

Service Date: February 27, 2017

**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 (*Consolidated*)

ORDER 07

ORDER DENYING PETITION FOR
RECONSIDERATION OR, IN THE
ALTERNATIVE, REHEARING

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MEMORANDUM

- 1 On December 23, 2016, Avista d/b/a/ Avista Utilities (Avista or Company) filed a Petition for Reconsideration or, in the Alternative, for Rehearing, of the Commission's December 15, 2016, Final Order in the above-captioned dockets (Petition for Reconsideration). In that Order (Order 06), the Commission rejected the Company's request to approve revisions to its currently effective Tariffs WN U-28, Electric Service, and WN U-29, Natural Gas Service. Avista's as-filed tariff revisions, if approved, would have increased charges and rates for electric service by approximately \$48.9 million, with a \$38.6 million increase effective January 1, 2017, plus an additional increase of \$10.3 million to become effective January 1, 2018. Avista's filing, if approved, also would have increased rates for natural gas service by approximately \$5.3 million, with a \$4.4 million increase effective January 1, 2017, and a further \$0.9 million increase effective January 1, 2018.
- 2 In rejecting the Company's requests, the Commission determined that the Company failed to follow the approach to determining revenue requirements including an attrition adjustment as required in Order 05 in the Company's 2015 case, and failed to present the evidence identified in Order 05 as being critical to demonstrating the basis for rates including an attrition adjustment. The guidance the Commission gave in Order 05 was built on guidance provided in Avista's 2012 and 2014 general rate cases in which the Company also sought attrition adjustments.¹ Avista's 2015 general rate case was the first

¹ Order 06 relates that the Commission, in approving a contested settlement in the 2012 proceeding, "made clear that it was 'not endorsing the specific attrition methodologies, assumptions, or inputs used in this case.'" Order 06 ¶ 36. Order 06 also summarizes the Commission's discussion in its Final Order in the Company's 2014 case concerning Public Counsel's and ICNU's opposition to attrition proposals and its determination in approving a contested settlement in the case that "[s]ince the parties do not agree that an attrition adjustment is included within the Settlement or whether an attrition adjustment is appropriate at all, we do not deliberate on the merits of any position on the issue presented in this case." *Id.* ¶¶ 42-43. The Commission also observed in its 2014 order that "there is a consensus among the parties regarding the need for a formalized discussion of attrition along with other possible ratemaking mechanisms that may address attrition's effects on earnings." *See Id.* The Commission initiated a forum on these issues by notice served on February 5, 2015, in Docket U-150040. All of the parties to this case, and the other regulated gas and electric companies in Washington filed comments on March 27, 2015, and participated in a workshop on April 16, 2016. Avista, however, already had filed its 2015 general rate case on February 9, 2015. The Commission's Final Order in the fully contested 2015 case included its definitive statements, following four years of discussion, of the meaning of attrition and the contemporary circumstances in which an

general rate case in which the Commission expressly approved an attrition adjustment following a nearly 25 year hiatus in the use of this ratemaking tool, the use of which had previously been limited to exceptional circumstances.²

- 3 For the reasons discussed below, we deny the Company's Petition for Reconsideration. Avista has not met the requirements of reconsideration set forth in WAC 480-07-850(2); specifically, it has not shown that the Commission failed to consider the relevant evidence or committed any error of law. For that reason, Avista's petition generally falls short of what is required under WAC 480-07-850(2) for relief to be granted.

I. Background and Procedural History

- 4 Avista's 2016 rate case filing, which resulted in Order 06 of which the Company now seeks reconsideration, followed closely on the heels of its 2015 general rate case.³ The Commission determined in that case, in Order 05 on January 6, 2015, the revenue requirements for Avista's electric and natural gas services, establishing rates for prospective application after that date. Within weeks, on February 19, 2016, the Company asserted in the pending dockets that it would require Commission approval within a matter of less than 11 months for additional increases of \$48.9 million and \$5.3 million for the electric and natural gas services relative to the adjusted revenue requirements set just 44 days earlier.⁴

attrition adjustment might be considered an appropriate adjustment to *pro forma* results of operations determined following the Commission's long-standing preference for the modified historical test year approach.

²See Dockets UE-150204 and UG-150205, Order 05 ¶¶ 50-51 for a detailed discussion of the history of the Commission's use of attrition adjustments, and ¶¶ 52-66 for a detailed discussion of the Commission's contemporary experience with the subject.

³ *Washington Utilities & Transportation Comm'n v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-150204 and UG-150205, Order 05 (January 6, 2016). We note that Order 05 is currently pending appeal in the Thurston County Superior Court. *Washington State Attorney General's Office, Public Counsel Unit v. Washington Utilities & Transportation Commission*, Thurston County Superior Court, Case No. 16-2-01108-34 (filed March 18, 2016).

⁴ The proposed effective date of the as-filed tariff sheets in these dockets was March 21, 2016. The Company recognized, of course, that the Commission would suspend operation of the tariffs within 30 days after they were filed for up to 10 months from their stated effective date and set the matter for hearing.

- 5 The Commission entered Order 06, its Final Order in these dockets, on December 15, 2016. As discussed in more detail in Order 06 and below, the Commission declined to grant the additional increases, finding that Avista failed to present substantial competent evidence supporting its proposed revenue requirement for either electric operations or natural gas operations. Specifically, the Commission determined that Avista failed to demonstrate that it is presently suffering attrition,⁵ or that the prospect of attrition looms during the rate year. Although Avista presented traditional modified historical test year *pro forma* analyses for another reason, it neither directly, nor in the alternative, proposed that the Commission rely on the results of its *pro forma* studies to establish revenue requirements for the Company.
- 6 The Commission discussed in Order 06 three principal reasons supporting its conclusion that Avista failed to carry its burden of proof in this case. First, Avista's approach to determining revenue requirements in this case, described in detail in Order 06 and somewhat more briefly below, is not the method accepted in this jurisdiction.⁶ As discussed in Order 05 in the Company's 2015 case:

The Commission's long-standing practice is to set rates using a modified historical test year with post-test year adjustments following the used and useful, and known and measurable standards while exercising the considerable discretion these standards allow in the context of individual cases. We do not waiver from that approach now. In a rate proceeding with claims of attrition-related earnings erosion, it is necessary to first

⁵ We note here, and discuss later, that the operative definition of attrition in our jurisdiction, as established by Commission precedent, including Order 05 in the Company's 2015 case and in Order 06 is: "Earnings erosion that eliminates a rate-regulated utility's opportunity to earn its authorized rate of return due to the failure of test period relationships among rate base, expense, and revenue to hold into the rate effective period, resulting from conditions or circumstances beyond the utility's control." Attrition, thus defined, may be caused, for example, by conditions in the general economy such as high inflation rates or increasing interest rates year over year. More contemporary examples might be the need for high levels of capital investment in non-revenue producing plant over a short period of time *required* by government mandate, or investments shown by substantial competent evidence to be *so necessary and immediate* to protect system reliability or public safety *as to be beyond the Company's control*.

⁶ It is important to our later discussion to note that Avista abandoned its original proposal in the Company's 2015 case and adopted, in large part, Staff's methodology.

develop a modified test year upon which the addition of an attrition adjustment may be considered.⁷

Avista did not rely in this case on modified historical test year *pro forma* analyses for the purpose of establishing revenue requirements during the rate year, but performed such analyses only for other reasons. In any event, weighing Avista's *pro forma* analyses taken at face value with *pro forma* studies presented by Staff and ICNU witnesses, the Commission found that revenue requirements measured by these studies were as likely to show a revenue sufficiency as a revenue deficiency going forward.

7 Second, the Commission found in Order 06 that the evidence did not show a pattern during recent years of chronic under earnings, or any significant shortfall at all relative to authorized returns. Indeed, Order 06 discusses the undisputed evidence that the Company has continued to earn for several years at, near, or even in excess of, its authorized return. In the context of the Commission's discussions of attrition in recent years, this undercuts the Company's claim that it is suffering or is likely to suffer attrition in the rate year.

8 Third, although the Company presented a significant volume of testimony indicating its intention to continue making capital investments at the levels exhibited by its steadily increasing planned and actual expenditures during the past decade,⁸ it did not present persuasive evidence that all, a significant part, or even any, of this planned investment would be in response to conditions or circumstances beyond the Company's control. The Commission stated in its final order in Avista's 2015 general rate case, however, that this is a required and necessary showing to support an attrition adjustment.⁹

9 Because Avista failed to meet the requirements for demonstrating a need for an attrition adjustment identified in Order 05, the Commission considered the Company's evidentiary presentation in this case to be insufficient. The Commission found that the record did not establish that Avista would suffer the attrition it claimed, and that the

⁷ Dockets UE-150204 and UG-150205, Order 05 ¶ 35.

⁸ Theis, Exhibit MTT-1T at 12:Table 1 (Planned and Actual Expenditures 2006-2015); see also Avista Petition ¶ 50 ("planned level of capital spend in 2016 is \$375 million, and \$405 million in the 2017 rate year").

⁹ *Id.* ¶ 110 ("we . . . require that utilities requesting an attrition adjustment demonstrate that the cause of the mismatch between revenues, rate base and expenses is not within the utility's control."); see also *Id.* ¶ 116 ("it is necessary for Avista, and any other utility seeking an attrition adjustment, to demonstrate that its need to invest in non-revenue generating plant, particularly distribution plant, is so necessary and immediate as to be beyond its control.").

evidence supported the Commission's determination that the revenues produced by Avista's rates approved in 2016 would be sufficient to allow the Company to continue to provide safe and reliable electric and natural gas services to its customers during the rate effective period.

II. Petition for Reconsideration

- 10 Avista filed its Petition for Reconsideration or, in the Alternative, for Rehearing, on December 23, 2016. Staff, Public Counsel, ICNU, and NWIGU filed Answers opposing the Company's petition on January 13, 2017. Avista filed its Motion for Leave to File Reply Comments and Reply Comments to its opponents Answers on January 20, 2017. ICNU filed its Response opposing the Company's Motion on January 26, 2017.
- 11 We agree generally with ICNU that granting leave to reply, considering the procedural rules governing petitions for reconsideration, should be a rare exception to standard practice. However, we will in this instance exercise our discretion to accommodate the Company's wish to have the final word and grant its motion. At the same time, we agree with ICNU that "Avista appears to be improperly attempting to supplement the record via new representations of Company stock performance attached to reply comments." We will not accept the attachment to Avista's reply into the record of this proceeding and do not consider it in our decision here.¹⁰
- 12 Avista's Petition frames eight "issues" identifying portions of Order 06 the Company deems to be "erroneous or incomplete."¹¹ In our view, these issues were fully resolved in Order 06, and the Company has not shown that the Commission failed to consider the relevant evidence or committed any error of law. For this reason, Avista's petition generally falls short of what is required under WAC 480-07-850(2) for relief to be granted.

¹⁰ We note that whatever impact Order 06 may be claimed to have had on Avista's stock performance, this is a matter not relevant to our consideration of the Company's Petition. Fluctuations in Avista's stock price, the causes of which could never be definitively determined, do not bear on the question of whether we should grant reconsideration or rehearing.

¹¹ Avista Petition ¶ 2.

13 Even so, we will discuss at least briefly each of the individual issues Avista frames.¹² We clarify certain discussions in Order 06, considering Avista’s Petition and its opponents’ Answers. We explain in this Order our reasons for denying reconsideration or rehearing of Order 06. We also discuss Avista’s opportunity “to explore alternative resolutions for rate relief in these dockets,” in collaboration with Staff, Public Counsel and the Intervenor, as suggested by Avista’s petition, its interrelated plea for rehearing and its reply. Finally, we provide additional guidance to that included in Order 06 concerning the Commission’s expectations for regulatory ratemaking considering current and emergent circumstances in the general economy and in the industry.¹³

A. Avista Issues One, Two, Four, and Eight

14 Avista disputes in **Issue One** the Commission’s determination that the Company failed to carry its burden of proof. We disagree. The Company focuses on the formal conclusions of law in Order 06 that followed from its failure to prove the underlying facts that would support any conclusions other than those reached in Order 06.¹⁴ Avista failed to prove a need for its revenue requirements because the approach it took to calculating these requirements was fundamentally flawed. As NWIGU argues, “Avista fails to grapple with the individual findings in the body of the Order which explain the Commission’s decision, and which cite to the evidence in the record on which the Commission made its decision.”¹⁵ By way of example, NWIGU discusses “with respect to the sufficiency of current rates” that:

[T]he Commission considered Avista’s analysis the Company described as a modified historical test year *pro forma* study. But the Commission also considered the analyses of other parties and concluded that Staff and

¹² While we discuss each of the eight issues Avista identifies, we take some of them in a different order than what Avista presented and we group certain issues that exhibit a common thread.

¹³ See Order 06 ¶¶ 75-82.

¹⁴ Petition ¶ 8 (quoting Order 06, Conclusions of Law (4), ¶111. Avista also quotes and contests Order 06, Conclusion of Law (5), ¶ 112 that simply states the logical counterpart to Conclusion of Law (4): “Avista’s existing rates continue to be fair, just, reasonable, and sufficient and should remain in effect prospectively from the date of this Order.”

¹⁵ NWIGU Answer ¶ 14.

ICNU/NWIGU presented “results that show small to modest revenue sufficiencies for both electric and natural gas service.”¹⁶

Avista did not propose revenue requirements based on its *pro forma* studies for electric and gas operations. Nor, despite express direction from the Commission requiring it,¹⁷ did Avista use its *pro forma* studies as a starting point for its attrition studies on which the Company bases its claim that it requires revenue for electric and gas operations that exceed by tens of millions of dollars what its *pro forma* results indicate. Considering these, and other factors discussed in Order 06 and below, the Commission found that the parties’ *pro forma* studies, considered together, did not support a determination that the Company’s existing rates would fail to provide sufficient revenue going forward. Further, the Commission found that Avista failed to show revenue requirements greater than what the parties’ *pro forma* results collectively indicated.

15 Avista argues that it presented in these dockets essentially the same case that it presented in its 2015 case, “based on similar evidence.” The Company finds it “perplexing” and states it is “in a quandary, wondering why it was able to satisfy the requirements for an attrition adjustment in one case” but not the case following.

16 Briefly, Avista *did not* present in this case “essentially the same case that it presented in . . . 2015.” In fact, it withdrew the case it presented in 2015 in favor of Staff’s case, with certain modifications. Yet in this case it did not present an attrition study or revenue requirements analysis based on Staff’s methodology from the 2015 case, or one that followed the Commission’s requirements as stated in Order 05 in the 2015 case. In addition, the Commission discussed in Order 05 the deficiencies it found in the Company’s evidence in that case and made clear its expectations for a more robust record in any future case, such as this one, proposing an attrition adjustment. We agree that Avista based its case here “on similar evidence” to what the Company presented in 2015, but as Staff argues:

The Commission’s decision to provide an attrition allowance in the last case should not have been understood to mean that the Commission will continue to provide an attrition allowance if Avista fails to provide

¹⁶ *Id.* (citing Order 06 ¶¶ 63, 65). While this example is more directly on point in response to Avista’s Issues Two and Eight, it serves to illustrate NWIGU’s point in response to Issue One.

¹⁷ See Dockets UE-150204 and UG-150205, Order 05 ¶ 111.

sufficient evidence to meet the Commission's standard. In the Commission's judgment, that standard was not met in the present case.¹⁸

Indeed, considering Avista's failure to follow the guidance given in Order 05, the "similar evidence" presented in this case was found in Order 06 to be insufficient to support determinations that Avista now faces attrition or that an attrition adjustment would be an appropriate ratemaking tool to adjust *pro forma* results in the current record.

17 Avista did not begin with *pro forma* studies based on modified historical test year results, but based its requested revenue requirements in this case on the projected costs and expenses produced by extrapolating historical levels of capital investment and expense to the rate year, arguing that the trends in such information effectively prove attrition conditions prospectively and measure revenue requirements.¹⁹ To these trended revenue requirements, Avista added "after-attrition" adjustments that capture the estimated costs of large capital projects the Company may complete during 2017 or 2018.²⁰ More specifically, the Company's revenue requirements case depended on extrapolating trends in costs indicated by regression analysis performed on cost data from 2007 to 2015 to determine escalation factors it applies broadly to test year results to estimate revenue requirements for the rate effective period. The Company then adds what it refers to as "after-attrition adjustments" based on investment of \$67.1 million for the "Spokane River Projects" that went into service six months after the end of the test year, and \$17.9

¹⁸ Staff Answer ¶ 9 (citing Order 06 ¶ 70).

¹⁹ We discuss below that such analyses do not, in themselves, prove the existence of attrition. Here, our focus is on Avista's misuse of this type of analysis by treating it as a *ratemaking methodology*, not as a *ratemaking tool* used to inform development and application of a discrete adjustment to *pro forma* results determined using the modified historical test year ratemaking methodology, as required by Dockets UE-150204 and UG-150205, Order 05. An attrition adjustment is one tool among several that the Commission may use to adjust *pro forma* results when it determines attrition is present. *See supra* n. 9 (defining attrition). Avista used a different, but also unacceptable, ratemaking methodology in the Company's 2015 case, but abandoned its approach, adopting Staff's approach on rebuttal.

²⁰ Avista added these so-called after-attrition adjustments to yield full revenue requirements for the rate year based on the proposition that the costs of the projects upon which the adjustments were based were so large and unusual relative to investments in earlier years that they would not be reflected in the Company's trending analyses.

million of capital projects associated with its ongoing Advanced Meter Infrastructure (AMI) project that the Company expects to be in service, in part, sometime in 2017.²¹

18 The Commission, however, stated plainly in Order 05 that:

Because an attrition study is an additional tool to use in conjunction with a modified historical test year, the appropriate methodology begins with development of a modified historical test year with *pro forma* plant additions, even subsequent to a test year. An attrition study is based on the resulting projected earnings and revenue requirements, and the attrition adjustment is added only if the study shows a mismatch of earnings and expenditures.²²

Avista, as discussed above, did not follow this “appropriate methodology” to determine proposed revenue requirements in this case.

19 Staff and ICNU, in contrast to Avista, took the approach the Commission described in Order 05, starting with *pro forma* studies based on the modified historical test year methodology on which the Commission has relied for many years. Their independent *pro forma* studies indicated that the Company’s existing rates would continue to yield sufficient revenue going forward. They nevertheless presented their own distinct trending studies to develop attrition adjustments to their respective *pro forma* results using statistical approaches that were different than what Avista proposed and that yielded different results. The considerable range of the parties’ results is displayed in the table below along with the parties’ respective *pro forma* results.²³

²¹ Avista Brief ¶ 83 (citing Exh. EMA-6T at 32-33).

²² Dockets UE-150204 and UG-150205, Order 05 ¶ 111.

²³ While Order 06 discusses some of the limitations on the use of, and inferences that can be drawn from, trending studies based on regression analyses, we see in Staff’s presentations general improvement of the mechanics of attrition analysis over the course of Avista’s general rate cases since 2012. Nevertheless, such studies do not in themselves demonstrate that Avista will experience attrition, as the Commission defines the term. Thus, Staff’s and ICNU’s studies, like Avista’s, fail to demonstrate that the Commission should adjust *pro forma* results to produce revenue requirements that will satisfy Avista’s proposed capital spending during the rate effective period. We note, in addition, the cautions expressed by our predecessors who discussed attrition analysis in an earlier era of Commission general rate cases:

Dockets UE-160228 and UG-160229 Recommended Revenue Increases (Decreases) by Party, Electric
\$ Millions

Party	Electric Recommended Revenue Increase (Decrease)	Pro Forma Results	Natural Gas Recommended Revenue Increase (Decrease)	Pro Forma Results
Avista	\$48.9	\$11.8	\$5.3	(\$1.2)
Staff	\$25.6	(\$0.4) ²⁴	\$0.7	(\$3.3)
ICNU/NWIGU	(\$1.0)	(\$8.1)	(\$2.0)	(\$4.1)

20 Turning directly to Avista’s **Issue Two**, Order 06 does not dispute and, indeed, expressly recognizes and discusses, that Avista performed and presented traditional modified historical test year *pro forma* studies.²⁵ The Order discussed, however, that Avista presented its modified historical test year with *pro forma* adjustments, further modified by the Company’s so-called cross-check studies, only for purposes of comparison to the results of its trending analysis as adjusted for “after-attrition” capital projects, which

The attrition allowance is not without its negative aspects. Its derivation requires a good deal of judgment. The same reasons that cause the Commission to use a historical test year rather than a forecasted test year would weigh against the use of an attrition allowance. The attrition allowance, however, tends to be smaller in scope than a forecasted test year, and thus more manageable. It is of a limited nature and is more susceptible of knowledgeable evaluation.

Washington Utilities & Transportation Comm’n v. Pacific Power & Light Company, Cause No. U-84-65, Fourth Supp. Order at 35 (August 2, 1985).

²⁴ Staff’s response testimony showed *pro forma* electric results of (\$4.5 million) and *pro forma* gas results of (\$3.3 million). Staff, on brief, stated its *pro forma* results changed due to Staff’s acceptance of Avista’s *pro forma* property tax adjustment and Staff’s modification of its position on the Montana Riverbed lease expense. Staff Brief ¶ 1 n.2.

²⁵ Order 06 ¶¶ 9, 63. Staff states in its Answer, in response to Avista’s Issue Two, that “[t]he lack of clarity in [Avista’s presentation [of a *pro forma* study] may explain the Commission’s finding that Avista did not provide an adequate modified historical test year *pro forma* study.” Staff Answer ¶ 12. The Commission made no such finding in Order 06. We nevertheless clarify here what the Commission did say about such studies in Order 06: 1) Avista did not propose revenue requirements based on its *pro forma* analyses; 2) Avista’s *pro forma* analyses are entitled to no more weight than are Staff’s and ICNU/NWIGU’s studies and the studies collectively are at least as likely to show revenue sufficiencies as revenue deficiencies for electric operations and show without exception revenue sufficiencies for gas operations; 3) Avista failed to use its *pro forma* studies as the starting points for its attrition analyses.

established its requested revenue requirements.²⁶ Order 05, however, requires parties to use a *pro forma* study based on the modified historical test year ratemaking methodology as the starting point for determining revenue requirements that may be adjusted using an attrition adjustment. This is fundamentally different than Avista’s use of such a *pro forma* study as the starting point for an analysis that purports to do no more than validate an independent determination of revenue requirements based entirely on trending analyses as adjusted for “after-attrition” capital projects. Moreover, Order 05 expressly rejected the use of Avista’s cross-check methodology as a measure of revenue requirements.²⁷ The Commission similarly rejected the Company’s cross-check methodology in Order 06.²⁸

21 In its Petition, Avista now claims 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.”²⁹ This claim is not supported by the testimony of Avista’s own witnesses, particularly Ms. Andrews, who conducted the “attrition analyses,” and Ms. Smith, who conducted the modified test year studies for the Company. Ms. Andrews testified unequivocally that: “The Company’s proposed electric and natural gas revenue increases in this filing are based on the Attrition Adjustments derived from the 2017 and January to June 2018 electric and natural gas Attrition Studies provided as [Exhibits EMA-2 through EMA-5.]”³⁰ She testified in addition:

As explained by Ms. Smith, the Company has also provided electric and natural gas “Cross Check Studies” that adjust the “Pro Forma Study” results, identified in Table No. 3, recognizing additional expected increases in expenses and capital investment identified by the Company beyond the Pro Forma Study. These Cross Check Studies provide the level of net income and net rate base expected for the 2017 and January to June 2018 rate periods. These balances are then compared to the results produced by the Attrition Studies *for comparison purposes only*, to determine the reasonableness of the results produced by the Attrition

²⁶ Order 06 ¶¶ 9, 63.

²⁷ Dockets UE-150204 and UG-150205, Order 05 ¶ 37.

²⁸ See Order 06 ¶¶ 9, 53, 63.

²⁹ Avista Petition ¶ 18.

³⁰ Andrews, Exhibit EMA-1T at 20:20-21:2.

Studies, and for the limited purpose of preparing the cost-of-service studies as presented by Company witnesses Ms. Knox and Mr. Miller.³¹

22 Describing her own testimony, Ms. Smith said:

My testimony and exhibits in this proceeding will cover the overall methodology and results of the Company's electric and natural gas Pro Forma and Cross Check Studies in support of the Company's need for the proposed increases in rates requested in Company witness Ms. Andrews' testimony. As discussed in my testimony, the Pro Forma and Cross Check Studies present the Company's electric and natural gas results for the 2017 and January to June 2018 rate periods, on an average-of-monthly-averages (AMA) basis. The Company first determines the Company's results on a Pro Forma basis, using modified historical test period results, adjusted for limited pro forma adjustments (modified test year Pro Forma), and then adjusts the modified test year Pro Forma results further, to reflect Company results on a "Cross Check" basis for the 2017 and January to June 2018 rate periods. The electric and natural gas Cross Check Studies are then compared to the results produced by the Attrition Studies for the same periods, *for comparison purposes only*, to determine the reasonableness of the levels produced by the Attrition Studies sponsored by Ms. Andrews.³²

Ms. Smith testified in addition that her "exhibits show the specific restating, *pro forma* and cross check adjustments used as a 'Cross Check' to compare with the electric and

³¹ Andrews, Exhibit EMA-1T at 14 n. 4. (Emphasis added).

³² Smith, Exhibit JSS-1T at 1:19-2:9. (Emphasis added). We frankly do not understand the Company's use of the term "limited" to modify "*pro forma* adjustments." Staff also adopted the use of this adjective in its testimony and brief. If the use of this qualifier is meant to suggest that the Commission does anything other than allow all *pro forma* adjustments found to satisfy the requirements that they reflect plant that is "used and useful" and that have costs that are "known and measurable," we reject it and expect to see it eliminated from use in future cases. Indeed, in the exercise of its discretion, the Commission has on numerous occasions relaxed these requirements to allow *pro forma* adjustments that will neither be fully used and useful nor have fully known and measurable costs until well into the post-test period or even until the rate year. In other words, to the extent the Commission deviates from the strict definition of *pro forma* adjustments, it is in the direction of being more inclusive, not less.

natural gas Attrition Study analyses.”³³ She reiterated the limited purpose of the Company’s *pro forma* studies several more times in her testimony.³⁴ She said, for example that:

The Company’s electric and natural gas rate relief for the 2017 and January to June 2018 rate periods requested in this case are based on the Company’s electric and natural gas Attrition Study results sponsored by Ms. Andrews. However, the Company has also provided results on a Pro Forma basis, using modified historical test period results, adjusted for limited pro forma adjustments (modified test year Pro Forma).³⁵

The witnesses’ testimony is clear that Avista did not follow the direction given in Order 05 in the Company’s 2015 case that any analysis testing for attrition or proposing an attrition adjustment must begin with a modified historical test year *pro forma* analysis. It must follow the “bottom up” approach approved in Order 05 and followed by Staff in this case, and not take the “top down” approach to determining revenue requirements that the Company, in fact, followed in this case.

- 23 In sum, while Avista expresses its perplexity at the different outcomes in its 2015 case and this case, Avista did not present the same methodology in 2015 and eventually withdrew its “attrition study” in favor of Staff’s approach to determining revenue requirements and an attrition adjustment. In this case, Avista relied on a new analytical approach that was fundamentally different than what it presented in 2015, and different than Staff’s approach that the Commission accepted, with modifications, in Order 05. Simply put, the methodology the Commission approved in Order 05 is not the same methodology that Avista proposed in this case.³⁶

³³ *Id.* at 4:6-8.

³⁴ *Id.* at 5:3-9 *Id.* at 5: 10-13 Even so, the Commission previously rejected the use of cross-check studies, indeed this specific methodology, in Dockets UE-150204 and UG-150205, Order 05.

³⁵ Smith, Exhibit JSS-1T at 4:16-18.

³⁶ Avista conflates or confuses in its arguments two separate uses of the term “methodology.” The relevant methodology for comparison is the methodology for deriving revenue requirements. The statistical methodology by which trending analyses are conducted is a different concern. As between the 2015 case and this case, the methodology adopted by the Commission for deriving revenue requirements in 2015-Staff’s methodology following the bottom up approach that starts with the modified historical test year-is fundamentally different than the methodology Avista

- 24 Under **Issue Four**, Avista argues that the *pro forma* “test period studies do not show that existing revenues are sufficient.” We presume Avista means to refer to its own *pro forma* study and the *pro forma* studies sponsored by Staff, and co-sponsored by NWIGU and ICNU. In its Petition, however, Avista also generalizes that “[t]he 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.”³⁷ Avista offers no citation for this proposition. We are not persuaded, as this Commission, and regulatory commissions throughout the United States, have relied for decades on modified test year *pro forma* results of operations to determine revenue requirements upon which to base fair, just, reasonable, and sufficient rates in the prospective rate year or rate effective period. ³⁸ Our orders also demonstrate a range of tools the Commission has available to adjust *pro forma* results including those discussed in a later section of this Order.³⁹ Attrition adjustment also is a ratemaking tool available to adjust *pro forma* results, but only in appropriate circumstances that are not present in this case.
- 25 Because Avista and other parties failed to support requested revenue requirements that are based on attrition-adjusted *pro forma* results, and the results of *pro forma* studies by the Company, Staff, and ICNU/NWIGU that are not so adjusted fail to demonstrate a revenue deficiency, we are left only with the finding that existing revenue requirements and rates remain sufficient to the Company’s needs.
- 26 Avista states in its **Issue Eight** that the Company presented “a traditional modified test year *pro forma* study [that] shows an electric revenue requirement of \$11.83 million.”⁴⁰ Avista points out that other parties identified approximately 10 adjustments to Avista’s *pro forma* studies that the Company rejected on rebuttal.⁴¹ Avista complains that “[n]owhere in its Order 06 does the Commission enter findings with respect to any of

used in this case. Thus, Avista should not be “perplexed” by the different results achieved in the two cases. In contrast, the statistical methodology Avista used to develop escalation factors in this case is similar to what the Commission accepted in the 2015 case.

³⁷ Avista Petition ¶ 30 (emphasis removed).

³⁸ See Order 06 ¶¶ 13-28, discussing previous Commission orders in which Avista’s rates were determined relying on such *pro forma* studies.

³⁹ See *infra* ¶ 57.

⁴⁰ Avista Petition ¶ 54.

⁴¹ Avista Petition ¶ 55.

these contested issues.”⁴² Although the Commission considered Avista’s *pro forma* studies, as well as *pro forma* studies by Staff and ICNU/NWIGU, it did so only to the limited extent necessary in a case where no party, and most significantly not Avista, advocated revenue requirements based on such a study. Considering the three *pro forma* studies uncritically (*i.e.*, “at face value”), the Commission found that revenue requirements measured by these studies were as likely to show a revenue sufficiency as a revenue deficiency going forward.

- 27 As previously discussed, Avista advocated revenue requirements based on cost trends extrapolated from historic data, not on *pro forma* results. Avista performed its *pro forma* study based on modified historical test year results only as a part of its “cross-check study” that adjusted the *pro forma* results by adding budgeted expenditures for the sole purpose of comparing the results to its trended cost analyses. Thus, the Commission was under no obligation, and had no need, to resolve the disputes between the Company and other parties in connection with their respective *pro forma* studies.

B. Avista Issue Three

- 28 In its **Issue Three**, Avista states its difference of opinion with the Commission concerning the relevance of evidence showing the Company’s earnings during recent periods.⁴³ We determined in Order 06 that the “undisputed evidence that the Company continues to earn at, near, or even in excess of, its authorized return, . . . militates against the use of an attrition adjustment in this case.”⁴⁴ This relates back to the point that chronic under earnings were the touchstone that sparked the Commission’s positive reaction to Staff’s suggestion in PSE’s 2011 general rate case that attrition adjustments could be used again in Commission ratemaking, after a nearly 25-year hiatus. Thus, the Commission’s finding quoted above concerns the circumstances in which the Commission considers it appropriate to consider using an attrition adjustment. The Commission did not conclude that the earnings evidence in this case was dispositive, just as it was not dispositive in the Company’s 2015 case in which the Commission found

⁴² Avista Petition ¶ 56.

⁴³ Avista Petition ¶ 23 (“The conclusion in Order 06 is incorrect that the absence of a showing of chronic under-earnings, and [evidence establishing] 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.”).

⁴⁴ Order 06 ¶ 66.

some evidence of overearnings, but also found evidence of the Company experiencing costs beyond its control. However, absent a satisfactory showing that the Company faces such costs in this case, the earnings evidence weighs additionally against the use of an attrition adjustment.⁴⁵

C. Avista Issue Five

29 The Commission established in Order 05 a criterion the Company must pass before the Commission will find that attrition exists and that the use of an attrition adjustment to modified historical test year *pro forma* results may be appropriate. In Order 05, the Commission determined that:

[I]t 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. *However, we do require that utilities requesting an attrition adjustment demonstrate that the cause of the mismatch between revenues, rate base and expenses is not within the utility’s control. Without such a standard, a utility could plan for a level of expenditures that would exceed revenues and rate base recovery, creating the need for an attrition adjustment.*⁴⁶

Elsewhere in Order 05 the Commission emphasized this requirement, saying with respect to Avista’s proposed attrition adjustment on the electric side of its operations that “it is *necessary* for Avista, and any other utility seeking an attrition adjustment, to demonstrate that its need to invest in non-revenue generating plant, particularly distribution plant, is so necessary and immediate as to be beyond its control.”⁴⁷

30 Avista questions the Commission’s interpretation in Order 06 of the term “beyond its control,” contending that the Company submitted “hundreds of pages of testimony and

⁴⁵ We note that Avista’s final argument under Issue Three, purporting to show specific amounts by which the Company will under earn relative to its authorized return as a result of Order 06, fails among other reasons because its calculations assume it is entitled to the revenue requirements it advocates. As Staff points out “for electric service the Company uses the “Attrition Adjusted / Cross Check” total rate base figure found in Exhibit No. JSS-2, page 12. . . . In other words, Avista’s argument relies on exactly [the] evidence that the Commission found to be unreliable.” Staff Answer ¶ 15.

⁴⁶ Dockets UE-150204 and UG-150205, Order 05 ¶ 110.

⁴⁷ *Id.* ¶ 116.

exhibits” concerning planned and active capital projects, as well as demonstrating that the capital expenses are “necessary and immediate.”⁴⁸

31 Order 05, among other things, allowed an attrition adjustment to natural gas revenue requirements and a modified or partial attrition adjustment to electric revenue requirements.⁴⁹ The different treatment afforded gas and electric revenue requirements reflected the Commission’s determinations that Avista would experience costs associated with capital investments for gas distribution during 2016 that were beyond its control, but failed to make such a showing relative to anticipated electric distribution investments, the predominant source of large capital investments on the electric side of the Company’s operations.⁵⁰

32 Order 05 identified specific gas distribution investments that it considered to be beyond the Company’s control as justification for granting an attrition adjustment considering that the investments were required “to comply with explicit regulatory requirements and in accordance with prior Commission orders.”⁵¹ Order 05 said, in addition:

Avista has pipe replacement programs to replace natural gas pipe and facilities that have been determined to have a high risk of failure, such as Alkyl-A and steel pipe, which are at the end of their useful lives or have failed. The Commission has procedures in place to review and approve this program on a biennial basis.⁵² The Commission has recognized these activities as a priority, stating that “it is in the public interest for all gas companies to take a proactive approach to replacing pipe that presents an elevated risk of failure.” We accept that Avista has established that the

⁴⁸ Avista Petition, ¶¶ 35, 41.

⁴⁹ *Id.* ¶¶ 50-51.

⁵⁰ Dockets UE-150204 and UG-150205, Order 05 ¶¶ 74, 125-41. We note that the Commission made no specific finding with respect to any particular investment, or class of investments, to support electric operations that were shown to be beyond the Company’s control. Instead, the Commission relied on its discretion under the “end result” principles expressed in *Hope* and other seminal cases. *See infra* ¶ 32.

⁵¹ Dockets UE-150204 and UG-150205, Order 05 ¶ 121 (citing Schuh, Exh. No. KKS-5 (attachment NGD-7 and NGD-1.1); Kopczyński, Exh. No. DFK-1T at 20:7-21.).

⁵² Gomez, Exh. No. DCG-1TC at 32:8-10.

need for its capital investments in natural gas operations are beyond its control.⁵³

33 As discussed in Order 06, the attrition adjustment for gas operations allowed in the Company's 2015 case provided funds at least sufficient to fund fully the subject investments through the rate effective period. The Commission noted in this connection that:

Avista has not elected the option of a Cost Recovery Mechanism (CRM) for its expenditures related to the replacement of high-risk pipe though this option has been available to the Company on an annual basis since 2013. The purpose of the CRM is to allow ongoing recovery of the costs associated with the replacement of high-risk pipe, including return of and return on investment. Were a CRM in place for Avista, there would be no basis to claim the need for an attrition adjustment to ensure recovery of the Company's pipeline replacement program costs.⁵⁴

The opportunity for Avista to use a CRM remains available and, as stated in Order 06, putting the mechanism in place would obviate the need going forward for *pro forma* adjustments in a general rate proceeding, or other proposals such as an attrition adjustment, while reducing regulatory lag and smoothing cost recovery associated with distribution pipeline replacement. In Order 06, we encouraged Avista to reconsider its decision so far not to avail itself of the opportunity presented by the CRM option.⁵⁵ Thus, we suggested, as we clarify here, that the CRM is a ratemaking tool more suitable than an attrition adjustment to effect recovery of pipe replacement program costs. The continuing availability of the CRM arguably means that such costs should no longer be considered to be beyond the Company's control for purposes of evaluating whether it is appropriate to use an attrition adjustment to support investment in gas distribution plant.

34 While the Commission nominally allowed an attrition adjustment on the electric side of Avista's operations in the 2015 case, Order 05 focuses in this connection on an "end

⁵³ Dockets UE-150204 and UG-150205, Order 05 ¶ 121 (quoting *In the Matter of the Policy of the Washington Utilities and Transportation Commission Related to Replacing Pipeline Facilities with an Elevated Risk of Failure*, Docket No. UG-120715, ¶ 37 (Dec. 31, 2012)).

⁵⁴ Order 06 ¶ 72 n. 139 (citing *see Pipeline Replacement Policy Statement* ¶¶ 58-75.).

⁵⁵ *Id.*

results” analysis following the venerable authorities of *Hope*,⁵⁶ *Bluefield*,⁵⁷ and their progeny.⁵⁸ It is clear from Order 05 that neither the Company nor any other party presented fully persuasive evidence that Avista would experience a pressing need for specific electric investments during the rate effective period due to circumstances beyond the Company’s ability to control.⁵⁹ Indeed, although the Commission allowed “a modified attrition adjustment for electric operations” it completely excluded distribution plant, identified as the major source of expenditures for infrastructure investment to support electric operations.⁶⁰ In granting this modified attrition adjustment, the Commission stated that it wished to “emphasize that we share Staff’s frustration about continuing to authorize recovery for these significant capital investments, *absent a complete demonstration by the Company of quantifiable benefits to ratepayers.*”⁶¹ The Commission concluded its discussion of this issue by giving clear direction to Avista, as follows:

Before seeking further rate increases for its electric service, the Company must provide more analysis showing how it plans and prioritizes investments in its distribution system, and how those decisions impact system reliability and economy. Staff asserts that an examination of Avista’s capital spending plans and results is called for, and we agree. We encourage the Company to work with Staff on this issue. The econometric study recommended by Staff could provide useful information about Avista’s relative reliability, compared to other utilities. We agree, but since Staff has begun its work on the study, we do not think it is necessary to require it in this order.⁶²

⁵⁶ *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (*Hope*).

⁵⁷ *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*).

⁵⁸ See Dockets UE-150204 and UG-150205, Order 05 ¶¶ 132-34.

⁵⁹ See Dockets UE-150204 and UG-150205, Order 05 ¶¶ 125-41.

⁶⁰ See *id.*

⁶¹ *Id.* ¶ 141 (emphasis added).

⁶² *Id.* (footnotes omitted).

Yet, we do not find in the record of this case cogent presentations of evidence such as described in Order 05. Indeed, Avista argues in its petition for reconsideration that it relied in this case on testimony “substantially similar” to what it presented in its 2015 case.⁶³ We are unaware of any efforts by Avista to work with Staff as directed. In addition, Staff has had no practical opportunity to complete the econometric study to which the Commission refers considering that Avista allowed only a few weeks to pass after service of Order 05 before filing in this general rate case.

35 The Commission made clear in Order 05 that any future proposals to use an attrition adjustment to *pro forma* results shown by a modified historical test period study would be approved only on a fully satisfactory record showing that the Company, during the rate effective period, would experience earnings erosion that eliminates its opportunity to earn its authorized rate of return due to the failure of test period relationships among revenue, rate base, and expenses due to investment and/or increased operating or administrative costs in the rate effective period required by circumstances beyond the Company’s control. Indeed, it may fairly be said that Order 05 established this as the very definition of attrition for purposes of its consideration during the current period, following a hiatus in the use of this ratemaking tool since 1993.⁶⁴

36 In the 2015 case, the Commission discussed at some length the deficiencies it found in the Company’s evidentiary presentation. Although the Commission granted attrition adjustments both for Avista’s natural gas and electric service in Order 05, this result turned more on end results than on other factors. Indeed, the Commission discusses at length in Order 05 its view that it found the Company’s testimony and exhibits concerning the extent and necessity of Avista’s investments to support electric operations less than fully persuasive.⁶⁵

37 As in the prior case, while the Company did include extensive documentation of its planned and existing capital projects, we found here on examination of the record that the Company has not fully explained the relationships between the Company’s business cases, asset management program, and total net plant investment. These relationships are not readily apparent from the record. It is not clear what projects, if any, are so necessary

⁶³ See supra ¶ 5.

⁶⁴ The Commission provides a thoroughgoing discussion of the history and contemporary use of attrition adjustments in Dockets UE-150204 and UG-150205, Order 05 ¶¶ 50-66.

⁶⁵ Dockets UE-150204 and UG-150205, Order 05 ¶¶ 125-41.

and immediate as to be beyond the Company's control as opposed to projects that are more routine or even those that might be undertaken toward the end of the year largely because funds were available to finance them. Nor do we have in our record a showing to what degree the Company's electric system as a whole, or in part, is unsafe or unreliable, and whether distribution capital spending is guided by a specific plan to address any safety or reliability shortcomings of the Company's electric service.

38 In the face of "some, but not complete, evidence to demonstrate . . . circumstances driving attrition [that] are outside of the Company's control," the Commission in Order 05 focused its attention on its broad discretion under *Hope, Bluefield, and Permian Basin*⁶⁶ to use its "informed judgment" to allow an adjustment based on attrition adjustment methodology to produce "end results" to avoid an outcome relying on unadjusted *pro forma* results that "would be a reduction in electric revenue requirement of more than \$20 million."⁶⁷ Important to Order 06, and to our Order here, the Commission provided clear guidance to Avista, saying:

While we grant a modified attrition adjustment for electric operations, we emphasize that we share Staff's frustration about continuing to authorize recovery for these significant capital investments, absent a complete demonstration by the Company of quantifiable benefits to ratepayers. Before seeking further rate increases for its electric service, the Company must provide more analysis showing how it plans and prioritizes investments in its distribution system, and how those decisions impact system reliability and economy.⁶⁸

Yet, as the Company acknowledges in its petition, it presented evidence in this case that mirrors to a large extent what it presented in the 2015 case. The Company's evidence was not entirely satisfactory then and remains so in this case.

D. Avista Issue Six

39 Avista's discussion under Issue Six largely repeats arguments in its brief concerning whether the Company showed it will experience costs beyond its control during the rate effective period. These track the same arguments Avista makes in connection with Issues

⁶⁶ *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968) (*Permian Basin*).

⁶⁷ Dockets UE-150204 and UG-150205, Order 05 ¶ 132.

⁶⁸ Dockets UE-150204 and UG-150205, Order 05 ¶ 141.

Three and Five, both discussed above. The Commission responded fully in Order 06,⁶⁹ and need not repeat these discussions here.

40 Avista concludes its argument under Issues Five and Six with the suggestion that since no one challenged and opposed specific capital projects identified by the Company, this somehow demonstrates that capital investments and operating cost increases proposed by the Company are beyond the Company's control.⁷⁰ We disagree. Avista has the burden to show and to explain why specific capital or other costs it faces during the rate effective period following a general rate case are beyond its ability to control. No other party has a burden to prove that no such costs exist.

E. Avista Issue Seven

41 Avista asserts as its Issue Seven that "[t]he Commission erroneously concludes that the Company is increasing the "pace" of capital expenditures."⁷¹ The Company's argument in other sections of its Petition, and its own witnesses' testimony, show that this conclusion is not erroneous. Under Issue One of its Petition, for example, the Company includes a graphic portrayal in "Illustration No. 5 [Growth in Net Utility Investment and Operating Expenses]."⁷² The illustration includes two steeply rising lines portraying actual and forecast growth in investment and expenses over time. Avista states in its Petition that "Illustration No. 5 above shows that net plant investment is growing at a much faster pace than sales."⁷³ Avista witness Mr. Theis includes in his testimony a table with the data reproduced below that shows Avista's planned and actual expenditures for the period 2006-2015.

⁶⁹ Order 06 ¶¶ 68-69.

⁷⁰ Avista Petition ¶¶ 40, 48.

⁷¹ Avista Petition ¶ 50.

⁷² Avista Petition ¶ 9.

⁷³ Id.

TABLE NO. 1			
Planned vs. Actual Expenditures			
	Planned Expenditures (\$ millions)	Actual Expenditures (\$ millions)	Percentage of Planned
2006	\$160.00	\$158.30	99%
2007	183.10	198.40	108%
2008	190.00	205.40	108%
2009	220.00	199.70	91%
2010	235.00	206.80	88%
2011	260.00	247.00	95%
2012	255.00	262.00	103%
2013	275.00	296.00	108%
2014	336.00	352.00	105%
2015	376.30	415.30	110%
Ten Year Average	\$249.04	\$254.09	102%

This evidence not only establishes the increased pace of Avista’s capital investments over time, it also shows that this has led to a relatively much higher level of investment over the periods for which the Company provides data. Indeed, the table above shows that actual expenditures in 2015, the test year in this case, exceeded planned and actual expenditures in 2006 by approximately 260 percent.

42 Avista argues under Issue Seven, as it did under Issue Six, that “no party identified a single capital project that should not be completed in the timeframe proposed by the Company”⁷⁴ Again, other parties do not have a burden to show that the prospective investments for which the Company seeks funding via an attrition adjustment are not beyond the Company’s control. It is the Company that must show by persuasive evidence that such investments are required.

⁷⁴ Avista Petition ¶ 51.

III. Petition for Rehearing

- 43 The Administrative Procedure Act, RCW Chapter 34.05, does not expressly provide an opportunity for rehearing of a Final Order. The Commission's organic statutes, however, do provide such an opportunity.⁷⁵ This is reflected in the Commission's procedural rules at WAC 480-07-870, which provides: "Any person affected by a final order may file a petition for rehearing. Public service companies may seek rehearing under RCW [80.04.200](#) or [81.04.200](#)." The first provision of our procedural rules reflects the high degree of discretion afforded the Commission under RCW 80.04.200, which states in relevant part: "The commission, may, in its discretion, permit the filing of a petition for rehearing at any time."
- 44 Avista argues that "good cause exists for the Commission to reopen the record and entertain additional evidence on the issues identified below."⁷⁶ Avista states that it seeks rehearing "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*

⁷⁵ RCW 80.04.200 provides:

Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: PROVIDED, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission.

⁷⁶ Avista Petition ¶ 57.

*these existing dockets.*⁷⁷ Indeed, Avista subsequently clarifies that “the primary purpose of rehearing would be to explore alternative resolutions for rate relief in these dockets”⁷⁸

45 In terms of process, Avista suggests:

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. That further guidance will benefit the parties in this and other future proceedings.

...

[T]he 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.⁷⁹

Finally, “[i]n addition to matters discussed in the Company’s Petition for Reconsideration” Avista identifies five additional issues the Company believes the parties should be given an opportunity to consider.⁸⁰

46 NWIGU argues in opposition that:

[I]t makes little sense to have a rehearing for the purpose of exploring alternatives for rate relief. In NWIGU’s experience, “alternatives to rate relief” means developing new solutions that depart from the Commission’s traditional ratemaking methods. Typically, new solutions are not without controversy and require a robust record. The appropriate process for exploring such alternatives is to work with parties in advance of a filing, explore the issue through a generic proceeding to obtain Commission guidance, or to file a well-developed proposal that parties can

⁷⁷ Avista Petition ¶ 59.

⁷⁸ Avista Petition ¶ 62.

⁷⁹ Avista Petition ¶ 62.

⁸⁰ Avista Petition ¶ 63.

analyze and critique – or a combination of all three. That process is not well suited at the end of a litigated rate case simply by re-opening the record for that new purpose.

We agree that rehearing is not the right approach to explore alternatives for rate relief that were not presented in this case. However, we do not agree that if Avista were to come forward with an alternative proposal at this time that it necessarily implies consideration of “new solutions that depart from . . . traditional ratemaking methods.”

47 Having rejected in Order 06 Avista’s proposal for an attrition methodology to determine revenue requirements and rates following review of a fully developed record and briefing by the parties, we agree with NWIGU and the other parties opposing rehearing, that rehearing is not the right way to proceed. However, we also are of the view that rehearing is not the only way forward for the Company. We strongly encourage Avista, Staff, Public Counsel, NWIGU, ICNU, and other stakeholders to begin a collaborative effort to work toward alternative solutions to the “new normal” in the utility sector that honor the Commission’s continuing commitment to the foundational principles of ratemaking methodology on which the Commission historically has relied.

48 Thus, while we determine in this Order that we should deny Avista’s Petition for Reconsideration or, In the Alternative, Rehearing, we express our openness to Avista filing a well-developed proposal that parties can use as a spring-board and procedural vehicle to provide an opportunity for settlement negotiations as an alternative means to a fully litigated general rate case by which prospective revenue requirements and rates can be set.⁸¹ In the face of the uncertainties and challenges we face as the utility landscape

⁸¹ We note in this connection that Avista:

[B]elieves that, while the record is fresh, further exploration of the possibilities for a multi-year rate plan should be addressed through the use of the Alternative Dispute Resolution procedures of WAC 480-07-700, including the possible appointment of a Settlement Judge. If successful, any all-party or multi-party settlement in these dockets may forestall the need for Avista to immediately file for additional rate relief.

Reply of Avista Corporation ¶ 13. While we will not order such a process in the context of these dockets, which are fully concluded by this Order, it certainly is available to the parties with the assistance of a qualified mediator instead of a Settlement Judge. Indeed, such a process recently was used with considerable success in the context of Docket UE-

changes from what has been familiar, it serves the interests of our regulated utilities, our Staff, Public Counsel, others who elect to participate in the ratemaking process, and the Commission itself for parties to participate openly, transparently, in good faith, and with an eye to striking a fair balance between the needs of the utility for revenue sufficient to cover its operating and investment costs going forward, and the interests of ratepayers in receiving safe and reliable services at reasonable rates.

IV. Ratemaking Practice Going Forward

49 The Commission has observed in a number of orders during the past two decades that its responsibility in general rate case proceedings is to determine an appropriate balance between the needs of the public to have safe and reliable electric and natural gas services at reasonable rates, and the financial ability of the utility to provide such services on an ongoing basis. In the words of our governing statutes, we are required to determine results that establish “fair, just, reasonable and sufficient” rates for prospective application. This means rates that are *fair* to customers and to the Company’s owners; *just* in the sense of being based solely on the record developed in a rate proceeding; *reasonable* in light of the range of possible outcomes supported by the evidence; and *sufficient* to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.

50 The Commission’s long-established and well-understood ratemaking practice requires companies filing for revised rates to start with an historical test year. There is a fundamental reason for this starting point in every case: costs, revenues, loads, and all other pertinent factors are known and can be measured with a high degree of certainty because they have, in fact, occurred. The practical value of the historical test year is that the cost, revenue and plant data are available for audit, or at least careful review, and the test year captures the complex relationships among the various aspects of utility costs, revenue, load, and other factors over a uniform period of time.

51 The Commission’s past decisions in Avista’s and other investor-owned utilities’ general rate cases recognize that there are some expenses or investments that do not take place in the test year that, nevertheless, should be included in the rate-making formula. Thus,

151663, a PSE petition that raised novel issues associated with its efforts to adjust to the changing utility landscape in Washington, and more broadly throughout the United States.

subject to important conditions, a company's rate filing should include restating and *pro forma* adjustments that modify test year results.⁸² These are allowed to revise or update expenses, revenues, and rate base so long as there is a mechanism ensuring, and evidence establishing, that these adjustments do not disturb test year relationships.

52 While the Commission traditionally has described its ratemaking practice as being based on the historical test year, a key operative part of this description is "based on." In point of fact, our practice is quite forward looking and in actuality is a process more accurately referred to as a "modified historical test year" or "hybrid test year." In prior orders, the Commission has made clear that while its ratemaking practice starts with known data that are "historical" by definition, these data are adjusted using various approaches to set rates based on expected costs the utility will experience during the rate year following the effective date of the new rates. Whatever tools are proposed for use in a given case, however, must be chosen with specific reference to the needs and circumstances of the case. The appropriateness of using each tool selected must be demonstrated by applicable evidence.

53 The Commission, for example:

- Approves *pro forma* adjustments to test-year costs when the adjustments are adequately supported. The Commission retains significant discretion to apply flexibly the requirements that *pro forma* adjustments be known and measurable, used and useful, and matched to offsetting factors. The Commission has not established bright-line standards governing the timing or the number of adjustments that can be accepted in a given case, and has not established a minimum size for *pro forma* adjustments to be recognized.

⁸² WAC 480-07-510 (3)(e)(ii) and (iii) provide as follows:

(ii) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(iii) "*Pro forma* adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The work papers must identify dollar values and underlying reasons for each proposed *pro forma* adjustment.

- May allow calculation of base power costs using costs projected for the rate year based on data contemporaneous with the end of a general rate case (*i.e.*, at the beginning of the rate year). This has been found appropriate during periods of market volatility and could be shown to be appropriate in other circumstances.
- Has approved power cost adjustment mechanisms, such as Avista's ERM, that allow recovery of excess power costs incurred during the rate effective period, subject to certain conditions.
- May allow new generation plant or other infrastructure in rate base even when the new facilities are placed in service subsequent to the end of the test period. The more certain the timing of infrastructure being in service, that is used and useful, and the more certain the costs, the more likely the post-test period rate base will be approved.⁸³
- May approve end-of-period rate base when this is shown to be appropriate.
- May allow CWIP (Construction Work in Progress) in rate base.
- May approve hypothetical capital structures to improve a utility's financial condition.
- May set return on equity toward the higher end of a range of reasonable returns.
- May allow an attrition adjustment to *pro forma* rates determined using a modified historical test year when attrition, as defined in Order 06, is established on a fully satisfactory record.
- May approve a rate plan that establishes revenue requirements and base rates on updated information, such as data included in a Commission Basis Report, as a starting point for multi-year rates that can be adjusted in one fashion or another, subject to safeguards that protect ratepayers, over a period of two or three years, followed by a general rate case filing.

⁸³ Reliable estimates can be considered sufficiently known and measurable to be accepted when capital projects are near completion. Alternatively, capital costs can be included in rate base to the extent actually known and measurable and any subsequent costs can be approved for deferred accounting treatment.

54 Our decision here not to base revenue requirements and rates on the Company's attrition studies, or to accept Staff's modified historical test year results as adjusted for attrition, does not mean that there are no circumstances under which the Commission might accept escalation factors based on rigorous trend analyses such as those performed by Avista, Staff, and others, in this case.⁸⁴ Order 05, for example, discusses specifically that the Commission previously "has accepted some rate escalation or authorization of relief beyond the modified historical test year when rates will be in effect for more than one year."⁸⁵ Order 05 cites specifically the Commission's approval of a multi-year rate plan for PSE in 2013 where a "general rate case stay-out period was critical to the Commission's decision to approve an escalation factor for PSE."⁸⁶ The Commission explained that:

This approach requires the Company to accept some risk that rates in a future year will be sufficient, but it also provides more certainty to customers. It creates an incentive for the Company to control costs during the years that rates are in effect.⁸⁷

This discussion leaves open the possibility that the Commission would find acceptable in appropriate circumstances the use of escalation factors such as those determined by Staff in this proceeding, where such a proposal includes adjusted factors or other mechanisms that result in a reasonable sharing of risks between shareholders and ratepayers, as opposed to what would have occurred under the proposals in this case that would place all risk on the ratepayers.

55 A future proposal for a multi-year rate plan such as that approved for Avista in 2012, or for PSE in 2013, for example, could include both updated rates as a starting point and rate escalation one year later, or escalation annually for two or three years, subject to

⁸⁴ We are encouraged by Staff's refinements of its analytical approach in this case, relative to what it presented in Avista's 2015 case. ICNU also offers some useful ideas that parties may wish to explore in any future collaborative efforts.

⁸⁵ Dockets UE-150204/UG-150205, Order 05 ¶ 130.

⁸⁶ *Id.* ¶ 130 (citing *In the Matter of the Petition of Puget Sound Energy and Northwest Energy Coalition for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms*, Dockets No. UE-130137 and UG-130138 (consolidated), Order 07, ¶ 171 (June 25, 2013)).

⁸⁷ *Id.* ¶ 130.

reporting requirements and, perhaps, an earnings test or sharing mechanism.⁸⁸ Updated rates could be accomplished in an abbreviated proceeding using recent CBR results,⁸⁹ or on the basis of a carefully negotiated settlement among the parties, supported by evidence and subject to Commission review and approval. Rate plan adjustments to forward rates similarly could be the product of the Commission's adjudication based on a well-developed record showing what costs should be escalated using appropriately developed escalation factors. Alternatively, rate plan adjustments could be the product of careful negotiation and a settlement agreement with support adequate to establish that the results proposed are fair, just, reasonable, and sufficient. As approved in the PSE case, such escalation factors need not depend on a demonstration of attrition, but may well be another ratemaking tool available to the Commission in appropriate circumstances and with appropriate safeguards to protect ratepayers.⁹⁰

56 We also support the idea Avista put forward, and other parties endorsed in this case, to change the timing of filing Avista's rate cases, within any given calendar year, to a filing in June or July, rather than the December to February period. Both Staff and the Company testified that Avista should shift from filing general rate cases in the early part of the year to the late summer or early fall.⁹¹ Staff supported such a shift in timing as a means to help spread workload across the year and reduce pressures caused by coincident filings from multiple companies.⁹² Mr. Hancock also testified to the benefits for filings that coincide with the Company's construction season.⁹³ Avista pointed in addition to benefits to customers, observing in its brief that "if base rate adjustments occur in the

⁸⁸ The Commission emphasized the importance of breaking the pattern of annual rate filings when it expressed its openness to using such adjustments in PSE's 2011 general rate case. Indeed, this was a key factor contributing to the Commission's approval of PSE's decoupling mechanisms, ERF, and rate plan proposal in 2013. This remains an important policy goal today.

⁸⁹ Should Avista elect to take such an approach to proposing rate adjustments in the near to intermediate term, we note that the Company's next CBR results will be available no later than April 30, 2017, thus providing an opportunity for the Company to consult in advance of any rate filing with Staff and others, and the opportunity to base any rate proposal on closely contemporaneous data.

⁹⁰ We emphasize that the ideas discussed, and the citations in, paragraphs 61 and 62 are meant to be illustrative, not prescriptive. Parties are free to consider the full range of ratemaking tools that might be appropriate to consider in the context of a specific filing.

⁹¹ Morris, Exh. SLM-1T at 3:13-17; Hancock, Exh. CSH-1T at 7-10.

⁹² Hancock, Exh. CSH-1T at 8:7-23.

⁹³ Hancock, Exh. CSH-1T at 9-10.

summer months, customers will be aware well before the winter heating season.”⁹⁴ Avista will continue to control the timing of its general rate case filings and is in a position to shift the timing of its cases from mid-winter to mid-summer, which should benefit ratepayers by not burdening them with rate increases in the coldest months when they have difficulty controlling heating costs, and benefit the Company by reducing regulatory lag.

V. Conclusion

57 Consistent with the discussion in this Order, and for the reasons stated, the Commission concludes that Avista’s Petition for Reconsideration or, In the Alternative, for Rehearing, should be denied.

ORDER

THE COMMISSION ORDERS THAT:

- 58 (1) The Motion of Avista Corporation for Leave to File Reply Comments, is granted.
- 59 (2) Avista Corporation’s Petition for Reconsideration is denied.
- 60 (3) Avista Corporation’s Petition, In the Alternative, for Rehearing, is denied.
- 61 (4) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective February 27, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a Commission Order on Reconsideration. Judicial review may be available through a petition for judicial review, as provided under

⁹⁴ Avista Brief ¶ 1 n.1 (citing Exh. SLM-1T at 3:9-17).

Part V of the Administrative Procedure Act, RCW 34.05.510, et seq., filed within 30 days following the service of this order, pursuant to RCW 34.05.542.

Dissenting Opinion of Commissioner Jones

- 1 I continue to differ with the reasoning and analysis of the Majority in their denial of any rate relief in this proceeding. Although my views were fully explained in my earlier dissent, I feel compelled to respond to new arguments and analysis the Majority puts forward in this Order, particularly my disappointment in my colleague's lack of guidance on a path forward to resolve these issues. As described below, I favor granting Avista's Petition for Reconsideration on a targeted and limited basis.
- 2 Fundamentally, I continue to believe that Avista met its burden of proof in this proceeding. I previously cited to detailed testimony of the Avista's witnesses and believe they met their burden by providing sufficient detail and metrics on the capital expenditures the Company has made and intends to make going forward, including substantial investments in transmission, generation, and distribution assets. Despite the misgivings of my colleagues, I am convinced that the Company presented sufficient evidence and analysis through several witnesses in support of an attrition adjustment or on use of a modified historical test year. And, as noted in my earlier dissent, in addition to Avista's testimony Staff Witness Hancock provided complementary evidence and analysis in support of his own attrition analysis that could be used in determining a reasonable revenue requirement for the Company.
- 3 I recognize the majority's reliance on the "beyond the control" test as a means to reject Avista's overall rate request that was largely based on its attrition analysis. As I argued in my earlier dissent, the Majority draws too fine a line in this context on certain statements and arguments of the Company's analysis and Staff Witness Hancock. I concede that not all capital projects were "beyond the control" of Avista's management in a strict sense, and I could certainly question some of the Company's assumptions and analysis; therefore I might accept rate recovery of some projects while rejecting others. Unfortunately, the Majority and Commission Staff chose not to engage in such detailed analysis on the proposed projects and capital expenditures in this case, whether they are for electric generation, transmission, distribution or gas distribution. Instead, those projects fail on the Majority's simple burden of proof argument. Yes, the burden remains

with the Company to submit sufficient evidence on such investments including their rationale, but the Commission has a corresponding obligation to review such evidence in detail and make a reasoned judgment – whether it be an attrition analysis or a modified historical test year. In my view, we did not do so in this case.

- 4 In this Order, the Majority now cites to Staff testimony on a potentially new “econometric study” that will be developed in the future to assess the metrics of capital expenditures, especially for the transmission and distribution system. While this may be well intentioned, the fact remains that such a new study has not been developed and has not been shared with Avista or the other utilities we regulate. Multiple factors and elements enter into the area of decisions to deploy assets with the goal of providing safe, reliable, and affordable service, including engineering, physics, economics, and others. This is a challenging and complex area. In my view, the Majority errs by pointing to a prospective, (even speculative) tool or analysis when our role should be focused on practices that are currently in use; those that are well-vetted and known to both the utility, the Commission, and Staff.
- 5 The Majority concludes there is no revenue deficiency demonstrated in this proceeding and infers that the results of a modified historical test year analysis would yield either neutral results or slightly positive revenue adjustment. It cites to Staff and ICNU (in Paragraph 25) arguing that their independent pro forma analyses demonstrated that the Company should have sufficient revenue going forward.
- 6 As I stated in my earlier Dissent, the Company witnesses and Staff witness Hancock conducted a thorough and robust attrition analysis, similar in scope and use of trending analysis and escalators to the approach used by the Company that produces a revenue deficiency of about \$25 million electric. He favors this approach compared to the modified historical test year approach which he concludes would not yield sufficient results to meet the just and reasonable standard. That is the primary evidence introduced by our Staff in the proceeding, evidence that Avista agreed with on rebuttal, and no amount of post-hearing briefs or after-the-fact analysis can alter that evidence.
- 7 Secondly, regarding my ROE analysis in my earlier Dissent, I included such analysis as part of my best attempt at an ends-results test, per Hope and Bluefield standards, based on the evidence in this case because I felt an obligation to respond to the three cost-of-capital witnesses in this record. I accepted an attrition analysis, and argued for including a post-attrition adjustment for AMI, and also brought in to the potential risk reduction impact of full electric and gas decoupling adopted earlier. In the overall context of

reduced risks, I therefore argued that a lower ROE might be appropriate. However, given the Majority's decision for no rate relief whatsoever, it makes more sense to leave the ROE where it was established in the previous case, at 9.5 percent. Indeed, given the increased regulatory uncertainty occasioned by the Majority's decision and the fact that another Washington utility enjoys a higher ROE, and that the Federal Reserve is finally starting to tighten monetary policy, I could make an argument for a slightly higher ROE. My dissent here is not the proper forum for this debate, and neither is the Majority's opinion.

8 Finally, I find the Majority's suggestions for a path forward to be overly ambiguous. On the one hand, they suggest the Company put forth a "well-developed proposal" that could serve as the "spring-board and procedural vehicle" for settlement negotiations as an alternative means to full litigation. In my view, the Majority fails to provide clear guidance to the Company going forward, and it sounds to me like they are merely steering the Company to file a new general rate case in the hope that intervening parties can settle the matter quickly without a prolonged proceeding. Hope for a swift all-party settlement is unlikely given the current litigation in Superior Court concerning Order 05 in the previous rate proceeding (Dockets UE-105204 and UG-150205). The Majority goes on to describe in general terms various ratemaking methods (in Paragraph 53), for potential use in a future case. Again, I don't think there is anything particular relevant or new to such a list of possible ratemaking tools including the potential use of a multi-year rate plan with both defined escalators and potential sharing of benefits and other risk reduction measures. We have uttered similar observations in previous orders for all three of Washington's investor owned electric utilities.

9 I think the principles of regulatory consistency and gradualism call for a more reasoned approach. I would grant the Petition for Reconsideration for certain limited issues, namely Issue Number 2: "Use of the Modified Historical Test Year," or MHTY, and some of the confusion caused by the Company's use of a cross-check study in addition the MHTY and attrition analyses. This would be a targeted and limited opportunity for the Company, Staff and other parties to make their best case in this record.

10 On the issue of attrition analysis, I (along with the Company and Staff Witness Hancock) appear unable to sway my colleagues and I would simply abandon its use in this and future proceedings since it generates substantial controversy. Instead, I would grant reconsideration using a more tangible, well-tested, and pragmatic approach along the lines set forth below:

- Abandon use of any attrition analysis or cross check studies for the revenue requirements case;
- Require the Company to re-file its “best case” using a modified historical test year (MHTY) with its preferred pro forma adjustments, within 20 days;
- Require the Company to clarify in its filing the issue that Staff raised on Issue Number 2, or its use of its MHTY analysis, referring to the Exhibit Nos. JSS-1T, JSS-2, and JSS-3 as well as Exhibit EMA-1T (In its Answer, the Staff specifically refers to this issue and recognizes some merit, stating: “Avista seeks to have the Commission acknowledge the Company provided an appropriate pro forma study. Staff believes that the Company’s argument on this issue has merit and that further guidance from the Commission could be helpful.”)
- Defer treatment of AMI investments to a separate petition for deferred accounting that the Company should quickly file with the Commission;
- Not allow any specific new evidence in the record on cost-of-capital issues, or the fairly anecdotal and piecemeal issues that the Company and various parties make in the petitions and replies on issues like recent moves in equity prices, or dividends or earnings per share. The current capital structure and ROE of 9.5 percent would remain in place for analysis by the Company and parties;
- Allow Staff and the Parties to respond to this filing on the use of a case based on MHTY, with more limited pro forma adjustments; perhaps allow a 20 day period for responses to the Company’s filing;
- Allow a limited time for reply briefs, perhaps 10 days;

11 The approach set forth above would provide the Commission with sufficient data and information to make a fairly prompt determination of a potential revenue requirement deficiency for the test year. In contrast to the outright rejection the Majority reaches a second time, the approach I support is a more reasoned course of action that would result in a better end result than continuing to reject the entire case on a simplistic burden of proof argument. It comports with our well-honed principles of regulatory consistency and gradualism, which I believe the current Majority view does not reflect. It would also provide clear and useful guidance to the Company going forward.

PHILIP B. JONES, Commissioner