corporation, being thereto duly authorized;

That he has read the foregoing Petition, knows the contents thereof, and believes the same to be true.

*David J. Meyer*

SIGNED AND SWORN to before me on this 23rd day of December 2016



*Patty L. Hanson*

NOTARY PUBLIC in and for the State of Washington, residing at Spokane.

Commission Expires: 11/23/2017