BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UITILITIES AND TRANSPORTATION COMMISSION	)	DOCKETS UE-160228 and UG-160229 (*Consolidated*)
Complainant,	)	
v.	)	ANSWER OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST
AVISTA CORPORATION d/b/a AVISTA UTILITIES	)	UTILITIES TO AVISTA CORPORATION'S PETITION FOR RECONSIDERATION OR, IN THE
Respondent.	)	ALTERNATIVE, FOR REHEARING

I. INTRODUCTION

1 Pursuant to the Notice of the Washington Utilities and Transportation Commission ("WUTC" or the "Commission"),[1/] and WAC § 480-07-850, the Industrial Customers of Northwest Utilities ("ICNU") submits this Answer to Avista Corporation's ("Avista" or the "Company") Petition for Reconsideration or, in the Alternative, for Rehearing ("Petition"). For reasons explained specifically and in detail in this Answer, ICNU respectfully recommends that the Commission deny the Company's requests for both reconsideration and rehearing.

II. ANSWER

2 Commission rules contain separate provisions for petitions for reconsideration and rehearing, respectively,[2/] and there is a substantial body of WUTC precedent applying different standards to each form of post-order petition. While Avista frames the Petition in "Alternative" form, however, the Company arguably comingles the

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1/ Notice of Opportunity to File Answers to Petition for Reconsideration or Rehearing (Dec. 27, 2016).

2/ WAC §§ 480-07-850, 870.

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applicable standards for each form of requested relief, in addition to essentially seeking additional (and distinct) forms of post-order relief without any express attribution to Commission rule or precedent—e.g., motion relief via clarification or reopening of the record.[3/]

3 This point is not raised to imply that the Commission should not consider the Company's requests on their merits, in an elevation of form over substance.[4/] Rather, ICNU draws attention to the potential conflation of requested relief in the Petition to ensure that each request of the Company is separately considered on the *appropriate* merits, by applying the applicable standards relevant to each form of relief. Once considered in the context of relevant standards, none of relief sought by the Company has been justified in the Petition.

A. Simply Rearguing Issues Does Not Justify a Reconsideration

4 To justify the reconsideration of a final order, "a party must do more than simply reargue an issue decided in a final order."[5/] Notwithstanding, all eight of Avista's issues presented as "Grounds for Reconsideration" in the Petition amount to nothing more than improper attempts to reargue issues fully and fairly determined by the Commission in Order 06 (the final order of this proceeding). Since the Petition "does not raise new arguments that [the Commission has] not previously considered and rejected," there is no legal basis for reconsideration.[6/]

5 Indeed, the Commission has elsewhere explained that "[a] petition that cites no evidence that the Commission has not considered, and merely restates arguments

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3/ See WAC §§ 480-07-830, 835.

4/ Cf. WUTC v. Avista, Dockets UE-150204 and UG-150205 (*consolidated*), Order 06 at ¶ 17 n.17 (Feb. 19, 2016) (noting a "technicality of no particular consequence" when Staff appeared to improperly style a motion for clarification as a petition for reconsideration).

5/ Re Qwest Corp., Docket UT-063061, Order 19 at ¶ 7 (Jan. 30, 2009) (applying as the "Standard of Review" for petitions for reconsideration under WAC § 480-07-850).

6/ Docket UT-063061, Order 19 at ¶ 39.

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the Commission thoroughly considered in its final order, states no basis for relief."[7/] In this sense, "reconsideration is not a second opportunity to litigate issues " and "[t]he mere fact that a party disagrees with a final order does not state a basis for reconsideration."[8/] Thus, as explained in further detail below, and specifically in relation to each issue presented in the Petition, Avista's displeasure with Order 06 is an insufficient basis for the Commission to grant reconsideration.

1. The Commission Thoroughly Considered the Sufficiency of Existing Rates (*Petition Issue No. 1*)

6 As an initial matter, the record plainly indicates that the Commission very thoroughly considered the comprehensive evidence in this proceeding before concluding that Avista failed to carry its burden of proof to persuasively demonstrate that its existing rates are not fair, just, reasonable, and sufficient. Specifically, a two-day hearing concluded with the following statement by the senior presiding officer:

> [W]e have a very full record here, and myself and the policy advisers who are working on the case, we spend a great deal of time distilling that record and helping the Commissioners. *They also have very thoroughly studied the record.* I think we really have the materials we need. When you make out your arguments, we'll look beyond them to the record itself.[9/]

Moreover, the record also notes that, collectively, the parties were commended as having done "an excellent job" in developing the very full record at hearing, including "appropriate" cross-examination.[10/] Accordingly, allegations by Avista that Order 06 is "incomplete," as to Petition Issue No. 1 or any other of the purported "grounds for reconsideration," is difficult to square with the actual observations within the record

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7/ See, e.g., Re Avista, Dockets UE-991255 *et al.*, Fourth Suppl. Order at ¶ 40 (Apr. 21, 2000); WUTC v. Olympic Pipeline Co., Docket TO-011472, Eighth Suppl. Order at ¶ 38 (Mar. 29, 2002) (quoting Dockets UE-991255 *et al.*, Fourth Suppl. Order at ¶ 40).

8/ See, e.g., Dockets UE-991255 *et al.*, Fourth Suppl. Order at ¶ 40; Docket TO-011472, Eighth Suppl. Order at ¶ 38 (quoting Dockets UE-991255 *et al.*, Fourth Suppl. Order at ¶ 40).

9/ Judge Moss, TR. 436:14-21 (emphasis added).

10/ Id. at 437:1-2.

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concerning the completeness of the evidence and the thorough consideration given by the Commission to that evidence.

7 Regarding alleged errors of law, Avista effectively argues that the Commission has reached a rate result in Order 06 that is inconsistent with the result reached less than a year prior, in the final order of the Company's 2015 general rate case ("GRC"), based on the "new normal" of circumstances facing Avista.[11/] For example, the Company claims that Order 06 is "perplexing" because the Commission purportedly "rejects essentially the same attrition methodology that it approved less than a year ago, based on similar evidence," and "against a backdrop of the 'new normal' which has not changed."[12/] According to Avista, this "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 evidence a year later and have the adjustment summarily rejected."[13/]

8 Nevertheless, there is nothing mysterious, perplexing, or erroneous in comparing the rate results ordered by the Commission in Order 06 and the 2015 GRC. As with every single purported ground for reconsideration, the Company cites to the same two Washington statutory provisions, in addition to the same two U.S. Supreme Court cases, as providing the relevant law at issue: "Establish *end results* that balance both investor and consumer interests to arrive at rates that are fair, just, reasonable, and sufficient."[14/] From the relevant legal perspective of "end results," therefore, the

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11/ See Petition at ¶¶ 9-15.

12/ Id. at ¶ 9.

13/ Id. at ¶ 13.

14/ Id. at ¶¶ 15, 21, 29, 33, 41, 48, 52, and 56 (emphasis added). Specifically, Avista cites the following authority as relevant law in each instance: "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*)."

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status quo result in Order 06 is actually more favorable to the Company than the result of an $8.1 million reduction to overall electric revenue requirement determined in the 2015 GRC.[15/]

9 To the extent that Avista is left "wondering" about a "perplexing" result in Order 06,[16/] any confusion seems self-induced and not owing to either Commission error or failure to clearly explain the rationale behind the Order 06 result. For instance, the Commission provided a "full historical narrative" of relevant orders over the last decade, including the "applications of law and policy" in recent Avista orders, including Order 05 in the 2015 GRC.[17/] The Commission did this not only to provide an illustrative context, but also to demonstrate how the Commission applied prior articulations of precedential law and policy "to the *facts of record in this case* that are relevant to its decision" in Order 06.[18/] In this manner, the Commission's express acknowledgment that it "relied on the seminal authority" of Bluefield and Hope, in Order 05 of the 2015 GRC,[19/] establishes that the same precedential "end results" legal standard was also applied to the Commission's determination in Order 06, based on the specific "facts of record in this case."

10 Further, the Commission also explained that the Bluefield and Hope "end results" standards "do not support ratemaking decisions that fail to follow the dictates of our statutes, such as the threshold requirement in RCW 80.28.020."[20/] Thus, the Commission plainly based its decision in Order 06, regarding the sufficiency of Avista's

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15/ Order 06 at ¶ 58.
16/ Petition at ¶ 13.
17/ Order 06 at ¶ 13 n.16.
18/ Id. at ¶ 13 n.16 (emphasis added).
19/ Id. at ¶ 58 n.115.
20/ Id.

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existing rates, expressly upon the entirety of the relevant law cited by the Company in the Petition—i.e., Washington statute *and* precedent contained in Bluefield and Hope.

11 The Company's confusion seems to arise from an apparent misunderstanding of the appropriate relationship between ends and means, or "end results" and attrition adjustment issues. More specifically, while the Company focuses upon statutory "just, fair, reasonable, and sufficient" standards and "end results" precedent as relevant law on all reconsideration issues,[21] the actual focus of the Company's argument on the first reconsideration issue appears to be on the far narrower means/methodology issue of attrition adjustments. The Company claims that the Commission "did not fully examine the evidence of attrition and whether existing rates will be 'sufficient.'"[22] But, in so doing, the Company is improperly attempting to equate the award of an attrition adjustment with the sufficiency or "end results" of a rate determination, arguing that it should receive an attrition adjustment now, simply because it received an attrition adjustment in the 2015 GRC under alleged "similar evidence," and what the Commission pronounced as the "new normal" of circumstances facing Avista.[23]

12 The first problem with this line of reasoning is that it leads to illogical results that cannot be rationally justified. In the 2015 GRC, Avista explicitly acknowledged that the "end result" of an $8.1 million electric revenue *decrease* was "within the 'bounds of reasonableness.'"[24] In fact, the Commission commended the Company's position in support of the reasonableness of the $8.1 million revenue reduction in noting that "Avista focuses appropriately on the end result reflected in

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21/ See Petition at ¶ 2 (including the framing of the entire Petition on these overarching, "big picture" bases).

22/ Id. at ¶ 15.

23/ Id.

24/ Dockets UE-150204 and UG-150205 (*consolidated*), Order 06 at ¶ 23.

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Order 05 and cites specifically to the Commission's reliance on the 'end result' principle in the *Hope Natural Gas Co.* case that provides 'it is the result reached not the method employed which is controlling.'"[25] Stated differently, the Commission held that the appropriate focus in the 2015 GRC was not the method employed to reach the ordered rate reduction—namely, the method of "a positive $28 million attrition adjustment,"[26] to modify what would have otherwise been about a $36 million electric revenue decrease—but the end result of an overall, $8.1 million revenue reduction.

13 Notwithstanding, Avista now argues that a more favorable (from a utility perspective) "end result," i.e., of a zero percent rate change in Order 06, compared with the 1.63% electric rate decrease in the 2015 GRC,[27] is not sufficient because of the *method* employed to reach this more favorable end result, or the Commission's decision not to award an attrition adjustment in the present case. The most glaring "consistency" issue between the two cases,[28] however, relates to the Company's complete reversal in focus, from "end result" to "method employed," and not the Commission's decision to maintain the end result reached as the "controlling" focus in each of the last two final orders.

14 There is another problem with the Company's argument, and it is independently fatal to a proper request for reconsideration. That is, the Commission already addressed, directly and thoroughly, the Company's allegation that "attrition" results have impermissibly changed, despite similar evidence and the unchanged nature of the "new normal" of circumstances facing the Company. The Commission

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25/ Id. (quoting Avista's Response at ¶ 21 (citing Hope, 320 U.S. at 603)).
26/ Id. at ¶ 10.
27/ Id.
28/ See Petition at ¶ 11 ("In the regulatory arena, consistency … is important to allow all parties to manage their affairs.").

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specifically found that "Avista could avoid further increases in revenue requirements *at this time*."[29/] Nevertheless, the Company opted "to maintain a trajectory of rate increases," and without "adequate evidentiary support," in apparent refusal to comply with the following Commission expectation: "It should be Avista's goal to adjust to the 'new normal' discussed in the Commission's order in the Company's 2015 general rate case ...."[30/] In sum, the Company has refused to take agency or even attempt to properly adapt to the "new normal" identified by the Commission.

15 Ironically, the Company has placed tremendous reliance upon the attrition testimony of Staff witness Christopher Hancock, even to the point of minimizing the importance of its own attrition-related testimony on brief;[31/] citing so frequently to Mr. Hancock in pre-filed testimony that the Commission was apparently prompted to inquire why a utility like Avista, carrying the burden of proof, adopted such a curious strategy;[32/] and continuing to repeatedly cite to and block quote from the testimony of Mr. Hancock in the Petition.[33/] As an initial matter, the Company's reliance upon Staff to essentially provide a *de facto* lead attrition witness for the Company is fundamentally misplaced, as explained by the Commission: "Staff does not bear the burden of proof. Avista bears the burden to prove the existence of attrition, but failed to follow the Commission's prior direction ...."[34/]

29/ Order 06 at ¶ 73 (emphasis added).

30/ Id.

31/ Id. at ¶ 70 ("In its brief Avista does not cite to any testimony by a Company witness that establishes its increasing capital expenditures and operating expenses are beyond its ability to control. Indeed, the only direct testimony Avista cites in this connection is Staff witness Hancock's bare assertion ....").

32/ Commissioner Jones, TR. 115:5-9 (noting the "many quotes of Mr. Hancock" in Company testimony and asking "why did you quote Mr. Hancock so much in your rebuttal testimony?").

33/ E.g., Petition at ¶¶ 12, 21 n.36, 33, 46-48.

34/ Order 06 at ¶ 61 n.119. ICNU assumes that the Company took a calculated risk in presuming that the Commission would place unequal and improper weight to Staff testimony, relative to the recommendations of intervening parties. As the Commission often reminds parties, however, "the

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16 In any event, Mr. Hancock's explicit testimony—on how "attrition" relates to the "new normal" of circumstances identified by the Commission—completely undermines the Company's attempt to directly equate attrition with the "new normal." Specifically, Mr. Hancock testified that it would not be fair to characterize his position in this case "as attrition is the new normal."[35] Conversely, Mr. Hancock affirmed his understanding of the "new normal," as identified by the Commission in the 2015 GRC, as merely a reference to "the Company's current environment of low revenue growth."[36] Taken together, Mr. Hancock did not interpret the "new normal" for Avista to be an indefinitely continuing right to assert the existence of attrition in future rate cases, such that Avista would be justified in crying foul if the Commission were not to show "consistency" in awarding eight-figure attrition adjustments on an annual basis. Instead, Mr. Hancock acknowledged only that the "current" low revenue growth environment facing the Company represents a "new normal."

17 Seen in this correct light, Mr. Hancock's testimony (at least, in this regard) is fully consistent with the Commission's insistence that Avista still had to "carr[y] its burden to show the existence of attrition."[37] Likewise, the Company can also find no

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Commission's regulatory staff participates *like any other party* .... To assure fairness, the Commissioners ... do not discuss the merits of this proceeding with the regulatory staff ...." Id. at ¶ 2 n.2 (emphasis added). The Company's continued reliance on Staff's attrition studies may also be misplaced in that the Company seems to maintain a view that Avista and Staff were far more consistent on attrition than what the record would appear to really indicate. Compare Petition at ¶ 15 (claiming that Avista and Staff attrition "studies are largely consistent with the attrition studies presented by Avista and Staff in Avista's last general rate case"), with Order 06 at ¶ 64 (noting that, in support of proposed attrition adjustments in this case, ICNU and Staff each "performed trending analyses, albeit with *different methods and results relative to each other and to Avista*") (emphasis added).

35/ Hancock, TR. 395:24-396:2.

36/ Id. at 395:16-21.

37/ Order 06 at ¶ 66. ICNU also notes that the Commission thoroughly considered and rejected Mr. Hancock's testimony as to other aspects of the attrition issue and the extent of the Company's control over costs in this case. See id. at ¶¶ 70-71. This not only addresses the Company's general charge that Order 06 failed to "fully examine the evidence of attrition," but it also answers the body of argument on reconsideration issue no. 1—thereby manifesting the Company's

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support from Mr. Hancock's testimony in an attempt to challenge the Commission's ultimate conclusion that Avista failed "to adjust to the 'new normal' discussed in the Commission's order in the Company's 2015 general rate case."[38/] And, since Avista chose not to take agency via a suitable response to its "current environment," by actively exercising its persuasively demonstrated "ability to control its capital expenditures and expenses,"[39/] the Commission was not in error to find that "the evidence in the record … simply fails to establish that Avista's current rates are not, or will not remain after the conclusion of this case, fair, just reasonable and sufficient."[40/]

2. The Commission Did Not Err in Finding that Avista Had Not Appropriately Based Its Revenue Requirement Request on a Modified Historical Test Year (*Petition Issue No. 2*)

18 The Company argues that it had, "in fact, presented and explained" traditional modified historical test year studies in this case.[41/] Yet, while the Company did present and explain its studies, Avista's own witnesses have convincingly explained why the Company's use of the modified historical test year in this case was impermissibly subordinate to its attrition studies and "ignores the Commission's direction

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contentions as nothing more than an impermissible attempt at a second opportunity to litigate fully and fairly determined issues. See, e.g., Petition at ¶¶ 9, 12-14.

38/ Order 06 at ¶ 73.

39/ Id. at ¶ 73 n.140. See also id. at ¶ 71 n.137 (citing directly to Company testimony in concluding that "the evidence shows that Avista has in place a number of well-managed programs that function effectively to allow the Company to maintain control over its expenditures in systematic and rational ways").

40/ Id. at ¶ 74. Avista seems to place emphasis on its own perception of the quantitative aspect of attrition evidence provided, e.g., on claims that "the Company presented even more evidence in this case," or the "even more compelling evidence" allegedly supporting an attrition adjustment. Petition at ¶ 13. As the Commission explained, however, "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." Order 06 at ¶ 70 (emphasis added). Regardless of the quantity of evidence the Company provided, therefore, the Commission did not agree that Avista had carried its burden of proof by demonstrating that its attrition claims were "compelling."

41/ Petition at ¶ 17.

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in its final order in the 2015 case."[42]

19 First, Company witness Elizabeth Andrews testified that Avista's "electric and natural gas revenue requirement requests … are *based* on the Company's electric and natural gas Attrition Studies."[43] Going no further, such an admission of reliance on attrition studies by a Company witness is probably sufficient to fully validate the challenged portions of Order 06 on this issue, including the findings that Avista's case "begins and ends with its attrition study," contrary to the appropriate methodology identified by the Commission, "which begins with the development of a modified historical test year with pro forma plant additions."[44]

20 Also, Ms. Andrews adds that, while traditional pro forma studies are both presented and explained by Company witness Jennifer Smith, these results are adjusted to provide "a 'Cross Check' analysis."[45] In turn, these "Cross Check Studies are then compared to the Attrition Studies … as a 'cross check' to the reasonableness of *the end result revenue requirements from* the electric and natural gas Attrition Studies."[46] Thus, whatever other function these adjusted pro forma studies may purportedly serve, Ms. Andrews confirms that "the proposed revenue requirement" in this case does *not* begin with the development of a modified historical test year, but is simply "based on each Attrition Study analysis."[47]

21 If anything, Ms. Smith merely amplifies Ms. Andrew's testimony and the corresponding impropriety of the Company's reliance on attrition methodology to justify its revenue requirement requests. For instance, Ms. Smith sponsors both pro forma and

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42/ Order 06 at ¶ 62.
43/ Exh. EMA-1T at 3:7-8 (emphasis added).
44/ Order 06 at ¶¶ 62, 105.
45/ Exh. EMA-1T at 3:15-21.
46/ Id. at 3:21-4:2 (emphasis added).
47/ Id. at 4:12-13.

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cross check studies, but neither is claimed to perform any function other than to show how adjustments therein "compare with the electric and natural gas Attrition Study analyses."[48/] Moreover, Ms. Smith confirms: "The Company's electric and natural gas rate relief … requested in this case are *based on* the Company's electric and natural gas Attrition Study results sponsored by Ms. Andrews."[49/] Finally, Ms. Smith explains that pro forma and cross check study results "are compared to the results produced by the same period Attrition Studies *for comparison purposes only*."[50/] This unequivocal statement should dispel any possible doubt that the Company's attrition studies are, in practice, completely independent from adjusted pro forma and cross check studies presented by Avista—and, thereby, completely independent from the requested rate relief in this case, which is entirely based upon such attrition studies.

22 Based upon such testimony from the Company's own witnesses, it seems inaccurate for the Company to now claim that "the development of the modified test year study was the starting point in Avista's determination of the requested revenue increase in this case."[51/] At best, the plain inconsistency and apparent confusion between the Company's current argument and the conflicting testimony of its witnesses would more

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48/ Exh. JSS-1T at 4:2-8.

49/ Id. at 4:16-18 (emphasis added).

50/ Id. at 5:1-7 (emphasis added).

51/ Petition at ¶ 18. ICNU also finds it difficult, based on the evidence on record, to confirm the validity of the following argument: "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." Id. at ¶ 21. The testimony of the Company's witnesses, as noted above, would seem to emphatically indicate that the Company's pro forma studies *were* purposely altered, although for comparative purposes and not to arrive at the actual attrition results upon which Avista's rate relief requests were based. Indeed, the Company is correct to assert that, in a sense, its "modified historical test year studies stand on their own." Id. Yet, this fact accentuates the deficiency of Avista's entire approach in this case, since the requested rate relief is based on attrition studies which, similarly, "stand on their own," apart from what should have been the starting point in the Company's analysis of revenue requirement.

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than justify the Commission's overall determination that Avista has not carried its burden of proof and persuasion in this proceeding to justify a rate increase.

3. The Evidence on Record Does Not Support a Finding that the Company Will Return to "Chronic Under-Earning" without an Attrition Adjustment (*Petition Issue No. 3*)

23 To begin, common sense would seem to indicate the fallacy of the Company's reasoning on this alleged ground for reconsideration. As explained above, the Company expressly noted that the $8.1 million electric revenue reduction ordered in the 2015 GRC was within the "bounds of reasonableness." Thus, it appears irrational for Avista to now claim that Order 06, which does not result in *any* revenue reduction for the Company, was erroneous, based on an argument that the Commission should "recognize that the Company will return to 'chronic under-earning' during the rate-effective period without an attrition adjustment."[52/] Once again, Avista improperly focuses on methodology, rather than end result, while ignoring the fact that it has not shown the slightest indications of a return to "chronic under-earning," despite a less favorable end result in the 2015 GRC.

24 The Company argues that it was "incorrect" for the Commission to conclude "that the absence of a showing of chronic under-earnings … militates against the use of an attrition adjustment in this case."[53/] Essentially, the Company's reasoning is encapsulated by the claim that "use of an attrition adjustment … allowed Avista to move away from chronic under-earning in the first place," such that a decision to "deprive" Avista of an attrition adjustment now would "unravel the very progress that has been made to this point."[54/]

[52/] Id. at ¶ 29
[53/] Id. at ¶ 23.
[54/] Id. at ¶ 28.

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25 However, the Commission demonstrated that it thoroughly considered this line of argument in Order 06, meaning that Avista is improperly rearguing its complaints in the Petition. In particular, in effective refutation of a claim that recent attrition adjustments allowed Avista to move away from chronic under-earning, the Commission explained: "We do not agree that Avista's spending the revenue increases the Commission has authorized each year in the Company's three attrition-based general rate cases completed since 2012 'indicates' that the increases 'were very close to what they should have been.'"[55/] Rather, the Commission found that the Company had not shown any change to a practice of "spend[ing] up to its authorized revenue by ramping up expenditures late in the year."[56/] In turn, this led to a conclusion that, far from being an indispensable means to keep the Company afloat, attrition allowances have apparently been used to realize the Commission's concerns that the Company establishes a "self-fulfilling prophecy" by continually driving up expenditures to match projections within prior attrition studies.[57/] Such findings by the Commission seem to indicate the lack of an attrition allowance in this case will not result in chronic under-earning.

26 On a final note, the Company claims that, should the Commission's decision not to authorize a rate increase stand, Avista would only have "an earnings opportunity (ROE) of approximately 6.6% for electric" operations.[58/] However, the obvious means to avert this alleged crisis would be for the Company to simply follow the Commission's guidance—i.e., "moderate[] the pace of growth in its capital expenditures and carefully manage[] its expenses," based on evidence of the Company's capacity to do

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55/ Order 06 at ¶ 68.
56/ Id.
57/ Id. (quoting WUTC v. Avista, Dockets UE-150204 and UG-150205 (*consolidated*), Order 05 at ¶ 119).
58/ Petition at ¶ 29.

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so via "management processes that demonstrate persuasively its ability to control its capital expenditures and expenses."[59/]

27 Moreover, the record shows that the Company continued to earn above its authorized ROE into 2016, notwithstanding the $8.1 million revenue reduction ordered in the 2015 GRC.[60/] Given the Commission's acknowledgment that evidence on record indicates "that a ROE as low as 9.1 percent might be appropriate today," and that "[e]ach 10 basis points represents about $1,000,000 in electric revenue," the Company may actually have a potential earnings opportunity "windfall" of about $4 million due to the Commission's decision not to modify the Company's ROE at all in Order 06.[61/] While ICNU does not raise this point to challenge the ROE result in this case, such evidence does offset the Company's arguments, concerning the immediate specter of "chronic under-earnings," should Order 06 results stand.

4. Pro Forma Study Results Are a Legally Sound Basis for Consideration of Revenue Sufficiency (*Petition Issue No. 4*)

28 Avista's argument on this reconsideration issue is improperly premised upon a misrepresentation of the Commission's actual conclusions in Order 06. The Company contends that pro forma study results "Do Not Show" and "are not a reflection of" sufficient revenues for the rate-effective period.[62/] Likewise, Avista asserts that "the modified test year study does not in and of itself determine whether the resulting revenue

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59/ Order 06 at ¶ 73 & n.140.

60/ Id. at ¶ 67 (noting an estimated ROE for 2016 of 9.54%, while the Company's authorized ROE is 9.50%).

61/ Id. at ¶ 65 n.123. See also ICNU Post-hearing Brief at ¶ 10 (using evidence in the current record to demonstrate the magnitude of the 2016 over-earning that Avista would have received, if granted the $33.2 million originally sought in the 2015 GRC—i.e., a grossly excessive ROE of about 13.5%—which provides a helpful analog to the present proceedings, since Avista is seeking a similar rate increase now).

62/ Petition at ¶ 30.

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requirement from the study would provide sufficient revenues for the rate-effective period."[63]

29 The flaw in this line of argument is that it is a classic straw man—the Company is attributing error to the Commission for a position not represented upon a full and fair reading of Order 06. In short, the Commission does not cast pro forma study results into the constrained box that the Company presents, such that the Commission could be reasonably interpreted to support the proposition that a pro forma study "in and of itself" renders all final determinations on attrition in a case.

30 Indeed, the Company offers but a single portion of Order 06 deemed to be erroneous or incomplete on this issue, and the Commission's actual statement from that excerpt provides one of the many indications that the Commission takes a nuanced and multi-faceted approach to the issue of attrition: "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."[64] In other words, there is no "be all, end all" finality in the Commission's consideration of attrition on this point; instead, pro forma results are used as an evidentiary tool to help the Commission thoroughly weigh the issue and initially consider whether attrition may exist.

31 Similarly, the Commission explicitly indicated that its consideration of attrition allows for review of *other* forms of evidence, thereby demonstrating anything but an overly narrow or constrained analysis on the issue. In fact, the Commission explains this element of its broad, fully contextual view of attrition in the portion of Order 06 that the Company omits with an ellipsis. That is, after noting that a pro forma study may demonstrate evidence of attrition, the Commission goes on to state: "*Other*

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[63] Id. at ¶ 32.
[64] Order 06 at ¶ 61 & n.119.

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evidence, such as a history of chronic under earning, *also may suggest* the existence of attrition."[65] Plainly, the Commission is fully open to review "other evidence" that would allow the Company to demonstrate the existence of attrition, apart from just the results from a pro forma study. Moreover, "other evidence" is presented as an intentionally undefined, open category (i.e., given the recitation of chronic under earnings as a "such as" example).

32 What the Company seems to desire, however, is the ability to carry its burden of proof through simple projections of future expenses in a stand-alone attrition study, a form of evidence that the Commission has not deemed sufficient, in and of itself, to demonstrate that expenses are beyond Avista's control.[66] But, on this point, the Commission has more than adequately shown that it has fully considered Avista's favored approach and rejected it.[67] This is perhaps summarized best and most succinctly by the conclusion that simple future projections obtained through "[s]tatistical analyses do not identify or establish causal relationships."[68]

33 Accordingly, the Company's strategic focus on statistics and trends—instead of a focus upon thorough and persuasive evidence of causal relationships—accounts for the denial of its attrition request, and not any error or incomplete consideration of evidence by the Commission in this proceeding. Rather than developing such causal relationship evidence itself, Avista essentially chose to cast its entire lot with Mr. Hancock, as already discussed and as noted by the Commission.[69] But, given the

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65/ Id. (emphasis added).

66/ See, e.g., Petition at ¶ 32 ("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.'").

67/ E.g., Order 06 at ¶¶ 55, 68, 71.

68/ Id. at ¶ 71. Here again, the Company's reliance on Mr. Hancock is unabated on this reconsideration issue. See Petition at ¶ 33.

69/ Order 06 at ¶ 70.

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Commission's detailed explanation as to why Mr. Hancock's testimony was not deemed persuasive,[70] the Company's continued reliance upon Mr. Hancock, to support its argument on this reconsideration issue,[71] amounts to another instance of impermissible rearguing of a fully and fairly considered issue.

5. Avista Improperly Ignores both the Persuasive Element of Evidence and the Existence of Evidence from Other Parties Regarding Company Cost Controls (*Petition Issue No. 5*)

34 The Company attributes error to the Commission's alleged failure 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."[72] To support this argument, Avista explains that it "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.'"[73]

35 As to the Company's burden of proof, the emphasis placed on quantity (e.g., "hundreds" and "thousands" of pages) does not address the persuasive quality of the evidence submitted by the Company. Yet, the element of persuasion was a component of each of the order portions that Avista challenges on this reconsideration issue, and was explicitly recognized and found wanting in two of the excerpts quoted by the Company.[74]

70/ Id. at ¶¶ 70-71 (analyzing the flawed emphasis Mr. Hancock places upon "appearances" and "feelings" in "carefully qualified testimony concerning conditions outside the Company's control").

71/ Petition at ¶ 33 (quoting Exh. CSH-1T at 3).

72/ Id. at ¶ 41.

73/ Id. at ¶ 35.

74/ Id. at ¶ 34. See Order 06 at ¶¶ 69-70 (affirming the need for Avista to "demonstrate persuasively" that any attrition occurring is "beyond the ability of the Company to control," and concluding that "Avista presented no *persuasive testimony or evidence* to support that the circumstances driving

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36 The Company cites to various testimony and exhibit submissions which purportedly contain "a demonstration that the expenditures are both 'necessary and immediate.'"[75] The specific witness evidence cited by the Company relative to the persuasiveness of its expenditure control is extremely telling, however, both in respect to what the Company chose to include and omit in support of this statement.

37 First, the Company *includes* citation to the testimony of witness Heather Rosentrater. This is important because the Commission also directly cited to Ms. Rosentrater's testimony and exhibits as persuasive evidence for the opposite proposition, that "Avista has in place a number of well-managed programs that function effectively to allow the Company to maintain control over its expenditures in systematic and rational ways."[76] Such evidence logically supports the Commission's conclusion, stated immediately prior: "There is no evidence of factors outside the Company's control forcing an increase in the pace of investments in infrastructure covered by the Asset Management Programs, or in other infrastructure, year over year."[77]

38 Second, the Company *excludes* any citation here to the contested testimony and exhibits of Ms. Smith on non-capital expenses. This is important because the Company challenges a two-pronged Commission finding that "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."[78] In other words, even if persuasive, evidence and argument by the Company that merely focuses on uncontrollable capital costs, to the exclusion of

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the Company's steadily increasing rate of capital investment and steadily increasing expenses are matters beyond the ability of the Company to control") (emphasis added).

75/ Petition at ¶ 35 & n.53.

76/ Order 06 at ¶ 71 n.137.

77/ Id.

78/ Petition at ¶ 34 (quoting Order 06 at ¶ 105) (emphasis added).

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increasing non-capital expenses, would not be sufficient to support an attrition adjustment.

39 Avista later addresses increases in operations and maintenance expenses, and cites to Ms. Smith's testimony, but the Company's brief discussion on these non-capital expenditures is relegated to a single footnote within this reconsideration issue section.[79/] This comparatively light treatment of equally important control over non-capital expenditures is probably attributable to persuasive evidence in the record that the Company failed to follow express Commission precedent relative to costs addressed in Ms. Smith's testimony (and despite opposition from both ICNU and Staff), as explained in considerable detail at the briefing stage.[80/] Thus, the Company's broad assertion that no party identified any capital projects that should not go forward, with one "general" exception relative to Public Counsel,[81/] seems calculated to distract from the acute controversies surrounding the Company's ability to control other costs.

40 However, even putting aside the issue of non-capital expenditures, the Company's over broad claims about the lack of party opposition to proposed capital costs are not accurate, and demonstrate a risky corollary to Avista's strategy of leaning heavily on the recommendations of Staff in this proceeding. Specifically, the Company has ignored considerable evidence from ICNU and the Northwest Industrial Gas Users ("NWIGU") raising numerous concerns over the Company's capital spending, in addition to what is likely an improper characterization of Public Counsel's position. Yet, simply

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79/ See id. at ¶ 40 n.58.

80/ ICNU Post-hearing Brief at ¶¶ 33-39. As ICNU notes, the Company's persistence in seeking recovery for costs not allowed by express Commission directive, even after being confronted by other parties in discovery and testimony on the issues, should provide ample cause for skepticism on the exercise of cost controls being implemented on all manner of expenditures, whether capital or not. See id. at ¶ 39.

81/ See Petition at ¶ 40.

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ignoring non-Staff evidence does nothing to justify a claim that "there is no evidence in the record that any of Avista's capital expenditure projects are not needed, and not needed immediately."[82]

41 For instance, ICNU and NWIGU witness Bradley Mullins performed highly granular and disaggregated attrition studies in this proceeding to better evaluate the reasonableness of trending and projections in Company spending.[83] Based on this level of detailed review, Mr. Mullins found it "surprising" that "growth in general plant has also been a key driver of revenue requirement."[84] The reason Mr. Mullins was surprised by this finding was that "the need to invest in general plant is generally less time-sensitive, meaning the Company has greater discretion to control and defer those *capital outlays* as necessary."[85]

42 In other words, evidence that Avista is driving revenue requirement via discretionary capital outlays means the Company is not exercising available cost controls to moderate the pace of its capital investment to adjust to the "new normal" of its current environment. As Mr. Mullins explained, "it is probably unnecessary for a Company experiencing low load growth to invest in a new office building, and accordingly, such an investment may be better deferred."[86]

43 Likewise, ICNU and NWIGU also opposed the Company's Advanced Metering Infrastructure ("AMI") program in testimony.[87] Nevertheless, though Mr. Mullins explained ICNU and NWIGU's opposition to the AMI program from the perspective of the Company's deferral proposal *and* overall capital investment plans,

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82/ Id.
83/ See ICNU Post-hearing Brief at ¶¶ 23-32.
84/ Exh. BGM-1CT at 19:18-19.
85/ Id. at 19:22-20:2 (emphasis added).
86/ Id. at 20:2-4.
87/ Id. at 38:12-40:17.

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Avista acknowledges only the opposition of Public Counsel relative to AMI capital spending throughout the Petition.[88/]

44 Avista's failure to acknowledge intervenor opposition on AMI capital projections also extends to The Energy Project, which co-sponsored extensive testimony and exhibits from witness Barbara Alexander, along with Public Counsel.[89/] Given that quite a few of these exhibits are actually data request responses from Avista, and that even these exhibits represent only a fraction of the AMI discovery conducted in this case, the sole recognition of Public Counsel as the only a party opposing the Company's capital spending is, to say the least, inaccurate. Finally, given the depth and breadth of Ms. Alexander's analysis, the Company's characterization of Public Counsel's (and The Energy Project's) position as mere "general opposition" to the AMI project is probably unfair, if not an obvious mischaracterization.

6. The Record Contains More than Ample Evidence to Indicate a "Self-Fulfilling Prophecy" in which Avista Drives Expenditures to Match Earlier Projections (*Petition Issue No. 6*)

45 As already noted, the record contains sufficient evidence to support a finding that the Company is impermissibly driving expenditures to match prior estimates, which parties have often referred to as the realization of a "self-fulfilling prophecy." For instance, discretionary capital outlays associated with general plant comprise a key driver of Company revenue requirement,[90/] even though the Commission has found persuasive evidence, provided by the Company itself, regarding Avista's "ability to control its

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88/ E.g., Petition at ¶¶ 40, 56, 60 and nn.63, 69.

89/ See BRA-1T through BRA-33. Moreover, even Staff filed testimony opposing the Company's AMI capital spending plans, as recognized by the Commission. See Order 06 at ¶ 85 n.157.

90/ Exh. BGM-1CT at 19:18-20:4. Avista also repeats the inaccurate claim that "no party" identified a single capital project that should not go forward, save Public Counsel in the context of AMI. Petition at ¶ 45. Similarly, Avista continues to rely on the testimony of Mr. Hancock regarding the Company's ability to control costs, id. at ¶ 47, notwithstanding the comprehensive analysis and rejection of Mr. Hancock's position by the Commission. See Order 06 at ¶¶ 70-71.

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capital expenditures and expenses."[91] Similarly, evidence shows that Avista has rejected calls from parties to rein in other expenditures that appear to directly contradict WUTC precedent.[92]

46 On top of all this, the record plainly establishes that no party supports Avista's AMI project, regardless of Avista's election not to acknowledge any party save Public Counsel in this context—and even then, in an arguably incorrect manner. Indeed, while not directly reaching AMI issues, the Commission noted that "[n]othing changed" over the six week period between the Commission's finding that AMI was "not ripe for Commission determination" in the 2015 GRC, and the filing of the present case.[93] Notwithstanding this continued lack of ripeness in the formulation of the AMI project and universal party opposition, the Company is still charging forward with plans to eventually spend $290.1 million in estimated total AMI costs.[94]

47 In this light, Avista's primary argument on this reconsideration issue cannot be substantiated, i.e., the claim that "[t]here 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."[95] Perhaps more importantly, however, such argument appears to impermissibly flip the burden of proof onto the Commission and other parties, as if Avista were not under a positive obligation to persuasively demonstrate the immediate and uncontrollable need for its expenditures in this and every other rate case.

91/ Id. at ¶ 73 n.140.
92/ ICNU Post-hearing Brief at ¶¶ 33-39.
93/ Order 06 at ¶ 85 n.157 (quoting Dockets UE-150204 and UG-150205 (*consolidated*), Order 05 at ¶ 191).
94/ Id. at ¶ 84.
95/ Petition at ¶ 43.

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48 The Commission explained that, "[j]ust because money is available to Avista does not mean it is required to … spend it," nor does the spending of money "provide any insight into whether the projects in question are required to be undertaken at this time, or even at all, in response to factors beyond Avista's control."[96/] Thus, even if there was no evidence on record to demonstrate a "self-fulfilling prophecy" in this case, Avista would not be entitled to an automatic attrition adjustment as a result, or have satisfied its burden to demonstrate that all its prior expenditures, using funds facilitated by prior attrition adjustments, were "so necessary and immediate as to be beyond its control."[97/]

49 Stated differently, it is incumbent upon Avista to demonstrate a continuing need for an attrition adjustment through evidence that would justify a conclusion that the Company has *not* created a self-fulfilling prophecy or fallen prey to the widely recognized Averch-Johnson Effect.[98/] Yet, as explained in prior Answer sections, the evidence supplied by the Company is, *at least*, as harmful to the Company's claims as might be considered supportive. For example, while Avista professes to have "provided significant documentation" through testimony and "additional information in response to discovery requests from the parties" that would disprove self-fulfilling prophecy concerns,[99/] ICNU demonstrated through specific citation to both Avista testimony and discovery that the Company refused to yield on proposals for unnecessary cost increases

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96/ Order 06 at ¶ 71 n.137.

97/ Id. at ¶ 69 (quoting Dockets UE-150204 and UG-150205 (*consolidated*), Order 05 at ¶ 116).

98/ See id. at ¶ 55 (quoting Dockets UE-150204 and UG-150205 (*consolidated*), Order 05 at ¶ 117). In this regard, Avista seems to have the burden of proof upside-down when asserting (and, arguably, lecturing the Commission): "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." Petition at ¶ 44.

99/ Id. at ¶ 45. Although Avista was specifically addressing evidence associated with capital projects in this instance, as already discussed, the Company's burden applies to its control over capital and non-capital expenditures.

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that appear to directly contradict WUTC precedent.[100] This sort of willful conduct would seem precisely the definition of actions taken toward realization of a self-fulfilling prophecy, and justify the conclusion reached in Order 06.

7. Avista Has Elected Not to Moderate the Pace of Expenditures, despite the Capacity to Control Costs (*Petition Issue No. 7*)

50 Avista's argument in support of this reconsideration issue is another straw man that mischaracterizes the Commission's actual conclusion in Order 06. According to the Company, "[t]he Commission erroneously concludes that the Company is increasing the 'pace' of capital expenditures."[101] In support of this claim, however, Avista quotes the following excerpt: "[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.*"[102]

51 As should have been self-evident to the Company, the Commission's observation concerning the pace of expenditures, relative to the Company's level of control, does not equate to an erroneous Order 06 conclusion that Avista is "increasing" the pace of its expenditures. Instead, the Commission's statement simply goes to the need for the Company to sufficiently demonstrate that the pace of its investments, whatever that pace may be, is in alignment with drivers "outside of the Company's control."

52 To this end, the Commission considered relevant evidence that persuasively demonstrated Avista's capacity to control costs and the opportunity for the Company to "moderate[] the pace of" its expenditures.[103] The Company merely reargues

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100/ ICNU Post-hearing Brief at ¶¶ 33-39 & nn.66-76.
101/ Petition at ¶ 50.
102/ Id. at ¶ 49 (quoting Order 06 at ¶ 73) (emphasis added).
103/ Order 06 at ¶ 73 & n.140.

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evidence already thoroughly considered in the remainder of this reconsideration issue section,[104] and the Commission has demonstrated that it consciously rejected such evidence as unpersuasive, based on a holistic view of the record, when determining Avista's need for increased rates.[105]

8. The Company's Failure to Properly Present and Support Its Rate Relief Requests Does Not Create an Obligation for the Commission to Recognize Alleged Needs (*Petition Issue No. 8*)

53 This final reconsideration issue could be rejected on several bases already discussed, as the issue and Avista's supporting arguments are somewhat of a mishmash of those that preceded. But, the primary flaw in the Company's argument is that Avista attributes error to the Commission for an alleged failure "to recognize needed test year adjustments."[106] To the contrary, any and all blame lies squarely at Avista's feet for choosing to base its requested revenue requirement solely on the basis of attrition studies, in spite of the Commission's direction in the 2015 GRC to begin a revenue requirements case with modified historical test year results.[107]

54 As thoroughly discussed in the second reconsideration issue section of this Answer, the Company's own witnesses established that: a) Avista's revenue relief requests were completely based upon attrition studies; and b) the Company's pro forma and cross check studies were developed and employed "only" for comparative purposes. Based on this evidence, the Commission was not in error to conclude that "Avista's case begins and ends with its attrition study."[108] The Company's insistence that it "did

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104 Petition at ¶¶ 51-52.
105 Order 06 at ¶ 74.
106 Petition at ¶ 56.
107 Order 06 at ¶ 62.
108 Id.

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present a traditional modified test year pro forma study" is,[109] therefore, simultaneously accurate and irrelevant. Avista purposely developed its revenue request in isolation from what the Commission has described as the "appropriate methodology" to follow.[110] The Company's election to do so creates no positive duty upon the Commission to carry Avista's burden in determining its needs, based upon what the Company's revenue request would have been, had Avista not chosen to ignore prior Commission guidance.

55 Notwithstanding, the portion of the order which the Company challenges on this reconsideration issue recognizes evidence establishing the continuing sufficiency of Company revenues, as provided via Staff and ICNU pro forma results.[111] Thus, the Commission cannot be considered to have committed error, to the extent that it simply found Staff and ICNU pro forma results more persuasive than the Company's "needed test year adjustments."[112]

B. Good Cause Does Not Exist for Rehearing

56 ICNU understands that the Commission has wide latitude to grant a petition for rehearing.[113] Nonetheless, for the reasons stated below, no good cause seems to exist that would warrant a rehearing in this proceeding on the bases asserted by Avista.[114]

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109 Petition at ¶ 54.
110 Order 06 at ¶ 62.
111 Petition at ¶ 53 (quoting Order 06 at ¶ 65).
112 As the Company points out, there are numerous Staff and intervenor proposed adjustments that were contested in this case, relative to the testimony and exhibits sponsored by Ms. Smith. Id. at ¶ 55. Given prior discussion of Avista's apparent refusal to follow WUTC precedent in relation to some of these adjustment issues, reliance upon Staff and ICNU pro forma results would seem all the more justified.
113 RCW § 80.04.200 (allowing for filing "at any time" based on "any good and sufficient cause which for any reason was not considered and determined in [the] former hearing").
114 Petition at ¶ 63. The Answer sections here correspond to the five listed issues on which the Company seeks rehearing.

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1. Further Exploration of the Interrelationship of Modified Test Year Studies with Attrition Studies or Other Regulatory Tools Should Be Reserved for Future Dockets

57 The Company cites to items identified in paragraph 82 of Order 06 as the regulatory tools to be explored on rehearing.[115/] However, further exploration of the interrelationship between these tools and the modified historical test year appears contrary to the Commission's stated intent in Order 06. Specifically, paragraph 82 appears well after the Commission's direct consideration of the revenue requirement evidence in this proceeding, in a section titled "Commission Expectations *for Future Rate Filings* That Propose to Use the Modified Historical Test Year."[116/]

58 While ICNU finds this "expectations" section regarding "future filings" to be quite helpful to all parties on a prospective basis, a rehearing in the present case would likely be an inappropriate forum to explore these issues. For instance, the Commission explains: "Whatever tools are proposed for use in a given case, however, must be chosen with specific reference to the needs of the case and *the appropriateness of using each tool selected must be demonstrated by applicable evidence*."[117/] If nothing else, the rejection of Avista's entire tariff filing in Order 06 emphasizes that the Company categorically failed to carry its burden of proof in this case—i.e., the Company did not show the "appropriateness of using" the tools it selected "by applicable evidence."

59 However, a rehearing would essentially equate to a second opportunity to relitigate, rather than the innocuous and academic-sounding "opportunity to further explore" interrelationships. Although Avista has every right do show the appropriateness of using selected tools by the demonstration of applicable evidence going forward, a

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115/ Id.
116/ Order 06 at p. 47 (emphasis added).
117/ Id. at ¶ 82.

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second litigation opportunity for the Company in the present case would seem unfair to ratepayers.

2. Clarification on Issues Can Be Provided without the Need for Rehearing

60 Commission rules provide all parties an opportunity to seek clarification of final order issues via motion, as a completely distinct form of process from rehearing.[118] While ICNU does not oppose Avista's request for "clarification" on the various points discussed within its second rehearing issue request—e.g., regarding control over spending, the "necessary and immediate" term, and other relationships—it appears wholly unnecessary to subject other parties to a full rehearing process, simply to satisfy a clarification (or even a "further discussion") request on these points.

3. Avista Already Had a Full and Fair Opportunity to Provide Evidence Concerning Various "Financial Ramifications" Scenarios

61 The Company's request for rehearing, "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," bears an uncanny resemblance to the rehearing request of Puget Sound Energy ("PSE") in Dockets UE-011163 and UE-011170, a consolidated proceeding cited as authoritative on the "Grounds for Rehearing."[119] This is surprising because, as explained below, the Commission strongly denied PSE's rehearing request in similar circumstances, delivering various negative observations about PSE's conduct that were both pointed and probably equally applicable to Avista in this case.

62 For example, PSE "allege[d] in introducing its petition for reconsideration or rehearing that the order fails to recognize the gravity of PSE's situation and that the

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118/ Compare WAC § 480-07-835, with WAC § 480-07-870.
119/ Petition at p. 32 n.82.

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Commission has left it … facing insolvency."[120/] Although Avista does not go so far as to expressly threaten a looming insolvency in this case, the Company has alleged that "chronic under-earning" will immediately commence "during the rate effective period without an attrition adjustment."[121/] In any event, the Commission's response to PSE, in denying either reconsideration or rehearing, is instructive in this proceeding:

> PSE supplied *no* evidence that any level of rates is necessary to avert any pressing or immediate harm to the Company. If PSE had such information, it failed to present it with its request …. PSE's financial indicators, PSE's actions, and the *actions* of ratings analysts (as opposed to their rhetoric) that are described in its petition for reconsideration do not depict a company on the verge of insolvency.[122/]

63 Similarly, based on the evidence on record in this case, the Commission found that "access to capital markets …. [C]learly is not a problem for Avista today; quite the contrary is true according to Staff's own discussion."[123/] Likewise, as previously discussed, the record plainly indicates that Avista has continued to earn above its authorized ROE, despite the $8.1 million electric revenue reduction ordered in the 2015 GRC.

64 Thus, good cause for rehearing on the Company's current "financial ramifications" claims, associated with ROE and investor support, would appear to be as lacking as in the PSE case. Indeed, the Commission's final words in rejecting PSE's rehearing petition apply with equal force today, more than fifteen years later: "The Company is free to approach the Commission with a request … in a future general rate

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120/ WUTC v. PSE, Dockets UE-011163 and UE-011170 (*consolidated*), Seventh Suppl. Order at ¶ 12 (Oct. 24, 2001).

121/ Petition at ¶ 29.

122/ Dockets UE-011163 and UE-011170 (*consolidated*), Seventh Suppl. Order at ¶ 15 (emphasis in original).

123/ Order 06 at ¶ 71 n.137. In essence, Avista appears to seek a reopening of the record to include various statements attributed to the "investor community," see Petition at ¶ 3 & n.3, although the Company does not expressly attempt to explain why this would be appropriate in the context of Commission rules, after issuance of the final order. See WAC § 480-07-830.

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proceeding .... But if PSE expects to succeed, it must present evidence that demonstrates that its actual condition meets the standards for the relief that it requests."[124/]

4. Avista Also Had a Full and Fair Opportunity to Address Opportunities and Risks Associated with Capital Expenditures

65 The Company's fourth ground for rehearing should be denied for the same reasons explained in association with its third ground. Moreover, the Commission has gone above and beyond requirements in devoting two sections of Order 06 to policy considerations and expectations "looking forward" and "for future rate filings," respectively, and there is a wealth of guidance which Avista and all other parties would be prudent to carefully review and follow, on a prospective basis.[125/]

66 Indeed, the crucial aspect of such guidance is the apparent prospective intent of the Commission. Nothing in these two order sections indicates that the Commission intended to apply the results immediately on rehearing—that is, to take the bizarre course of explicitly denying the Company's tariff filing while simultaneously (and implicitly) laying out the detailed steps the Company could avail itself of, to undo that outcome within the same proceeding. To the contrary, the Commission comments upon such things as "useful ideas that parties may wish to explore in any *future* collaborative efforts."[126/] So, while ICNU would support discussion and collaboration on any issues in the future and in other processes, including "opportunities and risks" related to capital expenditure plans, a rehearing is neither appropriate in the context of time nor forum.

124/ Dockets UE-011163 and UE-011170 (*consolidated*), Seventh Suppl. Order at ¶ 16. On this same theme, the statements by Staff in the PSE case are worthy of note, given the close parallel to Avista's rehearing petition: "... the petition insults the Commission's firm resolve [and] disregards PSE's obligation to demonstrate need for rate relief .... PSE, states the Staff, ... has chosen to blame the Commission for its own failures." Id. at ¶ 14.

125/ Order 06 at ¶¶ 75-82.

126/ Id. at ¶ 75 n.141 (emphasis added).

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5. Alternative Proposals for 2017 Rate Relief Are Best Presented in Future Rate Proceedings or Informal Collaborative Efforts

67 Avista argues for rehearing on this issue by citing to "the Commission's guidance" found in "paragraphs 76-77" in Order 06.[127] Yet, here again, the guidance provided by the Commission is contained within a section entirely devoted to "Policy Considerations, *Looking Forward*."[128] For the reasons explained above, presentation of such alternate proposals should take place in a future proceeding or future informal collaborative effort.

68 Moreover, the Commission observed that Avista appeared to have "had very little time and, hence, opportunity to take into account the direction the Commission gave in Order 05" in the 2015 GRC, given the mere span of six weeks between final order issuance and the filing of the present rate case.[129] Accordingly, the grant of a rehearing to allow the Company to immediately present alternative proposals for rate relief in 2017 would seem to virtually invite the same rushed and unsatisfactory results. Instead, the Company may be far better served to prudently digest the comprehensive guidance within Order 06 over the coming months, in recognition of the fact that it "typically requires months to prepare a general rate case."[130] In so doing, the Commission, Staff, and all ratepayer advocates would finally be allowed to take a much needed break from what has been constant Avista rate process over more than twenty-three consecutive months.[131]

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127 Petition at ¶ 63 & n.84.
128 Order 06 at ¶¶ 75-78 (emphasis added).
129 Id. at ¶ 59.
130 Id.
131 Avista filed its 2015 GRC on February 9, 2015, and process continued in that case through February 19, 2016—the same day the current rate case was filed. Dockets UE-150204 and UG-150205 (*consolidated*), Order 06 at ¶ 1; Order 06 at ¶ 1. Further, given the Company's estimation of "3-4 months" to complete a rehearing process, and previously stated plans to begin filing rate cases in "June or July," there is a very strong likelihood that there will be no break from rate case

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III. CONCLUSION

69 For all the reasons stated in this Answer, ICNU respectfully requests that the Commission deny the Company's requests for reconsideration and rehearing.

Dated in Portland, Oregon, this 13th day of January, 2017.

Respectfully submitted,

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process until mid-2018, if rehearing is granted (and even that presumes, probably unrealistically given trends over the last decade, that Avista will not continue its trend of annual rate filings). Petition at ¶ 62; Order 06 at ¶ 78.